FORTY-NINTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D C 20402 • 1988

For sale by the Superintendent of Documents, U S Government Printing Office
Washington, D C 20402 (paper cover)

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NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. 16 December 1987.

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit the Forty-Ninth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1984.

Respectfully submitted,

DONALD L. DOTSON, *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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Operations In Fiscal Year 1984

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 1984, 44,118 cases were received by the Board.

The public filed 35,529 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected hundreds of thousands of employees. The NLRB during the year also received 8,100 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. Also, the public filed 489 amendment to certification and unit clarification cases.

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

At the end of fiscal year 1984, the five-member Board was composed of Chairman Donald L. Dotson and Members Don A. Zimmerman, Robert P. Hunter, and Patricia Diaz Dennis; one seat was vacant. Wilford W. Johansen served as Acting General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1984 include:

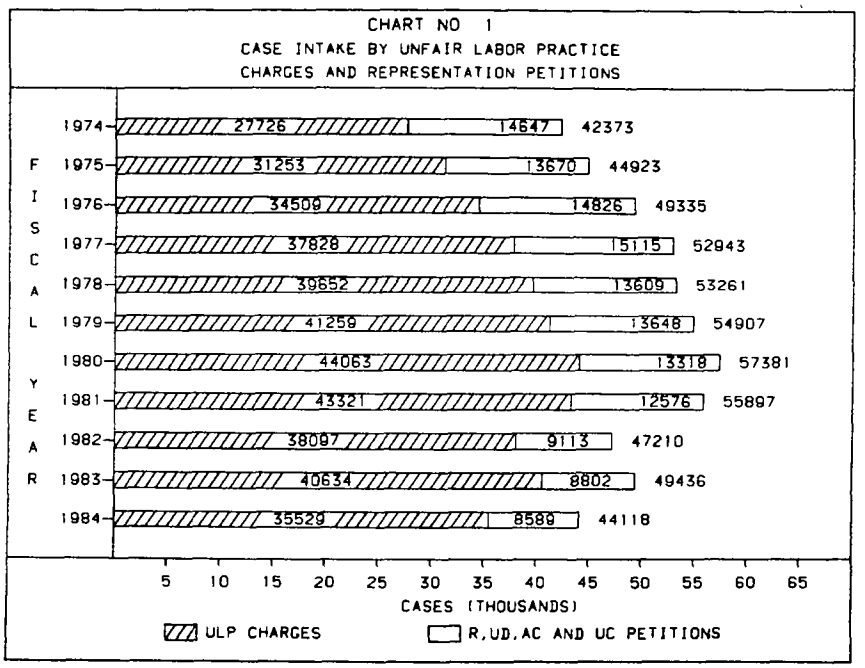
- The NLRB conducted 4,436 conclusive representation elections among some 221,023 employee voters, with workers choosing labor unions as their bargaining agents in 42.0 percent of the elections.
- Although the Agency closed 46,356 cases, 21,420 cases were pending in all stages of processing at the end of the fiscal year. The closings included 37,783 cases involving unfair labor practice charges and 7,859 cases affecting employee representation.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations,

numbered 11,223. Only on two previous occasions has this total been exceeded.

• The amount of $38,869,729 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 5,363 offers of job reinstatements, with 4,309 acceptances.

• Acting upon 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 3,609 complaints, setting the cases for hearing.

• NLRB's corps of administrative law judges issued 1,030 decisions.



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 52 during fiscal year 1984.

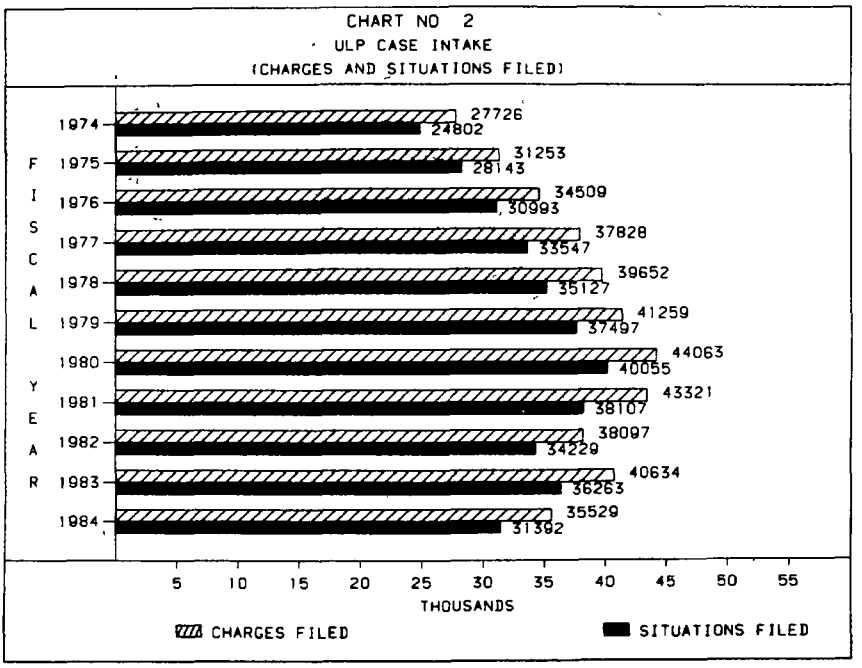
The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine 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 field 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.

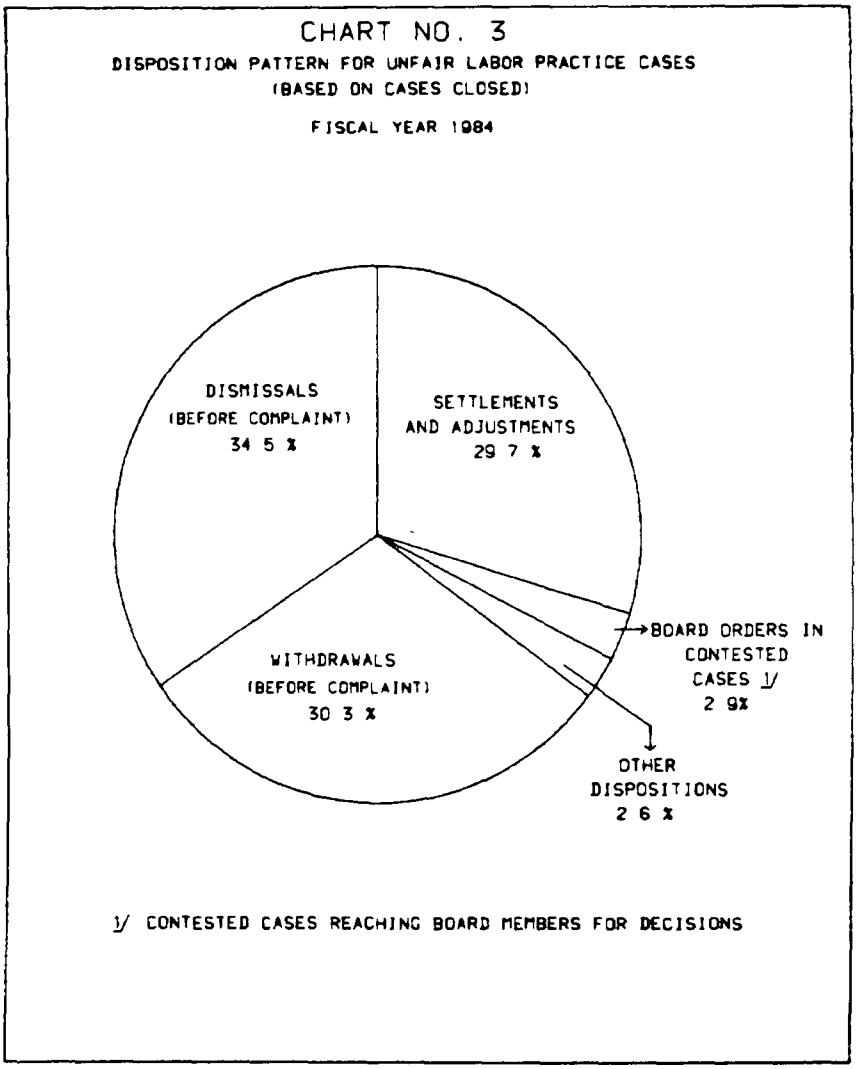
As noted, all cases coming to the NLRB begin their processing in the regional offices. Regional directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining 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 a 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.

Of major importance is that more than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 40 days without the necessity of formal litigation before the Board. Only about 2 percent of the cases go through to Board decision.

In fiscal year 1984, 35,529 unfair labor practice charges were filed with the NLRB, a decrease of 13 percent from the 40,634 filed in fiscal 1983. In situations in which related charges are counted as a single unit, there was a 14-percent decrease from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 24,852 cases, about 14 percent less than the 28,995 of 1983. Charges against unions decreased 6 percent to 10,884 from 11,565 in 1983.

There were 63 charges of violation of section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 13,177 such charges in 53 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,349 charges, in about 42 percent of the total charges. (Table 2.)

Of charges against unions, the majority (8,228) alleged illegal restraint and coercion of employees, about 78 percent, an increase from last year. There were 1,391 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 33 percent from the 2,090 of 1983.

There were 1,660 charges (about 16 percent) of illegal union discrimination against employees, virtually the same as in 1983. There were 290 charges that unions picketed illegally for recognition or for organizational purposes, compared with 463 charges in 1983. (Table 2.)

In charges filed against employers, unions led with 64 percent of the total. Unions filed 15,935 charges, individuals filed 8,912, and employers filed 5 charges against other employers.

As to charges against unions, 7,344 were filed by individuals, or 69 percent of the total of 10,614. Employers filed 3,079 and other unions filed the 124 remaining charges.

In fiscal 1984, 37,783 unfair labor practice cases were closed. Some 94 percent were closed by NLRB regional offices, as compared to 95 percent in 1983. During the fiscal year, 29.7 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.3 percent were withdrawn before complaint, and 34.5 percent were administratively dismissed.

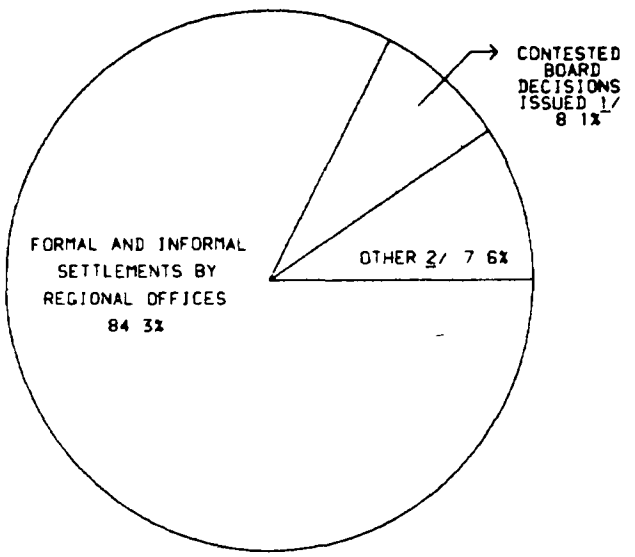
In evaluation of the regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. Some 34 percent of the unfair labor practice cases were found to have merit, the same percentage as in 1983.

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

CHART NO. 3A

DISPOSITION PATTERN FOR MERITORIOUS UNFAIR LABOR PRACTICE CASES (BASED ON CASES CLOSED)

FISCAL YEAR 1984

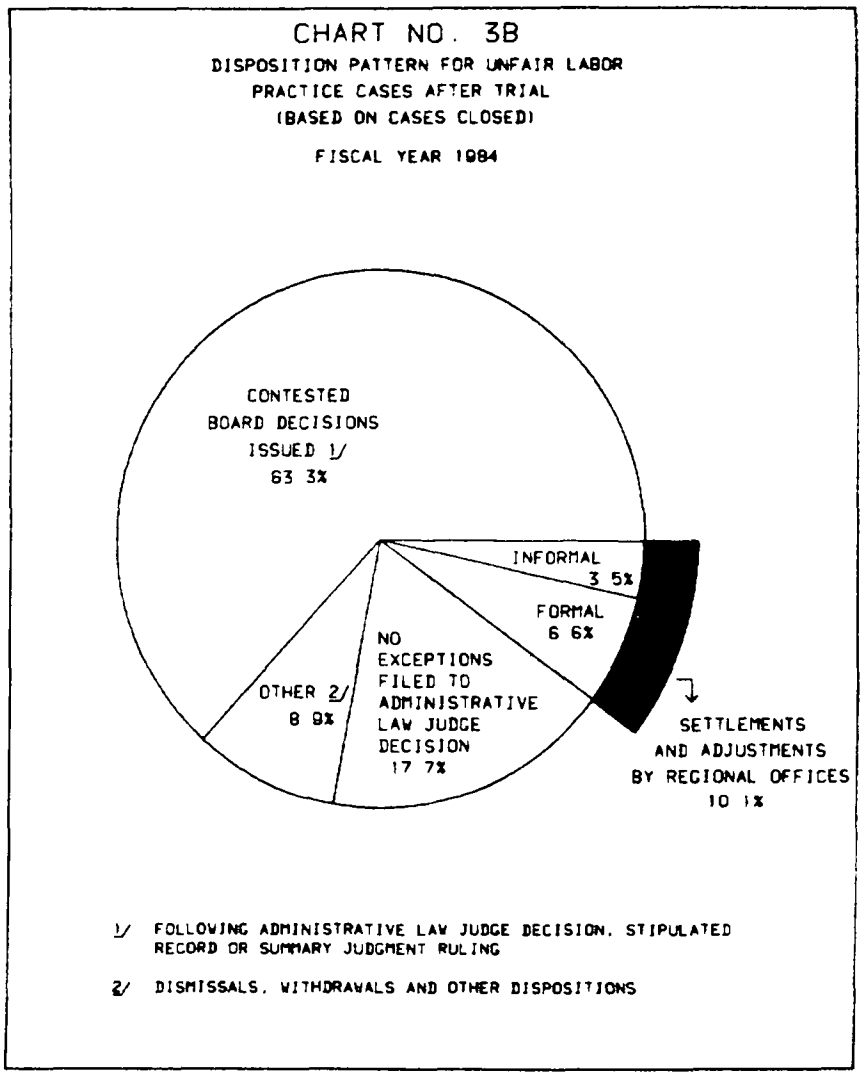


1/ FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING

2/ COMPLIANCE WITH ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING

reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal 1984, precomplaint settlements and adjustments were achieved in 7,123 cases, or 19.4 percent of the charges. In 1983 the percentage was 17.3.

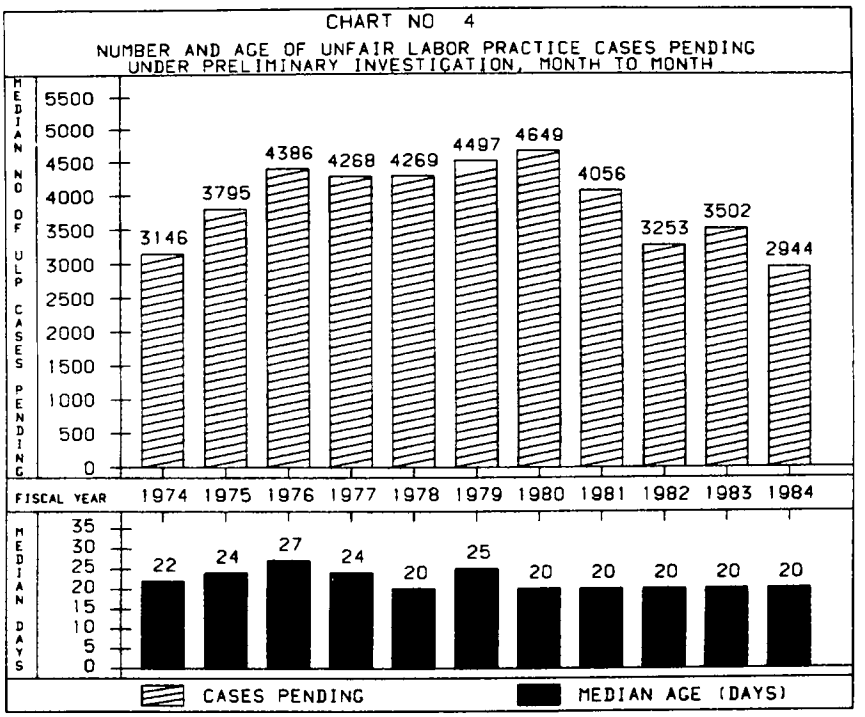
Cases of merit not settled by the regional offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1984, 3,609 complaints were issued, compared with 5,371 in the preceding fiscal year. (Chart 6.)



Of complaints issued, 85.1 percent were against employers, 14.7 percent against unions, and 0.2 percent against both employers and unions.

NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 45 days, the same as in 1983. The 45 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. Even so, their hearing and decisional workload is heavy. The judges issued 1,030 decisions in 1,131 cases during 1984. They conducted 830 initial hearings,



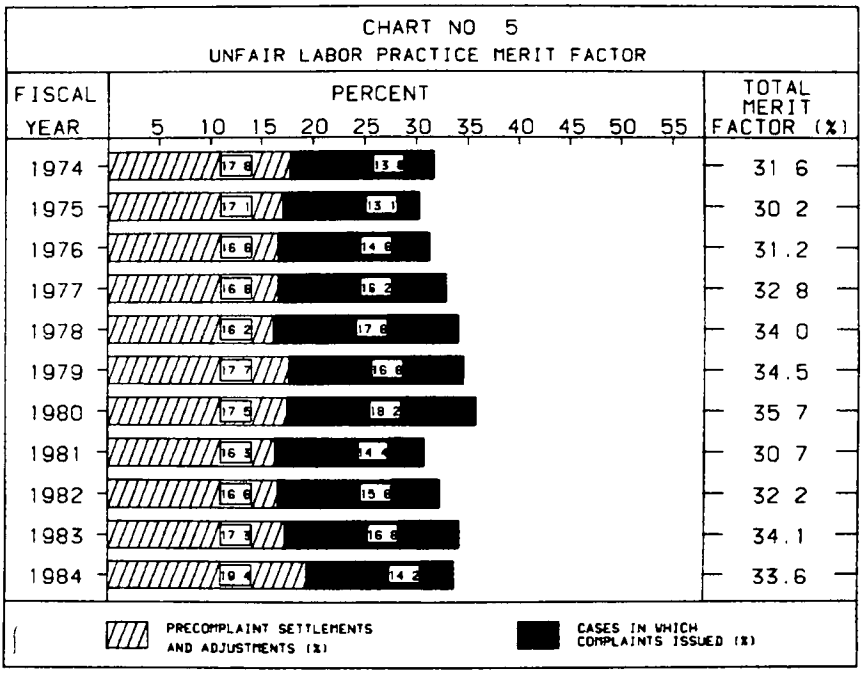
and 53 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

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

In fiscal 1984, the Board issued 1,023 decisions in unfair labor practice cases contested as to the law or the facts—873 initial decisions, 54 backpay decisions, 50 determinations in jurisdictional work dispute cases, and 46 decisions on supplemental matters. Of the 873 initial decision cases 722 involved charges filed against employers and 151 had union respondents.

For the year, the NLRB awarded backpay of $38.1 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $0.8 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. Some 5,363 employees were offered reinstatement, and 80 percent accepted.

At the end of fiscal 1984, there were 18,432 unfair labor practice cases being processed at all stages by the NLRB, compared with 20,686 cases pending at the beginning of the year.



2. Representation Cases

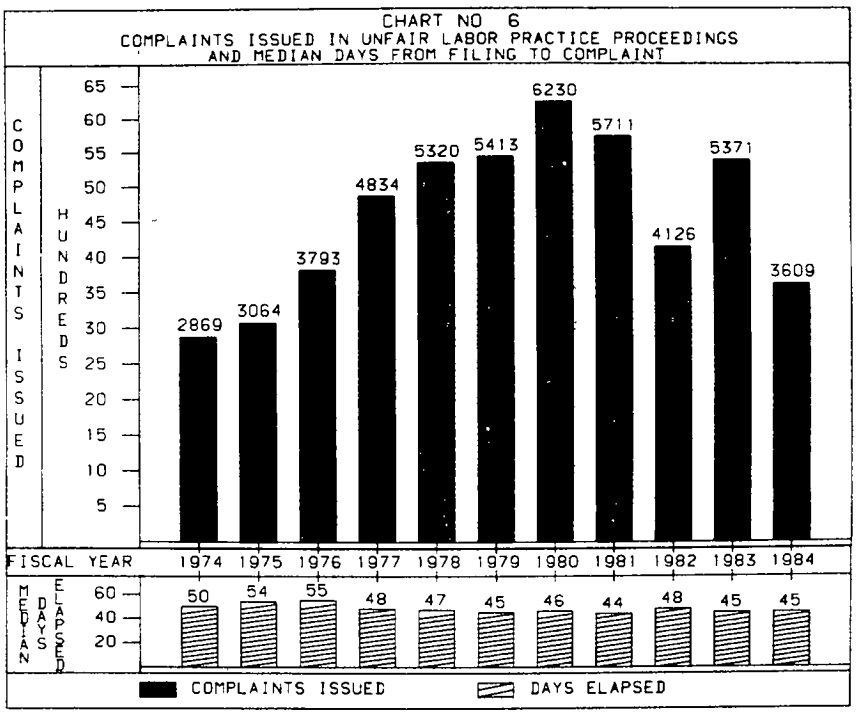
The NLRB received 8,589 representation and related case petitions in fiscal 1984, compared with 8,802 such petitions a year earlier.

The 1984 total consisted of 6,016 petitions that the NLRB conduct secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1,830 petitions to decertify existing bargaining agents; 254 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 453 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units.

Additionally, 36 amendment of certification petitions were filed.

During the year, 8,573 representation and related cases were closed, compared with 8,480 in fiscal 1983. Cases closed included 6,040 collective-bargaining election petitions; 1,819 decertification election petitions; 264 requests for deauthorization polls; and 450 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

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



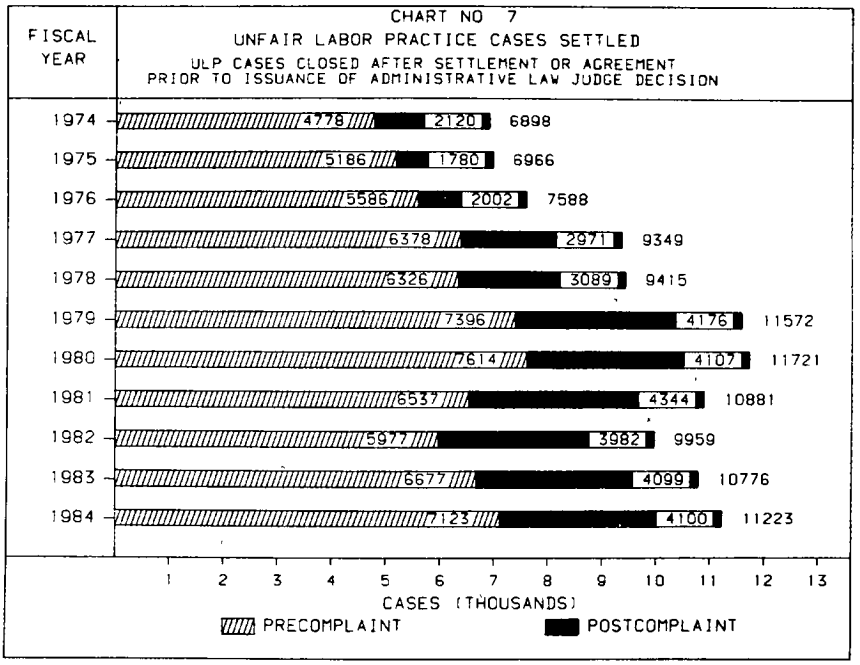
agreements are encouraged by the Agency. In 15.7 percent of representation cases closed by elections, balloting was ordered by NLRB regional directors following hearing on points in issue. In 21 cases, the Board directed elections after appeals or transfers of cases from regional offices. (Table 10.) There were five cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

3. Elections

The NLRB conducted 4,436 conclusive representation elections in cases closed in fiscal 1984, compared with the 4,405 such elections a year earlier. Of 249,512 employees eligible to vote, 221,023 cast ballots, virtually 9 of every 10 eligible.

Unions won 1,861 representation elections, or 42.0 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 105,919 workers. The employee vote over the course of the year was 114,321 for union representation and 106,702 against.

The representation elections were in two categories—the 3,561 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 875

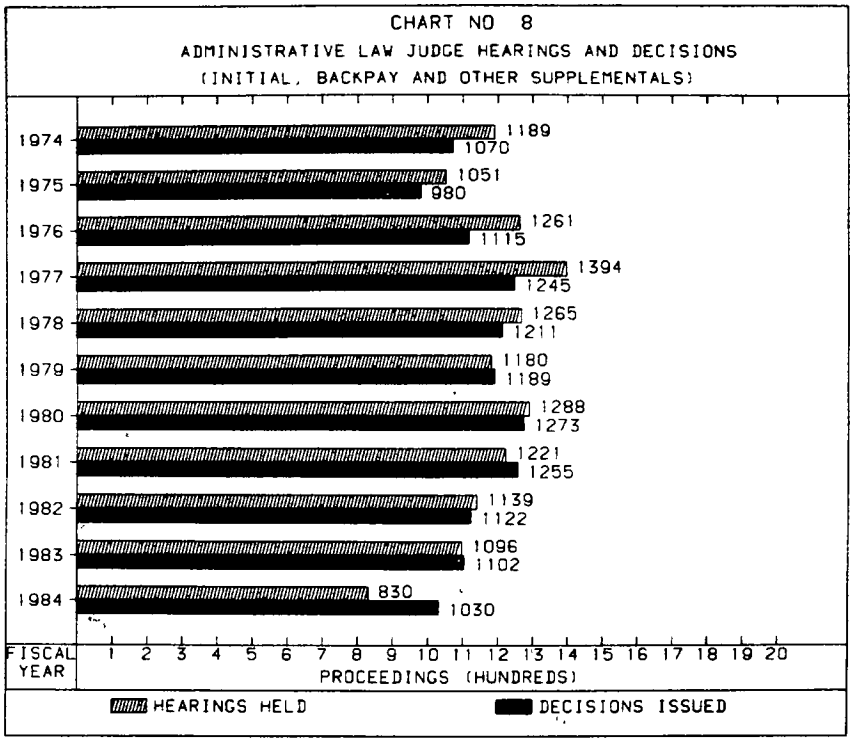


decertification elections determining whether incumbent unions would continue to represent employees.

There were 4,259 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1,719, or 40.4 percent. In these elections, 79,471 workers voted to have unions as their agents, while 101,040 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 67,354 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 177 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 142 elections, or 80.2 percent.

As in previous years, labor organizations lost decertification elections by a substantial percentage. The decertification results brought continued representation by unions in 206 elections, or 23.5 percent, covering 13,688 employees. Unions lost representation rights for 24,128 employees in 669 elections, or 76.5 percent. Unions won in bargaining units averaging 66 employees, and lost in units averaging 36 employees. (Table 13.)



Besides the conclusive elections, there were 131 inconclusive representation elections during fiscal 1984 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 54 referendums, or 71 percent, while they maintained the right in the other 22 polls which covered 2,087 employees. (Table 12.)

For all types of elections in 1984, the average number of employees voting, per establishment, was 50 compared with 41 in 1983. About three-quarters of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)

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 2,206 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 1,963 decisions rendered during fiscal 1983.

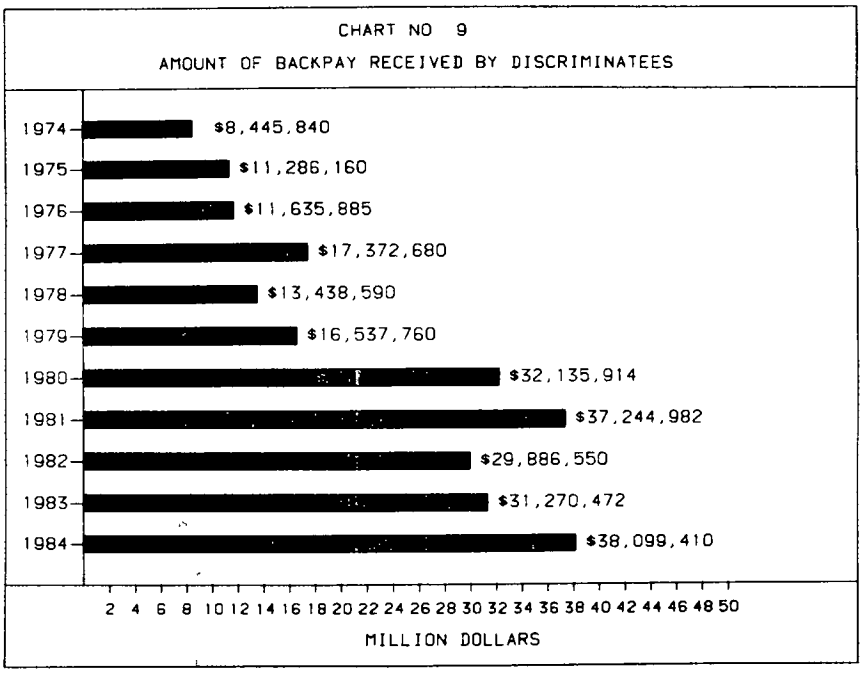


CHART NO 9
AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES
1974 $8,445,840
1975 $11,286,160
1976 $11,635,885
1977 $17,372,680
1978 $13,438,590
1979 $16,537,760
1980 $32,135,914
1981 $37,244,982
1982 $29,886,550
1983 $31,270,472
1984 $38,099,410
2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44 46 48 50
MILLION DOLLARS

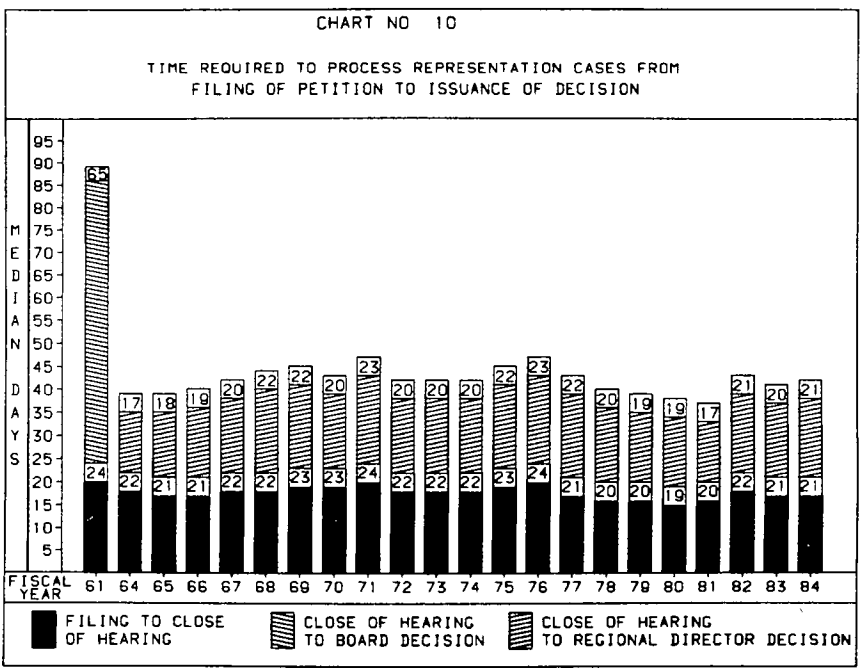


CHART NO 10
TIME REQUIRED TO PROCESS REPRESENTATION CASES FROM
FILING OF PETITION TO ISSUANCE OF DECISION
MEDIAN DAYS
FISCAL YEAR 61 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84
FILING TO CLOSE OF HEARING
CLOSE OF HEARING TO BOARD DECISION
CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION

A breakdown of Board decisions follows:

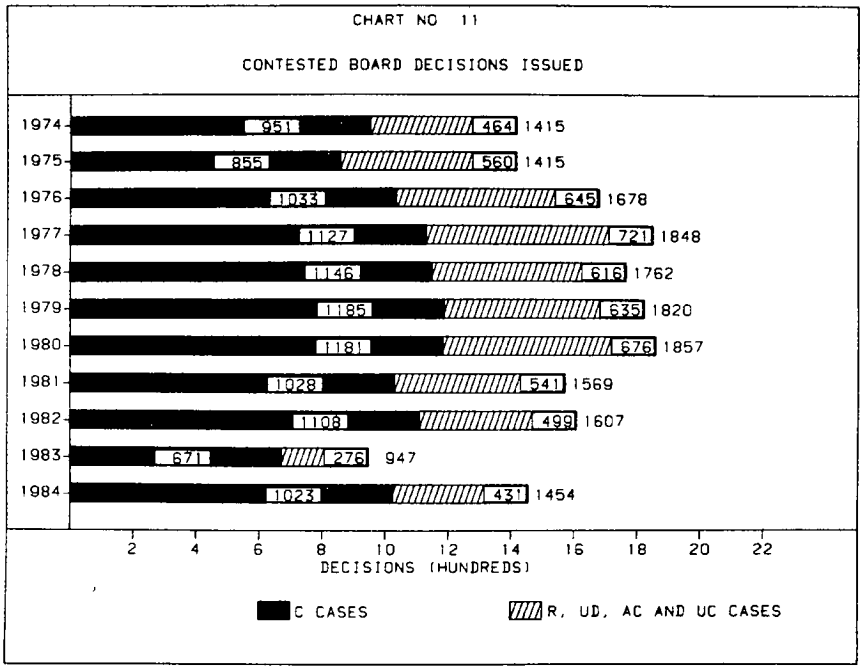
Total Board decisions			**2,206**
Contested decisions			**1,429**
Unfair labor practice decisions		1,023	
Initial (includes those based on stipulated record)	873		
Supplemental	46		
Backpay	54		
Determinations in jurisdictional disputes	50		
Representation decisions		395	
After transfer by regional directors for initial decision	19		
After review of regional director decisions	82		
On objections and/or challenges	294		
Other decisions		11	
Clarification of bargaining unit	8		
Amendment to certification	0		
Union-deauthorization	3		
Noncontested decisions			777
Unfair labor practice	433		
Representation	342		
Other	2		

Thus, it is apparent that the majority (65 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

Emphasizing the steadily mounting unfair labor practice caseload facing the Board was the fact that in fiscal 1984 more than 8 percent of all meritorious charges and 63 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) These high proportions are even more significant considering that unfair labor practice cases in general require about 2-1/2 times more processing effort than do representation cases.

b. Regional Directors

Meeting the challenge of a heavy workload, the NLRB regional directors issued 1,513 decisions in fiscal 1984, compared with 1,662 in 1983. (Chart 13 and Tables 3B and 3C.)



c. Administrative Law Judges

Despite the decrease in case filings alleging commission of unfair labor practices, the administrative law judges issued 1,030 decisions and conducted 830 hearings. (Chart 8 and Table 3A.)

5. Court Litigation

a. Appellate Courts

The National Labor Relations Board is involved in more litigation in the United States courts of appeals than any other Federal administrative agency. In fiscal 1984, the Appellate Court Branch was responsible for handling 186 cases referred by the regions for court enforcement and 119 cases wherein petitions for review were filed by other parties for a total intake of 305 cases. By filing briefs in 173 cases and securing compliance in another 89 cases for a total of 262, intake exceeded the dispositions. Oral arguments were presented in 194 cases compared with 302 in fiscal 1983. The median time for filing applications for enforcement was 18 days, compared with 72 days last year. The median time for both enforcement and review from the receipt of cases to the filing of briefs was 132 days, down from 160 days in fiscal 1983.

In fiscal 1984, 259 cases involving NLRB were decided by the United States courts of appeals compared with 338 in fiscal 1983.

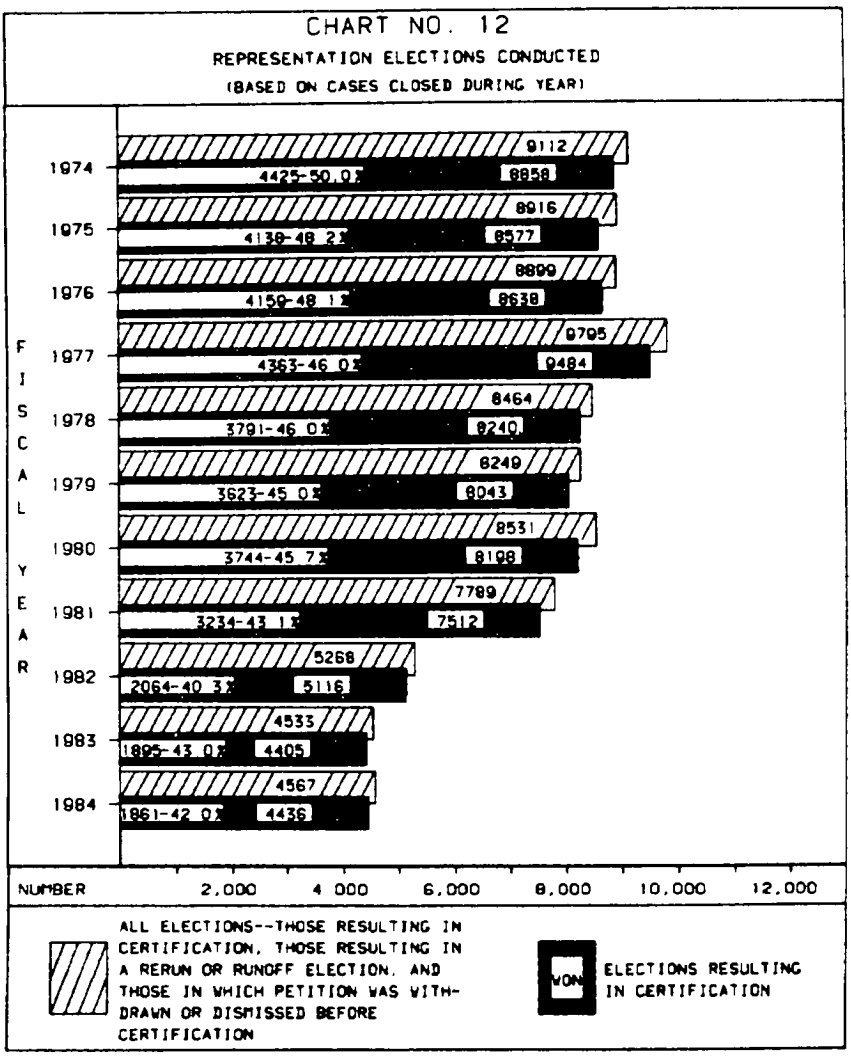
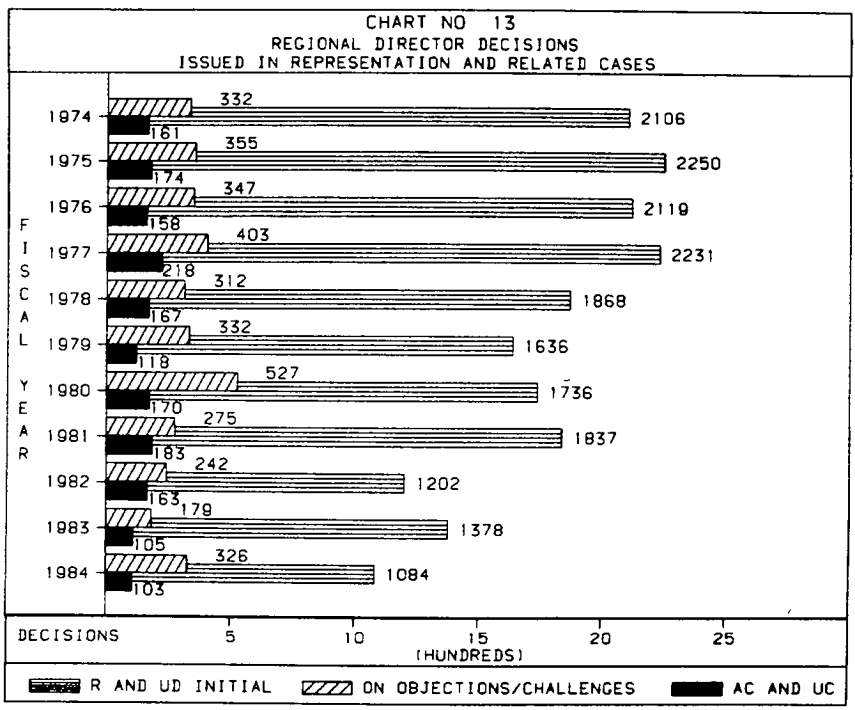


CHART NO. 12
REPRESENTATION ELECTIONS CONDUCTED
(BASED ON CASES CLOSED DURING YEAR)
FISCAL YEAR
1974
9112
4425-50.0%
8858
1975
8916
4138-48.2%
8577
1976
8899
4159-48.1%
8638
1977
9795
4363-46.0%
9484
1978
8464
3791-46.0%
8240
1979
8249
3623-45.0%
8043
1980
8531
3744-45.7%
8198
1981
7789
3234-43.1%
7512
1982
5268
2064-40.3%
5116
1983
4533
1895-43.0%
4405
1984
4567
1861-42.0%
4436
NUMBER
2,000
4,000
6,000
8,000
10,000
12,000
ALL ELECTIONS--THOSE RESULTING IN CERTIFICATION, THOSE RESULTING IN A RERUN OR RUNOFF ELECTION, AND THOSE IN WHICH PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION
WON
ELECTIONS RESULTING IN CERTIFICATION

Of these, 81.1 percent were won by NLRB in whole or in part compared to 81.7 percent in fiscal 1983; 8.5 percent were remanded entirely compared with 5.9 percent in fiscal 1983; and 10.4 percent were entire losses compared to 12.4 percent in fiscal 1983.

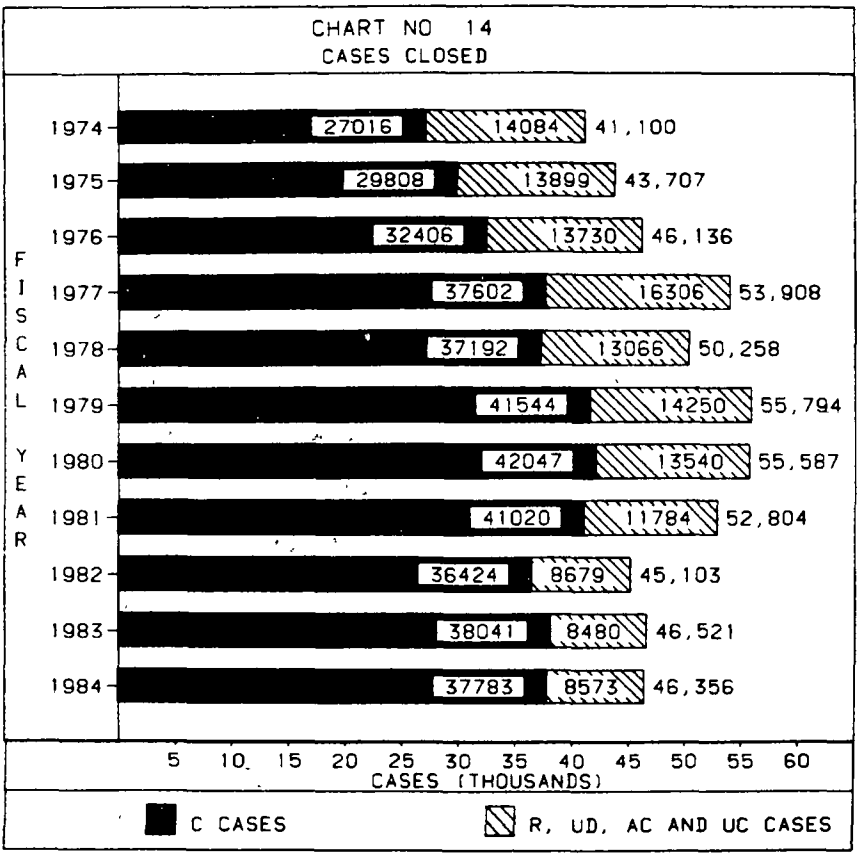


b. The Supreme Court

In fiscal 1984, the Supreme Court decided four Board cases; the Board won two in full, one in part, and lost one. In fiscal 1984 the Court denied 1 Board and 34 private party petitions for certiorari compared to 39 private party petitions denied in fiscal 1983. Finally, in fiscal 1984, the Court granted five Board petitions for certiorari and two private party petitions.

c. Contempt Actions

In fiscal 1984, 146 cases were referred to the contempt section for consideration of contempt action. During fiscal 1984, 25 contempt proceedings were instituted. There were 22 contempt adjudications awarded in favor of the Board; 2 cases were discontinued upon compliance after petitions were filed before court orders; and there were 3 cases where compliance was directed without contempt adjudications.



d. Miscellaneous Litigation

There were 54 additional cases involving miscellaneous litigation decided by appellate and district courts. The NLRB's position was upheld in 51 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to sections 10(j) and 10(l) in 116 petitions filed with the U.S. district courts, compared with 110 in fiscal 1983. (Table 20.) Injunctions were granted in 53, or 93 percent, of the 57 cases litigated to final order.

NLRB injunction activity in district courts in 1984:

Granted	53
Denied	4
Withdrawn	7
Dismissed	5
Settled or placed on court's inactive lists	35
Awaiting action at end of fiscal year	14

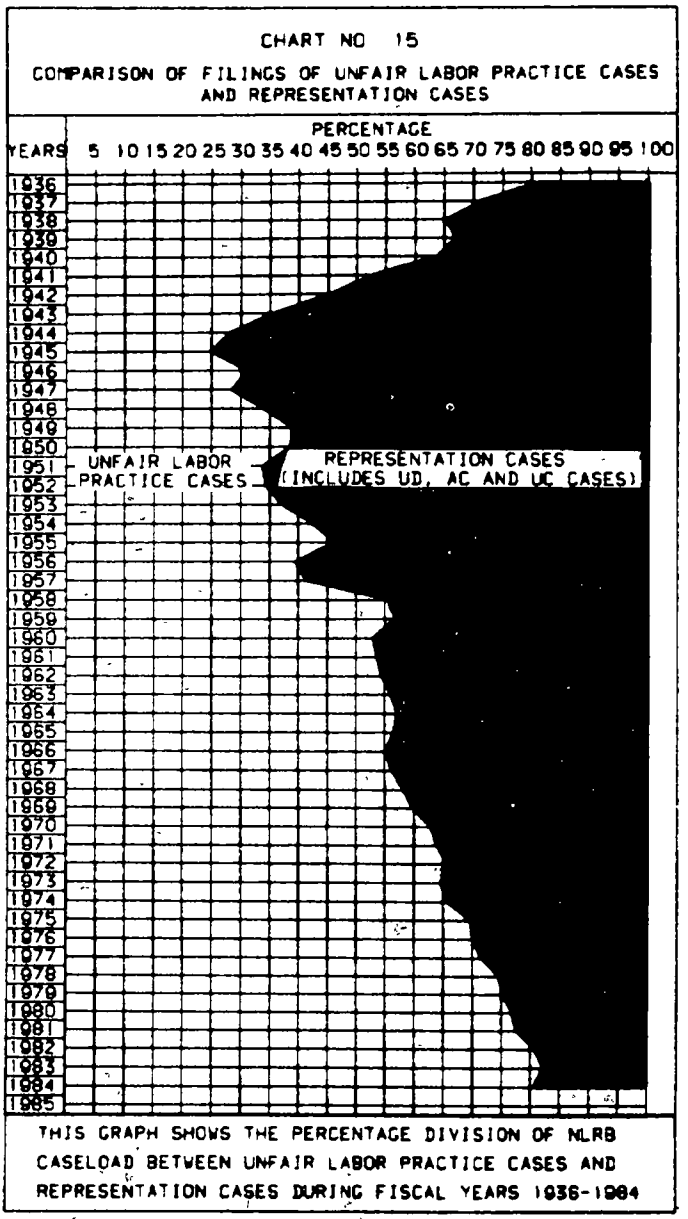


CHART NO 15
COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES
YEARS
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UNFAIR LABOR PRACTICE CASES
REPRESENTATION CASES (INCLUDES UD, AC AND UC CASES)
THIS GRAPH SHOWS THE PERCENTAGE DIVISION OF NLRB CASELOAD BETWEEN UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES DURING FISCAL YEARS 1936-1984

C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II, "NLRB Procedure," Chapter III, "Representation Proceedings," and Chapter IV, "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly some decisions establishing or reexamining basic principles in significant areas.

1. Deference to Arbitration

The Board clarified its requirements that before it would defer to an arbitrator's award, the award must be consistent with the standards set in *Spielberg Mfg. Co.*,[1] and the further condition that the arbitrator must have considered the unfair labor practice issue.[2] The Board concluded that the latter condition for deferral would be met if (1) the contractual issue is factually parallel to the unfair labor practice issue and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice issue. Differences, if any, between the contractual and statutory standards of review would be weighed by the Board as part of its determination under the *Spielberg* standards of whether an award is "clearly repugnant" under the applicable standard. The Board would not require an arbitrator's award to be totally consistent with Board precedent, but just that the award not be "palpably wrong."[3]

In another case,[4] the Board overruled *General American Transportation Corp.*[5] and stated that it would defer cases alleging violations of sections 8(a)(1) and (3) and 8(b)(1)(A) and (2).

2. Concerted Activity When Only Single Employee Involved

On reexamination of its definition of concerted activity, the Board overruled the *Alleluia*[6] approach of finding concerted activity when a single employee acting on his own behalf lodges a complaint over working conditions. In *Meyers Industries*,[7] the Board, noting the absence of any group support for the complaint lodged by the employee with state authorities over the unsafe conditions of the truck he was assigned to drive, found

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[1] 112 NLRB 1080 (1955)
[2] See *Raytheon Co*, 140 NLRB 883 (1963)
[3] *Olin Corp*, 268 NLRB 573
[4] *United Technologies Corp*, 268 NLRB 557
[5] 228 NLRB 808 (1977)
[6] *Alleluia Cushion Co*, 221 NLRB 999 (1975)
[7] 268 NLRB 493

that the employee did not engage in concerted activity. The Board allocated the burden of proving that the employee actually did engage in concerted activity to the General Counsel, who no longer could establish concertedness of the action by setting out the subject matter that is of alleged concern to a theoretical group. The Board also distinguished *Interboro Contractors*,[8] in that in *Meyers* there was no bargaining agreement to implement.

3. Requirement of Bargaining Before Initiating Partial Closing

In *Otis Elevator*,[9] the Board considered whether an employer need bargain with the union before implementing its decision over a partial closing of its plants when it consolidated operations at three separate locations. The Board, relying on *First National Maintenance Corp.*,[10] held that the critical factor to a determination of whether the decision is subject to mandatory bargaining is the essence of the decision itself, i.e., whether it turns upon a change in the nature or direction of the business or turns upon labor costs considerations, and not its effect on employees nor on a union's ability to offer alternatives. The Board found that the employer's decision to consolidate its research centers was excluded from the bargaining obligation of section 8(d) of the Act because it was based on the opinion that its technology was dated, its product not competitive, its research efforts duplicated in other operations, and because a newer and larger research and development center was available, and not upon labor costs.

4. Test for Bargaining Units in Health Care Industry

On a subsequent technical 8(a)(5) refusal-to-bargain motion for summary judgment, the Board reconsidered its own decision in the underlying representation proceeding involving a unit determination of maintenance employees in the health care industry. In *St. Francis I*,[11] the Board, in recognition of Congress' admonition against the proliferation of units in enacting the health care amendments to the Act, set up an initial screening procedure in which seven groups of employees were deemed "potentially appropriate" for bargaining in the health care field and that if the petitioned-for unit fell within one of these seven groupings then, and only then, would the Board apply its traditional community-of-interest test to see if the unit was appropriate. Under this test the Board found the petitioned-for unit appropriate.

On reconsideration, the Board felt that to carry out the mandate of Congress a stricter standard than community-of-interest was required and, in *St. Francis II*,[12] it rejected the two-tier ap-

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[8] 157 NLRB 1295 (1966), enfd 388 F 2d 495 (2d Cir 1967)
[9] 269 NLRB 891
[10] 452 U S 666 (1981)
[11] *St Francis Hospital*, 265 NLRB 1025 (1982)
[12] *St Francis Hospital*, 271 NLRB 948

proach of *St. Francis I*, and substituted a "disparity-of-interest" analysis using community-of-interest elements to curtail unit fragmentation in the health care field. In the disparity-of-interest test, the appropriateness of the petitioned-for unit is judged in terms of the normal criteria, but sharper than usual differences between wages, hours, and working conditions, etc., of the requested employees and those in the overall professional or nonprofessional unit must be established to grant the unit.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1984, are as follows:

Personnel compensation	$91,519,723
Personnel benefits	11,372,631
Travel and transportation of persons	3,907,588
Transportation of things	212,644
Rent, communications, and utilities	17,239,203
Printing and reproduction	639,167
Other services	3,721,055
Supplies and materials	1,201,030
Equipment	1,897,149
Insurance claims and indemnities	58,476
Total obligations and expenditures[13]	$131,768,665

[13] Includes reimbursable obligations as follows Personnel compensation, $1,588

II

NLRB Procedure

A. Unfair Labor Practice Procedure

The Board processes alleged violations of the National Labor Relations Act through specific investigative and adjudicative procedures. The filing of an unfair labor practice charge activates the Board's machinery. The Board investigates the charge through the appropriate regional office. The regional director may dispose of the case at this level by approving a settlement agreement executed by the parties. Alternatively, the General Counsel might dismiss the case as lacking merit. If the General Counsel issues an unfair labor practice complaint, the case proceeds to a hearing before an administrative law judge. The judge issues a written decision following the hearing. The parties may file exceptions to this decision. On the basis of the judge's decision, the parties' exceptions, and the record as a whole, the Board renders a final decision and order, dismissing the complaint or directing appropriate remedial action. During the report year, the Board decided significant cases involving each of these stages of the Board's unfair labor practice procedure.

1. Period for Filing Charge

As mentioned above, the filing of a charge activates the Board's processes. The charge enables the General Counsel, after due investigation, to issue a complaint. Section 10(b) of the Act provides, however, "[t]hat no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge." In *Postal Service Marina Center*,[1] the Board announced a new rule concerning the application of this section. The Board declared that it would "henceforth focus on the date of the alleged unlawful act, rather than on the date its consequences become effective, in deciding whether the period for filing a charge under Section 10(b) has expired."

Because the communication of a final adverse employment decision places the affected employee in a position to file an unfair labor practice charge, a Board majority reasoned, Member Zim-

[1] 271 NLRB 397 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

merman dissenting, that the statute of limitations should begin to run at that time.

Overruling *Roman Catholic Diocese of Brooklyn*[2] and *California School of Professional Psychology*,[3] the Board majority stated that "where a final adverse employment decision is made and communicated to an employee—whether the decision is nonrenewal of an employment contract, termination, or other alleged discrimination—the employee is in a position to file an unfair labor practice charge and must do so within 6 months of that time rather than wait until the consequences of the act become most painful."

The facts of the *Postal Service* case may serve as an illustration. On 27 February 1981 the employer informed Jack Wittenberg of its intent to terminate him. On 3 March the employer placed Wittenberg in a nonpay/nonduty status. Wittenberg appealed the decision unsuccessfully. On 21 August the employer removed Wittenberg's name from its employment rolls. Alleging that the employer discriminatorily discharged him for distributing newsletters, Wittenberg filed an unfair labor practice charge on 6 January 1982.

Ruling that the 6-month statute of limitations commenced no later than 3 March 1981, when Wittenberg ceased to work, an administrative law judge granted the employer's motion to dismiss the complaint as time-barred by section 10(b). Affirming the judge's decision, the Board majority specified that the limitations period commenced on 27 February, when Wittenberg received the employer's letter advising him of his removal. The majority relied on two Supreme Court cases involving limitations periods under civil rights legislation.[4] In those cases, the Supreme Court found that the limitations periods commenced on the date of notice, not on the final date of employment. The Board majority found that the Supreme Court's reasoning applied with equal force to cases arising under the National Labor Relations Act.

Member Zimmerman maintained that the majority misapplied the two Supreme Court decisions. In each of those cases, he argued, the only issue was whether the employment decision was unlawful. "In such circumstances," he stated, "notification of that decision was the only affirmative act from which any alleged discrimination could flow." In contrast, Member Zimmerman continued, Wittenberg's discharge constituted a possible violation independent of the notification. "When the discharge is unlawful in itself, regardless of the issuance of prior notice," Member Zimmerman concluded, "a charge filed within 6 months of the discharge is timely."

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[2] 222 NLRB 1052 (1976), enf denied in relevant part sub nom *Nazareth Regional High School v NLRB*, 549 F 2d 873 (2d Cir 1977)

[3] 227 NLRB 1657 (1977), enf denied 583 F 2d 1099 (9th Cir 1978)

[4] *Chardon v Fernandez*, 454 U S 6 (1981), *Delaware State College v Ricks*, 449 U S 250 (1980)

2. Effect of Settlement

After the filing of a charge, the Board conducts an investigation to determine whether the charging party's allegations are meritorious. During the course of the Board's investigation, the parties might enter into a settlement agreement. If approved by the regional director, the settlement agreement is conclusive. It "disposes of all issues involving presettlement conduct of a charged party," the Board observed in *E.S.I. Meats*,[5] "unless prior violations of the Act were either unknown to the General Counsel and not readily discoverable by investigation, or specifically reserved from the settlement agreement by the mutual understanding of the parties." The Board found in *E.S.I. Meats* that the binding effect of the rule above is not limited to parties to the agreement. Specifically, a Board panel ruled that a settlement agreement barred litigation of three separate charges—even though the party who filed one of the charges did not participate in the execution of the agreement.

The nonparticipating party, Marlin Eugene West, charged that the employer discharged him because of his union activities. During the course of the Board's investigation, the regional director approved an agreement between the employer and the union based on union charges that the employer unlawfully had discriminated against employees other than West. The employer attempted to comply with the settlement agreement by posting the required notice and submitting a backpay check for an alleged discriminatee. Several days later, the regional director notified the parties that he was vacating his approval of the settlement agreement because it might affect the rights of West, who was not advised of the proposed agreement or given an opportunity to object.

The Board panel found that West's discharge was readily discoverable when the regional director approved the settlement agreement. Indeed, the panel observed, it was the subject of a charge filed more than 2 weeks earlier. At that time, the regional director signed a letter informing the employer of West's charge. An investigation of that charge had commenced. There was no basis, the panel found, for finding that the regional director was personally unaware of West's charge at the time he approved the settlement agreement. Because there was no evidence that the employer had failed to fulfill its obligations under the agreement, the panel concluded that the regional director acted improperly in vacating his approval.

The panel held that the fact that the charges at issue were filed by different charging parties was insufficient to change the rules barring litigation of discoverable presettlement conduct. "If, after settlement of one charge, a related charge regarding presettlement conduct is filed, litigation of the new charge is barred

[5] 270 NLRB 1430 (Members Zimmerman, Hunter, and Dennis)

whether the same or different party filed the new charge," the panel stated. "The issue is not whether the new charge was filed by a different charging party, but whether the matters raised by the new charge were readily discoverable through investigation."

Finally, the Board panel decided that the fact that West's charge was not listed in the settlement agreement was not sufficient to sustain the General Counsel's burden of establishing by affirmative evidence that the charge was specifically reserved for future resolution. The panel granted the employer's motion for summary judgment and dismissed the General Counsel's complaint.

3. General Counsel's Prosecutorial Discretion

In the absence of a settlement agreement, the General Counsel must decide whether to issue a complaint or to dismiss the charge as lacking merit. Under section 3(d) of the Act, the General Counsel exercises final authority with respect to this decision. During the report year, the Board reinterpreted section 3(d) as it relates to findings made pursuant to the General Counsel's prosecutorial discretion. In *Hotel & Restaurant Employees Local 274 (Warwick Caterers)*,[6] the Board held that a dismissal of allegations by the General Counsel does not preclude the Board from considering the same allegations when raised defensively in a subsequent case. The charged party in the later action, the Board found, enjoys the right to a full hearing on all of its defenses.

The union charged that Warwick Caterers, as a successor or alter ego to another employer, unlawfully refused to recognize the union. The regional director dismissed the charge. Upholding the dismissal on appeal, the General Counsel found no evidence that Warwick was an alter ego of any party who might have had a bargaining relationship with the union. Notwithstanding the General Counsel's decision, the union picketed Warwick's place of business. In response, Warwick and another employer filed 8(b)(7)(C) charges against the union. In its defense, the union raised the successorship/alter ego arguments previously rejected by the General Counsel.

Relying on *Food & Commercial Workers Local 576 (Earl J. Engle)*,[7] an administrative law judge refused to consider the defense. Under *Engle*, the judge found, the General Counsel's rejection of the union's arguments was conclusive.

In *Warwick Caterers* the Board overruled *Engle*, and adopted the D.C. Circuit's view "that allowing the Respondent to present its defense is not tantamount to reviewing the General Counsel's decision not to issue a complaint." Under section 10(b), the Board observed, a charging party has the right to file an answer

[6] 269 NLRB 482 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)
[7] 252 NLRB 1110 (1980), enf denied 675 F 2d 346 (D C Cir 1982)

to a complaint and to give testimony. The Board stated, "Absent any limitation on these rights, the Board is bound to hear, receive, and consider the Respondent's answer at a trial-like hearing. The Regional Director's prior consideration and investigation of the earlier charge serves a more limited and discretionary function than the hearing necessary under the Act and cannot, therefore, serve as a replacement for the Board's adjudicatory responsibility." The Board remanded the case to the judge.

4. Filing of Exceptions

If the General Counsel decides to prosecute, the case proceeds to a hearing before an administrative law judge. The judge's decision operates as a recommendation to the Board. The parties may file exceptions to the judge's decision. These exceptions must comply with section 102.46(b) of the Board's Rules and Regulations. If the exceptions do not meet certain minimum requirements, the Board will not consider them; and the findings, conclusions, and recommendations of the judge, in the absence of exceptions, are automatically adopted by the Board.

In *Fiesta Printing Co*,[8] a Board panel majority acknowledged that "the Board may consider exceptions which do not fully comport with the rules if the exceptions sufficiently designate the portions of the judge's decision which are claimed to be erroneous." Chairman Dotson and Member Hunter found, however, that the employer's exceptions failed to challenge any specific portion of the judge's decision. Rather, the panel majority observed, the exceptions challenged the very existence of certain testimony reflected in the record. In effect, the panel majority continued, the employer sought to introduce new evidence by recanting the testimony given at the hearing by its two principal witnesses. Striking the employer's exceptions, the majority found that they failed to meet the Board's minimum standards "as they do not allege with any degree of particularity what error, mistake, or oversight the judge committed or on what grounds the findings should be overturned."

Dissenting in part, Member Zimmerman conceded that the exceptions did not fully comport with the requirements of section 102.46(b). He found, however, that "they sufficiently designate the portions of the decision Respondent claims are erroneous and do not force the Board to speculate as to what problems are at issue." Under these circumstances, Member Zimmerman concluded, the Board should not disregard the exceptions, filed pro se by the employer without the benefit of legal counsel. He also concluded, however, that the exceptions were without meirt. They essentially challenged the judge's credibility resolutions, he observed, without demonstrating that the resolutions were incorrect.

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[8] 268 NLRB 660 (Chairman Dotson and Member Hunter, Member Zimmerman dissenting in part)

B. Representation Procedure

Section 102.69(a) of the Board's Rules and Regulations provides that a party may file an objection to the conduct of a representation election, or to conduct affecting the results of the election, within 5 days after receiving the tally of ballots.

The Board established its "5-day rule' for the filing of election objections, Chairman Dotson and Member Zimmerman explained in *Rhone-Poulenc, Inc.*,[9] "to prevent the piecemeal submission of objections which necessarily delays the Regional Director's investigation." Accordingly, the panel majority continued, the Board will consider evidence of misconduct unrelated to a party's timely objections "only when the objecting party demonstrates by clear and convincing proof that the evidence is not only newly discovered but was also previously unavailable." Because the employer in *Rhone-Poulenc* failed to meet this burden, the panel majority affirmed the regional director's refusal to investigate untimely allegations unrelated to the employer's original objections.

Dissenting in part, Member Hunter maintained that the case presented a "special circumstance." He conceded that two of the employer's allegations, submitted after the expiration of the Board's 5-day filing period, were unrelated to the employer's original, timely objections. Nevertheless, he would remand the case to the regional director for consideration of the additional allegations. Distinguishing prior cases, Member Hunter relied on the fact that the employer submitted the additional allegations, as well as supporting evidence, "before the time had expired to submit evidence on the original objections and prior to the Region's beginning its investigation on those objections."

This circumstance, in the opinion of Chairman Dotson and Member Zimmerman, did not justify the allowance of untimely objections.

[9] 271 NLRB 1008 (Chairman Dotson and Member Zimmerman, Member Hunter dissenting in part)

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 of employment, or other terms or conditions of employment. The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents who have been previously certified, or who are being 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.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representatives were adapted to novel situations or reexamined in the light of changed circumstances.

A. Bars to Conducting an Election

1. Contract as Bar

In certain circumstances the Board, in the interest of promoting the stability of labor relations, will find that circumstances appropriately preclude the raising of a question concerning representation.

One such circumstance occurs under the Board's contract-bar rules. Under these rules, a present election among employees cur-

rently covered by a valid collective-bargaining agreement may, with certain exceptions, be barred by an outstanding contract. Generally these rules require that to operate as a bar the contract must be in writing, properly executed, and binding on the parties; it must be of definite duration and effective for no more than 3 years; and it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act. Established Board policy requires that to serve as a bar to an election a contract must have been signed by all parties before the rival petition is filed.

During the report year, a Board panel found in *Crothall Hospital Services*[1] that a contract signed by only two of the three named parties to the agreement could not act as a bar to a decertification petition filed by an individual employee. In this case, at the end of negotiations for a renewal contract representatives of both the employer and the local union had signed a memorandum of agreement incorporating by reference the terms of the last contract, but modifying certain language and economic terms as well as setting forth a new expiration date. Although only the local union had been certified as the exclusive bargaining representative of the unit employees, the Board found that the employer and the local union had agreed to include the national union as a named party to their last contract and that the language of the old contract expressly naming the national union as a party was incorporated by reference in the memorandum of agreement. The Board noted that its contract-bar rule, set foth in *Appalachian Shale Products,*[2] requires that all the parties must have signed a contract in order for it to constitute a bar. Therefore, the Board held that the memorandum of agreement in this case could not act as a bar to the petition, because the national union, a named party to the contract, had not yet signed the agreement when the petition was filed.

2. Waiver of Pending Board Proceedings

Among the cases decided during the report year was one in which the Board further clarified its longstanding rule against conducting an election while an 8(a)(2) proceeding, involving alleged illegal assistance to a labor organization purporting to represent employees in the same unit as the one for which the representation petition was filed, is pending. The question presented in the *Mistletoe Express Service* case[3] was whether the Board should honor a petitioning union's request to proceed to an election under the terms of the *Carlson Furniture Industries* case.[4] In *Carlson*, the Board, exercising its discretion, accepted a written

[1] 270 NLRB 1420 (Chairman Dotson and Members Hunter and Dennis)
[2] 121 NLRB 1160, 1162 (1958)
[3] 268 NLRB 1245 (Chairman Dotson and Members Zimmerman and Hunter)
[4] 157 NLRB 851 (1966)

request to proceed to an election, notwithstanding that the Board had found that the employer violated section 8(a)(2).

In *Mistletoe*, the petitioning union's written request offered (1) to proceed to an election with the understanding that the intervening union may appear on the ballot in any election directed by the Board, (2) that if a majority of the ballots in the election were cast for the intervenor that union may be certified unless meritorious objections are filed, and (3) that, if the intervenor were certified, no further action on the pending 8(a)(2) charges would be taken. The petitioning union also indicated that it sought no disgorgement remedy and that its *Carlson* waiver request related to the pending charges against both the employer and the intervenor.

The Board panel denied the petitioning union's request for a *Carlson* waiver and concluded that the petition should be held in abeyance. It pointed out that the pending 8(a)(2) charges alleged that the employer unlawfully assisted the intervenor by granting recognition when the intervenor was not the designated representative of a majority of employees, while there was a real question concerning representation; that the pending 8(b)(1)(A) charges alleged that the intervenor accepted recognition when it was not the designated representative of employees; that no hearing had been held on these charges and no violation findings were outstanding; that the issues raised by the petitioner's unfair labor practice charges and the representation petition required a resolution of the unfair labor practice charges; and that the existing contract between the employer and the intervenor could constitute a bar to the representation case proceeding, unless the employer and the intervenor are found to have engaged in conduct violative of section 8(a)(1) and (2) and section 8(b)(1)(A) of the Act.

The Board panel noted that the Board had often held that it would not litigate unfair labor practice allegations in a representation proceeding, and that a party asserting such allegations may litigate them only in an unfair labor practice proceeding designed to adjudicate such matters. The Board panel concluded: a "*Carlson* waiver is appropriate only when the unfair labor practices have been litigated or when unusual circumstances not present here warrant such a waiver."

B. Qualification of Representative

The Board will refuse to direct an election where the proposed bargaining agent fails to qualify as a bona fide representative of the employees. In *Armored Transport*,[5] a Board panel determined that the petitioners, two full-time representatives of a nonguard union who negotiate and administer collective-bargaining agree-

[5] 269 NLRB 683 (Chairman Dotson and Members Zimmerman and Dennis)

ments on behalf of that union, were not qualified for certification under section 9(b)(3) of the Act because they were at least indirectly affiliated with a labor organization that admits to membership employees other than guards. The nonguard union represented unit employees for many years and, after the expiration of its last contract, the union filed an unfair labor practice charge against the employer, alleging that the employer refused to bargain. The charge was dismissed because the employees in question were found to be guards within the meaning of section 9(b)(3) of the Act. Approximately 2 weeks later, the petitioners filed a petition seeking to represent the same unit.

The petitioners contended that they would not seek the nonguard union's permission as to terms and conditions to be negotiated on behalf of the employees, but they acknowledged they planned to continue in their full-time jobs with the nonguard union if certified as the employees' bargaining representative and would represent the guards in their free time.

The employer argued that the petitioners had not shown they would be sufficiently independent of the union to overcome the prohibition of section 9(b)(3).

The Board panel found, on the entire record, particularly the petitioners' employment as full-time nonguard union business agents, that the petitioners were at least indirectly affiliated with that union and that they could not qualify as representatives due to the congressional mandate, set forth in section 9(b)(3), that a bargaining agent representing guards should be completely divorced from one representing nonguard employees.

C. Unit Issues

1. Joint Employers

The status of a petition which seeks employees of two or more employers may be predicated upon a finding that the employers are joint employers of the petitioned-for employees.

In *Laerco Transportation*,[6] the petitioner sought to represent truckdriver and warehouse employees who, the petitioner alleged, were jointly employed by Laerco and California Transportation Labor (CTL). Laerco provided trucking and warehouse services to distribution operations of other businesses. CTL was a labor broker providing labor services to trucking and warehouse industries, including Laerco.

In resolving this joint employer case, the Board panel identified the criteria to be considered, stating: "The joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms and conditions of employment. Whether an employer possesses sufficient indicia of control over peti-

[6] 269 NLRB 324 (Members Zimmerman, Hunter, and Dennis)

tioned-for employees employed by another employer is essentially a factual issue. To establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction."[7]

In examining the relationship between Laerco and CTL, the Board panel found that Laerco did not possess sufficient indicia of control over CTL employees to support a joint employer finding. It relied particularly on the minimal and routine nature of Laerco supervision of CTL employees, the limited dispute resolution attempted by Laerco, the routine nature of the work assignments, and the fact that CTL and the intervening union had a broad collective-bargaining agreement which effectively controlled many of the terms and conditions of employment of the petitioned-for employees. On the basis of the facts before it, the Board panel concluded that Laerco was not a joint employer of the CTL employees. As the scope of the unit sought by the petitioner was predicated on Laerco's being a joint employer, the finding that Laerco was not a joint employer rendered the unit inappropriate.

2. Consolidation

In *Martin Marietta Co.*,[8] a Board panel held that a unit of employees historically represented by one union at a quarry newly purchased by the employer merged into the unit of employees represented by another union at the employer's older quarry. The panel found that after purchase of the second operation, which was adjacent to the older one, the employer created a new operation which obliterated the previous separate identities of the two units of employees. The panel noted that the new operation was physically consolidated, that it was under common management and administration, and that there was centralized control of labor relations and interchange of employees. In these circumstances, the panel found that one overall unit of all production and maintenance employees employed at the combined facility was the sole appropriate unit and that a question concerning representation existed in that unit. Even if either of the unions' collective-bargaining agreements had remained in effect, the panel found, that would not bar an election in the overall unit. The panel noted that where an employer merges two groups of employees historically represented by different unions, the Board will not impose a union by applying its accretion policy where neither group is sufficiently predominant to remove the question concerning overall representation. The panel thus directed an election in which eligible employees would be given a choice between each of the unions and no union.

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[7] Id at 325 See also *H & W Motor Express*, 271 NLRB 466 (Chairman Dotson and Members Zimmerman and Hunter)

[8] 270 NLRB 821 (Chairman Dotson and Members Hunter and Dennis)

3. Withdrawal From Multiemployer Bargaining

In *Walt's Broiler*[9] a Board panel, reversing a regional director's dismissal of petitions, found that the employers had clearly and unequivocally withdrawn from a multiemployer bargaining unit in a timely fashion. The employers were members of a 10-member restaurant association which had entered into a 3-year contract with the union, effective from 1 June 1980 to 1 June 1983. In February 1983, at the direction of a management consultant representing the association, the member-employers sent identical letters to the union informing it of their intent not to be bound to a multiemployer agreement, but to "retain the right to accept or reject [individually] any part of the contract negotiated." Further, the management consultant advised the union that he would be representing members of the association "as a group and individual members."

The Board panel found that the timely withdrawals of the employers were clearly and unequivocally stated to the union, initially by separate letters from each member-employer and thereafter by the consultant's reiteration of the member-employers' positions. Although the union initially objected to this position, it continued to negotiate with the association. The panel also found no evidence that either the member-employers or the consultant engaged in any inconsistent actions subsequent to the time the notices of withdrawal were sent to the union, and that the parties recognized the withdrawals by discussing concerns of the individual member-employers. The Board panel concluded that the fact that employers had bargained as one unit in the past, and had been parties to a contract covering the association as a whole, did not, of itself, preclude them from electing not to be bound to group bargaining in future negotiations.[10] Moreover, the Board panel held that neither the continued membership of the employers in the association nor their decision to retain the same negotiator to represent them on an individual basis was inconsistent with the withdrawal.[11] Accordingly, the panel concluded that the employers effectively withdrew from the preexisting multiemployer unit and ordered the petitions reinstated.

4. Unit Determinations

In the report year, the Board reached a number of unit determinations in a variety of interesting circumstances. Several Board decisions involving such unit determinations are summarized below.

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[9] 270 NLRB 556 (Chairman Dotson and Members Hunter and Dennis)

[10] Compare *Kroger Co*, 148 NLRB 569 (1964)

[11] See *Santa Barbara Distributing Co*, 172 NLRB 1665 (1968)

a. Health Care Unit

The Board addressed the question of the appropriateness of a unit limited to a hospital's maintenance department employees in *St. Francis Hospital.*[12] In that decision, a Board plurality revised the analysis to be used in determining which units are appropriate for bargaining in the health care industry, and vacated an earlier decision involving the same parties.[13]

The plurality determined that the congressional admonition to avoid undue proliferation of bargaining units in the health care field required the use of a stricter test than that which is generally applied to other industries. It concluded that a disparity-of-interest test would result in fewer units than a community-of-interest test. The majority said that under this test, "the appropriateness of the petitioned-for unit is judged in terms of normal criteria, but sharper than usual differences (or 'disparities') between the wages, hours, and working conditions, etc., of the requested employees and those in an overall professional or nonprofessional unit must be established to grant the unit." Thus, while the existing record might demonstrate that the maintenance employees share certain common workplace concerns (community-of-interest), they nevertheless do not have sufficiently distinct employment conditions separate from other hospital employees (disparity-of-interest) to warrant representation in their own bargaining unit, the majority held. Accordingly, the majority declined to find that the hospital had unlawfully refused to bargain with the maintenance employees' collective-bargaining representative, as had been alleged in this summary judgment proceeding.

Member Dennis concurred with the majority's promulgation of a disparity-of-interest standard, but observed that even this test lacked the certainty that could be achieved in health care unit determinations through rulemaking. She found that a disparity of interest may be demonstrated most readily in a large diversified health care institution yielding four appropriate units (professional, service and maintenance, technical, and business office clericals), while a small, functionally integrated facility may yield only two appropriate units (professional and nonprofessional).

Member Zimmerman, in dissent, stated that the majority's approach raised more questions than it answered, thereby denying all affected parties the finality they need in order to operate effectively. He cited the approach outlined in *St. Francis I* as offering a more straightforward analysis than that described by the majority and stated that the two-tiered community-of-interest test should have been reviewed by the courts before being discarded

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[12] 271 NLRB 948 (*St Francis II*) (Chairman Dotson and Member Hunter, Member Dennis concurring, Member Zimmerman dissenting)

[13] 265 NLRB 1025 (1982) (*St Francis I*) The majority in the underlying decision (Members Fanning, Jenkins, and Zimmerman) applied a two-tiered community-of-interest analysis in determining that a unit consisting solely of the maintenance department employees was appropriate for bargaining Then Chairman Van de Water and Member Hunter dissented separately

by the Board. In concluding that he would adhere to the two-step analysis of *St. Francis I* and find the maintenance department unit appropriate, he nevertheless noted that alternative unit determination methods such as rulemaking would at least have the effect of certainty and predictability he found lacking in the majority view.

b. Higher Education Institution

In *Harvard College*,[14] the Board reconsidered the question whether clerical and technical employees in the university's Medical Area Schools constituted a unit appropriate for bargaining. In a 1977 decision, *Harvard College*,[15] a Board majority had found the less-than-universitywide unit to be appropriate. The instant proceeding involved substantially the same unit.

A Board majority in *Harvard II* disagreed with *Harvard I's* conclusion that Medical Area employees were an appropriate unit. It noted that *Harvard I* utilized "the existence of a separate personnel office to serve the Medical Area employees exclusively" to infer that Medical Area employees were hired separately and treated differently from other university employees. The majority in *Harvard II* found that effectuation and implementation of personnel policies were highly centralized throughout the university. It concluded that the Medical Area personnel office, which was abolished in 1982, had operated essentially as a satellite of the university personnel office. The majority further found that the presence in the Medical Area of personnel officers, whose responsibility was to ensure universitywide application of personnel policies, supported a conclusion that personnel policies were uniformly administered.

Quoting extensively from *Harvard I's* dissent, the majority dismissed the earlier decision's findings that Medical Area employees were geographically separate, that the absence of transfers to and from the medical area and the medical orientation of Medical Area employees set them apart from the rest of the university, and that the lack of Medical Area bargaining history justified a separate unit.

In sum, the majority found that the employer's general and fiscal operations were centrally managed and controlled; that personnel and labor relations policies were universitywide and centrally administered and consequently Medical Area employees shared the same salary schedule, benefits and options, and classifications that other university employees enjoyed; and that skills and functions were similar to those of employees in comparable classifications elsewhere in the university. The majority thus concluded that the Medical Area employees did not share a commu-

[14] 269 NLRB 821 (*Harvard II*) (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

[15] 229 NLRB 586 (1977) (*Harvard I*) (Chairman Fanning and Members Jenkins and Murphy, Members Penello and Walther dissenting)

nity of interest sufficiently special to warrant separating them from other employees, and dismissed the petition.

Member Zimmerman dissented. He noted the *Harvard I* findings that the Medical Area constituted a geographically distinct entity; that unit employees' work was medically oriented and differed in character from nonunit work; that unit employees were separately supervised; that there was no evidence of everyday interchange, and there were few transfers; and that the university maintained a separate personnel and hiring office at the Medical Area. Member Zimmerman said that while the university tried to show it eliminated the separate personnel office, the change was little more than cosmetic because the Medical Area continued to have an employment office. He also held significant the creation of other personnel offices in the Medical Area which have a "straight line" reporting relationship to the deans of their respective schools and a less distinct relationship with the central office. Accordingly, Member Zimmerman would find the unit appropriate.

c. Other Unit Issues

In *V.I.M. Jeans*,[16] a Board panel majority determined that the employer successfully rebutted a presumption that a requested single-store unit was appropriate for collective-bargaining purposes. The panel majority noted the Board's holding that a single retail store is a presumptively appropriate unit, unless it is established that the single store has been effectively merged into a more comprehensive unit so as to have lost its individual identity.[17] However, the panel majority added, the Board has never held that to rebut the presumption a party must proffer overwhelming evidence illustrating the complete submission of the interests of employees at the single store, nor is it necessary to show that the separate interests of the employees sought have been obliterated.

The employer in *V.I.M. Jeans* operated a chain of retail stores selling jeans and tennis shoes at nine locations in the New York City metropolitan area. The panel majority found that each store followed the same basic floorplan; that employees at all stores had similar work skills, classifications, and working conditions; that all wages and benefit plans were centrally set and the salaries of all employees were similar; and that the staffing levels and working hours at the stores were centrally determined and generally uniform throughout the chain.

The majority also determined that much of the control over day-to-day operations of the stores was retained by the company president and two midlevel supervisors, who visited the stores on a daily basis and reviewed all decisions regarding hiring, firing,

[16] 271 NLRB 1408 (Chairman Dotson and Member Hunter, Member Zimmerman dissenting)
[17] See *Petrie Stores Corp*, 266 NLRB 75 (1983)

wage increases, and the scheduling of vacation time. Therefore, relying on its findings of a high degree of centralization of labor relations policies and circumscribed authority of the local managers, the Board panel majority held that the requested single-store unit was inappropriate.

Member Zimmerman dissented. He would find that the individual store manager retained major control over labor relations in his store. Therefore, Member Zimmerman would conclude the single-store unit was appropriate.

The issue of the appropriateness of a single-location unit was also considered by the Board in *Electric Machinery.*[18] In that decision, which involved employees of an electrical contractor performing work at a variety of sites, a Board panel held that neither the petitioned-for, single-location unit nor the countrywide unit found by the regional director was appropriate for collective bargaining. The panel found that the employer's Tampa construction division, consisting of 51 jobsites located in 11 cities within 8 counties, was the only appropriate unit in light of the uniform working conditions and employee skills, the significant employee interchange between all jobsites in the division, the common hiring and wage rates, the employer's centralized administration and operations, the divisionwide seniority system, and the lack of substantial autonomy on the part of the superintendent or foremen at each construction site.

Accordingly, in light of this evidence, the panel concluded that the presumption of appropriateness of the single-location unit had been rebutted. Relying on the substantial community of interest shared throughout the entire Tampa construction division, the panel held, contrary to the regional director, that the smallest appropriate unit must include all the employer's construction sites within the Tampa construction division. Since the petitioner had not indicated that it desired to proceed to an election in a broader unit, the panel dismissed the petition.

In *Birdsall, Inc.*,[19] the petitioning union sought a unit composed of warehouse employees, but excluding other employees performing nonwarehousing duties. Based on its analysis of the interaction of employee classifications or functions within the employer's operational scheme, a Board panel held that the unit limited to warehouse employees was not appropriate.

In so doing, the panel concluded that the employer's operation was highly integrative and adaptive and could not be artificially characterized as, or divided into, warehousing and nonwarehousing functions. The employer's business was found to operate with a high degree of functional integration, including substantial interchangeability and contact among employees. The panel noted that new employees were required to participate in an em-

[18] 269 NLRB 499 (Chairman Dotson and Members Zimmerman and Hunter)
[19] 268 NLRB 186 (Chairman Dotson and Members Hunter and Dennis)

ployerwide orientation to familiarize them with all aspects of the employer's operations, that all employees shared uniform working conditions, and that a policy existed allowing employees to bid for available jobs on a companywide basis. The panel accordingly determined that a broader unit encompassing certain nonwarehouse employee classifications was appropriate. Thus, stevedoring, equipment control, reefer control, container repair, shop, marine, and maintenance employees were included.

Employees in the traffic, insurance, data processing, and administration departments were excluded, however, based on the panel's finding that these employees did not share a community of interest with the other employees. Thus, the panel noted that these excluded employees were not located in areas where freight is handled and were primarily concerned with the administration, recordkeeping, sales, and marketing requirements of the employer's business, rather than being involved in physically following the freight. The panel further found that the excluded employees had little or no contact or interchange with the employees included in the unit.

Napa Columbus Parts Co.[20] also presented the issue of whether a separate unit of warehouse employees was appropriate. A Board panel found it was not. The Board panel stated that, in order for a separate warehouse unit to be appropriate, the employees involved must form a distinct and identifiable administrative segment of an employer's operation devoted essentially to warehousing functions; and the employees also must be under separate supervision, should perform substantially all their work tasks in buildings geographically separated from those in which the bulk of the remaining employees work, and should not be integrated, to any substantial degree, with employees in other divisions in the performance of their ordinary duties.

In finding a separate warehouse unit to be inappropriate, the Board panel emphasized that employees other than the warehouse employees performed some warehouse work; there was highly centralized control of personnel and business decisions at the general manager level; the autonomy of warehouse supervisors was limited to routine daily matters; the workplace of the warehouse employees was not separate and distinct from that of other employees; and there was a high degree of contact between warehouse employees and other employees.

The panel further found that the presumption favoring a single-facility unit was rebutted by the high degree of functional integration, centralized control, and uniform application of all labor relations policies, procedures, and practices of the employer's operation, frequent temporary interchange and permanent transfer of employees, and the similarity of employee skills and working conditions at the distribution center and in all local

[20] 269 NLRB 1052 (Members Zimmerman, Hunter, and Dennis)

stores. The panel held that these factors established that a multifacility unit including at least the warehouse and all local store employees would be appropriate. Accordingly, it vacated an election held in the warehouse unit and directed another election.

In *Abdow Corp.*,[21] a Board panel majority concluded that a plantwide unit of truckdrivers, warehouse employees, and kitchen and bakery employees was the only appropriate unit. The panel majority accordingly reversed a regional director's direction of an election in a unit of drivers and warehouse employees, excluding the kitchen and bakery workers.

In support of its decision, the panel majority noted that the employer employed a relatively small complement of plant employees (approximately 24); all plant employees were located within a single building; the building was designed in such a way that there necessarily was contact between the various classifications; all aspects of the employer's operations were functionally integrated, revolving around a single goal of preparation and delivery of the employer's food products to restaurants; and all employees were allowed to and actually did perform receiving functions.

In his dissent, Member Zimmerman adopted the regional director's finding that the petitioned-for unit of drivers and warehouse employees constituted a separate appropriate unit because there was limited contact between the two groups of employees, separate supervision, and a lack of interchange and functional similarity of tasks.

D. Conduct of Election

Section 9(c)(1) of the Act provides that where a question concerning representation is found to exist pursuant to the filing of a petition, the Board shall resolve it through a secret-ballot election. The election details are left to the Board. Such matters as voting eligibility, timing of elections, and standards of election conduct are subject to rules laid down by the Board in its Rules and Regulations and in its decisions. Elections are conducted in accordance with strict standards designed to ensure that the participating employees have an opportunity to register a free and untrammeled choice in the selection of a bargaining representative. Any party to an election who believes that the standards have not been met may file timely objections to the election with the regional director under whose supervision it was held. The regional director may either make an administrative investigation of the objections or hold a formal hearing to develop a record as the basis for a decision, as the situation warrants. If the election was held pursuant to a consent election agreement authorizing a determination by the regional director, he will issue a final deci-

[21] 271 NLRB 1269 (Members Hunter and Dennis, Member Zimmerman dissenting)

sion.[22] If the election was held pursuant to a consent agreement authorizing a determination by the Board, the regional director will issue a report on objections which is subject to exceptions by the parties and decision by the Board.[23] However, if the election was originally directed by the Board,[24] the regional director may either (1) make a report on the objections, subject to exceptions, with the decision to be made by the Board, or (2) issue a decision, which is subject to review by the Board.[25]

One case decided by the Board in this report year concerned the Board's failure to provide voting instructions in Spanish in a situation where a significant number of voters did not speak or understand English. In *Alco Iron & Metal Co.*,[26] there were 18 eligible voters, 9 or 10 of whom spoke only Spanish and 4 or 5 of whom spoke Spanish and English. Although the election notices and ballots were in both Spanish and English, no instructions on voting procedures to be used were given for Spanish-speaking employees. The Board agent and the employer election observer spoke only English, and only the union observer was bilingual.

The first or second employee to vote at the election spoke only Spanish, and the Board agent asked the union observer to explain in Spanish the voting procedures to that employee. The union observer initiated conversations with 8 or 10 of the next 12 voters, with the conversations generally ranging from 30 seconds to 1-1/2 minutes. The Board agent did not participate or speak to any of these voters, but merely handed them a ballot after the union observer finished speaking. The employer observer then complained to the Board agent about the union observer's conversations, and the Board agent instructed the union observer to repeat in Spanish the instructions which the Board agent then gave in English. Five to seven employees voted under this arrangement, with each conversation lasting approximately 15 to 20 seconds.

The hearing officer found no basis for concluding that the Board agent's conduct or the union observer's activity compromised the neutrality of the Board or indicated to voters that the Board supported the union. The Board, however, noted that the Board agent instructed the union observer to translate the voting procedures to the Spanish-speaking employees. The Board agent provided no additional instruction or guidance, and did not participate further in the conduct of the election, except for handing ballots to the employees, until the employer observer complained. Even after this complaint, the Board agent merely instructed the union observer to repeat the instructions in Spanish.

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[22] Rules and Regulations, sec 102 62(a)
[23] Rules and Regulations, secs 102 62(b) and 102 69(c)
[24] Rules and Regulations, secs 102 62 and 102 67
[25] Rules and Regulations, sec 102 69 (c) and (a)
[26] 269 NLRB 590 (Chairman Dotson and Member Dennis, Member Hunter concurring)

Contrary to the hearing officer, the Board found that, under these circumstances, the atmosphere of impartiality in which the election should have been held was not present. The Board stated that the delegation of an important part of the election process to the union observer conveyed the impression that the union, and not the Board, was responsible for running the election. The Board found that such conduct was incompatible with its responsibility for assuring properly conducted elections, and accordingly ordered that the election be set aside.

While concurring with the majority's decision to direct a new election, Member Hunter suggested that the Board articulate how an election should be conducted when possible language issues are involved. Member Hunter stated that he would hold that where a regional office is on notice that a substantial percentage of the electorate do not speak English, it is the regional offices' duty to ensure to the maximum extent administratively possible that appropriate personnel are present to assist non-English-speaking employees.

In *Jowa Security Services*,[27] a Board panel addressed the question whether eligible voters had an adequate opportunity to see and fully digest the posted election notices.

The official notices were posted 3 days before the election in locations where employees regularly reported to receive their paychecks. The election was conducted on payday. In addition, the union mailed a copy of the notice to all employees 2 days before the election. The regional director concluded that the employees received inadequate notice of the election, inferred that this was the cause of low voter turnout (64, of 314 eligible, voted), and recommended that the election be set aside.

The Board panel stated that the Board has never required that employees receive *actual* notice of an impending election. Rather, it said, the standard has always been that reasonable measures must be taken to assure that the unit employees are aware of their right to exercise freely their franchise in the Board-conducted election. This is traditionally accomplished through the posting of the official notice of election in conspicuous places prior to the election. Here, the Board panel found, there was no evidence of any irregularity in the posting of election notices. Accordingly, it held that there was no basis for drawing an inference that lack of notice was the reason for the low turnout. Therefore, the Board certified the results of the election.

E. Objections to Conduct Affecting the Election

An election will be set aside and a new election directed if the election campaign was accompanied by conduct which the

[27] 269 NLRB 297 (Chairman Dotson and Members Hunter and Dennis)

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 National Labor Relations 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 not attempt to coerce the voters so as to deprive them of 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 campaigns, the parties threaten the employees with reprisals or cajole them with the promise of benefits. In several cases decided during the report year, the Board considered allegations involving each of these types of preelection conduct.

In *KCRA-TV*,[28] a Board panel unanimously overruled a union objection alleging that the employer's owner impliedly promised to institute a grievance procedure similar to one in effect at his nonunion banking system if employees voted to decertify the union. At an employee meeting, several employees questioned the owner about the station's policies if the union were decertified. The owner refused to state what the policies would be, but the employees insisted. When asked how the station would resolve employee problems if there was no contractual grievance procedure, the owner replied that he could not make any promises and that, while he would give an example, he was "not saying that this is the way it would happen." He explained that at his nonunion banking system he discussed employee complaints periodically with an employee committee at an informal dinner meeting, and that sometimes problems were resolved and sometimes they were not.

The Board held that *Viacom Cablevision of Dayton*[29] was controlling, and distinguished *Etna Equipment & Supply Co.*,[30] on which the hearing officer had relied. At least twice during the meeting the owner cautioned the employees that he was not promising anything if the election resulted in the union's decertification. His reference to the grievance procedure at his nonunion banks was a casual response to persistent employee ques-

[28] 271 NLRB 1288 (Chairman Dotson and Members Hunter and Dennis)
[29] 267 NLRB 1141 (1983)
[30] 243 NLRB 596 (1979)

tioning. The Board found that his response was dissimilar to the employer's calculated scheme in *Etna* of holding three dinner meetings at which greater pension benefits of nonunion employees were emphasized, culminating in the distribution to each employee of an individually tailored chart comparing pension benefits under union and nonunion plans. The Board held that as the union could emphasize the superiority of the existing grievance procedure, the owner, in response to employee questioning, could also explain that the station would continue to resolve employee complaints even in a nonunion setting by giving an example of how this might be done.

In *Marmon Group, Inc.*,[31] a Board panel found, contrary to the regional director, that sufficient evidence was revealed during an investigation to warrant a hearing on the employer's objections to an election. In recommending overruling the objections, the regional director assessed the alleged threats as third-party conduct. He concluded there was no evidence that the threats were attributable to the union.

The Board panel noted that the employer presented signed statements of four employees. The first employee stated that two individuals alleged as the union's organizers asked him, while he was sitting in his car with his wife, whether he was "for the Union." When the employee responded, "I don't know," one of the individuals stated, "You have some mighty nice tires there you wouldn't want them cut," and "You wouldn't like somebody to come by and bomb your house would you." Another employee asserted in his statement that an individual, alleged in the objections as one of the union's organizers, told him that "they were going to stomp him and get his car if he vote [sic] no for the union." This employee further stated that while he was standing in line to vote and this same individual was leaving the voting area, the individual "slammed me into the wall on his way back."

The Board panel concluded that the evidence was sufficient to warrant a hearing. It pointed out that the employer presented witnesses who testified to various alleged threats of serious violence, including threats of bodily harm, of house bombing, and of property damage, and of an incident in which an employee waiting to vote was slammed into a wall by an employee who previously had threatened him with bodily harm. This serious and aggravated conduct, if proven, might indeed have created a general atmosphere of fear and reprisal rendering a free choice in the election impossible, the Board said. It noted that a hearing would determine whether the alleged conduct occurred, the context in which it occurred, and its possible impact on the election. Member Hunter further noted that a hearing might reveal in

[31] 268 NLRB 1252 (Chairman Dotson and Members Hunter and Dennis)

greater detail the relationship, if any, between the union and the employees who allegedly engaged in the conduct.

A Board panel majority in *S & C Security*[32] reversed a hearing officer and set aside an election in circumstances where the union reasonably led an employee to believe that he would be paid for serving as an observer in an amount which, if paid, would have had been grossly disproportional to his normal hourly rate of pay. The employee had received about $50 from the union for serving 2 hours as one of its observers in a prior Board-conducted election in 1982. When the employee was asked to serve as an observer for the union in the 1983 election by an employee acting as the union's agent for the purpose of designating observers, no mention was made of payment. Under the circumstances, the Board panel majority found that the employee anticipated and was reasonably left with the impression that he would again be paid as he was in the prior election.

The panel majority, in setting aside the election, relied on *Easco Tools*.[33] Although noting that unlike *Easco*, it had not been established that the union paid, or expressly promised to pay, the observer, the panel majority did not find this difference significant since the observer reasonably was led to believe he would be paid about $50 for acting as an observer for 2 hours as he was under the previous arrangement with the union; and the sum, if paid, would have been grossly disproportionate to the observer's normal hourly rate of $6.48. The panel majority found it questionable whether in these circumstances the observer, whose vote was sufficient to affect the outcome of the election, could have voted independently without a sense of obligation to vote for the union. The panel majority concluded that, as the Board held in *Easco*, "The matter is not free from doubt. But precisely because of that, we believe the integrity of our election processes is better served by directing a new election in this case."[34]

Member Dennis, dissenting, considered the evidence insufficient to establish that the union made improper payments to unit employees. She reasoned that although the panel majority conceded that the evidence did not establish that the union paid, or expressly promised to pay, the observer, and that the issue of payment was not mentioned when the employee was asked to serve as an observer, the panel majority nevertheless set aside the election on their conclusion that the employee reasonably anticipated he would be paid as he had been in the prior election and that, consequently, it was questionable whether he could have voted independently. Member Dennis stated that she could not set aside the election on such a basis, expressing her view that the employee's "expectations, even if reasonable, cannot substitute for evidence of union conduct." She further stated that,

[32] 271 NLRB 1300 (Chairman Dotson and Member Hunter, Member Dennis dissenting)
[33] 248 NLRB 700 (1980)
[34] 271 NLRB at 1301

absent evidence that the union made or promised payments, she did not reach the question whether the payment the employee anticipated would have been improper if offered.

In *Owens-Illinois, Inc.*,[35] a Board panel majority found, in disagreement with a regional director's recommendation, that the union's distribution of jackets with union insignia to unit employees on election day was objectionable conduct. The union's business representative admitted that he handed out about 25 union jackets to employees who came to his motel room during the period between the first and second voting session and that about five or six of these employees had not yet voted. The jackets cost the union $16 each.

The Board panel majority found that five or six votes could have determined the election's results and that, distributed as they were between voting sessions on election day, the jackets could well have appeared to the electorate as a reward for those who had voted for the union and as an inducement for those who had not yet voted to do so in the union's favor. The Board majority noted that the Board had previously held[36] the distribution of inexpensive pieces of campaign propaganda such as buttons, stickers, or T-shirts was not per se objectionable conduct, but it found that the value of the jackets given away in this case ($400 total) was far greater than the value of the items considered in the earlier case. Given all the circumstances, the Board majority set the election aside.

Member Dennis dissented on this point and would have found the union's conduct permissible. Relying on the objective "tendency-to-influence test" in Board and court precedent,[37] she concluded that a $16 union jacket did not have sufficient value to create in the recipient a feeling of obligation to favor the union in the election. She would have found the union's conduct here comparable to the employer's distribution of 468 company T-shirts in *R. L. White*,[38] which the Board found was not objectionable.

F. Other Representation Issues

Whether to certify a local union, part of which was placed under trusteeship and renamed by its parent international after a Board election, was considered by a Board panel in *Charlie Brown's*.[39] The Board panel decided not to certify the local union absent a showing of the employees' desire for the change.

In a Board election, the employer's employees selected Hotel, Restaurant and Club Employees and Bartenders Union, Local 6

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[35] 271 NLRB 1235 (Chairman Dotson and Member Hunter, Member Dennis dissenting in part)

[36] *R L White Co*, 262 NLRB 575, 576 (1982)

[37] Citing *Gulf States Canners*, 242 NLRB 1326 (1979), and cases cited therein, enfd 634 F 2d 215 (5th Cir 1981)

[38] 262 NLRB 575, 576, 588

[39] 271 NLRB 378 (Chairman Dotson and Member Hunter, Member Zimmerman dissenting)

to represent them. After the election but before the petitioner was certified, the petitioner's parent organization, the Hotel Employees and Restaurant Employees International Union, established a trusteeship, denominated Hotel and Restaurant Employees Union Local 100, which was to represent certain bargaining units formerly represented by Local 6. The employer filed objections to the election, alleging that the "Local 6" seeking certification was not the same organization that won the election. The regional director rejected this argument, finding that the petitioner continued to operate as it did before the trusteeship was imposed.

A Board panel majority reversed the regional director's conclusion, finding that "[t]he division of a local union into two or more locals is a structural change that raises a question as to continuity of representation, requiring a showing that it reflects the employees' desires."[40] It was undisputed that the affected employees did not participate in the decision to divide Local 6. For that reason, the Board concluded that it could not certify Local 6, nor proceed on Local 6's prior showing of interest, and it dismissed the petition.

The Board panel majority noted that it was not addressing the effect that a trusteeship alone would have on the representative status of a union.

Member Zimmerman dissented, arguing that a hearing was required to resolve factual issues raised by the employer, which disputed the regional director's findings that the petitioner had continued to operate "substantially" as it did before the changes, and that "it would be premature to conclude that Petitioner has undergone the type of fundamental change that would bar its certification." The panel majority found such factual issues immaterial to its resolution of the case, however, since it would require a showing of the employees' desires in any event.

In *Associated Day Care Services*,[41] the Board found, contrary to a regional director, that seven employees occupying the newly created position of administrative assistant were confidential employees and thus should be excluded from the certified bargaining unit.

It was undisputed that all of the administrative assistants worked directly for admitted managerial employees with labor relations responsibilities. The Board panel found that they assisted and acted in a confidential capacity to these managerial employees because they were expected to play a role in the investigation of first-step grievances that would affect management's decision on the merits of the grievances. The Board panel noted that the administrative assistants could be asked to investigate the facts underlying an employee's grievance by, for example, check-

[40] The Board noted its recent holding that all bargaining unit employees must have the opportunity to vote on the merger of two or more union locals *F W Woolworth Co*, 268 NLRB 805

[41] 269 NLRB 178 (Members Zimmerman, Hunter, and Dennis)

ing the employee's personnel file to determine whether the employee was actually entitled to more time off as claimed, and in connection with such an investigation could be requested to be present at the meeting when a grievance was presented.

Furthermore, the Board panel found that the administrative assistants were expected to have regular access to, and on occasion to type, memoranda concerning management proposals for collective bargaining before these proposals were presented to the union. The assistants would regularly see the minutes of weekly management meetings at which management proposals for collective bargaining would be discussed. Therefore, the Board clarified the unit as requested by the employer to exclude the new position of administrative assistant.

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 section 8) affecting commerce. In general, section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which 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. The are filed with the regional office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during fiscal year 1984 which involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

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 derivative or by-product of any of the types of conduct specifically identified in paragraphs (2) through (5) of section 8(a),[1] or may consist of any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities which constitute such independent violations of section 8(a)(1).

1. Standard for Finding Unlawful Interrogation

In *Rossmore House*[2] the Board overruled *PPG Industries*[3] and similar cases "to the extent they find that an employer's question-

[1] Violations of these types are discussed in subsequent sections of this chapter

[2] 269 NLRB 1176 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting in part)

[3] 251 NLRB 1146 (1980)

ing open and active union supporters about their union sentiments, in the absence of threats or promises, necessarily interferes with, restrains, or coerces employees in violation of Section 8(a)(1) of the Act." The Board majority emphasized it would weigh the setting and the nature of interrogations involving open and active union supporters and stated that factors it may consider in analyzing alleged interrogations are (1) the background; (2) the nature of the information sought; (3) the identity of the questioner; and (4) the place and method of interrogation. The Board stated these factors would not be mechanically applied in each case but that they represented some areas of inquiry that may be considered in applying the longstanding *Blue Flash*[4] test of whether under all the circumstances the interrogation reasonably tended to restrain, coerce, or interfere with rights guaranteed by the Act.

The majority noted that the *PPG* decision held that questions concerning union sympathies, even when addressed to open and active union supporters in the absence of threats or promises, are inherently coercive. The majority stated it would no longer apply that standard, which improperly established a per se rule and completely disregarded the circumstances surrounding an alleged interrogation.

In his dissent, Member Zimmerman stated he would adhere to *PPG* and disagreed with the majority's conclusion that *PPG* established a per se rule. Rather, Member Zimmerman stated that the majority's position established a per se rule that would give no weight to the setting and nature of an interrogation. He stated that *PPG* "simply recognized that just because an employee is an open union adherent does not end the inquiry into the lawfulness of an employer's interrogation of him." Member Zimmerman noted that "such questioning necessarily calls upon an employee to defend his Section 7 right to support a union" and that usually there is no justification for putting an employee in such a position particularly since these conversations serve no valid employer purpose.

2. Permissible Employer Speech

In *Riley-Beaird, Inc.*,[5] during the election campaign during a speech to all employees the company's president referred to a "blank piece of paper" and said: "We have shown you that paper as an example of how you could lose with the Union, as there are no guarantees that you would keep all your present pay and benefits." During this speech, the company's president also requested employees help in "smashing" the union. During another speech, the company's president thanked employees for supporting the company and stated, "We will never forget it."

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[4] *Blue Flash Express*, 109 NLRB 591 (1954)

[5] 271 NLRB 155 (Chairman Dotson and Members Hunter and Dennis)

The Board found these comments did not imply a threat of loss of benefits or other problems if the employees voted for the union. The Board stated:

> The Respondent's remarks referring to a blank piece of paper, in context, were merely a reflection of the bargaining process: negotiating carries with it no guarantee that the status quo will be preserved. Further, thanking employees for their support with the reminder that such support will not be forgotten is just that: a thank you. Such a statement cannot reasonably be said to imply that some type of retribution awaited those who supported the union.
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> Comments of this nature do not interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Rather, such comments constitute permissible partisan propaganda protected by Section 8(c).

3. No-Solicitation/No-Distribution Rules

In *Our Way, Inc.*,[6] the Board majority reconsidered the presumptive validity or invalidity of rules prohibiting employees from soliciting or distributing literature, returned to the standard of *Essex International*[7] that rules using "working time" are presumptively valid and those using "working hours" are presumptively invalid, and overruled *T.R.W. Bearings*[8] to the extent it conflicts with *Essex International*. Member Zimmerman, dissenting in part, stated he would adhere to the principles of *T.R.W. Bearings*, which held that rules prohibiting solicitation during "working time" or "work time," without further clarification, are, like rules prohibiting such activity during "working hours," presumptively invalid.

An administrative law judge found that the employer's rules prohibiting distribution and solicitation during "working time" are presumptively unlawful. Although the Board found that the judge correctly applied *T.R.W. Bearings*, the Board majority decided to overrule that case. The Board, however, agreed with the judge that the employer's solicitation rules "as orally modified, as discriminatorily applied only to union solicitation, and as enforced against [an employee] violate the Act."

The Board majority, citing *Republic Aviation Corp. v. NLRB*,[9] stated, "The governing principle is that a rule is presumptively invalid if it prohibits solicitation on the employees' own time." The majority agreed with the distinction made in *Essex International* that "rules using 'working hours' are presumptively invalid because that term connotes periods from the beginning to the end of workshifts, periods that include the employees' own time,

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[6] 268 NLRB 394 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting in part)

[7] 211 NLRB 749 (1974)

[8] 257 NLRB 442 (1981)

[9] 324 U S 793 (1945)

and that rules using 'working time' are presumptively valid because that term connotes periods when employees are performing actual job duties, periods which do not include the employees' own time such as lunch and break periods." The majority found that the maxim "working time is for work" has long been accepted[10] and that the distinction between "working time" and "working hours" has attained substantial understanding. Chairman Dotson and Members Hunter and Dennis stated: "The Board's decision in *T.R.W. Bearings* was an unnecessary departure from longstanding precedent and has served primarily to cause unjustified confusion and a string of nonproductive litigation." In contrast, they stated, "The return to *Essex International* will not require unions and employers to rewrite any existing instructions, policies, or rules and will not make any valid rule suddenly invalid."

The majority noted that they were not creating a per se approach but that they were returning to the presumptions of *Essex International,* which concern the facial validity or invalidity of no-solicitation rules and which can be rebutted by appropriate evidence. The majority concluded, "In overruling *T.R.W. Bearings* we are merely returning to the long-held standard that rules banning solicitation during working time state with sufficient clarity that employees may solicit on their own time."

In his partial dissent, Member Zimmerman stated, "My colleagues have overruled precedent, and found that the [employer's] rules are not unlawful as published; I would adhere to precedent, and find that they are." Member Zimmerman agreed with the holding in *T.R.W. Bearings* that "work rules which prohibit solicitation and distribution either during 'working hours' or 'working time' were presumptively invalid because, without more, they both were susceptible to the incorrect interpretation by employees that such activity was prohibited during *all* business hours, including periods (such as meal and break periods) when employees are properly not engaged in performing their work tasks." He would find, "Both terms are, without more, ambiguous, and the risk of such ambiguity must be borne by the promulgator of the rule."[11]

Member Zimmerman stated that the majority did not give a clear or convincing reason why employees would be likely to construe "working time" different from "working hours." He concluded, "In the understandable absence of any such explanation, I would continue to adhere to the principles that best express and protect the employees' interest, those set forth in *T.R.W. Bearings.*"

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[10] Citing *Peyton Packing Co.*, 49 NLRB 828, 843 (1943)

[11] Quoting from *T R W Bearings*, 257 NLRB at 443

4. Forms of Employee Activities Protected

The forms that protected concerted activity may take are numerous. The following cases decided by the Board during the report year provide a representative sample of the types of activities found by the Board to be protected.

a. Concerted Nature of Activity

The definition of "concerted" activity played a major role in the Board's decisions this past year. The following cases illustrate the Board's modified interpretation of that term.

In *Meyers Industries*,[12] the Board majority overruled the decision in *Alleluia Cushion Co.*[13] and its progeny. *Alleluia* stated that an employee action to enforce a statutory provision designed to benefit all employees was, per se, concerted activity within the meaning of section 8(a)(1) of the Act. The Board majority, in the *Meyers* case, noting "the statute envisions 'concerted' action in terms of collective activity," stated that the per se standard is at odds with the Act. The Board majority held that to be considered concerted, an employee's activity must "be engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself."

The Board majority stressed that the question of whether an employee engaged in concerted activity is a factual one. In this case, employee truckdriver Prill contacted a state official to inspect his truck while he was out on the road, and then refused to drive the vehicle when it was found to be unsafe. Prill was discharged. Inasmuch as Prill alone refused to drive the truck, and Prill alone contacted the state official, the Board majority found that he had not engaged in concerted activity.

In his dissent, Member Zimmerman stated his agreement with the Board in *Alleluia* that "the presumption of concert in the assertion of an employment-related statutory right is proper and valid." Accordingly, he would find that Prill had engaged in concerted activity and was discharged in violation of section 8(a)(1).

In *Certified Service*,[14] a Board panel relied on *Meyers* to hold that an employee who acted alone and on his own behalf in filing a complaint with the Occupational Safety and Health Administration (OSHA) was not engaged in "concerted" activity under the Act.

It unanimously concluded, however, that the employer violated section 8(a)(1) of the Act when a supervisor shouted into a group of employees that if he found out who had called OSHA, "they was gone." The panel found that the group of employees

[12] 268 NLRB 493 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

[13] 221 NLRB 999 (1975)

[14] 270 NLRB 360 (Chairman Dotson and Members Hunter and Dennis)

would reasonably construe the supervisor's statements as a threat to retaliate against employees for jointly filing complaints with OSHA.

In *ABF Freight Systems*,[15] a Board panel considered whether an individual employee's refusal to operate equipment on the basis of safety-related complaints, where there was an applicable collective-bargaining agreement covering safety considerations such as those the employee raised, was protected concerted activity under either the standard set forth in *Meyers Industries* or the Board's *Interboro*[16] doctrine.

Affirming the judge's conclusion, but substituting rationale, the panel found that because the employee acted alone in his refusal to operate the equipment, and because the employee, in making the complaints on which his refusal was based, was not reasonably and honestly invoking a collectively bargained right, his refusal to operate the equipment was not protected. Consequently, the employer did not violate section 8(a)(1) of the Act by discharging the employee for the refusal.

Applying the standard of concerted activity set forth in *Meyers*,[17] the panel found that when employee Callahan refused to operate the truck assigned to him on the basis of his complaints that it had faulty brakes and lacked the required reflectors, he acted alone, without the participation or authorization of other employees. The panel noted that although Callahan had recruited other employees to help him observe the truck's braking and its reflectors, the only evidence bearing directly on whether other employees supported Callahan in his refusal to drive indicated that they did not. Both a fellow employee and Callahan's union business agent advised him not to refuse to drive the truck. The panel concluded that, under *Meyers*, Callahan's refusal to drive did not constitute actual concerted activity.

It pointed out, however, that in *Meyers* there was no applicable collective-bargaining agreement and that the Board distinguished this situation from *Interboro* in which an individual attempts to enforce the terms of a collective-bargaining agreement. The panel noted that the Supreme Court had recently affirmed the *Interboro* doctrine in *NLRB v. City Disposal Systems*, stating, "As long as the employee's . . . action is based on a reasonable and honest belief that he is being . . . asked to perform a task that he is not required to perform under his collective-bargaining agreement, and the . . . action is reasonably directed toward the enforcement of a collectively bargained right, there is no justification for overturning the Board's judgment that the employee is engaged in concerted activity."[18] The panel noted further that

[15] 271 NLRB 35 (Chairman Dotson and Member Hunter, Member Dennis concurring)
[16] See *Interboro Contractors*, 157 NLRB 1295 (1966)
[17] See *Meyers*, supra, 268 NLRB 493 at 497
[18] 465 U S 822, 837

both *City Disposal* and the case at hand involved safety-related complaints by drivers where an applicable collective-bargaining agreement prohibited the employer from assigning employees to work under unsafe conditions and protected a driver's refusal to drive an unsafe vehicle.

The panel concluded that when Callahan refused to drive the truck assigned to him, after it had been thoroughly and repetitively inspected, he was not reasonably and honestly invoking a collectively bargained right, but was obtrusively raising petty and/or unfounded complaints. He was, therefore, not protected under *Interboro*, the panel found.

Member Dennis, concurring, agreed with the majority that Callahan did not engage in concerted activity within the meaning of *Meyers Industries*. She also agreed with their conclusion that Callahan's refusal to drive the truck assigned to him did not constitute concerted activity under the *Interboro* doctrine, but she did not rely on the majority's entire rationale. Member Dennis pointed out that in *City Disposal* the Supreme Court, in upholding the *Interboro* doctrine, held that the rationale of that doctrine "compels the conclusion that an honest and reasonable invocation of a collectively bargained right constitutes concerted activity, regardless of whether the employee turns out to have been correct in his belief that his right was violated."[19] She then contrasted the facts in *City Disposal* to those in the case at hand, observing that in *City Disposal* the employee truckdriver found to have been unlawfully discharged had refused to drive a truck on which he personnally had observed braking problems the previous working day, while Callahan, by contrast, refused to drive a truck which had been tested and found safe several times. Member Dennis found that the employer had presented Callahan with an evaluation of the truck, before his discharge, showing that it was safe to drive, and that under these circumstances his continued refusal to drive it could not be considered a reasonable and honest invocation of rights the collective-bargaining agreement secured. She concluded that Callahan's refusal to drive was not concerted within the meaning of section 7 of the Act and that his discharge did not violate section 8(a)(1).

Finally, in *J. T. Cullen Co.*,[20] a Board panel concluded that employee Pollitz engaged in concerted activity within the definition of *Meyers Industries* when he refused to inspect a smokestack which he considered to be unsafe. Here, Pollitz and two fellow inspectors discussed their safety concerns among themselves and with their immediate supervisor, and they jointly put the supervisor on notice that they would not perform the smokestack inspection unless they were sure it was safe. The supervisor subsequently informed the company's president. Thereafter, in re-

[19] Quoting *NLRB v City Disposal Systems*, supra, 465 U S at 840

[20] 271 NLRB 114 (Chairman Dotson and Members Hunter and Dennis)

sponse to a question from the company's president why he would not perform the inspection, Pollitz reiterated that based on his discussions with his supervisor and the plant manager, he considered the job unsafe. The president thereupon threatened Pollitz with discharge, and later did discharge him for refusing to perform the work.

The panel found that because Pollitz' refusal leading to his discharge was based on the mutual employee decision, jointly communicated to the employees' immediate supervisor, it constituted concerted activity. The panel further found that the employer knew of Pollitz' concerted activity, that the activity was protected in that Pollitz honestly and reasonably believed the work to be unsafe, and that the discharge was motivated by the activity. The panel therefore concluded that Pollitz' discharge violated section 8(a)(1) of the Act.

b. Protected Activity

In *Energy Coal Partnership*,[21] the issue before the Board was whether a minority strike during initial contract negotiations without union sanction was protected activity, rendering the discharge of the participants unlawful. Seven employees, against the recommendation of the union agent, picketed the employer's premises because of their feelings that negotiations were progressing too slowly, despite the union's having arrived at an interim agreement on seniority and layoffs. The administrative law judge found that the employer's discharge of the seven employees because of their participation in the strike violated section 8(a)(1) of the Act. The judge relied on *NLRB v. R.C. Can Co.*[22] and *Western Contracting Corp.*[23] in finding the strike protected, reasoning that although not sanctioned by a majority of the unit or by the union, the strike was in support of, and not an attempt to usurp or replace, the certified bargaining representative.

In reversing the judge and dismissing the complaint, the Board panel distinguished the cases relied on by the judge. Unlike *Western Contracting* and *R.C. Can*, in which the strikers received support from the union following their decisions to strike, the union was strongly opposed to a strike and so informed the dissidents both before and after their vote. The union subsequently made persistent, although unsuccessful, attempts to persuade the strikers to quit the picket line. The panel found that the "objective" discerned by the judge, unlike that in *Western Contracting*, had never been advanced by the union. The panel then quoted the Fifth Circuit's observation in *NLRB v. Shop Rite Foods*[24] that "[i]f *R.C. Can* is not applied with great care it would allow minority action in a broad range of situations and permit unre-

[21] 269 NLRB 770 (Chairman Dotson and Members Hunter and Dennis)
[22] 328 F 2d 974 (5th Cir 1964), enfg 140 NLRB 588 (1963)
[23] 139 NLRB 139 (1962), enfd 322 F 2d 893 (10th Cir 1963)
[24] 430 F 2d 786 (5th Cir 1970), enfg 171 NLRB 1498 (1968)

strained undercutting of collective bargaining." Accordingly, the panel found the strikers' activity unprotected and dismissed the complaint.

Audubon Health Care Center[25] posed the question whether employees are engaged in a protected or an unprotected partial strike when they refuse to work on some of the tasks which are part of their duties while accepting pay and performing the remainder of their duties.

The Board panel found that the employees' actions were unprotected, holding that "[w]hile employees may protest and ultimately seek to change any term or condition of their employment by striking or engaging in a work stoppage, the strike or stoppage must be complete, that is, the employees must withhold all their services from their employer. They cannot pick and choose the work they will do or when they will do it. Such conduct constitutes an attempt by the employees to set their own terms and conditions of employment in defiance of their employer's authority to determine those matters and is unprotected."

In *Manville Forest Products*,[26] the Board panel was presented with the question of whether a union steward's advice to employees with respect to cooperating in an employer's investigation is protected by the Act.

The employer suspended a steward pending an investigation of unsolicited charges from three employees that the steward had tried to prevent them from cooperating with the employer's inquiry into another employee's alleged misconduct and told them not to tell the employer what they had seen or heard, but to state that they had seen or heard nothing. The employer moved for summary judgment claiming that the steward's conduct was not "protected" activity under the Act, and that the steward's suspension for such conduct was, therefore, not unlawful.

In opposing the employer's motion for summary judgment, the General Counsel claimed that the steward merely "advised" the three employees that they need not answer the respondent's questions, and that the steward was actually suspended for "his energetic pursuit of his responsibilities as a representative of respondent's employees." Though conceding that the employer could lawfully compel the three employees to cooperate with its investigation, the General Counsel emphasized that the steward had not personally refused to answer the employer's questions, but rather advised others not to answer, in his official capacity as union steward.

Noting that "[t]he Board has never held that a union official's advice is entitled to such wide-reaching protection," the Board panel found that the steward's "advice to the three employees was unprotected." The panel analogized the steward's conduct to

[25] 268 NLRB 135 (Chairman Dotson and Members Zimmerman and Hunter)
[26] 269 NLRB 390 (Chairman Dotson and Members Hunter and Dennis)

situations in which a union steward interferes with management by advising employees to refuse to obey their superior's orders (such conduct being unprotected), and stated: "The General Counsel's contention to the contrary notwithstanding, it is within an employer's legitimate prerogative to investigate misconduct in its plant and to do so without interference from any of its employees—including those who are union officials . . . . When a union steward is disciplined for violating shop rules, and not because of his position as a union official, the steward cannot look to his union status for protection."

Under the circumstances, the Board panel granted the employer's motion for summary judgment.

In *Roadway Express*,[27] a Board panel reversed the administrative law judge and found that an employee was not engaged in protected activity when he surreptitiously removed documents from the employer's business records and furnished copies to the union in support of its grievance.

The union represented the employer's drivers and dockmen. For some time the union had expressed to the employer its concern that nonbargaining unit employees had been performing unit work by receiving freight at the dock. At a meeting with the employer, the union again raised this issue and in support of its claim presented the employer with bills of lading signed by nonbargaining unit employees. Since bills of lading were signed by the employee who received the freight, the documents supported the union's claim, and the employer agreed to have the work done in the future by bargaining unit employees. The union refused to tell the employer how it had obtained the copies of the bills of lading. At that time, the employer suspected that its porter, who was not a member of the bargaining unit, had provided the copies to the union since he was the only employee, other than supervisory and clerical staff, who had access to the office. When confronted by the employer, the porter admitted taking the documents from the files, making copies, and giving them to the union. The employer discharged the porter for the unauthorized use and distribution of company documents.

The panel found the porter's actions to be unprotected. The bills of lading were the employer's private business records, were kept in files in an office with limited access, and were taken surreptitiously by the porter. In contrast to *W. R. Grace Co.*[28] and *Ridgely Mfg. Co.*,[29] here the bills of lading were not openly available at work and were not obtained by the porter "in the normal course of work activity and association."[30] Rejecting the administrative law judge's view that the taking of the company documents was protected since the employer did not have a rule,

[27] 271 NLRB 1238 (Chairman Dotson and Members Hunter and Dennis)
[28] 240 NLRB 813, 820 (1979)
[29] 207 NLRB 193, 196–197 (1973)
[30] Id at 197

known to the employees, which prohibited the dissemination of the bills of lading, the panel concluded that, while the presence of a specific company rule is a factor, it is not the controlling element in deciding whether an employee's conduct is protected by the Act. In this case, the panel determined that the absence of a written rule was of little significance because the documents taken clearly were the employer's private business records and were taken from files to which the porter had no proper access. In such circumstances, an employer, regardless of whether it has a written rule, has a right to expect its employees not to take its business records from its files for whatever reason they wish.

Furthermore, the panel rejected the administrative law judge's apparent conclusions that the porter's conduct was protected because it was taken in a good-faith attempt to assist the union and since it provided information relevant to the union's claim against the employer. The panel found the administrative law judge's reliance on these facts to be misplaced since it does not follow from such facts that the manner in which the porter obtained the information was protected. Finally, the Board panel, contrary to the administrative law judge, found that the fact that neither the porter nor the union disclosed the information on the bills of lading to "outside persons" did not make the porter's action protected. The panel concluded that the employer was not required to suffer actual commercial harm before it could act to protect its business records from unauthorized taking by its employees.

In *Public Service Electric Co.*,[31] a Board panel considered whether an employer violated section 8(a)(1) by disciplining three employees for record falsification which it learned of through their testimony at an arbitration hearing. The three employees testified at an arbitration proceeding concerning the discharge of a fourth employee that they had falsified records, a practice which they maintained was condoned by supervisors. They offered this testimony in an effort to establish a defense of supervisory condonation for the discharged employee. The employer had an established policy against record falsification and regularly disciplined employees for violating it. Upon review of the arbitration transcript, the employer followed its established practice when faced with evidence of record falsification and disciplined the employees by issuing verbal warnings to them and placing a memorandum of the warning in each employee's file.

The panel found that the employer's discipline did not violate section 8(a)(1). Noting that arbitration is a private mechanism for dispute resolution established through collective bargaining, the panel found that such protection as the arbitration process enjoys under the Act derives from the collective-bargaining agreement. The Act protects an individual employee's right to have access

[31] 268 NLRB 361 (Chairman Dotson and Members Zimmerman and Hunter)

to the arbitration machinery but it does not control the operation of that machinery. Accordingly, when an employer disciplines an employee based on his participation in or conduct at an arbitration proceeding, the Board properly finds a violation of the Act. No violation will be found, however, when an employer disciplines employees based on past misconduct that comes to light at arbitration. The panel concluded that section 7 does not extend protection to wrongdoing, freely confessed, simply because the employer discovers the wrongdoing in the course of protected activities engaged in by the employee.

In *ABS Co.*,[32] the issue was whether respondent violated section 8(a)(1) of the Act by discharging an employee after she failed to report for scheduled work, because she refused to cross a lawful picket line that was maintained by a union to which she did not belong, for the sole reason that she feared for her personal safety.

The Board found it well established that nonstriking employees who refuse to cross a picket line maintained by their fellow employees have made common cause with the strikers, are engaged in protected concerted activities as defined in section 7 of the Act, and may not be lawfully discharged for these activities. It is not material that the employee who refuses to cross the picket line is not a member of the picketing union, is not represented as part of the collective-bargaining unit, or is motivated by personal fear. Thus, the Board found an 8(a)(1) violation in discharging the employee who refused to cross the picket line.

In dissent, Chairman Dotson noted that the stipulation established that the employee's *sole* reason for refusing to cross the picket line was her fear of physical harm. In these circumstances, he sees no compelling basis for treating the employee as a striker and according to her the protection of the Act. He would not find the refusal to cross the picket line was protected activity, and would dismiss the complaint, citing *NLRB v. Union Carbide Corp.*[33]

B. Employer Assistance to Labor Organizations

One case decided by the Board during the report year concerned the applicability of principles set forth in *Bruckner Nursing Home.*[34] The Board in *Bruckner* had reevaluated application of the *Midwest Piping*[35] doctrine in situations where an employer is faced with an initial organizing situation involving two rival labor organizations. Thus, the Board reestablished in *Bruckner* that the filing of a valid petition is the operative event which

[32] 269 NLRB 774 (Members Zimmerman, Hunter, and Dennis, Chairman Dotson dissenting)
[33] 440 F 2d 54, 56 (4th Cir 1971), cert denied 404 U S 826 (1971)
[34] 262 NLRB 955 (1982)
[35] *Midwest Piping Co*, 63 NLRB 1060 (1945)

triggers a requirement of strict employer neutrality in rival union organizing situations.

In this report year, the Board panel in *Film Consortium*[36] reversed an administratrive law judge's finding that the employer violated section 8(a)(2) of the Act by recognizing one of two rival unions in an initial organizing situation. In finding a violation, the judge had relied on the separate rationales of both *Midwest Piping* and *Lyndale Mfg. Corp.*[37] The judge found a violation under the former case based on his finding that the employer had, through its conduct, "conceded the substantiality" of the representation claim by the rival union prior to its recognition of the other. Thus, the judge concluded, a real question concerning representation then existed which triggered the employer's duty to remain neutral.

The judge found a violation under *Lyndale* based on his finding that the employer had misled the rival union and "lulled [it] into inaction" in its organizational efforts, before subsequently recognizing the other union.

Reversing the judge, the Board panel found that the facts did not support a violation under either analysis. With respect to the *Midwest Piping* rationale, the panel reiterated the Board's holding in *Bruckner Nursing Home.* Finding that no petition for an election had been filed in this case, and that the General Counsel had neither alleged nor proven that the recognized union lacked majority status, the panel accordingly concluded that an essential element of an 8(a)(2) violation under *Bruckner* was missing.

Turning to the *Lyndale* rationale, the panel found that, contrary to that case, it was not shown that the employer had made misleading statements or otherwise misled the rival union to believe that circumstances existed to preclude representative status at the time when it first requested recognition.

Accordingly, the panel concluded that *Lyndale* was also factually distinguishable.

C. Employer Discrimination Against Employees

Section 8(a)(3) prohibits an employer from discriminating against employees "in regard to hire or tenure of employment or any other term or condition of employment" for the purpose of encouraging or discouraging membership in any labor organization. Many cases arising under this section present difficult factual, but legally uncomplicated, issues as to employer motivation. Other cases, however, present substantial questions of policy and statutory construction.

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[36] 268 NLRB 436 (Chairman Dotson and Members Zimmerman and Hunter)

[37] 238 NLRB 1281 (1978)

1. Right of Strikers to Reinstatement

During the report year, the Board had occasion to consider the question whether threatening words and actions by strikers constitute misconduct which justifies an employer's denial of reinstatement to those strikers.

In *Clear Pine Mouldings*,[38] the Board adopted the Third Circuit's objective test for determining whether verbal threats by strikers to fellow employees justify an employer's refusal to reinstate them, as set forth in *NLRB v. W. C. McQuaide, Inc.*, 552 F.2d 519, 528 (3d Cir. 1977): "[W]hether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." By adopting this standard, the Board overruled a line of previous Board decisions holding that a verbal threat could never justify denial of reinstatement in the absence of physical gestures. Although the Board agreed that the presence of physical gestures accompanying a verbal threat might increase the gravity of the verbal conduct, it noted that even in the absence of physical gestures a serious threat could draw its credibility from other surrounding circumstances.

Member Zimmerman noted that, under common law and statute, threats unaccompanied by acts ordinarily are not illegal or actionable and that the first amendment protects pure speech from governmental restraint. He agreed with a rejection of the Board's previous test as too narrow, but in adopting the new standard encompassing threats that are wholly verbal he would take care to condemn only statements which are reasonably likely to instill fear of physical harm.

The Board also indicated that it would apply the same standard to misconduct directed at nonemployees, such as supervisors, as it applied to strikers' retaliation against nonstriking employees, in deciding whether an employer was warranted in denying reinstatement. Chairman Dotson and Member Hunter analyzed how the statutory right to strike, the legislative history of the Act, and section 8(c) of the Act support the adoption of such a standard; however, Members Zimmerman and Dennis did not rely on their colleagues' analysis on these points but relied instead on the standard set forth in *McQuaide*, supra, and *Associated Grocers of New England v. NLRB*,[39] i.e., whether the particular strike misconduct "in the circumstances reasonably tends to coerce or intimidate."[40]

Applying this new standard to the facts in *Clear Pine*, the Board reversed the judge's decision and found that two employees had engaged in strike misconduct justifying the employer's

[38] 268 NLRB 1044 (Chairman Dotson and Member Hunter, Members Zimmerman and Dennis concurring)

[39] 562 F 2d 1333 (1st Cir 1977)

[40] Id at 1336

refusal to reinstate them. In this regard, the Board found that one striker made threats of property damage and bodily harm, including repeated threats to burn another employee's house if he did not go on strike, a threat to break the hands of certain knife-grinding personnel who might drop out of the union, and a statement to a nonstriking employee that she was taking her life in her hands by crossing the picket line.

The Board also found that a second striker's conduct on the picket line reasonably tended to coerce or intimidate other employees. That striker's conduct included carrying a wooden club and swinging it at nonstriking employees who were leaving the plant, using the club to hit vehicles nonstriking employees were driving out of the plant parking lot, and threatening to kill another nonstriker leaving the plant.

The question whether certain contractual language waived an employer's right to permanently replace sympathy strikers was considered by the full Board in *Butterworth Mortuary.*[41] The contract provided:

> It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a labor dispute or refuses to go through or work behind any picket line at the place of business of any employer party to this Agreement.

Previously, in *Torrington Construction Co.*, 235 NLRB 1540 (1978), the Board had held, inter alia, that virtually identical contractual language constituted a waiver of an employer's right permanently to replace sympathy strikers.

In *Butterworth*, the Board overruled *Torrington* to the extent that it made such a holding. The Board observed that in *Metropolitan Edison Co. v. NLRB*, 460 U.S. 393 (1983), the Supreme Court affirmed the principle that a waiver of a statutory right must be clear and unmistakable. The Board also noted that the specific circumstances of each case will determine whether a statutory right has been waived. In analyzing the circumstances of both *Torrington* and *Butterworth*, the Board concluded that a finding of waiver was not warranted from any express contractual language because in both cases the contract prohibited only the discharge and discipline of sympathy strikers, and did not refer to "permanent replacement." The Board then assumed that both provisions contained some ambiguity, but found that there was no extrinsic evidence in either *Torrington* or *Butterworth* to shed light on what the parties intended when the provisions were agreed upon. The Board therefore concluded that there was no reason to infer that the phrase "discharge or disciplinary action" as it appeared in the contract in both *Torrington* and *Butterworth*

[41] 270 NLRB 1014 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)

meant anything other than what it expressly stated. Consequently, the Board found that the contractual language did not waive the employer's right permanently to replace sympathy strikers.

Member Dennis joined the Board's conclusion, but found it unnecessary to consider whether an employer's right to replace sympathy strikers is a "statutory right." She found it to be a "judicially recognized right" that was not waived by the contractual language.

In *Gem City Ready Mix Co.*,[42] a Board panel found that the union, with the subsequent concurrence of its membership, had waived full prestrike seniority on behalf of returning economic strikers in return for an opportunity to end the strike and return to work. The evidence showed that the strike settlement agreement in issue, which the union's own business agent drafted, was freely entered into by the employer and the union. It provided, among other things, that the three employees who worked during the strike were to be placed at the top of the seniority list. The striking employees themselves fully understood both the terms and effects of this aspect of the settlement. Then, after thorough discussion, and with an obvious understanding of the ramifications of their action, they voted to accept the employer's offer.

In reversing the judge's finding of an 8(a)(3) and (1) violation, the panel emphasized that the Board never has required, as a condition for finding a valid and binding waiver of rights under the statute, that the waiving party be shown to have clearly and unmistakably understood that a right voluntarily relinquished was one that could not lawfully be denied involuntarily. The panel noted that just as ignorance of the law does not excuse conduct which violates it, ignorance of the law does not revoke conduct which legitimizes what might otherwise violate the law. In the panel's view, it is sufficient, for a finding of a valid waiver of rights under the Act, that the waiving party or parties be shown to have clearly and unequivocally relinquished or forgone a course of conduct, even if that conduct otherwise was protected. The panel concluded that, in short, a waiver of what constitutes a legally protected right is not invalidated on the basis that the waiving party or parties may not have realized that the right waived was otherwise protected by the Act.

Applying these standards to the present case, the panel found that it had been satisfactorily demonstrated that the employer's awarding top seniority to two nonstriking employees and the strike replacement was a lawful implementation of a right clearly understood by all affected to have been created through the collective-bargaining process. Accordingly, the panel dismissed the complaint alleging that the employer discriminated against the

[42] 270 NLRB 1260 (Chairman Dotson and Members Zimmerman and Hunter)

employees who had been on strike by according preferential rights to striker replacements.

In *Nolan Systems*,[43] a Board panel held that the employer's written commitment to return an employee to a job, which the employee had been forced to relinquish because of illness, was not so substantial as to outweigh the statutory commitment imposed by *Laidlaw* on the employer to reinstate a former economic striker, after the termination of his permanent strike replacement, to the same job which the former striker had held more recently than the ill employee.

The Board panel noted that *Laidlaw Corp.*[44] established that economic strikers who unconditionally apply for reinstatement when their positions are filled by permanent replacements are entitled to full reinstatement upon the departure of the replacements, unless the employer can sustain its burden of proof that the failure to offer reinstatement was for legitimate and substantial business reasons. Because the former economic strikers had made an unconditional offer to return to work, the panel concluded that the employer was required to prefer the former striker for reinstatement to his former job rather than transfer the other employee to the job unless the employer could show "substantial and legitimate business reasons" for transferring the employee.

The Board panel found that because no overriding business considerations compelled the transfer, and the commitment to return the employee to the job appeared to have been purely a personal pledge, the employer's written commitment to the ill employee was not sufficient business justification for its failure to reinstate the former striking employee to his former job. Accordingly, the panel found that the employer violated section 8(a)(3) and (1) by failing to reinstate the former economic striker after his strike replacement was discharged.

2. Other Discrimination Issues

The question whether two employees were unlawfully discharged pursuant to an employer decision to subcontract work was considered by a Board panel in *P. W. Supermarkets*.[45] In that decision, the Board panel found that the employer did not violate section 8(a)(3) and (1) when it discharged two bakery cleanup employees after it decided to subcontract the work they performed. The Board panel thus reversed an administrative law judge's finding that the discharges were inherently destructive of employees' rights because they were predicated on a relative cost comparison between subcontracting and a wage rate for cleanup employees which had been established through the contractual grievance procedure.

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[43] 268 NLRB 1248 (Members Zimmerman, Hunter, and Dennis)

[44] 171 NLRB 1366 (1968)

[45] 269 NLRB 839 (Chairman Dotson and Members Hunter and Dennis)

During the spring of 1980, the union filed a grievance at one of the employer's stores, claiming that cleanup employees were entitled to a higher wage rate and inclusion in the pension and health and welfare funds. The grievance was applicable to bakery cleanup employees at all stores. The pension and health and welfare aspect of the grievance was settled quickly; agreement was reached on a wage rate a couple of months thereafter.

Meanwhile, the feasibility of subcontracting the bakery cleanup work at store 5 was under study by the manager of that store. After receiving bids, the store manager did a relative cost analysis and determined that the company would save from $8,000 to $10,000 a year by subcontracting the work. The store manager was later told to accept one of the bids and to discharge the two store 5 bakery cleanup employees.

The judge held that the employees were unlawfully discharged because he found that the decisive factor in the decision to discharge them was the substantial cost increase engendered by the union's grievance. He found that the employer's action was inherently destructive of employee rights because it deprived them of economic gains achieved through the protected actions of collective bargaining, i.e., the grievance process.

In reversing, the Board panel noted that there was no evidence of union animus and no allegation that the decision to subcontract violated section 8(a)(5). In addition, the Board noted that the decision was predicated solely on an economic basis.

Accordingly, the Board found that the discharges appeared to be predicated on traditional and legitimate economic grounds, with no evidence of unlawful motive. The question became then whether the action was so inherently destructive of employee rights because of the reliance on gains achieved through the grievance process that no showing of unlawful motive was necessary. The Board panel concluded that it was not.

D. 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 8(b)(3) of the Act if it does not fulfill its bargaining obligation.

1. Mandatory Subject of Bargaining

The Act requires both an employer and its employees' statutory representative to bargain collectively with respect to "wages, hours, and other terms and conditions of employment."[46] Either

[46] Sec 8(d) of the Act

party may insist on the other's agreement to its proposals concerning these areas. In addition to these mandatory subjects the parties may bargain about other matters. But neither party may insist that the other agree on such nonmandatory or permissive subjects, nor may a party condition performance of his mandatory bargaining obligation on agreement to nonmandatory bargaining proposals. The Board is frequently required to determine whether a particular subject or specific proposal is mandatory.

During the report year the Board had occasion to examine whether subsistence pay was a matter falling within section 8(d)'s definition of mandatory subjects of bargaining about which parties are obligated to bargain.

In *Community Electric Service*,[47] the Board panel, reversing the judge, found that contractually provided subsistence pay was a mandatory subject of bargaining and that the employer's unilateral discontinuance of such pay constituted a midterm modification of the contract in derogation of section 8(d) and in violation of section 8(a)(5) of the Act. The parties' contract provided that if an employer's shop was located more than 18 miles from the jobsite the employer was required to pay employees "travel expenses," referred to as subsistence pay, in an amount calculated on the basis of the distance from the employer's shop to the jobsite on a per-mile basis up to a maximum of $35 per day. If, however, the employer did not have a shop within the union's territorial jurisdiction for a period of 90 days before the job began, a determination which the contract left to the union, the contract established a particular post office as the location of the employer's shop for the duration of the job for the purpose of calculating subsistence pay. Following the union's determination that the employer had not maintained a shop within its territorial jurisdiction for 90 days before the employer started its job, the employer initially made the subsistence payments but subsequently ceased doing so.

The panel, contrary to the judge, found the subsistence pay a mandatory subject of bargaining. Citing *NLRB v. Borg-Warner Corp.*,[48] the panel noted that in determining whether a matter falls within section 8(d)'s definition of mandatory subjects of bargaining as wages, hours, or other terms and conditions of employment, "The touchstone is whether or not the proposed clause sets a term or condition of employment or regulates the relationship between the employer and its employees." The panel further noted, citing *McDonnell Douglas Corp.*,[49] that the term "wages" under section 8(d) includes "emoluments of value which accrue to the employees out of their employment relationship in addition to the actual rate of pay earned." The panel concluded that the subsistence pay was clearly encompassed by this broad

[47] 271 NLRB 598 (Chairman Dotson and Members Hunter and Dennis)
[48] 356 U S 342 (1958)
[49] 224 NLRB 881, 886 (1976)

construction of the term "wages" finding that, because the employees received such pay only if they reported for work, it constituted "compensation by the employer for services rendered by the employees and, thus, directly affects the employment relationship," and that "because the contract required an employer to make subsistence payments in accordance with specified criteria and at a fixed rate, subsistence payments are received on a regular basis in the employees' paychecks and become part of the employees' wage expectancy." The panel therefore concluded that the subsistence pay was "part of the employees' wages just like any other supplement to the actual rate of pay." The panel also noted that in *Electrical Workers IBEW Local 401 (Stone & Webster)*,[50] the Board had found similar contractually provided subsistence pay, which was based on a flat amount if the jobsite was more than a certain distance from the intersection of two highways, to constitute part of the employees' wages and a mandatory subject of bargaining.

The panel rejected the judge's conclusion that the subsistence pay was a nonmandatory subject of bargaining based on his findings that the real purpose of the subsistence pay provisions was to prevent employers from bidding on jobs within the union's jurisdiction and that therefore such pay was a "sham." Contrary to the judge, the panel did not find the parties' motivation in agreeing to a contractual provision relevant to the determination of whether the provision is a mandatory subject of bargaining. Citing *NLRB v. American Insurance Co.*[51] and *Evening News Publishing Co.*,[52] the panel noted that "the Board's function in applying Section 8(d) is not to sit in judgment on the substantive terms of collective-bargaining agreements," and found that the judge had improperly substituted his own judgment for that of the parties "by focusing on the purpose of the subsistence pay provisions . . . rather than their effect on the employment relationship." The panel further rejected the judge's conclusion that the subsistence pay constituted a windfall to the employees, noting that such pay was conditioned on the employees reporting for work; that the "windfall" here was no greater than the "windfall an employee receives whenever a flat rate or per diem is used to calculate reimbursement for expenses rather than a method which reflects actual expenses incurred"; and that in *Stone & Webster*, supra, the Board had "rejected any distinction between reimbursement for fees likely to be, but not necessarily, incurred and those actually incurred." Finally, the panel again concluded that "the parties to the contract, not the Board, are charged with determining which method of reimbursement best suits their needs."

[50] 266 NLRB 870 (1983)
[51] 343 U S 395, 404 (1952)
[52] 196 NLRB 530, 535 (1972)

2. Bargaining Impasse

During the 1984 fiscal year, the Board considered several cases involving a unilateral action taken by an employer after an impasse had been reached in the collective-bargaining negotiations with the union.

In *Bell Transit Co.*,[53] a Board panel majority, contrary to an administrative law judge, found that an employer and a union had bargained to impasse on wages before the employer unilaterally reduced them. Therefore, the employer's wage reduction did not violate section 8(a)(5) of the Act.

In this case, the employer was a labor broker, providing truckdrivers to Union Carbide. The employer was reimbursed by Union Carbide for the drivers' direct labor costs. After Union Carbide informed the employer that it had received offers from other labor brokers who could provide less expensive drivers, the employer responded by seeking to negotiate a new collective-bargaining agreement with lower rates. After the existing contract expired, the parties bargained over the wage issue on three occasions. During bargaining, the union representatives told the employer that, while they were authorized to negotiate, only the union's Eastern Conference had authority to approve any contract proposal. At the third bargaining session on wages, the employer's proposals included a wage offer which the union agreed to submit for approval to its Eastern Conference. About 9 days later, the employer instituted its wage reduction proposal. However, the Eastern Conference eventually rejected the employer's proposals.

The majority concluded that at the time the employer instituted its wage reduction, the parties had reached impasse. The majority held that the parties' extensive bargaining history and good-faith bargaining lent support to this conclusion. Further, since the employer faced compelling pressure from Union Carbide, its only customer, to cut the drivers' wages or be replaced, the wage issue was of supreme importance. The majority stated that an understanding of tentative agreement may be consistent with an impasse finding, that is, if the tentative agreement is accepted, the impasse breaks. Otherwise, it endures. Here the parties were at impasse at the same time they had an agreement subject to Eastern Conference approval.

In dissent, Member Zimmerman found no impasse was reached by the parties. He argued that the Board must examine the stance of negotiations at the time unilateral action is taken. Accordingly, Member Zimmerman found every reason to think negotiations would reach fruition and no reason to assume the parties had exhausted prospects of reaching agreement.

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[53] 271 NLRB 1272 (Chairman Dotson and Member Hunter, Member Zimmerman dissenting)

In *Allbritton Communications*,[54] a panel majority held an employer did not bargain in bad faith when it insisted to impasse on a $35-per-week wage cut for each unit employee. The majority noted that the employer offered proposals and counterproposals on bargaining issues, offered to substantiate its claim of operating losses that underlay its demand for wage reductions, and otherwise met its procedural obligations. The majority agreed with the administrative law judge that the employer's substantive proposals were not so harsh, vindictive, or otherwise unreasonable as to warrant the conclusion that they were offered in bad faith. It rejected the judge's conclusion, however, that certain events occurring away from the bargaining table and certain nonsubstantive remarks belied the genuineness of the employer's overall bargaining conduct.

Member Zimmerman, in dissent, argued that the judge properly relied on the employer's activities away from the bargaining table, because they showed consistency with the employer's bad-faith attitude at the bargaining table. In addition, he would have found that the employer's statements, to the effect that the employer would stick to the $35 wage cut "no matter what," indicated the employer never intended to engage in the give and take of bargaining, but rather was predisposed to a course of conduct designed to preclude the reaching of an agreement.

In *Thomas Sheet Metal Co.*,[55] a Board panel reversed the administrative law judge and found that the parties had reached impasse before the employer unilaterally eliminated travel and zone payments to its employees.

The employer had been signatory to an association agreement with the union for approximately 5 years until the latest contract expired on 31 July 1982. About 3 months before the contract expired, the employer's representative arranged a meeting with the union to obtain relief from contractually required zone and travel payments to its employees. When the new association agreement became effective 1 August 1982 it contained zone and travel pay provisions identical to those in the expired agreement. The employer would not agree to become a party to the contract as long as it contained travel pay provisions, and the union did not offer a contract without such provisions. Again, in late September, the employer told the union it could not afford to make travel and zone payments and would not make those payments. In early October 1982, the employer stopped making the payments without notice to the union.

The Board panel found that the only factor preventing the parties from reaching a new agreement was the single bargaining issue of travel and zone pay. There was no allegation that the employer engaged in anything but good-faith bargaining or that

[54] 271 NLRB 201 (Chairman Dotson and Member Hunter, and Member Zimmerman concurring in part and dissenting in part)

[55] 268 NLRB 1189 (1984) (Members Zimmerman, Hunter, and Dennis)

it harbored any union animus. In light of these facts, and the fact that neither party had made any significant concessions or proposals at any time or evidenced any intent to change their respective positions since the commencement of bargaining, the panel held that the parties had reached impasse no later than the end of September 1982. Accordingly, the employer was found not to have violated section 8(a)(5) and (1) by eliminating travel and zone payments to its employees.

In *E. I. du Pont & Co.*,[56] a Board panel determined whether a bargaining impasse had been reached before the employer implemented a proposal which freed it from its obligation to bargain further with the union. The parties had engaged in 47 bargaining sessions, of which the last 17 had focused on the employer's proposal to modify employees' almost unrestricted right to bid on job transfers. The employer remained firm on its proposal restricting job transfers, except promotions, to one every 12 months, while the union indicated that it would never agree to such a proposal. Although there continued to be some movement in the union's position, and although other important subjects of bargaining were still open, the Board panel found that an impasse had been reached.

Relying on the guidelines set forth in *Taft Broadcasting Co.*,[57] the panel noted that the number of bargaining sessions at which the subject had been discussed, the employer's firm but good-faith bargaining posture, and the union's indication that it would never accept the employer's proposal militated toward a finding of impasse.

Despite the existence of other open subjects, the union had given no indication that it would concede to the employer's job transfer proposal in return for a tradeoff in another area. The fact that the union had continued to make substantive counterproposals on job transfer did not preclude a finding of impasse because this subject had become of central importance to the parties and, after long, hard negotiations, the parties were still not close to reaching an agreement.

3. Refusal to Furnish Information

Section 8(a)(5) of the Act requires an employer to bargain collectively with the representatives of his employees. Pursuant to this bargaining duty, the employer must provide, on request, information relevant "to the union in carrying out its statutory duties and responsibilities,"[58] unless the requested information is confidential. During the report year, the Board considered a number of cases in which the employer refused to furnish information to the union. These cases turned on the relevance and the confidentiality of the requested information.

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[56] 268 NLRB 1075 (Chairman Dotson and Members Zimmerman and Hunter)
[57] 163 NLRB 475 (1967)
[58] *NLRB v Acme Industrial Co*, 385 U S 432, 437 (1967)

As mentioned above, the union first must request the desired information. Otherwise, no duty of disclosure arises. Furthermore, the union must provide a legitimate basis for its request. In *Emery Industries*,[59] a Board panel found that the union failed to notify the employer of such a basis. Therefore, the panel ruled, the employer did not violate section 8(a)(5) by refusing to supply the requested information.

The employer announced a new policy regarding absenteeism. The union requested information concerning the new policy. The Board panel noted that the union had waived its right to bargain over the change in the policy. Therefore, the panel reasoned, the employer was under no obligation to furnish the information to the union for the purposes of bargaining. Because the union provided no actual or constructive notice of any other legitimate basis for requesting the information, the panel concluded, the employer did not violate the Act by disregarding the union's request.

"We do not here decide that the information cannot be obtained by the Union under any circumstance," the panel stated. "Subject to the requirements of relevance, the Union may obtain the information it seeks if it states some legitimate basis for seeking the information, such as preparing for upcoming contract negotiations, assessing the validity of a grievance, policing compliance with a current contract, or the like."

If the basis of a union's request for information is legitimate, the employer must comply with the request unless the information sought by the union is confidential or irrelevant to the union's legitimate objective. The Board determines the relevance of requested information under a "liberal discovery-type standard."[60] "Thus," the Board stated in *Pfizer, Inc.*,[61] "information need not necessarily be dispositive of the issue between the parties, it need only have some bearing on it."

If the requested information pertains to employees within the bargaining unit, it is presumptively relevant.[62] If it pertains to employees outside the unit, the union must establish the relevance of the information.[63] *Pfizer* involved the latter situation. In *Pfizer*, several unions represented the company's employees. One of these unions, representing an electrician whom the company fired for fighting, requested records and documents concerning nonunit employees who also had been disciplined for fighting or engaging in other forms of disorderly conduct. Refusing to comply, the employer maintained that the requested information was irrelevant.

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[59] 268 NLRB 824 (Chairman Dotson and Members Hunter and Dennis)

[60] *NLRB v Acme Industrial Co*, 385 U S 432, 437 (1967), *Loral Electronic Systems*, 253 NLRB 851, 853 (1980)

[61] 268 NLRB 916 (Chairman Dotson and Members Zimmerman and Hunter)

[62] *Boeing Co*, 182 NLRB 421, 425 (1970)

[63] *Brooklyn Union Gas Co*, 220 NLRB 189 (1975)

A Board panel noted that the employer disciplined all its employees, regardless of which union represented them, under the same set of rules. The panel also noted that the employer dispensed punishment according to an employee's overall work record. In light of these facts, the panel reasoned, the information sought by the union was "relevant to a determination as to whether the Respondent, in taking into account past work performance, has treated like cases in a like manner, or whether there has been disparate treatment." This determination, the panel continued, might "be of use to the Union either in deciding whether to proceed to arbitration, or in the arbitration proceeding itself." In short, the panel found that the requested information was relevant even though it related to nonunit employees.

In its defense, the employer asserted "a general claim that an employee's work record at Pfizer should be confidential." The Board panel rejected the claim. Distinguishing *NLRB v. Detroit Edison Co.*,[64] the panel noted that the employer had made no express commitment to preserve the confidentiality of its employees' employment records. Indeed, the panel observed, "Arbitrators routinely consider employee work records in deciding whether employers have applied their disciplinary rules in a consistent, evenhanded, and nondiscriminatory manner." Under these circumstances, the panel concluded, the union's need for the requested information outweighed the employer's concern for the confidentiality of its employment records.

E. I. du Pont & Co.[65] also involved a request for information concerning nonunit employees. In *du Pont*, a union representing employees at one particular plant sought information regarding wages paid by the employer at nine other plants. The union asserted that it needed the information in order to prepare for negotiations. Because it based its wages on local wage rates, the employer maintained the requested information was irrelevant.

Quoting from *NLRB v. Acme Industrial Co.*,[66] a Board panel stated that it determines an employer's obligation to furnish information about nonunit employees according to "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties." The employees at all the plants in question, the panel observed, performed substantially the same duties and possessed the same skills. Therefore, the panel concluded, the requested information was relevant to the union's bargaining obligation. The employer violated the Act, the panel held, by refusing to comply with the union's request.

At times, employers must disclose more than information concerning their nonunit employees. In appropriate cases, employers must divulge information concerning apparently separate though

[64] 440 U S 301 (1979)
[65] 268 NLRB 1031 (Chairman Dotson and Members Zimmerman and Hunter)
[66] 385 U S 432, 437 (1967)

affiliated companies. *Walter N. Yoder & Sons*[67] illustrated this point.

In *Yoder*, the union received reports, from several sources, that the employer was operating a nonunion affiliate through which it was performing certain work covered by the collective-bargaining agreement. State records tended to confirm this information. The union concluded that the employer might be conducting a "double-breasted" operation. A Board panel described such an operation as follows:

> A "double breasted" operation is one in which a contractor operates two companies, one unionized and the other nonunionized. Depending on how the companies are structured and operated, each may be a separate corporation or else both may be so interrelated that they constitute a single employer or one may be the alter ego of the other. A collective-bargaining contract signed by one of the companies would not bind the other if each were a separate corporation, but would bind the other if both constituted a single employer and the employees of both companies constitute a single appropriate bargaining unit or the nonsignatory company is an alter ego of the signatory company.

The union requested information about the relationship between the companies to determine whether the collective-bargaining agreement applied to the nonunion affiliate. On the basis of a substantial probability that the requested information would aid the union in fulfilling its statutory duties as the employees' representative, the Board panel found that the information was relevant. The employer violated the Act, the panel ruled, by refusing to comply with the union's request.

In *Yoder* and *Ray C. Lapp Air Conditioning*,[68] Chairman Dotson and Member Dennis emphasized that the requested information was not presumptively relevant simply because it would enable the union to determine whether the contract applied to both companies. "A union must demonstrate reasonable or probable relevance," they stated, "whenever the requested information ostensibly relates to employees outside the represented bargaining unit even though the information may show ultimately that the employees are part of the bargaining unit because of the existence of a single employer or an alter ego relationship."

Unlike Chairman Dotson and Member Dennis, Member Zimmerman found no implication in *Associated General Contractors of California*[69] or *Leonard B. Hebert, Jr. & Co.*[70] that the information sought by the union was presumptively relevant. "To the contrary," he stated, "both cases make clear that a union must

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[67] 270 NLRB 652 (Chairman Dotson and Members Zimmerman and Dennis)

[68] 270 NLRB 641 (Chairman Dotson and Members Zimmerman and Dennis)

[69] 242 NLRB 891 (1979), enfd as modified 633 F 2d 766 (9th Cir 1980), cert denied 452 U S 915 (1981)

[70] 259 NLRB 881 (1981), enfd 696 F 2d 1120 (5th Cir 1983), cert denied 104 S Ct 76 (1983)

establish a good-faith belief that employees may have been excluded improperly from the bargaining unit in order to demonstrate the 'reasonable or probable relevance' of the information requested."

The relevance of requested information is not the only factor considered by the Board in determining an employer's duty of disclosure. Relevant information may be confidential. In such cases, the union has an interest in securing the information in order to fulfill its statutory bargaining obligation. At the same time, the employer has an interest in preserving the information's confidentiality. In *General Dynamics Corp.*,[71] the Board explored the conflict between those legitimate interests.

The employer contracted to build four petroleum barges. The piping system installed by unit employees in one of the barges was defective. Reinstallation was necessary. The contractor insisted that the employer subcontract the reinstallation work to another firm. Seeking recovery for damages arising from the employer's alleged delay in delivering the barges, the contractor also initiated several lawsuits. Meanwhile, the employer commissioned a professor from the Massachusetts Institute of Technology to study the defective piping system. The professor issued a report.

The union charged that the employer, by subcontracting the reinstallation work, breached the parties' collective-bargaining agreement. In connection with this charge, the union requested permission to examine the professor's report. The employer maintained that it had commissioned the report in contemplation of defending the lawsuits brought by the contractor. Claiming confidentiality, the employer refused to disclose the contents of the report to the union.

Contrary to an administrative law judge, a Board panel found "that the existence of the lawsuits, which involve substantial liability, coupled with the timing of the study with respect to those lawsuits, establishes that the study was prepared in contemplation of litigation." The panel also found that disclosure of the report would have an impact on the pending litigation. For these reasons, the panel concluded that the employer had established "a confidentiality concern of a legitimate and substantial nature."

On the other hand, the Board panel acknowledged, the professor's report was relevant to the union's grievances. Balancing the union's need for the requested information against the employer's legitimate confidentiality interest, the panel held that the employer's complete refusal to provide access to the report violated section 8(a)(5). Nevertheless, the panel did not order full disclosure. Rather, it ordered the parties "to bargain in good faith in order to reach a mutually acceptable accommodation of their respective interests." More specifically, the Board directed the employ-

[71] 268 NLRB 1432 (Chairman Dotson and Members Zimmerman and Hunter)

er to provide access to the report "subject to bargaining in good faith regarding the conditions under which the information may be furnished, such that access is provided in a manner consistent with maintaining appropriate safeguards protective of the Respondent's confidentiality concerns."

4. Work Transfer or Discontinuance

In a case of major importance involving work transfer,[72] the Board ruled that an employer, after satisfying any bargaining obligation it may have, can lawfully transfer work from a unionized plant to a nonunion plant during the term of a contract to cut costs unless the contract specifically prohibits work relocation.

Reversing a 1982 holding,[73] the Board dismissed a complaint against the Milwaukee Spring Division of Illinois Coil Spring Co. for deciding—without the United Auto Workers' consent—to transfer its assembly operations from Milwaukee, Wisconsin, to its nonunion facility in McHenry, Illinois. The company sought relief from the higher labor costs under the contract. The move would have resulted in layoffs at the Milwaukee plant.

A 3-to-1 Board majority found no specific contract term forbidding such a transfer. Member Zimmerman dissented.

In the earlier *Milwaukee Spring* ruling, then Chairman Van de Water and former Members Fanning and Jenkins held that the relocation decision violated the Act.

The case arose in 1982 when the company asked UAW Local 547 to forgo a scheduled wage increase and to grant other contract concessions. After bargaining over these concessions failed to produce an agreement, the company announced its intention to relocate the assembly operations. The parties agreed the proposed transfer was based solely on economic considerations, not animosity toward the union. The parties also stipulated that the company satisfied its obligation to bargain over the relocation decision.

In its new ruling, the Board stated that before finding a violation of section 8(d) of the Act, which requires an employer to obtain a union's consent before modifying a term or condition "contained in" a contract, it must first identify a specific contract term that the company has modified. It found "neither wage and benefit provisions nor the recognition clause contained in the collective-bargaining agreement preserves bargaining unit work at the Milwaukee facility for the duration of the contract."

"We have searched the contract in vain for a provision requiring bargaining unit work to remain in Milwaukee," the Board majority declared. Accordingly, it concluded the company's decision to relocate did not modify the contract in violation of the Act.

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[72] *Milwaukee Spring Division*, 268 NLRB 601 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

[73] 265 NLRB 206 (1982)

Milwaukee Spring I discouraged truthful midterm bargaining over decisions to transfer unit work, the majority said. Under that ruling, it reasoned, an employer would be likely to admit only reasons unrelated to labor costs to avoid giving the union veto power over the decision. The union, meanwhile, unaware that labor costs were a factor in the employer's decision, would be unlikely to volunteer wage or other concessions.

The Board stated, "We believe our holding . . . avoids this dilemma and will encourage the realistic and meaningful collective bargaining that the Act contemplates."

Dissenting Member Zimmerman held that the employer had abrogated its bargaining obligation because the relocation decision, "admittedly motivated solely to avoid the contractual wage rates, was simply an attempt to modify the wage rate provisions in the contract, albeit indirectly." He said the company "voluntarily obligated itself to pay a certain amount of wages to employees performing assembly work during the term of the contract, and it cannot avoid this obligation merely by unilaterally relocating the work to another of its facilities, just as it could not by unilaterally reducing the wage rate."

Member Zimmerman said the relocation decision was amenable to resolution through bargaining and thus was a mandatory subject of bargaining. He further held that since the decision was motivated solely by the desire to avoid the wage provisions of the contract, the company is prohibited by section 8(d) from implementing the transfer without the union's consent during the term of the contract.

In another significant case decided during the past fiscal year, the Board, in *Otis Elevator*,[74] reconsidered its 1981 decision and order[75] in light of the Supreme Court's opinion in *First National Maintenance Corp. v. NLRB*.[76] In its 1981 decision, the Board had held that the employer was required to bargain with the incumbent union over its decision to relocate certain of its work and operations. The employer transferred 17 unit employees from its Mahwah, New Jersey facility to a research and development facility in East Hartford, Connecticut, to combine research and development functions from several divisions in one location and to update its operation. On reconsideration, the Board plurality concluded that the company was free to decide to discontinue its research and development activities in Mahwah, New Jersey, and to consolidate them with its operation in East Hartford, Connecticut, unrestrained by section 8(a)(5) and (d) of the Act. While the plurality consisting of Chairman Dotson and Member Hunter acknowledged that this decision touched on a matter of central concern to the union and the employees, it found that,

[74] 269 NLRB 891 (Chairman Dotson and Member Hunter, Member Dennis concurring, Member Zimmerman concurring in part and dissenting in part)

[75] 255 NLRB 235 (1981)

[76] 452 U S 666 (1981)

under *First National Maintenance*, the decision to discontinue the Mahwah research and development activities and to consolidate them in East Hartford turned not on labor costs, but on a change in the nature and direction of a significant facet of the business. Thus it constituted a managerial decision of the sort which is at the core of entrepreneurial control outside the limited scope of section 8(d), and was not subject to mandatory bargaining. The critical factor in determining whether the decision is subject to mandatory bargaining is the essence of the decision itself, i.e., whether it turns on a change in the nature or direction of the business, or turns on labor costs; *not* its effect on employees nor a union's ability to offer alternatives. For the reasons the Court gave in *First National Maintenance* (inter alia, management's need for predictability, flexibility, speed, and secrecy, and to operate profitably), decisions which affect the scope, direction, or nature of the business are excluded from section 8(d) of the Act. Included within section 8(d), however, are all decisions which turn on a reduction of labor costs.

Member Dennis concurred in the result, but did not rely on the rationale of Chairman Dotson and Member Hunter. She relied on her own analysis of *First National Maintenance* and proposed a framework for analyzing decisions that have a direct impact on employment, but have as their focus only the economic profitability of the employer's operation, such as plant relocations, consolidations, automation, and subcontracting. The first step is to determine whether the employer's decision is "amenable to resolution through the bargaining process." The key question is whether a factor over which the union has control is a significant consideration in the employer's decision. If not, the analysis ends and bargaining is not required. If it is determined that the employer's decision is "amenable to resolution through the bargaining process," bargaining is required "*only if* the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business." The burden elements include, without limitation, the extent of capital commitment, extent of changes in operations, need for speed, need for flexibility, and need for confidentiality. Applying this framework to the instant case, Member Dennis found that none of the factors underlying the company's decision to consolidate research and development functions in East Hartford, Connecticut, was within the union's control. There were no labor-related considerations underlying the decision. Therefore, the company's decision was not amenable to resolution through collective bargaining, and bargaining was not required.

Member Zimmerman, concurring in part and dissenting in part, would find under the analytical framework outlined in his dissent in *Milwaukee Spring*[77] that the company's transfer deci-

[77] 268 NLRB 601, 605–612 (1984)

sion was not a mandatory subject of bargaining.[78] Member Zimmerman would find bargaining over an employer's decision to relocate work to be mandatory when the decision is amenable to resolution through collective bargaining. A decision motivated by labor costs is a mandatory subject of bargaining. A decision may be amenable to resolution through bargaining where the employer's decision is related to overall enterprise costs not limited specifically to labor costs. Amenability to resolution through the bargaining process necessarily encompasses situations where union concessions may substantially mitigate the concerns underlying the employer's decision, thereby convincing the employer to rescind its decision. The union's capacity to affect the employer's decision in such situations places the decision within the employer's bargaining obligation absent any showing of the employer's urgent need for the kind of speed, flexibility, or secrecy referred to in *First National Maintenance*. Applying this framework to the instant case, Member Zimmerman found that the union had no ability to affect the employer's decision and the employer's concerns were not amenable to resolution through bargaining. Therefore the employer did not unlawfully refuse to bargain with the union over its decision to transfer the Mahwah group to East Hartford.

In *Columbia City Freight Lines*,[79] the Board considered whether the employer was required to bargain about its decision to close two of its truck terminals and transfer the work from those terminals to a third terminal. By the time of the closings, the relevant collective-bargaining agreements had expired, and the employer had met once for negotiations with the charging party union, Teamsters National Freight Industry Negotiating Committee. Regarding the first closing, the employer notified the local union that represented employees at its Hammond, Indiana terminal that in 3 days all work then being handled at that terminal would be transferred to the terminal in South Bend, Indiana, which would "become a break bulk terminal." The employer further advised that the consolidation would enable it to provide better service, eliminate duplicate costs, and reduce costs in overhead, mileage, etc. Regarding the South Bend closing, the employer gave to that local union a copy of a letter to the South Bend employees advising them of a "change in operations," i.e., the closing of the terminal, necessitated by the loss of a major customer. The Board panel majority, although agreeing with the judge's conclusion that the employer did not violate section 8(a)(1) and (5) of the Act by failing or refusing to bargain with the union about the decisions to close the two terminals, em-

[78] Member Zimmerman would find that the decision at issue in this case is the employer's October 1977 decision to transfer the Mahwah unit employees to East Hartford and not its July 1977 decision to consolidate its research and development functions in East Hartford

[79] 271 NLRB 12 (Chairman Dotson and Member Hunter, Member Dennis concurring)

ployed the test set forth in *Otis Elevator*[80] for determining whether management decisions are subject to the mandatory bargaining obligation of section 8(d). Thus, looking at the "essence" of the employer's decision, the panel majority found it clear that the decision "did not turn on labor costs, albeit labor costs may have been one factor in the [employer's] decision." Rather, based on record evidence that the employer was seeking to reduce costs, eliminate duplication in costs and service, and maximize equipment and fuel, and that it had lost a major customer in South Bend, the panel majority found that the decisions at issue "clearly turned on a fundamental change in the nature and direction of the [employer's] business." Accordingly, the panel majority affirmed the judge's dismissal of that portion of the complaint.[81]

Member Dennis, concurring in the dismissal, agreed that the management decisions were not mandatory subjects of bargaining. In her view, there were several factors influencing the employer's decision—e.g., its desire to reduce costs, eliminate duplication of service, and maximize usage of equipment and fuel—over which the union had little or no control. She further found that labor costs were at best an insignificant consideration in the employer's decisions. She therefore concluded, under the analysis in her *Otis Elevator* concurrence, that the employer's decisions "were not amenable to resolution through collective bargaining."

In *Creasey Co.*,[82] a Board panel considered whether a food distributor satisfied its obligation to give the union adequate notice and opportunity to bargain about the effects of the distributor's decision to close its produce division.

Under the particular circumstances, the panel held the employer's notice to the union 3 days before the closure was reasonable and the effects bargaining that immediately followed was meaningful.

In finding the employer's notice to be reasonable, the Board panel relied on the employer's substantial inventory of perishable produce and the possible immediate loss of customers to competitors once disclosure of the shutdown was made. The panel further relied on the fact that the employer notified the union shortly after the closure date became definite and that the employer did not treat the union disparately in keeping the decision to close confidential for some time.

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[80] *Otis Elevator*, 269 NLRB 891 (Chairman Dotson and Member Hunter, Member Dennis concurring, Member Zimmerman dissenting)

[81] The full Board panel affirmed the judge's conclusion that the employer violated sec 8(a)(1) and (5) by failing to afford the union an opportunity to bargain about the effects of its decisions to close the two terminals

[82] 268 NLRB 1425 (Chairman Dotson and Members Zimmerman and Hunter)

5. Withdrawal of Recognition

In *Wells Fargo Corp.*,[83] the Board considered an employer's withdrawal of recognition from a voluntarily recognized mixed guard union[84] during an economic strike and after the expiration of the parties' contract. While the administrative law judge had found nothing in section 9(b)(3) of the Act to be inconsistent with a finding that the employer had violated section 8(a)(5) by withdrawing recognition from the union which represented its guards, the majority, in reversing the judge and dismissing the complaint, found her prohibition against certification contained in section 9(b)(3) to be in issue.[85] From an examination of the legislative history of section 9(b)(3), the majority found the congressional "purpose in enacting Section 9(b)(3) was to shield employers of guards from the potential conflict of loyalties arising from the guard union's representation of nonguard employees or its affiliation with other unions who represent nonguard employees." Since this potential conflict exists whether a mixed guard union is certified or not, the majority concluded that a "too literal reading of the statute" as prohibiting only the Board's certifying the union "effectively would thwart that congressional purpose." For to find that the employer violated section 8(a)(5) by ending the voluntary relationship would give "the Union indirectly—by a bargaining order—what it could not obtain directly—by certification—i.e., it compels the Respondent to bargain with the Union." Thus the majority found "no basis for the Board's drawing a distinction between initial certification and, as here, the compulsory maintenance of a bargaining relationship through the use of a bargaining order." The majority noted that, "[I]n either case, saddling the employer with an obligation to bargain presents it with the same set of difficulties and the same potential conflict of loyalties that Section 9(b)(3) was designed to avoid."

Moreover, the majority found that the employer could not be estopped from withdrawing voluntary recognition because an estoppel theory does not operate to preclude the intended beneficiary of section 9(b)(3), the employer, from asserting its rights thereunder. Thus while the majority agreed that the employer and the union could enter into a valid, voluntary collective-bargaining relationship, they found the employer "was privileged to withdraw from the relationship" at the time that it did. The majority found it unnecessary to pass on whether the employer

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[83] 270 NLRB 787 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

[84] A mixed guard union is one which represents guards but which also admits nonguards to membership or is affiliated directly or indirectly with an organization which admits nonguards to membership

[85] As pertinent, sec 9(b)(3) states that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards"

would also have been privileged to withdraw recognition during the contract term. In reaching its conclusion, the majority found the dissent's references to section 9(b)(1) and cases thereunder to be inapplicable. The majority also noted that the dissent's references to former subsections 9(f), (g), and (h) did not dissuade them from their conclusion based on the legislative history they attributed to section 9(b)(3) and the manner in which that section has been interpreted in case law.

Member Zimmerman, dissenting, claimed the majority's opinion to be "a novel but untenably expansive construction of Section 9(b)(3)." If an 8(a)(5) violation were found, the order would have the effect of requiring the employer to bargain, but Member Zimmerman found the Board would not be "establishing the bargaining obligation." Rather, the "Order more fairly would be characterized as one compelling Respondent to *maintain* the relationship it, not we, created." He found this distinction was supported by section 9(b)(1) and cases thereunder, by the enactment of former subsections 9(f), (g), and (h) which were contemporaneous with the enactment of section 9(b)(3), and by the language of section 9(b)(3) itself. Member Zimmerman found the majority's result to be beyond the words of section 9(b)(3) and its legislative history and disagreed with the majority's sanctioning of a type of voluntary bargaining where the employer could walk away at a contract's end since "such voluntary bargaining is contrary to the stability of collective-bargaining relationships promoted by the statute."

6. Successor Employer

In *Spencer Foods*,[86] a Board panel majority reversed an administrative law judge's finding that a business, following its acquisition by another corporation, remained the "same continuing employing entity" and as such violated section 8(a)(5) by withdrawing recognition from the union, refusing to bargain, and by unilaterally establishing hiring eligibility criteria.

The acquisition was through a stock transfer. The judge had applied *Western Boot & Shoe*[87] and *Topinka's Country House*[88] to find that the stock transfer did not alter the nature of the employing entity. The judge also relied on dicta in *Hendricks-Miller Typographic Co.*,[89] which stated that there is a "difference in genesis" between a stock transfer and a successorship situation because a stock transfer "involves no break or hiatus between the two legal entities, but is, rather, the continuing existence of a legal entity, albeit under new ownership." In this case Members Hunter and Dennis found that there is much more than the mere

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[86] 268 NLRB 1483 (Member Hunter, Member Zimmerman concurring in part, Member Dennis concurring in part and dissenting in part)

[87] 205 NLRB 999 (1973)

[88] 235 NLRB 72 (1978)

[89] 240 NLRB 1082 (1979)

substitution of one owner for another through a stock transfer within the context of an ongoing enterprise. Further, the purchase arrangement resembled in part an assets purchase in that unwanted facilities of the original business were not acquired. The panel majority found *Hendricks-Miller* distinguishable because the employer in that case acquired the predecessor's stock without a hiatus, retained the same work force, and made no operational changes.

Members Hunter and Dennis applied the Board's threshold test for the inheritance of bargaining obligations as approved by the Supreme Court in *NLRB v. Burns Security Services.*[90] They found that the resumption of the original business by the purchasing company following a lawful economic closure and a hiatus in operations of almost a year and a half did not involve the "substantial continuity of the business enterprise" required by *Burns* to support the 8(a)(5) allegation. In addition to the hiatus, the original business, as a corporate division of the purchasing company, was directed by substantially new top management and plant supervisory personnel. Four of the original business' six facilities were eliminated. The work force was reduced to approximately one-half its preclosure size due to changes in product and production methods. These changes resulted in the loss of certain former customers and the acquisition of new customers. Other factors militating against a finding of continuity were the efforts of the purchasing company, a cooperative, to secure supplies from its own members and the capital investment in new equipment and plant improvements amounting to approximately 10 percent of the purchase price.

In these circumstances the panel majority found that the purchasing company's corporate subsidiary is a new and independent entity and not a successor to the original business. Accordingly, the 8(a)(5) allegation was dismissed. Member Dennis, while also relying on the factors enumerated by Member Hunter, viewed as more important the fact that the purchasing company did not hire a majority of its employees from the closed plant's former work force and did not fail to do so because of unlawful discrimination. It was on this 8(a)(3) issue that she dissented from the finding by Members Hunter and Zimmerman that the corporate subsidiary was aware that all the former employees were union members and that it designed and implemented its hiring criteria in a discriminatory manner so as to disqualify most of the former employees. Member Zimmerman adopted the judge's reasoning that the same employing entity continued following the purchase and his finding of an 8(a)(5) violation.

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[90] 406 U S 272 (1972)

7. Refusal to Sign Contract

In *Dependable Tile Co.*,[91] the Board determined that an employer acted in a manner inconsistent with its withdrawal from multiemployer bargaining. About 31 December 1980, employer Dependable Tile[92] informed the multiemployer bargaining association and the union that, as of 31 March 1981, it would no longer consider the expiring contract to be binding on it. The employer also informed them that it would not be bound by any future contract not personally signed by its president. The majority found that the employer gave notice which, absent subsequent events, would constitute timely and unequivocal withdrawal from multiemployer bargaining.

However, on 16 January the employer tendered quarterly dues to the association and, between 20 January and 31 March, the employer's president actively participated as a part of the association's negotiating committee in formal negotiating sessions seeking agreement on a new contract. After 31 March, the employer's president no longer participated in negotiations, and on 15 November the employer refused to sign the contract reached by the association and the union.

The panel majority held that "to renew its membership in the Association and participate actively in group negotiations for a *new* multiemployer agreement is clearly inconsistent with a stated intent to abandon group bargaining and negotiate separately." The majority found that the employer sought the "best of the two worlds—the conduct prohibited by the Board's decisions in *Associated Shower Door Co.*, 205 NLRB 677 (1973), and *Michael J. Bollinger Co.*, 252 NLRB 406 (1980)." The majority therefore held that the employer nullified its withdrawal from multiemployer bargaining, and it must honor the contract reached through multiemployer bargaining.

In his dissent, Chairman Dotson indicated that he found all of the employer's actions after its 31 December unequivocal notice of withdrawal were consistent with withdrawal as of the specified contract expiration date of 31 March 1981. "Thus, Dependable Tile, in January 1981, paid its Association dues for the 1 January to 31 March 1981 period; it did not pay dues for any time after it said it was going to withdraw from the Association. [The employer's president] attended as a member of the Association at the negotiating meetings with the Union through 31 March 1981; he did not participate in or attend the first negotiating meeting (held 7 April) after the date Dependable Tile had said it would withdraw, and did not participate in or attend any of three other Association-Union negotiating sessions held after the previously announced 31 March cutoff date." Chairman Dotson would not apply the holding of *Shower Door* or *Bollinger* to this case and

[91] 268 NLRB 1147 (Members Zimmerman and Hunter, Chairman Dotson dissenting)

[92] At the close of the hearing the allegations against employer Reliable were dismissed

would not find the employer's withdrawal to have been unlawful.

8. Joint Employer Questions

In *United States Steel Corp.*,[93] a Board panel agreed with the administrative law judge that a respondent company did not violate section 8(a)(1) and (5) by refusing to bargain with the union. The respondent company utilized leased trucks to transport products from its warehouse to its customers and contracted with a truck-leasing company for this purpose. The leasing company employed drivers to man trucks servicing the company. These drivers were represented by a union and were covered by a collective-bargaining agreement with the leasing company. When the employer terminated its agreement with the leasing company, work for the drivers servicing the warehouse was discontinued. The General Counsel contended that the company was a joint employer of the drivers and that it violated the Act by refusing to bargain over the effect of the work's discontinuance and by refusing to participate in the processing of a driver's grievance. In agreement with the judge the Board panel found that the company was not a joint employer of the drivers because it did not share or codetermine those matters governing their essential terms and conditions of employment. Thus, at all relevant times, the leasing company exercised full, independent, and sole control over labor relations affecting the drivers assigned to service the employer, and any interrelationship between the operations of the companies was incidental to the contractor-customer relationship, but did not establish a joint employer relationship.

In *TLI, Inc.*,[94] the Board found, contrary to the judge, that Crown Zellerbach was not a joint employer of drivers leased to it by TLI, and thus was not obligated with TLI to restore to the status quo ante terms and conditions of employment found to have been unlawfully unilaterally changed. In making his determination, the judge had focused on several aspects of the TLI-Crown relationship, including their lease agreement, which provided that Crown would be exclusively responsible for maintaining operational control, direction, and supervision of the leased drivers. The judge found that Crown in fact exercised this authority; that drivers reported daily to the Crown facility, returned the trucks there on completion of their deliveries, and reported all mechanical difficulties to Crown. The judge also noted that the Crown foreman will call drivers if they are required to work during their vacation, and that all logs and records are kept by Crown and submitted to TLI for payroll purposes. In looking at wages and other economic benefits, the judge concluded that these too were under Crown's control. He based this finding on

[93] 270 NLRB 1318 (Chairman Dotson and Members Zimmerman and Hunter)

[94] 271 NLRB 798 (Chairman Dotson and Member Hunter, Member Dennis concurring in part and dissenting in part)

Crown's presence at both bargaining sessions between the union and TLI, noting that because Crown dictated the maximum acceptable package TLI could negotiate and still keep Crown as its customer, Crown affected the principal terms and conditions of employment[95] and therefore was a joint employer.

In rejecting the judge's conclusion, the Board relied on the Third Circuit's decision in *NLRB v. Browning-Ferris Industries*,[96] and the Board's recent decision in *Laerco Transportation*,[97] where the Board found that to establish joint employer status there must be a showing that the employer meaningfully affects matters relating to the employment relationship such as hiring, firing, discipline, supervision, and direction. Applying this standard, the majority noted that Crown neither hired nor fired the drivers, and contrary to the finding of the judge did not discipline the employees; disciplinary notices or other necessary actions were issued by TLI. The majority found that "the supervision and direction exercised by Crown on a day-to-day basis is both limited and routine, and considered with its lack of hiring, firing, and disciplinary authority, does not constitute sufficient control to support a joint employer finding." Finally, the majority rejected the judge's finding that through its presence at the bargaining sessions Crown controlled the economics of the relationship; it noted that while the Crown representative outlined his company's position, there was no evidence that he demanded specific reductions or made particular proposals. Accordingly, the Board majority found that Crown did not "share or codetermine" those matters governing the essential terms and conditions of employment.

In her dissent, Member Dennis took the position that Crown was a joint employer with TLI. She based her conclusion on the lease agreement between the two entities, finding not only that Crown had the authority under the lease to control the manner and means by which drivers performed, but also that "Crown actually exercises the daily operational control reserved for itself under the lease agreement." She therefore found that Crown maintained sufficient control over terms and conditions of drivers' employment to constitute a joint employer with TLI.

9. Bargaining Following Union Merger or Affiliation Vote

In the 1982 *Amoco Production Co.* case,[98] the Board held that a union's denial to members of the opportunity to participate in an affiliation election involving another union violated fundamental due-process standards and found that the employer did not violate section 8(a)(5) when it refused to bargain with the newly created union.

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[95] See *NLRB v Browning-Ferris Industries*, 691 F 2d 1117 (3d Cir 1982)
[96] 691 F 2d 1117 (3d Cir 1982)
[97] 269 NLRB 324 (Members Zimmerman, Hunter, and Dennis)
[98] 262 NLRB 1240 (1982)

During the past year, the Board addressed the applicability of *Amoco Production Co.* to cases involving mergers. In *F. W. Woolworth Co.*,[99] an administrative law judge held that employees who had elected a union as their bargaining representative but who had not yet joined the union prior to a merger election between their union and another union were ineligible to vote in the merger election because they were not members of their bargaining representative. Contrary to the judge, the Board found that the merger was invalid relying on the principles set forth by the Board in *Amoco Production Co.*, which they found to be applicable to mergers between two locals within the same international union. The Board noted that, in both this case and *Amoco Production Co.*, the certified union was replaced by a different entity designated by the unit employees and that a factor of primary importance was whether the affected employees had an opportunity to pass on the change of representative.

In *Furr's Cafeterias*,[100] the administrative law judge concluded that Furr's did not violate section 8(a)(1) and (5) of the Act by refusing to bargain with a successor local union where the merger election in the merged unions was conducted among union members only. A Board panel found the judge was correct in applying the rationale in *Amoco Production Co.* to mergers of local unions. Accordingly, the Board affirmed the judge's conclusion that Furr's did not violate the Act.

In *May Department Stores Co.*,[101] a Board panel found that an election conducted among locals of the United Retail Workers Union seeking affiliation with the United Food and Commercial Workers International Union, AFL–CIO, CLC was conducted with insufficient due-process safeguards because all unit employees were not permitted to participate and vote in the election. Citing *Amoco Production Co.*, the Board panel noted that "a critical element of an affiliation election is that all unit employees, whether union members or not, be permitted to participate and vote in the affiliation election." Here, voting eligibility was limited to active URW members and nonmembers from whom the URW had received a membership application prior to 31 July 1981, the date the mail ballots were sent to voters. The panel accordingly found that the affiliation election was improper and that the employer did not violate section 8(a)(1) and (5) when it refused to bargain with the United Retail Workers Union Local No. 881, chartered by the UFCW, or when it refused to comply with collective-bargaining agreements in effect with the United Retail Workers Union as applied to Local 881.

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[99] 268 NLRB 805 (Chairman Dotson and Members Hunter and Dennis)

[100] 268 NLRB 988 (Chairman Dotson and Members Hunter and Dennis)

[101] 268 NLRB 979 (Chairman Dotson and Members Hunter and Dennis)

10. Midterm Contract Modification

In *Connecticut Power Co.*,[102] the Board reexamined whether parties to a collective-bargaining agreement must bargain over midterm proposals they proffer when their contract does not anticipate midterm modifications. In finding no bargaining obligation, the Board partially overruled *Equitable Life Insurance Co.*,[103] which held that if a party made a midterm proposal, upon request it must engage in good-faith bargaining about its proposal.

This case arose when the employers advised the unions that they planned to increase the shift differential for nonbargaining unit employees and would do the same for bargaining unit employees if the unions agreed. The employers' offer occurred during the term of the parties' collective-bargaining agreements which did not contain any reopener language. The unions requested to meet with the employers to discuss the increase, but the employers refused. The unions did not agree to the increase and the employers did not implement it for bargaining unit employees.

The unions charged that the employers' refusal to bargain over their proposal violated section 8(a)(5) of the Act. Based on *Equitable*, supra, the administrative law judge agreed. The Board, however, reviewed the *Equitable* rationale and disagreed with it. The Board reasoned that section 8(d) does not state that parties may not propose midterm modifications, nor that a contract cannot be changed after signed. Rather, it states that no party to a collective-bargaining agreement may be compelled to discuss or agree to contract changes, without qualifying that right according to which party proffers the midterm change. As the recipient of a midterm proposal has no duty to bargain about it, neither does the party proposing it. To find otherwise would enable a union to strike to enforce the duty to bargain irrespective of the ongoing contract. However, section 8(d) was designed, inter alia, to prevent midterm strikes, and such a result would frustrate that purpose. The Board thus concluded that section 8(d) of the Act, in the absence of reopener language, protects every party to a collective-bargaining agreement from involuntarily incurring a bargaining obligation for the duration of the agreement. Accordingly, the Board found the employers' refusal to bargain about their offer did not violate section 8(a)(5) of the Act, and it dismissed the complaint. In a footnote, Member Zimmerman noted he found it significant that the employers' conduct in proffering the midterm proposal did not disturb the stability of the parties' collective-bargaining agreement, as the employers adhered to established principles of collective bargaining by seeking the unions' approval. He found it particularly sig-

[102] 271 NLRB 766 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)
[103] 133 NLRB 1675 (1961)

nificant that the employers did not seek to undermine the unions' strength as they neither advertised the unions' refusal to approve the changes, nor tried to circumvent the unions by dealing directly with employees. Rather, when they did not receive the unions' approval for the proposed changes, the employers abided by the existing terms of the parties' collective-bargaining agreements.

11. Withdrawal of Settlement Offer

In *Crown Cork & Seal Co.*,[104] a Board panel determined that the union had not accepted the employer's settlement offer within a reasonable time. Upon notice that the employer intended to close its plant, the union and the employer met to bargain over the effects of the closing. On 8 May 1981 the employer proposed a lump-sum settlement. The union rejected the offer. However, on 4 January 1982 the union business agent orally notified the employer that the union might accept the settlement. On 21 March 1982 the employer received the union's written proposals and on 20 April 1982 informed the union in writing that the decision to accept the employer's settlement offer was too late.

The Board panel held that the employer's offer had lapsed on the grounds that "at least 10 months had passed between [the employer's] offer in May 1981 and the Union's written reply on 19 March 1982. During that time there was a period of 5 months where the Union and [the employer] did not communicate at all. Thus, this is a case where an offer was ignored for an unreasonable period of time thereby leading the party making the offer to believe the offer was not being considered. See *Worrell Newspapers*, 232 NLRB 402, 407 (1977)." Accordingly, the panel dismissed the complaint.

12. Unilateral Changes

In cases decided during the report year, the Board was presented with alleged violations of section 8(a)(5) involving employers' unilateral changes in employees' terms and conditions of employment. The obligation to recognize and bargain with a labor organization representing its employees precludes an employer from taking unilateral action changing the terms and conditions of employment of those employees.

In *Columbus Electric Co.*,[105] the judge concluded that "Respondent's unilateral cessation of a Christmas bonus without bargaining with the Union violated Section 8(a)(1) and (5) of the Act [as] the 'zipper clause' . . . did not clearly and unmistakably waive the Union's right to bargain over items not contained in the agreement."

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[104] 268 NLRB 1089 (Chairman Dotson and Members Zimmerman and Hunter)
[105] 270 NLRB 686 (Chairman Dotson and Members Zimmerman and Hunter)

In evaluating the judge's finding, the Board panel started from the premise that "before a waiver of the duty to bargain will be found, there must be clear and unmistakable evidence of the parties' intent to waive this right." The requisite evidence is "gleaned from an examination of all the surrounding circumstances including but not limited to bargaining history, the actual contract language, and the completeness of the collective-bargaining agreement."

After examining these areas, the panel found that the zipper clause in issue was discussed during negotiations, the subject of a Christmas bonus was neither broached during negotiations nor contained in the contract, the contract by its terms was to be the source of any and all rights or claims, and the contract itself addressed an entire spectrum of issues. The panel concluded that, based on all these factors, the zipper clause agreed to by the parties constituted a clear and unmistakable waiver of the union's right to bargain over the elimination of the Christmas bonus. The employer's refusal to pay a Christmas bonus therefore did not violate section 8(a)(5).

In *Benchmark Industries*,[106] a Board majority held that the employer did not violate section 8(a)(5) and (1) of the Act when it unilaterally discontinued giving its employees Christmas hams and dinners. Although the employer had given all its employees a holiday meal and 5-pound hams for 3 years, the majority found that these items could not be fairly characterized as compensation or as terms and conditions of employment but rather were merely gifts. In noting that these items were given to all employees regardless of employment-related factors and for a relatively short period of time, they expressed approval of the views of the Eighth Circuit Court of Appeals in its decision in *NLRB v. Wonder State Mfg. Co.*,[107] and of former Board Member Kennedy in his dissent in *Nello Pistoresi & Sons*,[108] and overruled the Board's decisions in those cases to the extent inconsistent with their determination in this case.

Member Zimmerman dissented, finding that, given the employer's consistent practice of giving employees dinners and hams at Christmas, the dinners and hams became a term and condition of employment and therefore could not be unilaterally withheld by the employer without notice to and bargaining with the union.

13. Other 8(a)(5) Issues

In *Acme Marble & Granite Co.*,[109] a Board panel had to determine whether a 9(a) relationship existed between the union and

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[106] 270 NLRB 22 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting in part)

[107] 344 F 2d 210 (8th Cir 1965), denying enf in pertinent part to 147 NLRB 179 (1964)

[108] 203 NLRB 905 (1973), enf denied 500 F 2d 399 (9th Cir 1974)

[109] 271 NLRB 908 (Chairman Dotson and Members Hunter and Dennis)

an employer in the construction industry before deciding whether the employer violated section 8(a)(5) by ignoring the parties' contract at the Resurrection Cemetery project. In urging that a 9(a) rather than an 8(f) relationship existed the General Counsel relied on language in the contract that extended exclusive recognition of the union in a specific geographical area and on evidence that on the date the contract was executed the union represented a majority of the employer's employees in the geographical area covered by the contract. The Board short form adopted the judge's decision.

The judge found that in 1976 and 1977 a majority of the laborers at the employer's only projects within the jurisdiction of the parties' 1976 "me too"-type contract were members of the union through the duration of these projects. The employer performed no work on projects within the geographical jurisdiction of the contract between July 1977 and July 1978 when it began work on the Resurrection Cemetery project. The employer did not deny having employed laborers without use of any referral system from the union on the Resurrection Cemetery project. Nor did the employer pay the fringe benefits provided for in the contract on this project. Finally there was no evidence or contention that any employee at the Resurrection Cemetery project had ever designated the union as collective-bargaining representative.

In dismissing the 8(a)(5) allegation the judge relied on the facts there is nothing in the Act to indicate that the union's geographical jurisdiction establishes the bargaining unit and on certain language from *Dee Cee Floor Covering*[110] that was dispositive of the instant case: "The mere fact that the Union might indeed have represented a majority of the employees at Respondent Dee Cee's previous jobsites is of no consequence inasmuch as *the Union must demonstrate its majority at each new jobsite in order to invoke the provisions of section 8(a)(5) of the Act*" (emphasis added). Applying this principle the judge found that on these particular facts the employer had every legal right to ignore its agreement with the union at the Resurrection Cemetery project.

In *NCR Corp.*,[111] the Board considered an employer's bargaining obligation under section 8(d) where the contract clause defining that obligation is ambiguous. The parties had signed a collective-bargaining agreement covering employees in the Philadelphia district of the employer's data processing operations. In December 1980, the employer created a new independent office in Paoli, Pennsylvania, and consolidated all functions previously performed by bargaining unit employees and employees from other locations at the new office, removing unit work from the Philadelphia office and eliminating a job classification there.

[110] 232 NLRB 421 (1977)

[111] 271 NLRB 1212 (Chairman Dotson and Members Zimmerman and Hunter)

The contract provided that "[t]here shall be no transfers out of the District except by mutual agreement between the parties." It also provided, however, that "[n]othing in this Agreement shall be construed to restrict the employer's right to consolidate, merge, or reorganize any District," and stated the procedure under which the union could bargain with the company over effects of such consolidation, merger, or reorganization. The General Counsel relied on the former clause to support his argument that the employer had an obligation to obtain the union's consent before transferring the work and argued that the latter clause governed only transfers within a given district. The employer, on the other hand, maintained that the clause sanctioning unilateral "merger, consolidation, and reorganization" was a management-rights clause and an effective waiver by the union of its right to have the employer obtain its consent before proceeding with the Philadelphia-Paoli work transfer.

The administrative law judge examined the language and bargaining history under the two relevant contract provisions and concluded that the contract clause the employer relied on was "at best ambiguous, and does not clearly constitute a waiver of the Union's right to be consulted and to agree to the transfer of unit work out of the district." Thus, he found that the employer violated Section 8(a)(1) and (5) of the Act by engaging in a unilateral contract modification.

The Board reversed the judge's decision on the ground that it was not compelled to endorse either of "two equally plausible interpretations" of the contract's application to this case. When the employer has a sound arguable basis for ascribing a particular meaning to a contract and its action is in accordance with the terms of the contract as it construes it, the Board stated, it would not enter the fray and serve the function of arbitrator to decide which party's interpretation is correct. The Board observed that the employer complied with the contractual notice provisions enabling the union to request effects bargaining. Moreover, there was no evidence, the Board noted, of animus or bad faith, nor was there evidence that the employer was seeking in any way to undermine the union's status as collective-bargaining representative; rather, the employer's action was based on a substantial claim of contractual privilege. For these reasons it dismissed the complaint.

In *Towne Ford Sales*,[112] a Board panel, reversing the administrative law judge, found that the single employer's mechanics at its import automobile operations did not constitute an accretion to the existing collective-bargaining unit covering its mechanics at its Ford automobile operations which was represented by the Charging Party, IAM District Lodge No. 190, Local Lodge No. 1414. The panel initially noted that the Board has followed a re-

[112] 270 NLRB 311 (Chairman Dotson and Members Hunter and Dennis)

strictive policy in finding accretion because it forecloses the employees' basic right to select their bargaining representative. In considering this issue, the panel recognized that the Board has identified several factors as especially important in a finding of accretion, i.e., degree of interchange of employees between the affiliated companies and whether the day-to-day supervision of employees is the same in the group sought to be accreted. In general agreement with the administrative law judge's findings, the Board panel found separate daily supervision and a lack of interchange among the two groups of employees involved. In the face of separate daily supervision and lack of interchange, the Board panel, unlike the administrative law judge, found the other factors in the case were insufficient to establish accretion. Thus, the Board panel concluded that the General Counsel had not established an accretion by a preponderance of the evidence. Therefore, the complaint which alleged, inter alia, that the employer had violated section 8(a)(5) and (1) by refusing to bargain with the union and comply with its agreement with the union with respect to its mechanics at its important automobile operations was dismissed in its entirety.

E. Union Interference With Employee Rights

Section 8(b)(1)(A) of the Act provides that "[i]t shall be an unfair labor practice for a labor organization or its agents—to restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7," including the rights to form, join, or assist a labor organization or to refrain from such activities. Under section 8(b)(1)(A), a union not only must refrain from interfering with employee rights through the enforcement of union rules, but affirmatively must also represent employees with complete good faith and honesty. During the report year, the Board decided several important cases involving each of these aspects of a union's duty to those whom it represents.

1. Duty of Fair Representation

As mentioned above, a labor organization must represent unit employees with complete good faith and honesty. In other words, a union owes unit employees a duty of fair representation. The union may breach this duty in several ways. Alleged breaches during the report year involved acts of omission by the union, acts of commission, and conflicts of interest.

A union does not breach its duty of fair representation under section 8(b)(1)(A) unless the union's conduct is arbitrary or based on irrelevant, invidious, or unfair considerations. In a 1974 case, *Teamsters Local 692 (Great Western)*,[113] the Board declared that

[113] 209 NLRB 446 (1974)

negligence alone does not constitute arbitrary conduct. A Board panel reiterated this rule in *Office Employees Local 2.*[114] Quoting from *Great Western*, the panel stated that "the General Counsel must demonstrate that 'something more than mere negligence' occurred to justify a finding of arbitrariness and, therefore, a breach of a union's statutory duty." The panel in *Office Employees* found the union's failure to notify an employee in a timely manner that it had decided not to process the employee's grievance constituted mere negligence. Contrary to the recommendation of an administrative law judge, the panel ruled that the union's omission did not constitute a breach of its duty of fair representation.

The union's president decided that the employee's grievance lacked merit. Accordingly, the president did not process the grievance. He also did not inform the employee of his decision until the 30-day grievance period had expired. Consequently, the grievant lost an opportunity to press her claim for severance pay. Because the union president was aware of the 30-day rule and presented no logical explanation for his failure to notify the grievant of his decision, the judge reasoned the union's inaction was arbitrary and thus unlawful.

However, the Board panel stated, "Exactly when union conduct constitutes 'something more than mere negligence' is not susceptible to precise definition." Each case, the panel continued, must be evaluated in light of the totality of the circumstances. The union in this case fully considered the employee's claim before dismissing it. Moreover, the panel observed, the employee was aware of the 30-day limit and could have filed the grievance herself. Under these circumstances, the panel concluded, the union's inaction was merely negligent.

In *Teamsters Local 299 (McLean Trucking)*,[115] the Board found that a union breached its duty of fair representation through acts of commission. Specifically, the union encouraged its members to violate the collective-bargaining agreement and thereby to expose themselves to discipline. By doing so, a Board panel ruled, the union acted arbitrarily in violation of section 8(b)(1)(A).

A no-strike provision in the collective-bargaining agreement permitted the employer to suspend employees participating in an unauthorized work stoppage. The contract further provided that a work stoppage would be deemed unauthorized if the union failed to respond to a telegraphic notification that work stoppage had occurred. In other words, the Board panel observed, the union exercised "absolute control over whether a work stoppage would be considered unauthorized and, consequently, whether

[114] 268 NLRB 1353 (Chairman Dotson and Members Zimmerman and Dennis)
[115] 270 NLRB 1250 (Chairman Dotson and Members Hunter and Dennis)

the participating employees would be subject to severe discipline."

To protest the employer's elimination of three "day-dock" bids, the day-shift employees, at the union's behest, refused to work. The employer sent mailgrams, inquiring whether the work stoppage was authorized. The union's officers failed to respond to these inquiries. Thus, under the contract, the work stoppage was unauthorized. Pursuant to the contract, the employer suspended the participating employees for 30 days.

The employees did not engage in a "work stoppage" within the meaning of the contract, the union argued; rather, they merely assembled for a meeting. The union advanced this position in bad faith, the Board panel found. Further, the union acted arbitrarily. "Regardless of whether the employees believed the events of 24 March constituted a meeting or a work stoppage," the Board panel stated, "they had the right to expect that the union would not encourage them to violate the contract in a way that would expose them to a loss of income or even of employment." By doing so, the panel concluded, the union breached its duty of fair representation.

Plumbers Local 553 (Plumbing Contractors)[116] also involved a union's duty of fair representation. An administrative law judge ruled that the union breached this duty by executing a contract while holding 25 percent of the employer's outstanding shares of stock. The union's substantial interest in the management of the company, the judge reasoned, created a conflict of interest that precluded the union from fairly representing the company's employees. A Board panel disagreed.

A bargaining representative owes complete loyalty to those whom it represents, Chairman Dotson and Members Zimmerman and Hunter acknowledged. In determining whether a union's ownership interest in a company compromises this duty of loyalty, the Board panel continued, two factors are relevant: (1) the union's power to control the company; and (2) the union's incentive to exercise that power to protect its ownership interest. "In short," the panel stated, quoting from *H. P. Hood & Sons*,[117] "our task is to carefully scrutinize and weigh elements of both power and temptation, and, from this overall appraisal, determine the proximity of the danger that a remote financial interest will infect the bargaining process."

The union's sole purpose in purchasing shares in the company, the panel observed, was to improve employment opportunities for its members. Distinguishing *St. John's Hospital*,[118] the panel noted that the union took steps to divest itself of actual and potential power to control the company. Under the stock purchase agreement, the union could hold the stock for only 3 years. The

[116] 271 NLRB 1361 (Chairman Dotson and Members Zimmerman and Hunter)
[117] 182 NLRB 194 (1970)
[118] 264 NLRB 990 (1982)

union assigned its proxy, voting, and other rights as an owner to the company's attorney. No representative of the union occupied a corporate office or a place on the company's board of directors. The collective-bargaining agreement called for prevailing wage rates and fringe benefits. It granted no special privileges to the union. "Based on these facts," the Board panel concluded, "the Union effectively has divested itself from the management of the company to such an extent that, even if tempted, it would be powerless to 'infect the bargaining process.'"

2. Enforcement of Internal Union Rules

The proviso to section 8(b)(1)(A) specified that a labor organization may "prescribe its own rules with respect to the acquisition or retention of membership therein." A union may enforce a valid rule adopted pursuant to this proviso. A union may not enforce an internal rule, however, in such a way as to violate its members' protected rights. One of these rights is the right to resign from the union. In *Machinists Local 1414 (Neufeld Porsche-Audi)*,[119] the Board majority announced an important new rule concerning a union's ability to restrict this right. Overruling *Machinists Local 1327 (Dalmo Victor)*[120] and its progeny, a Board majority declared that all such restrictions are invalid. Although he concurred in the result in the case, Member Zimmerman opposed the new rule.

In *Neufeld Porsche-Audi*, the union's constitution provided that a member could not resign during a strike or within 14 days of the commencement of a strike. The union fined an employee whose resignation violated this provision. Adopting the views expressed by Chairman Van de Water and Member Hunter in their concurring opinion in *Dalmo Victor II*, Chairman Dotson and Members Hunter and Dennis found that the union's constitutional restriction on resignations was invalid. The fine imposed pursuant to that provision, they ruled, violated section 8(b)(1)(A).

Applying the test enunciated by the Supreme Court in *Scofield v. NLRB*,[121] the Board majority stated that a "union rule is valid only if it 'reflects a legitimate union interest, impairs no policy Congress has embedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.'" A rule restricting resignations, the Board majority acknowledged, advances the union's legitimate interest in maintaining strike solidarity. However, the majority found a restriction on resignations also "substantially impairs fundamental policies embedded in the labor laws."

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[119] 270 NLRB 1330 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting in part)

[120] 263 NLRB 984 (1982) (*Dalmo Victor II*), enf denied 725 F 2d 1212 (9th Cir), cert granted 105 S Ct 3517 (1984)

[121] 394 U S 423 (1969)

Most obviously, the majority observed, a restriction on resignations impairs the employees' right under section 7 to refrain from participating in protected concerted activities. This right, the majority stated, "encompasses not only the right to refrain from strikes, but also the right to resign union membership." Similarly, the majority continued, a restriction on resignations impairs the fundamental policy recognized by the Supreme Court of distinguishing internal union actions, applicable to members, from external actions. "By unilaterally extending an employee's membership obligation through restrictions on resignation," the majority stated, "a union artificially expands the definition of internal action and can thus continue to regulate conduct over which it would otherwise have no control."

The Board majority dismissed the argument that restriction on resignations is justified because it preserves the union's interest in maintaining strike solidarity and protects the rights of employees who choose to strike. In *Granite State*[122] and *Boeing Co.*,[123] the majority observed, the Supreme Court rejected such an argument. A union's institutional interests are not equivalent to an employee's statutory right to resign, the majority explained. Also, the rights of striking employees do not take precedence over the rights of those who choose not to strike. With equal vigilance, the majority stated, section 7 protects "the rights of employees to *engage in* and to *refrain from* union or other concerted activities."

Under *Scofield*, Chairman Dotson and Members Hunter and Dennis continued, employees must be free to leave a union to escape its rules. "In our view," they stated, "it is apparent that this principle is violated by a rule that tells employees they cannot, in fact, escape the rule."

Member Zimmerman noted that the Supreme Court cases cited by the majority were distinguishable. Indeed, he maintained, those cases supported the proposition that a section 7 right is not absolute. An individual employee's right to resign from a union, he asserted, must be balanced against the group's right to strike. Reiterating the arguments he advanced with former Member Fanning in *Dalmo Victor II*, Member Zimmerman concluded that a 30-day restriction on resignations would constitute a reasonable accommodation of competing interests.

Applying *Neufeld Porsche-Audi*, the Board in *Machinists Local 1769 (Dorsey Trailers)*[124] held that a union could not enforce a rule providing that a member's resignation during a strike did not discharge that member's obligation to refrain from returning to work. Pursuant to this rule, the union fined an employee who returned to work during a strike after resigning from the union. The union sought to collect the fine in court. These actions, the

[122] *NLRB v Textile Workers Local 1029 (Granite State Joint Board)*, 409 U S 213 (1972)
[123] *Machinists Local 405 (Boeing Co.) v NLRB*, 412 U S 84 (1973)
[124] 271 NLRB 911 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)

Board ruled, violated section 8(b)(1)(A). Again, Chairman Dotson and Members Hunter and Dennis stated that any restriction on a member's right to resign is unreasonable. For the reasons set forth in the plurality opinion in *Dalmo Victor II*, Member Zimmerman again concurred in the result.

F. Coercion of Employer in Selection of Representatives

Under section 8(b)(1)(B), a union may not obstruct an employer's right to select its own representatives. Specifically, the section provides that "[i]t shall be an unfair labor practice for a labor organization or its agents—to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." In *Electrical Workers IBEW (Bergelectric Corp.)*,[125] a Board panel found that the union violated this section by fining two supervisor-members for failing to perform picketing assignments during a strike.

The union's sanctions against the supervisor-members, the panel reasoned, "would tend to encourage them to picket and to refrain from working during future work stoppages, thus depriving the company of its chosen supervisors." Citing *American Broadcasting Cos. v. Writers Guild*,[126] the panel stated that section 8(b)(1)(B) "prohibits union disciplinary actions tending to have such an effect."

The panel rejected an administrative law judge's finding that the fines were lawful to the extent they applied to the supervisor's refusal to picket during nonworking days. In imposing the fines, the union did not distinguish between nonworking and working days; therefore, the Board panel concluded, the fines were unlawful in their entirety. The panel did not decide whether a union could lawfully require supervisor-members to picket through an order limited to nonworking days.

G. Union Causation of Employer Discrimination

In *Longshoremen ILA Local 333 (ITO Corp.)*,[127] the principal question that the Board panel had to decide was whether the union violated section 8(b)(1)(A) and (2) of the Act when its delegate ordered a leader of a crew to remove a stevedoring employee who used profane language in criticizing the delegate's performance of his duties. The Board panel disagreed with the administrative law judge's finding that the employee's conduct was so "opprobrious" as to cause the forefeiture of the statutory protection afforded employees who express dissatisfaction with a union's conduct and policies. The Board panel held that the em-

[125] 271 NLRB 25 (Chairman Dotson and Members Zimmerman and Dennis)
[126] 437 U S 411 (1978)
[127] 267 NLRB 1320 (Chairman Dotson and Members Zimmerman and Hunter)

ployee's resort "to strong language which is not unusual on the docks, albeit not in conformity with Emily Post standards of etiquette customary in more genteel surroundings, cannot justify the Union's reprisal against [the employee]." Accordingly, the Board panel did not deem the employee's conduct "opprobrious" and therefore found that the union violated section 8(b)(1)(A) and (2) of the Act by bringing about the removal of the employee. However, as to a second alleged violation of the same provisions, the Board panel found no violation in the delegate's statement to the crew leader that the employee, who filed a charge with the Board, did not have a job on the next day and that he should go to the Board if he wanted one. In so holding, the Board panel applied an objective test, in contrast to the administrative law judge's subjective test, and found, in view of the fact that the employee was already back at work when he was apprised of the foregoing statement, that it cannot reasonably be concluded that the statement tended to coerce or intimidate the employee in the rights guaranteed him by the Act.

H. Union Bargaining Obligation

Section 8(b)(3) of the Act imposes a duty upon a labor organization to bargain collectively with the employer of those whom it represents. Several significant cases during the report year turned upon the scope of this bargaining duty. In these cases, the unions argued that the duty had been fulfilled. The Board disagreed.

In *Carpenters Local 1476 (Lake Charles AGC)*,[128] the union maintained that it had no duty to bargain with the employer because the parties had signed a complete contract. A Board panel found, however, that the contract failed to incorporate a "weather clause" agreed upon by the parties at one of their bargaining sessions. The weather clause limited the employer's wage liability when forces beyond its control necessitated layoffs. The employer unknowingly deleted the clause before submitting the contract for the union's signature and the employees' ratification. After discovering the error, the employer requested further negotiations concerning the omitted clause. The union refused to negotiate.

The remedy of rescission for unilateral mistake, the Board panel acknowledged, is limited "to those instances where the mistake is so obvious as to put the other party on notice of an error." In finding that "this case presents such an instance," the Board panel relied on the fact that the omission of the weather clause represented a change not only from the parties' previous contract but also from all proposals offered by the employer during negotiations. Furthermore, omission of the clause repre-

[128] 270 NLRB 1432 (Chairman Dotson and Members Zimmerman and Hunter)

sented the extension by the employer of a significant and costly new benefit. For these reasons, it concluded, the union recognized or should have recognized the employer's mistake. The panel ruled the parties never reached a final agreement on the weather clause, and, therefore, the union's refusal to bargain over that clause violated section 8(b)(3).

Because the weather clause was only tentatively agreed upon, and because the employees never ratified the clause, the Board panel did not adopt the judge's recommended remedy directing the union to incorporate the weather clause in the printed contract. Rather, the panel directed the union to bargain with the employer over inclusion of the clause.

The Board encountered the converse case in *Teamsters Local 595 (Sweetner Products).*[129] As discussed above, the parties in *Lake Charles AGC* signed a contract but failed to complete negotiations. In contrast, the parties in *Sweetner Products* completed negotiations but the union refused to sign the contract. The result was the same: The Board found a violation of section 8(b)(3).

Upon ratification of the negotiated contract, the union in *Sweetner Products* disclaimed any further interest in representing the unit employees. It purported to "transfer" its status as the employees' representative to a sister local. Despite its disclaimer, a Board panel ruled, the union breached its bargaining duty by refusing to sign the contract.

Section 8(d) defines a party's bargaining duty. If the parties succeed in reaching an agreement, the Board panel noted, section 8(d) compels the parties, on request by either of them, to execute a written contract incorporating that agreement. Citing *H. J. Heinz Co. v. NLRB,*[130] the panel observed that the obligation to execute a contract accords with the recognized fact that a signed instrument promotes industrial peace. "As the Respondent's obligation to sign became fixed before it disclaimed interest in representing the employees covered by the agreement," the panel reasoned, "its refusal to sign constitutes a violation of its duty under Section 8(b)(3) of the Act, irrespective of the motivation or effectiveness of its purported disclaimer."

I. Jurisdictional Dispute Proceedings

Section 8(b)(4)(D) of the Act prohibits a labor organization from engaging in or inducing strike action for the purpose of forcing any employer to assign particular work to "employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining

[129] 268 NLRB 1106 (Chairman Dotson and Members Zimmerman and Hunter)
[130] 311 U S 514, 524 (1941)

the bargaining representative for employees performing such work."

An unfair labor practice charge under this section, however, must be handled differently from a charge alleging any other type of unfair labor practice. Section 10(k) requires that parties to a jurisdictional dispute be given 10 days, after notice of the filing of the charge with the Board, to adjust their dispute. If at the end of that time they are unable to "submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute," the Board is empowered to hear the dispute and to make an affirmative assignment of the disputed work.

Section 10(k) further provides that pending 8(b)(4)(D) charges shall be dismissed where the Board's determination of the underlying dispute has been complied with or the parties have voluntarily adjusted the dispute. An 8(b)(4)(D) complaint issues if the party charged fails to comply with the Board's determination. A complaint may also be issued by the General Counsel in the event recourse to the method agreed upon to adjust the dispute fails to result in an adjustment.

In order to proceed with the determination under section 10(k), the Board must find (1) that there is reasonable cause to believe that the union charged with having violated section 8(b)(4)(D) has induced or encouraged employees to strike or refuse to perform services in order to obtain a work assignment within the meaning of section 8(b)(4)(D); and (2) that a dispute within the meaning of section 10(k) currently exists. If these two conditions are met, the Board proceeds by making an affirmative award of the disputed work in accordance with the policy and criteria set forth in *J. A. Jones Construction*[131] where it stated: "The Board will consider all relevant factors in determining who is entitled to the work in dispute, e.g., the skills and work involved, certifications by the Board, company and industry practice, agreements between unions and between employers and unions, awards of arbitrators, joint boards, and the AFL–CIO in the same or related cases, the assignment made by the employer, and the efficient operation of the employer's business. This list of factors is not meant to be exclusive, but is by way of illustration."

A common issue in 10(k) proceedings is whether the parties have voluntarily agreed to a dispute resolution mechanism. In *Mine Workers District 30 (Samoyed Energy)*,[132] the Board held that the parties had not agreed to a method for adjusting the work dispute despite the fact that the employer had executed a contract with District 30 which contained a grievance procedure mandating contractual resolution of the parties' dispute. The

[131] *Machinists Lodge 1743 (J A Jones Construction)*, 135 NLRB 1402, 1410 (1962)
[132] 271 NLRB 191 (Members Zimmerman, Hunter, and Dennis)

panel found doubt as to the contract's validity and as to whether all parties had agreed to be bound by it.

At the time the employer's president signed the contract, the unions were engaging in minesite picketing and violence and were threatening the employer with serious consequences if he refused to recall employees, represented by the unions, who had formerly been employed by the employer's predecessors. In fact, the General Counsel subsequently issued a complaint against the unions alleging that they violated section 8(b)(1)(A) and (2) with regard to the employer's contract execution. The employer's president testified that he signed the contract under heavy duress and only because he felt that he had to sign to stay in business. When the employer did not recall former union members or abide by the contract, a union representative handed the company president a grievance which he accepted but refused to process.

The Board summarized its determination of the case as follows:[133]

> In evaluating the evidence about the 12 July collective-bargaining agreement and its grievance procedures, we particularly rely on: the highly charged and potentially coercive circumstances surrounding [the company president's] execution of the contract and acceptance of the grievance; the employer's consistent refusal to abide by the contract or to arbitrate the grievance; the fact that the contract's validity is now being litigated in Federal District Court; and the lack of evidence that any of the Employer's employees has ever authorized union representation. Doubt exists as to the contract's validity and as to whether all parties will be bound to it. Consequently, we find no private means of settlement sufficient to preclude us from proceeding to a determination of the dispute.

One case which issued during the report year involved disagreement over the proper definition of the disputed work. In *Longshoremen ILWU Local 32 (Weyerhaeuser Co.)*,[134] a Board panel majority awarded work to employees represented by the Association of Western Pulp and Paper Workers (AWPPW) Local 10 rather than to those represented by ILWU Local 32. In so doing, the majority rejected the ILWU claim that the work in dispute should be defined with reference to the ownership of the vessels to be unloaded, and found that the proper definition looks to the work actually performed.

Weyerhaeuser operated a private dock (the T-M dock) at Everett, Washington. It employed individuals represented by the ILWU to tie up and offload vessels. The T-M dock was used for Weyerhaeuser products brought in on ships Weyerhaeuser owned or on ships owned by others carrying Weyerhaeuser

[133] 271 NLRB at 192

[134] 269 NLRB 1 (Members Hunter and Dennis, Member Zimmerman dissenting)

goods. The work of ship tieup and the bringing of goods from shipside to the warehouse were the subject of a previous 10(k) dispute in which the Board awarded that work to AWPPW-represented employees.[135]

A short distance from the T-M dock was the Port of Everett docks. At those docks, ILWU employees traditionally performed the work carried out by AWPPW employees at the T-M dock. In August 1982, a vessel named *Great Ocean* was due at the Port of Everett to pick up logs from an unspecified owner. The Port of Everett was filled, and the ship was diverted to the T-M dock. When the ship arrived, ILWU employees engaged in a work stoppage, claiming the work of tying and casting off the vessel.

The AWPPW claimed that the work in dispute was the tying up and casting off of vessels at the T-M dock. The ILWU asserted that the work in dispute was tying up and casting off vessels neither owned nor chartered by Weyerhaeuser that are to be loaded with logs from the water, which logs are not owned by Weyerhaeuser.

The panel majority agreed with the AWPPW definition. It noted that AWPPW employees traditionally did linework at the T-M dock regardless of the ownership of the vessel. The panel majority also found that by seeking to define the work in terms of vessel ownership and cargo "the ILWU is attempting to bifurcate the appropriate work description by relying on considerations that have no bearing upon the performance of the work itself."

Having defined the work, the Board panel majority applied the established 10(k) criteria to award the work to employees represented by AWPPW. It relied on the employer's expressed preference, the long-established practice of assigning all linework at the T-M dock to AWPPW employees, the Board's previous 10(k) award, and certain contractual provisions indicating deference to established work practices at individual sites.

Member Zimmerman dissented in part. In his view the disputed work was "the tying work on vessels present at the Everett dock for the purpose of loading goods other than those from the Weyerhaeuser warehouse." He found that with this definition of the disputed work, the Board's previous 10(k) award was distinguishable and that consideration of economy and efficiency of operations merited award of the work to employees represented by ILWU since they were necessarily at the site to do the actual loading, while AWPPW employees would have to come to the dock simply to do the line work.

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[135] *Longshoremen ILWU Local 32 (Weyerhaeuser Co.)*, 256 NLRB 167 (1981)

J. Deferral to Arbitration

The jurisdiction of the Board over unfair labor practices is exclusive under section 10(a) of the Act and is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." However, consistent with the congressional policy to encourage utilization of agreements to arbitrate grievances disputes, the Board, in the exercise of its discretion, will under appropriate circumstances withhold its processes in deference to an arbitration procedure.

The Board has long held that, where an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, the Board will defer to the arbitration award if the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act.[136]

In the seminal case of *Collyer Insulated Wire*,[137] the Board majority articulated several factors favoring deferral: a dispute arising within the confines of a long and productive collective-bargaining relationship; lack of employer animosity to employees' exercise of protected rights; a contract providing for arbitration in a very broad range of disputes; an arbitration clause which clearly encompasses the dispute at issue; employer willingness to utilize arbitration to resolve the dispute; and a dispute which is eminently suited to resolution by arbitration. In years following *Collyer*, the Board further refined the deferral doctrine and applied it to other situations, including cases involving 8(a)(3) allegations.

Subsequently, however, the Board in *General American Transportation Corp.*[138] changed course and adopted a different standard for arbitral deferral. In that decision, the Board majority held that it would no longer defer in advance to contractual arbitration procedures the adjudication of individual statutory rights that arise solely by virtue of the National Labor Relations Act. It was the consensus of the majority that deferral in advance of situations where the dispute is between the contracting parties and where there is no alleged interference with individual basic rights should continue. However, where the dispute is between the employee on the one hand, and the employer and/or union on the other, over issues comprehended with the protection against discrimination or interference and coercion accorded the individual by statute, considerations of statutory interpretation and policy warranted the Board's discontinuance of advance deferral in such situations.

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[136] *Spielberg Mfg Co*, 112 NLRB 1080, 1082 (1955)
[137] 192 NLRB 837 (1971)
[138] 228 NLRB 808 (1977)

During the report year, the Board had occasion to reconsider its policy concerning deferral to arbitration in a number of cases before it. In *United Technologies Corp.*,[139] a Board majority overruled *General American Transportation* and decided to defer to the parties' contractual grievance-arbitration machinery in cases alleging violations of sections 8(a)(1), 8(a)(3), 8(b)(1)(A), and 8(b)(2) of the Act. The Board majority initially noted that arbitration as a means of resolving labor disputes has gained widespread acceptance over the years and occupies a respected and firmly established place in Federal labor policy.

Next, the Board majority traced the Board's deferral policy from *Collyer.* It observed that despite the universal judicial acceptance of the *Collyer* doctrine, the Board in *General American Transportation* had abruptly changed course and adopted a different standard for arbitral deferral, one that the Board majority in the instant case believed ignored the important policy considerations in favor of deferral. In the Board majority's view, the *General American Transportation* majority essentially emasculated the Board's deferral policy, a policy that had favorably withstood the tests of judicial scrutiny and of practical application, for reasons that were largely unsupportable. In the majority's view, *Collyer* worked well because it was premised on sound legal and pragmatic considerations and should be "resurrected and infused with renewed life."

Finding the instant case well suited for deferral, the majority applied the principle of *Collyer.* The dispute centered on a statement of a single foreman made to a single employee and a shop steward during the course of a first-step grievance meeting, allegedly concerning possible adverse consequences that might flow from a decision by the employee to process her grievance to the next step. This statement was alleged to have been a threat violative of section 8(a)(1). The majority found that this statement was clearly cognizable under the broad grievance-arbitration provision of the parties' collective-bargaining agreement and that the employer had expressed its willingness, indeed its eagerness, to arbitrate the dispute. The complaint was dismissed.

Dissenting, Member Zimmerman acknowledged the existence of a salutary Federal labor law policy favoring the resolution of collective-bargaining disputes through grievance and arbitration. However, he disagreed with the majority because, in his opinion, the determination to "Collyerize" the type of unfair labor practice claims at issue here needlessly sacrifices basic safeguards for individual employee rights under the Act. Contrary to his colleagues, Member Zimmerman would continue to adhere to the law of deferral to the arbitral process as that law was represented in the concurring opinion of former Chairman Murphy in

[139] 268 NLRB 557 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting)

General American Transportation. In accord with that opinion and with the sense of the original *Collyer* decision, he would not defer from Board decision-making by forcing parties through contractual grievance and arbitration proceedings unless their unfair labor practice disputes essentially involve the interpretation of a collective-bargaining agreement. Even assuming the propriety of the majority's overruling of *General American Transportation*, Member Zimmerman still would not defer in this case. In sum, Member Zimmerman would adhere to the principles of *General American Transportation* and not defer to the grievance-arbitration process where the unfair labor practice issues concern the statutory rights of individual employees, such as in cases alleging violations of section 8(a)(1) and (3) and section 8(b)(1)(A) and (2) of the Act.

In *Olin Corp.*,[140] a majority of the Board reexamined standards for deferral to arbitration awards under *Spielberg*, and endorsed the longstanding *Spielberg* standards for deferral. Additionally, the majority endorsed the condition previously set forth in *Raytheon Co.*[141] that the arbitrator must consider the unfair labor practice, but it stated that it would find the arbitrator has adequately considered the unfair labor practice issue if "(1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. In this respect, differences, if any, between the contractual and statutory standards of review should be weighed by the Board as part of its determination under the *Spielberg* standards of whether an award is 'clearly repugnant' to the Act."

Thus, the Board majority stated that unless an arbitrator's award is "palpably wrong," i.e., unless it is not susceptible to an interpretation consistent with the Act, it will defer. Finally, the Board majority added in *Olin* that the party seeking to have the Board reject deferral must show that the deferral standards have not been met and that, "to the extent that *Suburban Motor Freight*[142] provided for a different allocation of burdens in deferral cases, it is overruled." Under these standards a majority of the Board concluded that, contrary to the judge, deferral to the arbitrator's award was appropriate.

An employee of Olin who was also president of the union was discharged based on his record and for threatening a "sick out," participating in a "sick out," and failing to prevent it. The employee's discharge was grieved and arbitrated. The arbitrator found that under the parties' contract "union officers implicitly have an affirmative duty not to cause strikes which are in violation of the clause, not to participate in such strikes and to try and

[140] 268 NLRB 573 (Chairman Dotson and Members Hunter and Dennis, Member Zimmerman dissenting in part)

[141] 140 NLRB 883 (1963)

[142] 247 NLRB 146 (1980)

stop them when they occur" and that the employee had been appropriately discharged for breaching this duty. The arbitrator also found "no evidence that the company discharged the grievant for his legitimate union activities."

Dissenting in part, Member Zimmerman agreed with the majority that deferral to the arbitration award was appropriate, but disagreed with the overruling of *Suburban Motor Freight* and the majority's interpretation of the *Raytheon* condition that the arbitrator consider the unfair labor practice. Member Zimmerman found the "new standard is significantly flawed in several respects." Specifically, he stated:

> (1) it represents an impermissible abdication of the Board's statutory obligation to prevent unfair labor practices; (2) it contradicts a substantial body of judicial precedent; (3) it imposes a novel and inequitable burden of proof on the General Counsel; (4) in conjunction with the unwarranted change in prearbitral deferral doctrine announced today in *United Technologies Corp.*, 268 NLRB No. 83, the standard here signals a Board policy of broadscale deferral which, contrary to the majority's intent, may actually discourage the use of grievance and arbitration dispute resolution systems; (5) it proceeds from the wholly erroneous premise that under the Board's prior policy, overruled today, deferral to the arbitral process has only been infrequent; and (6) ironically, the new standard is unnecessary to justify deferral in this case, where the Board should in any event reverse the judge, defer under *Suburban Motor Freight* and *Spielberg* to the arbitration award, and dismiss the complaint.

Member Zimmerman added that "mere factual parallel between contract and statutory issues will not suffice to prove that an arbitrator must have resolved an unfair labor practice issue." He further stated that the majority's view would presume that an arbitrator has considered both contract and unfair labor practice issues unless the General Counsel can prove that there is no factual parallel between the issues. In this regard, Member Zimmerman contended that the burden of establishing an affirmative defense should be placed on the party raising the deferral rather than on the General Counsel.

The Board had occasion to apply the principles set forth in *United Technologies* and *Olin* in several cases which issued during the report year. In *Altoona Hospital*,[143] a Board panel decided that deferral to an arbitration award was appropriate under *Olin*, reversing an administrative law judge's decision which was based in part on *Suburban Motor Freight* and *Spielberg Mfg. Co.*

In *Altoona Hospital*, the Board found that the arbitration award satisfied the *Olin* standard that an arbitrator has adequately con-

[143] 270 NLRB 1179 (Chairman Dotson and Members Hunter and Dennis)

sidered an unfair labor practice if the contractual issue was factually parallel to the unfair labor practice issue, and the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice issue. The Board panel held, "The contractual issue whether the Respondent discharged Focht for just cause is factually parallel to the statutory issue whether the Respondent could lawfully discipline Focht for disclosure of confidential information during her protected pursuit of a grievance. The arbitrator addressed the same facts that would be considered by the Board in a consideration of the unfair labor practice, namely, the complaint against Focht, the progression of her grievance, Focht's disclosure to the investigator, and the Respondent's rule on confidential information."

In *Chemical Leaman Tank Lines*,[144] a Board panel majority, relying on *Olin*, agreed with an administrative law judge that deferral to a decision by a Southern Tank Line grievance committee, upholding the discharge of the grievant for having struck a supervisor, was appropriate. The General Counsel in this case had alleged that deferral was inappropriate, because the statutory issue of whether the grievant had been unlawfully discharged for filing numerous grievances against his employer had purportedly not been presented to or decided by the committee.

In rejecting the General Counsel's allegations, the panel majority found that the contractual issue and the statutory issue were factually parallel since the question before both forums was whether the grievant was discharged for hitting his supervisor or for filing grievances. The panel majority pointed out that "resolution by the committee of the contractual issue would, of necessity, require it to resolve this very issue." The panel majority further noted that, during the hearing in this case, the grievant admitted that all the facts presented to the judge concerning his claim that he was discriminated against for filing grievances had been presented to the committee. The panel majority thus concluded that the statutory issue had, in accordance with *Olin* standards, been adequately considered by the committee and that deferral was warranted.[145] Accordingly, it dismissed the complaint, finding it unnecessary to rule, as the judge had done, on the merits of the unfair labor practice allegation.

In his concurring opinion, Member Zimmerman, for the reasons stated in his dissenting opinion in *Olin*, disagreed with the majority that deferral to the committee's decision was appropriate. He pointed out that while the judge had recommended that the Board defer, the judge, relying on the testimony of those present at the grievance hearing, stated that "it does not appear

[144] 270 NLRB 1219 (Members Hunter and Dennis, Member Zimmerman concurring)

[145] In light of its finding that the committee had adequately considered the unfair labor practice issue, the panel majority disavowed the judge's comment that the committee had not considered the statutory question Rather, it noted that having heard the facts on the statutory issue, the committee's decision effectively, although not explicitly, did decide that issue

that the statutory question was considered or decided by the Committee." Member Zimmerman noted that a plain reading of the committee's decision clearly supported the judge's finding that the issue of whether the sole or even a partial motive behind the grievant's discharge was his protected activity had not been considered by the committee. Thus, he pointed out that aside from some vague reference to the employer's alleged harassment of the grievant and the committee's curt denial, without explanation, of the former's grievance, there is nothing in the committee's decision to remotely suggest that the statutory issue had been presented to or considered by that committee. In the absence of such evidence, Member Zimmerman concluded that deferral was inappropriate.[146]

In *General Dynamics Corp.*,[147] a Board panel addressed the question of whether deferral under *United Technologies* was appropriate where an employee filed grievances over his suspensions, pursued those grievances through four of the five steps of the grievance-arbitration procedure, and then withdrew those grievances, choosing instead to pursue an unfair labor practice charge before the Board.

The employee in *General Dynamics* filed grievances alleging that his two suspensions constituted violations of the provisions of the collective-bargaining contract prohibiting the respondent from discriminating against any employee because of his union membership or activity and prohibiting discipline of any employee except for just cause. The employee went through four steps of the grievance procedure and the parties agreed to take the grievance to the fifth step, which consisted of arbitration. An arbitrator was chosen. The employee then announced that he intended to withdraw his grievance because his suspension had been expunged from his record, the cost of arbitrating would outweigh the amount of backpay, and Board procedures (charges had been filed alleging violations of sec. 8(a)(1) and (3)) would constitute "the most appropriate avenue for relief."

The Board panel stated that, under *United Technologies*, deferral is appropriate in circumstances which establish that the parties' collective-bargaining contract contains a broad grievance-arbitration provision clearly encompassing the unfair labor practice allegation. The Board panel concluded that this conclusion was met by the parties' contract and that deferral was all the more appropriate because the employee had voluntarily filed grievances and pursued those grievances through most of the grievance-arbitration procedure before withdrawing them based on his conclusion that pursuing his unfair labor practice charge would be less expensive and more convenient.

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[146] On the merits, however, Member Zimmerman agreed with the judge's findings that the grievant had been lawfully discharged for hitting his supervisor and not for filing grievances. On this basis only he joined the majority in dismissing the complaint.

[147] 271 NLRB 187 (Members Zimmerman, Hunter, and Dennis)

The Board panel concluded that to allow a party to withdraw a grievance and turn to the Board under these circumstances would render meaningless both the contractual agreement of the parties and the statutory policy of the Board. Accordingly, the Board deferred the unfair labor practice allegations concerning the suspensions to the parties' grievance-arbitration procedure while, as in *United Technologies*, retaining jurisdiction for the purpose of entertaining a motion for further consideration in the event that the dispute is not resolved by the grievance-arbitration procedure, or the procedure has not been fair and regular or has produced a result repugnant to the Act.

The issue whether allegations of violation of the Act's section 8(a)(4), accompanied with alleged violations of section 8(a)(3) and (1), should be deferred to contractual grievance-arbitration provisions was considered by a Board panel in *International Harvester Co.*[148] In this case, an employee filed a charge alleging discriminatory treatment in retaliation for his grievance-filing activity. He subsequently filed an amended charge alleging, among other things, that he had been discharged in retaliation for filing his original charge with the Board. The events relating to these charges were presented to an arbitrator prior to trial of the unfair labor practice charges.

Although the panel majority recognized that its decision in *United Technologies* did not address the issue, it held that deferral was inappropriate in light of the Board's longstanding position not to defer alleged 8(a)(4) violations. In addition, the Board found that "where, as here, there are alleged violations of Section 8(a)(3) and (1) that are 'closely intertwined' with the allegations involving Section 8(a)(4), deferral of those statutory issues is equally inappropriate."[149]

Member Zimmerman concurred with the majority's decision but added that, in keeping with his dissent in *United Technologies*, he would limit deferral to cases involving contractual interpretation consistent with the Board's decision in *Collyer Insulated Wire.*[150]

In *Postal Service*,[151] a Board panel majority deferred, pending arbitration, an allegation that the employer created an impression of surveillance of grievance-processing activity. Specifically, the panel majority held that absent a contention that the employer so interfered with the grievance-arbitration machinery as to render access to it "unpromising or futile," the allegation of unlawful impression of surveillance was susceptible to resolution under the parties' contractual grievance-arbitration provisions.

The complaint in this case alleged that without affording the union an opportunity to bargain, the employer altered the loca-

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[148] 271 NLRB 647 (Members Hunter and Dennis, Member Zimmerman concurring)
[149] Ibid
[150] 192 NLRB 837 (1971)
[151] 271 NLRB 1297 (Chairman Dotson and Member Hunter, Member Zimmerman dissenting)

tion, size, and physical arrangement of the union shop stewards' work area, refused stewards access to forms necessary to leave their workplace to perform union duties, and required them to stand in a conspicuous area in the center of the workroom floor while processing grievances. The complaint alleged that the location and physical layout of the stewards' work area, as so altered, created the impression of surveillance of employees' union activities.

The parties' contract contained a general grievance-arbitration procedure culminating in "final and binding" arbitration and which defined a grievance as "a dispute, difference, disagreement or complaint . . . relating to wages, hours, and conditions of employment [including, but not limited to] the complaint of an employee or of the Union which involves the interpretation, application of or compliance with the provisions of [the contract]." The contract also contained provisions governing the rights of stewards to leave their work areas to investigate and adjust grievances, and their access to records for such purposes.

The panel majority granted an employer motion for summary judgment on the grounds that the unfair labor practice allegations should be deferred pending arbitration. Rejecting the Union's contention that, because the complaint allegations concerned grievance activity, they are not deferrable, the majority stated that, unlike a situation where an employer has interfered with the grievance-arbitration machinery so as to render it "unpromising or futile," the employer indicated his willingness to resolve the dispute through an arbitral forum and agreed to waive the timeliness provisions of the contractual grievance-arbitration cluases. Thus, the panel majority found the Board's discussion of deferral in *United Technologies* to be controlling.

The panel majority rejected the General Counsel's further contention that an allegation of unlawful impression of surveillance is unsusceptible of resolution under the contractual provisions. Initially, the majority noted that the impression of surveillance issue in this case was narrowly drafted: The employer was not alleged to have created the impression of surveillance in any manner other than its interference with the physical arrangement of the stewards' work area. Thus, the panel majority found the issues framed as: (1) did the employer alter the stewards' work area, and (2) if so, did that alteration place employees and stewards in an environment so conspicuous to supervisors and management as to inhibit the grievance process. Both questions, the majority found, appeared to be resolvable by an arbitrator under contractual provisions. The majority also stated that whether in fact the grievance is cognizable under the contract is an issue properly determinable by the arbitrator.

In his dissent, Member Zimmerman indicated he would deny the employer's motion for summary judgment and would remand the case for a hearing. In his opinion, this case involves conduct

allegedly impinging upon the integrity of the grievance process itself. Unlike the panel majority, Member Zimmerman found that the dispute falls squarely within the holding of *Joseph T. Ryerson & Sons*,[152] under which the Board has consistently declined to defer to the grievance-arbitration procedure.

Another issue the Board considered during the report year was a question of deferral to a private settlement agreement. In *Lectromelt Casting Co.*,[153] a Board panel majority declined to defer to a private settlement agreement between the employer and the union. The administrative law judge had found that the agreement between the parties, to drop all charges against the other and to reinstate 10 employees discharged during a wildcat strike if those individuals would drop charges against the employer, barred the prosecution of later charges brought by discharged employees who had not been reinstated pursuant to the agreement.

The Board panel majority noted that, on its face, the agreement did no more than offer each discharged striker immediate reinstatement as a quid pro quo for abandoning his claim that he was unlawfully discharged. With respect to those who failed to accept this offer, the offer was withdrawn and the discharged employees were left in the same position as before—free to exercise whatever right of access to the Board's processes as the Act allows. In these circumstances, the panel majority found, yielding to the settlement agreement did not resolve the issues raised and thus did not bar prosecution of the complaint allegations that certain employees who did not accept the offer of reinstatement were discharged in violation of section 8(a)(3) and (1) of the Act. Accordingly, the Board remanded the proceeding to the judge for a decision on the merits.

Chairman Dotson, dissenting on this issue, would defer to the settlement agreement which, he said, "represents the fruits of voluntary bargaining and is consistent with the policies of the Act."

K. Remedial Order Provisions

1. Bargaining Orders

During the report year, the Board considered the issue of whether it has authority to issue a *Gissel*[154] bargaining order to remedy an employer's unfair labor practices when the record did not establish that the union previously had majority support among unit employees. In *Gourmet Foods*,[155] the Board held

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[152] 199 NLRB 461 (1972) In *Ryerson*, the Board refused to defer to the grievance-arbitration procedure an allegation of a violation of sec 8(a)(1)

[153] 269 NLRB 933 (Members Zimmerman and Hunter, Chairman Dotson dissenting in part)

[154] *NLRB v Gissel Packing Co*, 395 U S 575 (1969)

[155] 270 NLRB 578 (Chairman Dotson and Member Hunter, Member Dennis concurring, Member Zimmerman dissenting)

that, before the union obtains majority support, remedial bargaining orders are never warranted, even in cases of "pervasive" or "outrageous" unfair labor practices during an organizing campaign.

Chairman Dotson and Member Hunter recognized that the Board's broad remedial powers under section 10(c) of the Act are subject to limitation when their use would "violate a fundamental premise on which the Act is based." Because collective bargaining can be effective "only when workers are sufficiently solidified in their interests to make one agreement covering all," they concluded that majority rule is one of the Act's fundamental premises. With Member Dennis concurring and Member Zimmerman dissenting, the Board consequently overruled "those cases in which the Board has found that it has statutory remedial authority to issue nonmajority bargaining orders and in which the Board has exercised that authority."[156]

In her concurrence, Member Dennis relied on the *Conair* court's[157] reasoning that nonmajority bargaining orders are inconsistent with "the Act's bedrock principles of employee free choice and majority rule." She also found support for her position in the Supreme Court's *H. K. Porter*[158] holding that the Board's remedial authority reaches only to the extent that it does not inpinge on principles Congress embodied elsewhere in the Act.

In his dissent, Member Zimmerman asserted that neither the Act nor its legislative history justifies "interpreting the majority rule principle as a bar to the remedial nonmajority bargaining order." He argued that when an employer's unfair labor practices impede uncoerced majority rule, "the risk of imposing a minority union on employees for an interim remedial bargaining period is greatly outweighed by the risk that, without a bargaining order, all employees would be indefinitely denied their statutory right to make a fair determination whether they desire union representation."

2. Restoration of Status Quo Ante

In *Purolator Armored, Inc.*,[159] the Board considered whether a status quo ante remedy requiring the reopening of a coin change service was appropriate where the partial closing was found to be in violation of section 8(a)(3) under the standards set forth in *Textile Workers v. Darlington Mfg. Co.*[160] The panel found convincing evidence that the employer's operation was financially distressed and held that, under the circumstances of the case, the employer should not be required to reopen the service, because

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[156] See, e g , *Conair Corp* , 261 NLRB 1189 (1982)
[157] *Conair Corp v NLRB*, 721 F 2d 1355 (D C Cir 1983)
[158] *H K Porter Co v NLRB*, 397 U S 99 (1970)
[159] 268 NLRB 1268 (Chairman Dotson and Members Zimmerman and Hunter)
[160] 380 U S 263 (1965)

"such an order here would likely be unduly burdensome and is unnecessary to effectuate the policies of the Act." Instead, the panel concluded that the unfair labor practices would be "sufficiently remedied by a full make-whole order." The employer was given the choice of either (1) reinstituting the coin change service and offering reinstatement to each of the discriminatees to his or her former position; or (2) offering reinstatement to each discriminatee to any position in its existing operations which he or she was capable of filling, giving preference in order of seniority and placing those for whom there were no jobs on a preferential hiring list.

3. Respondent's Proclivity to Violate the Act

In *Operating Engineers Local 12 (Associated Engineers)*,[161] the Board overruled decisions holding that administrative law judge decisions to which no exceptions are filed may not be considered by the Board when determining whether a union demonstrated a proclivity to violate the Act.[162] The judge had issued a decision in an earlier case finding that the union violated section 8(b)(4)(i) and (ii)(B) by certain picketing activities. The union did not except and the Board accordingly adopted the decision. The judge later issued a decision in a second case, finding the union had again violated the Act by unlawful picketing directed against another employer, and issued a broad remedial order. The Board adopted the remedy, finding that the union's conduct in both cases demonstrated a proclivity to violate the Act. The Board stated that it was not persuaded by the rationale advanced for treating unexpected to decisions differently from formal settlement agreements not containing a nonadmissions clause, which may be considered when determining whether a respondent has demonstrated a proclivity to violate the Act. The Board noted that while administrative law judge decisions not excepted to may have minimal precedential value, they have the same force and effect as fully reviewed Board decisions and therefore may result in enforcement or contempt proceedings. The Board found, moreover, that "to permit a respondent to fully litigate a case and then avoid the consequences of repeated unfair labor practices merely by failing to except to an adverse decision by the judge would exalt form over substance."

4. Backpay Issues

In *Earle Equipment Co.*,[163] the Board denied the General Counsel's motion for default judgment, in part because the Gen-

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[161] 270 NLRB 1172 (Chairman Dotson and Members Zimmerman and Hunter)

[162] See, e g , *Tri-State Building Trades Council (Structures, Inc)*, 257 NLRB 295 (1981), *Broadway Hospital*, 244 NLRB 341 (1979), *Elkwood Detective Agency*, 239 NLRB 99 (1978), *Plumbers Local 142 (Cross Construction)*, 169 NLRB 840 (1968)

[163] 270 NLRB 827 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)

eral Counsel had issued a combined complaint, backpay specification, and notice of hearing against the employer. Section 102.52 of the Board's Rules and Regulations clearly authorized the issuance of a backpay specification only after the entry of a Board order directing the payment of backpay or the entry of a court decree enforcing such a Board order, if it appears to the regional director that a controversy exists between the Board and a respondent concerning the amount of backpay due which cannot be resolved without a formal proceeding. Because there had been no prior Board order requiring backpay or an enforcing court decree, the Board found that issuance of a backpay specification was inappropriate.

Inta-Roto, Inc.[164] concerned the issue of whether backpay for unlawfully discharged strikers commences the day the employer writes the letters discharging the strikers or the day the strikers receive notice they are discharged. The panel majority held that the backpay period commenced the day the employer wrote the letters discharging the strikers. Member Dennis agreed with the result, because the circuit court, in enforcing the Board's order in the underlying unfair labor practice case,[165] "specifically found substantial evidence in the record to support the Board's application of *Abilities & Goodwill, Inc.*,[166] to the facts of this case." In so doing, Member Dennis found it unnecessary to decide whether a discharged striker should be awarded backpay from the date of discharge without requiring the discharged striker to request reinstatement.

In *American Navigation Co.*,[167] the Board, overruling previous cases,[168] held that henceforth "discriminatees found to have willfully concealed from the Board their interim employment will be denied backpay for all quarters in which they engaged in employment so concealed." In so ruling, the Board also reaffirmed earlier cases which held that all backpay will be denied "claimants whose intentionally concealed employment cannot be atttributed to a specific quarter or quarters because of the claimant's deception."[169] The Board concluded that the application of this standard to backpay remedies will serve to discourage claimants from abusing the Board's processes for their personal gain as well as deter employers from committing future unfair labor practices. The Board then denied the claimant backpay for two calendar quarters because it was impossible to ascertain whether the period of concealed employment was wholly confined to one of these quarters or whether it spanned both. The Board, howev-

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[164] 267 NLRB 1026 (1983) (Members Jenkins, Zimmerman, and Dennis)

[165] 661 F 2d 922 (1981), enfg 252 NLRB 764 (1980)

[166] 241 NLRB 27 (1979)

[167] 268 NLRB 426 (Chairman Dotson and Members Zimmerman, Hunter, and Dennis)

[168] See, e g, *Big Three Industrial Gas*, 263 NLRB 1189 (1982), *Flite Chief, Inc*, 246 NLRB 407 (1979)

[169] See, e g, *Great Plains Beef Co*, 255 NLRB 1410 (1981), *M J McCarthy Motor Sales Co*, 147 NLRB 605 (1964)

er, did not deny the pension fund contributions claimed for these two quarters because there was no evidence that the claimant had concealed contributions into the pension fund provided by the employer. Even assuming that the claimant's unknown interim employer had contributed into another pension fund on his behalf, the claimant would not thereby have received a pension benefit exactly equivalent to that lost when the employer unlawfully terminated him.

L. Equal Access to Justice Act

Congress enacted the Equal Access to Justice Act[170] (EAJA) in 1980 to authorize fee and expenses awards to prevailing parties in specified adversary adjudications and civil actions against the United States. The EAJA became effective 1 October 1981 and applies to "any adversary adjudication . . . which is pending on, or commenced on, or after, such date."[171]

1. Effective Date

In *DeBolt Transfer*,[172] a Board panel construed the EAJA to (1) apply to any action pending on 1 October 1981, regardless of when the services were rendered, and (2) allow recovery for time spent preparing and prosecuting recovery of attorney's fees.

The administrative law judge's decision issued 26 May 1981, and was before the Board on the General Counsel's exceptions until the decision and order issued 4 January 1982. The applicant applied to the Board for an award for fees and expenses under the EAJA after the Board dismissed the 8(a)(1), (3), and (5) complaint.

The General Counsel conceded that the case was pending before the Board on and after 1 October 1981, but argued that the EAJA did not authorize an award for legal work performed before 1 October 1981.

The panel disagreed, finding that neither the "EAJA nor its legislative history contemplates a bifurcation of pre- and post-effective date work for award purposes." Rather, the panel specifically adopted the Third Circuit's conclusion in *National Resources Defense Council v. USEPA*,[173] that "the test is not when services were rendered, but whether the action was pending on October 1, 1981."

The applicant further requested an award for fees and expenses spent pursuing recovery of attorney's fees. Section 102.144(a) of the Board's Rules and Regulations allows an award for fees and expenses incurred "in connection with an adversary adjudica-

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[170] Pub L 96-481, 94 Stat 2325 (1980) See 5 U S C § 504 (1980 ed , Supp IV) and 28 U S C § 2412 (1980 ed , Supp IV) See also Board's Rules and Regulations, Sec 102 143 et seq

[171] Sec 208

[172] 271 NLRB 299 (Chairman Dotson and Members Zimmerman and Dennis)

[173] 703 F 2d 700, 712 (3d Cir 1983)

tion." The General Counsel, however, argued that "adversary adjudication" referred only to the unfair labor practice proceeding.

The panel disagreed, and noted that fees and expenses are recoverable in an EAJA award "in connection with" the unfair labor practice proceeding. The panel found it inconsistent to "dilute the fee award by refusing compensation for the time reasonably spent securing the right to the award."

Under the EAJA, applications for attorney's fees must be filed within 30 days after entry of a final order. In *B. J. Heating, Inc.*,[174] the 30th day fell on Sunday, 10 October 1982.

A Board panel held that when calculating the expiration of the 30-day period, if the 30th day falls on a Saturday, Sunday, or legal holiday, the application will be timely filed on the first business day following the 30th day.

2. Criteria for Qualifying

In *W. C. McQuaide, Inc.*,[175] a Board panel considered two matters regarding a corporation's eligibility to collect fees and expenses under EAJA: (1) whether a corporation may consider accumulated depreciation in calculating its net worth, and (2) whether a corporation must meet both EAJA criteria, that is, whether its net worth must be $5 million or less and whether it must have no more than 500 employees.

The Board concluded that accumulated depreciation may not be used to determine a corporation's net worth; that net worth is determined by subtracting total liabilities from total assets; and that assets are valuable exclusively by their acquisition cost, not their current fair market value. The Board further concluded that consistent with the plain language of the statute[176] as well as the Board's Rules and Regulations[177] a corporation must have a net worth of $5 million or less, *and* not more than 500 employees to be eligible for an award under EAJA. Both criteria must be satisfied for a corporation to collect an EAJA award in proceedings before the Board.

In *Stucco Stone Products*,[178] a Board panel, in accordance with the decision in *W. C. McQuaide, Inc.*, agreed with the administrative law judge that in determining an applicant's net worth for the purpose of qualifying for a recovery of fees and expenses, assets are properly valued at their acquisition cost and not at their depreciated value. Because the applicant exceeded the qualifying net worth limitations for recovery of fees and expenses under this standard, the Board denied the application.

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[174] 268 NLRB 643 (Chairman Dotson and Members Zimmerman and Hunter)
[175] 270 NLRB 1197 (Chairman Dotson and Members Zimmerman and Hunter)
[176] 5 U S C § 504(b)(1)(B)
[177] NLRB Rules and Regulations sec 102 143(c)(5)
[178] 270 NLRB 1195 (Chairman Dotson and Members Zimmerman and Hunter)

In *Pacific Coast Metal Trades Council (Foss Launch)*,[179] a Board panel considered whether it would be contrary to the purpose of EAJA to aggregate the net worth of a trade council and its member labor organizations for the purpose of determining eligibility for an award of fees and expenses under EAJA.

Section 102.143(g) of the Board's rules mandates the aggregation of net worth of an applicant and another entity where that entity is directly or indirectly controlled by or in control of the applicant. The only express statutory exclusion to aggregation for the purpose of computing net worth and determining EAJA eligibility where related entities have formed a larger group for a common objective pertains to agricultural cooperatives. The panel held, therefore, that where the facts of the case evince the requisite degree of direct or indirect financial control between a trade council and the labor organizations it represents for bargaining purposes, such an aggregation would not be unjust or contrary to the purposes of EAJA.

The record in the instant case established that local unions pay the applicants a monthly application fee and a per capita tax on dues for each union member. The financial statements filed by the applicants indicate that the vast majority of their total cash receipts are derived from the contributions from local unions.

The panel remanded the case to the judge to afford the parties an opportunity to develop issues relating to the question of affiliation including the sources and nature of the applicants income. The panel directed that if, on review of this evidence, the judge finds that the applicants derive a majority of their financial support, either directly or indirectly, from member local unions, the applicant's net worth shall be combined with that of their member locals to determine the applicants' eligibility under EAJA.

The judge granted the applicant's motion to strike certain evidentiary materials first filed as attachments to the General Counsel's supplemental memorandum on the grounds that the General Counsel failed to comply with section 102.150(c) by failing to submit the material simultaneously with its answer.

In its answer, the General Counsel set forth the basis for its decision to go forward with adversary adjudication. The answer was clear that, if nonrecord acts were controverted, the General Counsel could and would provide supporting evidence.

The Board panel held that, in taking this approach, the General Counsel properly sought to preserve the confidentiality of the affidavits and other materials contained in the region's investigation file, while reserving the right to release such materials should a factual dispute arise. Section 102.150(c) gives the General Counsel the option of submitting with the answer supporting affidavits on alleged facts not already on the record of adversary

[179] 271 NLRB 1165 (Chairman Dotson and Members Zimmerman and Hunter)

adjudications or making a request for further proceedings under section 102.152 of the Board's rules. The panel found that the General Counsel's stated willingness to adduce supporting evidence should certain nonrecord facts be contested was, in effect, a request for further proceedings should they become necessary. The General Counsel's submission of supporting evidence regarding the issue of substantial justification was warranted if not mandated by the judge's request for a supplemental memorandum on that issue.

The panel held, therefore, that the General Counsel's manner of proceeding complied with the provisions of section 152(a) of the Board's rules and ordered the judge to accept the evidence in the event that the applicants are found to be eligible for an EAJA award.

In *Roofers Local 135 (Advanced Coatings)*,[180] a Board panel adopted an administrative law judge's decision rejecting the applicant's contention that it qualified for an EAJA award as either a section 102.143(c)(3) tax-exempt organization under Internal Revenue Code Section 501(c)(3) or as a section 102.143(c)(5) organization with less than $5 million net worth. The applicant alleged that it was eligible beause it was a section 501(c)(5) tax-exempt labor organization which employs less than 500 employees. The judge, citing section 102.143(c) of the Board's rules, found that this did not establish eligibility because only "'a charitable or tax-exempt organization described in section *501(c)(3)* of the Internal Revenue Code'" is eligible to receive an EAJA award.

The judge further found that the applicant failed to include a statement that its net worth did not exceed $5 million pursuant to section 102.147(b) of the Board's rules. In this regard, the judge deemed inadequate in meeting this section's requirements a letter from the applicant's principal officer to its attorney stating, "Please be advised that the total net worth of the Applicant is less than $5 million dollars." The judge noted that this letter was not signed by the official, but rather by the clerk who typed it, and that it was not attached to the EAJA application.

Additionally, the judge found that the applicant failed to meet section 102.147(f)'s requirement that it include with the application a detailed exhibit showing its net worth. The judge rejected the applicant's contention that it need not have filed such a statement because section 102.147(f) exempts qualified tax-exempt labor organizations. The judge found that only section 501(c)(3) tax-exempt organizations are exempt from this requirement, based on his readings of sections 102.143(c)(3) and 102.147(b)(1) of the Board's rules.

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[180] 269 NLRB 1067 (Members Zimmerman, Hunter, and Dennis)

3. Prevailing Parties and Substantial Justification

In *Wellman Thermal Systems*,[181] a Board panel adopted the administrative law judge's dismissal of an employer's application for attorney's fees under EAJA. The applicant sought reimbursement for fees incurred in defending against the General Counsel's unsuccessful opposition to, and request for, special permission to appeal the judge's order approving a settlement agreement between the applicant and the union.

Observing that the courts have found an applicant under EAJA to be a "prevailing party" even where the case has been settled, the judge nevertheless denied the application on three alternative grounds. First, the judge found that the statement in the settlement agreement, that the applicant "agrees to waive any and all entitlement to attorney fees, costs, and other expenses under or pursuant to the Equal Access to Justice Act," constituted a waiver of whatever entitlement the applicant might otherwise have had under EAJA.

Second, the judge found that the applicant had failed to meet the requirement in section 504 of EAJA that it submit an application demonstrating its eligibility to receive an award. The judge noted that section 504 of EAJA limits eligibility to a corporation whose net worth does not exceed $5 million and who had no more than 500 employees at the time the adversary adjudication was initiated, and that under section 102.143(g) of the Board's rules, the net worth and number of employees of the applicant and all of its affiliates are aggregated to determine eligibility. The records submitted by the applicant indicated that it met the eligibility standard. The judge found, however, that the records also showed that the applicant was affiliated with a United Kingdom corporation but they did not disclose the affiliate's employee complement or net worth. By this omission, the judge reasoned, the applicant failed to show that it is an eligible party under EAJA. That the affiliate was incorporated in the United Kingdom did not, he added, exempt the applicant from the burden to demonstrate its eligibility imposed by EAJA and the Board's rules.

Third, the judge concluded that the General Counsel's effort to have the settlement set aside was substantially justified because the Board's decision in *Clear Haven Nursing Home*,[182] in which it rejected a settlement agreement, gave the General Counsel cause to believe that the instant settlement would not substantially remedy the alleged unfair labor practices and the Board would therefore reject it also. He further noted that the General Counsel had substantial cause to object to the settlement on the ground that it provided for only a small fraction of the ultimate backpay liability in actual payments in view of the Board's con-

[181] 269 NLRB 162 (Chairman Dotson and Members Zimmerman and Hunter)
[182] 236 NLRB 853 (1978)

clusion in *Clear Haven* that the failure of the settlement there to provide for any backpay was a significant ground for setting it aside. Finally, the judge noted that there was certainly substantial justification for the General Counsel's objection to the settlement on the ground that the backpay provided by the settlement was really unemployment compensation or supplemental unemployment benefits from government agencies to which the employees were contractually entitled. The judge added that although a voting majority of the employees had accepted the settlement despite the inadequacies mentioned, the Board in *Clear Haven* recognized that it is neither the union's willingness to join in the settlement nor the acquiescence of its members, but the Board's discretion which provides the measure of adequacy for a settlement agreement.

Chairman Dotson found that the applicant waived any rights under EAJA in the settlement agreement. In his view, the waiver covered the underyling proceeding leading to the settlement agreement, the motion for special permission to appeal, and the petition for legal fees. Acordingly he did not reach or express a view on the other issues presented by the judge's opinion.

In *Woodville Rehabilitation Center*,[183] a Board panel adopted the administrative law judge's dismissal of an employer's application for an award of fees and expenses. The judge found that despite the applicant's prevailing in a "significant and discrete substantive portion" of the underlying proceeding because of the dismissal of certain allegations, there were yet numerous violations of section 8(a)(1) found. In addition, the General Counsel had established a prima facie case with regard to an alleged 8(a)(3) discharge. The judge concluded that the General Counsel properly pursued the case against the applicant and the General Counsel was "substantially justified" at all stages of the underlying proceeding.

In *Shellmaker, Inc.*,[184] a Board panel agreed with the administrative law judge that applications for fees and expenses pursuant to EAJA should be denied. In the underlying unfair labor practice case,[185] the General Counsel alleged that the applicant violated section 8(a)(1) and (5) by failing to apply a collective-bargaining agreement covering employees of one company to employees of a newly formed company. The judge found that the evidence on the whole did not preponderate in favor of a determination of alter ego status as between the two companies.

In denying the applications for fees and expenses under EAJA, the Board panel agreed with the judge that the underlying unfair labor practice proceeding was a close case and the Government's position, although not prevailing, was reasonable both in law and in fact.

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[183] 268 NLRB 1239 (Chairman Dotson and Members Zimmerman and Hunter)
[184] 267 NLRB 20 (Members Jenkins, Zimmerman, and Hunter)
[185] 265 NLRB 749 (1982) (Members Jenkins, Zimmerman, and Hunter)

In *Charles H. McCauley Associates*,[186] a Board panel concluded that the employer's application for an award of fees should be dismissed because the General Counsel's position, both at the initial and supplemental hearings in the underlying case, was reasonably grounded in law and fact and was substantially justified. In the underlying unfair labor practice case,[187] the Board had found that the employer unlawfully discharged employee Beck. Thereafter, the Fifth Circuit agreed with the Board as to the violation found but remanded the case for further factual findings related to the remedy given for it. The court directed the Board to ascertain whether Beck had refused the employer's unconditional offer of reinstatement. After a supplemental hearing on this issue, the administrative law judge, discrediting Beck, found that, contrary to the General Counsel's contention, the employer had offered Beck unconditional reinstatement. While the panel noted that the General Counsel's position at the second hearing was rejected, it found that the General Counsel had properly pursued this matter to a second hearing because the General Counsel cannot himself resolve credibility issues.

In *Charter Management*,[188] a Board panel dismissed the employer's application for an award under EAJA. The panel agreed with the administrative law judge that the General Counsel presented evidence which, if credited, would have constituted a prima facie case of 8(a)(3) discrimination. The panel noted that it was only through credibility resolutions adverse to the General Counsel's case that the judge found that the decision to discharge the alleged discriminatees occurred prior to the employers' learning of their employees' union activity. Further, the panel noted that the element of union animus could have been established if the judge had credited two employees with respect to alleged 8(a)(1) violations.

[186] 269 NLRB 791 (Chairman Dotson and Members Hunter and Dennis)
[187] 248 NLRB 346 (1980)
[188] 271 NLRB 169 (Members Zimmerman, Hunter, and Dennis)

V

Supreme Court Litigation

During the fiscal year 1984, the Supreme Court decided four cases in which the Board was a party.

A. Standard for Rejection of a Collective-Bargaining Agreement and Unilateral Changes in an Agreement Before Rejection by a Bankruptcy Court

Bildisco[1] involved the related questions of (1) the standard governing a bankruptcy court in permitting a debtor-in-possession to reject a collective-bargaining agreement, and (2) whether a debtor-in-possession commits an unfair labor practice by unilaterally terminating or modifying a collective-bargaining agreement before rejection of the agreement has been approved by the bankruptcy court. The employer filed a petition for reorganization under Chapter 11 of the Bankruptcy Code and was authorized by the bankruptcy court to operate the business as a debtor-in-possession. Although the employer later obtained bankruptcy court approval to reject the collective-bargaining agreement, the Board found that the employer violated section 8(a)(5) and (1) of the Act by unilaterally changing the terms of the agreement and refusing to negotiate with the union before rejection was approved.

The Supreme Court[2] unanimously held that a bankruptcy court should permit a debtor-in-possession to reject a collective-bargaining agreement upon a showing that the agreement "burdens the estate, and that after careful scrutiny, the equities balance in favor of rejecting the labor contract" 465 U.S. at 526. The Court found that, "because of the special nature of a collective-bargaining contract, and the consequent 'law of the shop' which it creates" (id. at 524), rejection of a collective-bargaining agreement should be governed by a stricter standard than the traditional "business judgment" standard governing rejection of ordinary executory contracts. The Court, however, rejected the Board's position that an employer should not be permitted to reject a collective-bargaining agreement unless it can demon-

[1] *NLRB v Bildisco & Bildisco*, 465 U S 513, affg 682 F 2d 72 (3d Cir 1982)

[2] Justice Rehnquist delivered the opinion of the Court Justice Brennan, joined by Justices White, Marshall, and Blackmun, filed an opinion concurring in part and dissenting in part

strate that its reorganization will fail unless rejection is permitted (id. at 524).[3] The Court stated (id. at 527):

> Determining what would constitute a successful rehabilitation involves balancing the interests of the affected parties—the debtor, creditors, and employees. The Bankruptcy Court must consider the likelihood and consequences of liquidation for the debtor absent rejection, the reduced value of the creditors' claims that would follow from affirmance and the hardship that would impose on them, and the impact of rejection on the employees. In striking the balance, the Bankruptcy Court must consider not only the degree of hardship faced by each party, but also any qualitative differences between the type of hardship each may face.[4]

On the second question presented, the Court, with four Justices dissenting, held that unilateral abrogation of a labor contract after the date of filing the bankruptcy petition, but before final approval of rejection by the bankruptcy court, is not an unfair labor practice. The Court stated that to make such conduct an unfair labor practice "would largely, if not completely, undermine whatever benefit the debtor-in-possession otherwise obtains by its authority to request rejection of the agreement" (id. at 529). The Court concluded that "from the filing of a petition in bankruptcy until formal acceptance, the collective-bargaining agreement is not an enforceable contract within the meaning of the NLRA Section 8(d)," and that the Board is therefore "precluded from, in effect, enforcing the contract terms of the collective-bargaining agreement by filing unfair labor practices against the debtor-in-possession for violating Section 8(d)" (id. at 532).

The dissenting Justices concluded that permitting unilateral modifications of collective-bargaining agreements by debtors-in-possession would seriously undermine the policies of the Act in favor of labor peace, but that prohibiting such conduct would not substantially undermine the goals of the Bankruptcy Code. "For if a contract is so burdensome that even temporary adherence will seriously jeopardize the reorganization, the debtor in possession may seek the Bankruptcy Court's permission to reject that contract [and] [u]nder the test announced by the Court today, his request should be granted" (id. at 550–551).

In response to the Court's decision, Congress enacted an amendment to the Bankruptcy Code which limits the right of the debtor-in-possession to make unilateral changes in a collective-bargaining agreement prior to formal approval of rejection by

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[3] That standard had been adopted by the Second Circuit in *Railway Clerks v REA Express*, 523 F 2d 164 (1975), cert denied 423 U S 1017 (1975)

[4] The Court noted, however, that "[b]efore acting on a petition to modify or reject a collective-bargaining agreement the Bankruptcy Court should be persuaded that reasonable efforts to negotiate a voluntary modification have been made and are not likely to produce a prompt and satisfactory solution" (465 U S at 526)

the bankruptcy court. The amendment provides that a court shall approve rejection of a collective agreement only if the debtor-in-possession has made a proposal to and bargained with the union over modifications to the agreement "necessary to permit the reorganization of the debtor"; the union has rejected the proposal "without good cause"; and the balance of the equities clearly favors rejection of the agreement.[5]

B. Individual Assertion of Rights Under a Collective-Bargaining Agreement as Concerted Activity

City Disposal[6] presented the question whether an individual's honest and reasonable assertion of a right under a collective-bargaining agreement is "concerted activity" within the meaning of section 7 of the Act. A truckdriver covered by a collective agreement was discharged when he refused to drive a truck that he honestly and reasonably believed to be unsafe because of faulty brakes. A provision in the agreement gave drivers the right to refuse to operate any truck "not in safe operating condition . . . unless such refusal is unjustified." The Board, applying its longstanding *Interboro* doctrine,[7] found that the driver's assertion of his right under the contract to refuse to drive unsafe trucks constituted "concerted activity" within the meaning of section 7.

The Supreme Court,[8] resolving a conflict in the circuits,[9] held that the Board's *Interboro* doctrine was a reasonable construction of the scope of section 7. The Court concluded that the invocation of a right rooted in a collective-bargaining agreement is an integral part of the collective process that gave rise to the agreement and affects the rights of all employees covered by the agreement. "Obviously, an employee could not invoke a right grounded in a collective-bargaining agreement were it not for the prior negotiating activities of his fellow employees. . . . Moreover, when an employee invokes a right grounded in the collective-bargaining agreement . . . he brings to bear on his employer the power and resolve of all his fellow employees" (465 U.S. at 832). The Court also concluded that the *Interboro* doctrine "preserves the integrity of the entire collective-bargaining process" in

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[5] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub L No 98-353, Sec 541, 98 Stat 333, 390 (1984) (codified as amended at 11 U S C § 1113 (1984))

[6] *NLRB v City Disposal Systems*, 465 U S 822, revg 683 F 2d 1005 (6th Cir 1982)

[7] *Interboro Contractors*, 157 NLRB 1295 (1966), enfd 388 F 2d 495 (2d Cir 1967)

[8] Justice Brennan delivered the opinion of the Court Justice O'Connor, joined by Chief Justice Burger and Justices Powell and Rehnquist, dissented

[9] Three circuits had accepted the Board's view that the assertion by an individual of a right grounded in a collective-bargaining agreement was concerted activity See *NLRB v Ben Pekin Corp*, 452 F 2d 205 (7th Cir 1971), *NLRB v Selwyn Shoe Mfg Corp*, 428 F 2d 217 (8th Cir 1970), *NLRB v Interboro Contractors*, 388 F 2d 495 (2d Cir 1967) Four circuits shared the view of the Sixth Circuit that such conduct did not amount to concerted activity See *Royal Development Co v NLRB*, 703 F 2d 363 (9th Cir 1983), *Roadway Express v NLRB*, 700 F 2d 687 (11th Cir 1983), *NLRB v Buddies Supermarkets*, 481 F 2d 714 (5th Cir 1973), *NLRB v Northern Metal Co*, 440 F 2d 881 (3d Cir 1971)

the same way as does pressing a formal grievance under the contract. "[F]or a variety of reasons, an employee's initial statement to an employer to the effect that he believes a collective bargained right is being violated, or the employee's initial refusal to do that which he believes he is not obligated to do, might serve as both a natural prelude to, and an efficient substitute for, the filing of a formal grievance" (id. at 837).

The Court noted, however, that the question whether the individual assertion of a contract right is concerted is separate from the question whether it is protected. Thus where, for example, "the collective-bargaining agreement imposes a limitation on the means by which a right may be invoked, the concerted activity would be unprotected if it went beyond that limitation" (id. at 841).[10]

C. Protection of Unlawful Aliens and Remedies for Their Discharge

In *Sure-Tan*,[11] the Board found that the employer violated section 8(a)(3) and (1) of the Act by reporting employees known to be undocumented Mexican nationals to the Immigration and Nautralization Service (INS) solely in retaliation for their engaging in union activity, as a proximate result of which the alien employees were returned to Mexico and thereby constructively discharged. The Board ordered the conventional remedy of reinstatement with backpay, leaving for compliance proceedings the determination whether the employees had lawfully reentered the United States and thereby had been legally available for work so as not to toll the employer's backpay liability. Thereafter, in proceedings to enforce its order, the Seventh Circuit modified the Board's order to condition reinstatement on the lawful reentry of the employees into the United States, but to provide for a minimum of 6 months' backpay in any event. The minimum backpay was predicated on the theory that the employees would have remained at their jobs for that period in the absence of the employer's unlawful conduct and that such a remedy was necessary to deter future violations. The modified order also required the employer to hold the reinstatement offers open for 4 years, and required that the reinstatement offers be written in Spanish and be mailed so that receipt could be verified.

The Supreme Court[12] agreed with the Board that the employer constructively discharged its undocumented alien employees

[10] The Court added that the question whether the employee's "action in this case was unprotected is not before us" (id at 837)

[11] *Sure-Tan Inc v NLRB*, 467 U S 883, affg in part and revg in part 672 F 2d 592 (7th Cir 1982)

[12] Justice O'Connor delivered the opinion of the Court Justice Powell, joined by Justice Rehnquist, dissented from that portion of the Court's decision dealing with the question whether the employer's conduct violated the Act Justice Brennan, joined by Justices Marshall, Blackmun, and Stevens, dissented from that portion of the decision dealing with the appropriate remedy

in violation of the Act, but disagreed as to the appropriate remedy. The Court stated that extending the Act's protection to undocumented aliens furthers the Act's purposes of protecting the collective-bargaining process by eliminating a "subclass of workers" who, "without a comparable stake in the collective goals of their legally resident co-workers," would erode employee unity and thereby impede effective collective bargaining (467 U.S. at 892). The Court found that protecting undocumented aliens under the Act is compatible with the policies of the immigration laws, because an employer has less incentive to hire illegal aliens if there is no advantage under the labor laws. It rejected the employer's contention that it had a first amendment right to report its alien employees to the INS, stating that the "First Amendment right protected . . . is a 'right of access to the courts . . . for redress of alleged wrongs'" and that the employer "did not invoke the INS administrative process in order to seek the redress of any wrongs committed against [it]" (id. at 897).

On the matter of the appropriate remedy, the Court approved of conditioning the reinstatement offers on the employees' legal reentry into the country, but found the minimum backpay award impermissible because it was based on "conjecture" and was "not sufficiently tailored to the actual, compensable injuries suffered by the discharged employees" (id. at 901). The Court added that in computing backpay "employees must be deemed 'unavailable' for work (and the accrual of backpay therefore tolled) during any period when they were not lawfully entitled to be present in the United States" (id. at 903). The Court noted that the aspects of the Board's remedy dealing with the form of the reinstatement offers and the length of time they were to remain open "appear unobjectionable," but concluded that the court of appeals should have remanded the case to the Board for its consideration of those features in the first instance, rather than modifying the Board's order.

D. Administrative Delay in Calculating Backpay in Compliance Proceedings

Ironworkers Local 480[13] presented the question whether a court of appeals may modify a Board order awarding backpay on the ground that the Board failed promptly to calculate and specify the amount of the award. The Board had ordered that a union pay backpay to five charging parties and all other "similarly situated" employees who had lost earnings due to the union's discriminatory hiring hall practices. Because of the complexity of the task, the recalcitrance of the union pension and welfare fund in providing certain data, and several delays in conducting a computer analysis of the data, the process of identifying all iron-

[13] *NLRB v Iron Workers Local 480*, 466 U S 720, revg 598 F 2d 611 (3d Cir 1983)

workers in the class entitled to backpay, and of calculating the specific amounts due, took 3-1/2 years from the time of enforcement of the Board's remedial order by the court of appeals. On the union's motion, the court of appeals set a deadline for filing a backpay specification, which the Board met. However, when the Board filed an amended specification pursuant to its rules and regulations in order to correct the amounts due on the basis of more current information, the court of appeals, relying solely on the delay since the date of its enforcement of the Board's remedial order, modified the Board's order to eliminate all "similarly situated" employees from entitlement to relief, and also prohibited the Board from issuing the amended specification.

The Supreme Court, in a per curiam decision, summarily reversed the court of appeals.[14] Relying on its *Rutter-Rex* decision,[15] which held that a court of appeals could not cut off the accrual of backpay at an earlier date than the Board's order merely because of the Board's delay in formulating a backpay specification, the Court held, "By restricting the beneficiaries of the Board's remedy and abridging procedures lawfully established by the Board for determining the amount of backpay," the court of appeals' action improperly "punishes employees for the Board's nonfeasance" (466 U.S. at 725).

[14] Justice Marshall dissented from the Court's action in deciding the case without briefing on the merits or oral argument

[15] *NLRB v Rutter-Rex Mfg Co*, 396 U S 258 (1969)

VI

Enforcement Litigation

A. Board Procedures

Pursuant to section 102.69 of the Board's rules and regulations, postelection objections which raise substantial and material issues of fact must be resolved through an evidentiary hearing conducted by a hearing officer appointed by the regional director. Although the objecting party has the burden of establishing that factual issues actually exist, the regional director may supplement evidence submitted by the parties with confidential affidavits from material witnesses. If affidavits present factual questions, the regional director must conduct a hearing. Conversely, if the regional director determines that a hearing is not required, he files a "report on objections," from which a party may file exceptions to the Board on the narrow question of whether a hearing should be conducted because of unresolved factual issues. The regional director thereupon transmits to the Board "the entire record" accumulated in the investigation, including documentary evidence, but excluding affidavits.[1] In the so-called *Prestolite*[2] line of cases, a significant minority of courts of appeals have criticized nondisclosure of affidavits as a denial of due process to the party filing exceptions, holding that the Board's review was necessarily incomplete if it did not include review of affidavits.[3] The Sixth Circuit, which decided *Prestolite*, went so far as to suggest that the failure of the Board to review affidavits might itself be proper grounds for denying enforcement—although the court acknowledged that "if an objector's allegations [on exceptions] would not warrant a new election even if true, the objector has not been prejudiced by the inadequate record."[4] And the Seventh Circuit had apparently adopted a "per se" approach, requiring a remand of "well-pleaded" objections to the Board if the regional director failed to transmit affidavits to the Board after the filing of exceptions to his report on objections.[5]

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[1] See *Summa Corp*, 265 NLRB 343, 343 fn 4 (1982), enfd mem 734 F 2d 21 (9th Cir 1982)

[2] *Prestolite Wire Division v NLRB*, 592 F 2d 302 (6th Cir 1979)

[3] See *NLRB v Klinger Electric Corp*, 656 F 2d 76 (5th Cir 1981), *NLRB v Belcor, Inc*, 652 F 2d 856 (9th Cir 1981), *NLRB v Cambridge Wire Cloth Co*, 622 F 2d 1195 (4th Cir 1980), *NLRB v Allis-Chalmers Corp*, 680 F 2d 1166 (7th Cir 1982)

[4] *Kitchen Fresh, Inc v NLRB*, 716 F 2d 351, 356 (1983)

[5] *NLRB v Allis-Chalmers Corp*, 680 F 2d 1166, 1169 (1982)

Nevertheless, in practice, the courts have been sparing in denying enforcement simply because the Board had not reviewed affidavits in the file. During the year, for example, the Sixth Circuit observed in *NLRB v. Michigan Rubber Products*[6] that "[w]e fail to see how [the objecting party] could have been prejudiced by an incomplete record . . . when its allegations challenging [the regional director's] Report were insufficient grounds for setting aside the election even if true."

Procedural changes adopted by the Board in 1981 also led at least one court during the year to register its satisfaction that objecting parties' due process rights are now adequately safeguarded. Ambiguous language in section 102.69 originally suggested that the requirement that the regional director submit "the entire record" relieved a party excepting to denial of a hearing from responsibility for submitting its own supporting evidence to the Board. In *Summa Corp.*[7] and in concurrent amendments to section 102.69, the Board made clear that an objecting party always has the burden of establishing that material issues exist, and that the burden is not satisfied on the basis of confidential material gathered by the regional director, since the party is free to submit its own witness' statements to the regional director and append them to its exceptions to the Board. In *L. C. Cassidy & Son, Inc. v. NLRB*,[8] the Seventh Circuit expressed approval of this procedural modification because it removed any doubts as to the parties' responsibilities. The court enforced the bargaining order, observing that "the Board's new regulations put the parties on notice that the affidavits received in the Regional Director's administrative investigation are not part of the record, and . . . it is the responsibility of the objecting party to file supporting affidavits with the Board." Hence, one court has agreed with the Board that the Board's failure to review confidential regional affidavits should never prejudice a party seeking a hearing on objections when that party is free to supplement the record before the Board with its own evidence.

B. Representation Issues

The Board has long recognized that its agent must maintain the appearance of neutrality in conducting representation elections and will set aside an election if a Board agent comments on local issues in a campaign. At the same time, the Board agent is expected to answer general questions from the public. The distinction between specific and general responses was addressed this year by the Sixth Circuit in *NLRB v. State Plating & Finishing Co.*[9] The court rejected as unsupported by substantial evi-

[6] 738 F 2d 111 (granting enforcement)
[7] See fn 1, above
[8] 745 F 2d 1059 (7th Cir)
[9] 738 F 2d 733 (6th Cir)

dence the Board's finding that the agent was merely answering general questions by employees with a general statement of law. Although the court agreed with the Board that the agent had responded with a general statement of the law when employees asked her if their employer could give regularly scheduled raises during the campaign, it found that the agent "should have realized that the employees were concerned with a specific issue and would take her statement as a specific answer to their concern." Moreover, the court found that the agent's answer misled employees into believing that their employer had lied to them whereas, in fact, the court found, the employer's statement that he could not lawfully give them raises during the campaign was correct. Accordingly, the court concluded that the Board agent's comment on an issue of local importance destroyed the necessary appearance of neutrality and therefore held that the election should have been set aside.

C. Deferral to Other Means of Adjustment

In *Hotel Holiday Inn de Isla Verde v. NLRB*,[10] the First Circuit had occasion to consider the propriety of the Board's refusal to defer to a non-Board strike settlement agreement. The Board did not defer because the agreement did not provide the strikers, who had been discharged for alleged strike misconduct, with the reinstatement rights that were required under the Act. The First Circuit, Circuit Judge Breyer dissenting, disagreed with the Board's refusal to defer and remanded the case. The court noted that in deciding the case, the Board failed to consider that, at the time of the settlement agreement, there was no assurance that the strikers would ultimately win their case by proving they had not been involved in serious strike misconduct. The court further noted that in these circumstances, if "it is the policy of the Board to reject strike settlement agreements in all cases which cannot otherwise be faulted solely because the agreements did not provide all that the employees might have ultimately gotten by litigation, then the Board has removed any incentive on the part of the employer to bargain on reinstatement issues." The court therefore remanded the case for the Board to examine the settlement issue in light of the facts as they existed at the time of the settlement and to consider "why a fair settlement of disputed claims, so highly regarded in all other areas . . . is inappropriate in labor cases" (footnote omitted).

D. The Bargaining Obligation

In *Amax*,[11] the Supreme Court held that employer-selected trustees of a trust fund are not, by virtue of that selection, repre-

[10] 723 F 2d 169 (1st Cir)
[11] *NLRB v Amax Coal Co*, 453 U S 322 (1981)

sentatives of the employer "for the purposes of collective bargaining or the adjustment of grievances" within section 8(b)(1)(B) of the Act. In a case decided this year,[12] the Second Circuit addressed the issue of whether a trust fund's trustees, half chosen by the participating employers and half by the participating unions, in fact acted as agents of the union.

While the collective-bargaining agreement providing for payments to the trust fund was in effect, one of the unions demanded that two of the employers make payments for seasonal, casual, and part-time employees, as well as full-time employees. The trustees made an identical demand. When the employers refused to make such payments, the trustees refused to accept the employer's contributions on behalf of full-time employees. The Board found that the contract provided only for payments on behalf of full-time employees and that the union, through the trustees as it agents, was seeking to effect a midterm modification of the contract in violation of section 8(b)(3) of the Act. The court agreed that the contract did not provide for contributions for seasonal, casual, and part-time employees, and that the trustees' action in coercing payments by the employer amounted to a midterm modification which would have been unlawful if engaged in by the union. The court rejected the Board's agency finding, however, concluding that in making demands on the employers that paralleled those of the union, the trustees were acting on behalf of the fund, rather than as agents of the union. Citing a Ninth Circuit case that had reached a similar result,[13] the court noted that the demands made during the contract term had not been advanced and rejected at the bargaining table and that the demands favored the interests of the trust fund by increasing contributions on behalf of employees who were unlikely to achieve a vested pension. The court recognized, however, citing another Ninth Circuit case,[14] that actions by trustees could be attributed to the union where the collective-bargaining agreement removes the discretion to administer the trust funds solely for the benefit of the employees or the trust fund, where the union's officials directed the trustees' actions, or where the trustees' acts were taken in their capacities as union officials.

In *Bay Area Sealers*,[15] the Board held that those terms and conditions of employment in a collective-bargaining agreement that govern the employer-employee relationship, as opposed to the employer-union relationship, survive the expiration of the contract. Accordingly, before changing such terms and conditions of employment, the employer must notify and consult with the bargaining representative. In *NLRB v. Southwest Security*

[12] *NLRB v Teamsters Local 449*, 728 F 2d 80 (2d Cir)

[13] *NLRB v Teamsters Local 582 (Halle Bros)*, 670 F 2d 855 (9th Cir 1982)

[14] *Griffith Co v NLRB*, 660 F 2d 406, 411 (9th Cir 1981), cert denied 457 U S 1105 (1982), affg *Operating Engineers Local 12*, 243 NLRB 1121 (1979)

[15] 251 NLRB 89 (1980), enfd as modified 665 F 2d 970 (9th Cir 1982)

Equipment Corp.,[16] the Ninth Circuit applied the *Bay Area Sealers* analysis and determined that a hiring hall provision in the collective-bargaining agreement fit within the "employer-employee" rubric. In so finding, the court agreed with Board precedent that the hiring hall provision is a mandatory subject of bargaining that goes to the core of the employer-employee relationship. The court further relied on the importance of hiring halls in certain industries where work is sporadic, and without the assistance of a hiring hall, a "potential employee may spend more time looking for work than he does actually working." Accordingly, the court held that the "construction industry hiring hall is an essential component of the employer/employee relationship" and therefore survived the expiration of the contract.

E. Union Interference with Employee Rights

In *Electrical Workers IUE Local 900 v. NLRB*,[17] the District of Columbia Circuit approved the Board's unanimous holding in *Gulton Electro-Voice*,[18] that union officials other than stewards may not be awarded contractual superseniority for purposes of layoff and recall unless they can demonstrate a need to be on the job in order to accomplish duties directly related to administering the collective-bargaining agreement. The court concluded that the Board acted within its discretionary authority when it overruled some previous cases that had permitted such superseniority based merely upon a showing that the union officials had duties that bore a direct relationship to the effective and efficient representation of unit employees.[19] The court stated that the Board's overruling of "prior inconsistent precedent . . . is within its prerogative," that the Board "surely has arrived at one reasonable resolution of the problem in a reasonable manner," and that the court "will not substitute [its] judgment on a question of policy when four members of the Board have brought their expert knowledge of labor relations to bear and have reached a unanimous conclusion." The court also rejected an argument that the parties had effectively waived the rights of the employees by holding that the rights in issue were not waivable. The court further ruled that the Board acted properly in applying its new principle retroactively to the case before it. In so ruling, the court noted in particular that the pre-*Gulton* law had been in a confused state, and that there was no showing that the Union had relied upon any specific pre-*Gulton* decision or that retroactive application would cause the union any great hardship.

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[16] 736 F 2d 1332 (9th Cir)

[17] 727 F 2d 1184 (D C Cir)

[18] 266 NLRB 406 (1983)

[19] *Electrical Workers IUE Local 623 (Limpco Mfg)*, 230 NLRB 406, 407–408 (1977), *American Can Co*, 244 NLRB 736, 739–740 (1979)

In two cases decided this year, the Seventh and Ninth Circuits reached different conclusions in resolving a question twice left unanswered by the Supreme Court[20]—that is, whether a union may lawfully fine individuals who, during the strike, had resigned from that union and returned to work in violation of a union rule restricting resignations at that time. In *Pattern Makers (Rockford-Bloit) v. NLRB*,[21] the Seventh Circuit agreed with the Board that the union violated section 8(b)(1)(A) by imposing such a fine. The union's constitution prohibited membership resignations "during a strike or lockout" or when one "appears imminent." Employers who tendered their resignations during a strike and returned to work were fined by the union. These employees, the court found, had a statutorily protected right to resign from the union that was unreasonably restricted by the union rule. The court rejected the union's reliance on the proviso to section 8(b)(1)(A), finding that a union rule requiring retention of membership was not a purely internal matter. Relying on *Scofield v. NLRB*,[22] the court found that the rule frustrated "an overriding policy of the labor laws" that employees be free to choose whether to engage in concerted activities. The court, relying on *Granite State*, where the Supreme Court gave "little weight" to the "mutual reliance" theory (409 U.S. at 217), also rejected the union's further argument that union members waived their section 7 right to abandon the strike by voting to strike in "mutual reliance" and in full awareness of the restriction.

By contrast, the Ninth Circuit, in *Machinists Local 1327 v. NLRB*,[23] reversed the Board and held that the union rule at issue—one that barred resignations during a strike or within 14 days preceding its commencement—was a reasonable restriction on the right to resign union membership. The court analyzed the reasonableness of the rule under its view of the three-part *Scofield* test (394 U.S. at 430) and found that the union rule satisfied this test. Viewing postresignation strikebreaking as a serious threat to a union's viability, it found the union interest to be "serious and legitimate." It further found no impairment of labor policy on the ground that the employee's right to resign and the union's interest can "co-exist." Finally, it agreed with the union that the restriction was reasonably enforced, finding a "critical" need for solidarity during a strike and the absence of any practical means other than fining members to enforce what the court viewed as a member's contractual obligation to honor his promise to his fellow members not to break the strike.

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[20] *Machinists Local 405 v NLRB*, 412 U S 84, 88–90 (1973), *NLRB v Textile Workers Local 1029 (Granite State Joint Board)*, 409 U S 213, 217 (1972)

[21] 724 F 2d 57 (7th Cir)

[22] 394 U S 423, 429 (1969)

[23] 725 F 2d 1212 (9th Cir)

F. Remedial Orders

In *Passaic Daily News v. NLRB*,[24] the D.C. Circuit agreed with the Board that a newspaper had unlawfully discontinued a reporter's byline column because of his union activity and rejected the contention that the first amendment precluded the Board from inquiring into the newspaper's motive for discontinuing the reporter's column. The court, however, found that the portion of the Board's remedial order that required the newspaper to restore the reporter to his former position as a weekly columnist and to resume publication of his column ran afoul of first amendment protections. Although the court recognized the Board's obligation to devise meaningful remedies for victims of unlawful discrimination and to ensure that the columnist is not subjected to unlawful retaliation, it found that an order to resume publication of the column "has two unfortunate consequences. First, it seeks to compel the [newspaper] to publish what it prefers to withhold; and, second, it injects the Board into the editorial decision-making process on an ongoing basis." Citing the Supreme Court's opinion in *Tornillo*,[25] the court found that such an order impermissibly infringed upon the newspaper's first amendment interest in retaining control over prospective editorial decisions. The court observed, however, that an "order that merely directed the [newspaper] to not discriminate against [the columnist] on the basis of his union activity would present a much closer case." It therefore remanded the case to the Board to draft a more narrow remedy that does not mandate resumption of the column.

[24] 736 F 2d 1543 (D C Cir)

[25] *Miami Herald Publishing Co v Tornillo*, 418 U S 241 (1974)

VII

Injunction Litigation

Section 10(j) and 10(l) authorize application to the U.S. district court, by petition on behalf of the Board, for injunctive relief pending hearing and adjudication of unfair labor practice charges by the Board.

A. Injunctive Litigation Under Section 10(j)

The propriety of an interim reinstatement order as temporary injunctive relief was considered by two courts of appeals during the past year.

In *Maram v. Universidad Interamericana de Puerto Rico,*[1] the First Circuit reversed a district court's refusal to order interim reinstatement of the university's entire janitorial force, whose work had been subcontracted away in the midst of a union organizing effort. Giving blanket credence to the university officials' denial of unlawful motivation, the district court found no reasonable cause to believe the subcontracting decision was intended to thwart the union organizing campaign. It further held that, in any event, interim reinstatement of the janitors would not be just and proper because this would result in added expenses to the university and would require the displacement of the innocent employees of the subcontractor. As an additional basis for denying relief, the court observed that the Board had delayed 4 months in seeking 10(j) relief.

The court of appeals held that the district court's failure to find reasonable cause to believe an unfair labor practice had been committed did not accord proper deference to the position of the regional director. In the appellate court's view, it was "apparent that the [district] court regarded its duty to be to try the matter de novo and make its own findings without even deference to the Board. This was precisely contrary to the cases cited ante, and all other cases that we know of." Examining the facts of the case for itself, the court of appeals concluded that "[a]ttaching even the mildest presumption to the Director's resolution of conflicting evidence causes us to conclude that the likelihood of Board success was great." The court further held that an interim reinstatement order was plainly "just and proper." The "dis-

[1] 722 F 2d 953 (1st Cir)

charge of the entire workforce in the face of unionization" obviously could have serious adverse consequences on the union's campaign, the court said. Moreover, since the subcontractor's employees, who would be displaced by the interim reinstatement of the university's janitors, had to cross a picket line protesting the discharges, they "undertook the employment with full knowledge of the situation. . . . If they underestimated their risk, that is not a reason for denying relief where the [Board's] likelihood of success is great." The appellate court also rejected as a basis for denying relief the passage of 4 months between the filing of the initial charge with the Board and the Board's petitioning the district court for an injunction. The court observed that "[a] busy administrative agency cannot operate overnight. The very fact that it must exercise discretion, and that its decision is entitled to persumptive weight . . . indicate that it should have time to investigate and deliberate." Finally, the court rejected the university's contention that the lapse of time while the case was pending appeal in the circuit court had so diminished "the curative effect of the relief" sought as to render injunctive relief unnecessary. "If we were to consider this further delay," the court reasoned, "any undeserving beneficiary of a court's refusal to enjoin could hold fast and win above, even though he should not have won below, by a sort of automatic mootness. We cannot accept this result."

In *Kobell v. Suburban Lines*,[2] the Third Circuit upheld a district court's denial of a 10(j) reinstatement order and other relief, but only because it was satisfied that, in the peculiar circumstances of the case, the lower court's findings rebutted the presumption that interim reinstatement was just and proper. The complaint alleged that Suburban Lines and its purchaser, Shortway, had jointly contrived discriminatorily to refuse to consider Suburban's union-represented employees for employment by Shortway. The Board sought an injunction requiring Shortway to offer jobs to Suburban's drivers and, as a successor to Suburban, to bargain with the union. The district court found that the evidence presented was so insubstantial that the regional director had not met even the "relatively low standard of proof" required under section 10(j). Like the district court in *Maram v. Universidad*, the district court further concluded that, in any event, the requested injunctive relief would not be just and proper.

A panel majority of the appellate court held that the district court committed reversible error when it found no reasonable cause to believe the Act was violated.[3] To support such a conclusion, the court held, the district court must make one of two findings:

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[2] 731 F 2d 1076 (3d Cir.)

[3] Judge Aldisert agreed with the district court's finding

> [Either it] must find there to be no legal theory implicit or explicit in the regional director's argument that is substantial and not frivolous[, or it] must find insufficient evidence—at least taking the facts favorably to the Labor Board—to support any non-frivolous theory appropriate to the case at bar.

The court further held that, on appeal, it would review for mere error the district court's determination whether the Board's legal theory was substantial, while the district court's "finding of facts and whether the facts satisfied the theory" could be reversed only if they were clearly erroneous.

Applying these standards, the court of appeals found that the district court erred in rejecting the regional director's theory that, because Suburban and Shortway allegedly conspired to discourage Suburban employees from seeking employment with Shortway, unlawful hiring discrimination could be found even as the former employees of Suburban who had not filed employment applications with Shortway. "Posting a sign . . . that reads 'No Union Members Need Apply' . . . is just as effective (and just as offending) a method of discrimination as a point blank refusal to hire . . . ." The court also found, contrary to the district court, that "anti-union animus need not be the sole motive for an employment decision in order for that decision to constitute an unfair labor practice." Finally, the court found insufficient evidence to support the district court's conclusion that the Suburban employees would not have worked for lower wage rates offered by Shortway upon its takeover of Suburban.

Turning to whether injunctive relief was "just and proper," the appeals court first concluded that the district court erroneously premised its denial of a reinstatement remedy upon its belief that a Board order in due course could fully remedy the situation by awarding reinstatement with full backpay, and upon its concern for the replacement employees who might lose their jobs if the discriminatees were reinstated. The court observed that

> [to] focus on the relief to be granted to individual employees is incorrect because it ignores the harm to the bargaining process that may accompany delayed relief. [Citation omitted.] The basic theory is that denial of interim reinstatement effectively denies employees the fruits of the collective bargaining process that otherwise would have been available to them prior to ultimate reinstatement.

However, as further justification for denying injunctive relief, the district court had advanced the proposition that "[g]iven the [small] size and intimacy of [the long-established union, there is] no reason to think that it could not swiftly and effectively reconstruct itself should the Board uphold its charge." While expressing some discomfort with the lack of "empirical evidence to sup-

port [this] thesis," the appellate court concluded that, given "the district court's superior vantage point," it could not be said that the lower court's "predictive factual finding was clearly erroneous or that it was not a substantial basis for its conclusion." Accordingly, the district court's denial of interim relief was not deemed an abuse of its discretion.

In another case dealing with the obligation of a successor employer, *Squillacote v. U.S. Marine Corp.*,[4] a district court found reasonable cause to believe that the respondent employer, which had purchased a business from a predecessor that had an incumbent union, had become a "successor" employer within the meaning of the Supreme Court's *Burns* decision,[5] and had unlawfully refused to recognize and bargain with the predecessor's union. The district court rejected the employer's defense that any bargaining obligation had to wait until a subsequent date when the employer would reach its "full complement." The court further concluded that an interim bargaining order was just and proper to prevent the frustration of the remedial purposes of the Act which otherwise could occur by the erosion of the union's support among employees and the denial of the benefits of collective bargaining during the time required for completion of Board proceedings.

The recurring problem whether a temporary bargaining order in favor of a nonincumbent union may be appropriate interim relief was again addressed by the Second Circuit in *Kaynard v. MMIC, Inc.*[6] In obtaining such an injunction from the district court, the regional director showed that the union had secured authorization cards from four of five unit employees, and that the employer, in order to thwart this incipient union campaign, then engaged in numerous unfair labor practices, including threats to close the plant if the union organizing campaign were successful, the discharge of the two leading union adherents, promises of benefits if support for the union were abandoned, and various other threats and acts of interrogation and surveillance. The court of appeals upheld the injunction order, finding that "there is more than reasonable cause to believe that the unfair labor practices complained of have been committed. Indeed, in terms of the number, variety, and malevolence of the unfair labor practices here involved, the company's course of conduct strikes us as an extraordinary example of interference with organizational rights." The appellate court then reaffirmed its holdings in *Seeler v. Trading Port, Inc.*,[7] and *Kaynard v. Palby Lingerie, Inc.*,[8] that when a union obtains a card majority during

[4] 116 LRRM 2663 (E D Wis)
[5] *NLRB v Burns Security Services*, 406 U S 272 (1972)
[6] 734 F 2d 950 (2d Cir)
[7] 517 F 2d 33 (2d Cir 1975)
[8] 625 F 2d 1047 (2d Cir 1980)

an election campaign, and the employer responds by "engag[ing] in such egregious and coercive unfair labor practices as to make a fair election virtually impossible, the district court should issue a bargaining order under section 10(j)," for such an order is then "a just and proper means of restoring the pre-unfair labor practice status quo and preventing further frustration of the purposes of the Act." Noting that "the Board does not take lightly the commencement of a section 10(j) action," the court of appeals also rejected the employer's contention that delay in processing the case rendered the interim bargaining order inappropriate. Finally, the court took the unusual step of awarding double costs and damages under Fed.R.App.P. 38, finding that "[n]ot only was [the employer's] anti-union conduct grossly outrageous; but its prolongation of proceedings by this frivolous appeal strike us as a deliberate attempt to thwart the intent of Congress in providing in section 10(j) a swift interim remedy to halt unfair labor practices."

Finally, in *Marine & Shipbuilding Workers Local 33 v. Marine & Shipbuilding Workers*,[9] a district court found reasonable cause to believe that an international union had threatened to place an affiliated local union in trusteeship and to bring internal union charges against certain of the local officers because the local union and its officers, assertedly without authority, had negotiated a new labor agreement with an employer which called for concessions in wages and benefits. The court was satisfied that if the General Counsel's witnesses were ultimately credited in the administrative proceeding, the local lawfully negotiated the new agreement and the international union's attempts to repudiate the agreement and discipline the local officers violated section 8(b)(3) and (1)(A) of the Act. The court concluded that inasmuch as the new labor agreement was the basis upon which the employer hoped to bid on Government construction contracts, the success of which would affect some 2300 jobs, section 10(j) relief was just and proper to enjoin the international union's conduct during Board litigation.

B. Injunctive Litigation Under Section 10(l)

In *Lewis v. Longshoremen ILA Local 1497 (New Orleans)*,[10] the Fifth Circuit affirmed a section 10(l) order enjoining two local unions and an employer association from maintaining and implementing the warehousing provisions of the ILA's rules on containers, finding that the district court properly found reasonable cause to believe the rules were being applied in a manner violative of section 8(e) of the Act. The theory of violation was founded on the Board's *ILA* decision[11] after remand from the

[9] 116 LRRM 2508 (D Md)
[10] 724 F 2d 1109 (5th Cir)
[11] *Longshoremen ILA (New York Shipping)*, 266 NLRB 230 (1983)

Supreme Court,[12] in which the Board found that, while the rules on containers were generally a lawful attempt to preserve unit work, their application to certain traditional warehousing practices had an unlawful work acquisition object. In affirming the district court's injunction, the court of appeals rejected the contention that the district court lacked jurisdiction under section 10(l) of the Act to grant an injunction because the Board's *ILA* decision, adjudicating the same legal issues, was then pending review in the Fourth Circuit under section 10(e) and (f) of the Act. The appellate court held that while the present case involved issues similar to those in the *ILA* case, it "concern[ed] a different employer, different local unions, and a different case." The court of appeals also rejected the contention that, in determining whether reasonable cause existed, it should inquire into the correctness of theories adopted by the Board in the *ILA* case, upon which theories the present injunction was predicated. It held that, in reviewing a district court's reasonable cause findings, the appellate court "must inquire into the substantiality of the Regional Director's theories—not into their correctness." Accordingly, because "[it] is not impossible that on the facts of this case the Board could find [a violation] . . . [g]iven the Board's decision in the *ILA* case, this Court cannot deem the Regional Director's legal theory insubstantial or frivolous." Finally, the court of appeals held that the district court did not abuse its discretion in finding "than an injunction was a 'just and proper' remedy" in order to avoid a "'substantial interruption in the smooth and orderly flow and government inspection' of . . . imported frozen meat . . . ."

In *Dawidoff v. Teamsters Local 544*,[13] a panel majority of the Eighth Circuit affirmed a district court's refusal to enjoin picketing alleged to violate section 8(b)(7)(C) of the Act.[14] The regional director's petition was grounded on the testimony of employer witnesses which, if credited over the union witnesses' contrary testimony, would have shown that the union's picketing was accompanied by a demand of a recognitional nature.[15] In the panel majority's view, there was no corroborative evidence that the union's picketing had a recognitional objective. Indeed, the other evidence was consistent with lawful, area standards picketing. The panel concluded that, looking at the record evidence as a whole, the district court did not abuse its discretion in "finding that the record did not establish reasonable cause that

[12] *NLRB v Longshoremen*, 447 U S 490 (1980)

[13] 736 F 2d 465 (8th Cir)

[14] Judge Heany wrote an opinion with which Chief Judge Lay separately concurred Judge Bowman dissented, finding that the district court should have deferred to the regional director's conclusion that there was reasonable cause to believe the union was engaged in unlawful recognitional picketing

[15] According to employer witnesses, in response to their inquiry what it would take to settle the dispute, union agents replied, "Sign the book" (i e , sign a contract), according to the union agents, they responded, "Pay the book" (i e , pay the area standards)

the preliminary injunction should issue." The regional director petitioned for rehearing en banc, expressing concern that, in conflict with two prior decisions in the Eighth Circuit, the decision appeared to be grounded upon a failure preliminarily to resolve credibility conflicts in the regional director's favor. In a separate order denying rehearing,[16] the court "emphasize[d] that it continues to adhere to *Dawidoff v. Minneapolis Building and Construction Trades Council*, 550 F.2d 407 (8th Cir. 1979), and *Wilson v. Milk Drivers and Dairy Employees Union Local 471*, 491 F.2d 200 (8th Cir. 1974)."

[16] Four circuit judges would have granted the petition for rehearing

VIII

Contempt Litigation

In fiscal year 1984, 146 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with outstanding court decrees, as compared to 115 cases in fiscal year 1983 and 108 cases in 1982. Voluntary compliance was achieved in 38 cases during the fiscal year without the necessity of filing a contempt petition, while in 57 others it was determined that contempt was not warranted. During the same period, 25 civil contempt proceedings were instituted as compared to 23 in fiscal year 1983. These include three motions for assessment of fines and one motion for a writ of body attachment.[1] Twenty-six contempt or equivalent adjudications were awarded in favor of the Board including five where compliance fines were assessed and one in which a writ of

[1] *NLRB v Chem Fab*, in No 81-2316 (8th Cir) (civil contempt for failing to offer reinstatement), *NLRB v Carbide Tools*, in No 73-2115 (6th Cir) (civil contempt for failure to pay backpay), *NLRB v Sterritt Trucking Co*, in Nos 75-4044 and 76-4253 (2d Cir) (civil contempt for violation of a protective restraining order), *NLRB v Shawnee-Penn*, in No 81-1750 (3d Cir) (civil contempt for failing to make fringe benefit contributions to contractual funds), *NLRB v J & W Drywall Contractors*, in No 81-1110 (6th Cir) (civil contempt for failure to make periodic payments to fringe benefit funds), *NLRB v General Service Employees, Local 73*, in No 79-1706 (7th Cir) (civil contempt for engaging in 8(b)(7) unlawful conduct), *NLRB v Wayne Trophy*, in No 81-2893 (3d Cir) (civil contempt for failure to pay backpay), *NLRB v Solid Rock Transit Mix*, in No 83-7180 (9th Cir) (civil contempt for failure to produce payroll records and to notify employees that their files were expunged of references to discharge), *NLRB v Trinity Roseland*, in No 83-1985 (7th Cir) (civil contempt for failure to offer reinstatement and failure to notify), *NLRB v M & B Contracting*, in No 80-1077 (6th Cir) (civil contempt for failure to comply with 8(a)(1) and (3) provisions of judgment), *NLRB v Amcar Division, ACF*, in No 77-1713 (8th Cir) (civil contempt for violating bargaining order), *NLRB v Ajax Paving*, in No 82-1337 (6th Cir) (civil contempt for refusal to offer reinstatement, make records available to compute backpay, post notices, and pay costs), *NLRB v Fugazy Continental*, No 81-4103 (civil contempt for failure to comply with backpay judgment), *NLRB v Southwire*, in No 84-8380 (11th Cir) (civil contempt for violating 8(a)(1) provisions of judgment), *NLRB v Roger O Maffei*, in No 83-4074 (2d Cir) (civil contempt for failure to make fringe benefit contributions and post notices), *NLRB v Overseas Motors*, in No 82-1645 (6th Cir) (civil contempt for refusal to reinstate, provide payroll records, and post notices), *NLRB v Spear Meat*, in No 83-7605 (9th Cir) (civil contempt against successor for failure to recognize and bargain with the union), *NLRB v Carpenters Local 112*, in Nos 75-2064, 75-2166, and 75-2770 (9th Cir) (civil contempt for unlawful picketing and exertion of pressure to assign work to the union in violation of 8(b)(4)(D) provisions of judgment), *NLRB v Service Employees Local 77*, in No 83-7193 (9th Cir) (civil contempt for engaging in secondary picketing in violation of judgment), *NLRB v Everspray Enterprises*, in Nos 78-1805 and 81-1893 (7th Cir) (civil contempt of backpay provisions of judgment), *NLRB v Ron Simmons/Bell*, in No 83-7185 (9th Cir) (civil contempt of backpay order), *NLRB v Roofers Local 30*, in No 79-2649 (3d Cir) (for assessment of fines for failure to comply with purgation order for 8(b)(1) violations), *NLRB v Laborers Fund*, in No 81-7401 (9th Cir) (for assessment of additional fines for failing to obey purgation order to restore benefits and rescind unilateral changes), *NLRB v District 1199*, in No 81-4031 (2d Cir) (for assessment of fines for failure to refrain from picket line misconduct), *NLRB v Streator Glass*, in No 81-2381 (7th Cir) (body attachment for failure to make payments to fringe benefit funds)

body attachment issued.[2] Five motions for protective orders where filed[3] and seven discovery motions were filed.[4] Four protective orders were granted,[5] and one was referred to a special

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[2] *NLRB v Teamsters Local 695*, in Nos 78-1681 and 78-1391 (7th Cir) (consent contempt adjudication for picket line misconduct, including prospective fine of $5000 per incident), *NLRB v Garrett Freight (I)*, in No 82-2167 (10th Cir) (default contempt judgment for failure to provide payroll records), *NLRB v Phelps Cement*, in No 83-4144 (2d Cir) (consent order directing bargaining reports, costs, and prospective fines of $1000 plus $100/day), *NLRB v Carbide Tools*, in No 73-2115 (6th Cir) (default contempt judgment for failure to pay backpay, imposing prospective fine of $1000/day) *NLRB v J & W Drywall*, in No 81-1110 (6th Cir) (civil contempt directing payment of fringe benefit contributions, reimbursing Board costs, and imposing prospective fine of $1000/day), *NLRB v Rick's Construction*, in No 82-7088 (9th Cir) (civil contempt adjudication for failure to reinstate employees and produce payroll records, imposing prospective fine of $25,000 and $2500/day), *NLRB v Perschke Hay & Grain*, in No 76-1090, 115 LRRM 3115, adopting 115 LRRM 3108 (7th Cir) (civil contempt adjudication for failure to comply with backpay judgment), *NLRB v Hyde Park Construction*, in Nos 80-7312 and 82-1108 (6th Cir) (contempt adjudication for failure to make payments to fringe benefit funds, imposing prospective fine of $1000/day), *NLRB v Southwestern Bell*, in Nos 78-1911 and 78-1914, 730 F 2d 166 (5th Cir) (adopting recommendations of special master, with minor modifications, and finding civil contempt for failure to afford effective union representation to employees at investigatory interviews and to provide information needed to process grievances), *NLRB v Maine Caterers*, in No 81-1778, 732 F 2d 689 (1st Cir) (civil contempt adjudication for refusal to bargain and delay in posting notices, imposing $1000/violation and $100/day prospective fine), *NLRB v Trailways*, in No 78-3056, 729 F 2d 1013 (5th Cir) (contempt adjudication awarding costs and attorney's fees for failure to comply with 8(a)(1) and (3) provisions of judgment), *NLRB v Solid Rock Transit*, in No 83-7180 (9th Cir) (civil contempt adjudication, imposing prospective fines of $1000 plus $500/day for failure to produce payroll records and notify employees that references to discharge were expunged from records), *NLRB v Nagle Industries*, in No 81-1104 (6th Cir) (civil contempt adjudication for failure to sign agreed-upon contract, imposing prospective fines of $5000 for each subsequent violation plus $1000/day), *NLRB v Ellingson's Sport Center*, in No 80-7450 (9th Cir) (consent contempt judgment for failure to comply with 8(a)(1) provisions of judgment, imposing prospective fines of $4000 plus $100/day), *NLRB v Ajax Paving*, in Nos 82-1337 and 82-1482 (6th Cir) (civil contempt adjudication for refusal to offer reinstatement and produce payroll records for backpay computation), *NLRB v Service Employees Local 73*, in Nos 79-1706, 79-1715, and 80-2629 (7th Cir) (consent contempt adjudication for continuing 8(b)(7) violations, imposing prospective fine of $2500 plus $500/day), *NLRB v Shawnee-Penn*, in No 83-3550 (3d Cir) (consent order providing for payment of fringe benefit moneys, secured by mortgage on respondent's property), *NLRB v Transportation by LaMar*, in No 82-1144 (7th Cir) (default civil contempt adjudication for failure to produce payroll records, awarding Board costs, and imposing fine of $5000 per violation plus $1000/day), *NLRB v Indian Resort Raga Restaurant*, in No 81-4126 (2d Cir) (civil contempt consent order for 8(a)(3) violations, awarding costs and prospective fines of $5000 per subsequent violation), *NLRB v Laborers Fund*, in No 81-7401 (9th Cir) (assessed fines of $1000 plus $100/day for refusal to rescind unilateral changes and restore benefits), *NLRB v Philadelphia Building & Construction Trades Council*, in No 83-3456 (3d Cir) (consent contempt adjudication assessing $3000 fine and imposing prospective fine of $13,000 plus $1000/day), *NLRB v George A Angle*, in Nos 23,295, 23,330, 23,750, and 23,751 (D C Cir) (assessing $22,500 fine to Board as settlement of contempt proceeding brought because of respondent's resort to state court malicious prosecution action to punish employee's exercise of protected rights), *NLRB v Roofers Local 30*, in No 79-2649 (3d Cir) (consent contempt adjudication for failure to comply with purgation order for 8(b)(1)(A) violations, assessing $20,000 prospective fine against union, $500 against business agent, and assessment of $25,000 fine), *NLRB v Blevins Popcorn*, in No 75-1748, 117 LRRM 2425, adopted 117 LRRM 2392 (D C Cir) (contempt adjudication for failure to comply with purgation order to bargain, assessing $100/day and $1000 prospective fine, costs and expenses, and imposing $1000/day prospective fine), *NLRB v Sterritt*, in Nos 75-4044 and 75-4253 (2d Cir) magistrate's order directing rearrest for violation of contempt adjudication, upon finding that individual respondent was medically able to endure incarceration)

[3] *NLRB v Hennepin, (I)*, in No 75-1108 (8th Cir), *NLRB v Las Villas Produce*, in No 82-2308 (7th Cir), *NLRB v Ashland Const*, in No 82-1750 (7th Cir), *NLRB v Air-Vac Industries*, in No 82-4103 (2d Cir) (two motions, one for a protective restraining order, followed by a motion to avoid fraudulent conveyances and for other relief)

[4] *NLRB v Ariga Textile*, in No 80-5339 (11th Cir), *NLRB v Hansa Mold*, in No 83-7646 (9th Cir), *NLRB v Calif Pacific Signs*, in No 82-7087 (9th Cir), *NLRB v M & B Contracting*, in No 80-1077 (6th Cir), *NLRB v Fullerton Transfer*, in No 76-2478 (6th Cir), *NLRB v G & G Supermarket*, in No 83-5631 (6th Cir), *NLRB v DaVinci Fashions*, in No 83-7472 (9th Cir)

[5] *NLRB v Hennepin*, in No 75-1108 (8th Cir) (respondent restrained and enjoined from disposing of assets unless escrow fund is established and maintained), *NLRB v Ashland*, in No 82-1750 (7th

Continued

master for factual findings.[6] Four discovery orders were entered[7] and one was denied.[8] Two cases were discontinued upon full compliance.[9] Nearly $98,000 in fines was collected. During the fiscal year the Board also recouped in excess of $138,000 in costs and attorney's fees incurred in contempt litigation.

A number of the proceedings during the fiscal year were noteworthy. Three of these involved violations of the employers' bargaining obligations. In *Blevins Popcorn*,[10] discussed in the 1983 Annual Report, the employer sought a purgation order and remittance of daily fines which had been levied against it in a prior "third stage" civil contempt proceeding.[11] While ruling that it was the employer's burden to demonstrate that it had purged itself of contempt, the court's special master concluded that irrespective of which party bore the burden of proof, the evidence established that the company had again failed to satisfy its bargaining obligations under the court's judgments, and recommended that its motion for relief from the contempt adjudication be denied.[12] Thereafter, the court entered a consent contempt adjudication directing reimbursement of the Board's litigation expenses and attorney's fees and the union's costs incurred in the fruitless collective-bargaining negotiations, and assessing approximately $385,000 in noncompliance fines, $310,000 of which was suspended on condition of employer's future compliance. Additional prospective compliance fines of $1100 per day were also imposed.

In *Maine Caterers*,[13] the court approved the findings of its special master recommending that the companies and their president be adjudged in civil contempt because of their 6-month delay in posting the Board's notices as well as their direct dealing with employees and unilateral changes in violation of the companies' bargaining obligation.[14] In so doing, the court held that the

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Cir) (unless respondent establishes and maintains an escrow account, it is restrained from disposing of company assets), *NLRB v Las Villas Produce*, in No 82-2308 (7th Cir) (protective order entered), *NLRB v Air-Vac Industries*, in No 82-4103 (2d Cir) (order directing that proceeds from sale of residence be paid into the registry of the court and granting other relief sought by Board's motion to avoid fraudulent conveyances)

[6] *NLRB v Air-Vac Industries*, in No 82-4103 (2d Cir)

[7] *NLRB v Streator Glass*, in No 81-2381 (7th Cir), *NLRB v Ariga Textile*, in No 80-5339 (11th Cir), *NLRB v Calif Pacific Signs*, in No 82-7087 (9th Cir), *NLRB Hansa Mold*, in No 83-7646 (9th Cir)

[8] *NLRB v M & B Contracting*, in No 80-1077 (6th Cir)

[9] *NLRB v Ashland Constr Co*, in No 84-1836 (7th Cir), *NLRB v Chem Fab Corp*, in No 81-2316 (8th Cir) (order directing that civil contempt proceeding instituted by Board be discontinued without prejudice)

[10] *NLRB v Blevins Popcorn Co*, No 75-1748 (D C Cir)

[11] See 117 LRRM 2342 (first master's report), adopted 117 LRRM 2392 (Apr 21, 1983) See also 96 LRRM 2857 (first contempt adjudication)

[12] 117 LRRM 2425 (report of U S Magistrate Jean F Dwyer, June 29, 1984) See also 117 LRRM 2392 (order of Aug 29, 1984)

[13] *NLRB v Maine Caterers, Inc, W H Maine, Inc, and William H Maine, Individually*, No 80-1778 (1st Cir)

[14] 732 F 2d 689 (Apr 10, 1984), adopting the report of Administrative Law Judge Marvin H Morse, as special master, in contempt of 654 F 2d 131 (1981), enfg 251 NLRB 505 (1980)

president, as the corporate officer responsible for companies' compliance with the court's order, was properly chargeable in contempt for the companies' disobedience of the judgment. Further, the court rejected the employers' contention that the proceedings were rendered moot by reason of the dissolution of the employers' business subsequent to the commission of the contumacious conduct, reasoning that a contempt adjudication might still serve as useful purpose, given the monetary remedies contained in the purgation order.

In the third case, *Nagle Industries*,[15] the Sixth Circuit affirmed the decision of the late Senior District Court Judge Thomas P. Thornton, sitting as special master, in which he found that the company had violated section 8(a)(5) of the Act and the prior judgment of the court by repudiating and refusing to execute a collective-bargaining agreement it had reached with the union at the bargaining table and improperly insisting upon reratification of the agreement and approval by the union's regional director as a precondition to signing the agreement.

In two other cases, the Fifth Circuit adjudged employers in civil contempt for conduct interfering with their employees' exercise of their section 7 rights. In *Trailways*,[16] the court reversed its special master, who had recommended dismissal of the Board's case in its entirety, and found the company in civil contempt. In its opinion, the court rejected the special master's conclusion that the company's unlawful actions during an organizational campaign were technical in nature or de mininis. Instead, the court found that the company had violated section 8(a)(1) of the Act and the court's prior judgment by disparately enforcing no-solicitation, no-distribution, and no-posting rules to discourage union activity; by threatening employees with discharge or other discipline for violating such rules; and by charging an employee with an unexcused absence for attending a Board hearing. The court concluded, contrary to the findings of the special master, that neither the company's attempts to comply with the judgment, nor its having used only relatively mild forms of discipline in response to the employees' protected activity, precluded a finding of contempt. In the particular circumstances of the case, however, the court rejected the Board's request for prospective fines and access remedies.

In *Southwestern Bell*,[17] the court, affirming its special master, found that the company had violated the prior judgments of the court by silencing union stewards at investigatory interviews, thereby denying employees their right to effective union representation, and by refusing to furnish information relevant to a grievance. In finding the company in civil contempt, the court

[15] *NLRB v Nagle Industries*, 117 LRRM 2115 (special master's report), affd 117 LRRM 2224 (6th Cir.)

[16] *NLRB v Trailways, Inc*, 729 F 2d 1013 (5th Cir 1984)

[17] *NLRB v Southwestern Bell Telephone Co*, 730 F 2d 166 (5th Cir 1984)

rejected the company's contentions, among others, that the judgments were too vague to support contempt and that they did not preclude the type of conduct found to be contumacious.

Two cases involving violations by labor organizations of outstanding contempt adjudications resulted in settlement agreements. In *Philadelphia Building Trades Council*,[18] the Board had instituted civil contempt proceedings against the council for engaging in secondary boycott activity in violation of two Third Circuit judgments[19] and a prior contempt adjudication.[20] The parties reached a settlement prior to trial, resulting in the entry of a consent contempt adjudication requiring the respondent to pay a fine of $3000 for its past noncompliance, and providing for a prospective noncompliance fine of $13,000 for each future violation of the court's decrees and an additional fine of $1000 per day for each day such violation continued. Further, to assure against future violations, the council agreed to refrain from authorizing picketing without first meeting with its agents and representatives to determine that the object and manner of the proposed picketing were permissible under the court's decrees. At the outset of all future picketing, the council agreed to supply its pickets with copies of the court's orders and appropriate verbal and written instructions regarding the conduct of the picketing.

In *Roofers Local 30*,[21] the Board instituted civil contempt proceedings against the union and certain of its business agents for violating a judgment[22] and a previous contempt adjudication[23] of the Third Circuit by engaging in 8(b)(1)(A) conduct, including mass picketing, threats, and acts of property damage. The unions agreed to the entry of a consent contempt adjudication which provided, inter alia, that the union would pay a $25,000 noncompliance fine and be subject to a prospective noncompliance fine of $20,000 for each future violation of the court's decrees. In addition, a prospective noncompliance fine of $500 per violation was imposed on one of the union's business agents individually.

Finally, in *Kurt Perschke*,[24] the Seventh Circuit issued its order adopting the report of its special master (U.S. District Court Judge James Moody), and adjudged an individual proprietor in civil contempt for failing to pay backpay.[25] In his report,

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[18] *NLRB v Philadelphia Building Trades Council*, No 83-3456 (3d Cir)

[19] Judgment of March 4, 1974 (Third Circuit Case No 74-1143), enforcing an unreported Board order, Judgment of November 28, 1980 (Third Circuit Case No 80-2506), enforcing an unreported Board order

[20] Contempt adjudication entered May 24, 1982, in Third Circuit Case No 81-2485

[21] *NLRB v Local 30, United Slate, Tile, and Composition Roofers, Damp and Water Proof Workers Assn*, No 84-3107 (3d Cir)

[22] Judgment of April 11, 1978, in Third Circuit Case No 78-1260, enfg 227 NLRB 1444 (1977), and 228 NLRB 652 (1977)

[23] Contempt adjudication of February 20, 1980, in Third Circuit Case No 79-2649

[24] *NLRB v Kurt A Perschke, a sole proprietorship doing business as Perschke Hay & Grain*, No 78-1741 (7th Cir)

[25] 115 LRRM 3115 (Feb 8, 1984)

the master held that where inability to comply is raised as a defense, the respondent bears the burden of proving "by clear and convincing evidence" that it is impossible for him to comply with the order.[26] To satisfy this standard, the respondent must show that at no time since the entry of the judgment was he even able to partially satisfy the judgment; this proof must constitute more than "merely demonstrating that compliance would create financial hardship; he must demonstrate that he would have been and still is unable to satisfy the judgment even if all his property were sold or mortgaged."[27] In deciding whether assets of various corporations of which Perschke was the dominant shareholder were available to satisfy his individual debts, the master agreed with the Board that, in view of Perschke's unfettered use of the corporations' funds to satisfy his personal obligations, the corporate assets should be treated as if they were Perschke's, and therefore should be taken into account in determining whether he had the ability to comply with the court's judgment. Applying these standards, the master concluded that Perschke had not carried his burden and should be adjudged in contempt. In adopting the master's recommendations, the court directed Perschke to negotiate an installment plan for satisfaction of his backpay obligation, acceptable to the Board, upon penalty of body attachment.[28]

[26] 115 LRRM 3108, 3110 (report of special master, July 6, 1983)
[27] 115 LRRM at 3110
[28] 115 LRRM at 3116

IX

Special and Miscellaneous Litigation

A. Litigation Involving the Board's Jurisdiction

Hartz Mountain Corp. v. Dotson[1] arose out of a district court suit brought (1) to nullify a Board order certifying the winning labor organization (UAW District 65) in a 1982 Board-conducted representation election and (2) to set aside an earlier Board order which nullified the results of a 1979 election won by IBT Local 806, after Local 806 had expressly disclaimed interest in representing the employees. The district court dismissed the complaint for lack of subject matter jurisdiction because Hartz failed to establish that the Board's ordering a second election violated a clear and specific statutory mandate. The district court also noted that Hartz had access to judicial review of the Board's actions under section 10(e) and (f) of the Act. On appeal, the District of Columbia Circuit affirmed this decision in all respects. The court of appeals noted the general rule that district courts lack subject matter jurisdiction to entertain direct appeals of Board actions in representation cases, and the court found this was no exception. Rejecting the company's contention that section 9(c)(1) compels the Board to certify the results of a valid election, the court of appeals stated that "'the Board has discretion' to deny certification in appropriate cases to further the basic purposes of the Act. On the face of it, we can find no better reason for the Board to deny certification than when the winning union makes an unequivocal postelection disclaimer of interest. Whether the disclaimer is unequivocal and voluntary are purely factual issues that may not be addressed on direct review under *Kyne*."

In another case,[2] the District of Columbia Circuit affirmed a district court dismissal of a complaint which had been brought to nullify part of a Board unfair labor practice decision and require the Board to conduct a collateral hearing to receive new evidence. In the unfair labor practice proceeding against a company, the administrative law judge had ruled that the company's attorney suborned perjury and the Board affirmed that finding. The court of appeals agreed with the district court ruling that

[1] 727 F 2d 1308 (D C Cir)

[2] *Rosen v NLRB*, 735 F 2d 564 (D C Cir)

the attorney-plaintiff was not entitled to a collateral administrative hearing, reasoning that: (1) such a hearing would impede "the orderly and sound procedures of administrative agency adjudication" by encouraging multiple proceedings and undermining the finality of judgments, (2) the complaining attorney had conducted his client's representation in the administrative proceeding and had proxy representation through his client, and (3) the complaining attorney had taken no step to bring his specific concern for his reputation to the attention of the administrative law judge. The court noted that the attorney could have, but chose not to withdraw as company counsel in order to appear as a witness on his own behalf.

B. Litigation Under the Bankruptcy Code

In *East Belden Corp. v. NLRB*,[3] when a controversy arose as to the appropriate amount of backpay due under a court-enforced Board backpay order, East Belden filed a petition in bankruptcy and sought to enjoin a scheduled Board backpay hearing. Initially, the bankruptcy court entered a temporary restraining order barring the Board from proceeding until the court could determine whether it had subject matter jurisdiction. Thereafter, the court entered its final order dissolving the restraining order, denying the requested injunction, and dismissing the complaint against the Board. The bankruptcy court recognized that the Board was the proper forum for liquidating employee backpay claims. The court further observed that the debtor wanted to delay, but not entirely avoid, resolution of the backpay dispute. As to the question of its authority to enjoin Board proceedings, the court declared that the proper test was whether the Board action constituted a threat to the assets of the debtor's estate. The bankruptcy court concluded that the Board's backpay proceeding was not such a threat because the company's backpay "obligation for services rendered in liquidation will be a diminution of the assets sooner or later." Accordingly, the court granted the Board's motion to dismiss the adversary complaint.

In another case,[4] after the Board's General Counsel issued a complaint charging Rath Packing with unlawfully bypassing its employees' bargaining representative and unilaterally modifying its collective-bargaining contract, the company filed a voluntary Chapter 11 petition. In bankruptcy court, Rath first sought an order subordinating the Board's backpay claims to the claims of all other creditors. The court determined that the subordination issue was not ripe since the hearing before the Board had not been held and its outcome was thus not determined. Rath's request that the bankruptcy court enjoin the filing and prosecution of future unfair labor practice charges was similarly rejected as

[3] Docket No 1-84-0023 (B C N D Cal April 10, 1984) (unpublished)
[4] *In re Rath Packing Co*, 38 B R 552 (B C N D Iowa 1984)

not being ripe for judicial resolution since "any decision by [the court] regarding a charge that *may* be filed . . . will be nebulous, contingent, premature, and abstract."[5] Finally, the bankruptcy court rejected Rath's request that the court enjoin the prosecution and hearing of pending unfair labor practice charges. The court determined that under *NLRB v. Evans Plumbing Co.*,[6] the automatic stay provisions of the Bankruptcy Code (11 U.S.C. § 362(b)(4)) do not apply to Board proceedings because the Board is a Government unit exercising its regulatory powers. The court further observed that in *Nathanson v. NLRB*[7] the Supreme Court held that the Board, not the bankruptcy court, should determine the amount of backpay claims arising from an unfair labor practice proceeding. The bankruptcy court determined that the complained-of litigation expense and the asserted discouragement to potential buyers or investors did not raise a threat to the company's assets sufficient to justify injunctive relief under 11 U.S.C. § 105(a). The bankruptcy court found the litigation expense argument particularly unconvincing since, regardless of the tribunal, the debtor would have to incur expenses in defending itself against unfair labor practice charges. Accordingly, the court concluded that the Board's hearing should not be enjoined.

C. Litigation Involving the Equal Access to Justice Act[8]

In *Iowa Express Distribution v. NLRB*,[9] the Eighth Circuit reviewed the Board's decision dismissing an application for attorneys' fees under the Equal Access to Justice Act (EAJA) (5 U.S.C. § 504). Initially, the court observed that the standard for its review was whether the Board had abused its discretion in deciding that the General Counsel's position in the underlying unfair labor practice proceeding was substantially justified. The Eighth Circuit concluded that the purpose of EAJA would "best be served by interpreting the position of the United States to include the government's position at both the prelitigation and litigation levels." On the facts presented, the circuit court held that the two "positions" were essentially merged because the General Counsel had continuously maintained the merit of its position that Iowa Express was an alter ego of the predecessor company. Upon reviewing the General Counsel's prosecution of the unfair

[5] 38 B R at 558 (emphasis in original)

[6] 639 F 2d 291 (5th Cir 1981)

[7] 344 U S 25 (1952)

[8] The Equal Access to Justice Act (EAJA), Title II of Pub L No 96-481, 94 Stat 2325 (1980), 5 U S C § 504 (allowing a fee award to an eligible prevailing party in an administrative adversary adjudication where the agency's position was not substantially justified), and 28 U S C § 2412 (allowing a fee award to an eligible prevailing party in a civil action against the United States under the same standard), was repealed by its own terms on October 1, 1984 5 U S C § 504(c), 28 U S C § 2412(c) The repealed provisions continued to apply through final disposition of any adversary adjudication or civil action initiated before the date of repeal (Ibid) On August 5, 1985, Congress enacted Public Law 99-80 effectively reviving and modifying the EAJA expired provisions

[9] 739 F 2d 1305 (8th Cir)

labor practice case, the court noted that there was considerable evidence supporting the General Counsel's allegation of alter ego status and, further, that there existed a "nucleus of Board decisions" which provided "plausible support" for the argument. Accordingly, the court concluded that, while the case may not have been successful before the Board, the General Counsel's position was reasonable and substantially justified. Upon this finding, the court held that the Board's denial of the company's fee application was within the Board's broad discretion.

In two other cases, circuit courts denied companies' applications for fees pursuant to EAJA, 28 U.S.C. § 2412. In *Kitchen Fresh, Inc. v. NLRB*,[10] the company sought attorney fees incurred in obtaining from the Sixth Circuit an order remanding to the Board a decision finding the company guilty of unlawfully refusing to bargain with its employees' certified bargaining representative. In the underlying circuit court case, the company had been successful in establishing its right to an evidentiary hearing on its objections to the conduct of a representation election. On the application for fees, the Sixth Circuit noted that the company had yet to prevail on the merits of any of its claims before the Board or the court on appeal. Recognizing that "the procedural victory won by the [company] may affect the disposition of [its] claims," the court nonetheless ruled that such a victory "is insufficient to establish that the [company] has prevailed for the purposes of an award of attorneys' fees" under EAJA. The court accordingly held that Kitchen Fresh was not a "prevailing party" entitled to apply for fees under 28 U.S.C. § 2412(d)(1)(A).

In *Murphy Bros. v. NLRB*,[11] the Fourth Circuit denied the company's application for fees incurred in a Board representation proceeding and a related unfair labor practice case litigated before the Board and the court of appeals. Initially, the court ruled that no fees could be obtained for services rendered in the representation proceeding because that proceeding was not an "adversarial adjudication" as required under EAJA, 5 U.S.C. §§ 504(a)(1) and (b)(1)(c). The Fourth Circuit further concluded that the company was not entitled to fees for the unfair labor practice proceedings before the Board or the court because at all times the position of the Board's General Counsel was substantially justified. The court found unconvincing the company's argument that the General Counsel's position before the Board was contrary to a 1982 Fourth Circuit decision. The court noted that the company had not cited the case in the Board proceeding. Thereafter, the court observed, when the company initiated review in the Fourth Circuit, "the General Counsel acted reasonably" in moving to remand the case to the Board for reconsideration. The court concluded that its own action in denying en-

[10] 729 F 2d 1513 (6th Cir)
[11] Docket No 82-2151 (4th Cir 1983) (unpublished)

forcement, rather than remanding the case, did not in itself entitle the company to fees.

INDEX OF CASES DISCUSSED

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 intitated 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

SUBJECT INDEX TO ANNUAL REPORT TABLES

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of the Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW , Washington, D C 20570.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1984[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending October 1, 1983	*23,658	8,909	2,686	1,006	1,255	7,542	2,260
Received fiscal 1984	44,118	14,368	4,511	846	2,049	18,342	4,002
On docket fiscal 1984	67,776	23,277	7,197	1,852	3,304	25,884	6,262
Closed fiscal 1984	46,356	15,167	4,848	1,147	2,164	18,788	4,242
Pending September 30, 1984	21,420	8,110	2,349	705	1,140	7,096	2,020
Unfair labor practice cases[2]							
Pending October 1, 1983	*20,686	7,601	2,206	886	1,025	6,986	1,982
Received fiscal 1984	35,529	11,142	2,903	640	1,445	16,257	3,142
On docket fiscal 1984	56,215	18,743	5,109	1,526	2,470	23,243	5,124
Closed fiscal 1984	37,783	11,923	3,244	926	1,572	16,707	3,411
Pending September 30, 1984	18,432	6,820	1,865	600	898	6,536	1,713
Representation cases[3]							
Pending October 1, 1983	*2,772	1,262	472	120	214	480	224
Received fiscal 1984	7,846	3,055	1,556	201	559	1,829	646
On docket fiscal 1984	10,618	4,317	2,028	321	773	2,309	870
Closed fiscal 1984	7,859	3,066	1,554	218	554	1,816	651
Pending September 30, 1984	2,759	1,251	474	103	219	493	219
Union-shop deauthorization cases							
Pending October 1, 1983	*76	—	—	—	—	76	—
Received fiscal 1984	254	—	—	—	—	254	—
On docket fiscal 1984	330	—	—	—	—	330	—
Closed fiscal 1984	264	—	—	—	—	264	—
Pending September 30, 1984	66	—	—	—	—	66	—
Amendment of certification cases							
Pending October 1, 1983	*10	6	0	0	4	0	0
Received fiscal 1984	36	19	5	0	10	0	2
On docket fiscal 1984	46	25	5	0	14	0	2
Closed fiscal 1984	36	21	5	0	8	0	2
Pending September 30, 1984	10	4	0	0	6	0	0
Unit clarification cases							
Pending October 1, 1983	*114	40	8	0	12	0	54
Received fiscal 1984	453	152	47	5	35	2	212
On docket fiscal 1984	567	192	55	5	47	2	266
Closed fiscal 1984	414	157	45	3	30	1	178
Pending September 30, 1984	153	35	10	2	17	1	88

[1] See Glossary for definitions of terms Advisory Opinion (AO) cases not included See table 22
[2] See table 1A for totals by types of cases
[3] See table 1B for totals by types of cases
* Revised, reflects lower figures than reported pending Sept 30, 1983, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1984[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
CA cases							
Pending October 1, 1983	*16,452	7,533	2,189	876	968	4,872	14
Received fiscal 1984	24,852	11,057	2,888	630	1,360	8,912	5
On docket fiscal 1984	41,304	18,590	5,077	1,506	2,328	13,784	19
Closed fiscal 1984	27,162	11,825	3,225	916	1,482	9,703	11
Pending September 30, 1984	14,142	6,765	1,852	590	846	4,081	8
CB cases							
Pending October 1, 1983	*2,972	42	15	10	33	2,099	773
Received fiscal 1984	8,899	52	13	7	52	7,334	1,441
On docket fiscal 1984	11,871	94	28	17	85	9,433	2,214
Closed fiscal 1984	8,652	60	16	7	52	6,989	1,528
Pending September 30, 1984	3,219	34	12	10	33	2,444	686
CC cases							
Pending October 1, 1983	*810	14	2	0	14	9	771
Received fiscal 1984	1,108	16	0	3	16	4	1,069
On docket fiscal 1984	1,918	30	2	3	30	13	1,840
Closed fiscal 1984	1,236	20	1	3	20	8	1,184
Pending September 30, 1984	682	10	1	0	10	5	656
CD cases							
Pending October 1, 1983	*175	8	0	0	4	2	161
Received fiscal 1984	283	11	0	0	11	2	259
On docket fiscal 1984	458	19	0	0	15	4	420
Closed fiscal 1984	319	11	0	0	12	4	292
Pending September 30, 1984	139	8	0	0	3	0	128
CE cases							
Pending October 1, 1983	*65	0	0	0	5	1	59
Received fiscal 1984	63	2	2	0	0	1	58
On docket fiscal 1984	128	2	2	0	5	2	117
Closed fiscal 1984	65	2	2	0	0	0	61
Pending September 30, 1984	63	0	0	0	5	2	56
CG cases							
Pending October 1, 1983	*16	0	0	0	0	1	15
Received fiscal 1984	34	0	0	0	2	0	32
On docket fiscal 1984	50	0	0	0	2	1	47
Closed fiscal 1984	33	0	0	0	1	1	31
Pending September 30, 1984	17	0	0	0	1	0	16
CP cases							
Pending October 1, 1983	*196	4	0	0	1	2	189
Received fiscal 1984	290	4	0	0	4	4	278
On docket fiscal 1984	486	8	0	0	5	6	467
Closed fiscal 1984	316	5	0	0	5	2	304
Pending September 30, 1984	170	3	0	0	0	4	163

[1] See Glossary for definition of terms

* Revised, reflects lower figures than reported pending Sept 30, 1983, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1984[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
				RC cases			
Pending October 1, 1983	*2,064	1,260	471	120	209	4	—
Received fiscal 1984	5,370	3,050	1,554	201	558	7	—
On docket fiscal 1984	7,434	4,310	2,025	321	767	11	—
Closed fiscal 1984	5,389	3,064	1,551	218	552	4	—
Pending September 30, 1984	2,045	1,246	474	103	215	7	—
				RM cases			
Pending October 1, 1983	*224	—	—	—	—	—	224
Received fiscal 1984	646	—	—	—	—	—	646
On docket fiscal 1984	870	—	—	—	—	—	870
Closed fiscal 1984	651	—	—	—	—	—	651
Pending September 30, 1984	219	—	—	—	—	—	219
				RD cases			
Pending October 1, 1983	*484	2	1	0	5	476	—
Received fiscal 1984	1,830	5	2	0	1	1,822	—
On docket fiscal 1984	2,314	7	3	0	6	2,298	—
Closed fiscal 1984	1,819	2	3	0	2	1,812	—
Pending September 30, 1984	495	5	0	0	4	486	—

[1] See Glossary for definition of terms

* Revised, reflects lower figures than reported pending Sept 30, 1983, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1984

	Number of cases showing specific allegations	Percent of total cases
A Charges filed against employers under sec 8(a)		
Subsections of sec 8(a) Total cases	24,852	100 0
8(a)(1)	3,824	15 4
8(a)(1)(2)	218	0 9
8(a)(1)(3)	9,408	37 9
8(a)(1)(4)	205	0 8
8(a)(1)(5)	7,280	29 3
8(a)(1)(2)(3)	176	0 7
8(a)(1)(2)(4)	4	0 0
8(a)(1)(2)(5)	124	0 5
8(a)(1)(3)(4)	653	2 6
8(a)(1)(3)(5)	2,714	10 9
8(a)(1)(4)(5)	12	0 0
8(a)(1)(2)(3)(4)	15	0 1
8(a)(1)(2)(3)(5)	125	0 5
8(a)(1)(2)(4)(5)	8	0 0
8(a)(1)(3)(4)(5)	68	0 3
8(a)(1)(2)(3)(4)(5)	18	0 1
Recapitulation[1]		
8(a)(1)[2]	24,852	100 0
8(a)(2)	688	2 8
8(a)(3)	13,177	53 1
8(a)(4)	983	3 9
8(a)(5)	10,349	40 2
B Charges filed against unions under sec 8(b)		
Subsections of sec 8(b) Total cases	10,580	100 0
8(b)(1)	6,307	59 6
8(b)(2)	124	1 2
8(b)(3)	525	5 0
8(b)(4)	1,391	13 2
8(b)(5)	7	0 1
8(b)(6)	4	0 0
8(b)(7)	290	2 7
8(b)(1)(2)	1,432	13 5
8(b)(1)(3)	366	3 5
8(b)(1)(5)	8	0 1
8(b)(1)(6)	12	0 1
8(b)(2)(3)	4	0 0
8(b)(3)(6)	7	0 1
8(b)(1)(2)(3)	81	0 8
8(b)(1)(2)(5)	12	0 1
8(b)(1)(2)(6)	2	0 0
8(b)(1)(3)(5)	1	0 0
8(b)(1)(3)(6)	2	0 0
8(b)(1)(2)(3)(5)	2	0 0
8(b)(1)(2)(3)(6)	2	0 0
8(b)(1)(2)(3)(5)(6)	1	0 0
Recapitulation[1]		
8(b)(1)	8,228	77 7
8(b)(2)	1,660	15 6
8(b)(3)	991	9 4
8(b)(4)	1,391	13 2
8(b)(5)	31	0 3
8(b)(6)	30	0 2
8(b)(7)	290	2 7

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1984—Continued

	Number of cases showing specific allegations	Percent of total cases
B1 Analysis of 8(b)(4)		
Total cases 8(b)(4)	1,391	100 0
8(b)(4)(A)	110	7 9
8(b)(4)(B)	939	67 5
8(b)(4)(C)	8	0 6
8(b)(4)(D)	283	20 4
8(b)(4)(A)(B)	43	3 1
8(b)(4)(A)(C)	2	0 1
8(b)(4)(B)(C)	4	0 3
8(b)(4)(A)(B)(C)	2	0 1
Recapitulation[1]		
8(b)(4)(A)	157	11 2
8(b)(4)(B)	988	71 0
8(b)(4)(C)	16	1 1
8(b)(4)(D)	283	20 4
B2 Analysis of 8(b)(7)		
Total cases 8(b)(7)	290	100 0
8(b)(7)(A)	59	20 4
8(b)(7)(B)	16	5 5
8(b)(7)(C)	208	71 7
8(b)(7)(A)(B)	2	0 7
8(b)(7)(A)(C)	3	1 0
8(b)(7)(B)(C)	2	0 7
Recapitulation[1]		
8(b)(7)(A)	64	22 1
8(b)(7)(B)	20	6 9
8(b)(7)(C)	213	73 4
C Charges filed under sec 8(e)		
Total cases 8(e)	63	100 0
Against unions alone	60	95 2
Against employers alone	2	3 2
Against unions and employers	1	1 6
D Charges filed under sec 8(g)		
Total cases 8(g)	34	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

[2] Sec 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1984[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 hearings issued	90	84	—	—	—	84	—	—	—	—	—	—	—
Complaints issued	5,243	3,609	3,064	338	119	—	10	10	9	29	6	8	16
Backpay specifications issued	175	155	111	41	0	—	0	0	0	0	1	2	0
Hearings completed, total	948	920	733	129	15	37	1	2	0	1	2	0	0
Initial ULP hearings	872	867	687	123	14	37	1	2	0	1	2	0	0
Backpay hearings	60	42	38	4	0	—	0	0	0	0	0	0	0
Other hearings	16	11	8	2	1	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	1,131	1,030	857	147	16	—	1	2	1	2	1	2	1
Initial ULP decisions	1,039	973	814	133	16	—	1	2	1	2	1	2	1
Backpay decisions	71	43	33	10	0	—	0	0	0	0	0	0	0
Supplemental decisions	21	14	10	4	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	2,123	1,456	1,155	203	40	50	4	2	0	2	0	0	0
Upon consent of parties													
Initial decisions	143	93	58	16	17	—	2	0	0	0	0	0	0
Supplemental decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed)													
Initial ULP decisions	444	340	282	52	2	—	2	0	0	2	0	0	0
Backpay decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Contested													
Initial ULP decisions	1,379	898	706	119	21	50	0	2	0	0	0	0	0
Decisions based on stipulated record	35	25	16	9	0	—	0	0	0	0	0	0	0
Supplemental ULP decisions	48	46	41	5	0	—	0	0	0	0	0	0	0
Backpay decisions	74	54	52	2	0	—	0	0	0	0	0	0	0

[1] See Glossary for definitions of terms

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1984[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	1,455	1,377	1,031	128	218	7
Initial hearings	1,224	1,159	842	120	197	6
Hearings on objections and/or challenges	231	218	189	8	21	1
Decisions issued, total	1,193	1,179	869	110	200	8
By regional directors	1,082	1,078	785	105	188	6
Elections directed	928	928	680	87	161	5
Dismissals on record	154	150	105	18	27	1
By Board	111	101	84	5	12	2
Transferred by regional directors for initial decision	39	19	17	0	2	0
Elections directed	22	12	10	0	2	0
Dismissals on record	17	7	7	0	0	0
Review of regional directors' decisions						
Requests for review received	592	530	509	9	12	2
Withdrawn before request ruled upon	0	0	0	0	0	0
Board action on request ruled upon, total	518	476	400	7	69	61
Granted	72	68	58	0	10	0
Denied	443	405	339	7	59	61
Remanded	3	3	3	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	86	82	75	2	5	0
Regional directors' decisions						
Affirmed	43	41	36	2	3	0
Modified	26	13	11	0	2	0
Reversed	17	8	8	0	0	0
Outcome						
Election directed	69	66	61	0	5	0
Dismissals on record	17	16	14	2	0	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1984[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Decisions on objections and/or challenges, total	977	953	834	28	91	12
By regional directors	318	317	286	11	20	9
By Board	659	636	548	17	71	3
In stipulated elections	601	581	501	15	65	3
No exceptions to regional directors' reports	344	342	309	8	25	0
Exceptions to regional directors' reports	256	239	192	7	40	3
In directed elections (after transfer by regional director)	54	51	43	2	6	0
Review of regional directors' supplemental decisions						
Request for review received	177	174	170	2	2	0
Withdrawn before request ruled upon	0	0	0	0	0	0
Board action on request ruled upon, total	186	165	163	0	1	0
Granted	21	21	20	0	0	0
Denied	161	143	142	0	1	0
Remanded	4	1	1	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	4	4	4	0	0	0
Regional directors' decisions						
Affirmed	1	1	1	0	0	0
Modified	1	1	1	0	0	0
Reversed	2	2	2	0	0	0

[1] See Glossary for definitions of terms

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1984[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	114	7	106
Decisions issued after hearing	116	6	108
By regional directors	107	6	97
By Board	9	0	9
Transferred by regional directors for initial decision	8	0	7
Review of regional directors' decisions			
Requests for review received	8	0	7
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	5	0	5
Granted	3	0	2
Denied	2	0	1
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	1	0	1
Modified	0	0	0
Reversed	0	0	0

[1] See Glossary for definitions of terms

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year1984[1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A By number of cases involved	[2]12,294	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	2,999	2,442	1,775	147	13	324	183	557	414	53	3	67	20
Recognition or other assistance withdrawn	56	56	37	5	0	9	5	—	—	—	—	—	—
Employer-dominated union disestablished	20	20	12	2	3	2	1	—	—	—	—	—	—
Employees offered reinstatement	3,539	3,539	2,793	182	19	297	248	—	—	—	—	—	—
Employees placed on preferential hiring list	1,263	1,263	979	79	6	106	93	—	—	—	—	—	—
Hiring hall rights restored	256	—	—	—	—	—	—	256	212	9	0	26	9
Objections to employment withdrawn	243	—	—	—	—	—	—	243	201	8	0	25	9
Picketing ended	385	—	—	—	—	—	—	385	365	16	0	2	2
Work stoppage ended	92	—	—	—	—	—	—	92	71	9	0	1	11
Collective bargaining begun	2,565	2,364	2,088	96	1	98	81	201	189	4	0	5	3
Backpay distributed	3,917	3,500	2,927	125	31	242	175	417	306	55	1	40	15
Reimbursement of fees, dues, and fines	1,718	1,344	1,044	74	12	114	100	374	274	55	0	30	15
Other conditions of employment improved	4,546	3,584	3,468	20	7	53	36	962	940	0	0	19	3
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	5,363	5,363	4,063	198	11	362	729	—	—	—	—	—	—
Accepted	4,309	4,309	3,559	142	9	218	381	—	—	—	—	—	—
Declined	1,054	1,054	504	56	2	144	348	—	—	—	—	—	—
Employees placed on preferential hiring list	727	727	646	35	0	31	15	0	0	0	0	0	0
Hiring hall rights restored	114	—	—	—	—	—	—	114	108	1	0	5	0
Objections to employment withdrawn	60	—	—	—	—	—	—	60	57	0	0	3	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year1984[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Employees receiving backpay													
From either employer or union	34,857	34,532	31,014	453	108	1,993	964	325	253	4	0	17	51
From both employer and union	335	331	118	0	0	213	0	4	3	0	1	0	0
Employees reimbursed for fees, dues, and fines													
From either employer or union	1,396	818	533	152	0	11	122	578	551	2	0	7	18
From both employer and union	185	184	1	0	0	183	0	1	1	0	0	0	0
C By amounts of monetary recovery, total	$38,869,729	$37,327,796	$23,797,734	$2,664,741	$462,652	$4,841,112	$5,561,557	$1,541,933	$754,337	$30,653	$3,944	$128,476	$624,523
Backpay (includes all monetary payments except fees, dues, and fines)	38,099,410	36,596,828	23,268,708	2,650,543	462,652	4,733,467	5,481,458	1,502,582	724,758	29,896	3,944	126,409	617,575
Reimbursement of fees, dues, and fines	770,319	730,968	529,026	14,198	0	107,645	80,099	39,351	29,579	757	0	2,067	6,948

[1] See Glossary for definition of terms Data in this table are based on unfair labor practice cases that were closed during fiscal year 1984 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 1984[1]

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
Food and kindred products	1,458	1,182	894	268	11	1	7	0	1	256	170	10	76	6	1	13
Tobacco manufacturers	31	30	25	5	0	0	0	0	0	1	1	0	0	0	0	0
Textile mill products	327	269	204	59	1	1	0	0	4	58	43	5	10	0	0	0
Apparel and other finished products made from fabric and similar materials	339	271	199	65	3	0	0	0	4	64	45	3	16	3	0	1
Lumber and wood products (except furniture)	563	399	319	75	4	1	0	0	0	151	99	14	38	3	2	8
Furniture and fixtures	417	331	262	62	6	0	1	0	0	78	57	6	15	4	0	4
Paper and allied products	588	484	368	107	7	2	0	0	0	93	78	1	14	2	0	9
Printing, publishing, and allied products	857	649	502	131	6	7	2	0	1	193	114	13	66	3	1	11
Chemicals and allied products	727	576	460	108	8	0	0	0	0	140	77	7	56	4	0	7
Petroleum refining and related industries	226	178	130	33	14	1	0	0	0	42	19	5	18	0	3	3
Rubber and miscellaneous plastic products	485	374	288	85	1	0	0	0	0	105	86	2	17	3	2	1
Leather and leather products	275	252	199	53	0	0	0	0	0	22	15	1	6	1	0	0
Stone, clay, glass, and concrete products	666	548	397	114	25	8	3	0	1	108	67	7	34	3	1	6
Primary metal industries	1,160	968	650	308	6	2	1	0	1	177	122	11	44	11	0	4
Fabricated metal products (except machinery and transportation equipment)	1,495	1,225	929	273	13	8	1	0	1	249	173	14	62	13	2	6
Machinery (except electrical)	1,622	1,319	919	326	38	23	7	0	6	286	190	19	77	9	0	8
Electrical and electronic machinery, equipment, and supplies	749	603	426	166	7	2	0	0	2	132	97	11	24	6	0	8
Aircraft and parts	320	301	171	128	2	0	0	0	0	19	10	0	9	0	0	0
Ship and boat building and repairing	276	245	137	103	4	1	0	0	0	28	16	1	11	1	1	1
Automotive and other transportation equipment	845	703	491	208	4	0	0	0	0	136	114	2	20	3	0	3
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks	292	231	180	50	0	0	0	0	1	55	37	7	11	4	0	2
Miscellaneous manufacturing industries	1,480	1,186	728	427	20	6	1	0	4	272	214	22	36	6	2	14
Manufacturing	15,198	12,324	8,878	3,154	180	63	23	0	26	2,665	1,844	161	660	85	15	109

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
Metal mining	306	235	63	168	3	0	1	0	0	71	4	31	36	0	0	0
Coal mining	489	456	302	102	29	1	0	0	22	32	25	1	6	1	0	0
Oil and gas extraction	114	86	40	14	21	6	0	0	5	24	9	5	10	2	0	2
Mining and quarrying of nonmetallic minerals (except fuels)	65	46	35	9	1	1	0	0	0	19	10	6	3	0	0	0
Mining	974	823	440	293	54	8	1	0	27	146	48	43	55	3	0	2
Construction	5,064	4,562	2,412	1,321	543	152	17	0	117	473	275	104	94	7	2	20
Wholesale trade	2,701	1,970	1,552	381	25	4	1	0	7	689	447	46	196	17	4	21
Retail trade	4,350	3,237	2,503	605	64	7	5	0	53	1,018	590	128	300	51	4	40
Finance, insurance, and real estate	586	441	338	90	10	1	0	0	2	135	104	7	24	5	1	4
U S Postal Service	1,355	1,353	1,044	306	1	1	0	0	1	2	1	0	1	0	0	0
Local and suburban transit and interurban highway passenger transportation	664	560	433	108	14	2	1	0	2	99	84	3	12	1	1	3
Motor freight transportation and warehousing	2,214	1,803	1,314	413	55	5	4	0	12	381	269	31	81	11	3	16
Water transportation	295	256	123	120	6	2	3	0	2	34	28	0	6	2	0	3
Other transportation	342	280	176	89	13	0	0	0	2	58	44	8	6	2	0	2
Communication	1,180	963	518	420	13	10	1	0	1	201	142	12	47	7	1	8
Electric, gas, and sanitary services	587	474	334	125	10	1	3	0	1	95	71	5	19	4	1	13
Transportation, communication, and other utilities	5,282	4,336	2,898	1,275	111	20	12	0	20	868	638	59	171	27	6	45
Hotels, rooming houses, camps, and other lodging places	1,186	979	704	247	23	3	0	0	2	169	116	16	37	12	0	26
Personal services	342	240	200	35	4	0	0	0	1	97	60	18	19	4	0	1
Automotive repair, services, and garages	398	258	207	48	3	0	0	0	0	132	94	9	29	4	0	4
Motion pictures	281	251	157	79	7	4	1	0	3	28	19	0	9	1	0	1
Amusement and recreation services (except motion pictures)	274	202	142	51	4	3	1	0	1	70	45	2	23	0	0	2
Health services	2,650	1,834	1,536	249	11	0	0	34	4	670	543	23	104	13	2	131
Educational services	215	148	116	22	9	0	0	0	1	62	52	2	8	0	0	5
Membership organizations	527	456	234	209	6	3	1	0	3	52	38	1	13	1	0	18
Business services	1,850	1,472	1,013	389	38	12	0	0	20	353	296	17	40	19	0	6
Miscellaneous repair services	191	144	102	38	3	1	0	0	0	44	23	3	18	1	1	1
Legal services	99	78	59	17	1	0	0	0	1	18	14	0	4	0	0	3
Museums, art galleries, and botanical and zoological gardens	8	5	4	0	1	0	0	0	0	3	1	0	2	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
Social services	248	154	139	12	1	1	0	0	1	83	65	4	14	2	1	8
Miscellaneous services	68	52	29	19	3	0	1	0	0	14	11	0	3	1	0	1
Services	8,337	6,273	4,642	1,415	114	27	4	34	37	1,795	1,377	95	323	58	4	207
Public administration	271	210	145	59	6	0	0	0	0	55	46	3	6	1	0	5
Total, all industrial groups	44,118	35,529	24,852	8,899	1,108	283	63	34	290	7,846	5,370	646	1,830	254	36	453

[1] See Glossary for definitions of terms
[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 1984[1]

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
Maine	159	123	99	18	2	0	4	0	0	31	20	0	11	3	0	2
New Hampshire	120	99	75	23	0	0	0	0	1	20	17	0	3	0	0	1
Vermont	58	45	35	10	0	0	0	0	0	13	13	0	0	0	0	0
Massachusetts	1,272	1,046	778	197	41	19	1	0	10	210	157	7	46	4	2	10
Rhode Island	128	105	75	12	11	6	0	0	1	22	16	2	4	0	0	1
Connecticut	833	710	552	129	17	4	2	1	5	105	82	3	20	10	3	5
New England	2,570	2,128	1,614	389	71	29	7	1	17	401	305	12	84	17	5	19
New York	4,411	3,577	2,177	1,225	90	38	5	14	28	723	598	33	92	17	1	93
New Jersey	1,613	1,249	898	282	36	22	4	0	7	336	276	13	47	10	1	17
Pennsylvania	2,519	2,117	1,406	568	82	35	9	4	13	366	280	14	72	11	2	23
Middle Atlantic	8,543	6,943	4,481	2,075	208	95	18	18	48	1,425	1,154	60	211	38	4	133
Ohio	2,553	2,091	1,454	509	84	13	5	4	22	421	306	21	94	19	1	21
Indiana	1,635	1,442	1,042	361	21	10	1	1	6	179	134	7	38	6	0	8
Illinois	2,447	2,004	1,347	526	61	33	7	1	29	413	290	27	96	22	0	8
Michigan	2,170	1,665	1,284	332	40	4	0	0	5	471	369	12	90	22	2	10
Wisconsin	959	751	598	138	8	5	1	1	0	189	112	16	61	4	2	13
East North Central	9,764	7,953	5,725	1,866	214	65	14	7	62	1,673	1,211	83	379	73	5	60
Iowa	332	250	194	46	5	1	0	0	4	77	49	5	23	0	1	4
Minnesota	620	399	296	59	37	2	1	0	4	204	94	19	91	3	0	14
Missouri	1,343	1,088	780	237	51	12	3	0	5	238	152	16	70	10	0	7
North Dakota	60	40	34	6	0	0	0	0	0	19	10	2	7	0	0	1
South Dakota	17	10	4	6	0	0	0	0	0	7	4	2	1	0	0	0
Nebraska	169	139	116	21	0	0	0	0	2	30	19	3	8	0	0	0
Kansas	283	229	165	48	14	1	0	0	1	50	28	5	17	0	0	4
West North Central	2,824	2,155	1,589	423	107	16	4	0	16	625	356	52	217	13	1	30
Delaware	96	76	61	9	5	0	0	0	1	18	15	1	2	1	0	1
Maryland	755	622	409	206	7	0	0	0	0	127	110	0	17	0	1	5

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
District of Columbia	296	231	180	43	7	0	0	0	1	55	48	2	5	0	0	10
Virginia	518	415	326	88	0	1	0	0	0	99	81	2	16	0	0	4
West Virginia	497	450	289	106	24	5	0	1	25	40	36	0	4	2	1	4
North Carolina	399	328	284	43	1	0	0	0	0	69	55	1	13	0	2	0
South Carolina	185	153	111	41	1	0	0	0	0	31	24	1	6	0	1	0
Georgia	823	693	530	152	2	6	1	0	2	128	103	4	21	0	0	2
Florida	946	770	617	136	12	0	2	0	3	172	142	5	25	1	0	3
South Atlantic	4,515	3,738	2,807	824	59	12	3	1	32	739	614	16	109	4	5	29
Kentucky	734	626	499	102	23	1	0	0	1	95	74	4	17	2	0	11
Tennessee	716	608	499	99	6	1	0	0	3	106	75	4	27	0	0	2
Alabama	421	334	256	76	0	0	0	0	2	86	58	5	23	0	0	1
Mississippi	223	177	151	24	2	0	0	0	0	43	34	2	7	0	1	2
East South Central	2,094	1,745	1,405	301	31	2	0	0	6	330	241	15	74	2	1	16
Arkansas	187	141	122	19	0	0	0	0	0	45	27	1	17	0	0	1
Louisiana	472	388	239	138	9	1	0	1	0	79	58	0	21	0	2	3
Oklahoma	365	304	222	75	7	0	0	0	0	57	25	7	25	3	0	1
Texas	1,249	1,030	745	271	8	6	0	0	0	209	141	20	48	0	4	6
West South Central	2,273	1,863	1,328	503	24	7	0	1	0	390	251	28	111	3	6	11
Montana	186	110	79	21	5	4	0	1	0	70	46	5	19	5	0	1
Idaho	128	84	69	12	0	3	0	0	0	36	26	1	9	2	0	6
Wyoming	48	38	22	16	0	0	0	0	0	9	3	1	5	0	0	1
Colorado	611	509	386	118	5	0	0	0	0	93	53	16	24	5	0	4
New Mexico	178	147	97	50	0	0	0	0	0	28	16	2	10	1	0	2
Arizona	557	427	205	218	3	0	1	0	0	128	31	41	56	0	0	2
Utah	114	85	61	23	1	0	0	0	0	27	16	1	10	1	0	1
Nevada	647	576	351	182	33	4	1	0	5	50	32	1	17	0	0	21
Mountain	2,469	1,976	1,270	640	47	11	2	1	5	441	223	68	150	14	0	38

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
Washington	1,274	892	606	236	33	4	1	0	12	337	151	47	139	21	1	23
Oregon	525	309	228	66	12	1	1	0	1	179	70	29	80	20	0	17
California	6,327	5,144	3,313	1,413	280	37	11	4	86	1,076	611	221	244	33	6	68
Alaska	282	229	125	79	17	4	1	0	3	50	34	8	8	2	0	1
Hawaii	328	238	198	33	5	0	1	0	1	75	54	4	17	14	0	1
Guam	4	1	0	1	0	0	0	0	0	3	3	0	0	0	0	0
Pacific	8,740	6,813	4,470	1,828	347	46	15	4	103	1,720	923	309	488	90	7	110
Puerto Rico	296	193	142	49	0	0	0	1	1	94	85	3	6	0	2	7
Virgin Islands	30	22	21	1	0	0	0	0	0	8	7	0	1	0	0	0
Outlying areas	326	215	163	50	0	0	0	1	1	102	92	3	7	0	2	7
Total, all States and areas	44,118	35,529	24,852	8,899	1,108	283	63	34	290	7,846	5,370	646	1,830	254	36	453

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

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1984[1]

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	833	710	552	129	17	4	2	1	5	105	82	3	20	10	3	5
Maine	159	123	99	18	2	0	4	0	0	31	20	0	11	3	0	2
Massachusetts	1,272	1,046	778	197	41	19	1	0	10	210	157	7	46	4	2	10
New Hampshire	120	99	75	23	0	0	0	0	1	20	17	0	3	0	0	1
Rhode Island	128	105	75	12	11	6	0	0	1	22	16	2	4	0	0	1
Vermont	58	45	35	10	0	0	0	0	0	13	13	0	0	0	0	0
Region I	2,570	2,128	1,614	389	71	29	7	1	17	401	305	12	84	17	5	19
Delaware	96	76	61	9	5	0	0	0	1	18	15	1	2	1	0	1
New Jersey	1,613	1,249	898	282	36	22	4	0	7	336	276	13	47	10	1	17
New York	4,411	3,577	2,177	1,225	90	38	5	14	28	723	598	33	92	17	1	93
Puerto Rico	296	193	142	49	0	0	0	1	1	94	85	3	6	0	2	7
Virgin Islands	30	22	21	1	0	0	0	0	0	8	7	0	1	0	0	0
Region II	6,446	5,117	3,299	1,566	131	60	9	15	37	1,179	981	50	148	28	4	118
District of Columbia	296	231	180	43	7	0	0	0	1	55	48	2	5	0	0	10
Maryland	755	622	409	206	7	0	0	0	0	127	110	0	17	0	1	5
Pennsylvania	2,519	2,117	1,406	568	82	35	9	4	13	366	280	14	72	11	2	23
Virginia	518	415	326	88	0	1	0	0	0	99	81	2	16	0	0	4
West Virginia	497	450	289	106	24	5	0	1	25	40	36	0	4	2	1	4
Region III	4,585	3,835	2,610	1,011	120	41	9	5	39	687	555	18	114	13	4	46
Alabama	421	334	256	76	0	0	0	0	2	86	58	5	23	0	0	1
Florida	946	770	617	136	12	0	2	0	3	172	142	5	25	1	0	3
Georgia	823	693	530	152	2	6	1	0	2	128	103	4	21	0	0	2
Kentucky	734	626	499	102	23	1	0	0	1	95	74	4	17	2	0	11
Mississippi	223	177	151	24	2	0	0	0	0	43	34	2	7	0	1	2
North Carolina	399	328	284	43	1	0	0	0	0	69	55	1	13	0	2	0

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
South Carolina	185	153	111	41	1	0	0	0	0	31	24	1	6	0	1	
Tennessee	716	608	499	99	6	1	0	0	3	106	75	4	27	0	0	2
Region IV	4,447	3,689	2,947	673	47	8	3	0	11	730	565	26	139	3	4	21
Illinois	2,447	2,004	1,347	526	61	33	7	1	29	413	290	27	96	22	0	8
Indiana	1,635	1,442	1,042	361	21	10	1	1	6	179	134	7	38	6	0	8
Michigan	2,170	1,665	1,284	332	40	4	0	0	5	471	369	12	90	22	2	10
Minnesota	620	399	296	59	37	2	1	0	4	204	94	19	91	3	0	14
Ohio	2,553	2,091	1,454	509	84	13	5	4	22	421	306	21	94	19	1	21
Wisconsin	959	751	598	138	8	5	1	1	0	189	112	16	61	4	2	13
Region V	10,384	8,352	6,021	1,925	251	67	15	7	66	1,877	1,305	102	470	76	5	74
Arkansas	187	141	122	19	0	0	0	0	0	45	27	1	17	0	0	1
Louisiana	472	388	239	138	9	1	0	1	0	79	58	0	21	0	2	3
New Mexico	178	147	97	50	0	0	0	0	0	28	16	2	10	1	0	2
Oklahoma	365	304	222	75	7	0	0	0	0	57	25	7	25	3	0	1
Texas	1,249	1,030	745	271	8	6	0	0	0	209	141	20	48	0	4	6
Region VI	2,451	2,010	1,425	553	24	7	0	1	0	418	267	30	121	4	6	13
Iowa	332	250	194	46	5	1	0	0	4	77	49	5	23	0	1	4
Kansas	283	229	165	48	14	1	0	0	1	50	28	5	17	0	0	4
Missouri	1,343	1,088	780	237	51	12	3	0	5	238	152	16	70	10	0	7
Nebraska	169	139	116	21	0	0	0	0	2	30	19	3	8	0	0	0
Region VII	2,127	1,706	1,255	352	70	14	3	0	12	395	248	29	118	10	1	15
Colorado	611	509	386	118	5	0	0	0	0	93	53	16	24	5	0	4
Montana	186	110	79	21	5	4	0	1	0	70	46	5	19	5	0	1
North Dakota	60	40	34	6	0	0	0	0	0	19	10	2	7	0	0	1
South Dakota	17	10	4	6	0	0	0	0	0	7	4	2	1	0	0	0
Utah	114	85	61	23	1	0	0	0	0	27	16	1	10	1	0	1
Wyoming	48	38	22	16	0	0	0	0	0	9	3	1	5	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1984[1]—Continued

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
Region VIII	1,036	792	586	190	11	4	0	1	0	225	132	27	66	11	0	8
Arizona	557	427	205	218	3	0	1	0	0	128	31	41	56	0	0	2
California	6,327	5,144	3,313	1,413	280	37	11	4	86	1,076	611	221	244	33	6	68
Hawaii	328	238	198	33	5	0	1	0	1	75	54	4	17	14	0	1
Guam	4	1	0	1	0	0	0	0	0	3	3	0	0	0	0	0
Nevada	647	576	351	182	33	4	1	0	5	50	32	1	17	0	0	21
Region IX	7,863	6,386	4,067	1,847	321	41	14	4	92	1,332	731	267	334	47	6	92
Alaska	282	229	125	79	17	4	1	0	3	50	34	8	8	2	0	1
Idaho	128	84	69	12	0	3	0	0	0	36	26	1	9	2	0	6
Oregon	525	309	228	66	12	1	1	0	1	179	70	29	80	20	0	17
Washington	1,274	892	606	236	33	4	1	0	12	337	151	47	139	21	1	23
Region X	2,209	1,514	1,028	393	62	12	3	0	16	602	281	85	236	45	1	47
Total, all States and areas	44,118	35,529	24,852	8,899	1,108	283	63	34	290	7,846	5,370	646	1,830	254	36	453

[1] See Glossary for definitions of terms
[2] The States are grouped according to the 10 Standard Federal Administrative Regions

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1984[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		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	37,783	100 0	——	27,162	100 0	8,652	100 0	1,236	100 0	319	100 0	65	100 0	33	100 0	316	100 0
Agreement of the parties	11,085	29 4	100 0	8,787	32 3	1,530	17 8	614	49 7	4	1 3	14	21 5	17	51 7	119	37 7
Informal settlement	10,715	28 3	96 7	8,545	31 5	1,480	17 1	545	44 1	4	1 3	11	16 9	15	45 7	115	36 4
Before issuance of complaint	6,985	18 5	63 0	5,445	20 1	1,031	11 9	409	33 1	[2]	——	5	7 7	14	42 7	81	25 6
After issuance of complaint, before opening of hearing	3,671	9 7	33 1	3,046	11 2	444	5 1	136	11 0	4	1 3	6	9 2	1	3 0	34	10 8
After hearing opened, before issuance of administrative law judge's decision	59	0 2	0 6	54	0 2	5	0 1	0	0 0	0	0 0	0	0 0	0	0 0	0	0 0
Formal settlement	370	1 0	3 3	242	0 8	50	0 7	69	5 6	0	0 0	3	4 6	2	6 0	4	1 3
After issuance of complaint, before opening of hearing	257	0 7	2 3	137	0 5	45	0 6	66	5 4	0	0 0	3	4 6	2	6 0	4	1 3
Stipulated decision	33	0 1	0 3	21	0 1	5	0 1	6	0 5	0	0 0	0	0 0	1	3 0	0	0 0
Consent decree	224	0 6	2 0	116	0 4	40	0 5	60	4 9	0	0 0	3	4 6	1	3 0	4	1 3
After hearing opened	113	0 3	1 0	105	0 3	5	0 1	3	0 2	0	0 0	0	0 0	0	0 0	0	0 0
Stipulated decision	12	0 0	0 1	12	0 0	0	0 0	0	0 0	0	0 0	0	0 0	0	0 0	0	0 0
Consent decree	101	0 3	0 9	93	0 3	5	0 1	3	0 2	0	0 0	0	0 0	0	0 0	0	0 0
Compliance with	1,071	2 8	100 0	891	3 4	132	1 5	31	2 5	2	0 6	7	10 8	3	9 0	5	1 6
Administrative law judge's decision	48	0 1	4 5	42	0 2	2	0 0	2	0 2	0	0 0	2	3 1	0	0 0	0	0 0
Board decision	666	1 8	62 2	546	2 0	101	1 2	14	1 1	1	0 3	0	0 0	1	3 0	3	1 0
Adopting administrative law judge's decision (no exceptions filed)	294	0 8	27 5	244	0 9	43	0 5	5	0 4	0	0 0	0	0 0	1	3 0	1	0 4
Contested	372	1 0	34 7	302	1 1	58	0 7	9	0 7	1	0 3	0	0 0	0	0 0	2	0 6
Circuit court of appeals decree	342	0 9	31 9	289	1 1	29	0 3	15	1 2	1	0 3	4	6 2	2	6 0	2	0 6

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1984[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		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
Supreme court action	15	00	14	14	01	0	00	0	00	0	00	1	15	0	00	0	00
Withdrawal	11,709	310	1000	8,296	305	2,894	334	376	304	0	00	25	385	10	303	108	341
Before issuance of complaint	11,319	300	967	7,966	293	2,849	329	365	295	[2]	——	23	354	10	303	106	335
After issuance of complaint, before opening of hearing	368	10	31	308	11	45	05	11	09	0	00	2	31	0	00	2	06
After hearing opened, before administrative law judge's decision	22	00	02	22	01	0	00	0	00	0	00	0	00	0	00	0	00
After administrative law judge's decision, before Board decision	0	00	00	0	00	0	00	0	00	0	00	0	00	0	00	0	00
After Board or court decision	0	00	00	0	00	0	00	0	00	0	00	0	00	0	00	0	00
Dismissal	13,534	358	1000	9,120	335	4,094	473	214	173	0	00	19	292	3	90	84	266
Before issuance of complaint	12,982	344	959	8,655	319	4,016	464	210	170	[2]	——	19	292	3	90	79	250
After issuance of complaint, before opening of hearing	179	05	13	164	06	14	02	1	01	0	00	0	00	0	00	0	00
After hearing opened, before administrative law judge's decision	12	00	01	11	00	1	00	0	00	0	00	0	00	0	00	0	00
By administrative law judge's decision	0	00	00	0	00	0	00	0	00	0	00	0	00	0	00	0	00
By Board decision	330	09	25	263	10	59	07	3	02	0	00	0	00	0	00	5	16
Adopting administrative law judge's decision (no exceptions filed)	9	00	01	6	00	3	00	0	00	0	00	0	00	0	00	0	00
Contested	321	09	24	257	10	56	07	3	02	0	00	0	00	0	00	5	16
By circuit court of appeals decree	29	01	02	25	01	4	00	0	00	0	00	0	00	0	00	0	00
By Supreme Court action	2	00	00	2	00	0	00	0	00	0	00	0	00	0	00	0	00
10(k) actions (see table 7A for details of dispositions)	313	08	00	0	00	0	00	0	00	313	981	0	00	0	00	0	00
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	71	02	00	68	03	2	00	1	01	0	00	0	00	0	00	0	00

[1] See table 8 for summary of disposition by stage See Glossary for definitions of terms
[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 1984[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	313	100 0
Agreement of the parties—informal settlement	130	41 5
Before 10(k) notice	90	28 8
After 10(k) notice, before opening of 10(k) hearing	38	12 1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	0 6
Compliance with Board decision and determination of dispute	8	2 6
Withdrawal	116	37 1
Before 10(k) notice	101	32 3
After 10(k) notice, before opening of 10(k) hearing	13	4 2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	0 6
After Board decision and determination of dispute	0	0 0
Dismissal	59	18 8
Before 10(k) notice	40	12 7
After 10(k) notice, before opening of 10(k) hearing	9	2 9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	4	1 3
By Board decision and determination of dispute	6	1 9

[1] See Glossary for definition of terms

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1984[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	37,783	100 0	27,162	100 0	8,652	100 0	1,236	100 0	319	100 0	65	100 0	33	100 0	316	100 0
Before issuance of complaint	31,599	83 7	22,066	81 2	7,896	91 3	984	79 6	313	98 1	47	72 3	27	82 0	266	84 1
After issuance of complaint, before opening of hearing	4,475	11 8	3,655	13 5	548	6 3	214	17 3	4	1 3	11	16 9	3	9 0	40	12 7
After hearing opened, before issuance of administrative law judge's decision	206	0 5	192	0 6	11	0 2	3	0 2	0	0 0	0	0 0	0	0 0	0	0 0
After administrative law judge's decision, before issuance of Board decision	48	0 1	42	0 2	2	0 0	2	0 2	0	0 0	2	3 1	0	0 0	0	0 0
After Board order adopting administrative law judge's decision in absence of exceptions	303	0 9	250	0 9	46	0 5	5	0 4	0	0 0	0	0 0	1	3 0	1	0 4
After Board decision, before circuit court decree	764	2 0	627	2 3	116	1 4	13	1 1	1	0 3	0	0 0	0	0 0	7	2 2
After circuit court decree, before Supreme Court action	371	1 0	314	1 2	33	0 3	15	1 2	1	0 3	4	6 2	2	6 0	2	0 6
After Supreme Court action	17	0 0	16	0 1	0	0 0	0	0 0	0	0 0	1	1 5	0	0 0	0	0 0

[1] See Glossary for definitions of terms

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1984[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	7,859	100 0	5,389	100 0	651	100 0	1,819	100 0	264	100 0
Before issuance of notice of hearing	2,548	32 5	1,336	24 8	326	50 0	886	48 7	195	73 8
After issuance of notice, before close of hearing	4,077	51 9	3,150	58 4	214	32 9	713	39 2	21	8 0
After hearing closed, before issuance of decision	76	1 0	56	1 0	11	1 7	9	0 5	0	0 0
After issuance of regional director's decision	1,063	13 4	768	14 3	97	14 9	198	10 9	48	18 2
After issuance of Board decision	95	1 2	79	1 5	3	0 5	13	0 7	0	0 0

[1] See Glossary for definitions of terms

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1984[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	7,859	100 0	5,389	100 0	651	100 0	1,819	100 0	264	100 0
Certification issued, total	4,896	62 3	3,646	67 6	296	45 5	954	52 4	148	56 1
After										
Consent election	183	2 3	114	2 1	18	2 8	51	2 8	15	5 7
Before notice of hearing	74	0 9	40	0 7	11	1 7	23	1 3	14	5 3
After notice of hearing, before hearing closed	109	1 4	74	1 4	7	1 1	28	1 5	1	0 4
After hearing closed, before decision	0	0 0	0	0 0	0	0 0	0	0 0	0	0 0
Stipulated election	3,943	50 2	2,974	55 2	207	31 8	762	41 9	87	33 0
Before notice of hearing	1,215	15 5	806	15 0	92	14 1	317	17 4	71	26 9
After notice of hearing, before hearing closed	2,704	34 4	2,147	39 8	114	17 5	443	24 4	16	6 1
After hearing closed, before decision	24	0 3	21	0 4	1	0 2	2	0 1	0	0 0
Expedited election	5	0 1	1	0 0	4	0 6	0	0 0	0	0 0
Regional director-directed election	744	9 4	539	10 0	66	10 1	139	7 6	46	17 4
Board-directed election	21	0 3	18	0 3	1	0 2	2	0 1	0	0 0
By withdrawal, total	2,206	28 1	1,422	26 4	224	34 4	560	30 8	87	32 9
Before notice of hearing	919	11 7	426	7 9	149	22 9	344	18 9	83	31 4
After notice of hearing, before hearing closed	1,114	14 2	864	16 0	59	9 0	191	10 5	3	1 1
After hearing closed, before decision	45	0 6	31	0 6	9	1 4	5	0 3	0	0 0
After regional director's decision and direction of election	127	1 6	100	1 9	7	1 1	20	1 1	1	0 4
After Board decision and direction of election	1	0 0	1	0 0	0	0 0	0	0 0	0	0 0
By dismissal, total	757	9 6	321	6 0	131	20 1	305	16 8	29	11 0
Before notice of hearing	335	4 3	63	1 2	70	10 7	202	11 1	27	10 2
After notice of hearing, before hearing closed	150	1 9	65	1 2	34	5 2	51	2 8	1	0 4
After hearing closed, before decision	7	0 1	4	0 1	1	0 2	2	0 1	0	0 0
By regional director's decision	192	2 4	129	2 4	24	3 7	39	2 2	1	0 4
By Board decision	73	0 9	60	1 1	2	0 3	11	0 6	0	0 0

[1] See Glossary for definitions of terms

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1984

	AC	UC
Total, all	36	414
Certification amended or unit clarified	10	59
Before hearing	0	0
By regional director's decision	0	0
By Board decision	0	0
After hearing	10	59
By regional director's decision	10	59
By Board decision	0	0
Dismissed	8	137
Before hearing	2	25
By regional director's decision	2	25
By Board decision	0	0
After hearing	6	112
By regional director's decision	5	108
By Board decision	1	4
Withdrawn	18	218
Before hearing	18	218
After hearing	0	0

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1984[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total						
Elections	4,512	144	3,668	24	676	0
Eligible voters	254,305	3,614	204,780	3,260	42,651	0
Valid votes	224,934	3,041	182,563	2,866	36,464	0
RC cases						
Elections	3,336	77	2,769	19	471	0
Eligible voters	205,717	1,905	168,616	1,881	33,315	0
Valid votes	182,444	1,583	150,713	1,668	28,480	0
RM cases						
Elections	225	12	165	1	47	0
Eligible voters	5,979	174	4,677	237	891	0
Valid votes	5,225	156	4,124	222	723	0
RD cases						
Elections	875	49	696	4	126	0
Eligible voters	37,816	1,319	29,242	1,142	6,113	0
Valid votes	33,354	1,134	25,915	976	5,329	0
UD cases						
Elections	76	6	38	0	32	—
Eligible voters	4,793	216	2,245	0	2,332	—
Valid votes	3,911	168	1,811	0	1,932	—

[1] See Glossary for definitions of terms

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1984

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[1]	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 types	4,567	41	90	4,436	3,447	35	76	3,336	232	5	2	225	888	1	12	875
Rerun required	—	—	72	—	—	—	60	—	—	—	1	—	—	—	11	—
Runoff required	—	—	18	—	—	—	16	—	—	—	1	—	—	—	1	—
Consent elections	145	6	1	138	82	4	1	77	14	2	0	12	49	0	0	49
Rerun required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,715	19	66	3,630	2,843	18	56	2,769	166	0	1	165	706	1	9	696
Rerun required	—	—	55	—	—	—	46	—	—	—	1	—	—	—	8	—
Runoff required	—	—	11	—	—	—	10	—	—	—	0	—	—	—	1	—
Regional director-directed	678	15	19	644	499	13	15	471	50	2	1	47	129	0	3	126
Rerun required	—	—	14	—	—	—	11	—	—	—	0	—	—	—	3	—
Runoff required	—	—	5	—	—	—	4	—	—	—	1	—	—	—	0	—
Board-directed	29	1	4	24	23	0	4	19	2	1	0	1	4	0	0	4
Rerun required	—	—	2	—	—	—	2	—	—	—	0	—	—	—	0	—
Runoff required	—	—	2	—	—	—	2	—	—	—	0	—	—	—	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	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1984

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	4,567	593	13 0	251	5 5	179	3 9	772	17 0	430	9 5
By type of case											
In RC cases	3,447	483	14 1	200	5 8	153	4 5	636	10 6	353	10 3
In RM cases	232	27	11 6	14	6 0	6	2 6	33	14 2	20	8 6
In RD cases	888	83	9 3	37	4 2	20	2 3	103	11 6	57	6 4
By type of election											
Consent elections	145	15	10 3	9	6 2	3	2 1	18	12 4	12	8 3
Stipulated elections	3,715	448	12 1	187	5 1	131	3 5	579	15 7	318	8 6
Expedited elections	0	0	——	0	——	0	——	0	——	0	——
Regional director-directed elections	678	125	18 4	55	8 1	43	6 3	168	24 8	98	14 5
Board-directed elections	29	5	17 2	0	0 0	2	6 9	7	24 1	2	6 9

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1984[1]

	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	847	100 0	262	30 9	505	59 6	80	9 4
By type of case								
RC cases	705	100 0	225	31 9	456	64 7	24	3 4
RM cases	33	100 0	7	21 2	12	36 4	14	42 4
RD cases	109	100 0	30	27 5	37	33 9	42	38 5
By type of election								
Consent elections	19	100 0	8	42 1	9	47 4	2	10 5
Stipulated elections	634	100 0	184	29 0	394	62 1	56	8 8
Expedited elections	0	—	0	—	0	—	0	—
Regional director-directed elections	187	100 0	69	36 9	96	51 3	22	11 8
Board-directed elections	7	100 0	1	14 3	6	85 7	0	0 0

[1] See Glossary for definitions of terms
[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 1984[1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained[2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	847	75	772	591	76 6	181	23 4
By type of case							
RC cases	705	69	636	484	76 1	152	23 9
RM cases	33	0	33	28	84 8	5	15 2
RD cases	109	6	103	79	76 7	24	23 3
By type of election							
Consent elections	19	1	18	11	61 1	7	38 9
Stipulated elections	634	55	579	460	79 4	119	20 6
Expedited elections	0	0	0	0	—	0	—
Regional director-directed elections	187	19	168	114	67 9	54	32 1
Board-directed elections	7	0	7	6	85 7	1	14 3

[1] See Glossary for definitions of terms
[2] See table 11E for rerun elections held after objections were sustained In 109 elections in which objections were sustained, the cases were subsequently withdrawn Therefore, in these cases no rerun elections were conducted

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1984[1]

	Total rerun elections[2]		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	69	100 0	26	37 7	43	62 3	52	75 4
By type of case								
RC cases	57	100 0	23	40 4	34	59 6	44	77 2
RM cases	2	100 0	0	0 0	2	100 0	0	0 0
RD cases	10	100 0	3	30 0	7	70 0	8	80 0
By type of election								
Consent elections	1	100 0	0	—	1	100 0	0	—
Stipulated elections	43	100 0	16	37 2	27	62 8	36	83 7
Expedited elections	0	—	0	—	0	—	0	—
Regional director-directed elections	15	100 0	7	46 7	8	53 3	10	66 7
Board-directed elections	10	100 0	3	30 0	7	70 0	6	60 0

[1] See Glossary for definitions of terms

[2] More than one rerun election was conducted in three cases, however, only the final election is included in this table

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1984

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total	76	54	71 1	22	28 9	4,793	2,706	56 5	2,087	43 5	3,911	81 6	2,320	48 4
AFL-CIO unions	56	38	67 9	18	32 1	3,103	1,594	51 4	1,509	48 6	2,495	80 4	1,368	44 1
Teamsters	8	6	75 0	2	25 5	117	73	62 4	44	37 6	91	77 8	54	46 2
Other national unions	4	3	75 0	1	25 0	646	193	29 9	453	70 1	535	82 8	171	26 5
Other local unions	8	7	87 5	1	12 5	927	846	91 3	81	8 7	790	85 2	727	78 4

[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 1984[1]

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	Teamsters	Other national unions	Other local unions		Total	In elections won	AFL-CIO unions	In units won by			
												Teamsters	Other national unions	Other local unions	
							A All representation elections								
AFL-CIO	2,583	41 1	1,061	1,061	—	—	—	1,522	140,699	46,590	46,590	—	—	—	94,109
Teamsters	1,252	35 1	440	—	440	—	—	812	41,309	11,840	—	11,840	—	—	29,469
Other national unions	113	51 3	58	—	—	58	—	55	6,333	1,718	—	—	1,718	—	4,615
Other local unions	311	51 4	160	—	—	—	160	151	15,479	7,206	—	—	—	7,206	8,273
1-union elections	4,259	40 4	1,719	1,061	440	58	160	2,540	203,820	67,354	46,590	11,840	1,718	7,206	136,446
AFL-CIO v AFL-CIO	26	73 1	19	19	—	—	—	7	2,441	1,400	1,400	—	—	—	1,041
AFL-CIO v Teamsters	29	69 0	20	4	16	—	—	9	2,252	1,414	374	1,040	—	—	838
AFL-CIO v National	15	66 7	10	5	—	5	—	5	1,714	888	575	—	313	—	826
AFL-CIO v Local	51	88 2	45	24	—	—	21	6	8,539	7,521	2,687	—	—	4,834	1,018
Teamsters v National	3	66 7	2	—	1	1	—	1	88	57	—	35	22	—	31
Teamsters v Local	17	82 4	14	—	8	—	6	3	4,238	957	—	462	—	495	3,281
Teamsters v Teamsters	1	100 0	1	—	1	—	—	0	4,458	4,458	—	4,458	—	—	0
National v Local	7	85 7	6	—	—	2	4	1	647	639	—	—	248	391	8
National v National	3	100 0	3	—	—	3	—	0	547	547	—	—	547	—	0
Local v Local	16	81 3	13	—	—	—	13	3	1,313	1,229	—	—	—	1,229	84
2-union elections	168	79 2	133	52	26	11	44	35	26,237	19,110	5,036	5,995	1,130	6,949	7,127
AFL-CIO v AFL-CIO v AFL-CIO	2	100 0	2	2	—	—	—	0	77	77	77	—	—	—	0
AFL-CIO v AFL-CIO v Local	2	100 0	2	2	—	—	0	0	516	516	516	—	—	0	0
AFL-CIO v Teamsters v Local	2	100 0	2	2	0	—	0	0	341	341	341	0	—	0	0
AFL-CIO v Local v Local	1	100 0	1	1	—	—	0	0	18,200	18,200	18,200	—	—	0	0
Teamsters v Local v Local	1	100 0	1	—	0	—	1	0	197	197	—	0	—	197	0
Local v Local v Local	1	100 0	1	—	—	—	1	0	124	124	—	—	—	124	0
3(or more)-union elections	9	100 0	9	7	0	0	2	0	19,455	19,455	19,134	0	0	321	0
Total representation elections	4,436	42 0	1,861	1,120	466	69	206	2,575	249,512	105,919	70,760	17,835	2,848	14,476	143,593

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	In elections won	AFL–CIO unions	In units won by			
												Teamsters	Other national unions	Other local unions	
B Elections in RC cases															
AFL–CIO	1,897	47 3	898	898	—	—	—	999	108,986	36,142	36,142	—	—	—	72,844
Teamsters	936	41 0	384	—	384	—	—	552	33,688	9,135	—	9,135	—	—	24,553
Other national unions	94	56 4	53	—	—	53	—	41	5,777	1,430	—	—	1,430	—	4,347
Other local unions	253	54 9	139	—	—	—	139	114	13,100	6,359	—	—	—	6,359	6,741
1-union elections	3,180	46 4	1,474	898	384	53	139	1,706	161,551	53,066	36,142	9,135	1,430	6,359	108,485
AFL–CIO v AFL–CIO	23	73 9	17	17	—	—	—	6	2,116	1,120	1,120	—	—	—	996
AFL–CIO v Teamsters	26	65 4	17	3	14	—	—	9	2,166	1,328	320	1,008	—	—	838
AFL–CIO v National	11	63 6	7	4	—	3	—	4	1,403	599	363	—	236	—	804
AFL–CIO v Local	46	87 0	40	20	—	—	20	6	8,033	7,015	2,309	—	—	4,706	1,018
Teamsters v National	3	66 7	2	—	1	1	—	1	88	57	—	35	22	—	31
Teamsters v Local	15	80 0	12	—	7	—	5	3	4,003	722	—	427	—	295	3,281
Teamsters v Teamsters	1	100 0	1	—	1	—	—	0	4,458	4,458	—	4,458	—	—	0
National v Local	7	85 7	6	—	—	2	4	1	647	639	—	—	248	391	8
National v National	3	100 0	3	—	—	3	—	0	547	547	—	—	547	—	0
Local v Local	13	84 6	11	—	—	—	11	2	1,256	1,186	—	—	—	1,186	70
2-union elections	148	78 4	116	44	23	9	40	32	24,717	17,571	4,112	5,928	1,053	6,578	7,046
AFL–CIO v AFL–CIO v AFL–CIO	1	100 0	1	1	—	—	—	0	71	71	71	—	—	—	0
AFL–CIO v AFL–CIO v Local	2	100 0	2	2	—	—	0	0	516	516	516	—	—	0	0
AFL–CIO v Teamsters v Local	2	100 0	2	2	0	—	0	0	341	341	341	0	—	0	0
AFL–CIO v Local v Local	1	100 0	1	1	—	—	0	0	18,200	18,200	18,200	—	—	0	0
Teamsters v Local v Local	1	100 0	1	—	0	—	1	0	197	197	—	0	—	197	0
Local v Local v Local	1	100 0	1	—	—	—	1	0	124	124	—	—	—	124	0
3 (or more)-union elections	8	100 0	8	6	0	0	2	0	19,449	19,449	19,128	0	0	321	0
Total RC elections	3,336	47 9	1,598	948	407	62	181	1,738	205,717	90,186	59,382	15,063	2,483	13,258	115,531

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	In elections won	AFL–CIO unions	In units won by			
												Teamsters	Other national unions	Other local unions	
C Elections in RM cases															
AFL–CIO	138	20 3	28	28	—	—	—	110	3,549	613	613	—	—	—	2,936
Teamsters	67	23 9	16	—	16	—	—	51	1,256	594	—	594	—	—	662
Other national unions	2	50 0	1	—	—	1	—	1	9	7	—	—	7	—	2
Other local unions	9	33 3	3	—	—	—	3	6	482	148	—	—	—	148	334
1-union elections	216	22 2	48	28	16	1	3	168	5,296	1,362	613	594	7	148	3,934
AFL–CIO v AFL–CIO	2	100 0	2	2	—	—	—	0	280	280	280	—	—	—	0
AFL–CIO v Teamsters	1	100 0	1	0	1	—	—	0	17	17	0	17	—	—	0
AFL–CIO v National	1	100 0	1	0	—	1	—	0	2	2	0	—	2	—	0
AFL–CIO v Local	4	100 0	4	4	—	—	0	0	378	378	378	—	—	0	0
2-union elections	8	100 0	8	6	1	1	0	0	677	677	658	17	2	0	0
AFL–CIO v AFL–CIO v AFL–CIO	1	100 0	1	1	—	—	—	0	6	6	6	—	—	—	0
3 (or more) union elections	1	100 0	1	1	0	0	0	0	6	6	6	0	0	0	0
Total RM elections	225	25 3	57	35	17	2	3	168	5,979	2,045	1,277	611	9	148	3,934
D Elections in RD cases															
AFL–CIO	548	24 6	135	135	—	—	—	413	28,164	9,835	9,835	—	—	—	18,329
Teamsters	249	16 1	40	—	40	—	—	209	6,365	2,111	—	2,111	—	—	4,254
Other national unions	17	23 5	4	—	—	4	—	13	547	281	—	—	281	—	266
Other local unions	49	36 7	18	—	—	—	18	31	1,897	699	—	—	—	699	1,198
1-union elections	863	22 8	197	135	40	4	18	666	36,973	12,926	9,835	2,111	281	699	24,047
AFL–CIO v AFL–CIO	1	0 0	0	0	—	—	—	1	45	0	0	—	—	—	45
AFL–CIO v Teamsters	2	100 0	2	1	1	—	—	0	69	69	54	15	—	—	0
AFL–CIO v National	3	66 7	2	1	—	1	—	1	309	287	212	—	75	—	22
AFL–CIO v Local	1	100 0	1	0	—	—	1	0	128	128	0	—	—	128	0
Teamsters v Local	2	100 0	2	—	1	—	1	0	235	235	—	35	—	200	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	In elections won	AFL–CIO unions	In units won by			
												Teamsters	Other national unions	Other local unions	
Local v Local	3	66 7	2	—	—	—	2	1	57	43	—	—	—	43	14
2-union elections	12	75 0	9	2	2	1	4	3	843	762	266	50	75	371	81
Total RD elections	875	23 5	206	137	42	5	22	669	37,816	13,688	10,101	2,161	356	1,070	24,128

[1] See Glossary for definitions of terms

[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1984[1]

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	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
						A All representation elections							
AFL-CIO	124,985	27,553	27,553	—	—	—	13,750	27,655	27,655	—	—	—	56,027
Teamsters	36,872	7,044	—	7,044	—	—	3,516	7,963	—	7,963	—	—	18,349
Other national unions	5,377	942	—	—	942	—	388	1,280	—	—	1,280	—	2,767
Other local unions	13,277	4,463	—	—	—	4,463	1,466	2,571	—	—	—	2,571	4,777
1-union elections	180,511	40,002	27,553	7,044	942	4,463	19,120	39,469	27,655	7,963	1,280	2,571	81,920
AFL-CIO v AFL-CIO	2,065	1,063	1,063	—	—	—	92	211	211	—	—	—	699
AFL-CIO v Teamsters	2,009	1,126	422	704	—	—	152	289	126	163	—	—	442
AFL-CIO v National	1,592	768	474	—	294	—	49	363	30	—	333	—	412
AFL-CIO v Local	7,479	5,927	2,468	—	—	3,459	603	395	298	—	—	97	554
Teamsters v National	81	44	—	32	12	—	9	9	—	1	8	—	19
Teamsters v Local	3,627	808	—	426	—	382	43	656	—	544	—	112	2,120
Teamsters v Teamsters	3,982	3,920	—	3,920	—	—	62	0	—	0	—	—	0
National v Local	502	466	—	—	226	240	28	4	—	—	4	0	4
National v National	492	482	—	—	482	—	10	0	—	—	0	—	0
Local v Local	1,069	943	—	—	—	943	69	26	—	—	—	26	31
2-union elections	22,898	15,547	4,427	5,082	1,014	5,024	1,117	1,953	665	708	345	235	4,281
AFL-CIO v AFL-CIO v AFL-CIO	75	75	75	—	—	—	0	0	0	—	—	—	0
AFL-CIO v AFL-CIO v Local	292	288	241	—	—	47	4	0	0	—	—	0	0
AFL-CIO v Teamsters v Local	290	289	171	18	—	100	1	0	0	0	—	0	0
AFL-CIO v Local v Local	16,689	16,430	13,590	—	—	2,840	259	0	0	—	—	0	0
Teamsters v Local v Local	170	170	—	1	—	169	0	0	—	0	—	0	0
Local v Local v Local	98	98	—	—	—	98	0	0	—	—	—	0	0
3 (or more)-union elections	17,614	17,350	14,077	19	0	3,254	264	0	0	0	0	0	0
Total representation elections	221,023	72,899	46,057	12,145	1,956	12,741	20,501	41,422	28,320	8,671	1,625	2,806	86,201

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
B Elections in RC cases													
AFL–CIO	97,149	21,411	21,411	—	—	—	10,511	22,046	22,046	—	—	—	43,181
Teamsters	30,122	5,432	—	5,432	—	—	2,684	6,841	—	6,841	—	—	15,165
Other national unions	4,909	784	—	—	784	—	313	1,216	—	—	1,216	—	2,596
Other local unions	11,081	3,959	—	—	—	3,959	1,211	2,081	—	—	—	2,081	3,830
1-union elections	143,261	31,586	21,411	5,432	784	3,959	14,719	32,184	22,046	6,841	1,216	2,081	64,772
AFL–CIO v AFL–CIO	1,764	808	808	—	—	—	87	198	198	—	—	—	671
AFL–CIO v Teamsters	1,931	1,049	391	658	—	—	151	289	126	163	—	—	442
AFL–CIO v National	1,309	513	301	—	212	—	40	359	29	—	330	—	397
AFL–CIO v Local	7,060	5,538	2,248	—	—	3,290	573	395	298	—	—	97	554
Teamsters v National	81	44	—	32	12	—	9	9	—	1	8	—	19
Teamsters v Local	3,435	623	—	375	—	248	36	656	—	544	—	112	2,120
Teamsters v Teamsters	3,982	3,920	—	3,920	—	—	62	0	—	0	—	—	0
National v Local	502	466	—	—	226	240	28	4	—	—	4	0	4
National v National	492	482	—	—	482	—	10	0	—	—	0	—	0
Local v Local	1,019	906	—	—	—	906	69	20	—	—	—	20	24
2-union elections	21,575	14,349	3,748	4,985	932	4,684	1,065	1,930	651	708	342	229	4,231
AFL–CIO v AFL–CIO v AFL–CIO	69	69	69	—	—	—	0	0	0	—	—	—	0
AFL–CIO v AFL–CIO v Local	292	288	241	—	—	47	4	0	0	—	—	0	0
AFL–CIO v Teamsters v Local	290	289	171	18	—	100	1	0	0	0	—	0	0
AFL–CIO v Local v Local	16,689	16,430	13,590	—	—	2,840	259	0	0	—	—	0	0
Teamsters v Local v Local	170	170	—	1	—	169	0	0	—	0	—	0	0
Local v Local v Local	98	98	—	—	—	98	0	0	—	—	—	0	0
3 (or more)-union elections	17,608	17,344	14,071	19	0	3,254	264	0	0	0	0	0	0
Total RC elections	182,444	63,279	39,230	10,436	1,716	11,897	16,048	34,114	22,697	7,549	1,558	2,310	69,003

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
C Elections in RM cases													
AFL–CIO	3,071	357	357	—	—	—	159	647	647	—	—	—	1,908
Teamsters	1,128	395	—	395	—	—	156	147	—	147	—	—	1,430
Other national unions	9	7	—	—	7	—	0	0	—	—	0	—	2
Other local unions	432	90	—	—	—	90	34	64	—	—	—	64	244
1-union elections	4,640	849	357	395	7	90	349	858	647	147	0	64	2,584
AFL–CIO v AFL–CIO	260	255	255	—	—	—	5	0	0	—	—	—	0
AFL–CIO v Teamsters	17	17	4	13	—	—	0	0	0	0	—	—	0
AFL–CIO v National	2	2	0	—	2	—	0	0	0	—	0	—	0
AFL–CIO v Local	300	271	196	—	—	75	29	0	0	—	—	0	0
2-union elections	579	545	455	13	2	75	34	0	0	0	0	0	0
AFL–CIO v AFL–CIO v AFL–CIO	6	6	6	—	—	—	0	0	0	—	—	—	0
3 (or more)-union elections	6	6	6	0	0	0	0	0	0	0	0	0	0
Total RM elections	5,225	1,400	818	408	9	165	383	858	647	147	0	64	2,584
D Elections in RD cases													
AFL–CIO	24,765	5,785	5,785	—	—	—	3,080	4,962	4,962	—	—	—	10,938
Teamsters	5,622	1,217	—	1,217	—	—	676	975	—	975	—	—	2,754
Other national unions	459	151	—	—	151	—	75	64	—	—	64	—	169
Other local unions	1,764	414	—	—	—	414	221	426	—	—	—	426	703
1-union elections	32,610	7,567	5,785	1,217	151	414	4,052	6,427	4,962	975	64	426	14,564
AFL–CIO v AFL–CIO	41	0	0	—	—	—	0	13	13	—	—	—	28
AFL–CIO v Teamsters	61	60	27	33	—	—	1	0	0	0	—	—	0
AFL–CIO v National	281	253	173	—	80	—	9	4	1	—	3	—	15

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1984[1]—Continued

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	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
AFL-CIO v Local	119	118	24	—	—	94	1	0	0	—	—	0	0
Teamsters v Local	192	185	—	51	—	134	7	0	—	0	—	0	0
Local v Local	50	37	—	—	—	37	0	6	—	—	—	6	7
2-union elections	744	653	224	84	80	265	18	23	14	0	3	6	50
Total RD elections	33,354	8,220	6,009	1,301	231	679	4,070	6,450	4,976	975	67	432	14,614

[1] See Glossary for definitions of terms

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1984

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	26	16	10	2	1	3	10	1,146	960	452	287	64	26	75	508	487
New Hampshire	13	7	5	2	0	0	6	398	362	229	145	84	0	0	133	231
Vermont	10	6	4	2	0	0	4	448	411	176	135	38	0	3	235	196
Massachusetts	136	62	39	13	0	10	74	11,449	9,924	4,247	2,209	923	560	555	5,677	2,724
Rhode Island	15	9	7	2	0	0	6	968	909	535	427	108	0	0	374	781
Connecticut	44	20	15	3	0	2	24	2,277	2,060	940	708	70	2	160	1,120	756
New England	244	120	80	24	1	15	124	16,686	14,626	6,579	3,911	1,287	588	793	8,047	5,175
New York	354	158	81	36	2	39	196	16,004	13,092	6,547	2,969	880	124	2,574	6,545	6,803
New Jersey	152	72	39	21	1	11	80	7,711	6,680	3,779	2,530	563	29	657	2,901	3,723
Pennsylvania	245	104	53	34	3	14	141	8,816	7,890	3,618	2,221	927	68	402	4,272	3,079
Middle Atlantic	751	334	173	91	6	64	417	32,531	27,662	13,944	7,720	2,370	221	3,633	13,718	13,605
Ohio	250	92	65	22	4	1	158	9,783	8,897	3,862	2,887	723	152	100	5,035	3,110
Indiana	115	48	26	20	0	2	67	6,729	6,337	2,847	2,003	585	6	253	3,490	2,250
Illinois	219	96	44	21	4	27	123	7,957	6,991	3,767	1,742	548	91	1,386	3,224	4,293
Michigan	275	118	67	34	7	10	157	15,504	13,623	6,081	4,196	1,013	71	801	7,542	4,017
Wisconsin	132	70	39	22	0	9	62	7,207	6,620	4,053	2,024	916	0	1,113	2,567	4,724
East North Central	991	424	241	119	15	49	567	47,180	42,468	20,610	12,852	3,785	320	3,653	21,858	18,394
Iowa	39	16	10	5	1	0	23	1,824	1,694	647	485	127	22	13	1,047	477
Minnesota	121	42	29	9	0	4	79	3,688	3,235	1,345	938	300	0	107	1,890	1,400
Missouri	172	83	43	31	6	3	89	5,987	5,072	2,535	1,534	842	65	94	2,537	2,936
North Dakota	11	4	1	2	1	0	7	473	446	300	20	75	205	0	146	294
South Dakota	2	1	1	0	0	0	1	14	14	7	7	0	0	0	7	6
Nebraska	17	7	7	0	0	0	10	671	508	172	151	21	0	0	336	100
Kansas	31	13	7	5	0	1	18	1,725	1,519	811	542	81	0	188	708	826
West North Central	393	166	98	52	8	8	227	14,382	12,488	5,817	3,677	1,446	292	402	6,671	6,039

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	10	3	1	2	0	0	7	601	501	191	92	99	0	0	310	65
Maryland	57	21	16	4	0	1	36	3,138	2,913	1,441	858	220	18	345	1,472	1,101
District of Columbia	25	15	13	0	0	2	10	986	804	432	323	7	0	102	372	531
Virginia	55	25	19	2	0	4	30	22,712	20,719	18,173	15,133	55	43	2,942	2,546	19,655
West Virginia	37	16	14	2	0	0	21	2,202	2,042	713	605	86	22	0	1,329	465
North Carolina	51	18	14	4	0	0	33	5,688	5,034	2,270	1,953	312	5	0	2,764	1,983
South Carolina	18	8	8	0	0	0	10	2,787	2,565	1,231	1,218	13	0	0	1,334	558
Georgia	73	27	22	5	0	0	46	6,687	6,107	2,346	2,077	258	11	0	3,761	1,794
Florida	102	44	28	10	1	5	58	4,958	4,763	2,379	1,750	352	51	226	2,384	2,117
South Atlantic	428	177	135	29	1	12	251	49,759	45,448	29,176	24,009	1,402	150	3,615	16,272	28,269
Kentucky	59	31	16	11	3	1	28	3,185	2,990	1,614	1,137	263	145	69	1,376	1,386
Tennesse	70	23	19	3	0	1	47	7,535	7,032	2,856	2,566	281	0	9	4,176	1,348
Alabama	59	13	12	0	1	0	46	3,885	3,603	1,371	1,320	22	23	6	2,232	1,006
Mississippi	24	10	8	1	0	1	14	4,095	3,844	1,602	1,200	223	0	179	2,242	1,114
East South Central	212	77	55	15	4	3	135	18,700	17,469	7,443	6,223	789	168	263	10,026	4,854
Arkansas	37	13	11	0	1	1	24	3,644	3,258	1,538	1,374	88	65	11	1,720	1,393
Louisiana	40	17	7	6	1	3	23	2,235	1,867	756	379	173	68	136	1,111	816
Oklahoma	31	12	7	4	1	0	19	1,833	1,616	755	543	187	35	0	851	853
Texas	113	65	49	9	2	5	48	6,437	5,588	3,405	1,968	1,025	31	381	2,183	4,261
West South Central	221	107	74	19	5	9	114	14,149	12,329	6,454	4,264	1,473	199	528	5,865	7,323
Montana	34	14	6	4	0	4	20	1,013	911	397	109	155	16	117	514	405
Idaho	18	5	1	4	0	0	13	453	402	199	64	135	0	0	203	158
Wyoming	5	4	2	0	2	0	1	660	604	430	133	0	297	0	174	516
Colorado	51	23	17	4	1	1	28	1,264	1,156	528	391	81	39	17	628	470
New Mexico	17	10	8	0	0	2	7	595	539	235	211	3	0	21	304	119
Arizona	46	19	11	5	1	2	27	1,737	1,539	641	406	126	19	90	898	458
Utah	14	4	3	1	0	0	10	693	600	238	27	211	0	0	362	36

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	22	3	1	2	0	0	19	1,591	1,267	376	306	70	0	0	891	58
Mountain	207	82	49	20	4	9	125	8,006	7,018	3,044	1,647	781	371	245	3,974	2,220
Washington	201	67	41	15	6	5	134	7,333	6,194	2,897	2,053	414	195	235	3,297	2,616
Oregon	78	20	15	3	1	1	58	3,766	3,166	1,050	773	93	149	35	2,116	909
California	586	219	133	66	8	12	367	29,502	25,458	13,497	6,003	6,612	121	761	11,961	13,134
Alaska	29	10	5	4	1	0	19	471	351	132	63	63	6	0	219	118
Hawaii	33	20	8	3	8	1	13	1,707	1,494	805	229	86	479	11	689	810
Guam	1	1	0	1	0	0	0	16	14	8	0	8	0	0	6	16
Pacific	928	337	202	92	24	19	591	42,795	36,677	18,389	9,121	7,276	950	1,042	18,288	17,603
Puerto Rico	52	33	9	5	1	18	19	5,102	4,630	2,792	890	207	322	1,373	1,838	2,346
Virgin Islands	9	4	4	0	0	0	5	222	208	63	63	0	0	0	145	91
Outlying Areas	61	37	13	5	1	18	24	5,324	4,838	2,855	953	207	322	1,373	1,983	2,437
Total, all States and areas	4,436	1,861	1,120	466	69	206	2,575	249,512	221,023	114,321	74,377	20,816	3,581	15,547	106,702	105,919

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

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1984

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Maine	21	14	9	2	1	2	7	839	758	368	260	18	26	64	390	420
New Hampshire	12	7	5	2	0	0	5	352	318	211	127	84	0	0	107	231
Vermont	10	6	4	2	0	0	4	448	411	176	135	38	0	3	235	196
Massachusetts	118	55	36	9	0	10	63	9,928	8,547	3,302	1,340	874	560	528	5,245	1,476
Rhode Island	13	8	7	1	0	0	5	903	848	504	425	79	0	0	344	732
Connecticut	38	18	13	3	0	2	20	1,591	1,444	677	445	70	2	160	767	555
New England	212	108	74	19	1	14	104	14,061	12,326	5,238	2,732	1,163	588	755	7,088	3,610
New York	311	149	76	33	2	38	162	15,130	12,327	6,267	2,811	775	124	2,557	6,060	6,671
New Jersey	135	68	38	19	1	10	67	7,262	6,275	3,552	2,469	497	26	560	2,723	3,486
Pennsylvania	207	97	49	34	3	11	110	7,549	6,789	3,206	1,974	857	68	307	3,583	2,739
Middle Atlantic	653	314	163	86	6	59	339	29,941	25,391	13,025	7,254	2,129	218	3,424	12,366	12,896
Ohio	199	80	55	21	3	1	119	8,261	7,539	3,340	2,564	607	134	35	4,199	2,709
Indiana	98	41	20	19	0	2	57	6,204	5,825	2,601	1,773	572	6	250	3,224	1,861
Illinois	173	83	38	20	2	23	90	6,375	5,596	2,940	1,236	514	37	1,153	2,656	3,249
Michigan	235	110	63	31	7	9	125	14,669	12,863	5,756	3,957	962	69	768	7,107	3,777
Wisconsin	106	59	30	20	0	9	47	6,012	5,505	3,526	1,660	867	0	999	1,979	4,214
East North Central	811	373	206	111	12	44	438	41,521	37,328	18,163	11,190	3,522	246	3,205	19,165	15,810
Iowa	32	14	9	4	1	0	18	1,668	1,559	600	445	120	22	13	959	460
Minnesota.	76	36	24	8	0	4	40	2,507	2,203	1,051	661	289	0	101	1,152	1,184
Missouri	129	71	35	27	6	3	58	4,484	3,758	1,971	1,234	578	65	94	1,787	2,265
North Dakota	10	4	1	2	1	0	6	469	442	300	20	75	205	0	142	294
South Dakota	1	1	1	0	0	0	0	6	6	5	5	0	0	0	1	6
Nebraska	12	7	7	0	0	0	5	332	306	157	142	15	0	0	149	100
Kansas	21	10	5	4	0	1	11	1,512	1,340	733	502	43	0	188	607	752
West North Central	281	143	82	45	8	8	138	10,978	9,614	4,817	3,009	1,120	292	396	4,797	5,061

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	9	3	1	2	0	0	6	574	476	190	91	99	0	0	286	65
Maryland	50	20	16	3	0	1	30	3,004	2,793	1,393	857	181	12	343	1,400	1,045
District of Columbia	23	15	13	0	0	2	8	920	740	430	321	7	0	102	310	531
Virginia	47	24	18	2	0	4	23	21,455	19,574	17,777	14,737	55	43	2,942	1,797	19,609
West Virginia	34	16	14	2	0	0	18	2,161	2,002	700	595	83	22	0	1,302	465
North Carolina	43	15	11	4	0	0	28	5,067	4,464	1,991	1,674	312	5	0	2,473	1,694
South Carolina	16	8	8	0	0	0	8	1,977	1,817	866	853	13	0	0	951	558
Georgia	62	24	19	5	0	0	38	5,566	5,130	1,961	1,692	258	11	0	3,169	1,443
Florida	86	40	26	9	1	4	46	4,327	4,159	1,992	1,495	303	12	182	2,167	1,735
South Atlantic	370	165	126	27	1	11	205	45,051	41,155	27,300	22,315	1,311	105	3,569	13,855	27,145
Kentucky	56	29	14	11	3	1	27	2,968	2,782	1,504	1,028	262	145	69	1,278	1,176
Tennesse	54	21	18	3	0	0	33	5,891	5,566	2,322	2,055	267	0	0	3,244	1,312
Alabama	47	11	10	0	1	0	36	3,197	2,970	1,154	1,105	20	23	6	1,816	868
Mississippi	21	9	7	1	0	1	12	3,459	3,246	1,315	1,023	223	0	69	1,931	887
East South Central	178	70	49	15	4	2	108	15,515	14,564	6,295	5,211	772	168	144	8,269	4,243
Arkansas	24	10	9	0	1	0	14	1,599	1,457	634	496	73	65	0	823	585
Louisiana	31	15	5	6	1	3	16	1,987	1,645	712	340	168	68	136	933	806
Oklahoma	25	9	5	4	0	0	16	1,169	981	434	247	187	0	0	547	277
Texas	92	56	45	6	2	3	36	4,610	4,010	2,421	1,626	421	31	343	1,589	2,788
West South Central	172	90	64	16	4	6	82	9,365	8,093	4,201	2,709	849	164	479	3,892	4,456
Montana	29	11	5	3	0	3	18	926	837	363	105	144	16	98	474	342
Idaho	16	5	1	4	0	0	11	394	348	175	40	135	0	0	173	158
Wyoming	3	3	1	0	2	0	0	403	355	347	50	0	297	0	8	403
Colorado	39	22	17	3	1	1	17	982	897	441	321	64	39	17	456	457
New Mexico	12	7	5	0	0	2	5	521	467	197	173	3	0	21	270	74
Arizona	29	15	8	4	1	2	14	1,368	1,197	501	320	77	14	90	696	359
Utah	10	4	3	1	0	0	6	583	492	193	27	166	0	0	299	36

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	15	3	1	2	0	0	12	808	666	240	180	60	0	0	426	58
Mountain	153	70	41	17	4	8	83	5,985	5,259	2,457	1,216	649	366	226	2,802	1,887
Washington	129	59	34	15	6	4	70	4,585	3,860	1,948	1,283	319	175	171	1,912	2,259
Oregon	42	12	8	3	1	0	30	2,362	2,071	598	361	79	147	11	1,473	395
California	449	185	110	57	8	10	264	25,299	21,750	11,949	4,891	6,284	92	682	9,801	11,242
Alaska	23	10	5	4	1	0	13	372	261	111	63	42	6	0	150	118
Hawaii	30	19	8	3	7	1	11	1,415	1,236	710	219	86	394	11	526	673
Guam	1	1	0	1	0	0	0	16	14	8	0	8	0	0	6	16
Pacific	674	286	165	83	23	15	388	34,049	29,192	15,324	6,817	6,818	814	875	13,868	14,703
Puerto Rico	48	32	9	5	1	17	16	5,008	4,539	2,768	876	207	322	1,363	1,771	2,329
Virgin Islands	9	4	4	0	0	0	5	222	208	63	63	0	0	0	145	91
Outlying Areas	57	36	13	5	1	17	21	5,230	4,747	2,831	939	207	322	1,363	1,916	2,420
Total, all States and areas	3,561	1,655	983	424	64	184	1,906	211,696	187,669	99,651	63,392	18,540	3,283	14,436	88,018	92,231

[1] 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 1984

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	5	2	1	0	0	1	3	307	202	84	27	46	0	11	118	67
New Hampshire	1	0	0	0	0	0	1	46	44	18	18	0	0	0	26	0
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	18	7	3	4	0	0	11	1,521	1,377	945	869	49	0	27	432	1,248
Rhode Island	2	1	0	1	0	0	1	65	61	31	2	29	0	0	30	49
Connecticut	6	2	2	0	0	0	4	686	616	263	263	0	0	0	353	201
New England	32	12	6	5	0	1	20	2,625	2,300	1,341	1,179	124	0	38	959	1,565
New York	43	9	5	3	0	1	34	874	765	280	158	105	0	17	485	132
New Jersey	17	4	1	2	0	1	13	449	405	227	61	66	3	97	178	237
Pennsylvania	38	7	4	0	0	3	31	1,267	1,101	412	247	70	0	95	689	340
Middle Atlantic	98	20	10	5	0	5	78	2,590	2,271	919	466	241	3	209	1,352	709
Ohio	51	12	10	1	1	0	39	1,522	1,358	522	323	116	18	65	836	401
Indiana	17	7	6	1	0	0	10	525	512	246	230	13	0	3	266	389
Illinois	46	13	6	1	2	4	33	1,582	1,395	827	506	34	54	233	568	1,044
Michigan	40	8	4	3	0	1	32	835	760	325	239	51	2	33	435	240
Wisconsin	26	11	9	2	0	0	15	1,195	1,115	527	364	49	0	114	588	510
East North Central	180	51	35	8	3	5	129	5,659	5,140	2,447	1,662	263	74	448	2,693	2,584
Iowa	7	2	1	1	0	0	5	156	135	47	40	7	0	0	88	17
Minnesota	45	6	5	1	0	0	39	1,181	1,032	294	277	11	0	6	738	216
Missouri	43	12	8	4	0	0	31	1,503	1,314	564	300	264	0	0	750	671
North Dakota	1	0	0	0	0	0	1	4	4	0	0	0	0	0	4	0
South Dakota	1	0	0	0	0	0	1	8	8	2	2	0	0	0	6	0
Nebraska	5	0	0	0	0	0	5	339	202	15	9	6	0	0	187	0
Kansas	10	3	2	1	0	0	7	213	179	78	40	38	0	0	101	74
West North Central	112	23	16	7	0	0	89	3,404	2,874	1,000	668	326	0	6	1,874	978

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	1	0	0	0	0	0	1	27	25	1	1	0	0	0	24	0
Maryland	7	1	0	1	0	0	6	134	120	48	1	39	6	2	72	56
District of Columbia	2	0	0	0	0	0	2	66	64	2	2	0	0	0	62	0
Virginia	8	1	1	0	0	0	7	1,257	1,145	396	396	0	0	0	749	46
West Virginia	3	0	0	0	0	0	3	41	40	13	10	3	0	0	27	0
North Carolina	8	3	3	0	0	0	5	621	570	279	279	0	0	0	291	289
South Carolina	2	0	0	0	0	0	2	810	748	365	365	0	0	0	383	0
Georgia	11	3	3	0	0	0	8	1,121	977	385	385	0	0	0	592	351
Florida	16	4	2	1	0	1	12	631	604	387	255	49	39	44	217	382
South Atlantic	58	12	9	2	0	1	46	4,708	4,293	1,876	1,694	91	45	46	2,417	1,124
Kentucky	3	2	2	0	0	0	1	217	208	110	109	1	0	0	98	210
Tennesse	16	2	1	0	0	1	14	1,644	1,466	534	511	14	0	9	932	36
Alabama	12	2	2	0	0	0	10	688	633	217	215	2	0	0	416	138
Mississippi	3	1	1	0	0	0	2	636	598	287	177	0	0	110	311	227
East South Central	34	7	6	0	0	1	27	3,185	2,905	1,148	1,012	17	0	119	1,757	611
Arkansas	13	3	2	0	0	1	10	2,045	1,801	904	878	15	0	11	897	808
Louisiana	9	2	2	0	0	0	7	248	222	44	39	5	0	0	178	10
Oklahoma	6	3	2	0	1	0	3	664	635	331	296	0	35	0	304	576
Texas	21	9	4	3	0	2	12	1,827	1,578	984	342	604	0	38	594	1,473
West South Central	49	17	10	3	1	3	32	4,784	4,236	2,263	1,555	624	35	49	1,973	2,867
Montana	5	3	1	1	0	1	2	87	74	34	4	11	0	19	40	63
Idaho	2	0	0	0	0	0	2	59	54	24	24	0	0	0	30	0
Wyoming	2	1	1	0	0	0	1	257	249	83	83	0	0	0	166	113
Colorado	12	1	0	1	0	0	11	282	259	87	70	17	0	0	172	13
New Mexico	5	3	3	0	0	0	2	74	72	38	38	0	0	0	34	45
Arizona	17	4	3	1	0	0	13	369	342	140	86	49	5	0	202	99
Utah	4	0	0	0	0	0	4	110	108	45	0	45	0	0	63	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	7	0	0	0	0	0	7	783	601	136	126	10	0	0	465	0
Mountain	54	12	8	3	0	1	42	2,021	1,759	587	431	132	5	19	1,172	333
Washington	72	8	7	0	0	1	64	2,748	2,334	949	770	95	20	64	1,385	357
Oregon	36	8	7	0	0	1	28	1,404	1,095	452	412	14	2	24	643	514
California	137	34	23	9	0	2	103	4,203	3,708	1,548	1,112	328	29	79	2,160	1,892
Alaska	6	0	0	0	0	0	6	99	90	21	0	21	0	0	69	0
Hawaii	3	1	0	0	1	0	2	292	258	95	10	0	85	0	163	137
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	254	51	37	9	1	4	203	8,746	7,485	3,055	2,304	458	136	167	4,420	2,900
Puerto Rico	4	1	0	0	0	1	3	94	91	24	14	0	0	10	67	17
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	4	1	0	0	0	1	3	94	91	24	14	0	0	10	67	17
Total, all States and areas	875	206	137	42	5	22	669	37,816	33,354	14,670	10,985	2,276	298	1,111	18,684	13,688

[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 1984

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Food and kindred products	164	57	32	21	1	3	107	14,702	12,938	6,442	4,039	1,110	12	1,281	6,496	4,306
Tobacco manufacturers	2	0	0	0	0	0	2	192	188	64	64	0	0	0	124	0
Textile mill products	35	13	7	5	0	1	22	4,939	4,493	2,160	1,756	348	0	56	2,333	1,327
Apparel and other finished products made from fabric and similar materials	35	11	7	3	1	0	24	4,094	3,763	1,563	1,081	347	5	130	2,200	723
Lumber and wood products (except furniture)	96	35	27	6	0	2	61	6,576	5,955	2,576	2,210	262	7	97	3,379	2,023
Furniture and fixtures	41	13	9	3	0	1	28	2,604	2,431	1,077	861	100	6	110	1,354	740
Paper and allied products	59	15	9	4	0	2	44	4,278	3,926	1,484	1,057	238	0	189	2,442	761
Printing, publishing, and allied products	132	39	22	3	0	14	93	5,246	4,762	1,948	1,191	219	4	534	2,814	1,776
Chemicals and allied products	89	31	19	6	0	6	58	4,373	4,109	2,011	1,212	391	0	408	2,098	1,842
Petroleum refining and related industries	14	3	1	2	0	0	11	634	584	177	90	29	0	58	407	80
Rubber and miscellaneous plastic products	79	29	21	5	1	2	50	4,632	4,285	1,752	1,329	298	37	98	2,523	1,254
Leather and leather products	18	3	1	0	0	2	15	1,511	1,366	655	148	80	316	111	711	254
Stone, clay, glass, and concrete products	74	31	18	10	0	3	43	2,655	2,395	1,185	713	226	0	246	1,210	994
Primary metal industries	113	52	34	12	2	4	61	7,196	6,562	2,897	2,136	462	23	276	3,665	1,897
Fabricated metal products (except machinery and transportation equipment)	175	64	48	9	3	4	111	9,173	8,457	3,776	2,830	596	99	251	4,681	3,283
Machinery (except electrical)	190	65	40	16	0	9	125	11,108	10,284	4,554	3,610	579	17	348	5,730	3,411
Electrical and electronic machinery, equipment, and supplies	71	29	19	8	0	2	42	5,802	5,295	2,546	2,103	431	0	12	2,749	2,780
Aircraft and parts	84	38	23	13	0	2	46	13,868	12,352	7,899	2,930	4,613	0	356	4,453	8,761
Ship and boat building and repairing	12	8	4	0	3	1	4	19,964	18,018	16,945	13,945	36	90	2,874	1,073	18,553
Automotive and other transportation equipment	10	4	2	2	0	0	6	644	603	271	121	150	0	0	332	227
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks	36	15	10	3	0	2	21	1,837	1,641	834	653	150	0	31	807	653
Miscellaneous manufacturing industries	156	70	37	20	3	10	86	6,540	5,774	2,857	1,796	567	37	457	2,917	2,716
Manufacturing	1,685	625	390	151	14	70	1,060	132,568	120,181	65,683	45,875	11,232	653	7,923	54,498	58,361
Metal mining	9	2	0	2	0	0	7	159	153	54	26	23	5	0	99	32
Coal mining	24	14	4	0	8	2	10	2,362	2,170	1,444	491	0	871	82	726	1,691
Oil and gas extraction	15	1	1	0	0	0	14	671	568	95	88	7	0	0	473	5

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Mining and quarrying of nonmetallic minerals (except fuels)	9	5	2	3	0	0	4	356	326	262	232	30	0	0	64	277
Mining	57	22	7	5	8	2	35	3,548	3,217	1,855	837	60	876	82	1,362	2,005
Construction	217	103	82	14	5	2	114	4,543	3,922	1,983	1,587	278	84	34	1,939	2,063
Wholesale trade	392	132	47	72	5	8	260	14,236	12,976	5,576	2,856	2,051	61	608	7,400	4,201
Retail trade	513	204	129	61	1	13	309	16,264	14,089	6,250	4,003	1,506	77	664	7,839	5,897
Finance, insurance, and real estate	68	31	20	5	2	4	37	1,597	1,449	669	428	80	57	104	780	486
U S Postal Service	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	52	20	10	8	1	1	32	2,319	1,888	854	583	219	12	40	1,034	780
Motor freight transportation and warehousing	211	77	11	57	3	6	134	5,532	4,825	2,290	383	1,674	53	180	2,535	2,482
Water transportation	22	12	5	2	4	1	10	421	374	171	126	8	32	5	203	267
Other transportation	24	14	4	6	1	3	10	836	719	371	271	52	4	44	348	615
Communication	138	69	57	6	1	5	69	3,538	3,168	1,694	1,428	38	34	194	1,474	1,867
Electric, gas, and sanitary services	65	26	16	8	1	1	39	2,491	2,247	1,031	664	181	33	153	1,216	656
Transportation, communication, and other utilities	512	218	103	87	11	17	294	15,137	13,221	6,411	3,455	2,172	168	616	6,810	6,667
Hotels, rooming houses, camps, and other lodging places	91	32	29	0	1	2	59	5,122	4,253	1,784	1,355	141	127	161	2,469	1,472
Personal services	59	26	19	5	0	2	33	1,293	1,119	624	339	199	0	86	495	641
Automotive repair, services, and garages	73	36	13	21	1	1	37	1,341	1,187	605	313	241	43	8	582	520
Motion pictures	11	8	8	0	0	0	3	150	138	90	90	0	0	0	48	92
Amusement and recreation services (except motion pictures)	34	9	3	3	0	3	25	2,841	2,295	1,337	258	68	6	1,005	958	1,420
Health services	386	217	159	15	11	32	169	33,280	28,741	13,506	9,315	1,795	555	1,841	15,235	12,870
Educational services	36	22	9	2	1	10	14	2,939	2,553	1,323	707	102	84	430	1,230	1,308
Membership organizations	21	15	9	2	0	4	6	470	404	240	113	42	0	85	164	279
Business services	184	105	60	16	9	20	79	7,205	5,807	3,090	1,756	537	219	578	2,717	3,676
Miscellaneous repair services	25	7	4	2	0	1	18	1,945	1,759	750	122	63	562	3	1,009	139

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1984—Continued

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Museums, art galleries, botanical and zoological gardens	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Legal services	10	10	7	0	0	3	0	236	177	139	105	0	0	34	38	236
Social services	46	29	19	2	0	8	17	3,789	2,627	1,792	589	175	9	1,019	835	2,850
Miscellaneous services	10	5	2	1	0	2	5	628	586	336	243	9	0	84	250	408
Services	986	521	341	69	23	88	465	61,239	51,646	25,616	15,305	3,372	1,605	5,334	26,030	25,911
Public administration	6	5	1	2	0	2	1	380	322	278	31	65	0	182	44	328
Total, all industrial groups	4,436	1,861	1,120	466	69	206	2,575	249,512	221,023	114,321	74,377	20,816	3,581	15,547	106,702	105,919

[1] Source Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D C , 1972

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1984[1]

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		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
					A Certification elections (RC and RM)									
Total RC and RM elections	211,696	3,561	100 0	——	983	100 0	424	100 0	64	100 0	184	100 0	1,906	100 0
Under 10	22,777	817	22 9	22 9	228	23 2	154	36 3	23	35 9	32	17 4	380	19 9
10 to 19	11,390	805	22 6	45 5	227	23 1	132	31 1	16	25 0	39	21 2	391	20 5
20 to 29	10,259	427	12 0	57 5	117	12 0	39	9 3	9	14 0	24	13 0	238	12 5
30 to 39	10,273	301	8 5	66 0	87	8 9	22	5 3	2	3 1	21	11 4	169	8 9
40 to 49	9,481	216	6 1	72 1	58	5 9	19	4 5	4	6 2	9	4 9	126	6 6
50 to 59	8,808	163	4 6	76 7	56	5 7	13	3 1	2	3 1	7	3 8	85	4 5
60 to 69	7,580	118	3 3	80 0	30	3 1	8	1 9	0	0 0	9	4 9	71	3 7
70 to 79	8,356	113	3 2	83 2	42	4 3	4	0 9	0	0 0	2	1 1	65	3 4
80 to 89	6,560	78	2 2	85 4	20	2 0	4	0 9	0	0 0	4	2 2	50	2 6
90 to 99	6,511	69	1 9	87 3	16	1 6	8	1 9	1	1 6	4	2 2	40	2 1
100 to 109	5,341	51	1 4	88 7	16	1 6	1	0 2	0	0 0	6	3 3	28	1 5
110 to 119	5,600	49	1 4	90 1	10	1 0	2	0 5	0	0 0	4	2 2	33	1 7
120 to 129	4,718	38	1 1	91 2	11	1 1	1	0 2	0	0 0	5	2 7	21	1 1
130 to 139	4,685	35	1 0	92 2	10	1 0	5	1 2	0	0 0	3	1 6	17	0 9
140 to 149	3,486	24	0 7	92 9	5	0 5	3	0 7	1	1 6	0	0 0	15	0 8
150 to 159	4,330	28	0 8	93 7	5	0 5	1	0 2	1	1 6	2	1 1	19	1 0
160 to 169	3,284	20	0 6	94 3	7	0 7	1	0 2	0	0 0	0	0 0	12	0 6
170 to 179	2,253	13	0 4	94 7	5	0 5	1	0 2	0	0 0	0	0 0	7	0 4
180 to 189	3,122	17	0 5	95 2	4	0 4	2	0 5	0	0 0	0	0 0	11	0 6
190 to 199	2,927	15	0 4	95 6	3	0 3	0	0 0	1	1 6	1	0 5	10	0 5
200 to 299	20,090	84	2 4	98 0	16	1 6	2	0 5	3	4 7	4	2 2	59	3 1
300 to 399	10,425	31	0 9	98 9	7	0 7	0	0 0	1	1 6	2	1 1	21	1 1
400 to 499	5,842	13	0 4	99 3	0	0 0	0	0 0	0	0 0	2	1 1	11	0 6
500 to 599	5,458	10	0 2	99 5	1	0 1	1	0 2	0	0 0	0	0 0	8	0 4
600 to 799	8,149	12	0 2	99 7	2	0 2	0	0 0	0	0 0	1	0 5	9	0 5
800 to 999	3,790	4	0 1	99 8	0	0 0	0	0 0	0	0 0	0	0 0	4	0 2
1,000 to 1,999	11,743	9	0 2	100 0	0	0 0	0	0 0	0	0 0	3	1 6	6	0 3
2,000 to 2,999	4,458	1	0 0	100 0	0	0 0	1	0 2	0	0 0	0	0 0	0	0 0

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1984[1]—Continued

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		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
					B Decertification elections (RD)									
Total RD elections	37,816	875	100 0	—	137	100 0	42	100 0	5	100 0	22	100 0	669	100 0
Under 10	1,679	305	34 9	34 9	14	10 2	10	23 8	0	0 0	2	9 1	279	41 7
10 to 19	2,445	176	20 1	55 0	29	21 2	11	26 1	0	0 0	4	18 2	132	19 7
20 to 29	2,364	99	11 3	66 3	19	13 9	2	4 8	1	20 0	4	18 2	73	10 9
30 to 39	2,424	71	8 1	74 4	16	11 7	4	9 5	0	0 0	1	4 5	50	7 5
40 to 49	2,276	51	5 8	80 2	11	8 0	5	11 9	0	0 0	5	22 9	30	4 5
50 to 59	1,918	36	4 1	84 3	8	5 8	2	4 8	1	20 0	0	0 0	25	3 7
60 to 69	2,047	32	3 7	88 0	6	4 4	4	9 5	1	20 0	1	4 5	20	3 0
70 to 79	726	10	1 1	89 1	1	0 7	0	0 0	1	20 0	2	9 1	6	0 9
80 to 89	1,009	12	1 4	90 5	5	3 7	0	0 0	0	0 0	1	4 5	6	0 9
90 to 99	670	7	0 8	91 3	2	1 5	0	0 0	0	0 0	0	0 0	5	0 7
100 to 109	1,365	13	1 5	92 8	4	2 9	1	2 4	0	0 0	0	0 0	8	1 2
110 to 119	453	4	0 5	93 3	3	2 2	0	0 0	0	0 0	0	0 0	1	0 2
120 to 129	626	5	0 6	93 9	1	0 7	0	0 0	0	0 0	1	4 5	3	0 4
130 to 139	412	3	0 3	94 2	1	0 7	0	0 0	1	20 0	0	0 0	1	0 2
140 to 149	582	4	0 5	94 7	2	1 5	0	0 0	0	0 0	0	0 0	2	0 3
150 to 159	463	3	0 3	95 0	1	0 7	0	0 0	0	0 0	0	0 0	2	0 3
160 to 169	323	2	0 2	95 2	1	0 7	1	2 4	0	0 0	0	0 0	0	0 0
170 to 199	1,094	6	0 7	95 9	0	0 0	0	0 0	0	0 0	0	0 0	6	0 9
200 to 299	4,935	21	2 4	98 3	9	6 6	1	2 4	0	0 0	1	4 5	10	1 5
300 to 499	1,590	4	0 5	98 8	2	1 5	0	0 0	0	0 0	0	0 0	2	0 3
500 to 799	5,059	8	0 9	99 7	1	0 7	1	2 4	0	0 0	0	0 0	6	0 9
800 and over	3,356	3	0 3	100 0	1	0 7	0	0 0	0	0 0	0	0 0	2	0 3

[1] See Glossary for definitions of terms

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1984[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	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
Total	[2]31,392	100 0	——	21,873	100 0	6,846	100 0	870	100 0	225	100 0	41	100 0	31	100 0	214	100 0	1,166	100 0	126	100 0
Under 10	8,899	28 3	28 3	5,786	26 5	2,268	33 1	362	41 6	78	34 7	28	68 5	1	3 2	93	43 5	239	20 5	44	34 9
10–19	2,872	9 1	37 4	2,202	10 1	419	6 1	100	11 5	36	16 0	2	4 9	0	0 0	37	17 3	64	5 5	12	9 5
20–29	2,337	7 4	44 8	1,759	8 0	371	5 4	65	7 5	30	13 3	1	2 4	1	3 2	24	11 2	70	6 0	16	12 7
30–39	1,525	4 9	49 7	1,189	5 4	213	3 1	41	4 7	16	7 1	0	0 0	0	0 0	13	6 1	47	4 0	6	4 8
40–49	1,135	3 6	53 3	796	3 6	222	3 2	28	3 2	7	3 1	1	2 4	0	0 0	13	6 1	53	4 5	15	11 9
50–59	1,323	4 2	57 5	967	4 4	232	3 4	48	5 5	9	4 0	1	2 4	1	3 2	8	3 7	53	4 5	4	3 2
60–69	754	2 4	59 9	582	2 7	122	1 8	16	1 8	3	1 3	0	0 0	1	3 2	2	0 9	27	2 3	1	0 8
70–79	655	2 1	62 0	526	2 4	97	1 4	8	0 9	3	1 3	0	0 0	0	0 0	1	0 5	20	1 7	0	0 0
80–89	487	1 6	63 6	379	1 7	72	1 1	12	1 4	0	0 0	0	0 0	1	3 2	1	0 5	20	1 7	2	1 6
90–99	296	0 9	64 5	238	1 1	41	0 6	4	0 5	2	0 9	0	0 0	1	3 2	1	0 5	9	0 8	0	0 0
100–109	1,362	4 3	68 8	945	4 3	306	4 5	34	3 9	8	3 6	2	4 9	1	3 2	2	0 9	59	5 1	5	4 0
110–119	191	0 6	69 4	163	0 8	19	0 3	2	0 2	1	0 4	0	0 0	0	0 0	1	0 5	5	0 4	0	0 0
120–129	423	1 3	70 7	332	1 5	64	0 9	6	0 7	2	0 9	1	2 4	1	3 2	1	0 5	16	1 4	0	0 0
130–139	226	0 7	71 4	194	0 9	24	0 4	1	0 1	0	0 0	0	0 0	0	0 0	0	0 0	7	0 6	0	0 0
140–149	149	0 5	71 9	126	0 6	16	0 2	1	0 1	1	0 4	0	0 0	0	0 0	0	0 0	5	0 4	0	0 0
150–159	576	1 8	73 7	394	1 8	144	2 1	12	1 4	1	0 4	2	4 9	1	3 2	2	0 9	19	1 6	1	0 8
160–169	136	0 4	74 1	112	0 5	19	0 3	3	0 3	0	0 0	0	0 0	0	0 0	0	0 0	2	0 2	0	0 0
170–179	170	0 5	74 6	132	0 6	18	0 3	7	0 8	3	1 3	0	0 0	0	0 0	1	0 5	8	0 7	1	0 8
180–189	134	0 4	75 0	108	0 5	19	0 3	2	0 2	0	0 0	0	0 0	0	0 0	0	0 0	2	0 2	3	2 3
190–199	68	0 2	75 2	47	0 2	10	0 1	4	0 5	4	1 8	0	0 0	0	0 0	2	0 9	1	0 1	0	0 0
200–299	1,636	5 2	80 4	1,130	5 2	381	5 6	32	3 7	2	0 9	1	2 4	1	3 2	5	2 3	78	6 7	6	4 8
300–399	1,051	3 3	83 7	729	3 3	233	3 4	10	1 2	6	2 7	0	0 0	3	9 8	2	0 9	65	5 6	3	2 3
400–499	572	1 8	85 5	399	1 8	126	1 8	12	1 4	0	0 0	0	0 0	1	3 2	3	1 4	29	2 5	2	1 6
500–599	694	2 2	87 7	453	2 1	177	2 6	10	1 2	6	2 7	0	0 0	1	3 2	0	0 0	46	3 9	1	0 8
600–699	310	1 0	88 7	211	1 0	83	1 2	4	0 5	0	0 0	0	0 0	0	0 0	0	0 0	12	1 0	0	0 0
700–799	243	0 8	89 5	146	0 7	73	1 1	7	0 8	0	0 0	0	0 0	1	3 2	0	0 0	16	1 4	0	0 0
800–899	236	0 8	90 3	149	0 7	69	1 0	4	0 5	1	0 4	0	0 0	0	0 0	0	0 0	13	1 1	0	0 0
900–999	117	0 4	90 7	78	0 4	28	0 4	3	0 3	0	0 0	0	0 0	1	3 2	0	0 0	7	0 6	0	0 0
1,000–1,999	1,124	3 6	94 3	642	2 9	384	5 6	15	1 7	0	0 0	1	2 4	7	22 8	2	0 9	71	6 1	2	1 6
2,000–2,999	594	1 9	96 2	316	1 4	225	3 3	10	1 2	0	0 0	0	0 0	5	16 2	0	0 0	36	3 1	2	1 6
3,000–3,999	293	0 9	97 1	157	0 7	114	1 7	1	0 1	6	2 7	0	0 0	0	0 0	0	0 0	15	1 3	0	0 0

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1984[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	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
4,000–4,999	131	0 5	97 6	76	0 3	44	0 6	0	0 0	0	0 0	0	0 0	1	3 2	0	0 0	10	0 9	0	0 0
5,000–9,999	343	1 2	98 8	199	0 9	111	1 6	3	0 3	0	0 0	1	2 4	0	0 0	0	0 0	29	2 5	0	0 0
Over 9,999	330	1 2	100 0	211	1 0	102	1 5	3	0 3	0	0 0	0	0 0	1	3 2	0	0 0	13	1 1	0	0 0

[1] See Glossary for definitions of terms.
[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1984 and Cumulative Totals, Fiscal Years 1936–1984

	Fiscal year 1984									July 5, 1935–Sept 30, 1984	
	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	Number	Percent
Proceedings decided by U S courts of appeals	286	243	28	12	3	—	—	—	—	—	—
On petitions for review and/or enforcement	259	220	24	12	3	100 0	100 0	100 0	100 0	9,166	100 0
Board orders affirmed in full	175	145	17	11	2	65 9	70 8	91 7	66 7	5,861	63 9
Board orders affirmed with modification	26	22	3	0	1	10 0	12 5	0 0	33 3	1,360	14 8
Remanded to Board	22	21	0	1	0	9 5	0 0	8 3	0 0	448	4 9
Board orders partially affirmed and partially remanded	9	9	0	0	0	4 1	0 0	0 0	0 0	172	1 9
Board orders set aside	27	23	4	0	0	10 5	16 7	0 0	0 0	1,325	14 5
On petitions for contempt	27	23	4	0	0	100 0	100 0	—	—	—	—
Compliance after filing of petition, before court order	2	2	0	0	0	8 7	0 0	—	—	—	—
Court orders holding respondent in contempt	22	18	4	0	0	78 3	100 0	—	—	—	—
Court orders denying petition	0	0	0	0	0	0 0	0 0	—	—	—	—
Court orders directing compliance without contempt adjudication	3	3	0	0	0	13 0	0 0	—	—	—	—
Contempt petitions withdrawn without compliance	0	0	0	0	0	0 0	0 0	—	—	—	—
Proceedings decided by U S Supreme Court	4	3	1	0	0	100 0	100 0	—	—	243	100 0
Board orders affirmed in full	2	1	1	0	0	33 4	100 0	—	—	146	60 1
Board orders affirmed with modification	1	1	0	0	0	33 3	0 0	—	—	19	7 8
Board orders set aside	1	1	0	0	0	33 3	0 0	—	—	40	16 5
Remanded to Board	0	0	0	0	0	0 0	0 0	—	—	19	7 8
Remanded to court of appeals	0	0	0	0	0	0 0	0 0	—	—	16	6 6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	0 0	0 0	—	—	1	0 4
Contempt cases remanded to court of appeals	0	0	0	0	0	0 0	0 0	—	—	1	0 4
Contempt cases enforced	0	0	0	0	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 for definitions of terms

[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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1984, Compared With 5-Year Cumulative Totals, Fiscal Years 1979 Through 1983[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1984	Total fiscal years 1979–1983	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1984		Cumulative fiscal years 1979–1983		Fiscal year 1984		Cumulative fiscal years 1979–1983		Fiscal year 1984		Cumulative fiscal years 1979–1983		Fiscal year 1984		Cumulative fiscal years 1979–1983		Fiscal year 1984		Cumulative fiscal years 1979–1983	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	259	2,051	175	67 6	1,340	65 3	26	10 0	222	10 8	22	8 5	130	6 3	9	3 5	57	2 8	27	10 4	302	14 7
1 Boston, MA	6	93	4	66 7	59	63 4	0	0 0	13	14 0	2	33 3	3	3 2	0	0 0	5	5 4	0	0 0	13	14 0
2 New York, NY	29	143	21	72 4	92	64 3	2	6 9	17	11 9	2	6 9	7	4 9	1	3 4	5	3 5	3	10 3	22	15 4
3 Phila , PA	22	196	14	63 6	137	69 9	2	9 1	15	7 7	2	9 1	13	6 6	1	4 5	7	3 6	3	13 6	24	12 2
4 Richmond, VA	12	165	6	50 0	96	58 2	4	33 3	24	14 5	2	16 7	10	6 1	0	0 0	3	1 8	0	0 0	32	19 4
5 New Orleans, LA	15	219	10	66 7	143	65 3	2	13 3	25	11 4	3	20 0	11	5 0	0	0 0	6	2 7	0	0 0	34	15 5
6 Cincinnati, OH	42	291	22	52 3	184	63 2	6	14 3	34	11 7	3	7 1	17	5 8	2	4 8	3	1 0	9	21 4	53	18 2
7 Chicago, IL	25	194	18	72 0	102	52 6	3	12 0	33	17 0	1	4 0	13	6 7	0	0 0	2	1 0	3	12 0	44	22 7
8 St Louis, MO	14	136	11	78 6	96	70 6	2	14 3	19	14 0	0	0 0	6	4 4	0	0 0	2	1 5	1	7 1	13	9 6
9 San Francisco, CA	42	399	33	78 6	284	71 2	2	4 8	27	6 8	4	9 5	30	7 5	0	0 0	15	3 8	3	7 1	43	10 8
10 Denver, CO	19	75	14	73 7	51	68 0	0	0 0	5	6 7	1	5 3	7	9 3	2	10 5	3	4 0	2	10 5	9	12 0
11 Atlanta, GA[2]	15	37	10	66 7	27	73 0	2	13 3	3	8 1	1	6 7	1	2 7	2	13 3	0	0 0	0	0 0	6	16 2
Washington, DC	18	103	12	66 7	69	67 0	1	5 6	7	6 8	1	5 6	12	11 7	1	5 6	6	5 8	3	16 7	9	8 7

[1] Percentages are computed horizontally by current fiscal year and total fiscal years
[2] Commenced operations October 1, 1981

Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10(1), Fiscal Year 1984

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept 30, 1984
		Pending in district court Oct 1, 1983	Filed in district court fiscal year 1984		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec 10(e) total	[1]2	0	2	1	1	0	0	0	0	0	1
Under Sec 10(j) total	30	0	30	29	18	0	9	2	0	0	1
8(a)(1)(2)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)	5	0	5	5	1	0	3	1	0	0	0
8(a)(1)(3)(4)	2	0	2	2	1	0	1	0	0	0	0
8(a)(1)(3)(5)	7	0	7	6	4	0	2	0	0	0	1
8(a)(1)(4)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(5)	3	0	3	3	2	0	1	0	0	0	0
8(b)(1)	4	0	4	4	3	0	1	0	0	0	0
8(b)(1)(3)	3	0	3	3	3	0	0	0	0	0	0
8(b)(3)	1	0	1	1	1	0	0	0	0	0	0
8(g)	3	0	3	3	2	0	0	1	0	0	0
Under Sec 10(l) total	88	2	86	75	35	4	21	5	5	5	13
8(b)(4)(A)	2	0	2	1	0	0	1	0	0	0	1
8(b)(4)(B)	53	2	51	48	23	4	14	0	3	4	5
8(b)(4)(B); 8(b)(7)(C)	3	0	3	3	2	0	1	0	0	0	0
8(b)(4)(B), 8(e)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)(D)	2	0	2	1	0	0	1	0	0	0	1
8(b)(4)(B), 8(e)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(D)	12	0	12	9	3	0	1	4	1	0	3
8(b)(4)(D), 8(b)(7)(A)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(B)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(C)	7	0	7	5	4	0	0	0	0	1	2
8(e)	3	0	3	2	0	0	0	1	1	0	1

[1] In courts of appeals

Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Fiscal Year 1984

Type of litigation	Number of proceedings								
	Total—all courts			In courts of appeals			In district courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	54	51	3	27	26	1	27	25	2
NLRB-initiated actions or interventions	3	3	0	1	1	0	2	2	0
To enforce subpoena	1	1	0	1	1	0	0	0	0
To defend Board's jurisdiction	1	1	0	0	0	0	1	1	0
To prevent conflict between NLRA and Bankruptcy Code	1	1	0	0	0	0	1	1	0
Action by other parties	51	48	3	26	25	1	25	23	2
To review non-final orders	2	2	0	1	1	0	1	1	0
To restrain NLRB from	24	22	2	5	5	0	19	17	2
Proceeding in R case	8	8	0	2	2	0	6	6	0
Proceeding in unfair labor practice case	16	14	2	3	3	0	13	11	2
Enforcing subpoena	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
To compel NLRB to	25	24	1	20	19	1	5	5	0
Issue complaint	4	4	0	1	1	0	3	3	0
Take action in R case	0	0	0	0	0	0	0	0	0
Comply with Freedom of Information Act[1]	3	2	1	2	1	1	1	1	0
Pay fees under Equal Access to Justice Act	17	17	0	17	17	0	0	0	0
Engage in rulemaking	1	1	0	0	0	0	1	1	0
Other	0	0	0	0	0	0	0	0	0

[1] FOIA cases are categorized as to court determination depending on whether NLRB substantially prevailed

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1984[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1983	0	0	0	0	0
Received fiscal 1984	2	2	0	0	0
On docket fiscal 1984	2	2	0	0	0
Closed fiscal 1984	1	1	0	0	0
Pending September 30, 1984	1	1	0	0	0

[1] See Glossary for definitions of terms

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1984[1]

Action taken	Total cases closed
	1
Board would assert jurisdiction	0
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	0

[1] See Glossary for definitions of terms

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1984; and Age of Cases Pending Decision, September 30, 1984

Stage	Median days
I Unfair labor practice cases	
A Major stages completed—	
1 Filing of charge to issuance of complaint	45
2 Complaint to close of hearing	122
3 Close of hearing to issuance of administrative law judge's decision	118
4 Administrative law judge's decision to issuance of Board decision	296
5 Filing of charge to issuance of Board decision	660
B Age[1] of cases pending administrative law judge's decision, September 30, 1984	219
C Age[1] of cases pending Board decision, September 30, 1984	688
II Representation cases	
A Major stages completed—	
1 Filing of petition of notice of hearing issued	8
2 Notice of hearing to close of hearing	13
3 Close of hearing to—	
Board decision issued	249
Regional director's decision issued	21
4 Filing of petition to—	
Board decision issued	301
Regional director's decision issued	44
B Age[2] of cases pending Board decision, September 30, 1984	377
C Age[2] of cases pending regional director's decision, September 30, 1984	26

[1] From filing of charge
[2] From filing of petition

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1984

I Applications for fees and expenses before the NLRB	
A Filed with Board	46
B Hearings held	1
C Awards ruled on	
1 By administrative law judges	
Granting	7
Denying	40
2 By Board	
Granting	3
Denying	32
D Amount of fees and expenses in cases ruled on by Board	
Claimed	$490,096
Recovered	$39,226
II Applications for fees and expenses before the circuit courts of appeals	
A Awards ruled on	
Granting	0
Denying	16
B Amounts of fees and expenses recovered pursuant to court award	0

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