FIFTY-SEVENTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., September 30, 1994.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Fifty-Seventh Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1992.

Respectfully submitted,
WILLIAM B. GOULD IV, *Chairman*

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

TABLE OF CONTENTS

TABLES

CHARTS IN CHAPTER I

I

Operations In Fiscal Year 1992

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 1992, 38,943 cases were received by the Board.

The public filed 32,442 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 6195 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 306 amendment to certification and unit clarification cases.

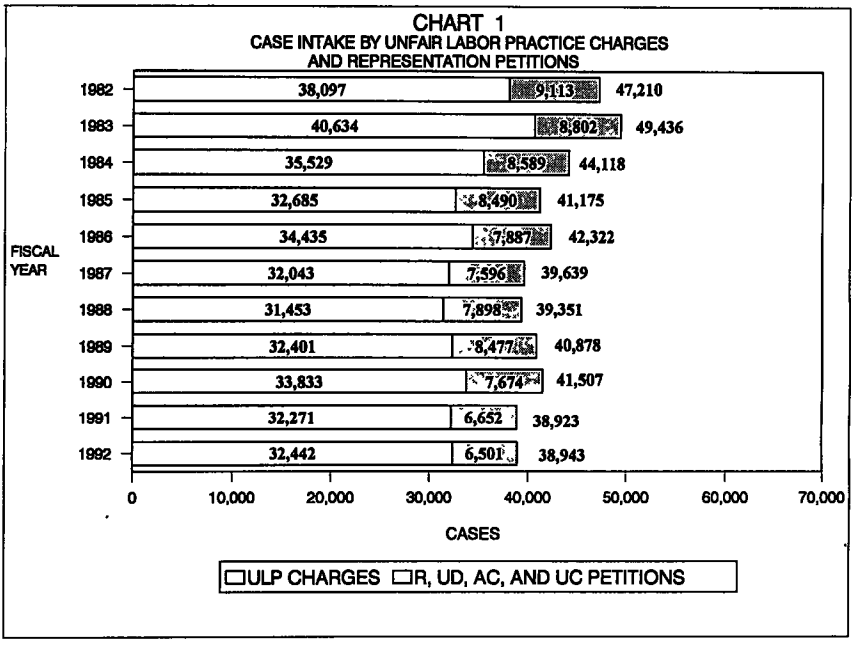
After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

At the end of fiscal year 1992, the five-member Board was composed of Chairman James M. Stephens and Members Dennis M. Devaney, Clifford Oviatt Jr., and John N. Raudabaugh. Jerry M. Hunter served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1992 include:

- The NLRB conducted 3599 conclusive representation elections among some 193,035 employee voters, with workers choosing labor unions as their bargaining agents in 46.5 percent of the elections.
- Although the Agency closed 39,074 cases, 26,788 cases were pending in all stages of processing at the end of the fiscal year. The closings included 32,750 cases involving unfair labor practice charges and 5860 cases affecting employee representation and 464 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9860.

- The amount of $51,117,358 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 3811 offers of job reinstatements, with 3216 acceptances.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 3521 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 658 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.

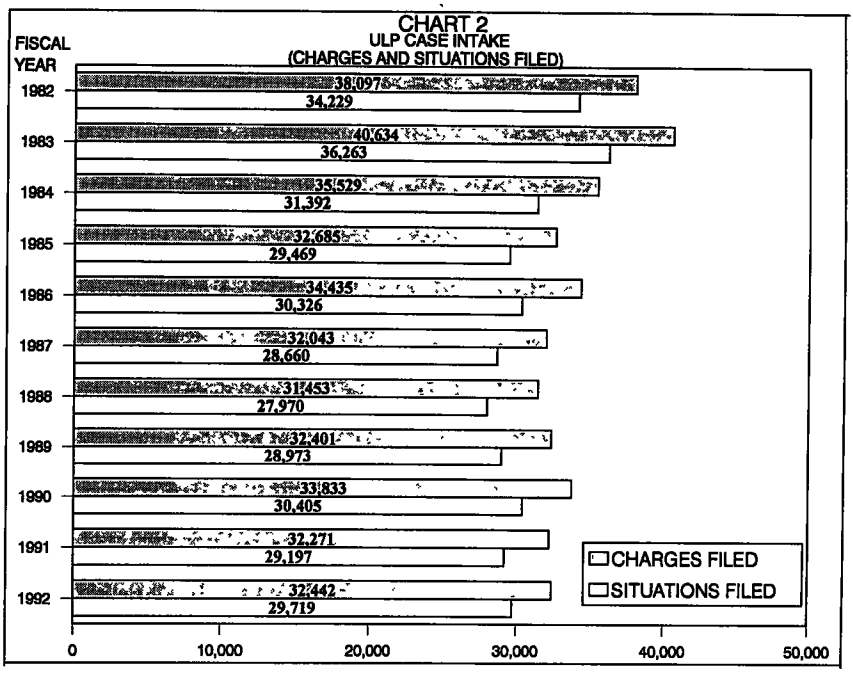
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1992.

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

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

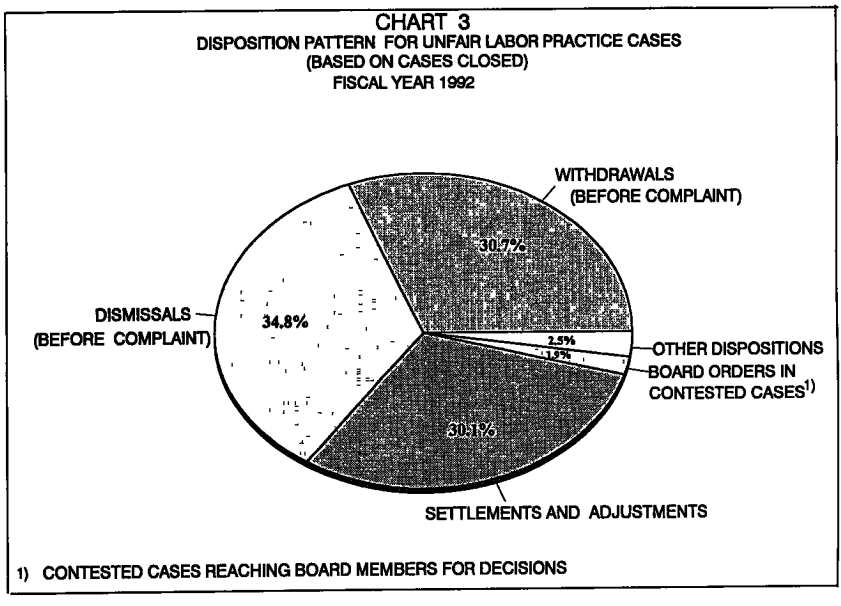
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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



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

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



B. Operational Highlights

1. Unfair Labor Practices

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

Following their filing, charges are investigated by the Regional professional staff to determine whether there is reasonable cause to

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

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 51 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1992, 32,442 unfair labor practice charges were filed with the NLRB, an increase of about 1 percent from the 32,271 filed in fiscal year 1991. In situations in which related charges are counted as a single unit, there was a 2-percent increase from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 21,245 cases, about 1 percent more than the 21,099 of 1991. Charges against unions increased 2 percent to 10,272 from 10,024 in 1991.

There were 45 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 11,310 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 9935 charges, in about 47 percent of the total charges. (Table 2.)

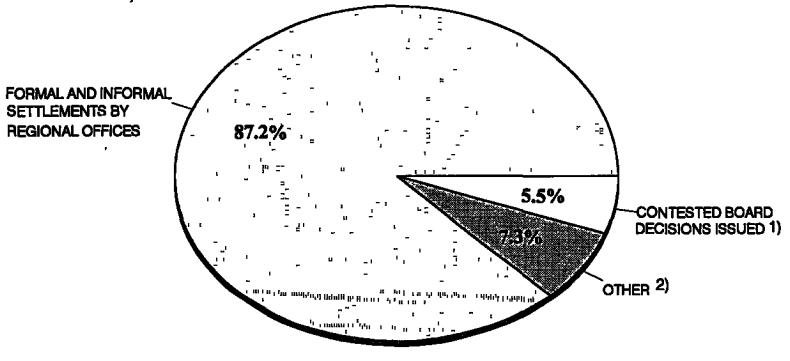
Of charges against unions, the majority (7800) alleged illegal restraint and coercion of employees, about 76 percent. There were 964 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of less than 1 percent from the 967 of 1991.

There were 1300 charges (about 13 percent) of illegal union discrimination against employees, an increase of 10 percent from the 1184 of 1991. There were 208 charges that unions picketed illegally for recognition or for organizational purposes, compared with 211 charges in 1991. (Table 2.)

In charges filed against employers, unions led with 69 percent of the total. Unions filed 16,026 charges and individuals filed 7093.

Concerning charges against unions, 7074 were filed by individuals, or 76 percent of the total of 9278. Employers filed 2029 and other unions filed the 175 remaining charges.

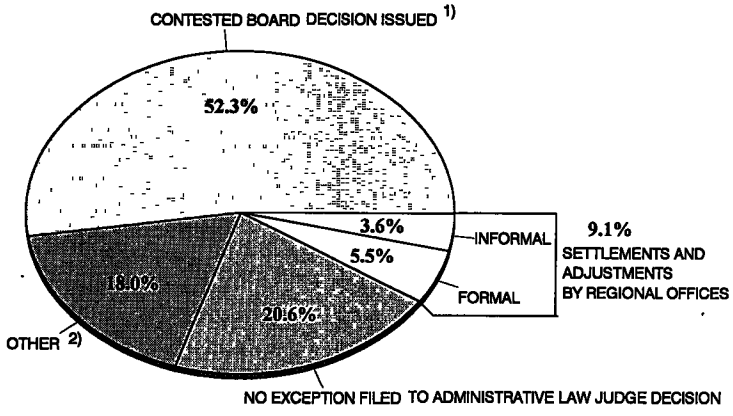
CHART 3A
DISPOSITION PATTERN FOR MERITORIOUS
UNFAIR LABOR PRACTICE CASES
(BASED ON CASES CLOSED)
FISCAL YEAR 1992



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

CHART 3B
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(BASED ON CASES CLOSED)
FISCAL YEAR 1992



1) FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING
2) DISMISSALS, WITHDRAWALS AND OTHER DISPOSITIONS

In fiscal year 1992, 32,750 unfair labor practice cases were closed. About 96 percent were closed by NLRB Regional Offices, the same as in 1991. During the fiscal year, 30.1 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.7 percent were withdrawn before complaint, and 34.8 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1992, 40 percent of the unfair labor practice cases were found to have merit, a 5-percent decrease from 1991.

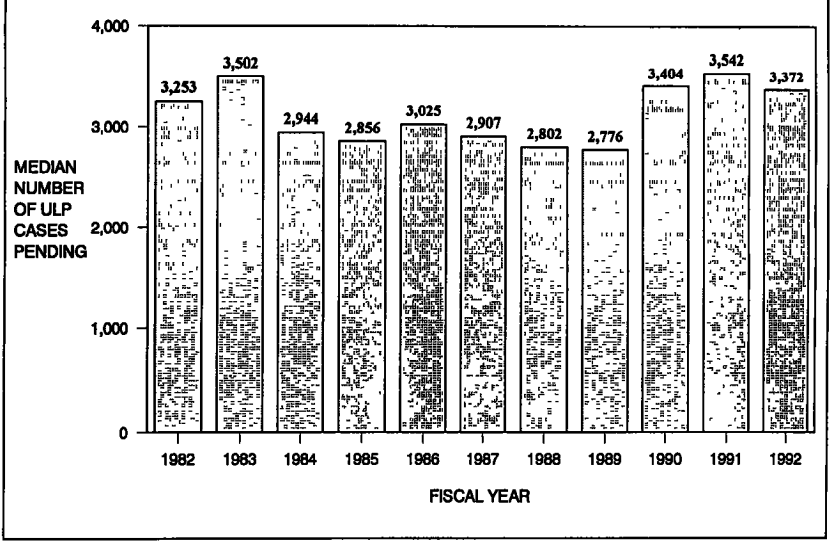
When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1992, precomplaint settlements and adjustments were achieved in 9652 cases, or 27.2 percent of the charges. In 1991 the percentage was 28.0. (Chart 5.)

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 1992, 3521 complaints were issued, compared with 3884 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 85.6 percent were against employers, 14.3 percent against unions, and 0.1 percent against both employers and unions.

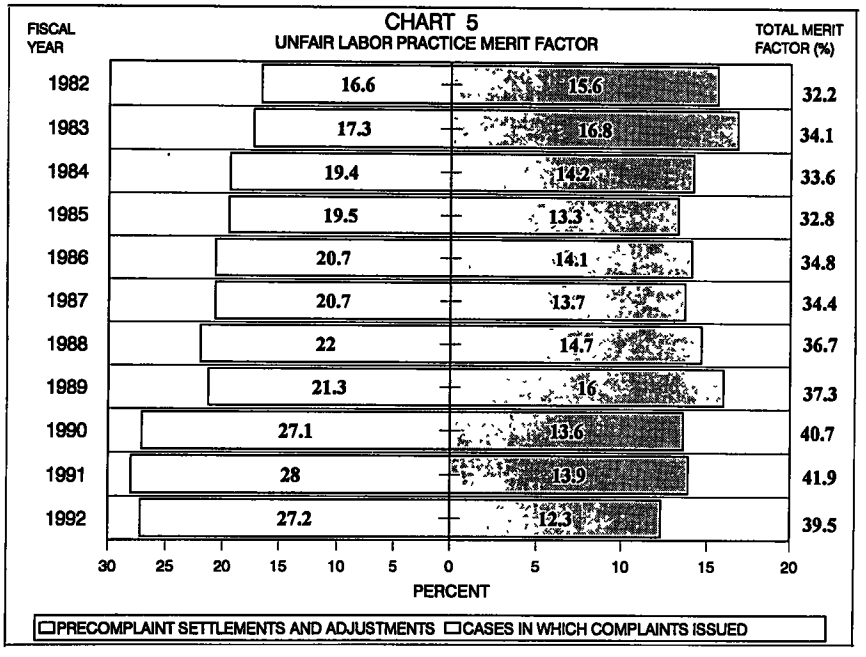
NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 46 days. The 46 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

CHART 4
NUMBER OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH



Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 658 decisions in

947 cases during 1992. They conducted 613 initial hearings, and 7 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

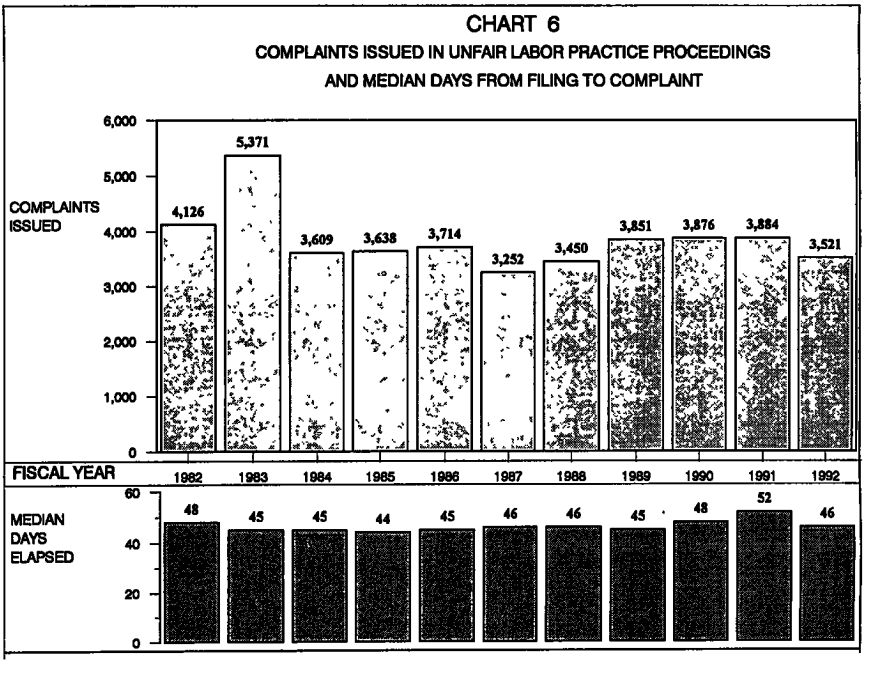


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the five-member Board for final NLRB decision.

In fiscal year 1992, the Board issued 751 decisions in unfair labor practice cases contested as to the law or the facts—643 initial decisions, 45 backpay decisions, 34 determinations in jurisdictional work dispute cases, and 29 decisions on supplemental matters. Of the 643 initial decision cases, 558 involved charges filed against employers and 85 had union respondents.

For the year, the NLRB awarded backpay of $50.7 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $435,531. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 3811 employees were offered reinstatement, and 84 percent accepted.

At the end of fiscal 1992, there were 23,388 unfair labor practice cases being processed at all stages by the NLRB, compared with 23,696 cases pending at the beginning of the year.

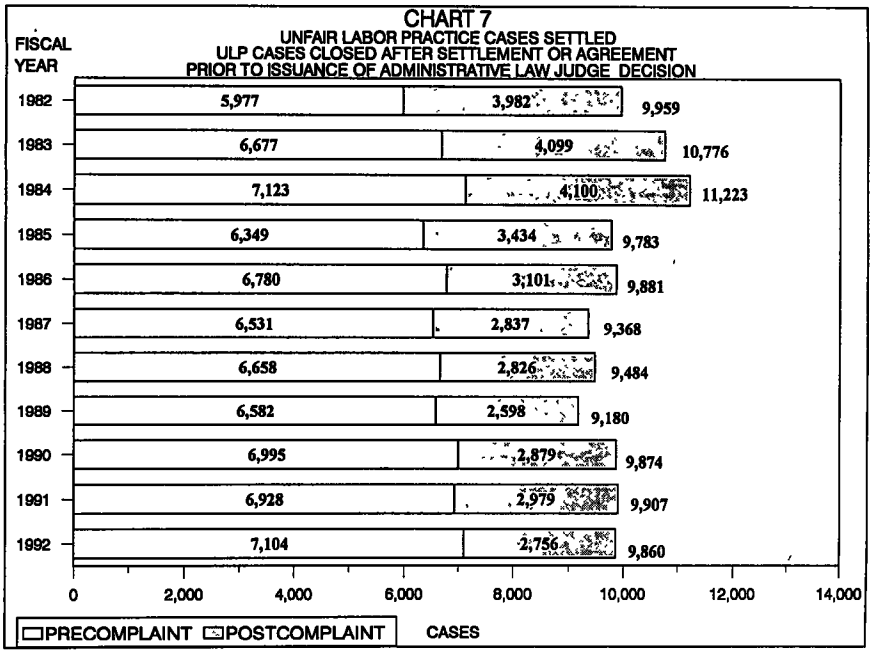


2. Representation Cases

The NLRB received 6501 representation and related case petitions in fiscal 1992, compared with 6652 such petitions a year earlier.

The 1992 total consisted of 4946 petitions that the NLRB conduct secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1130 petitions to decertify existing bargaining agents; 119 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 284 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from

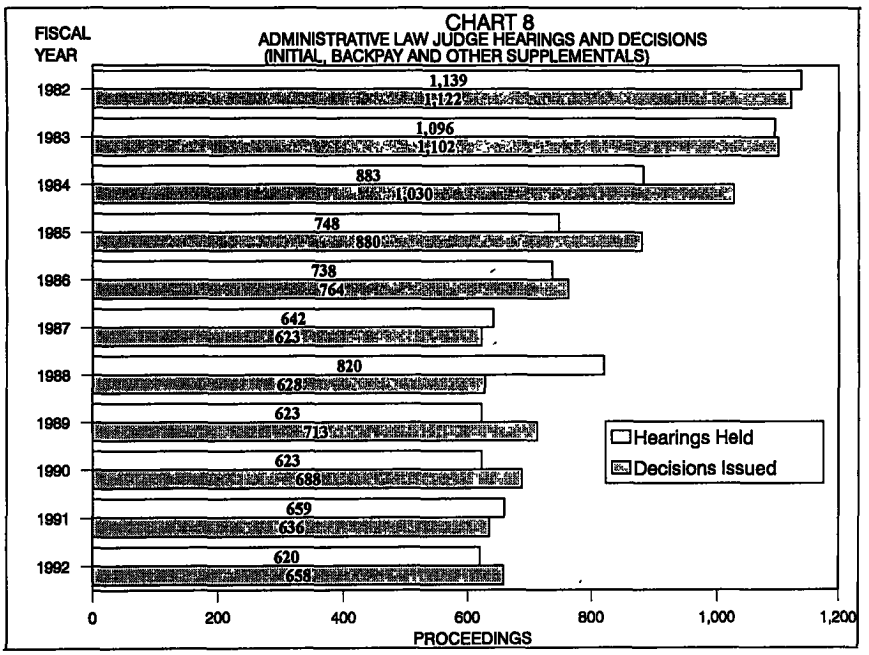
existing bargaining units. Additionally, 22 amendment of certification petitions were filed.



During the year, 6324 representation and related cases were closed, compared with 6656 in fiscal 1991. Cases closed included 4770 collective-bargaining election petitions; 1090 decertification election petitions; 145 requests for deauthorization polls; and 319 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 13.6 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 41 cases where the Board directed elections after transfers of cases from the Regional Office. (Table 10.) There were four cases that resulted in expedited

elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.



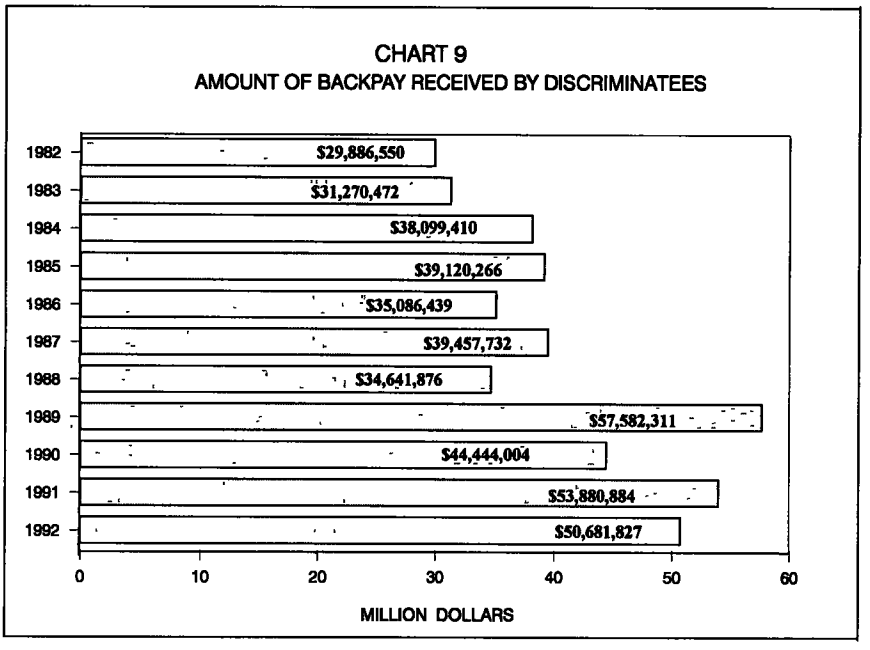
3. Elections

The NLRB conducted 3599 conclusive representation elections in cases closed in fiscal 1992, compared with the 3752 such elections a year earlier. Of 219,730 employees eligible to vote, 193,035 cast ballots, virtually 9 of every 10 eligible.

Unions won 1673 representation elections, or 46.5 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 83,379 workers. The employee vote over the course of the year was 90,900 for union representation and 102,135 against.

The representation elections were in two categories—the 2993 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 606 decerti-

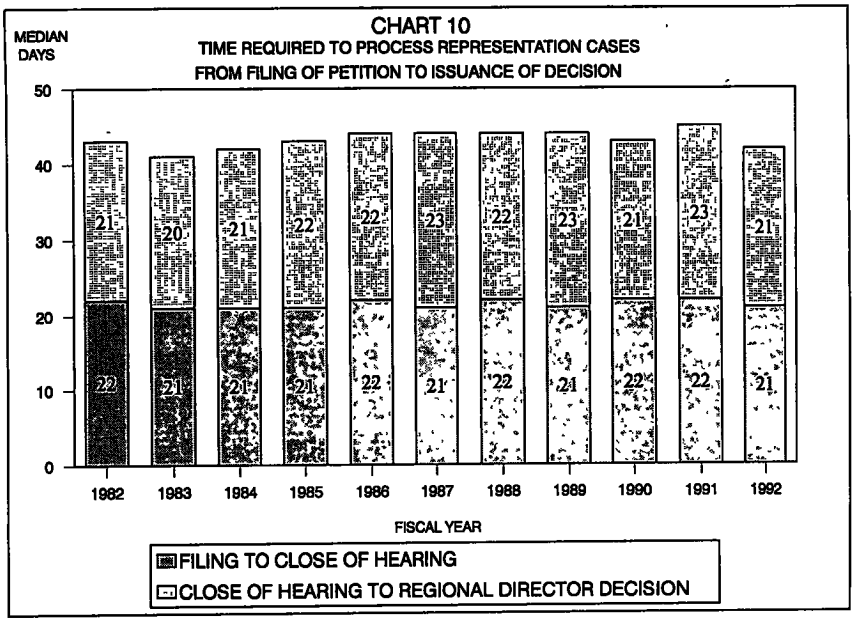
fication elections determining whether incumbent unions would continue to represent employees.



There were 3442 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1538, or 44.7 percent. In these elections, 79,328 workers voted to have unions as their agents, while 98,694 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 69,296 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 157 multiunion elections, in which 2 or more labor organizations were on the ballot, as well as a choice for no representa-

tion. Employees voted to continue or to commence representation by 1 of the unions in 135 elections, or 86.0 percent.



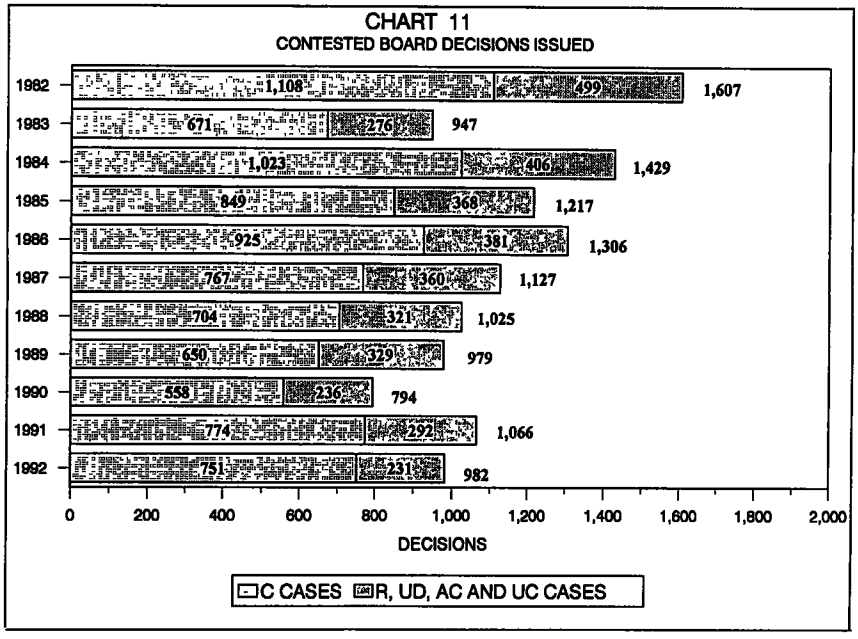
As in previous years, labor organizations lost decertification elections by a substantial percentage. The decertification results brought continued representation by unions in 181 elections, or 29.9 percent, covering 16,009 employees. Unions lost representation rights for 18,165 employees in 425 elections, or 70.1 percent. Unions won in bargaining units averaging 88 employees, and lost in units averaging 43 employees. (Table 13.)

Besides the conclusive elections, there were 189 inconclusive representation elections during fiscal year 1992 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 28 referendums, or 45.9 percent, while they maintained the right in the other 33 polls which covered 2973 employees. (Table 12.)

For all types of elections in 1992, the average number of employees voting, per establishment, was 54, about the same as 1991. About

75 percent 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 1478 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 1627 decisions rendered during fiscal year 1991.

A breakdown of Board decisions follows:

Total Board decisions		**1,478**
Contested decisions		**982**
Unfair labor practice decisions	751	
Initial (includes those based on stipulated record)	643	
Supplemental	29	
Backpay	45	
Determinations in jurisdictional disputes	34	

Representation decisions		223	
After transfer by Regional Directors for initial decision	5		
After review of Regional Director decisions	44		
On objections and/or challenges	174		
Other decisions		8	
Clarification of bargaining unit	8		
Amendment to certification	0		
Union-deauthorization	0		
Noncontested decisions			**496**
Unfair labor practice	251		
Representation	240		
Other	5		

The majority (66 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.)

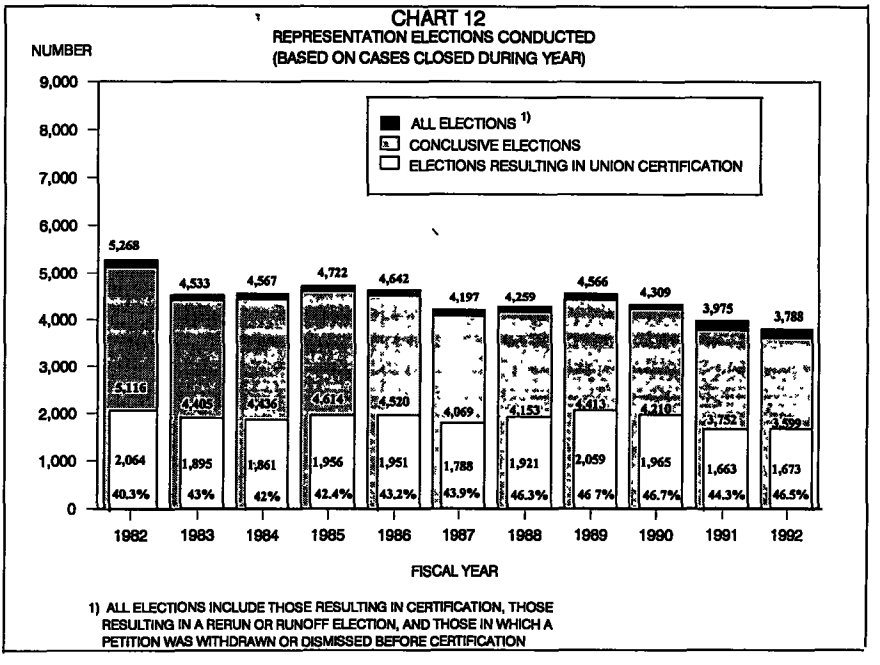
In fiscal 1992 about 6 percent of all meritorious charges and 52 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times longer to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 862 decisions in fiscal 1992, compared with 819 in 1991. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

With a leveling in case filings alleging unfair labor practices, administrative law judges issued 658 decisions and conducted 620 hearings. (Chart 8 and Table 3A.)



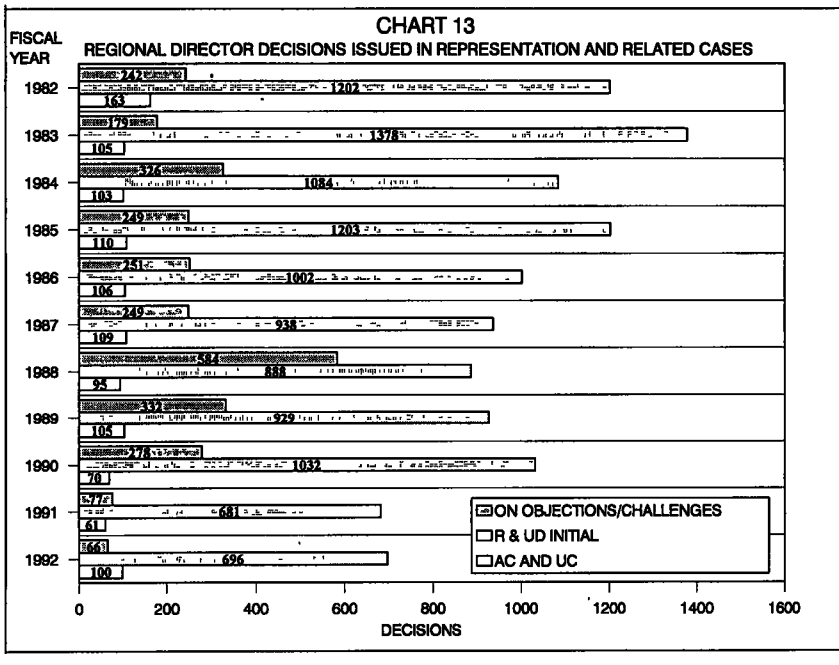
1) ALL ELECTIONS INCLUDE THOSE RESULTING IN CERTIFICATION, THOSE RESULTING IN A RERUN OR RUNOFF ELECTION, AND THOSE IN WHICH A PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION

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 year 1992, 161 cases involving the NLRB were decided by the United States courts of appeals compared with 178 in fiscal year 1991. Of these, 83.8 percent were won by NLRB in whole or in part compared to 86.5 percent in fiscal year 1991; 5.0 percent were remanded entirely compared with 5.6 percent in fiscal year 1991; and 11.2 percent were entire losses compared with 7.9 percent in fiscal year 1991.



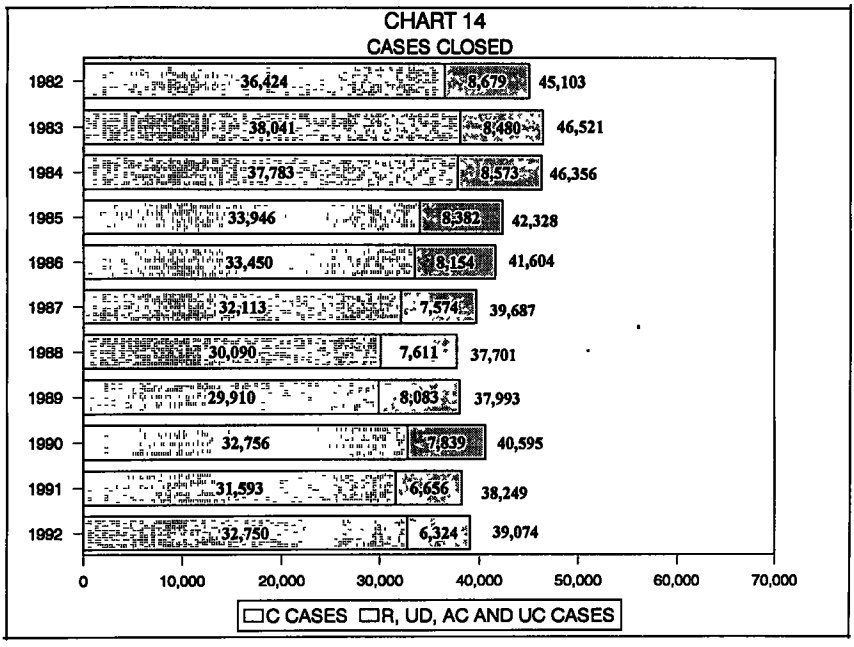
b. The Supreme Court

In fiscal 1992, there was one Board case decided by the Supreme Court. The Board participated as amicus in no cases in fiscal 1992.

c. Contempt Actions

In fiscal 1992, 107 cases were referred to the contempt section for consideration of contempt action. There were 20 contempt proceedings instituted. There were 13 contempt adjudications awarded in favor of the Board; 5 cases in which the court directed compliance

without adjudication; and no cases in which the petition was withdrawn or denied.



d. Miscellaneous Litigation

There were 21 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 17 cases. (Table 21.)

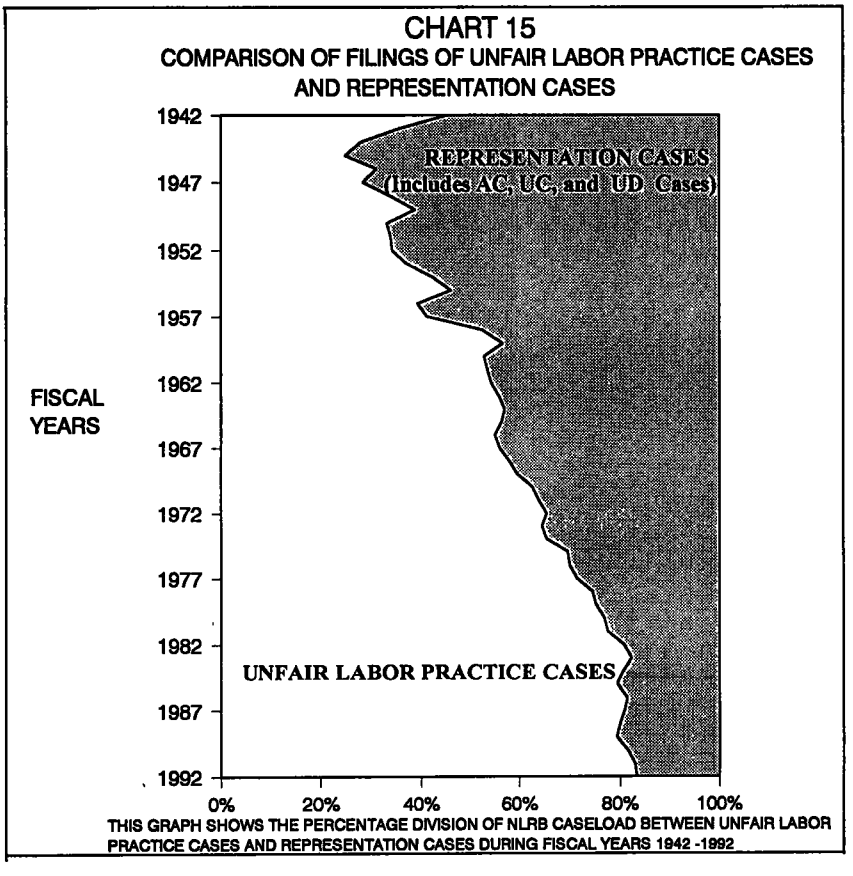
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 43 petitions filed with the U.S. district courts, compared with 55 in fiscal year 1991. (Table 20.) Injunctions were granted in 19, or 63 percent, of the 30 cases litigated to final order.

NLRB injunction activity in district courts in 1991:

Granted	19
Denied	11
Withdrawn	3
Dismissed	3

Settled or placed on court's inactive lists 19
Awaiting action at end of fiscal year 10



D. 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 on "NLRB Jurisdiction," Chapter III on "Board Procedure,"

Chapter IV on "Representation Proceedings," and Chapter V on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly six of the decisions establishing or reexamining basic principles in significant areas.

1. Jurisdiction Over Tribal-Owned Enterprises

In *Sac & Fox Industries*,[1] the Board asserted jurisdiction over a manufacturing enterprise, owned and controlled by the Sac and Fox Indian Tribe, which was located well outside the tribal reservation. The Board majority distinguished previous decisions in which the Board had declined jurisdiction over tribal-owned enterprises on the ground that the facilities in those cases were located on the tribal reservations. The Board majority found that jurisdiction was appropriate in this case because the facilities involved were not on the tribal reservation, there was no contention that the land under the facilities was protected by treaty, and the National Labor Relations Act (NLRA) did not specifically exempt Indians or their off-reservation enterprises. Moreover, the Board majority found that the tribe was engaged in a normal manufacturing operation employing mostly nontribal members, the NLRA's effects would not extend beyond the business enterprise itself, there was no provision in any of the tribe's treaties prohibiting application of the NLRA to an off-reservation tribal enterprise, and there was no basis in the language or legislative history of the NLRA to infer a congressional intent to exempt such enterprises. Finally, the Board majority rejected the argument that the tribe's common law sovereign immunity barred the Board from asserting jurisdiction on the ground that, as domestic dependent sovereigns, Indian tribes have no sovereign immunity against the superior sovereign, the United States.

2. Late-Arriving Voters in Representation Cases

In *Monte Vista Disposal Co.*,[2] the Board held that "an employee who arrives at the polling place after the designated polling period ends shall not be entitled to have his or her vote counted, in the absence of extraordinary circumstances, unless the parties agree not to challenge the ballot." The Board majority, citing a "confusing" array of precedent on this issue, overruled *New England Oyster House*[3] and similar cases, which had given the Regional Director broad discretion in determining whether to count the ballot of a late-arriving voter. The majority opted for "something closer to a bright-line rule terminating the balloting at the conclusion of the voting period," and therefore sustained the challenges to two voters' ballots when they arrived at the polling place, with no extraordinary circumstances to justify their tardiness, just after the polling period ended.

[1] 307 NLRB 241 (Chairman Stephens and Member Raudabaugh; Member Devaney dissenting).
[2] 307 NLRB 531 (Chairman Stephens and Members Oviatt and Raudabaugh; Member Devaney dissenting).
[3] 225 NLRB 682 (1976).

3. Union Access to Employer Premises

In *Loehmann's Plaza*,[4] the Board held that the filing or active pursuit of a state court lawsuit seeking to enjoin protected peaceful picketing after the point of preemption—when a complaint issues concerning the same activity—tends to interfere with Section 7 rights, thereby violating Section 8(a)(1) of the Act.

Finding that the right of the union to engage in area standards picketing and handbilling outweighed the respondents' right to restrict access to their private property in the circumstances, the Board concluded that the union was entitled to engage in picketing and handbilling at the entrances and exits of respondent Makro's store in the Loehmann's Plaza Shopping Center owned by respondent Renaissance Properties.

In addition, Chairman Stephens and Member Raudabaugh found that the respondents' pursuit of their state court lawsuit, which sought to enjoin the union's peaceful protected activity after the General Counsel issued a complaint in this case further violated Section 8(a)(1) even in the absence of a retaliatory motive. Member Devaney dissented on this point. The majority overruled *Clyde Taylor Co.*,[5] which had established the general principle that the filing of a lawsuit is not in and of itself an unfair labor practice, to the extent that that case is inconsistent with *Loehmann's Plaza*.

The majority applied this "arguably new rule" to the instant parties and to those parties in other pending cases because it found no "manifest injustice" in doing so.

Member Devaney stated that he would find that, in the absence of a retaliatory motive and "given a reasonable basis for filing the suit," the respondents did not violate Section 8(a)(1) by maintaining the state court trespass lawsuit even after the General Counsel issued the complaint.

4. Direct Dealing

In *Allied-Signal, Inc.*,[6] the Board held that the employer did not violate Section 8(a)(5) of the Act through its unilateral change of its employee smoking policy. The Board concluded that the union had contractually waived its bargaining rights on this issue. The Board also found, however, that the employer did violate Section 8(a)(5) by its direct dealing with an employee task force prior to the imposition of the new policy.

Prior to the new policy, smoking was prohibited in some parts of the plant and permitted in others; pursuant to the new policy it was prohibited in all areas except for designated areas in two employee cafeterias. Management had initially determined to permit smoking in some areas in addition to the cafeteria, but it appointed an employee task force, including employees both within and outside of the bar-

[4] 305 NLRB 663 (Chairman Stephens and Member Raudabaugh; Member Devaney concurring in part and dissenting in part).

[5] 127 NLRB 103 (1960).

[6] 307 NLRB 752 (Members Oviatt and Raudabaugh; Chairman Stephens dissenting in part).

gaining unit, to consider the matter before implementing the new policy. Pursuant to the task force deliberations, the additional restrictions were added. The union was not notified of the appointment of the task force and was not aware of its existence until after the new ban had been implemented.

The Board dismissed the complaint allegations as to the unilateral change because it found that a safety and health clause in the collective-bargaining agreement, considered in the light of past practice under the clause, gave the employer unilateral authority to develop and implement new policies affecting employee safety and health. The Board also considered a so-called zipper clause, but relied on that clause "only to the extent that it confirms the historical and contractual status quo of permitting the [employer] to act unilaterally with respect to its smoking policy."

However, in finding the direct dealing violation, the Board first noted that the employer had gone behind the back of the union to solicit employee input on a proposed change in working conditions and concluded that, particularly in light of the controversial nature of the policy in question, this "plainly erode[d] the position" of the union as employee bargaining representative. The Board rejected the employer's waiver contention, finding that "nothing in the language of the collective-bargaining agreement or the record of contract administration remotely suggests that the Union waived" its right not to be bypassed when the employer dealt with the employees on changes in their working conditions.

5. Discriminatee Engaged in Postdischarge Misconduct

In *Lear-Siegler Management Service*,[7] the Board held that the appropriate remedy for a discriminatee who engaged in postdischarge misconduct by threatening a potential witness in a Board proceeding is to deny reinstatement and to toll backpay as of the date of the misconduct.

The Board found that the discriminatee, Wood, should receive backpay from the date of his unlawful discharge until the date of his misconduct. The Board reasoned: "Denying backpay after the date of the threat protects the integrity of the Board's processes by providing that those who abuse the process cannot turn around and use the process to reap a full remedy. Granting backpay until that date also ensures that a respondent's unlawful discrimination does not go unremedied." Thus, the Board concluded that "a discriminatee who interferes with the Board's processes by attempting to influence and manipulate a witness in a Board proceeding will forfeit his right to backpay beyond the date of the impermissible interference."

[7] 306 NLRB 393 (Chairman Stephens and Members Oviatt and Raudabaugh).

Although a discriminatee's interference with the Board's processes warrants the tolling of backpay rights, the Board further held that "it does not alone warrant the denial of reinstatement," overruling the dictum in *D. V. Copying & Printing*,[8] to the extent that that case suggests that interference with the Board's processes alone, without accompanying threats, compels denial of reinstatement. However, because of the seriousness of the threat, coupled with Wood's workplace reputation for "disruptive and violent conduct," the Board agreed with the employer's contentions concerning Wood's fitness to return to the workplace and found that the potential for serious disruption warranted denying him reinstatement.

6. Special Remedial Order Against Labor Consultant

In *Blankenship & Associates*,[9] the Board issued a special remedial order against the respondents who committed numerous violations of Section 8(a)(1) of the Act when acting as labor consultants to a poultry processing company during a union organizing drive. The Board applies a narrow cease-and-desist order to the respondents when they act as agents for any employer over whom the Board has jurisdiction. The Board's order was narrow in the sense that it forbade the respondents from engaging in any like or related conduct. It was broad, however, in the sense that it was not confined to the respondents when acting as agents of the poultry processing company. The Board determined that such an order was warranted in light of the respondents' history of engaging in misconduct as agents for many different employer-clients.

The Board observed that "For more than a decade, Blankenship's name has come before the Board as an agent who has committed repeated unlawful acts on behalf of the employer/clients who hired him." Those acts included unlawful threats of loss of work or plant closing, unlawful undermining of support for a union by urging employees to bargain directly with the employer, overall bad-faith bargaining, locking out employees while engaging in bad-faith bargaining, and unlawful solicitation of grievances and promise of benefits. The Board expressed concern that, absent restraint, the respondent would engage in misconduct for other clients in the future. The Board concluded that in such circumstances it was appropriate to enter an order which applied to the respondents when they acted as agents for any employer over whom the Board would assert jurisdiction.

[8] 240 NLRB 1276 fn. 2 (1979).

[9] 306 NLRB 994 (Chairman Stephens and Members Devaney and Raudabaugh).

E. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1992, are as follows:

Personnel compensation	$106,598,313
Personnel benefits	18,112,999
Benefits for former personnel	23,350
Travel and transportation of persons	4,112,094
Transportation of things	106,740
Rent, communications, and utilities	20,853,804
Printing and reproduction	418,828
Other services	6,440,563
Supplies and materials	1,229,099
Equipment	3,830,055
Insurance claims and indemnities	157,767
Total obligations and expenditures[10]	$161,883,612

[10] Includes $228,789 for reimbursables from the administrative law judge loan program.

II

NLRB Jurisdiction

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

A. Tribal-Owned Enterprises

In *Sac & Fox Industries*,[6] the Board asserted jurisdiction over a manufacturing enterprise that was owned and controlled by the Sac and Fox Indian Tribe but was located well outside the tribal reservation.

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

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

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

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

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

[6] 307 NLRB 241 (Chairman Stephens and Member Raudabaugh; Member Devaney dissenting).

The Board majority of Chairman Stephens and Member Raudabaugh distinguished previous decisions in which the Board had declined jurisdiction over tribal-owned enterprises on the ground that the facilities in those cases were located on the tribal reservations. Applying the general rule of statutory construction set forth by the Supreme Court, the majority found that jurisdiction was appropriate over the tribe's facility because the facility was not on the tribal reservation, there was no contention that the land underlying the facilities was protected by treaty, and the National Labor Relations Act (NLRA) did not specifically exempt Indians or their off-reservation enterprises. Further, although recognizing that the courts of appeals had fashioned certain exceptions to the Supreme Court's general rule, the majority found that none of the exceptions applied because the tribe was engaged in a normal manufacturing operation employing mostly nontribal members, the NLRA's effects would not extend beyond the business enterprise itself, there was no provision in any of the tribe's treaties prohibiting application of the NLRA to an off-reservation tribal enterprise, and there was no basis in the language or legislative history of the NLRA to infer a congressional intent to exempt such enterprises. Finally, the majority rejected the tribe's argument that the tribe's common law sovereign immunity barred the Board from asserting jurisdiction, citing court decisions holding that, as domestic dependent sovereigns, Indian tribes have no sovereign immunity against the superior sovereign, the United States.

Dissenting, Member Devaney argued that the majority's decision was contrary to and seriously undermined the continued viability of the Board's prior precedent. In his view, the thrust of such prior decisions was that tribal enterprises were exempt as governmental entities under the NLRA, and thus it was the identity of the party controlling the enterprise, rather than the facility's location, that was of controlling significance. In his view, the spirit of such decisions was to allow tribal enterprises to operate freely without Board intervention, and the Board's assertion of jurisdiction over the tribe's off-reservation facility therefore not only violated that spirit, but also made little practical sense because the Board was not at the same time asserting jurisdiction over the tribe's other facilities that, unlike the subject facility, were located within the tribal reservation.

B. Definition of "Employer"

In *Operating Engineers Local 487 Health Fund*,[7] the Board dismissed the complaint after finding that the respondent trust fund was not a statutory employer within the meaning of Section 2(2) of the Act because the fund did not employ statutory employees.

The trust fund was established in 1969 by agreement of Operating Engineers Local 487 and employees represented by the Heavy Construction Association of South Florida, Inc. The fund contracted with American Administrators to administer the fund's day-to-day oper-

[7] 308 NLRB 805 (Chairman Stephens and Members Devaney and Oviatt).

ations. Contrary to the administrative law judge, the Board found that Sue Michael, American Administrators' account representative for the fund, and/or American Administrators was not an "employee" of the fund. Because the fund does not employ employees to work for compensation, the Board concluded that the General Counsel has not shown that the fund is a statutory employer. Accordingly, it dismissed the complaint for lack of jurisdiction.

III

Board Procedure

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 on any unfair labor practice occurring more than six months prior to the filing of the charge."

A. Limitation of Section 10(b)

In *Moeller Bros. Body Shop*,[1] the Board held that Section 10(b) of the Act, which provides for a 6-month statute of limitations period, limited the recovery available to the union for the respondent's unlawful failure to make fringe benefit fund payments and to pay contractually required wages to certain employees. The Board found that the union failed to exercise reasonable diligence in discovering the respondent's unlawful conduct. The Board concluded that the union's failure to exercise reasonable diligence precluded the finding or remedying of any violation occurring prior to the 10(b) 6-month limitations period.

The respondent construed the parties' contract to exclude employees classified as prejourneymen, and accordingly since 1983 hired prejourneymen at individually negotiated pay rates and did not make fringe benefit fund payments on their behalf. In addition, the respondent since 1987 failed to make fringe benefit fund payments on behalf of journeymen and utility employees and failed to pay utility employees contractually required wages. The respondent acted openly in this conduct, never attempted to deceive or mislead the union, and never denied the union access to its facility.

The union did not discover the respondent's conduct until November 1989, however, when it visited the respondent's facility. The Board observed that the union would have been alerted much earlier to the misconduct had it made even a minimal effort to monitor the respondent's facility. The union rarely visited the respondent's facility, however, never appointed a shop steward, and never took any measures to enforce the union-security provisions of the contract for some 12 years prior to the union's filing of the unfair labor practice charge in this case.

[1] 306 NLRB 191 (Chairman Stephens and Members Devaney and Oviatt).

The Board explained that "[w]hile a union is not required to aggressively police its contracts in order to meet the reasonable diligence standard, it cannot with impugnity ignore an employer or a unit as the Union did in this case, and then rely on its ignorance of events occurring at the shop to argue that it was not on notice of an employer's unilateral changes. This is not a case where information regarding misconduct is only in the hands of the employer, where an employer has concealed its misconduct, or where the size of an employer's operation prevents ready discovery of the misconduct. Rather, this is a case where the Union, if it had exercised reasonable diligence, would clearly have been alerted much earlier of the misconduct." The Board accordingly concluded that the union's recovery was limited to the 6-month period preceding the filing of the charge.

B. Disciplinary Proceedings

In *In the Matter of an Attorney*,[2] the Board approved a settlement agreement between its counsel and the respondent attorney which provided that the attorney would be reprimanded and suspended for 1 year, with 6 months of the suspension stayed for 3 years in the absence of any like or related conduct, for using profanity and verbally addressing the opposing counsel and witness in a rude, vulgar, and/or profane manner during the course of a representation hearing.

The Board majority of Chairman Stephens and Members Devaney and Oviatt rejected Member Raudabaugh's dissenting view that the settlement should be disapproved because it provided that the attorney's name would be redacted from publication and that the Board would not seek any further disciplinary action against the attorney by referring the matter to the state bar. The majority found that under the unique circumstances presented, including among other things that this was the first formal Board disciplinary proceeding against the attorney, that the Board's current rules did not clearly put the bar on notice concerning the extent of possible discipline for such conduct, and that the alleged conduct occurred more than 2 years prior thereto and did not involve conduct causing harm to third parties, the advantages of an immediate disciplinary consent order outweighed any additional public benefit that might be gained from publishing the attorney's name or referring the matter to the state bar.

Dissenting, Member Raudabaugh recognized that each party often gets less than it originally sought in a settlement. However, noting the deeply rooted interest that state bars have in such matters and the essentialness of publication to deterrence, he found the settlement unacceptable in view of its no referral or publication provisions.

[2] 307 NLRB 913 (Chairman Stephens and Members Devaney and Oviatt; Member Raudabaugh dissenting).

C. Submission of Exceptions Out-of-Time

In *York Printing Co.*,[3] a panel majority of the Board granted a respondent's motion to file exceptions out-of-time under the "excusable neglect" provision of Rule 102.111(c) of the Board's Rules and Regulations. The respondent's president averred that the original exceptions were stolen with her luggage from her residence on the day before she would have timely filed them in person at the Board's Regional Office. She allegedly reconstructed the exceptions and mailed them to the Board's office in Washington, D.C. Although the president's veracity appeared to be at issue, the majority decided to conserve the Board's resources by not holding a hearing on the truthfulness of her affidavit, to give her the benefit of the doubt, and to grant her motion.

In dissent, Member Oviatt would have rejected the claim of "excusable neglect" and denied the respondent's motion. Member Oviatt, pointing to evidence that the respondent's president falsified a police report to make it appear the original exceptions were stolen, stated that she showed a "contempt for Board processes that I, for one, am unwilling to countenance."

1. Withdrawal of Complaint After Opening of Hearing

In *Sheet Metal Workers Local 28 (American Elgen)*,[4] the Board, reversing the administrative law judge, held that where, as here, the hearing has opened but no evidence had been introduced, the General Counsel has discretionary authority to withdraw the complaint. In this case, a hearing opened before the judge, but as a result of respondent counsel's illness, the hearing adjourned without any evidence being introduced. On resumption of the hearing, the General Counsel moved to withdraw the complaint, advising that, on the basis of information obtained in her investigation of the unfair labor practice charge, including evidence relevant to the respondent's work preservation defense obtained after issuance of the complaint from previously uncooperative witnesses, she had concluded that further prosecution was not warranted. Charging party opposed the motion to withdraw on two grounds: (1) the charging party has a different theory of the case, and (2) the charging party asserts that it is not privy to the new evidence relied on by the General Counsel and wishes to assure itself that such new evidence is true and correct.

The judge denied the General Counsel's motion, noting that had the complaint been withdrawn prior to opening of the hearing, the General Counsel's action would have been nonreviewable under Section 3(d) of the Act.[5] However, although no evidence had been received, the judge held that because the hearing had opened, any final order is reviewable by the Board and the courts, that the judge must either grant or deny the motion to withdraw, exercising his or her dis-

[3] 308 NLRB 983 (Chairman Stephens and Member Raudabaugh; Member Oviatt dissenting).
[4] 306 NLRB 981 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[5] The judge relied on *NLRB v. Food & Commercial Workers Local 23*, 484 U.S. 112 (1987).

cretion in so doing, and that the exercise of discretion "requires at least some degree of independent fact finding and cannot be based on a blind reliance on facts as represented by one side only." At the same time, however, the judge concluded that a full evidentiary hearing is not required. Rather, the judge ordered the General Counsel to "turn over to me, to the Charging Party and to the Respondent . . . any nonprivileged statements given by contractors which were relied on as the basis for the General Counsel's motion to withdraw the complaint."

The General Counsel filed a request for special permission to appeal the judge's order, contending that the postcomplaint investigation of the respondent's work preservation defense establishes that a majority of the disputed work has been historically fabricated by members of the parties to the contract and that the General Counsel would not be justified in continuing to prosecute the complaint.

The Board concluded that the General Counsel has unreviewable discretion—i.e., discretion not subject to either Board or court review—to withdraw the complaint after the hearing on it has opened but before any evidence has been introduced, at least so long as there is no contention that a legal issue is ripe for adjudication on the parties' pleadings alone.

2. Nexus Between Complaint and Unfair Labor Practice Finding

In *Bouley*,[6] a Board panel adopted an administrative law judge's finding that the respondent violated Section 8(a)(1) of the Act by interrogating and threatening waiter David McGrath concerning his union activities, but a majority of the panel reversed and dismissed the judge's finding that the respondent's discharge of McGrath for threatening to file charges violated Section 8(a)(4) and (1) because the complaint alleged only an 8(a)(3) warning and discharge and neither the General Counsel's theory of the case, nor the respondent's asserted defense, addressed the 8(a)(4) issue.

Chairman Stephens, dissenting, argued that "[n]otice of an 8(a)(3) discharge complaint is closely connected to an 8(a)(4) finding at least to the extent that both go to the critical issue of the Respondent's motivation."[7] Chairman Stephens would have granted the respondent's request to remand and reopen this proceeding to avoid any further contention that it had not been accorded a full opportunity to provide a defense.

Undisputed evidence reveals that McGrath wrote a letter to the respondent, in response to a disciplinary warning from Supervisor Olivier, that stated, inter alia, "I will not stand by . . . without pressing charges . . . both against the restaurant and Mr. Olivier. I will accept a retraction . . . or I will find it necessary to subpoena the entire service staff . . . ." The respondent testified that it discharged McGrath solely for his "gross insubordination" as manifested in his letter.

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[6] 306 NLRB 385 (Members Oviatt and Raudabaugh, Chairman Stephens dissenting in part).

[7] *Pergament United Sales*, 296 NLRB 333 (1989), enfd. 920 F.2d 130, 135 (2d Cir. 1990).

After the hearing closed, the judge advised the parties to brief the issue of whether McGrath's discharge may have been motivated by a perception that McGrath would file charges with the Board. [The judge denied the respondent's request, in its brief to the judge, to reopen the record for additional evidence on those issues.]

The judge found that the General Counsel failed to prove that either the written warning or the discharge was motivated by antiunion considerations despite credited testimony showing that Bouley had prior knowledge of McGrath's union activities. The judge, however, in reliance on *Pergament*, supra, found from the evidence on the record that the purported insubordinate conduct for which McGrath was discharged was an intention to file Board charges and thus McGrath's discharge violated Section 8(a)(4) and (1). The judge reasoned that although McGrath's letter did not explicitly state that McGrath intended to file charges under the Act, respondent was aware, from knowledge of McGrath's union activities and from having settled other 8(a)(3) allegations a year earlier, that "pressing charges" meant filing unfair labor practice charges.

The majority based its reversal of the judge on the fact that here, unlike *Pergament*, supra, the respondent neither admitted that the discharge was related to filing charges, nor had any reason to adduce additional evidence at the hearing as to its understanding of the letter's language vis-a-vis filing of unfair labor practice charges. The majority noted in this latter connection that the General Counsel expressly grounded its theory on the provocation theory set forth in *Spartan Equipment*,[8] and did not advert to the threat to file legal action portion of *Spartan* until its brief in opposition to the respondent's motion to reopen the record. Finally, the majority rejected the dissenter's proposal to remand, saying that "A remand to 'cure' the denial of due process would unnecessarily give the General Counsel another bite at the apple."

3. Effect of Settlement Agreement

In *Urban Laboratories*,[9] the Board, granting the General Counsel's request for special permission to appeal, vacated the administrative law judge's order refusing to approve a settlement agreement which was limited to one of the potential jointly and severally liable respondents and provided for payment of backpay to be apportioned among the discriminatees. After the hearing opened, counsel for the General Counsel and one of the respondents entered into a partial settlement agreement which was submitted to Judge Kennedy for approval.

The judge issued an order to show cause, advising that he was withholding approval of the settlement "until I resolve the issue of whether or not approval of that agreement might have the unintended effect of extinguishing any further claims" against the other respondent. The judge's order sets forth "a general rule that a settlement by

[8] 297 NLRB 19 (1989).

[9] 305 NLRB 987 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

one of the joint and several tortfeasors, even though it may be a compromise, extinguishes the claim for the remainder due insofar as the others are concerned, even if a settlement agreement provides otherwise."[10] Acknowledging his uncertainty whether this "rule" applied to Board proceedings, the judge ordered the General Counsel and respondent Combs to show cause why the proposed settlement should not be disapproved. The General Counsel and respondent Burke filed responses to the judge's order.[11] After considering the responses, the judge, reiterating the concerns expressed in his order to show cause, issued an order denying approval of the settlement agreement.

The General Counsel filed a request for special permission to appeal and an appeal from administrative law judge's failure to approve settlement agreement, arguing that: (1) although the partial settlement involves only one of the alleged jointly and severally liable respondents, it was negotiated with all parties present; (2) the common law rule relied on by Judge Kennedy is not established Board law and its application would not effectuate the purposes of the Act; (3) the rule applied by the judge is not applicable in all States and has been modified by both statutes and courts in a significant number of jurisdictions; and (4) to follow the rule applied by the judge "would create a patchwork pattern in this area and a totally chaotic situation."

In granting the General Counsel's appeal and vacating the judge's order, the Board noted that it is not unusual, in situations where the General Counsel is alleging joint and several liability, for one respondent to settle while litigation proceeds with respect to another respondent who declines to settle. Further, although there is an absence of Board precedent treating the issue which prompted the judge to refuse to approve the settlement, the Supreme Court has expressly repudiated the old common law rule in a case involving a statutory cause of action created under Federal law (antitrust). Rather, the Court adopted in that case the more modern rule that a release of one joint tortfeasor does not release the other joint tortfeasor unless that is the intention of the parties. See *Zenith Radio Corp. v. Hazeltine Research.*[12]

[10] The judge's order relied on Am.Jur.2d, *Release and Discharge* §35; *Judgments*, §989; and 69 ALR2d 1034. See also Washington State decision, *Pinkman Lumber Co. v. Woodland State Bank*, 156 Wash. 117, 123, 286 Pac. 95, 98 (1930), and *Elliot v. Burns*, 645 P.2d 1136 (Wash.App. 1982).

[11] The General Counsel contended, inter alia, that the Board is "not bound by the state court decisions regarding technical interpretation of settlements" and, in any event, does not follow the technical requirements of contract law. Respondent Burke contended, inter alia, that in the absence of Board precedent, the Board should apply state law and release the joint tortfeasors regardless of any expressed reservation of rights.

[12] 401 U.S. 321, 342–348 (1970).

IV

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, and other conditions of employment.

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are 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 representative were adapted to novel situations or reexamined in the light of changed circumstances.

A. Bifurcated Election

In *Diamond Walnut Growers*,[1] the Board held that the direction of a bifurcated election was a permissible and reasonable method of accommodating the competing eligibility concerns present and of enfranchising the greatest number of eligible voters. The Board affirmed the Acting Regional Director's direction of an election with two separate polling sessions, one prior to the anniversary date of an

[1] 308 NLRB 933 (Chairman Stephens and Members Devaney and Raudabaugh).

ongoing economic strike to enfranchise the strikers, and the other during the seasonal peak of employment 2 months later.

The employer operates a seasonal business receiving, processing, and marketing walnuts. The employer adds approximately 500 seasonal employees to its 300-employee year-round complement during its peak season in September and October. Peak employment occurs about the second week of October. Cannery Workers, Processors, Warehousemen & Helpers Local 601, Teamsters struck the employer's business on September 4, 1991. The employer continued operations by hiring both core and seasonal permanent replacement employees. The union filed a representation petition seeking an election in the historically recognized unit of full-time, regular part-time, and seasonal maintenance, production and warehouse employees at the employer's Stockton, California facility on April 27, 1992, 5 months prior to the anniversary date of the strike.

The Acting Regional Director noted that if the election is not held prior to September 4, 1992, permanently replaced economic strikers will be ineligible to vote under Section 9(c)(3).[2] If the election is held before September 4, 1992, however, a large number of seasonal striker replacement employees will be ineligible to vote because the bulk of seasonal hiring occurs after that date.

The Board found that the Acting Regional Director struck a reasonable accommodation between the rights of economic strikers under Section 9(c)(3) and the interest of replacement seasonal workers to express their preferences regarding representation. In this regard, the Board stated: "Consistent with Section 9(c)(3)'s directive, the Acting Regional Director formulated an election plan that fostered the Act's policy of enfranchising the largest number of possible eligible voters, while concomitantly effectuating the Congressional objective of protecting the fundamental right of strikers to vote on union representation in any election conducted within 12 months from the inception of the strike."

The Board sanctioned bifurcated polling as a limited exception to the normal unitary election procedure. This exception was found to be consistent with precedent expediting elections to implement congressional intent to enfranchise replaced strikers during the first 12 months of an economic strike,[3] and with precedent recognizing that the 12-month eligibility period of Section 9(c)(3) must not be given an unnaturally wooden interpretation.[4] The Board also noted that significant equities weighed in favor of the strikers. The petition was filed, and striker's votes would be cast, within the 12-month period, and the fact that the election continues later results from a special peak-of-season eligibility rule which is outside the union's control. The Board concluded that bifurcated polling was justified in the par-

[2] Sec. 9(c)(3) states in pertinent part:

Employees engaged in an economic strike who are eligible to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike.

[3] *Kingsport Press*, 146 NLRB 260, 264 (1964).

[4] See *Jeld-Wen of Everett*, 285 NLRB 118, 121 (1987).

ticular circumstances of this case to reconcile competing eligibility issues which arose when the union's petition was filed well in advance of the 12-month period for striker eligibility, but further delay disenfranchising the strikers would be required to preserve the eligibility of the seasonal employees.

The Board specifically rejected the employer's arguments that the direction of a bifurcated election would undercut the integrity of the Board's election processes. The Board explained how the objections process and challenged ballot procedure would remain impaired.

B. Late-Arriving Voters

In *Monte Vista Disposal Co.*,[5] a panel majority of the Board held that "an employee who arrives at the polling place after the designated polling period ends shall not be entitled to have his or her vote counted, in the absence of extraordinary circumstances, unless the parties agree not to challenge the ballot."

The majority of Chairman Stephens and Members Oviatt and Raudabaugh, citing a "confusing" array of precedent on this issue overruled *New England Oyster House*[6] and similar cases, which gave the Regional Director broad discretion in determining whether to count the ballot of a late-arriving voter. Balancing the competing considerations of affording employees broad participation in elections and assuring prompt completion of elections, the majority decided on "something closer to a bright-line rule terminating the balloting at the conclusion of the voting period." In this case, the majority sustained the challenges to two voters' ballots where the voters arrived at the polling place, with no extraordinary circumstance to justify their tardiness, just after the polling period ended.

Member Devaney, dissenting, did not view precedent in this area as confusing and would have continued the past practice of allowing employees the broadest possible participation in elections. Member Devaney would have counted the two challenged ballots where the voters arrived only 2 or 3 minutes after polls closed and the ballot box had not been opened.

In *Pruner Health Services*,[7] a panel majority of the Board, remanded the case to the Regional Director to determine whether the late arrival of a voter constituted "extraordinary circumstances" within the meaning of the new rule in *Monte Vista*, supra.

Monte Vista held that "an employee who arrives at the polling place after the designated polling period ends shall not be entitled to have his or her vote counted, in the absence of extraordinary circumstances, unless the parties agree not to challenge the ballot." In this case, a voter alleged that he arrived 2 minutes before the end of the polling period at the building where polling was taking place. The voter further alleged that he was unable to reach the polling area on the second floor of the building because all the doors to the facility

[5] 307 NLRB 531 (Chairman Stephens and Members Oviatt and Raudabaugh; Member Devaney dissenting).
[6] 225 NLRB 682 (1976).
[7] 307 NLRB 529 (Chairman Stephens and Members Oviatt and Raudabaugh; Member Devaney dissenting).

were locked. The employer's director of field services alleged that the doors were unlocked and that he saw the late voter arrive at the facility after the polling period ended. The majority of Chairman Stephens and Members Oviatt and Raudabaugh held that if the voter's allegations are true, his ballot should be opened and counted pursuant to the "extraordinary circumstances" exception to the *Monte Vista* rule. The case was remanded to the Regional Director for a hearing to resolve the factual dispute surrounding the voter's arrival at the polling area.

Member Devaney, dissenting, cited his opinion in *Monte Vista* and would have counted the ballot because it was cast before the ballot box was opened.

C. Continuity of Representation

In *Service America Corp.*,[8] the Board majority held, contrary to the Regional Director, that the merger of two Teamsters locals, 513 with 115, resulted in continuity of representation. The Board found that Local 513 had retained substantive and significant assets (its union hall and benefit funds) which it controlled and administered for the benefit of former Local 513 members. Moreover, there was no change with regard to membership rights, duties, or eligibility. Further, there was continued leadership as both of Local 513's primary officers became business agents for Local 115 and as such were responsible for contract negotiations and grievance handling. According to the majority, "we know of no requirement that officers of a merged local must become *officers* of the new local in order to find continuity. Rather, we think 'leadership' has a broader definition and thus may encompass, in addition to union officers, other representatives of the union such as business agents who fill positions of responsibility and trust."

In the majority's opinion, the Regional Director gave "undue emphasis" to the fact that the former officers of Local 513 were not involved in the current contract negotiations and would not be exclusively assigned to service former Local 513 shops. The Board noted that a change in officers and business agents which occurs as a result of a merger of two locals is little different from the situation where new business agents and officers are elected by a local. Besides, one of the former Local 513 officers had only recently become an officer, and thus Local 513 would have had a new representative handling contract negotiations and grievances even if no merger had ever occurred.

Moreover, unlike *Western Commercial Transport*,[9] *Chas. S. Winner, Inc.*,[10] and *Independent Drug Store Owners of Santa Clara County*,[11] where the merged or affiliated union underwent enormous change in size, organizational structure, and administration, here the increase in membership (1300 merged with 2500) was less substantial

[8] 307 NLRB 57 (Chairman Stephens and Member Devaney; Member Oviatt dissenting).
[9] 288 NLRB 214 (1988).
[10] 289 NLRB 62 (1988).
[11] 211 NLRB 701 (1974).

and the organization, structure, and administration of the merged local remained essentially the same.

Thus, the Board majority concluded that in all important respects, the employer was bargaining with an entity similar to the one with which it had previously recognized and bargained. Consequently, the majority found the changes to be "more in the nature of administrative changes and . . . not the kind of substantial changes which result in the creation of a different representative."

Member Oviatt, dissenting, would have found lack of continuity for the same reasons as the Regional Director: the former Local 513 officers have no leadership role in Local 115 as they were not and will not be involved in current contract negotiations and may not handle contract administration or grievance processing for former Local 513 shops. These changes in leadership and administration were found by the Regional Director not to be simply structural changes but instead "the substitution of a new and different local union."

D. Unit Issues

1. Decertification Election

In *Albertson's, Inc.*,[12] the Board reaffirmed its long-held position that the appropriate unit in a decertification election must be coextensive with the currently recognized and certified unit. See *Wisconsin Bell.*[13] The petition in *Albertson's* sought an election in three of the employer's seven stores in the Spokane, Washington area. The three stores had been the subject of an election in 1989 and 4 months after the certification of the union the parties agreed to merge the newly certified unit into the larger preexisting unit. The larger unit had existed since at least 1987 and was composed entirely of the employer's employees.

The Board held that any election among the employees must be in the larger merged unit for three reasons. First, the merged unit had existed longer than the smaller recently certified unit. Second, the parties had agreed to a full merger of the smaller and larger unit and, finally, because there had been no significant history of bargaining in the smaller unit. In reaching this conclusion, the Board distinguished the facts in *Albertson's* from those in *West Lawrence Care Center*,[14] where the Board had applied an exception to the policy of conducting the election in the currently recognized unit.

The smaller unit in *West Lawrence* had been in existence for about 15 years and was included in the multiemployer unit for less than a year before the decertification petition was filed. The Board described the *West Lawrence* facts as "unusual to say the least" and determined that the balance in *West Lawrence* should be struck in favor of employee freedom of choice. In *Albertson's*, the Board found that the balance favored the merged unit with its larger bargaining history

[12] 307 NLRB 338 (Members Devaney, Oviatt, and Raudabaugh).
[13] 283 NLRB 1165 (1987).
[14] 305 NLRB 212 (1987).

"in much the same way and for the same reasons as it favored the merged unit and its history in *Wisconsin Bell.*" Accordingly, the Board in *Albertson's* affirmed the finding of the Regional Director that the decertification election must be in the existing merged unit.

2. Determination of Health Care Employee Status

In *Duke University*,[15] the Board concluded that a unit of full-time busdrivers, who serviced an entire university, including an on-campus acute care hospital, was an appropriate unit, and did not have to be included in a hospital nonprofessional employee unit under the Board's Final Rule on collective-bargaining units in the health care industry.[16]

The employer is a private nonprofit educational institution, which includes a medical center defined as an acute care hospital facility. The employer's transportation department provides bus transportation for students, employees, and visitors. The 14 full-time busdrivers stop throughout the campus as well as parking lots. Several of the bus routes run from parking lots restricted to hospital employees.

The transportation department hired and separately supervised the drivers. The drivers are physically headquartered in the transit building, located off the main campus. The drivers have little or no interaction with other nonprofessional employees of the employer. They are required to possess a special driver's license.

The Board concluded that the busdrivers were not health care employees simply because they drove hospital employees on their routes. The Board found that "the drivers' role of driving buses carrying hospital and other university employees around campus is not so functionally integrated with the hospital's operation that Duke's Transportation Department is a health care institution and the drivers health care employees." The Board noted that the drivers did not provide patient care and performed a function that could be easily replaced in the event of a strike.

The Board concluded that the determination of who is a health care employee in a university setting, where there were both health care and health-related facilities as well as traditional academic operations, required a "reasoned analysis of all of the circumstances of the case." Recognizing that "it may not always be easy to draw the line in making such a determination," the Board was "unwilling" to decide such issues on the basis of a flat numerical figure, without regard to other factors. In reaching its conclusion, the Board rejected the employer's assertion that because full-time busdrivers spent 50 percent of their time in support of the university's acute care facilities, the drivers should be deemed health care workers. To the extent that earlier precedent, such as *Duke University*[17] and related cases, suggested the appropriateness of such an inflexible, mathematical approach, regardless of other circumstances, the Board overruled it.

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[15] 306 NLRB 555 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[16] 29 CFR Part 103, 54 FR No. 76 at 16347–16348, 284 NLRB 1580, 1596–1597 (1989).
[17] 217 NLRB 470 (1976).

3. Nonacute Health Care Facilities

In *Park Manor Care Center*,[18] the Board set forth the standards by which units in nonacute health care facilities would be determined. The Board decided that such units would be decided by traditional community-of-interests factors, as well as background information gathered during the Board's rulemaking for units in acute health care facilities,[19] as well as cases decided before that rule issued.

The union sought a service and maintenance unit at a nursing home. The Regional Director, in agreement with the union, excluded the employer's four technical employees—licensed practical nurses (LPNs)—from the petitioned-for unit. The Regional Director applied the community-of-interests standard, and concluded that the LPNs should be excluded because they had distinct functions, training, skill, and education.

The Board remanded the case to the Regional Director for further consideration that took into account what the Board learned about nursing homes, LPNs, and technicals generally in the rulemaking proceeding that led to the Board's Rule governing units in acute care hospitals and Board cases involving nursing home units issued prior to rulemaking. The Board noted that, while the Rule for bargaining units in acute care hospitals originally encompassed nursing homes, it subsequently excluded such facilities. The Board concluded from the rulemaking evidence that a rule concerning appropriate units in nursing homes was neither feasible nor necessary. The Board thus decided to make unit determinations in nursing homes by adjudication.

The Board noted that it has traditionally determined units based on the community-of-interests standard and, for a short period, a disparity-of-interests standard. The Board then stated that the Rule concerning units in acute care facilities reflected a desire to replace doctrinal applications with formulation of units based on the realities of the workplace. The Board observed that it did not have a sufficient body of empirical evidence as to nursing homes to make a uniform rule as to them at the time, and was not sure it ever would, as it was not certain that all were sufficiently uniform to warrant a finding that the same units were appropriate for all. The Board also concluded, however, that it did not choose to substitute for either "community of interests" or "disparity of interests" yet another shorthand phrase by which to measure units in nursing homes or other nonacute care facilities. Thus, the Board will consider those factors deemed relevant by the Board during its rulemaking proceedings, the evidence presented during rulemaking with respect to units in acute care hospitals, as well as prior cases involving either the type of unit sought or the particular type of health care facility in dispute. The Board referred to this formula as the "pragmatic or empirical community of interests" approach.

The Board then examined the subject case under its new standard. The Board recounted its experience with technical units in the rule-

[18] 305 NLRB 872 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[19] 29 CFR §103.30.

making, as well as evidence concerning nursing homes gathered there. The Board also canvassed prerulemaking unit cases, noting that while LPNs are almost always found to be technicals, such a finding did not require automatic exclusion from another unit. Citing *Sheffield Corp.*,[20] the Board noted that it considered a variety of factors, in making a pragmatic judgment, involving placement of technicals. Many of those factors were relevant in nonacute health care cases.

Observing that the Regional Director did not, and could not, have analyzed the case under the Board's approach, the Board remanded the case to permit the Regional Director to address the relevant factors, and to allow the parties to adduce additional evidence if they so desired. The Board invited the parties to argue all pros and cons of the inclusion or exclusion of LPNs from the unit in the circumstances that existed at the employer's nursing home.

In *Child's Hospital*,[21] the Board held that the determination of the appropriate bargaining unit at the employer's facility was governed by the Board's decision in *Park Manor Care Center*,[22] in which the Board delineated principles to guide unit determinations in nonacute care facilities, rather than the Board's Final Rule (the Rule) on collective-bargaining units in the health care industry.[23]

The employer consists of the Child's Hospital, a nonprofit surgical care center providing both inpatient and ambulatory services; the Child's Nursing Home, a 120-bed residential nursing home attached to the surgical care center, and Samaritan Services Corp., which provides shared services to the nursing home and the hospital. The Board found that the nursing home, hospital, and Samaritan Services constituted a single employer and that the evidence also established that the nursing home, hospital, and Samaritan Services were sufficiently integrated both physically and operationally as to require that they be treated as a single facility. The nursing home, hospital, and Samaritan were physically contiguous, there was centralized control of labor relations and human resources, common personnel policies, uniform benefits and wage scales, one employee handbook, and common administration. Laundry, pharmacy services, housekeeping, dietary services, maintenance, and engineering were all provided facilitywide and the hospital provides lab work to the residents and employees of the nursing home. There was also a high degree of contact among the employees in the different operations.

Because the hospital, nursing home, and Samaritan constituted a single facility, the Board found that the petitioned-for unit of RNs employed solely at the hospital was inappropriate and that at the very least all RNs should be represented in a single unit. In determining whether the smallest appropriate bargaining unit in a facility composed of an acute care hospital and a nursing home must include all other professional employees, the Board noted that acute care hos-

[20] 134 NLRB 1101 (1961).

[21] 307 NLRB 90 (Members Devaney, Oviatt, and Raudabaugh).

[22] 305 NLRB 872 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

[23] 29 CFR 103 (1980), 284 NLRB 1580 (1989), approved by the Supreme Court in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991).

pitals were expressly covered under the Rule but facilities that are primarily nursing homes are expressly excluded. The Board concluded that in view of the extraordinary circumstances, it would be neither feasible nor sensible to automatically apply the Rule. Rather, the Board remanded the case to permit the parties to litigate the unit question under the guidelines set forth in *Park Manor.*

In *Faribault Clinic,*[24] the Board held that a unit of the medical clinic's technical employees was an appropriate unit for bargaining.

The petitioner sought a unit of licensed practical nurses, X-ray technologists, laboratory technicians, and medical secretaries at the employer's full service medical clinic, a nonacute health care facility. The employer contended that only a wall-to-wall unit of all nonprofessional employees was appropriate.

The Board adopted the Regional Director's decision. The Regional Director modified the petitioned-for unit to include all technical employees including the licensed practical nurses, laboratory technicians, MLT instructor, X-ray technologists, and ophthalmic technicians and assistants. The Regional Director found that the determination of unit appropriateness in the employer's facility is governed by the empirical community-of-interest test set forth in *Park Manor Care Center.*[25] Applying this test, the Regional Director determined that a number of factors considered in the rulemaking lend support for finding a technical unit appropriate: higher education, training and licensing requirements, and special skills for the technical employees; little cross-training or interchange with nontechnicals; and a unique and limited career path and labor market for the technicals. Further, unlike some other cases, with the exception of the lab secretary, the employer's technicals are the only employees who have significant contact with patients related to patient care. Board precedent on bargaining units in outpatient clinics offered little guidance since the Board had found appropriate broad units including technical and other nonprofessional employees when sought by petitioner, while here the petitioner sought a more limited unit.

Although certain factors suggested the appropriateness of a unit broader than one limited to the technical employees: wages of all employees are statistically similar; the technical unit does not conform to the employer's departmental or supervisory lines; and there is frequent contact between technicals and their supporting clericals, the factors are mitigated to some extent. The highest paid classifications are technicals; the Board acknowledged in its rulemaking that separate supervision for technicals was expected to differ from facility to facility; and lack of contact arises because acute care hospital technicals typically perform their work away from patient care areas, while the clinic's technicals are the patient care employees. Despite these factors, the Regional Director concluded that requiring a broader unit would not "assure to employees the fullest freedom in exercising the rights guaranteed" by the Act, in view of the technical em-

[24] 308 NLRB 131 (Chairman Stephens and Members Oviatt and Raudabaugh).
[25] 305 NLRB 872.

ployees' "distinctive training, skills, and licensing, and the fact that non-technicals do not share in the performance of the technicals' tasks."

In addition, the Board noted that "the Employer's technical work force is substantial in size, both in numbers and relative to the Employer's other nonprofessionals and its total staff."

4. Construction Industry

In *Steiny & Co.*,[26] the Board decided to continue to use a formula for determining eligibility in construction industry elections, and to return to use of the voting eligibility formula set forth in *Daniel Construction*.[27] The Board overruled that portion of *S. K. Whitty*,[28] which had modified the *Daniel* formula. The Board also decided that the readopted *Daniel* formula applies to virtually all construction industry elections.

The Regional Director had directed an election in two separate units and applied the eligibility formula in *S. K. Whitty* to both units. The employer was an electrical contractor and party to agreements under Section 8(f) of the Act covering both units. Under the contract, the employer obtained employees exclusively from the petitioner's hiring hall. The employer's request for review argued that the Regional Director erred in applying the *S. K. Whitty* formula, that the Board should clarify when, if at all, a formula should be used, and that the Board should overrule or substantially modify *S. K. Whitty*. The Board granted review and scheduled oral argument.

On review, the employer and amici Associated General Contractors and the Associated Builders and Contractors, Inc. contended that the Board should abandon the *S. K. Whitty/Daniel* eligibility formula and apply the traditional factors considered when determining the eligibility of laid-off employees.[29] In support of this contention, they argued that construction industry employment has changed and employment practices are so diverse that a formula is no longer needed. The petitioner and amicus Building and Construction Trades Department AFL–CIO argued that the Board should return to the *Daniel* formula and overrule the *S. K. Whitty* modification.

The Board decided to continue to use an eligibility formula in the construction industry because the industry "is different from many other industries in the way it hires and lays off employees." The Board stated that it had recognized the differences in *Daniel* when it stated that "construction employees may experience intermittent employment, be employed for short periods on different projects, and work for several different projects during the course of a year." Noting that it has devised numerical formulas for other industries, the Board found that its experience in this industry and others with un-

[26] 308 NLRB 1323 (Chairman Stephens and Members Devaney and Oviatt; Member Raudabaugh concurring).

[27] 133 NLRB 1078 (1961), modified at 167 NLRB 1078 (1967).

[28] 304 NLRB 776 (1991).

[29] See, e.g., *Atlas Metal Spinning Co.*, 266 NLRB 180 (1983).

usual employment patterns indicated that it should continue to use an eligibility formula.

The Board decided to return to the *Daniel* formula because "it has proven to be an effective, efficient, and familiar means of determining voter eligibility for over 30 years." The Board overruled the modifications to *Daniel* in *S. K. Whitty* which added a recurrency requirement. Although *S. K. Whitty* was a good-faith effort to add a measure of reasonable expectancy of reemployment to the formula, the Board concluded that in practice the modification excluded employees who, despite the absence of recurrent employment, nevertheless had a direct and substantial interest in the selection of a representative.

Although recognizing that there is some degree of variety among employers in their hiring patterns (e.g., project-by-project, stable or core group, or hybrids of the two patterns), the Board determined that the *Daniel* formula is applicable to all construction industry elections, with the possible exception of those employers which clearly operate on a seasonal basis.[30] Finding that there is no reasonable means by which to distinguish from among construction employers, the Board decided not to engraft another level of analysis onto eligibility determination in the industry.

In the absence of a study of employment patterns in the construction industry, Member Raudabaugh concurred in the return to *Daniel.* He believed the Board should engage in rulemaking to determine the appropriate formula based on an empirical study. The Board majority noted, however, that no party expressed an interest in rulemaking and the short-term nature of construction projects made further deferral for the extended rulemaking process unfair to the parties.

5. Casual Employees

In *Trump Taj Mahal Associates*,[31] the Board considered the unit inclusion and eligibility of the employer's casual technicians in the petitioned-for unit of all full-time and regular part-time entertainment and audio-visual technicians at the employer's hotel and casino in Atlantic City, New Jersey. The Board majority concluded that the traditional eligibility formula for determining the regularity of employment of on-call or casual employees set forth in *Davidson-Paxon Co.*,[32] was, in the absence of special circumstances, correctly applied here.

In reaching its conclusion, the majority noted that casual employees in this case are on an established list drawn from a limited pool of employees, who must be, and have been, approved by the Casino Control Commission and then "badged" by the employer. The employer has regularly called the employees on the list, and the casual employees averaged a substantial number of work hours since the opening of the Taj. Moreover, the employer hired regular full-time and part-time employees from the casual list, based on the number of hours they had worked and their particular skills, creating a rea-

[30] See *Dick Kelchner Excavating Co.*, 236 NLRB 1414, 1416 fn. 10 (1978).

[31] 306 NLRB 294 (Members Devaney and Oviatt; Member Raudabaugh dissenting in part).

[32] 185 NLRB 21, 23–24 (1970).

sonable basis for other casual employees on the list to anticipate future offers of regular employment. Thus, the Board found that the casual employees have worked on a regular basis and share a continuing interest in the working conditions of the employer.

The majority further noted that the *Davidson-Paxon* formula applied by the Regional Director is the Board's most longstanding and frequently used test for voting eligibility, absent a showing of special circumstances not present in the instant case; that its experience has shown the formula to be a reliable test for on-call employees; and that, in any event, the request for review did not expressly raise the issue of whether a different eligibility formula should be applied.

In dissent, Member Raudabaugh stated that the *Davidson-Paxon* formula was built on "slender reeds" and the "rote citation" of that formula "simply compounds the original flaw." He stated that he would use a formula that includes "recurrency of employment" as a factor in determining whether on-call employees should be included in the bargaining unit, requiring the employee to average 4 hours per week during the last quarter and "work for some period during at least one-half of the weeks in that quarter."

E. Bars to an Election

1. The 9(a) Collective-Bargaining Relationship

In *Golden West Electric*,[33] the Board held that the collective-bargaining agreement in existence between the construction industry employer and the union barred the processing of a decertification petition because the parties had a 9(a) rather than an 8(f) relationship. Thus, the Board affirmed the Acting Regional Director's dismissal of the petition.

It was undisputed that the union's assistant business manager and president of its local went to the employer in September 1988 with a voluntary recognition agreement and letter of assent, and that the employer's owner and president signed these documents. There was conflicting evidence as to whether the union official showed employee authorization cards to the employer's owner and president.

The Board concluded that, under all the circumstances presented, the union had established by the weight of the evidence a clear intent of the parties to establish a 9(a) relationship founded on the union's majority status, as required by Board precedent. The voluntary recognition agreement read and signed by the employer unequivocally stated that the union represented a majority of its employees and the employer's owner and president acknowledged that at the time he signed the agreement he knew the union represented a majority of its employees. In sum, although there was conflicting evidence as to whether the employer in fact saw the authorization cards, the majority concluded that the union was seeking recognition as the union employees' majority representative and the employer was granting the

[33] 307 NLRB 1494 (Chairman Stephens and Members Devaney and Raudabaugh; Member Oviatt concurring).

union recognition as such. In agreeing with this conclusion, Chairman Stephens and Member Oviatt, the latter in a separate concurrence, determined that the weight of the evidence supported a finding that the union's local president and assistant business agent showed the employer's owner and president the authorization cards of two of the three unit employees.

2. Contracting Units

In two cases, *Fish Engineering & Construction*[34] and *Davey McKee Corp.*,[35] the Board reached different results on the question of whether it would serve a useful purpose to conduct an immediate election.

In *Fish Engineering & Construction*, the panel majority found, contrary to the Regional Director, that based on the undisputed evidence of past and current work and bidding on future work, it would serve a useful purpose to conduct an immediate election.

The Regional Director had found that it was speculative whether the employer would secure additional work within the geographic boundaries of the petitioned-for unit. But the Board found that it was undisputed that the employer had worked on four projects in the past year, had two current projects at the time of the hearing, and had bid on another project for the same company with which it currently was under contract. The contract under bid was to commence within approximately 2 months from the end of the employer's current project, and within the same geographic area as the sought unit. Based on this undisputed evidence, the Board remanded the case to the Regional Director to conduct an immediate election, if appropriate, following resolution of remaining unit issues.

Member Devaney dissented as he agreed with the Regional Director that no useful purpose would be served by running an election at this time.

In *Davey McKee Corp.*, however, the Board denied review of the Regional Director's dismissal of the petition. The Regional Director dismissed the petition because the employer's only remaining projects were to be completed within approximately 1 month from the date of the hearing, the employer's operations would cease, and all employees would be terminated. In addition, the employer had no other ongoing projects within the geographic scope of the unit sought and had no work under bid. Although the joint petitioner contended that the employer had bid on future projects, it failed to provide any evidence of such bidding or to contradict the Regional Director's finding that this contention was based on uncorroborated hearsay.

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[34] 308 NLRB 836 (Members Oviatt and Raudabaugh; Member Devaney dissenting).

[35] 308 NLRB 839 (Members Devaney, Oviatt, and Raudabaugh).

3. Settlement Agreement

In *Nu-Aimco, Inc.*,[36] the Board, in accord with its decision in *Passavant Health Center*,[37] affirmed the Regional Director's decision to process the decertification petition after the Employer's compliance with a settlement agreement remedying an unfair labor practice charge.

The employer and the union were parties to a collective-bargaining agreement which automatically renewed absent timely notice by either party to terminate the agreement. On the same date as the decertification petition was timely filed, the union filed an unfair labor practice charge alleging that the employer had violated Section 8(a)(1), (2), and (5) of the Act. The Regional Director held the petition in abeyance pursuant to the Board's blocking charge policy pending resolution of the unfair labor practice charges. Thereafter, the Regional Director approved an informal settlement agreement containing an admissions clause. After the employer fully complied with the terms and conditions set forth in the settlement agreement, the Regional Director reinstated the petition, conducted an election, and impounded the ballots.

Under the Board's decision in *City Markets*,[38] *Passavant Health Center*, and *Island Spring*,[39] assuming that a decertification petition has been circulated and signed by employees, met all the Board's technical showing of interest requirements, and was otherwise timely filed, the petition would, on request, normally be reinstated or processed after compliance with a settlement agreement or withdrawal of the unfair labor practice charges and would not be barred by a contract entered into during the hiatus in processing the petition. The Board's conclusions in the cases were based on the fact that "neither withdrawal of the charge or complaint nor the execution of an informal settlement agreement constitutes an admission by an employer or an adjudication by the Board that an unfair labor practice has been committed in violation of the Act." The Board emphasized that it wished to encourage settlements, noting that should it decline to process petitions even where settlements are appropriate, the parties would be subjected to substantial expenditures of time and resources. The Board pointed out that the Regional Director had full discretion regarding whether to settle and could include the petitioner in settlement discussions. Moreover, the Regional Director could also take the position that the unfair labor practices, if proven, were sufficient to taint the petition such that dismissal of the petition is warranted. The Board also noted that the unilateral nature of a settlement agreement would not require a different result.

[36] 306 NLRB 978 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[37] 278 NLRB 483 (1986).
[38] 273 NLRB 469 (1984).
[39] 278 NLRB 913 (1986).

F. Unit Clarification

In *Kirkhill Rubber Co.*,[40] the Board reinstated the employer's unit clarification petition that was filed during the certification year.

The Regional Director approved a stipulated election agreement in which the parties agreed to a unit of production and maintenance employees, truckdrivers, and shipping and receiving employees, excluding supervisors as defined in the Act. At the election, the names of 26 leadpersons remained on the voting eligibility list and each voted an unchallenged ballot. On July 8, 1991, the Board certified the Rubber Workers International as the collective-bargaining representative of the unit employees. On August 1, 1991, the employer filed a unit clarification petition seeking to clarify the unit by having the Board determine whether the 26 leadpersons are supervisors. The Regional Director dismissed the petition because it was filed during the certification year, relying on *Firestone Tire & Rubber Co.*[41]

In *Firestone*, the petitioner sought to consolidate two units by adding a recently certified firemen unit to an uncertified production and maintenance unit, either without or after a Board-conducted election. The result of clarifying the unit would have been the obliteration of the certified unit despite the unit employees' recent vote to establish a separate unit. In dismissing the unit clarification petition, the Board held that it would apply the *Centr-O-Cast*,[42] rule requiring the dismissal of a representation petition filed during the certification year.

The Board did not find *Firestone* controlling. It noted that in the instant case, the employer seeks to clarify the unit so that it consists only of those employees actually covered by the unit description to which the parties stipulated. "We do not read the Board's finding in *Firestone* that the unit clarification petition there was untimely to preclude the processing of any and all unit clarification petitions filed during the certification year," the Board stated. Because the Board found that the *Centr-O-Cast* rule is limited in its application to representation petitions filed during the certification year that challenge the majority status of an incumbent certified representative, it did not apply it to unit clarification petitions that look "toward the continuation of the collective-bargaining relationship." In finding that the instant petition was timely filed, the Board overruled *Firestone* to the extent that it requires the dismissal of any unit clarification petition filed during the certification year.

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[40] 306 NLRB 559 (Chairman Stephens and Members Devaney and Raudabaugh).

[41] 185 NLRB 63 (1970).

[42] *Centr-O-Cast & Engineering Co.*, 100 NLRB 1507, 1508 (1952).

V

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal 1992 that 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 derivation or byproduct of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a), or may consist of any other employer conduct that independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities that constitute such independent violations of Section 8(a)(1).

1. Access to Employer Premises

In *Loehmann's Plaza*,[1] the Board held that the filing or active pursuit of a state court lawsuit seeking to enjoin protected peaceful picketing after the point of preemption—when a complaint issues con-

[1] 305 NLRB 663 (Chairman Stephens and Member Raudabaugh; Member Devaney concurring in part and dissenting in part). While the case was pending before the Sixth Circuit, the Supreme Court issued its decision in *Lechmere, Inc. v. NLRB*, 112 S.Ct. 841, holding that the Board's balancing test in *Jean Country*, 291 NLRB 11 (1988), as applied to nonemployee union organizers, was inconsistent with controlling Court precedent. On January 31, 1992, the Board filed a motion to remand this case for the Board's reconsideration in light of *Lechmere*. On March 6, 1992, the Sixth Circuit dismissed the petition for review and cross-application for enforcement.

cerning the same activity—tends to interfere with Section 7 rights, thereby violating Section 8(a)(1) of the Act.

Finding that the Section 7 rights of the union to engage in area standards picketing and handbilling outweighed the respondents' right to restrict access to their private property in the present circumstances, the Board concluded that the union was entitled to engage in picketing and handbilling at the entrances and exits of the respondent Makro's store in the Loehmann's Plaza Shopping Center owned by the respondent Renaissance Properties. Therefore, the Board reversed the administrative law judge and found that the respondents' instructions for the union to move its pickets and handbillers violated Section 8(a)(1) of the Act.

In addition, Chairman Stephens and Member Raudabaugh found that the respondents' pursuit of their state court lawsuit, which sought to enjoin the union's peaceful protected activity after the General Counsel issued a complaint in this case further violated Section 8(a)(1) even in the absence of a retaliatory motive. Member Devaney dissented on this point. The majority overruled the general principle established in *Clyde Taylor Co.*[2] that the filing of a lawsuit is not in and of itself an unfair labor practice.

The majority further held that:

> [T]he filing or active pursuit of a state court lawsuit seeking to enjoin protected peaceful picketing after the point of preemption—when a complaint issues concerning the same activity—tends to interfere with Section 7 rights, thereby violating Section 8(a)(1) of the Act. Accordingly, if there is a pending state court lawsuit when a complaint issues, the respondent has the burden to show that it has taken affirmative action to stay the state court proceeding within 7 days of the issuance of the complaint. If there is an outstanding injunction when a complaint arises, the respondent has the burden to show that it has taken affirmative action to have the injunction withdrawn within 7 days of the issuance of the complaint.

The majority applied this "arguably new rule" to the instant parties and to those parties in other pending cases because it found no "manifest injustice" in doing so.

Member Devaney stated that he would find that, in the absence of a retaliatory motive and "given a reasonable basis for filing the suit," the respondents did not violate Section 8(a)(1) by maintaining the state court trespass lawsuit even after the General Counsel issued the complaint.

In *Davis Supermarkets*,[3] the Board held that an employer cannot bar a union from access to its property while allowing charitable organizations to solicit on its property. The Board also held that an employer violates the Act by maintaining a lawsuit seeking exclusion of a union from its premises after the Board issues a complaint alleging unlawful denial of access to the employer's premises.

[2] 127 NLRB 103 (1960).

[3] 306 NLRB 426 (Chairman Stephens and Members Oviatt and Raudabaugh).

The union established a picket line on the sidewalk in front of the employer's store to protest its unfair labor practices. The employer told the pickets they were not allowed on the property, threatened to call the police, and obtained an injunction preventing the union from picketing on the sidewalk. At the same time, the employer permitted a charitable organization to set up a table on the sidewalk and sell raffle tickets for a car, which the employer allowed to be parked in its lot in front of the store. The record showed other instances in which charitable organizations sold items in front of the store.

The Board found that the employer violated the Act because of its disparate treatment of union activity. The Board noted that while the Supreme Court in *Lechmere*[4] rejected the Board's "balancing test" of *Jean Country*,[5] it did not disturb a *Babcock & Wilcox*[6] statement that "an employer may validly post his property . . . if [it] does not discriminate against the union by allowing other distribution." The employer here allowed other organizations unlimited access to its property for sales and solicitations while denying the union the use of the same premises for handbilling and picketing purposes.

On the day the union began its picketing, the employer filed a civil trespass suit against the union, and obtained an injunction prohibiting the union from picketing on the sidewalk in front of the store, but allowing it to have three pickets at each parking lot entrance. The union stopped picketing and filed an unfair labor practice charge with the Board which issued a complaint alleging the employer violated the Act by unlawfully denying the union access to its premises. When the union resumed its picketing, the employer threatened to have the picketers arrested and called the state police to its premises. Shortly thereafter, a sheriff's deputy presented the picketers with a document indicating they were no longer allowed to picket. Eventually the county court issued a decision dismissing the union's claim that the court's jurisdiction was preempted by the Board and a decision granting the employer's motion to show cause why the union should not be held in contempt for allegedly violating the court's injunction.

The Board found the employer violated the Act by maintaining its civil trespass suit against the union after the Board's complaint issued. The Board relied on its decision in *Loehmann's Plaza*[7] where it held that after issuance of a complaint alleging the unlawful exclusion of employees or a union from an employer's premises, a state court lawsuit concerning the same subject is preempted by the Board proceedings and continued maintenance of such a lawsuit violates the Act. The Board also stated an employer is under an affirmative duty to take action to stay state court proceedings once a complaint issues. In *Davis Supermarkets*, the employer continued to press its court proceedings against the union and violated the Act by doing so.

[4] *Lechmere v. NLRB*, 112 S.Ct. 841.

[5] 291 NLRB 11 (1988).

[6] *NLRB v. Babcock & Wilcox*, 351 U.S. 105, 112 (1956).

[7] 305 NLRB 663 (Chairman Stephens and Member Raudabaugh; Member Devaney concurring in part and dissenting in part).

In *CDK Contracting Co.*,[8] the Board held that an employer violated Section 8(a)(1) of the Act by denying access to a jobsite to union officials seeking to communicate with union-represented employees of a subcontractor. In this case, a visitation clause in the contract between the subcontractor and the union permitted access. Thus, in the Board's view, the employer, a general contractor, by soliciting subcontractors to perform work at the jobsite, had "invited" those subcontractors, and their subcontractors, onto the jobsite. Thereby, the employer subjected its "property rights" to the union's contractual "access" provision. Having voluntarily undertaken to have work performed by unionized subcontractors, the employer/general contractor was not privileged to interfere with the contractual rights of those subcontractors and the unions representing their employees. The Board further reasoned that, in light of the employer's voluntary undertaking to utilize subcontractors, the Supreme Court's decision in *Lechmere, Inc. v. NLRB*[9] did not control.

The Board further concluded that the union did not have a reasonable, effective alternative means to enforce its contractual rights and communicate with employees it represented at the jobsite. The Board noted that the visitation clause contemplated visitation at the jobsite, and the Board inferred that it was negotiated because visitation was deemed necessary to ensure contract compliance.

To remedy the violation found, the Board, while ordering the employer to cease and desist from its unlawful conduct, concluded that the employer should not be limited to maintaining only those rules applicable to jobsite visits that were in effect on the date of the violation. Further, the Board held that the employer was not precluded from including an escort requirement in its rules, so long as the requirement was reasonable and nondiscriminatory.

2. Investigatory Interview

In *New Jersey Bell Telephone Co.*,[10] a panel majority of the Board held that a union *Weingarten*[11] representative does not have the right to prevent an employer from repeating a question to an employee at an investigatory interview, and may not permissibly direct that questions by management may only be asked once.

The respondent conducted an investigation of incidents in which a ladder was apparently rigged to collapse on a supervisor, and the supervisor's office was ransacked. The respondent's security department interviewed numerous employees including employee Daniel Ehlers. The security representatives complied with Ehlers' request that William Huber serve as his union *Weingarten* representative during the interview. The security representatives asked Ehlers a series of questions. Each question was asked only once. Ehlers' responses were vague and inconclusive. On repetition for a second time of some of

[8] 308 NLRB 1117 (Members Devaney, Oviatt, and Raudabaugh).

[9] 112 S.Ct. 841.

[10] 308 NLRB 277 (Members Devaney, Oviatt, and Raudabaugh; Member Devaney, concurring in part and dissenting in part; and Member Raudabaugh, dissenting in part).

[11] *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

the prior questions, Huber objected that the questions had already been asked. Huber continued to interrupt the questions on that basis. The security representatives informed Huber that he was disruptive, should leave the interview, and that the interview would continue in the presence of another union official. On Huber's refusal, the respondent summoned the police and had Huber arrested for criminal trespass.

The Board majority found that an employer's "legitimate prerogative to investigate employee misconduct in its facilities" precluded a rule limiting the employer to asking a question only once. The Board explained that such a rigid limitation would only serve to turn an investigatory interview into an adversarial forum, a result contrary to the Supreme Court's direction in *Weingarten*. The Board majority accordingly concluded that Huber had exceeded the permissible role of a *Weingarten* representative and accordingly that the respondent lawfully ejected Huber from the interview. The Board majority observed that its holding did not detract from the right of a *Weingarten* representative to object to questions that may reasonably be construed as harassing; but rather that the respondent's efforts to raise questions more than once did not constitute harassment or intimidation.

In dissent, Member Devaney would have found that Huber's conduct was within the scope of that permitted a *Weingarten* representative and that the respondent's expulsion of Huber from Ehlers' interview was unlawful. Member Devaney observed that a *Weingarten* representative may not be required to remain silent during an investigatory interview, and that Huber was justified in aggressively objecting to the repetitive questions in light of the "high-pressure" circumstance of the interview. Member Devaney cautioned that the rule articulated by the panel majority would require the *Weingarten* representative to be a "passive observer in what is often a highly charged situation with the most severe potential employment ramifications."

B. Employer Bargaining Obligation

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

1. Mandatory Subject of Bargaining

In *Torrington Industries*,[12] the Board held that an employer is obligated to bargain about its decision to subcontract unit work, regardless of whether the decision turns on labor costs, when the decision

[12] 307 NLRB 809 (Chairman Stephens and Members Devaney and Oviatt; Member Raudabaugh concurring).

does not constitute a significant change in the nature or direction of the business. In a separate concurrence, Member Raudabaugh would apply the Board's burden-shifting analysis in *Dubuque Packing Co.*[13] to find that the employer had an obligation to bargain over the subcontracting decision.

The employer is engaged in the production and sale of ready-mix concrete at its Oneida, New York facility, one of nine such plants owned by the employer in the northeastern New York and Connecticut areas. Following an election on July 8, 1988, Teamsters Local 182 was certified on July 18 as the collective-bargaining agent of the employer's drivers, mechanics, and yardmen at the Oneida facility.

On July 11, the employer laid off William Marshall, 1 of 2 full-time drivers, and transferred the 10-wheel dump truck he had been driving to another of its plants. For nearly 2 weeks the other driver, Alton Blair, worked an extra 10 to 15 hours a week to maintain the stockpiles of sand and stone. Thereafter, the company transferred a truck and Benny Haywood, a nonunit driver from another plant, to haul sand while Blair continued to haul stone. On July 27, the employer laid off Blair and supplemented Haywood's deliveries with independent contractors. There is no dispute that the company did not notify or bargain with the union over the decision to lay off Marshall and Blair.

Chairman Stephens and Members Devaney and Oviatt found that the facts fall within the Supreme Court's decision in *Fibreboard Corp. v. NLRB*,[14] stating that,

> with the possible exception of one factor, we are presented with what may be termed "'Fibreboard subcontracting". . . replac[ing] the two employees hauling sand and stone with a nonunit employee and independent contractors, also hauling sand and stone" to the Oneida facility.

Thus the majority found no need to "reinvent the wheel by rebalancing the factors weighing for and against a finding that the decision is subject to the bargaining obligation."

The majority rejected the employer's argument that the decision to subcontract turned on entrepreneurial considerations rather than labor costs finding that the employer's "reasons had nothing to do with a change in the 'scope and direction' of its business." First the majority noted that Marshall and Blair were simply replaced, and that their discharge was not the result of an elimination of the type of work they performed. Nor did the employer demonstrate that the layoffs and reallocation of work to others involved entrepreneurial decisions that are outside the range of bargaining or decisions dictated by emergencies that would render bargaining impractical. The majority found that,

> whether or not the [employer's] decision to replace them with nonunit personnel was motivated by labor costs in the strictest

[13] 303 NLRB 386 (1991).
[14] 379 U.S. 203 (1964).

sense of that term, the fact remains that the decision clearly involved unit employees' terms of employment and it did not "lie at the core of entrepreneurial control."[15]

Member Raudabaugh, concurring in the result, said the majority ignored the Supreme Court's decision in *First National Maintenance Corp. v. NLRB*,[16] by requiring bargaining over a decision even when it is not amenable to the collective-bargaining process. According to Member Raudabaugh, "there is no point in requiring bargaining where such bargaining can have no meaningful result other than to delay the effectuation of the employer's decision." To avoid that result, Member Raudabaugh would apply the burden-shifting analysis of *Dubuque*, supra, which, he said, would balance the entrepreneurial prerogatives against the amenability to bargaining. Applying that analysis, Member Raudabaugh concluded that the employer had not satisfied its burden of proving that labor costs were not a factor in its decision to subcontract or that the union could not have offered labor costs concessions that could have changed the decisions.

In *Postal Service*,[17] the Board held, contrary to the administrative law judge, that the employer violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the union over a decision to reduce labor costs by $60 million for the 1988 fiscal year. The employer unilaterally closed postal facilities on the Saturday following two separate holidays, reduced window service hours nationwide, and discontinued Sunday collection and work and processing of outgoing mail nationwide. Mischaracterizing the operative decision at issue, the judge determined that the employer had no duty to bargain with the union because the labor costs savings were in response to a congressional mandated budget reduction. In view of this mischaracterization, the Board rejected the judge's analysis and determined that the employer's decision to cut labor costs "amounted to a decision to reduce work hours—a matter literally within the scope of an employer's obligation to bargain as defined in Section 8(d)." The Board thus concluded that the employer's changes in work hours involved a mandatory subject of bargaining.

The employer had also defended its actions on the basis of the parties' management-rights contract clause, bargaining history, and past practice. The Board rejected this defense, finding no clear and unmistakable waiver. Member Oviatt dissented because he would remand this case to the judge, who did not reach the waiver issue, for the taking of additional evidence, if necessary.

In *Holmes & Narver*,[18] the Board held that the employer violated Section 8(a)(5) of the Act by failing to bargain with the union before laying off nine employees.

The employer held the prime contract to provide operations and maintenance service at a U.S. Army facility, Redstone Arsenal. The

[15] 307 NLRB 809, citing *Fibreboard*, supra, 379 U.S. at 223.

[16] 452 U.S. 666 (1981).

[17] 306 NLRB 640 (Chairman Stephens and Member Raudabaugh; Member Oviatt dissenting in part).

[18] 309 NLRB 146 (Chairman Stephens and Members Devaney and Oviatt; Member Raudabaugh concurring in the result.)

Army exercised its option not to renew the contract and opened it to bidding. The employer submitted a bid in which it proposed performing essentially the same work it was then performing but with fewer employees. The employer did not notify or bargain with the Union about the bid.

The Board found that the decision to lay off employees was a mandatory subject of bargaining because it fell within the category of "management decisions, such as the order of succession of layoffs and recalls, production quotas, and work rules, that are almost exclusively 'an aspect of the relationship' between employer and employee." *First National Maintenance Corp. v. NLRB*,[19] citing *Allied Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*[20] The Board noted that the layoffs in this instance were the direct outcome of the decision to reassign work so that the same amount of work could be done by fewer employees.

Member Raudabaugh, concurring in the result, found that the employer's decision fell within the category of management decisions that have a direct impact on employment, but which have as their focus only the economic profitability of the business. Thus, the employer need only bargain if the benefit of bargaining for labor-management relations and the collective-bargaining process outweighs the burdens that it would place on the conduct of business. Applying the multipart test of *Dubuque Packing Co.*[21] for determining if an employer's economically motivated decision to relocate is a mandatory subject of bargaining, Member Raudabaugh found that the General Counsel met its burden of establishing that the decision to lay off employees did not involve any basic change in the direction or scope of the enterprise. He found that the employer failed to rebut the prima facie case.

2. Change in Operations

In *Borden, Inc.*,[22] the Board held that, whether two separate units of employees of one employer are represented by the same union but have different terms and conditions of employment are merged and thereby contribute "substantial proportions" of employees to the new unit, the employer is obligated "to preserve the status quo with respect to each of the two groups until it reaches a new agreement or a bargaining impasse."

The employer acquired the Farmer Jack plant shortly after its predecessor had obtained substantial monetary concessions from the union. It had purchased the Meadow Gold plant the prior year from a company that negotiated a contract with the union offering wages and benefits superior to Farmer Jack's. When the company first announced the purchase of Meadow Gold, it told the union it would operate the plants independently, applying the Farmer Jack contract at the Farmer Jack plant, and later consolidate them. The union took the

[19] 452 U.S. 666, 677 (1981).
[20] 404 U.S. 157, 178 (1971).
[21] 303 NLRB 386 (1991).
[22] 308 NLRB 113 (Chairman Stephens and Members Devaney and Raudabaugh).

position that, if the plants continued to operate independently, it expected the company to honor both contracts, but that, in the event of consolidation, the Meadow Gold contract should apply to employees from both units thereafter.

The day after the employer formally acquired the Farmer Jack plant it commenced operations, recognized the union in the unit covered by the contract there in place, and began applying that contract to Farmer Jack employees. Ultimately, the employer accelerated the transfer of operations and selectively employed Meadow Gold unit employees at the Farmer Jack facility without seniority rights and at wage and benefit rates specified in the contract it had assumed at Farmer Jack. When the consolidation was complete, there were 35 former Meadow Gold plant employees, 31 Farmer Jack employees previously covered by the contract in place at that plant, and 13 new hires. The Farmer Jack contract was applied to all 79 of these employees. The Board found that, as a result of the consolidation, a new merged unit, different from either preexisting unit, was created at the Farmer Jack plant.

The Board held that, "where two separate units of the same employer contribute substantial proportions of employees to a new unit, an employer is obligated to preserve the status quo with respect to each of the two groups until it reaches either a new agreement or a bargaining impasse." The Board stated that maintaining the status quo in these circumstances promoted stability in collective bargaining, as both portions of the merged unit "enter negotiations with their respective preexisting terms and conditions of employment intact." The Board rejected the contention that a bifurcated status quo would promote industrial unrest because each party will be motivated to reach agreement to forestall the continued application of the contract that each party views as the less desirable one. "There may be circumstances," the Board noted, "in which there is practical justification for not requiring an employer to adhere to two different sets of employment terms and conditions," but no such justification has been established before the employer unilaterally terminated the former Meadow Gold plant employees' terms and conditions before bargaining for a new agreement.

The Board analogized this situation to its treatment of an employer's obligation to bargain concerning the terms and conditions of previously unrepresented employees who are added to a bargaining unit as a result of an *Armor-Globe* election[23] during the term of a collective-bargaining agreement covering the larger unit. There, the Board noted, the newly added, or "fringe group," employees are not automatically swept under the terms of the agreement covering the existing unit but maintain their status quo. Accordingly, the Board found that the employer violated Section 8(a)(5) and (1) of the Act by unilaterally changing the terms and conditions of employment of Meadow Gold employees transferred to the Farmer Jack facility and compensating them at Farmer Jack contract rates. Correspondingly, the

[23] *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

Board found that former employees of the Meadow Gold plant who declined employment at Farmer Jack and retired because of those changes were constructively discharged in violation of Section 8(a)(3) and (1).

In *Gitano Distribution Center*,[24] the Board announced that when an employer transfers a portion of its unit employees at one location to a new location, it will apply a new test to determine whether the employer is obligated to recognize and bargain with the union as the representative of the unit at the new facility.

The Respondent is a public corporation controlled by the Dabah family, which owns 85 percent of its stock. The respondent is the sole owner of all the stock in Orit Corporation. One of Orit's subdivisions, P.S. Gitano, distributes proportionally sized jeans for women. In addition to Orit, the respondent is the sole owner of North American Underwear (NAU), a subsidiary that distributes men's and women's intimate apparel. Finally, members of the Dabah family own 100 percent of the stock in and control United States Outerwear (USO). USO is not a subsidiary of the respondent, but uses the Gitano label under a licensing agreement.

By the end of July 1987, the respondent had consolidated its Orit, NAU, and USO operations at its Edison, New Jersey warehouse (with the P.S. Gitano operation located in a Crazy Eddie warehouse down the street from the Edison facility). Following a rerun election held August 31, 1987, the union was certified as the exclusive collective-bargaining representative of all the full-time and part-time warehouse employees employed at the Edison warehouse (including the P.S. Gitano employees).

In June 1988, the respondent leased part of a warehouse in North Brunswick, New Jersey, approximately 12 miles from the Edison facility. The respondent hired approximately 20 warehouse employees to work there. Over the next several months, it gradually transferred the P.S. Gitano work to that facility from the Crazy Eddie warehouse. By December 1988, the respondent had completed its relocation of the P.S. Gitano operation from the Crazy Eddie warehouse to the North Brunswick facility. (None of the P.S. Gitano employees were laid off from the Crazy Eddie warehouse or transferred to the North Brunswick facility. They were all transferred back to the Edison warehouse.) Also in December, the respondent laid off most of its NAU employees at Edison and relocated that operation to North Brunswick.

The judge found, inter alia, that the respondent violated Section 8(a)(5) and (1) by refusing to bargain with the union as the certified representative of the bargaining unit employees. The judge further found that the bargaining unit should include all the warehouse employees working at both facilities.[25] With regard to the NAU and P.S.

[24] 308 NLRB 1172 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

[25] The Board reversed the judge's finding that the USO employees should be included in the bargaining unit. The union did not know that the USO operation had been relocated to the Edison facility prior to the rerun election. Consequently, it did seek to include the USO employees in the bargaining unit and they did not vote in the rerun election. Citing *Union Electric Co.*, 217 NLRB 66 (1975), the Board excluded the USO

Gitano warehouse employees at the North Brunswick facility, the judge reasoned that those employees should be included in the unit under either a "spinoff" or partial "relocation" analysis.

The Board affirmed the judge's finding of the 8(a)(5) violation, but found that the unit should be limited to the warehouse employees at the Edison facility (excluding the USO employees for the reasons explained above). The Board explained that it would no longer define the nature of the transfer as a "spinoff" or partial "relocation," but would begin its analysis with the "long-held rebuttable presumption" that the unit at the new facility is a separate appropriate unit. Assuming that the presumption is not rebutted, the Board stated that it would henceforth apply a "simple fact-based majority test" to determine the employer's bargaining obligation at the new facility. "If a majority of the employees in the unit at the new facility are transferees from the original bargaining unit, [the Board] will presume that those employees continue to support the union and find that the employer is obligated to recognize and bargain with the union as the exclusive collective-bargaining representative of the employees in the new unit. Absent this majority showing, no such presumption arises and no bargaining obligation exists."

Applying this analysis to the facts here, the Board found that but for the respondent's unlawful layoff of most of the NAU employees from Edison, a majority of the NAU employees at North Brunswick would have been transferees. Accordingly, the Board found that the union was obligated to recognize and bargain with the union as the representative of those employees. Finally, the Board found that the P.S. Gitano employees at North Brunswick constituted a separate unit. Because none of those employees were transferees from the Edison bargaining unit, the Board found that the respondent had no bargaining obligation as to those employees.

3. Direct Dealing

In *Allied-Signal, Inc.*,[26] the Board panel held that the employer did not violate Section 8(a)(5) of the Act through its unilateral change of its employee smoking policy. The Board so found because it concluded that the union had contractually waived its bargaining rights on this issue. The Board also found, however, that the employer did violate Section 8(a)(5) by its direct dealing with an employee task force prior to the imposition of the new policy.

Prior to the new policy, smoking was prohibited in some parts of the plant and permitted in others; pursuant to the new policy it was prohibited in all areas except for designated areas in two employee cafeterias. Management had initially determined to permit smoking in some areas in addition to the cafeteria, but it appointed an employee task force, including employees both within and outside of the bargaining unit, to consider the matter before implementing the new pol-

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employees on the ground that "when parties to a bargaining relationship, even by mistake, have excluded a group of employees from an established bargaining unit, the Board will not clarify the unit to include those employees unless substantial changes have occurred."

[26] 307 NLRB 752 (Members Oviatt and Raudabaugh; Chairman Stephens dissenting in part).

icy. Pursuant to task force deliberations, the additional restrictions were added. The union was not notified of the appointment of the task force and was not aware of its existence until after the new ban had been implemented.

The Board dismissed the complaint allegations as to the unilateral change because it found that a safety and health clause in the collective-bargaining agreement, considered in the light of past practice under the clause, gave the employer unilateral authority to develop and implement new policies affecting employee safety and health. The Board also considered a so-called zipper clause, but relied on that "only to the extent that it confirms the historical and contractual status quo of permitting the [employer] to act unilaterally with respect to its smoking policy."

In finding the direct dealing violation, the Board first noted that the employer had gone behind the back of the union to solicit employee input on a proposed change in working conditions and concluded that, particularly in light of the controversial nature of the policy in question, this "plainly erode[d] the position" of the union as employee bargaining representative. It rejected the employer's waiver contention, finding that "nothing in the language of collective-bargaining agreement or the record of contract administration remotely suggests that the Union waived" its right not to be bypassed when the employer dealt with the employees on changes in their working conditions.

Chairman Stephens assumed arguendo that the union had waived its right to bargain over changes in the plant smoking policy and agreed with his colleagues that the employer violated Section 8(a)(5) through its direct dealing with the employee task force. He concluded, however, that because the smoking policy was shaped by the deliberations of the task force, the employer's direct dealing was "inextricably tied to the announcement and implementation of the change." Hence, he would find violations as to both the direct dealing and the unilateral change.

4. Continuing Bargaining Obligation

In *Laidlaw Waste Systems*,[27] the Board held that in order to rebut the presumption of an incumbent union's majority status, the standard of proof by which an employer must show either actual loss of majority support or objective factors sufficient to support a reasonable and good-faith doubt of the union's majority is a preponderance of the evidence.

In finding that the respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the union, the administrative law judge stated that an employer may lawfully end its bargaining relationship with an incumbent union by overcoming the presumption of a union's continuing majority status with a "clear, cogent, and convincing" showing of either actual loss of majority support or of objective factors sufficient to support a reasonable and good-faith doubt of the

[27] 307 NLRB 1211 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

union's majority. The judge cited cases which appear to be in conflict on whether the quoted standard of proof is appropriate. Cf. *Hutchinson-Hayes International*[28] and *Westbrook Bowl*,[29] with *Bolton-Emerson, Inc.*[30]

The Board noted that its usual standard of proof is a preponderance of the evidence and that it saw no reason to apply a different standard to the affirmative defense here. To the extent that *Westbrook Bowl*, supra, and *Hutchinson-Hayes International*, supra, imposed the "clear, cogent, and convincing standard," the Board overruled those cases.

However, the majority of Chairman Stephens and Members Devaney and Oviatt agreed with the Ninth Circuit that the standard of "clear, cogent, and convincing" is pertinent to the type of evidence offered.[31] The majority noted, "[t]his makes sense given the types of evidence on which employers typically rely in good-faith doubt cases—statements by employees to supervisors reflecting varying degrees of hostility or indifference to the union, changes in affirmative support for the union, such as cessation of dues checkoff and the like." The majority explained that "[i]t is fair to say that the Board will not find that an employer has supported its defense by a preponderance of the evidence if the employee statement and conduct relied on are not clear and cogent rejections of the union as a bargaining agent, i.e., are simply not convincing manifestations taken as a whole, of a loss of majority support."[32]

Applying this standard to the facts, the Board agreed with the judge that the respondent had not effectively rebutted the presumption of the union's majority status. Employee Woolworth, who filed a decertification petition, with 15 signatures, with the Board, told 2 supervisors of the respondent "that what I considered a majority of the persons had signed a petition to vote on the union." He did not tell these two persons the number or names on the petition (nor was the size of the unit established at the hearing). In addition, the petition's stated purpose was to find out if the majority of the employees wanted to vote on the union—it did not indicate that the signers did not desire union representation.

5. Duty to Furnish Information

In *Nielsen Lithographing Co.*,[33] on remand from the U.S. Court of Appeals for the Seventh Circuit, a Board majority found that an employer did not violate Section 8(a)(5) by failing to provide requested

[28] 264 NLRB 1300 (1982).

[29] 293 NLRB 1000, 1001 (1989).

[30] 293 NLRB 1124 fn. 2 (1989), enfd. 899 F.2d 104 (1st Cir. 1990).

[31] See *NLRB v. Tahoe Nugget*, 584 F.2d 293, 297 fn. 13 (9th Cir. 1978), cert. denied 442 U.S. 921 (1979).

[32] At fn. 9, Member Raudabaugh noted that this case does not raise the issue of that type of evidence may be relied on by an employer. Because he found that the law remains the same on this point, he "would not confuse matters by seeking to characterize extant law by use of the phrase 'clear, cogent and convincing.'"

[33] 305 NLRB 697 (Chairman Stephens and Members Devaney and Raudabaugh; Member Oviatt concurring).

financial data to the union, reversing a previous decision in this case in which the Board found a violation.[34]

During bargaining for a new collective-bargaining agreement, the employer proposed reductions in wages and benefits. It informed the union that it was still making a profit but needed contract concessions to compete. The employer stated that costs in the expiring contract were resulting in significant losses of business to competitors and that trends indicated the employer was going to have a problem with labor cost items in the future without concessions. Thereafter, the employer refused the union's request for financial data.

Members Devaney and Raudabaugh found that the employer's claim of competitive disadvantages did not amount to a claim of inability to pay under the Supreme Court's decision in *NLRB v. Truitt Mfg. Co.*[35] The majority embraced the observation of the Seventh Circuit in *NLRB v. Harvstone Mfg. Corp.*,[36] that an employer's expressed view that its current economic position vis-a-vis competitors would lead to an eventual inability to pay beyond the intended contract term is quite different from an employer's insistence that a union's current bargaining demands are precluded by its condition at the present time or within the intended contract term.

Member Oviatt, concurring, agreed with the majority's analysis and indicated that his experience led him to conclude that requiring the employer to supply the requested financial data at issue would not encourage the practice and procedure of collective bargaining.

Chairman Stephens, dissenting, found that the employer made statements pertaining to its present and immediate economic condition that went beyond a mere claim of competitive disadvantage and, therefore, the employer had a duty to furnish requested information that was pertinent to assessing the respondent's actual economic condition.

6. Other Issues

In *Field Bridge Associates*,[37] the Board found that the purchasers of two apartment complexes were not required to abide by a collective-bargaining agreement between the service employees and a multiemployer association (RAB) representing the previous owners. The Board found that the purchasers did not assume the RAB contract, notwithstanding a contrary finding by a state court.

The Board noted initially that the Government was not a party to the prior private litigation, and thus it was not barred from litigating an issue involving enforcement of a Federal law which the private plaintiff had litigated unsuccessfully. Further, the Board has "consistently exercised restraint" in applying an assumption-of-the-contract theory, requiring "clear and convincing" evidence of actual or constructive consent. Here, the Board added, the evidence of consent was ambiguous. Accordingly, the Board found no violation of Section 8(a)(5) of the Act.

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[34] 279 NLRB 877 (1986).
[35] 351 U.S. 149 (1956).
[36] 785 F.2d 570, 577 (7th Cir. 1986).
[37] 306 NLRB 322 (Members Devaney, Oviatt, and Raudabaugh).

C. Union Interference with Employee Rights

Even as Section 8(a) of the Act imposes certain restrictions on employers, Section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is generally analogous to Section 8(a)(1), makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights, which generally guarantee employees freedom of choice with respect to collective activities. However, an important proviso to Section 8(b)(1)(A) recognizes the basic right of a labor organization to prescribe its own rules for the acquisition and retention of membership.

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule that "invades or frustrates an overriding policy of the labor law."[38] During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union action and the types of those actions protected by the proviso to that section.

Teamsters Local 776 (Rite Aid),[39] presented the issue of whether the respondent violated Section 8(b)(1)(A), (2), and (3) of the Act by continuing to prosecute its Section 301 lawsuit in the face of a conflicting Board unit clarification determination.

The employer, Rite Aid Corp., had consolidated at a new location certain job functions previously done at regional facilities. Employees represented by Teamsters Local 776 (who had previously performed the work) were transferred to other jobs within the Teamsters unit at the regional facility, and the "returns" work at the new centralized facility was performed by newly hired unrepresented employees. The arbitrator upheld the resulting grievances, finding that Rite Aid had violated the union's collective-bargaining agreement by failing to apply it to the newly hired employees. Rite Aid thereupon filed a unit clarification petition with the Board, seeking to exclude from the Teamsters unit the employees who were hired to perform the returns work. The Regional Director concluded that the returns facility was a different operation from the regional facility and clarified the Teamsters bargaining unit to exclude the newly hired employees. He viewed the employer's petition as raising "the same fundamental issue that was the subject of the Arbitrator's decision" but refused to defer to it. The respondent's request for review was denied by the Board. A further motion for reconsideration and a request for leave to file an appeal by the respondent were also denied. Prior to the issuance of the Regional Director's decision, the respondent sought judicial enforcement of the arbitration award by filing a Section 301 law-

[38] *Scofield v. NLRB*, 394 U.S. 423, 429 (1969); *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).
[39] 305 NLRB 832 (Chairman Stephens and Members Oviatt and Raudabaugh).

suit in district court and the respondent, nevertheless, continued to maintain the lawsuit to enforce the arbitrator's conflicting award even after the Board denied its request for review. Based on the conduct in derogation of the Regional Director's unit clarification determination, the General Counsel issued a complaint.

The Board rejected the respondent's assertion that the underlying dispute was decided on contractual grounds and hence did not involve a representational issue and granted the General Counsel's Motion for Summary Judgment. The Board held that the arbitrator's decision "is not controlling because it was superseded by the superior authority of the Board's subsequent unit clarification Decision and Order." *Carey v. Westinghouse.*[40] "By continuing to seek enforcement of an arbitration award which is in direct conflict with the Board's unit clarification determination, the Respondent has, in effect, sought to apply the collective-bargaining agreement to employees whom the Board has already determined to be outside of the parties' bargaining unit." The Board found that the analysis required under *Bill Johnson's Restaurants v. NLRB*,[41] to determine the legality of a lawsuit was not called into play because this case fell within the "illegal objective" exception of cases escaping the *Bill Johnson's* analysis.

D. Deferral to Grievance/Arbitration Procedure

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 grievance 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 when 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 agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act.[42]

In *Bethenergy Mines*,[43] the Board held that the respondent coal mining company did not violate Section 8(a)(3) and (1) of the Act by conditioning the retirement of five employees on their resignation from union positions that involved dealing directly with management and their written agreement not to hold such positions for the duration of the current collective-bargaining agreement between the respondent and Mine Workers Local 1197.

The union represented a unit of approximately 400 employees, including Mark Segedi, Fred Eimer, Patsy Bava, Joseph Goblesky, and

[40] 375 U.S. 261, 272 (1964).
[41] 461 U.S. 731 (1983).
[42] *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).
[43] 308 NLRB 1242 (Members Devaney, Oviatt, and Raudabaugh).

Jared Dobrinski. Bava was president of the union, Eimer was the union's safety committee chairman, and Segedi was a safety committee member for the union. Goblesky and Dobrinski held no union office.

On July 5, 1988, the respondent's employees, including Segedi, Eimer, Bava, Goblesky, and Dobrinski, commenced an unauthorized work stoppage at the respondent's worksite because of a dispute concerning health care benefits. On July 6, the five employees picketed the U.S. Steel Mining Company's Maple Creek facilities in furtherance of the work stoppage, which continued through July 7. The contract between the respondent and the union provided mandatory administrative procedures for the resolution of disputes about health care benefits. The work stoppage at the respondent's worksite did not involve an existing dispute at the U.S. Steel facilities.

On July 15, the respondent suspended with intent to discharge the five employees for participating in the unauthorized work stoppage and the picketing. All five employees filed grievances. In response to the union's request to reduce the discharges to a lesser penalty, the respondent proposed that it would require, as a condition of reinstatement, that each agree in writing not to hold union office for the balance of the collective-bargaining agreement. The union stated that it had no objections to this condition or the three other conditions proposed by the respondent, but it was compelled to review them with the affected employees.

On July 29, the five employees signed the "Last Chance Agreement," together with representatives from the union and the respondent, and on August 29 four of them returned to work. Bava retired on September 1. Thereafter, Segedi was allowed to continue serving on the Coal Miners Political Action Committee (COMPAC), a position to which he had previously been elected and which did not involve direct dealing with the respondent as a union representative.

In May 1990, Segedi ran for the position of financial secretary of the union, another position which involved no direct dealing with the respondent as a union representative. On May 21, the respondent suspended Segedi with intent to discharge, claiming that Segedi had violated the terms of the "Last Chance Agreement." Segedi grieved the suspension.

On June 11, arbitrator Thomas M. Phelan issued a decision and award sustaining Segedi's grievance. The arbitrator noted that the "Last Chance Agreements" had been interpreted as precluding the signers from holding only those positions involving direct dealing with the respondent. The arbitrator found this limitation consistent with the collective-bargaining agreement and the National Labor Relations Act.

Initially, the Board noted that the right to assist a union by holding office is protected by Section 7 of the Act and that employees and their union may choose their own representatives. Thus, an employer violates the Act by refusing to employ an individual because he or she has been designated as union steward, or by conditioning an employee's reinstatement on resignation from the union and an agree-

ment not to run for union office for a set period of time, the Board explained.

The Board then reasoned that "standing alone, the 'Last Chance Agreements' would appear to violate these principles." However, the "particular facts" of this case, the Board said, do not warrant finding a violation of the Act, because deferral to the "Last Chance Agreements," as interpreted by the arbitrator's award, was appropriate. "We defer because we find that the restriction on five employees' participation in union affairs was substantially justified by the unprotected conduct of the five employees," observed the Board. "We also rely on the fact that the employees themselves waived their Section 7 rights."

The Board stated that the four-part standard for Board deferral to arbitral awards had been met here—namely, that (1) the proceedings were fair and regular; (2) all parties agreed to be bound; (3) the unfair labor practice issue was presented to and considered by the arbitrator; and (4) the decision was not repugnant to the purposes and policies of the Act. With regard to the latter criterion, the Board noted that it was undisputed that the five employees had engaged in an unprotected, unauthorized work stoppage at the respondent's facility and extended this misconduct by picketing an unrelated employer. By engaging in this conduct "in contravention of the contract's mandatory procedures for the peaceful resolution of disputes over health care benefits," the Board said, "the five employees exhibited contempt for the collective-bargaining agreement. Their conduct was thus inimical to the welfare of the unit and the Union's representative function."

Further, the Board said that the prohibition on holding union office "was a condition narrowly drawn to fit the situation and designed to be prophylactic." Finally, the Board concluded that the five employees waived their Section 7 rights, finding that they knowingly and voluntarily signed the "Last Chance Agreements."

E. Remedial Order Provisions

1. Bargaining Orders

In *FJN Mfg.*,[44] a Board panel considered what must be alleged by the General Counsel in a complaint in order to warrant, as part of the remedy, the imposition of a *Gissel*[45] bargaining order. In *FJN*, the employers failed to file a timely answer to the complaint. Thereafter, the General Counsel filed with the Board a Motion for Summary Judgment. Although a panel majority of the Board consisting of Members Devaney and Oviatt granted the motion in regard to the unfair labor practices alleged in the complaint, the majority found that the complaint provided insufficient information to warrant the imposi-

[44] 305 NLRB 656 (Members Devaney and Oviatt, Member Raudabaugh dissenting in part).
[45] *NLRB v. Gissel Packing Co.*, 395 U.S. 595 (1969).

tion of a *Gissel* bargaining order and it accordingly denied the motion insofar as it sought that remedy.

The complaint alleged that the employers threatened, interrogated, and created an impression of surveillance among an unspecified number of employees and unlawfully discharged 10 employees. The panel majority, while acknowledging that the unfair labor practices were serious, noted that the complaint did not allege the size of the unit or the extent of the dissemination, if any, of the violations among the employees not directly affected by them. The panel majority stated that the Board had informed the General Counsel through published precedent that allegations of unit size and dissemination are required in order for the Board to grant the extraordinary remedy of a bargaining order in a no answer summary judgment case. As the required information was not alleged in the complaint, the panel majority denied the General Counsel's Motion for Summary Judgment insofar as it alleged that a bargaining order was appropriate.

Member Raudabaugh, dissenting, would have granted the motion in all respects as requested by the General Counsel. He noted that the complaint alleged that the employers committed violations of Section 8(a)(1) and (3); it alleged the *Gissel* test for the imposition of a bargaining order; and it alleged a refusal to bargain as the act that constituted an 8(a)(1) and (5) unfair labor practice. These allegations, Member Raudabaugh further noted, were all admitted by the employers. He stated that in these circumstances it was not necessary for the General Counsel to allege evidentiary factors in support of the complaint's allegations. Member Raudabaugh would thus "not find technical fault with the complaint" and would enter a bargaining order based on the employer's admissions.

2. Liability for Predecessor's Unfair Labor Practices

In *Glebe Electric*,[46] a Board panel majority reversed an administrative law judge and declined to hold respondent Aneco liable as a *Golden State*[47] successor for remedying the unfair labor practices of predecessor contractor Glebe that went out of business before fully performing an electrical job that Aneco contracted to complete. The majority did not attach any "special significance" to the fact that former Glebe employees constituted a majority of Aneco's work force or that Aneco had knowledge of Glebe's unfair labor practices because Aneco did not purchase Glebe or any of its assets, and there was a "total absence of any business relationship between Glebe and Aneco."

In August 1989, Glebe decided that it would go out of business before completing the final phase of its electrical subcontract on a hospital addition and renovation job for general contractor Centex-Rodgers. Glebe offered its business for sale to Aneco. Aneco declined the offer because Glebe had nothing of value to sell, but Aneco con-

[46] 307 NLRB 883 (Chairman Stephens and Member Oviatt; Member Raudabaugh dissenting).
[47] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

sidered taking on the job in the hope of obtaining future work from Centex.

The union wrote to Aneco, as the purchaser of Glebe's business, to advise it that an unfair labor practice complaint had issued against Glebe and to warn that it would hold Aneco accountable. Aneco learned from Glebe officials that Glebe was taking care of the charges. Aneco and Centex entered into a contract to complete the final phase on the identical terms given to Glebe, and on the same day, Centex and Glebe modified their contract to authorize Centex to withhold $30,000 from the original contract price due Glebe to cover its potential warranty liability.

Aneco began work on the hospital job within a few days after Glebe's departure, employing 11 persons, including 2 of its own employees, 7 former Glebe employees from the hospital job, and 2 former Glebe supervisors, subject to the same working conditions provided by Glebe. Aneco did not purchase any of Glebe's assets, but it did occupy two construction trailers at the hospital site that were left by Glebe.

The judge found that Aneco's continuation of the work without interruption, and in the same work force, supervision, and working conditions, constituted substantial continuity between the two enterprises, and that Aneco's notice of Glebe's unfair labor practices subjected Aneco to liability for remedying them, citing Board decisions, such as *Am-Del-Co.*,[48] in which nonpurchaser successors were found jointly and severally liable for their predecessor's wrongdoings.

The majority analyzed Board decisions following *Golden State* that imposed remedial liability on nonpurchaser successors, noting that in such cases some pecuniary or security interest existed between the successor and predecessor which served as a substitute for a purchase, and concluded that some such interest or relationship, or some other clearly identifiable and connecting interest, which is critical to establish a *Golden State* successorship, is lacking here.

In dissent, Member Raudabaugh finds clear precedent for granting the discriminatees a "meaningful remedy" without placing a significant burden on the successor employer, and would accordingly impose on Aneco only the narrow remedy imposed in the analogous case of *Am-Del-Co.*, i.e., offer of reinstatement to Glebe's discriminatees but not money liability.

3. Other Issues

In *Postal Service*,[49] the Board agreed with the administrative law judge that an extraordinary remedy was required to alleviate a "horrendous log jam," caused by the respondent, of grievances dating back to 1986. The Board modified the judge's remedy, and imposed strict time limits on the processing of grievances through steps 2 and 3 and arbitration as provided in the parties' collective-bargaining agreement.

[48] 234 NLRB 1040 (1978).

[49] 309 NLRB 13 (Members Devaney and Oviatt; Member Raudabaugh dissenting in part).

Article 15 of the national agreement between the American Postal Workers Union and the respondent contains a four-step grievance procedure ending in arbitration, with specific deadlines for each step of the process. The judge found that the respondent had violated the Act by its "continuous failure" to process grievances in a timely manner. The judge recommended that all pending and future grievances, not adjusted within contractual time limits, were to be resolved in the grievants' favor, with objections to the merits waived. Management would be permitted to appeal individual cases to the Board's Regional Director for determination whether the presumed waiver would cause an unduly prejudicial or harsh result.

The respondent and the General Counsel excepted to parts of the judge's remedy. The majority (Members Devaney and Oviatt) modified the judge's remedy by eliminating the provisions on the presumption of waiver on the merits of grievances, and by imposing specific time limits within each step of the grievance process. The majority noted that the relief provided was "procedural," and thus, they were not intruding into "the parties' substantive decision making" with regard to the resolution of grievances.

Specifically, the Board's remedy provides time limits under which the respondent will be required to meet the union to resolve grievances at steps 2 and 3; requires the respondent to consider grievances by assigned category for more efficient resolution; directs the respondent to answer unresolved grievances within certain time limits; and, in consideration of the need to expedite the large number of contractual grievances that are pending, permits the union to bypass step 3 and proceed directly to arbitration. To improve grievance processing further, the remedy requires that steps 2, 3, and arbitration hearings be held within certain Board-imposed time limits.

Member Raudabaugh, dissenting in part, opined that the Board lacks the power to impose a schedule for getting rid of a backlog caused in large part by the respondent's bad faith. He noted that the majority had "written for the parties an elaborate scheme that is at odds with what the parties themselves have agreed on." Because the Board is powerless to foist an agreement on private parties even as a remedy for unfair labor practices, Member Raudabaugh would issue a cease-and-desist order requiring the parties to adhere to their negotiated procedure, and require good-faith bargaining as to which grievances should be handled first.

In *Lear-Siegler Management Service*,[50] the Board held that the appropriate remedy for a discriminatee who engaged in postdischarge misconduct by threatening a potential witness in a Board proceeding is to deny reinstatement and to toll backpay as of the date of the misconduct.

Mack Wood, who had a reputation for "disruptive and violent conduct," was the employee who contacted a Teamsters local union about organizing the employer's employees in August 1988. The administrative law judge found, and the Board agreed, that he was fired

[50] 306 NLRB 393 (Chairman Stephens and Members Oviatt and Raudabaugh).

the next month because of his union activities in violation of Section 8(a)(3) and (1) of the Act. The judge, however, found that Wood's postdischarge misconduct constituted grounds for denying him the traditional remedies of reinstatement and backpay. The Board agreed with the judge that Wood should be denied reinstatement, but for different reasons, and also held that Wood was entitled to backpay up until the date of his misconduct.

In this regard, the Board noted that employee Gary Sumlin was expected to give testimony in this case about the employer's reprimand policy which was objectively favorable to Wood. When Wood heard a rumor that Sumlin was going to testify in a manner that Wood believed to be untruthful and, thus, unfavorable to Wood, Wood threatened Sumlin that he would report a violation of Sumlin's probation to the authorities if Sumlin changed his anticipated testimony at the hearing. The Board said that the record established that "Sumlin took Wood's threat seriously" and, as the judge noted, Sumlin was "visibly shaken while testifying."

In these circumstances, the Board found, unlike the judge, that Wood should receive backpay from the date of his unlawful discharge until the date of his misconduct. The Board reasoned: "Denying backpay after the date of the threat protects the integrity of the Board's processes by providing that those who abuse the process cannot turn around and use the process to reap a full remedy. Granting backpay until that date also ensures that a respondent's unlawful discrimination does not go unremedied." Thus, the Board concluded that "a discriminatee who interferes with the Board's processes by attempting to influence and manipulate a witness in a Board proceeding will forfeit his right to backpay beyond the date of the impermissible interference."

Although, a discriminatee's interference with the Board's processes warrants the tolling of backpay rights, the Board further held that "it does not alone warrant the denial of reinstatement," overruling the dictum in *D. V. Copying & Printing*,[51] to the extent that that case suggests that interference with the Board's processes alone, without accompanying threats, compels denial of reinstatement. Here, however, Wood not only "attempted to manipulate Sumlin's testimony," stated the Board, but he also "accompanied that interference with a blatant threat of specific consequences to Sumlin's well-being, i.e., a threat to lodge an accusation with authorities that could threaten Sumlin's continuing probation." Such a threat by an employee with Wood's workplace reputation "was of a nature likely to produce in coworker Sumlin a continuing fear that any workplace disputes with Sumlin might result in a revival and possible implementation of the threat," the Board reasoned. Hence, in the "unique circumstances" of this case, the Board agreed with the employer's contentions concerning Wood's fitness to return to the workplace and found that the potential for serious disruption warrants denying him reinstatement.

[51] 240 NLRB 1276 fn. 2 (1979).

In *Blankenship & Associates*,[52] the Board issued a special remedial order against the respondents who committed numerous violations of Section 8(a)(1) of the Act when acting as labor consultants to a poultry processing company during a union organizing drive. The Board applied a narrow cease-and-desist order to the respondents when they act as agents for any employer over whom the Board has jurisdiction. The Board's Order was narrow in the sense that it forbade the respondents from engaging in any like or related conduct. It was broad, however, in the sense that it was not confined to the respondents when acting as agents of the poultry processing company. The Board determined that such an order was warranted in light of the respondents' history of engaging in misconduct as agents for many different employer-clients.

During the union campaign at the poultry processing company, the respondent made repeated threats of plant closure to groups of employees. To dramatize the message, the respondent showed the employees a large padlock and told the employees it would be put on the plant doors if the union were elected. On the morning of the election, the respondent got into a shouting match with union organizers which ended with the respondent stating three or four times that he was hired to legally close the plant. On the same day, the respondent took a "vote yes" sign from the window of a car parked near the employee parking area and tore it in half in front of employees. The respondent also openly photographed employees and union organizers on the election day without any legitimate justification.

The Board observed that "For more than a decade, Blankenship's name has come before the Board as an agent who has committed repeated unlawful acts on behalf of the employer/clients who hired him." Those acts included unlawful threats of loss of work or plant closing, unlawful undermining of support for a union by urging employees to bargain directly with the employer, overall bad-faith bargaining, locking out employees while engaging in bad-faith bargaining, and unlawful solicitation of grievances and promise of benefits. The Board expressed concern that, absent restraint, the respondent would engage in misconduct for other clients in the future. The Board concluded that in such circumstances it was appropriate to enter an order which applied to the respondents when they acted as agents for any employer over whom the Board would assert jurisdiction.

The Board went on to find, however, that the respondent's conduct did not warrant the type of broad order which would forbid the respondent from engaging in conduct which "in any manner," interferes with, restrains, or coerces employees in the exercise of their Section 7 rights. "The issues concerning these two remedial orders are wholly different. The question of whether to grant a broad order in the first sense turns on whether the Board has a reasonable concern that Respondents, having committed misconduct as agents for some clients, may engage in like or related misconduct as agents for future clients. . . . By contrast, the question of whether the order should

[52] 306 NLRB 994 (Chairman Stephens and Members Devaney and Raudabaugh).

contain the broad language 'in any other manner' turns on whether Respondents' conduct meets the test of *Hickmott Foods*,[53] as applied by the Board." Noting that a broad order is warranted under *Hickmott Foods* when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights, the Board concluded that the respondent's conduct did not meet that test.

[53] 242 NLRB 1357 (1979).

VI

Supreme Court Litigation

In fiscal year 1992, the Supreme Court decided one Board case, which the Board lost. In fiscal year 1991, the Supreme Court decided two Board cases, which the Board won.

In fiscal year 1992, the Court denied 26 private party petitions for certiorari and granted none; no Board petitions were filed. In addition, the Board participated as amicus in two cases in which petitions were denied. In fiscal year 1991, the Court denied 23 private party petitions for certiorari and granted 2; 1 Board petition was filed and granted.

In *Lechmere, Inc. v. NLRB*,[1] the Supreme Court[2] rejected the Board's *Jean Country*[3] test as applied to nonemployee union organizers seeking access to the employer's property for the purpose of communicating with employees respecting the advantages of self-organization. The Court held that, under *NLRB v. Babcock Wilcox Co.*,[4] an employer rule barring nonemployee union organizers from its property is valid unless the union demonstrates that no other reasonable means of communicating its message to the employees exists. The relevant facts are as follows:

The company operated a retail store in a shopping mall. The union first attempted to organize the company's 200 employees by placing a full-page advertisement in the local newspaper, which drew little response. Nonemployee union organizers then came onto the mall's parking lot, which was owned jointly by the company and the mall's developer, and began placing handbills on the windshields of cars parked in a corner of the lot used mainly by the company's employees. The company's manager asked the organizers to leave, citing a company rule prohibiting solicitation or handbill distribution of any kind on its property. Thereafter, the organizers relocated to a publicly owned strip of grass lying between the parking lot and a four-lane highway, and attempted to distribute handbills to drivers entering the lot before the store opened and exiting the lot after it closed. The organizers also picketed on the grassy strip, and attempted to identify

[1] 112 S.Ct. 841, revg. 914 F.2d 313 (1st Cir. 1990).

[2] Justice Thomas delivered the opinion of the Court. Justice White filed a dissenting opinion, joined by Justice Blackmun. Justice Stevens filed a separate dissenting opinion.

[3] 291 NLRB 11 (1988). Under *Jean Country*, the Board balances the degree of impairment of Sec. 7 rights should access be denied against the degree of impairment of property rights should access be granted. The availability of reasonably effective alternative means of communication is "especially significant" in the balancing process. Id. at 14.

[4] 351 U.S. 105 (1956).

employees through the license plate numbers of cars parked in the employee parking area. From the license plates, the union was able to determine the names and addresses of about 20 percent of the employees, but mailings and other contacts resulted in only one signed union authorization card.

Applying its decision in *Jean Country*, the Board ruled that the company violated Section 8(a)(1) by barring the nonemployee organizers from distributing handbills in the parking lot. The First Circuit, with one judge dissenting, enforced the Board's Order, holding that the Board's *Jean Country* test was a reasonable construction of the Act and that the Board's finding that the union had no other reasonably effective means of communicating with the company's employees was supported by substantial evidence.

The Supreme Court reversed. In the Court's view, *Babcock & Wilcox* foreclosed the Board's application of *Jean Country*'s balancing test when access to private property is sought by nonemployee organizers. *Babcock*, according to the Court, drew a categorical distinction between the Section 7 organizational rights of employees and nonemployees: while Section 7 guarantees employees the right to self-organization, it applies only derivatively to nonemployees.[5] The teaching of *Babcock*, the Court added, was "straightforward": Section 7 "simply does not protect nonemployee union organizers *except* in the rare case where 'the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels.'"[6] Because *Babcock* had thus established the requisite accommodation between the employees' Section 7 rights and the employer's property rights "where nonemployee organizing is at issue,"[7] the Court concluded that the Board was not permitted to strike a different balance.[8]

The Court then applied the exception recognized in *Babcock & Wilcox* to the facts presented and concluded, contrary to the Board, that the union had reasonable alternative means of communicating its message to the company's employees. The Court stated that the *Babcock* exception is a "narrow one." "It does not apply whenever nontrespassory access to employees may be cumbersome or less-than-ideally effective, but only where 'the *location of a plant and the living quarters of the employees* place the employees *beyond the reach* of reasonable union efforts to communicate with them.'"[9] Because the employees did not reside on the company's property, the Court found that they were presumptively not beyond the reach of the union's message.[10] The Court further found that the union in fact had suc-

[5] 112 S.Ct. at 846.

[6] Id. at 848, quoting *Babcock & Wilcox*, 351 U.S. at 112.

[7] 112 S.Ct. at 848.

[8] The Court stated that the general principle of according deference to an agency's reasonable interpretation of its own statute (see *NLRB v. Food & Commercial Workers*, 484 U.S. 112, 123 (1987)), was not applicable here. "Once we have determined a statute's clear meaning, we adhere to that determination under the doctrine of stare decisis, and we judge an agency's later interpretation of the statute against our prior determination of the statute's meaning." *Lechmere*, 112 S.Ct. at 847–848 (quoting *Maislin Industries, U.S., Inc. v. Primary Steel*, 110 S.Ct. 2759, 2768 (1990)).

[9] 112 S.Ct. at 849, quoting *Babcock & Wilcox*, supra at 113 (emphasis added by *Lechmere* Court).

[10] 112 S.Ct. at 849.

ceeded in contacting a "substantial" percentage of them by mail, phone calls, and home visits, and had been able to inform them of its organizational efforts by picketing along the publicly owned grassy strip between the parking lot and the highway.[11]

The dissenting justices disagreed with the Court's interpretation of *Babcock & Wilcox*. In their view, the statement of the *Babcock* Court that "inaccessibility would be a reason to grant access does not indicate that there would be no other circumstances that would warrant entry to the employer's parking lot,"[12] nor does it "require the Board to ignore the substantial difference between the entirely private parking lot of a secluded manufacturing plant and a shopping center which is open to the public without substantial limitations."[13] They also were of the view that the Court's reading of *Babcock* was inconsistent with its recognition in *Hudgens*[14] that the "locus of [the] accommodation . . . may fall at differing points along the spectrum depending on the nature and strength of the respective [Sec. 7] rights and private property rights asserted in any given context," and that the primary responsibility for making this accommodation, "in each generic situation," rests with the Board.[15]

[11] Id. at 849–850.
[12] Id. at 851.
[13] Ibid.
[14] *Hudgens v. NLRB*, 424 U.S. 507 (1976).
[15] 112 S.Ct. at 851 (quoting 424 U.S. at 522).

VII

Enforcement Litigation

A. Definition of Employee

Section 2(3) of the Act states that "The term 'employee' shall include any employee . . . ." The Board has long held that a paid union organizer is an "employee" within the meaning of Section 2(3), and is therefore protected against discrimination because of his union activities or affiliation.[1] In 1989, in *H. B. Zachry Co. v. NLRB*,[2] the Fourth Circuit expressed its strong disagreement with the Board's position. However, in two cases reaching the courts of appeals this year, the first since *Zachry* to present the issue, the Board successfully defended its position.

In *Willmar Electric Service v. NLRB*,[3] the employer refused to hire a known paid union organizer who had earlier engaged in area standards picketing and handbilling at the employer's premises. The District of Columbia Circuit, applying a *Chevron* analysis,[4] held that the Board's interpretation of Section 2(3) was reasonable. Noting that that section is to be construed in accordance with common law principles, the court rejected the *Zachry* court's assertion[5] that the "plain meaning" of the term employee is inconsistent with an individual working for two different employers at the same time.[6] The court stressed that in "closely related legislation, the Labor Management Relations Act," Congress assumed that an individual could be concurrently employed by a labor organization and another employer.[7] The court also rejected employer arguments that employee status for paid union organizers was inconsistent with the Supreme Court's decision in *Lechmere, Inc. v. NLRB*,[8] respecting the property rights of employers, or with the Board's statutory obligations respecting representation elections.[9]

In the other case, *Escada (USA) Inc. v. NLRB*,[10] the employer discharged an employee for union activity but later discovered that the individual was a paid union organizer. In its appeal to the court, the

[1] See, for example, *Oak Apparel*, 218 NLRB 701 (1975).
[2] 886 F.2d 70 (1989).
[3] 968 F.2d 1327.
[4] *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).
[5] 886 F.2d at 73.
[6] 968 F.2d at 1329–1330.
[7] LMRA Sec. 302, 29 U.S.C. § 186(c)(1).
[8] 112 S.Ct. 841 (1992).
[9] 968 F.2d at 1330.
[10] 970 F.2d 898 (3d Cir.).

employer relied solely on its contention that the individual was not an employee because of his union employment. The Third Circuit, in an unpublished order, rejected the argument and enforced the Board's Order.

B. Protected Activity

Section 7 of the Act grants employees the right to engage in "concerted activities for the purpose of collective bargaining or other mutual aid or protection." Two cases decided during the report year explored the extent to which Section 7 protects employees who use satire to call attention to employer conduct that irritates them.

In *New River Industries v. NLRB*,[11] the Fourth Circuit recognized that criticisms of working conditions by satiric letters or other conduct can be protected activity. The court, however, rejected the Board's finding that Section 7 protected two employees who were discharged for posting a facetious letter that "thanked" management for offering a free ice cream cone to each rank-and-file employee in the plant. The court found that the letter at issue was not directed at working conditions but simply a satirical comment about the ice cream supplied in celebration of a new contract with a supplier. The court stated that "[t]he conditions of employment which employees may seek to improve are sufficiently well identified to include wages, benefits, working hours, the physical environment, dress codes, assignments, responsibilities, and the like."[12] The value of a one-time gift or expression of appreciation from management was not, in the court's view, a condition of employment that employees had a protected right to seek to improve.

In *Reef Industries v. NLRB*,[13] by contrast, the Fifth Circuit sustained the Board's conclusion that Section 7 protected an employee who sent a facetious letter and a cartoon printed on a T-shirt to a management official who, in the employees' eyes, had disparaged the plant employees' educational level during her testimony before the Board. The court agreed with the Board that the employee's satiric activity was related to an ongoing labor dispute and reflected employee views concerning the employer's treatment of them both before and during a union organizational campaign. In denying rehearing, however, the court rejected the suggestion that its holding was incompatible with the holding of the Fourth Circuit in *New River Industries*. The Fifth Circuit stated that in the case before it the nexus between the employee's satiric activity and the employees' union activity was undeniable. It speculated "that if the facts of *New River Industries* had been before us we might well have reached the same conclusion as did the Fourth Circuit, and for the same reasons."[14]

[11] 945 F.2d 1290, rehearing denied Nov. 14, 1991.
[12] Id. at 1294.
[13] 952 F.2d 830, rehearing denied.
[14] Id. at 840.

C. Subjects for Bargaining

Both the Board and the courts have held that parties may not collectively bargain over which employees are properly included within an appropriate bargaining unit but that they may bargain over the work performed by those employees. See, for example, *NLRB v. United Technologies Corp.*[15] The outcomes in cases applying this principle frequently turn on factual distinctions that are not large.

In a case decided during the past year,[16] the Seventh Circuit was required to review a Board finding that an employer illegally proposed to create new jobs outside the bargaining unit and to transfer bargaining unit work to those jobs. The employer, a manufacturer of hospital beds, planned to create the new, nonunit position of "Quality Assurance Technician" and to transfer to this position the quality inspection work then being done by bargaining unit employees. After an impasse in bargaining, the employer implemented its proposal unilaterally. The Board found that the employer's action amounted to a transfer of employees rather than a transfer of work out of the bargaining unit because the new, nonunit technicians spent 75 percent of their time performing the identical work that had previously been done by the unit employees and only 25 percent of their time performing work never done by bargaining unit employees.[17] The court, however, relying on its prior decision in *University of Chicago v. NLRB*,[18] found that the employer's action "constituted a lawful transfer of work" because the employees' "new duties required substantial additional training" and had been "previously conducted by nonunit personnel."[19]

Judge Easterbrook, dissenting, believed that the case came "down to a battle of characterization," and accordingly it was the court's duty to defer to the Board's determination.[20] In his view, it "is hard to see the difference" between the changes in the instant case and those in the court's prior decision in *NLRB v. Bay Shipbuilding Corp.*,[21] in which a similar Board ruling was upheld by the court. In addition, Judge Easterbrook thought that "Any distinction between the change at [the employer] and the change [involved in *NLRB v. United Technologies Corp.*, supra] is too small to perceive." He concluded that the employees of the employer "were not shifted to 'research'; they were the same inspectors as before with grandiloquent titles. So, at any rate, the Board found, and therefore we should enforce its order."[22]

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[15] 884 F.2d 1569, 1572–1573 (2d Cir. 1989).
[16] *Hill-Rom Co. v. NLRB*, 957 F.2d 454.
[17] *Hill-Rom Co.*, 297 NLRB 351 (1989).
[18] 514 F.2d 942 (1975).
[19] 957 F.2d at 459.
[20] Id. at 460.
[21] 721 F.2d 187 (1983).
[22] 957 F.2d at 461.

D. Burden of Proof

In *NLRB v. Transportation Management Corp.*,[23] the Supreme Court approved the Board's *Wright Line*[24] analysis in dual motive discharge cases under Section 8(a)(1) and (3) of the Act. Under that analysis, the General Counsel bears the initial burden of persuading the Board that an employee's union or other protected activity was a motivating factor in an employer's decision to discharge the employee. If the employer fails to rebut this showing, it can avoid a finding of violation only by proving, as an affirmative defense, that the employee would have lost his job anyway for nondiscriminatory reasons. In *Holo-Krome Co.*,[25] the Board found that the General Counsel's showing of unlawful motivation was supported by the employer's failure to give a credible explanation for its reasons for taking adverse action against two employees. In that case, the Board relied on the well-established legal principle that if the stated reason for the adverse action "is false, the trier of fact may infer that there is another motive the employer wishes to conceal—an unlawful motive—where the surrounding facts tend to reinforce that inference."[26]

In reviewing the Board's decision,[27] the Second Circuit initially held that the Board should not have evaluated the employer's explanations of why it acted as it did toward the employees until "after [it] found the General Counsel established a *prima facie* case [of unlawful motivation], not as part of the *prima facie* case itself."[28] In response to the Board's petition for rehearing, however, the Second Circuit "refine[d]" its opinion on the ground it was "a shade too broad" in faulting the Board "for considering the employer's explanation in the assessment of the *prima facie* case . . . ."[29] The court thus approved the Board's longstanding practice of considering whatever explanation the employer gave at the time of the adverse action or at the unfair labor practice hearing.[30] Moreover, the Second Circuit approved the Board's "examin[ing] the entire record to determine if improper motivation has been shown,"[31] including "the employer's explanation as elicited by the General Counsel [or offered by the employer to] rebut . . . the General Counsel's *prima facie* case (whether or not framed as an affirmative defense) . . . ."[32]

[23] 462 U.S. 393 (1983). See the discussion in 48 NLRB Ann. Rep. 109–110 (1983).

[24] 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[25] 302 NLRB 452 (1991) (Chairman Stephens and Members Cracraft and Raudabaugh).

[26] Id. at 453.

[27] *Holo-Krome Co. v. NLRB*, 947 F.2d 588.

[28] Id. at 594.

[29] 954 F.2d 108, 114.

[30] Id. at 113–114.

[31] Id. at 114.

[32] Id. at 113.

VIII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding while the case is pending before the Board.[1] In fiscal 1992, the Board filed a total of 24 petitions for temporary relief under Section 10(j): 22 against employers and 2 against labor organizations. Ten cases authorized in the prior year were also pending at the beginning of the year. Of these 34 cases, 8 were either settled or adjusted prior to court action. Injunctions were granted in 17 cases (16 against employers and 1 against a labor organization), denied in 4 cases, and 5 cases remained pending in district courts at the end of the fiscal year.

The cases involved a variety of violations, including employer interference with nascent union organizational campaigns and undermining an incumbent union. One case against an employer which had ceased operations involved an injunction to sequester assets to protect an eventual Board backpay remedy. Several other cases merit specific comment.

Two cases that arose during the fiscal year involved the effect of transformations of the "employing enterprise" on the bargaining obligation under Section 8(a)(5) of the Act.[2] In *Watson v. Moeller Rubber Products*,[3] the predecessor employer operated three plants whose employees were represented in a single bargaining unit. The predecessor employer sold the assets of one plant, a rubber products factory, to a new company which refused to recognize and bargain with the union in a single plant unit. The district court found reasonable cause to believe that the new company was a *Burns* successor with a bargaining obligation. Id. at 1464–1465. It noted evidence that most of the new company's employees were formerly employed by the predecessor. Id. at 1465. It also found sufficient evidence of continuity of the employing industry, even though the new employer operated the rubber company independently whereas the predecessor's op-

[1] See, e.g., *Pascarell v. Vibra Screw*, 904 F.2d 874 (3d Cir. 1990); *Asseo v. Centro Medico del Turabo*, 900 F.2d 445 (1st Cir. 1990).

[2] See generally *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

[3] 792 F.Supp. 1459 (N.D.Miss.).

eration had been controlled by a parent company. The court noted that the new company used the same plant, equipment, and processes as the predecessor. Ibid. Finally, the court found sufficient evidence of continuity of the bargaining unit even though the new company operated only a portion of the predecessor's multiplant unit.[4] The court also concluded that an interim bargaining order was "just and proper," distinguishing *Boire v. Pilot Freight Carriers*.[5] The court noted (id. at 1466) that, unlike *Pilot Freight Carriers*, the union in this case was not seeking initial recognition, but was a previously established bargaining representative that "merely seeks to ensure that workers at the rubber facility have the bargaining rights they previously enjoyed." Id. at 1466. Relying on evidence that union members were no longer attending union meetings and that the "drifting away of employee support during this transitional period is a major concern" (id. at 1467), the court concluded that "more harm will be created by the absence of injunctive relief than by its temporary presence." Id. at 1468.

The second case, *Miller v. California Pacific Medical Center*,[6] involved a corporate merger of two separate health care institutions. The merger provided that the Pacific Presbyterian Medical Center (PPMC) would merge into the Children's Hospital of San Francisco (Children's) which in turn would be renamed the California Pacific Medical Center (the employer). The surviving entity would assume all the assets and liabilities of the disappearing corporate entity, PPMC. PPMC's and Children's geographically separate facilities were retained and referred to after the merger as "campuses." Prior to the merger, the union represented the 568 registered nurses employed at Children's; the 802 registered nurses at PPMC were unrepresented and worked under different terms and conditions of employment. After the merger, the employer claimed that a combined unit of registered nurses at the two campuses was the only appropriate unit. Because the union did not represent a majority of the registered nurses in that group, the employer withdrew recognition from the union and changed the working conditions of the nurses at the Children's campus without bargaining with the union. The district court found reasonable cause to believe that the merger did not render invalid a separate registered nurses unit at the Children's campus and the employer had, therefore, improperly withdrawn recognition from the union. Id. at 2529. The court concluded that the merger was analogous to a stock transfer where the corporate entity remained the same.[7] It further noted that the two groups of nurses remained in their respective separate locations; they continued to work under their former immediate supervisors and the interchange among the two groups of nurses

[4] 792 F.Supp. at 1465, citing *NLRB v. Fabsteel*, 587 F.2d 689 (5th Cir. 1979), cert. denied 442 U.S. 943 (1979).

[5] 515 F.2d 1185, 1193–1194 (5th Cir. 1975), cert. denied 426 U.S. 934 (1976) (affg. district court's denial of a 10(j) interim bargaining order that would have been based on the "card majority" theory of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)).

[6] 141 LRRM 2526 (N.D.Ca.), appeal pending No. 92-15616 (9th Cir.).

[7] Ibid. The court held that the "successorship" doctrine was not applicable to this case. Id. at fn. 2, citing *Esmark, Inc. v. NLRB*, 887 F.2d 739 (7th Cir. 1979).

was minimal. Ibid. The court further found that an interim bargaining order was "just and proper" to avoid frustrating the remedial purposes of the Act. The court noted that the union membership had fallen drastically since the merger and that, absent an injunction, the union would cease to exist at the Children's campus. It further noted that Section 10(j) "codifies the strong public interest in maintaining the integrity of the collective bargaining process."[8] The court rejected the employer's claim that employer animus was a necessary element to obtain 10(j) relief and, in any event, found the record contained evidence of employer animus against the union. Id. at 2530.

Frye v. Seminole Intermodal Transport[9] involved an employer that decided to close a terminal, terminate all employees there and relocate the work to another terminal. The discharged employees were offered positions as new employees at the new terminal. The district court found reasonable cause to believe that the employer was required to bargain with the union over the decision to relocate and had violated Section 8(a)(5) by failing to do so. Id. at 2266–2267. The court further found that injunctive relief restoring the relocated work and the employees to the original terminal was just and proper. It noted that the lease on the original terminal was scheduled to expire in several months and that nearly all the terminated employees were available to return to work. Absent an order to reopen the old terminal, it was "likely that the bargaining unit will become dispersed and cease to function as a unit." Id. at 2267. The court further concluded that "[a]n injunction will preserve the ability of the Board to grant an effective remedy in this case." Ibid.

Frye v. Hospital Employees District 1199[10] involved picket line misconduct by a union engaged in a strike against a nursing home. The district court found reasonable cause to believe that the union was responsible for mass picketing, blocking of ingress and egress, assaults, property damage, and threats. The court ordered the union to cease and desist from the alleged unlawful conduct and to post a copy of the court's order. Subsequently, the court issued a supplemental order which, inter alia, limited the number of pickets to three persons; limited the hours of picketing from 9 a.m. to 5 p.m.; directed the union to use only "informational" signs (i.e., signs that did not urge employees or delivery persons to honor the picket line); restrained pickets from blocking the public highway, picketing on the highway, picketing closer than 25 feet from any entrance to the facility, or entering the facility's property without written consent; and, because "the nature of the premises [was] a Nursing Home," restrained the union from using bullhorns, loudspeakers, etc. The Board had not sought the additional provisions of the supplemental order and concluded that, insofar as the order limited the picketing to certain hours and to "informational" picket signs, it unduly restricted the union's right to engage in protected, primary picketing. The Board

[8] Ibid. citing *Brown v. Pacific Telephone Co.*, 218 F.2d 542, 544 (9th Cir. 1954).
[9] 141 LRRM 2265 (S.D.Ohio), appeal pending No. 92-4038 (6th Cir.).
[10] Civil No. 92-159 (E.D.Ky.), appeal pending No. 92-6102 (6th Cir.).

therefore moved the court to modify the supplemental order to delete the first provision and to amend the second to permit union picket signs to "appeal for support of [the union's] picket line from customers, delivery persons and nonstriking employees." The court granted the motion. The Board concluded that the remainder of the court's supplemental order was a legitimate exercise of its discretion and has defended it on the union's appeal.[11]

Three appellate court decisions on 10(j) matters that issued in the fiscal year are noteworthy. First, in *U.S. v. Hochschild*,[12] the Sixth Circuit affirmed a judgment of criminal contempt for violation of a 10(j) injunction. Crystal Window Cleaning Co., Inc., the respondent in the original 10(j) case, completely ignored the district court's 10(j) order. Accordingly, the Regional Director instituted civil contempt proceedings against Crystal Window and its president, Thomas R. Hochschild. The district court found the company, but not Hochschild, in civil contempt. The court found, in essence, it had no jurisdiction over Hochschild because the Board had failed to implead him properly in the civil contempt proceeding.[13] Shortly thereafter, the Board issued its Order in the underlying unfair labor practice case, thus terminating the 10(j) decree and any prospective relief under the civil contempt adjudication.[14] The Regional Director, together with the United States attorney, thereafter instituted criminal contempt proceedings against the company and Hochschild, alleging that, from the date of the original injunction until the date of the Board's Order, the company and its president, Hochschild, had failed to obey the injunction. The district court found each defendant guilty, fining the corporation $5000 and sentencing Hochschild to 120 days in jail. Hochschild appealed, arguing that he could not personally be adjudged in contempt because the injunction and the civil contempt finding were addressed to the corporation and not to him. The Sixth Circuit noted that under traditional injunction law corporate officers are responsible for injunctions directed to a corporation and held that Hochschild was bound by the original 10(j) injunction.[15] It rejected Hochschild's claim that the district court's refusal to hold him in civil contempt precluded a finding that he was bound by the order. The circuit court noted that, regardless of whether the district court had personal jurisdiction over Hochschild in the civil contempt proceeding, the district court there had made clear that "defendant, as president of Crystal, was, and had been, bound by the injunction and that he was not personally held in civil contempt *only* because the court

[11] The union did not appeal from the court's "reasonable cause" determinations or from the court's original order.

[12] 977 F.2d 208 (6th Cir.).

[13] See 977 F.2d at 210, 212. In the criminal contempt appeal, the circuit court noted that although some precedent supported this approach, "courts more often have held that officers or employees of corporate and business entities are subject to in personam jurisdiction for purposes of contempt if they have notice of the injunction and its contents." Id. at 212.

[14] See, e.g., *Levine v. Fry Foods*, 108 LRRM 2208, 2211–2212 (N.D.Oh.1979), affd. 657 F.2d 268 (6th Cir. 1981).

[15] 977 F.2d at 211, citing, inter alia, *Securities & Exchange Commission v. Coffey*, 493 F.2d 1304, 1310 (6th Cir. 1974), cert. denied 420 U.S. 908 (1975).

had doubts about its personal jurisdiction over him." 977 F.2d at 212–213 (emphasis in original).

In *Arlook v. Lichtenberg & Co.*,[16] the Eleventh Circuit issued its first interpretation of 10(j) standards. The Regional Director alleged the employer had committed a variety of unfair labor practices while a newly certified union was attempting to negotiate its first contract. The district court found reasonable cause to believe the employer had violated Section 8(a)(1) and (3) but not Section 8(a)(5). It denied injunctive relief because, in its view, the evidence failed to show that the Board's normal proceedings would be ineffective absent such relief. It refused to find that evidence of a diminution in union activities made such a showing because, the court concluded, the union was equally as responsible as the company for this result. The circuit court reversed the district court's 8(a)(5) finding because the district court inappropriately undertook to weigh the evidence presented and decide whether the company, in fact, violated its bargaining obligation. The circuit court held that in evaluating "reasonable cause" a district court is limited to determining that the Regional Director has presented "a coherent legal theory" of violation and "evidence showing that a rational factfinder could find for the Board on that theory." Id. at 372. The circuit court also reversed the district court's "just and proper" conclusion, rejecting as clearly erroneous the district court's conclusion that the evidence did not show that interim relief was equitably necessary. First, the evidence that the union was recently certified and bargaining for its first contract demonstrated that organizational efforts were vulnerable to management resistance. Second, testimony that employees feared that their jobs could be jeopardized if they engaged in union activity, combined with evidence the company intended to thwart the union, demonstrated a weakening of the organizational effort that would make it unlikely the Board could restore the status quo. Id. at 373–374. The court also rejected the district court's reasoning that interim relief was not proper because the union engaged in inappropriate conduct. Although it suggested that "inappropriate union conduct" such as "spreading rumors or sensationalizing wholly unsubstantiated charges against a company" might justify denying 10(j) relief, no evidence presented to the district court regarding the union's conduct here would support such a finding. Id. at 374. Finally the circuit court rejected the Board's alleged delay as grounds to deny injunctive relief. Ibid.

In *Kobell v. Paperworkers Union*,[17] the Board sought review of the district court's refusal to enjoin a contract ratification procedure alleged to violate Sections 8(b)(3) and 8(d). The procedure involved pooling the ratification votes of several separate bargaining units and conditioning ratification of an agreement in any one unit on an overall approval by the pool. While the appeal was pending, the voting pool arrangement was discontinued. The district court had refused to find reasonable cause to believe a violation occurred, noting that the

[16] 952 F.2d 367 (11th Cir. 1992), revg. 136 LRRM 2230 (S.D.Ga.1991).
[17] 965 F.2d 1401 (6th Cir.).

case involved a "tangled web of facts" and persuasive arguments on both sides. Id. at 1407. The Sixth Circuit reversed. It "reemphasize[d]" that to determine reasonable cause, the district court need not resolve factual conflicts. Ibid. Analyzing the legal support for the Regional Director's theory, the court concluded it was "substantial" and thus met the reasonable cause test. Id. at 1407–1409. The circuit court also reversed the district court's conclusion that relief was not just and proper. It rejected the district court's concern that an injunction would deprive the union of the bargaining advantage inherent in the pool, noting that the status quo to be protected was the one existing prior to the unlawful conduct. Id. at 1410. It also rejected the rationale that relief was not warranted because the theory of violation was novel, noting that, to the contrary, "the Director's theory . . . is premised upon well-established legal principles."[18] Finally, the appellate court held that the union had not met its "heavy burden" of demonstrating that its abandonment of the pooled voting procedure mooted the appeal. Id. at 1410–1411. One agreement at issue in the case remained unapproved under circumstances the Board alleged were unlawful; the administrative law judge's recommended Order that that agreement be ratified did not resolve the matter where the union had filed exceptions with the Board to that decision. In any event, the court noted, the alleged unlawful conduct could recur. Id. at 1411.

B. Injunction Litigation Under Section 10(l)

Section 10(l) requires the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[19] or Section 8(b)(7),[20] and against an employer or union charged with a violation of Section 8(e),[21] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such re-

[18] Ibid. Accordingly, the court found it unnecessary to reconcile its precedent with arguable contrary Second Circuit law. See, e.g., *Silverman v. 40-41 Realty Associates*, 668 F.2d 678, 680 (2d Cir. 1982).

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

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

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

lief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[22] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 19 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with seven cases pending at the beginning of the period, nine cases were settled, three were dismissed, two continued in an inactive status, three were withdrawn, and five were pending court action at the close of the report year. During this period, four petitions went to final order, the courts granting injunctions in two cases and denying them in two cases. An injunction was issued in 1 case involving secondary boycott action proscribed by Section 8(b)(4)(B), as well as in instances involving a violation of Section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by Section 8(e). No injunctions were issued in cases involving jurisdictional disputes in violation of Section 8(b)(4)(D). An injunction was issued in one case involving a violation of Section 8(b)(7)(C).

Of the two cases in which injunctions were denied, one involved secondary picketing activity by labor organizations, and the other involved a hot cargo agreement.

One 10(l) case decided during the fiscal year, *Kinney v. Operating Engineers Local 150*,[23] is of particular interest. The case arose out of a union's labor dispute with a subcontractor on a common situs. The union picketed a neutral gate at the site and instituted internal union disciplinary proceedings against union member employees of a neutral employer who crossed the picket line. The Region sought a 10(l) injunction to restrain the union from conducting a hearing on the charges.[24] The district court found reasonable cause to believe the union violated Section 8(b)(4)(i) and (ii)(B) by picketing the gate reserved for neutral employers[25] and that it further violated Section 8(b)(4)(i)(B) by instituting internal disciplinary proceedings against employees who crossed the picket line to work for neutral employers.[26] The court enjoined the union from conducting the disciplinary proceeding pending the Board's resolution of the charges. In deciding to grant the injunction, however, the district court held the Regional Director to the test for 10(j) injunctive relief enunciated in *Kinney v.*

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

[23] Civil No. H91-435 (N.D.Ind.), appeal pending No. 92-1919 (7th Cir.).

[24] The Region did not seek to enjoin the picketing because it had ceased by the time the injunction was sought.

[25] See, e.g., *Mautz & Oren v. Teamsters Local 279*, 882 F.2d 1117, 1122 (7th Cir. 1989).

[26] See, e.g., *Plumbers (Hanson Plumbing)*, 277 NLRB 1231, 1232 (1985), enfd. 827 F.2d 579 (9th Cir. 1987).

Pioneer Press.[27] The court rejected the Regional Director's argument that *Pioneer Press* is not applicable in 10(l) cases. Inasmuch as the union appealed the injunction, the Board has taken the opportunity to ask the Seventh Circuit to clarify this issue.

[27] 881 F.2d 485 (1989). The Seventh Circuit held that applications for 10(j) injunctions would be determined under the approach applied to equitable cases filed by public agencies. Id. at 493, 494. That test, as set forth in the cases cited in *Pioneer Press*, is twofold: consideration on the one hand of the petitioner's likelihood of success on the merits and, on the other, a balance of the harm to the petitioner if the injunction is denied and the harm to the respondent if the injunction is granted. See *Federal Trade Commission v. Elders Grain*, 868 F.2d 901 (7th Cir. 1989); *Federal Trade Commission v. World Travel Vacation Brokers*, 861 F.2d 1020 (7th Cir. 1988), cited in *Pioneer Press*, 881 F.2d at 490, 494.

IX

Contempt Litigation

In fiscal year 1992, 107 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 77 cases in fiscal year 1991. Voluntary compliance was achieved in 23 cases during the fiscal year, without the necessity of filing a contempt petition, while in 25 others, it was determined that contempt was not warranted.

During the same period, 20 civil contempt proceedings were instituted as compared to 21 civil proceedings in fiscal year 1991. These included five motions for the assessment of fines and writ of body attachment. In addition, one criminal contempt proceedings was initiated during the year. Eighteen civil contempt or equivalent adjudications were awarded in favor of the Board, including three where the court ordered civil arrest and assessment of fines.

During the fiscal year, the Contempt Litigation Branch collected $355,379 in fines and $1,114,996 in backpay, while recouping $48,549 in court costs and attorneys' fees incurred in contempt litigation.

In one case handled during the year,[1] the Contempt Branch obtained, for the first time in its history, an ex parte judicial order freezing the assets of individuals and corporations whom the Board was alleging, in a contempt proceeding, to be jointly and severally liable for the payment of backpay that previously had been assessed against a named respondent. The Board previously had obtained judgments from the court of appeals finding that a corporation had violated the Act and was liable for a substantial amount of backpay. In the course of the Board's collection efforts, the debtor corporation, through its officers, claimed in sworn statements that the corporation was unable to pay any portion of the backpay. Through investigation, the Board was able to determine that the corporation at one time possessed ample assets with which to satisfy a substantial portion of the judgment, but had engaged in apparently fraudulent transfers of those assets to an affiliated corporation and to an individual. In addition, the Board learned that a principal of the debtor corporation had set up a new corporation as a disguised continuance to carry on the business of the debtor.

[1] *NLRB v. A. N. Electric Corp.*, Nos. 86-4034, 88-4018, 89-4129 (2d Cir.).

The Board concluded that the affiliated corporation, the new corporation, and the individual corporate principals all could be held jointly and severally liable for the unpaid backpay under principles of derivative liability arising in labor law and in the law of contempt. The Board initiated its contempt proceeding in the court of appeals on an ex parte basis, and filed, at the same time, a motion for an ex parte freeze on the assets of all the alleged contemners. The court agreed with the Board's assessment that the pattern of fraud and evasion uncovered by the Board evinced a likelihood of further dissipation of assets pendente lite unless the alleged contemners were restrained from such action. The court further agreed with the Board that the restraint should run to third parties—such as banks—holding the alleged contemners' funds, and that ex parte relief was necessary to ensure that these funds were frozen before the alleged contemners received notice of the commencement of the action.

In another case,[2] the Third Circuit entered a contempt adjudication requiring payment by a Philadelphia union of contempt fines totaling $350,000. The union had been adjudicated in contempt of an enforced Board Order on several previous occasions and had recently been placed under a district court "decreeship" as a result of a civil RICO proceeding brought by the Justice Department. These fines, which the union must pay in installments over a 6-year period, were the highest ever assessed by the court of appeals in NLRB contempt litigation.

Under the terms of the decreeship, several union officials were prohibited from holding union office, and when an intraunion election was scheduled to select new officers, a slate of candidates supported by the incumbents was opposed by a dissident slate. During the campaign, dissident candidates were threatened with physical harm if they persisted in opposing the proincumbent candidates, and the Board brought contempt proceedings, alleging violations of Section 8(b)(1)(A) of the Act and the previous Third Circuit orders. The union's contentions that the decreeship preempted contempt proceedings under the NLRA, and that the preelection threats did not violate the Third Circuit orders because they were unrelated to the 8(b)(1)(A) violations underlying those orders (all of which involved picketline and related misconduct), were specifically rejected by the special master. In addition to contempt fines assessed against the union, two former officials were fined $10,000 and $4000, respectively, for their role in the misconduct, and prospective fines of $300,000 per violation were imposed by the court for future violations.

Finally, in another unprecedented action, collection proceedings were initiated in a foreign country against two individuals who owe backpay under a supplemental judgment. In this case,[3] the respondents, both Canadian citizens, closed their California facility while the unfair labor practice proceeding was pending before the Board and moved back to Canada. Subsequently, backpay proceedings commenced with service of a compliance specification on respondents'

[2] *NLRB v. Roofers Local 30*, No. 89-3388 (3d Cir.).
[3] *NLRB v. Hopkins Hardware*, No. 87-7120 (9th Cir.)

California counsel, and a supplemental order ultimately issued which the Ninth Circuit enforced. When the Board was unable to locate assets of respondents in the United States which could be reached to satisfy the backpay award, the Board authorized commencement of an action in Canada to enforce the Ninth Circuit's judgment. With the assistance of the Justice Department's Office of Foreign Litigation and local Canadian counsel, formal collection proceedings were initiated and are currently pending in the Ontario courts.

X

Special Litigation

A. Litigation Involving the Board's Jurisdiction

In *Dredge Operators v. Stephens*,[1] a United States corporation sought to enjoin the Board from conducting an election. The company employed American employees on a vessel performing offshore dredging in Hong Kong pursuant to a contract with the government of Hong Kong. The employer asserted that the Board was without jurisdiction to conduct an election for the selection of a bargaining representative for the employees aboard the vessel because the dredge operated under a Hong Kong contract and all work was to be performed outside the United States. The court found that these facts did not warrant departure from the general rule that district courts have no jurisdiction over direct appeals from Board actions in representation proceedings. The court held that neither of the narrow exceptions to this rule as set forth in *Leedom v. Kyne*,[2] or *McCulloch v. Sociedad Nacional de Marinaros de Honduras*,[3] were applicable to this case. The court found that the employer failed to make out a case under *Leedom* because it could not show either that the Board clearly exceeded its statutory authority, or that there was no alternative means to obtain judicial review. Further, the court found that *McCulloch* did not apply because, unlike *McCulloch*, the vessel was an American flagship, employed American seamen, and was owned by an American corporation. In addition, the employer failed to show that the Board's actions would adversely affect relations between the United States and Hong Kong. Accordingly, the employer's complaint was dismissed for lack of subject matter jurisdiction.

In *Bakery Workers v. NLRB*,[4] the union asked the court to compel the Board to sustain the union's challenge of a disputed ballot, and to order the employer to recognize the union as the bargaining representative. The union argued that the court had jurisdiction under *Leedom v. Kyne*, supra, because the Board failed to consider the union's objections to the employer's allegedly faulty compliance with its *Excelsior*[5] list requirements. The court found that the *Leedom* exception did not apply because the union neither alleged nor demonstrated that the Board "violated a specific statutory provision."

[1] D.D.C. No. 91-2209.
[2] 358 U.S. 184 (1958).
[3] 372 U.S. 10 (1962).
[4] 799 F.Supp. 507 (E.D.Pa.).
[5] *Excelsior Underwear*, 156 NLRB 1236 (1966).

The court observed that the Act vests the Board with wide discretion over representation proceedings, and concluded that the Board's actions were not an attempt to exercise power specifically withheld by the Act. Moreover, the court found that the *Fay v. Douds*[6] exception (which suggests district court jurisdiction over representation proceedings where the plaintiff has demonstrated a clear violation of constitutional rights) also did not apply. The court did not reach the merits of this argument noting that *Fay*'s continuing validity is extremely questionable and was not recognized by the Third Circuit. Finally the court rejected the union's claim that the court had jurisdiction over the employer's alleged breach of the stipulated election agreement on the grounds that the election agreement is part of the representation process and is thus within the exclusive jurisdiction of the Board. Accordingly, the court concluded that the union had failed to show that an alleged breach of a stipulated election agreement constituted a basis for departure from the rule prohibiting district court jurisdiction over Board representation proceedings.

Similarly, the court in *Posadas de San Juan v. NLRB*,[7] rejected the plaintiff-employer's *Leedom* claim because the employer had failed to show that the Board's representation decision violated any specific statutory command. While the employer argued that the Board's decision conflicted with First Circuit precedent, the court concluded that to allow *Leedom* jurisdiction every time a Board representation decision was alleged to be inconsistent with court of appeals precedent would vastly and impermissively expand *Leedom* beyond the narrow exception intended by the Supreme Court. Finally, the court held that it was without jurisdiction where the employer can point to no violation of a clear statutory mandate.

B. Freedom of Information Act Litigation

In *Alaska Pulp Corp. v. NLRB*,[8] the United States District Court for the Western District of Washington held that documents gathered by the Board in an ongoing supplemental backpay proceeding were properly withheld from disclosure under FOIA Exemptions 7(A) and (C), 5 U.S.C. §552(b)(7)(A) and (C). Those exemptions protect from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy . . . ." The documents withheld included questionnaires and other correspondence sent to backpay claimants, correspondence received by the Regional Office from backpay claimants concerning backpay or compliance issues, and correspondence received by the Regional Office from the charging parties concerning backpay or compliance issues. In concluding that the documents were protected under Ex-

[6] 172 F.2d 720 (2d Cir. 1949).
[7] No. 91-1762 (1st Cir.).
[8] No. C90-1510D (W.D.Wash.).

emption 7(A), the district court found applicable the reasoning in *NLRB v. Robbins Tire Co.*,[9] where the Supreme Court identified the intimidation of employee witnesses by employers as a potential interference with enforcement proceedings. The district court rejected the plaintiff's reliance on *Deering Milliken, Inc. v. Irving*,[10] where the court held that Exemption 7(A) was not applicable to documents gathered by the Board in a backpay specification, because in that case, the investigation was complete and the specification had issued. The district court here acknowledged the possibility that pressure could be put on employees while the investigation was still pending in the case. As an alternative exemption from compelled disclosure, the district court concluded that Exemption 7(C) was applicable because the Board was seeking to protect private information such as financial records and responses of employees.

In *Schiller v. NLRB*,[11] the United States Court of Appeals for the District of Columbia affirmed in part the district court's decision that the Board properly withheld from disclosure five documents pertaining to the Board's implementation of the Equal Access to Justice Act (EAJA). The court remanded for a determination of whether the Board should disclose any reasonably segregable portions of the documents. The court found that the documents fell within Exemption 2, 5 U.S.C. §552(b)(2), which applies to documents "related solely to the internal personnel rules and practices of an agency," and within Exemption 5, 5 U.S.C. §552(b)(5), which applies to "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency . . . ." As to Exemption 2, the court found that the district court properly concluded from the Board's *Vaughn* index[12] and affidavit that the documents contained information that was predominantly internal. The court further concluded that three documents contained "trivial administrative matters of no genuine public interest," falling within the "low 2" category, because they contained information such as internal time deadlines and procedures, and recordkeeping directions. Two documents contained litigation strategy, which the court concluded fit within the "high 2" category for documents the disclosure of which would risk circumvention of agency statutes and regulations. The court found that the disclosure of those documents would compromise the Board's ability to defend itself in EAJA actions.

As to Exemption 5, the *Schiller* court agreed with the Board that four of the documents contained information which fell within the attorney work-product privilege incorporated in Exemption 5, rejecting the plaintiff's argument that the documents must be created in anticipation of litigation over a specific claim. The court found, however, that the fifth document did not contain the "litigation strategies" described by the Board in its *Vaughn* index, and therefore did not contain information privileged under Exemption 5. The court noted its

[9] 437 U.S. 214 (1978).
[10] 548 F.2d 1138 (4th Cir. 1977).
[11] 964 F.2d 1205.
[12] *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied 415 U.S. 1974).

concern over the accuracy of the index, and stressed the importance of ensuring that an index is accurate "in every detail." The court further discussed the requirement that agencies must disclose "[a]ny reasonably segregable portion of a record . . . after deletion of the portions which are exempt." Because the district court had failed to address segregability, the court of appeals remanded for further proceedings to determine whether the documents contained passages that could be segregated and disclosed.

C. Enforcement of Board Subpoenas

In *NLRB v. Postal Service*,[13] the District Court for the District of Columbia granted the Board's application to enforce a subpoena duces tecum which directed the Postal Service to produce the names, addresses, and places of employment of its employees eligible to vote in an election to be conducted by the Board (i.e., an *Excelsior* list).[14] The Board sought the *Excelsior* list after a nonincumbent union filed a representation petition and the Regional Director determined that an election was appropriate. The court found that production of the list was not inconsistent with the Privacy Act because the Privacy Act does not protect records which are available "for a routine use." The court noted that the Postal Service had, in its own regulations, classified "disclosure to labor organizations" as a routine use. Moreover, the court found that disclosure was required to the nonincumbent union because the election petition process would be rendered meaningless if a challenging union was not given access to these materials. Indeed, the court held that production of the list would be consistent with both the NLRA and the routine use exception established by the Postal Service because both seek to permit and promote the ability and right of employees to choose their collective-bargaining representative.

In *NLRB v. Frazier*,[15] the United States Court of Appeals for the Third Circuit reversed the district court's determination that the Board was not entitled to enforce a subpoena. The Board had subpoenaed Frazier in an unfair labor practice proceeding based on a belief that Frazier had knowledge relevant to the issue of union recognition. A magistrate had treated the subpoena request as a basic civil discovery dispute and denied the Board's motion to enforce the subpoena. The magistrate found that the Board had not shown how Frazier's testimony was crucial to the Board's proceedings. The district court affirmed the magistrate's decision finding that it was not clearly erroneous or contrary to law. The Board appealed the decision. The Third Circuit found that the subpoena determination was dispositive of the district court proceeding, and not merely a matter collateral to the Board's proceedings. Consequently, the court of appeals agreed with the Board that the district court committed legal error in failing to review de novo the summary disposition by the magistrate. In addi-

[13] 790 F.Supp. 31.
[14] *Excelsior Underwear*, supra.
[15] 966 F.2d 812.

tion, the court of appeals determined that Frazier's testimony was relevant to the General Counsel's unfair labor practice complaint because Frazier's testimony might shed light on the union recognition issue. As the court concluded, that was sufficient to warrant enforcement of the subpoena.

D. Preemption Litigation

In *NLRB v. Illinois Department of Employment Security*,[16] the United States District Court for the Northern District of Illinois granted the Board's request for preliminary and permanent injunction and for declaratory judgment. The district court found that Section 900D of the State of Illinois Unemployment Insurance Act[17] is preempted by Section 10(c) of the NLRA. Section 900D provides, inter alia, that government agency backpay awards are to be paid to the individual, by check made payable jointly to the individual *and* the director of the department of employment security (IDES), for the purpose of recovering the amount of unemployment benefits received by that individual. The Board objected to the practice of joint payee checks because such checks infringe on the Board's exclusive jurisdiction to remedy unfair labor practices.

Relying on *San Diego Building Trades Council v. Garmon*,[18] the district court agreed with the Board's position that recouping unemployment benefits involves regulating conduct which is either protected or prohibited under Section 7 or Section 8 of the Act. Therefore, the court found that the NLRA preempts the conflicting section 900D, and the state statute must yield. The court found the most instructive case in the area to be that of *NLRB v. Gullet Gin Co.*,[19] in which the Supreme Court held that the Board properly refused to allow the employer to deduct unemployment compensation from backpay awards before submitting the checks to the Board for distribution. Moreover, none of the cases cited by IDES, which have allowed the recoupment of unemployment benefits from backpay awards, were unfair labor practice cases involving the Board's exclusive jurisdiction. The court pointed out that requiring joint payee backpay checks, thereby giving the State a direct ownership interest in certain backpay awards, threatens the Board's exclusive responsibility for redressing unfair labor practices. The court stated that the joint payee requirement would have a "debilitating effect on the NLRB in terms of cost and efficiency . . . [in that] the NLRB would either have to accept on its face that the joint check accurately reflects the proper amount, or it would have to determine the actual amount of unemployment benefits received for the period covered by the backpay award."[20]

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[16] 777 F.Supp. 1416.
[17] Ill. Rev. Stat., ch. 48. para. 490D (1989).
[18] 359 U.S. 236 (1959).
[19] 340 U.S. 361 (1951).
[20] Id. at 1419.

Further, the court rejected the IDES' argument that section 900D is outside the scope of the NLRA. The court held that the IDES read *Garmon* too narrowly, and interpreted too broadly case law providing that the NLRA does not preclude a State from paying unemployment benefits to strikers. The court found that the Board does not dispute a State's right to recoup unemployment benefits. Rather, the Board "merely desires that the IDES' efforts to recoup these benefits be directed at the discriminatee after he or she receives the full amount of the prescribed backpay award."[21] Accordingly, the court held that IDES' overall objective of administering unemployment benefits is not being frustrated, and there is insufficient local interest to permit enforcement of the state law under *Garmon.*

E. Equal Access to Justice Act Litigation

In two cases this year, the Sixth and Seventh Circuits disagreed with the Board's finding that the respective petitioners were not entitled to any attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. §504. In order to evaluate whether the fees should have been awarded by the Board, the court of appeals must evaluate whether substantial evidence supports the Board's conclusion that the General Counsel was substantially justified, that is "justified to a degree that could satisfy a reasonable person."[22] The Sixth Circuit, in *M.P.C. Plating v. NLRB*,[23] found that the General Counsel's position on one of the two issues was substantially justified, while it was not on the other. It enforced in part, and reversed and remanded in part, the denial of attorneys' fees. The Board's underlying decision found that the General Counsel was reasonable in alleging that: (1) the employer had discharged certain employees unlawfully for picket line conduct, and (2) temporary employees were unlawfully denied the opportunity for full-time employment due to the constructive discharge of the permanent work force. On the larger striker misconduct issue, the court of appeals found that the General Counsel was substantially justified. The court agreed with the Board that when the picket line misconduct was balanced against the employer's egregious misconduct, it was clear why the General Counsel issued complaint and sought to require the employees' reinstatement. As such, the denial of EAJA fees was appropriate for this issue, but not for the denial of opportunity issue. In reversing and remanding this part, the court held that the General Counsel was not justified because "[b]oth the factual and legal underpinnings of the position are shaky."[24]

The Seventh Circuit, in *Quality C.A.T.V. v. NLRB*,[25] affirmed the Board's finding that it was reasonable in fact and law for the General Counsel to issue complaint and prosecute his case to a decisison by the administrative law judge. The General Counsel had alleged that

[21] Id. at 1420.
[22] *Pierce v. Underwood*, 487 U.S. 522, 565 (1988).
[23] 953 F.2d 1018.
[24] Id. at 1025.
[25] 969 F.2d 541.

two employees were unlawfully discharged for refusing for safety reasons to perform outside work on cable television lines when the employees were wet. Once all the evidence was presented and the factfinder's decision issued, however, the continued prosecution was unreasonable to the court. Accordingly, the court awarded EAJA fees and expenses for that limited part of the Board's case.

F. Bankruptcy Litigation

In re Palau v. NLRB,[26] decided that backpay accruing during the postpetition period in a bankruptcy proceeding as a result of prepetition unfair labor practice conduct is not entitled to administrative priority pursuant to 11 U.S.C. §§507(a)(1) and 503(b)(1)(A). The Bankruptcy Appellate Panel (BAP) here affirmed the finding of the Bankruptcy Court that no priority is warranted because no actual services were rendered by the discharged employee during the postpetition period. Reviewing prior case law in this area, the BAP distinguished *In re Brinke Transportation*[27] in which the same kind of Board backpay claim was accorded administrative priority status. The *Palau* court noted that in *Brinke*, the bankruptcy court had concluded that the employee offered consideration—even though he was not permitted by the employer to actually perform work during the postpetition period. The *Palau* court relied on *In re Wheeling-Pittsburgh Steel*[28] for the proposition that where the employee does not work during the postpetition period, there is no postpetition benefit to the estate to justify the allowance of backpay as an administrative expense.[29] The BAP therefore denied administrative priority, reasoning that "[b]ecause [the employee] did not perform, give or furnish any actual services to the Debtor, the Board's claim for backpay during the postpetition period does not represent actual or necessary costs of preserving the estate."[30]

[26] 140 LRRM 2437 (BAP 9th Cir.), appeal pending No. 92-55720 (9th Cir.).

[27] 135 LRRM 2769 (N.J.1989), affd. 135 LRRM 2800 (D.N.J.1989).

[28] 113 B.R. 187, 192 (Bankr.W.D.Pa.1990.).

[29] As part of a settlement agreement between the parties in *Wheeling-Pittsburgh Steel Corp.*, this decision was later vacated and administrative priority was accorded for the Board's backpay claim. See 141 LRRM 2274 (Bankr.W.D.Pa.).

[30] 140 LRRM at 2439.

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, 1099 14th Street, NW., Washington, D.C. 20570.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1992[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	All cases						
Pending October 1, 1991	*26,919	11,247	2,532	1,011	1,265	8,533	2,331
Received fiscal 1992	38,943	14,841	4,081	1,027	1,176	15,418	2,400
On docket fiscal 1992	65,862	26,088	6,613	2,038	2,441	23,951	4,731
Closed fiscal 1992	39,074	14,263	4,181	912	1,295	15,529	2,894
Pending September 30, 1992	26,788	11,825	2,432	1,126	1,146	8,422	1,837
	Unfair labor practice cases[2]						
Pending October 1, 1991	*23,696	9,640	1,954	908	1,044	8,047	2,103
Received fiscal 1992	32,442	11,711	2,791	849	857	14,169	2,065
On docket fiscal 1992	56,138	21,351	4,745	1,757	1,901	22,216	4,168
Closed fiscal 1992	32,750	11,425	2,810	730	934	14,294	2,557
Pending September 30, 1992	23,388	9,926	1,935	1,027	967	7,922	1,611
	Representation cases[3]						
Pending October 1, 1991	*2,958	1,555	569	100	198	408	128
Received fiscal 1992	6,076	2,996	1,254	158	289	1,130	249
On docket fiscal 1992	9,034	4,551	1,823	258	487	1,538	377
Closed fiscal 1992	5,860	2,707	1,342	164	325	1,090	232
Pending September 30, 1992	3,174	1,844	481	94	162	448	145
	Union-shop deauthorization cases						
Pending October 1, 1991	*78	—	—	—	—	78	—
Received fiscal 1992	119	—	—	—	—	119	—
On docket fiscal 1992	197	—	—	—	—	197	—
Closed fiscal 1992	145	—	—	—	—	145	—
Pending September 30, 1992	52	—	—	—	—	52	—
	Amendment of certification cases						
Pending October 1, 1991	*10	4	1	0	4	0	1
Received fiscal 1992	22	5	5	4	3	0	5
On docket fiscal 1992	32	9	6	4	7	0	6
Closed fiscal 1992	20	5	5	3	4	0	3
Pending September 30, 1992	12	4	1	1	3	0	3
	Unit clarification cases						
Pending October 1, 1991	*177	48	8	3	19	0	99
Received fiscal 1992	284	129	31	16	27	0	81
On docket fiscal 1992	461	177	39	19	46	0	180
Closed fiscal 1992	299	126	24	15	32	0	102
Pending September 30, 1992	162	51	15	4	14	0	78

[1] See Glossary of terms for definitions. 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 higher figures than reported pending September 30, 1991, 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 1992[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	CA cases						
Pending October 1, 1991	*18,208	9,573	1,934	904	1,003	4,794	0
Received fiscal 1992	23,119	11,632	2,777	818	799	7,093	0
On docket fiscal 1992	41,327	21,205	4,711	1,722	1.802	11,887	0
Closed fiscal 1992	22,785	11,342	2,787	718	876	7,062	0
Pending September 30, 1992	18,542	9,863	1,924	1,004	926	4,825	0
	CB cases						
Pending October 1, 1991	*4,216	59	18	4	28	3,250	857
Received fiscal 1992	8,077	68	11	1	26	7,074	897
On docket fiscal 1992	12,293	127	29	5	54	10,324	1,754
Closed fiscal 1992	8,382	70	20	2	25	7,230	1,035
Pending September 30, 1992	3,911	57	9	3	29	3,094	719
	CC cases						
Pending October 1, 1991	*903	3	1	0	7	0	892
Received fiscal 1992	684	2	0	16	17	0	649
On docket fiscal 1992	1,587	5	1	16	24	0	1,541
Closed fiscal 1992	938	3	1	4	17	0	913
Pending September 30, 1992	649	2	0	12	7	0	628
	CD cases						
Pending October 1, 1991	*129	3	0	0	1	0	125
Received fiscal 1992	280	6	3	8	7	0	256
On docket fiscal 1992	409	9	3	8	8	0	381
Closed fiscal 1992	278	7	2	2	7	0	260
Pending September 30, 1992	131	2	1	6	1	0	121
	CE cases						
Pending October 1, 1991	141	1	0	0	4	3	133
Received fiscal 1992	45	1	0	0	6	2	36
On docket fiscal 1992	186	2	0	0	10	5	169
Closed fiscal 1992	143	0	0	0	7	2	134
Pending September 30, 1992	43	2	0	0	3	3	35
	CG cases						
Pending October 1, 1991	22	0	0	0	0	0	22
Received fiscal 1992	29	0	0	0	0	0	29
On docket fiscal 1992	51	0	0	0	0	0	51
Closed fiscal 1992	31	0	0	0	0	0	31
Pending September 30, 1992	20	0	0	0	0	0	20
	CP cases						
Pending October 1, 1991	*77	1	1	0	1	0	74
Received fiscal 1992	208	2	0	6	2	0	198
On docket fiscal 1992	285	3	1	6	3	0	272
Closed fiscal 1992	193	3	0	4	2	0	184
Pending September 30, 1992	92	0	1	2	1	0	88

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1991, 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 1992[1]

	Total	Identification of filing party					
		AFL–CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
	RC cases						
Pending October 1, 1991	*2,418	1,553	569	99	196	1	—
Received fiscal 1992	4,697	2,996	1,254	158	289	0	—
On docket fiscal 1992	7,115	4,549	1,823	257	485	1	—
Closed fiscal 1992	4,538	2,707	1,342	164	325	0	—
Pending September 30, 1992	2,577	1,842	481	93	160	1	—
	RM cases						
Pending October 1, 1991	128	—	—	—	—	—	128
Received fiscal 1992	249	—	—	—	—	—	249
On docket fiscal 1992	377	—	—	—	—	—	377
Closed fiscal 1992	232	—	—	—	—	—	232
Pending September 30, 1992	145	—	—	—	—	—	145
	RD cases						
Pending October 1, 1991	*412	2	0	1	2	407	—
Received fiscal 1992	1,130	0	0	0	0	1,130	—
On docket fiscal 1992	1,542	2	0	1	2	1,537	—
Closed fiscal 1992	1,090	0	0	0	0	1,090	—
Pending September 30, 1992	452	2	0	1	2	447	—

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1991, 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 1992

	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	23,119	100.0
8(a)(1)	3777	16.3
8(a)(1)(2	213	0.9
8(a)(1)(3	8187	35.4
8(a)(1)(4	180	0.8
8(a)(1)(5	7499	32.4
8(a)(1)(2)(3	178	0.8
8(a)(1)(2)(4	6	0.0
8(a)(1)(2)(5	104	0.4
8(a)(1)(3)(4	627	2.7
8(a)(1)(3)(5	2065	8.9
8(a)(1)(4)(5	27	0.1
8(a)(1)(2)(3)(4	16	0.1
8(a)(1)(2)(3)(5	94	0.4
8(a)(1)(2)(4)(5	3	0.0
8(a)(1)(3)(4)(5	128	0.6
8(a)(1)(2)(3)(4)(5	15	0.1
Recapitulation[1]		
8(a)(1)[2]	23,119	100.0
8(a)(2)	629	2.7
8(a)(3)	11,310	48.9
8(a)(4)	1,002	4.3
8(a)(5)	9,935	43.0
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b):		
Total cases	9,249	100.0
8(b)(1)	6,232	67 4
8(b)(2)	48	0.5
8(b)(3)	214	2.3
8(b)(4)	964	10.4
8(b)(5)	2	0.0
8(b)(6)	4	0.0
8(b)(7)	208	2.2
8(b)(1)(2)	1,165	12.6
8(b)(1)(3)	299	3.2
8(b)(1)(5)	7	0.1
8(b)(1)(6)	14	0.2
8(b)(2)(3)	4	0.0
8(b)(2)(5)	3	0 0
8(b)(2)(6)	1	0.0
8(b)(3)(6)	1	0.0
8(b)(1)(2)(3)	71	0.8
8(b)(1)(2)(5)	3	0.0
8(b)(1)(2)(6)	3	0.0
8(b)(1)(3)(5)	2	0.0
8(b)(1)(3)(6)	2	0.0
8(b)(1)(2)(3)(5)	1	0.0
8(b)(1)(2)(5)(6)	1	0.0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1992—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	7,800	84.3
8(b)(2)	1,300	14.1
8(b)(3)	594	6.4
8(b)(4)	964	10.4
8(b)(5)	19	0.2
8(b)(6)	26	0.3
8(b)(7)	208	2.2
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	964	100.0
8(b)(4)(A)	62	6.4
8(b)(4)(B)	554	57.5
8(b)(4)(C)	18	1.9
8(b)(4)(D)	280	29.0
8(b)(4)(A)(B)	38	3.9
8(b)(4)(A)(C)	5	0.5
8(b)(4)(B)(C)	5	0.5
8(b)(4)(A)(B)(C)	2	0.2
Recapitulation[1]		
8(b)(4)(A)	107	11.1
8(b)(4)(B)	599	62.1
8(b)(4)(C)	30	3.1
8(b)(4)(D)	280	29.0
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	208	100.0
8(b)(7)(A)	58	27.9
8(b)(7)(B)	16	7.7
8(b)(7)(C)	125	60.1
8(b)(7)(A)(B)	3	1.4
8(b)(7)(A)(C)	3	1.4
8(b)(7)(B)(C)	2	1.0
8(b)(7)(A)(B)(C)	1	0.5
Recapitulation[1]		
8(b)(7)(A)	65	31.3
8(b)(7)(B)	22	10.6
8(b)(7)(C)	131	63.0
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	45	100.0
Against unions alone	45	100.0
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	29	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 1992[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	60	37	—	—	—	37	—	—	—	—	—	—	—
Complaints issued	4,344	3,521	3,013	326	72	—	6	9	4	18	2	2	69
Backpay specifications issued	126	79	75	1	0	—	0	0	0	0	2	0	1
Hearings completed, total	922	635	536	67	9	15	0	0	0	1	0	1	6
Initial ULP hearings	908	628	529	67	9	15	0	0	0	1	0	1	6
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	14	7	7	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	947	658	569	73	4	—	0	1	0	0	3	0	8
Initial ULP decisions	941	653	565	72	4	—	0	1	0	0	3	0	8
Backpay decisions	6	5	4	1	0	—	0	0	0	0	0	0	0
Supplemental decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,697	1,002	801	73	11	34	5	1	0	3	25	42	7
Upon consent of parties:													
Initial decisions	68	28	19	6	3	0	0	0	0	0	0	0	0
Supplemental decisions	11	9	9	0	0	—	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	325	210	176	15	1	—	0	0	0	1	5	11	1
Backpay decisions	5	4	4	0	0	—	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	1,135	668	525	49	4	34	5	1	0	1	17	28	4
Decisions based on stipulated record	13	9	5	2	1	—	0	0	0	1	0	0	0
Supplemental ULP decisions	68	29	21	0	2	—	0	0	0	0	1	3	2
Backpay decisions	72	45	42	1	0	—	0	0	0	0	2	0	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1992[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	913	892	772	25	95	11
Initial hearings	766	754	644	24	86	11
Hearings on objections and/or challenges	147	138	128	1	9	0
Decisions issued, total	751	735	630	26	79	10
By Regional Directors	702	686	589	22	75	10
Elections directed	619	605	523	16	66	0
Dismissals on record	83	81	66	6	9	0
By Board	49	49	41	4	4	0
Transferred by Regional Directors for initial decision	5	5	4	1	0	0
Elections directed	3	3	3	0	0	0
Dismissals on record	2	2	1	1	0	0
Review of Regional Directors' decisions:						
Requests for review received	288	283	264	7	9	3
Withdrawn before request ruled upon	17	16	14	0	2	0
Board action on request ruled upon, total	272	270	250	9	9	2
Granted	44	44	38	3	3	0
Denied	218	216	203	5	6	2
Remanded	10	10	9	1	0	0
Withdrawn after request granted, before Board review	1	1	1	0	0	0
Board decision after review, total	44	44	37	3	4	0
Regional Directors' decisions:						
Affirmed	16	16	13	1	2	0
Modified	5	5	5	0	0	0
Reversed	23	23	19	2	2	0
Outcome:						
Election directed	33	33	29	2	2	0
Dismissals on record	6	6	4	1	1	0
Other	5	5	4	0	1	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1992[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	486	480	411	10	56	5
By Regional Directors	68	66	56	5	7	0
By Board	418	414	355	5	49	5
In stipulated elections	395	391	334	5	47	5
No exceptions to Regional Directors' reports	243	240	201	4	30	5
Exceptions to Regional Directors' reports	152	151	133	1	17	0
In directed elections (after transfer by Regional Director)	22	22	20	0	2	0
Review of Regional Directors' supplemental decisions:						
Request for review received	40	40	35	2	3	0
Withdrawn before request ruled upon	2	2	1	1	0	0
Board action on request ruled upon, total	36	36	30	1	4	1
Granted	3	3	2	0	1	0
Denied	29	29	25	1	2	1
Remanded	4	4	3	0	1	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	1	1	1	0	0	0
Regional Directors' decisions:						
Affirmed	0	0	0	0	0	0
Modified	0	0	0	0	0	0
Reversed	1	1	1	0	0	0

[1] See Glossary of terms for definitions.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1992[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	69	7	61
Decisions issued after hearing	108	10	98
By Regional Directors	100	10	90
By Board	8	0	8
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	21	1	19
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	29	0	28
Granted	5	0	5
Denied	21	0	20
Remanded	3	0	3
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	8	0	8
Regional Directors' decisions:			
Affirmed	1	0	1
Modified	4	0	4
Reversed	3	0	3

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1992[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]10,782	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,005	2,216	1,627	62	5	353	169	789	610	70	0	91	18
Recognition or other assistance withdrawn	83	83	43	0	1	34	5	—	—	—	—	—	—
Employer-dominated union disestablished	58	58	31	2	0	18	7	—	—	—	—	—	—
Employees offered reinstatement	1,067	1,067	644	50	8	207	158	—	—	—	—	—	—
Employees placed on preferential hiring list	350	350	196	20	2	80	52	—	—	—	—	—	—
Hiring hall rights restored	59	—	—	—	—	—	—	59	49	0	0	8	2
Objections to employment withdrawn	51	—	—	—	—	—	—	51	44	0	0	7	0
Picketing ended	213	—	—	—	—	—	—	213	199	9	0	5	0
Work stoppage ended	52	—	—	—	—	—	—	52	42	10	0	0	0
Collective bargaining begun	3,007	2,798	2,538	61	8	118	73	209	192	13	0	3	1
Backpay distributed	2,526	2,360	1,940	49	10	231	130	166	143	1	1	17	4
Reimbursement of fees, dues, and fines	605	459	292	18	5	90	54	146	133	0	0	13	0
Other conditions of employment improved	2	2	2	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1992[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
B. By number of employees affected:.													
Employees offered reinstatement, total	3,811	3,811	2,896	390	83	209	233	—	—	—	—	—	—
Accepted	3,216	3,216	2,564	331	81	138	102	—	—	—	—	—	—
Declined	595	595	332	59	2	71	131	—	—	—	—	—	—
Employees placed on preferential hiring list	330	330	169	127	8	11	15	0	0	0	0	0	0
Hiring hall rights restored	60	—	—	—	—	—	—	60	57	0	0	1	2
Objections to employment withdrawn	21	—	—	—	—	—	—	21	21	0	0	0	0
Employees receiving backpay:													
From either employer or union	21,549	21,193	15,969	632	96	3,118	1,378	356	325	17	0	9	5
From both employer and union	49	44	44	0	0	0	0	5	5	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	590	315	232	0	0	36	47	275	260	0	0	15	0
From both employer and union	237	64	64	0	0	0	0	173	173	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1992[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
C. By amounts of monetary recovery, total	$51,117,358	$50,423,945	$22,631,693	$3,176,856	$94,722	$16,297,978	$8,222,696	$693,413	$504,043	$18,297	0	$78,528	$92,545
Backpay (includes all monetary payments except fees, dues, and fines)	50,681,827	50,058,214	22,454,978	3,176,856	94,722	16,277,358	8,054,300	623,613	443,145	18,297	0	69,626	92,545
Reimbursement of fees, dues, and fines	435,531	365,731	176,715	0	0	20,620	168,396	69,800	60,898	0	0	8,902	0

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1991 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 1992[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	1,492	1,223	925	284	8	2	0	0	4	252	187	6	59	5	2	10
Tobacco manufacturers	10	10	7	3	0	0	0	0	0	0	0	0	0	0	0	0
Textile mill products	235	206	177	27	2	0	0	0	0	29	23	0	6	0	0	0
Apparel and other finished products made from fabric and similar materials	272	235	190	43	1	0	0	0	1	34	23	3	8	3	0	0
Lumber and wood products (except furniture)	365	294	213	79	1	1	0	0	0	68	44	2	22	0	0	3
Furniture and fixtures	399	344	286	57	0	0	0	0	1	51	40	1	10	2	0	2
Paper and allied products	579	503	401	99	3	0	0	0	0	61	46	0	15	2	0	13
Printing, publishing, and allied products	845	718	535	178	2	2	1	0	0	110	64	6	40	2	0	15
Chemicals and allied products	619	539	415	117	5	2	0	0	0	74	50	7	17	2	0	4
Petroleum refining and related industries	179	153	115	31	3	2	1	0	1	24	17	0	7	1	0	1
Rubber and miscellaneous plastic products	400	333	265	67	1	0	0	0	0	65	44	0	21	0	0	2
Leather and leather products	62	54	34	20	0	0	0	0	0	8	1	1	6	0	0	0
Stone, clay, glass, and concrete products	650	548	388	131	15	6	1	0	7	92	57	3	32	4	2	4
Primary metal industries	1,015	888	560	317	6	4	0	0	1	121	91	2	28	2	0	4
Fabricated metal products (except machinery and transportation equipment)	1,171	1,017	748	248	9	8	2	0	2	145	100	7	38	5	0	4
Machinery (except electrical)	1,049	905	668	201	24	4	1	0	7	136	84	8	44	2	1	5
Electrical and electronic machinery, equipment, and supplies	693	630	454	174	2	0	0	0	0	57	41	1	15	2	0	4
Aircraft and parts	409	390	203	186	0	1	0	0	0	19	15	0	4	0	0	0
Ship and boat building and repairing	126	117	59	58	0	0	0	0	0	9	6	0	3	0	0	0
Automotive and other transportation equipment	853	760	454	304	2	0	0	0	0	88	66	6	16	3	0	2

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1992[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
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	203	165	112	50	2	1	0	0	0	35	22	1	12	1	1	1
Miscellaneous manufacturing industries	321	293	178	105	6	1	0	0	3	26	16	0	10	1	0	1
Manufacturing	11,947	10,325	7,387	2,779	92	34	6	0	27	1,504	1,037	54	413	37	6	75
Metal mining	48	43	27	15	1	0	0	0	0	4	3	0	1	0	0	1
Coal mining	369	357	284	45	20	0	2	0	6	10	7	1	2	0	0	2
Oil and gas extraction	53	41	36	5	0	0	0	0	0	12	9	0	3	0	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	89	71	51	18	2	0	0	0	0	16	11	1	4	1	0	1
Mining	559	512	398	83	23	0	2	0	6	42	30	2	10	1	0	4
Construction	4,740	3,577	2,171	859	291	149	14	0	93	1,145	1,003	68	74	3	0	15
Wholesale trade	1,984	1,634	1,203	353	46	18	1	0	13	333	245	13	75	6	0	11
Retail trade	2,834	2,324	1,678	572	40	7	1	0	26	474	320	38	116	18	2	16
Finance, insurance, and real estate	827	679	478	164	23	5	4	0	5	137	105	6	26	5	0	6
U.S. Postal Service	2,504	2,498	1,822	670	6	0	0	0	0	5	5	0	0	1	0	0
Local and suburban transit and interurban highway passenger transportation	530	388	320	57	7	4	0	0	0	136	121	3	12	4	0	2
Motor freight transportation and warehousing	2,148	1,735	1,307	350	44	20	9	0	5	398	323	12	63	2	1	12
Water transportation	165	154	82	66	4	1	1	0	0	10	10	0	0	0	0	1
Other transportation	475	394	257	96	20	17	2	0	2	75	60	3	12	2	2	2
Communication	801	679	478	196	2	1	0	0	2	108	73	5	30	1	1	12
Electric, gas, and sanitary services	975	785	594	183	7	1	0	0	0	164	132	4	28	2	1	23
Transportation, communication, and other utilities	5,094	4,135	3,038	948	84	44	12	0	9	891	719	27	145	11	5	52
Hotels, rooming houses, camps, and other lodging places	808	703	514	173	11	3	1	0	1	100	75	2	23	2	0	3
Personal services	284	215	177	35	3	0	0	0	0	67	38	0	29	0	0	2
Automotive repair, services, and garages	388	266	200	56	5	1	0	0	4	120	94	4	22	0	1	1
Motion pictures	184	164	84	73	5	1	0	0	1	17	9	1	7	3	0	0
Amusement and recreation services (except motion pictures)	440	361	233	123	1	0	1	0	3	75	61	2	12	1	2	1
Health services	2,662	2,091	1,724	313	17	2	0	29	6	490	416	8	66	20	3	58
Educational services	258	204	167	34	3	0	0	0	0	50	46	3	1	0	0	4
Membership organizations	731	664	323	327	6	4	2	0	2	56	49	2	5	0	0	11
Business services	1,954	1,574	1,135	396	24	8	1	0	10	361	286	13	62	8	3	8

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1992[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
Miscellaneous repair services	111	78	51	21	1	3	0	0	2	32	22	4	6	1	0	0
Legal services	47	35	30	5	0	0	0	0	0	9	8	0	1	0	0	3
Museums, art galleries, and botanical and zoological gardens	11	6	5	0	1	0	0	0	0	5	4	0	1	0	0	0
Social services	311	215	174	40	1	0	0	0	0	87	70	0	17	1	0	8
Miscellaneous services	134	96	61	33	1	1	0	0	0	35	24	2	9	1	0	2
Services	8,323	6,672	4,878	1,629	79	23	5	29	29	1,504	1,202	41	261	37	9	101
Public administration	131	86	66	20	0	0	0	0	0	41	31	0	10	0	0	4
Total, all industrial groups	38,943	32,442	23,119	8,077	684	280	45	29	208	6,076	4,697	249	1,130	119	22	284

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

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1992[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	162	147	102	41	0	0	0	2	2	11	10	1	0	1	0	3
New Hampshire	56	48	35	9	3	1	0	0	0	7	7	0	0	0	0	1
Vermont	49	44	41	3	0	0	0	0	0	4	3	0	1	1	0	0
Massachusetts	1,263	1,100	823	217	29	18	0	2	11	142	114	2	26	2	0	19
Rhode Island	167	144	122	19	0	2	0	0	1	19	18	0	1	0	0	4
Connecticut	685	607	490	110	3	1	0	2	1	74	63	2	9	0	0	4
New England	2,382	2,090	1,613	399	35	22	0	6	15	257	215	5	37	4	0	31
New York	4,260	3,730	2,407	1,118	91	63	6	8	37	497	383	35	79	12	0	21
New Jersey	1,672	1,419	954	368	47	37	2	0	11	230	198	8	24	9	0	14
Pennsylvania	2,706	2,318	1,682	513	59	45	1	3	15	359	278	12	69	9	1	19
Middle Atlantic	8,638	7,467	5,043	1,999	197	145	9	11	63	1,086	859	55	172	30	1	54
Ohio	2,344	2,012	1,523	447	25	5	3	3	6	309	238	14	57	7	3	13
Indiana	1,319	1,144	824	272	29	4	2	1	12	166	123	4	39	4	0	5
Illinois	2,292	1,864	1,155	523	113	34	5	0	34	407	302	17	88	9	1	11
Michigan	2,308	2,020	1,454	512	36	7	0	2	9	264	205	2	57	8	0	16
Wisconsin	688	513	378	120	6	5	1	0	3	151	113	2	36	8	1	15
East North Central	8,951	7,553	5,334	1,874	209	55	11	6	64	1,297	981	39	277	36	5	60
Iowa	247	170	134	34	2	0	0	0	0	76	64	2	10	0	0	1
Minnesota	589	424	318	86	15	1	0	1	3	148	106	4	38	3	2	12
Missouri	1,069	898	573	275	26	8	1	2	13	164	111	5	48	4	1	2
North Dakota	55	43	37	4	2	0	0	0	0	11	8	0	3	0	1	0
South Dakota	45	36	28	7	1	0	0	0	0	9	5	1	3	0	0	0
Nebraska	97	74	57	15	0	1	0	0	1	20	13	2	5	0	0	3
Kansas	257	203	152	51	0	0	0	0	0	54	38	1	15	0	0	0
West North Central	2,359	1,848	1,299	472	46	10	1	3	17	482	345	15	122	7	4	18
Delaware	85	65	49	13	3	0	0	0	0	16	15	0	1	3	0	1
Maryland	704	617	397	206	5	4	5	0	0	82	73	1	8	0	0	5
District of Columbia	164	145	110	34	1	0	0	0	0	17	11	1	5	1	0	1
Virginia	471	413	317	94	2	0	0	0	0	58	49	1	8	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1992[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
West Virginia	613	551	431	91	20	3	1	0	5	56	45	2	9	2	1	3
North Carolina	381	341	263	70	8	0	0	0	0	39	30	3	6	0	0	1
South Carolina	114	98	73	25	0	0	0	0	0	15	13	0	2	0	0	1
Georgia	619	538	408	121	3	2	4	0	0	77	64	1	12	0	3	1
Florida	871	743	604	138	1	0	0	0	0	118	89	6	23	0	0	10
South Atlantic	4,022	3,511	2,652	792	43	9	10	0	5	478	389	15	74	6	4	23
Kentucky	624	525	402	99	15	4	0	0	5	94	71	4	19	2	1	2
Tennessee	608	524	421	96	2	3	1	0	1	79	56	1	22	0	0	5
Alabama	312	254	220	34	0	0	0	0	0	56	41	1	14	0	0	2
Mississippi	255	206	180	26	0	0	0	0	0	48	41	2	5	0	0	1
East South Central	1,799	1,509	1,223	255	17	7	1	0	6	277	209	8	60	2	1	10
Arkansas	195	165	147	18	0	0	0	0	0	27	17	0	10	0	0	3
Louisiana	279	234	181	53	0	0	0	0	0	45	39	0	6	0	0	0
Oklahoma	247	206	150	54	1	0	0	0	1	37	26	1	10	1	0	3
Texas	1,049	921	640	279	2	0	0	0	0	125	87	3	35	0	0	3
West South Central	1,770	1,526	1,118	404	3	0	0	0	1	234	169	4	61	1	0	9
Montana	171	111	104	7	0	0	0	0	0	54	30	4	20	1	0	5
Idaho	109	84	72	10	1	0	0	0	1	23	19	0	4	0	0	2
Wyoming	51	39	36	3	0	0	0	0	0	11	9	1	1	0	0	1
Colorado	472	415	339	75	1	0	0	0	0	51	35	5	11	1	1	4
New Mexico	155	123	91	31	0	0	0	1	0	30	26	2	2	0	1	1
Arizona	298	255	176	76	1	1	0	0	1	40	28	2	10	0	0	3
Utah	78	61	44	17	0	0	0	0	0	17	12	2	3	0	0	0
Nevada	538	493	339	135	13	1	2	0	3	45	35	1	9	0	0	0
Mountain	1,872	1,581	1,201	354	16	2	2	1	5	271	194	17	60	2	2	16

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1992[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	918	690	466	202	14	4	0	0	4	199	124	13	62	13	0	16
Oregon	455	330	223	81	14	2	1	0	9	112	76	7	29	4	1	8
California	4,586	3,764	2,523	1,111	79	22	10	2	17	776	547	63	166	13	0	33
Alaska	126	101	70	31	0	0	0	0	0	24	18	5	1	0	0	1
Hawaii	728	217	138	65	11	1	0	0	2	505	499	1	5	0	4	2
Guam	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	6,814	5,103	3,421	1,490	118	29	11	2	32	1,616	1,264	89	263	30	5	60
Puerto Rico	311	236	201	34	0	1	0	0	0	71	65	2	4	1	0	3
Virgin Islands	25	18	14	4	0	0	0	0	0	7	7	0	0	0	0	0
Outlying areas	336	254	215	38	0	1	0	0	0	78	72	2	4	1	0	3
Total, all States and areas	38,943	32,442	23,119	8,077	684	280	45	29	208	6,076	4,697	249	1,130	119	22	284

[1] See Glossary of terms for definitions.
[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 1992[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	685	607	490	110	3	1	0	2	1	74	63	2	9	0	0	4
Maine	162	147	102	41	0	0	0	2	2	11	10	1	0	1	0	3
Massachusetts	1,263	1,100	823	217	29	18	0	2	11	142	114	2	26	2	0	19
New Hampshire	56	48	35	9	3	1	0	0	0	7	7	0	0	0	0	1
Rhode Island	167	144	122	19	0	2	0	0	1	19	18	0	1	0	0	4
Vermont	49	44	41	3	0	0	0	0	0	4	3	0	1	1	0	0
Region I	2,382	2,090	1,613	399	35	22	0	6	15	257	215	5	37	4	0	31
Delaware	85	65	49	13	3	0	0	0	0	16	15	0	1	3	0	1
New Jersey	1,672	1,419	954	368	47	37	2	0	11	230	198	8	24	9	0	14
New York	4,260	3,730	2,407	1,118	91	63	6	8	37	497	383	35	79	12	0	21
Puerto Rico	311	236	201	34	0	1	0	0	0	71	65	2	4	1	0	3
Virgin Islands	25	18	14	4	0	0	0	0	0	7	7	0	0	0	0	0
Region II	6,353	5,468	3,625	1,537	141	101	8	8	48	821	668	45	108	25	0	39
District of Columbia	164	145	110	34	1	0	0	0	0	17	11	1	5	1	0	1
Maryland	704	617	397	206	5	4	5	0	0	82	73	1	8	0	0	5
Pennsylvania	2,706	2,318	1,682	513	59	45	1	3	15	359	278	12	69	9	1	19
Virginia	471	413	317	94	2	0	0	0	0	58	49	1	8	0	0	0
West Virginia	613	551	431	91	20	3	1	0	5	56	45	2	9	2	1	3
Region III	4,658	4,044	2,937	938	87	52	7	3	20	572	456	17	99	12	2	28
Alabama	312	254	220	34	0	0	0	0	0	56	41	1	14	0	0	2
Florida	871	743	604	138	1	0	0	0	0	118	89	6	23	0	0	10
Georgia	619	538	408	121	3	2	4	0	0	77	64	1	12	0	3	1
Kentucky	624	525	402	99	15	4	0	0	5	94	71	4	19	2	1	2
Mississippi	255	206	180	26	0	0	0	0	0	48	41	2	5	0	0	1
North Carolina	381	341	263	70	8	0	0	0	0	39	30	3	6	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1992[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	114	98	73	25	0	0	0	0	0	15	13	0	2	0	0	1
Tennessee	608	524	421	96	2	3	1	0	1	79	56	1	22	0	0	5
Region IV	3,784	3,229	2,571	609	29	9	5	0	6	526	405	18	103	2	4	23
Illinois	2,292	1,864	1,155	523	113	34	5	0	34	407	302	17	88	9	1	11
Indiana	1,319	1,144	824	272	29	4	2	1	12	166	123	4	39	4	0	5
Michigan	2,308	2,020	1,454	512	36	7	0	2	9	264	205	2	57	8	0	16
Minnesota	589	424	318	86	15	1	0	1	3	148	106	4	38	3	2	12
Ohio	2,344	2,012	1,523	447	25	5	3	3	6	309	238	14	57	7	3	13
Wisconsin	688	513	378	120	6	5	1	0	3	151	113	2	36	8	1	15
Region V	9,540	7,977	5,652	1,960	224	56	11	7	67	1,445	1,087	43	315	39	7	72
Arkansas	195	165	147	18	0	0	0	0	0	27	17	0	10	0	0	3
Louisiana	279	234	181	53	0	0	0	0	0	45	39	0	6	0	0	0
New Mexico	155	123	91	31	0	0	0	1	0	30	26	2	2	0	1	1
Oklahoma	247	206	150	54	1	0	0	0	1	37	26	1	10	1	0	3
Texas	1,049	921	640	279	2	0	0	0	0	125	87	3	35	0	0	3
Region VI	1,925	1,649	1,209	435	3	0	0	1	1	264	195	6	63	1	1	10
Iowa	247	170	134	34	2	0	0	0	0	76	64	2	10	0	0	1
Kansas	257	203	152	51	0	0	0	0	0	54	38	1	15	0	0	0
Missouri	1,069	898	573	275	26	8	1	2	13	164	111	5	48	4	1	2
Nebraska	97	74	57	15	0	1	0	0	1	20	13	2	5	0	0	3
Region VII	1,670	1,345	916	375	28	9	1	2	14	314	226	10	78	4	1	6
Colorado	472	415	339	75	1	0	0	0	0	51	35	5	11	1	1	4
Montana	171	111	104	7	0	0	0	0	0	54	30	4	20	1	0	5
North Dakota	55	43	37	4	2	0	0	0	0	11	8	0	3	0	1	0
South Dakota	45	36	28	7	1	0	0	0	0	9	5	1	3	0	0	0
Utah	78	61	44	17	0	0	0	0	0	17	12	2	3	0	0	0
Wyoming	51	39	36	3	0	0	0	0	0	11	9	1	1	0	0	1
Region VIII	872	705	588	113	4	0	0	0	0	153	99	13	41	2	2	10

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1992[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
Arizona	298	255	176	76	1	1	0	0	1	40	28	2	10	0	0	3
California	4,586	3,764	2,523	1,111	79	22	10	2	17	776	547	63	166	13	0	33
Hawaii	728	217	138	65	11	1	0	0	2	505	499	1	5	0	4	2
Guam	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	538	493	339	135	13	1	2	0	3	45	35	1	9	0	0	0
Region IX	6,151	4,730	3,177	1,387	104	25	12	2	23	1,366	1,109	67	190	13	4	38
Alaska	126	101	70	31	0	0	0	0	0	24	18	5	1	0	0	1
Idaho	109	84	72	10	1	0	0	0	1	23	19	0	4	0	0	2
Oregon	455	330	223	81	14	2	1	0	9	112	76	7	29	4	1	8
Washington	918	690	466	202	14	4	0	0	4	199	124	13	62	13	0	16
Region X	1,608	1,205	831	324	29	6	1	0	14	358	237	25	96	17	1	27
Total, all States and areas	38,943	32,442	23,119	8,077	684	280	45	29	208	6,076	4,697	249	1,130	119	22	284

[1] See Glossary of terms for definitions.
[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 1992[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	32,750	100.0	—	22,785	100.0	8,382	100.0	938	100.0	278	100.0	143	100.0	31	100.0	193	100.0
Agreement of the parties	9,755	29.8	100.0	7,689	33.7	1,405	16.7	557	59.3	2	0.7	17	11.8	16	51.6	69	35.7
Informal settlement	9,547	29.2	97.9	7,614	33.4	1,367	16.3	467	49.7	2	0.7	16	11.1	16	51.6	65	33 6
Before issuance of complaint	6,999	21.4	71.7	5,639	24.7	1,015	12.1	268	28.5	[2]	—	5	3.4	14	45.1	58	30.0
After issuance of complaint, before opening of hearing	2,505	7.6	25.7	1,937	8.5	347	4.1	199	21.2	2	0.7	11	7.6	2	6.4	7	3.6
After hearing opened, before issuance of administrative law judge's decision	43	0.1	0.4	38	0.1	5	0.0	0	—	0	—	0	—	0	—	0	—
Formal settlement	208	0 6	2.1	75	0.3	38	0.4	90	9.5	0	—	1	0.6	0	—	4	2.0
After issuance of complaint, before opening of hearing	142	0.4	1.5	18	0.0	37	0.4	82	8.7	0	—	1	0.6	0	—	4	2.0
Stipulated decision	8	0.0	0.1	3	0.0	4	0.0	0	—	0	—	0	—	0	—	1	0.5
Consent decree	134	0.4	1.4	15	0.0	33	0.3	82	8.7	0	—	1	0.6	0	—	3	1.5
After hearing opened	66	0.2	0.7	57	0.2	1	0.0	8	0.8	0	—	0	—	0	—	0	—
Stipulated decision	9	0.0	0.1	9	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	57	0.2	0.6	48	0.2	1	0.0	8	0.8	0	—	0	—	0	—	0	—
Compliance with	785	2.4	100.0	660	2.8	92	1.0	17	1.8	3	1.0	7	4.8	1	3.2	5	2.5

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1992[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
Administrative law judge's decision	20	0.1	2.5	20	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Board decision	541	1.7	68.9	438	1.9	78	0.9	15	1.5	1	0.3	5	3.4	1	3.2	3	1.5
Adopting administrative law judge's decision (no exceptions filed)	213	0.7	27.1	179	0.7	21	0.2	5	0.5	1	0.3	3	2.0	1	3.2	3	1.5
Contested	328	1.0	41.8	259	1.1	57	0.6	10	1.0	0	—	2	1.3	0	—	0	—
Circuit court of appeals decree	222	0.7	28.3	200	0.8	14	0.1	2	0.2	2	0.7	2	1.3	0	—	2	1.0
Supreme Court action	2	0.0	0.3	2	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	10,270	31.4	100.0	7,541	33.0	2,372	28.2	256	27.2	0	—	21	14.6	8	25.8	72	37.3
Before issuance of complaint	9,943	30.4	96.8	7,267	31.8	2,334	27.8	243	25.9	(2)	—	21	14.6	7	22.5	71	36.7
After issuance of complaint, before opening of hearing	279	0.9	2.7	229	1.0	36	0.4	13	1.3	0	—	0	—	0	—	1	0.5
After hearing opened, before administrative law judge's decision	47	0.1	0.5	44	0.1	2	0.0	0	—	0	—	0	—	1	3.2	0	—
After administrative law judge's decision, before Board decision	1	0.0	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	11,535	35.2	100.0	6,778	29.7	4,501	53.6	105	11.1	0	—	98	68.5	6	19.3	47	24.3
Before issuance of complaint	11,341	34.6	98.9	6,613	29.0	4,475	53.3	103	10.9	(2)	—	98	68.5	6	19.3	46	23.8
After issuance of complaint, before opening of hearing	75	0.2	0.7	60	0.2	14	0.1	0	—	0	—	0	—	0	—	1	0.5
After hearing opened, before administrative law judge's decision	5	0.0	0.0	3	0.0	0	—	2	0.2	0	—	0	—	0	—	0	—
By administrative law judge's decision	9	0.0	0.1	9	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By Board decision	94	0.2	0.2	82	0.3	12	0.1	0	—	0	—	0	—	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	33	0.0	0.0	27	0.1	6	0.0	0	—	0	—	0	—	0	—	0	—
Contested	61	0.2	0.2	55	0.2	6	0.0	0	—	0	—	0	—	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1992[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
By circuit court of appeals decree	11-	0.0	0.1	11	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
10(k) actions (see Table 7A for details of dispositions)	273	0.8	0.0	0	—	0	—	0	—	273	98.2	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	132	0.4	0.0	118	0.5	11	0.1	3	0.3	0	—	0	—	0	—	0	—

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

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1992[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	273	100.0
Agreement of the parties—informal settlement	103	37.9
Before 10(k) notice	78	28.7
After 10(k) notice, before opening of 10(k) hearing	25	9.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	2	0.7
Withdrawal	119	43.4
Before 10(k) notice	109	39.7
After 10(k) notice, before opening of 10(k) hearing	8	2.9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	0.7
After Board decision and determination of dispute	0	0.0
Dismissal	49	18.0
Before 10(k) notice	43	15.8
After 10(k) notice, before opening of 10(k) hearing	3	1.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.4
By Board decision and determination of dispute	2	0.7

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1992[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	32,750	100.0	22,785	100.0	8,382	100.0	938	100.0	278	100.0	143	100.0	31	100.0	193	100.0
Before issuance of complaint	28,606	87.3	19,558	85.8	7,835	93.5	614	65.5	273	98.2	124	86.7	27	87.1	175	90.7
After issuance of complaint, before opening of hearing	3,001	9.2	2,244	9.8	434	5.2	294	31.3	2	0.7	12	8.4	2	6.5	13	6.7
After hearing opened, before issuance of administrative law judge's decision	161	0.5	142	0.6	8	0.1	10	1.1	0	—	0	—	1	3.2	0	—
After administrative law judge's decision, before issuance of Board decision	51	0.2	48	0.2	0	—	3	0.3	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	246	0.8	209	0.9	24	0.3	5	0.5	1	0.4	3	2.1	1	3.2	3	1.6
After Board decision, before circuit court decree	389	1.2	317	1.4	60	0.7	10	1.1	0	—	2	1.4	0	—	0	—
After circuit court decree, before Supreme Court action	276	0.8	248	1.1	20	0.2	2	0.2	2	0.7	2	1.4	0	—	2	1.0
After Supreme Court action	2	—	2	—	0	—	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1992[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	5,860	100.0	4,538	100.0	232	100.0	1,090	100.0	145	100.0
Before issuance of notice of hearing	1,900	32.4	1,203	26.5	119	51.3	578	53.0	115	79.3
After issuance of notice, before close of hearing	3,120	53.2	2,618	57.7	86	37.1	416	38.2	14	9.7
After hearing closed, before issuance of decision	69	1.2	56	1.2	1	0.4	12	1.1	1	0.6
After issuance of Regional Director's decision	771	13.2	661	14.6	26	11.2	84	7.7	15	10.3
After issuance of Board decision	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1992[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	5,860	100.0	4,532	100.0	232	100.0	1,096	100.0	145	100.0
Certification issued, total	3,769	64.3	3,061	67.5	84	36.2	624	57.2	84	57.9
After:										
Consent election	41	0.7	37	0.8	0	—	4	0.4	2	1.4
Before notice of hearing	16	0.3	13	0.3	0	—	3	0.3	2	1.4
After notice of hearing, before hearing closed	22	0.4	21	0.5	0	—	1	0.1	0	—
After hearing closed, before decision	3	0.1	3	0.1	0	—	0	—	0	—
Stipulated election	3,174	54.2	2,558	56.4	68	29.3	548	50.3	68	46.9
Before notice of hearing	1,040	17.7	743	16.4	31	13.4	266	24.4	61	42.1
After notice of hearing, before hearing closed	2,111	36.0	1,796	39.6	37	15.9	278	25.5	6	4.1
After hearing closed, before decision	23	0.4	19	0.4	0	—	4	0.4	1	0.7
Expedited election	4	0.1	0	—	4	1.7	0	—	0	—
Regional Director-directed election	509	8.7	429	9.5	12	5.2	68	6.2	14	9.7
Board-directed election	41	0.7	37	0.8	0	—	4	0.3	0	—
By withdrawal, total	1,759	30.0	1,319	29.1	100	43.1	340	31.2	45	31.0
Before notice of hearing	686	11.7	404	8.9	60	25.9	222	20.4	37	25.5
After notice of hearing, before hearing closed	918	15.7	779	17.2	34	14.7	105	9.6	7	4.8
After hearing closed, before decision	33	0.6	28	0.6	0	—	5	0.5	0	—
After Regional Director's decision and direction of election	121	2.1	108	2.4	6	2.6	7	0.6	1	0.7
After Board decision and direction of election	1	0.0	0	—	0	—	1	0.0	0	—
By dismissal, total	332	5.7	152	3.3	48	20.7	132	12.1	16	11.0
Before notice of hearing	154	2.6	43	0.9	24	10.3	87	8.0	15	10.3
After notice of hearing, before hearing closed	68	1.2	22	0.5	15	6.5	31	2.8	1	0.7
After hearing closed, before decision	3	0.1	1	—	1	0.4	1	0.1	0	—
By Regional Director's decision	107	1.8	86	1.9	8	3.4	13	1.2	0	—
By Board decision	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1992

	AC	UC
Total, all	20	299
Certification amended or unit clarified	8	49
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	8	49
By Regional Director's decision	8	49
By Board decision	0	0
Dismissed	2	67
Before hearing	0	8
By Regional Director's decision	0	8
By Board decision	0	0
After hearing	2	59
By Regional Director's decision	2	59
By Board decision	0	0
Withdrawn	10	183
Before hearing	10	181
After hearing	0	2

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1992[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	3,660	33	2,999	6	619	3
Eligible voters	223,549	965	177,023	533	44,981	47
Valid votes	195,966	767	156,815	500	37,838	46
RC cases:						
Elections	2,927	28	2,376	5	518	0
Eligible voters	183,865	862	143,337	429	39,237	0
Valid votes	161,221	696	126,976	401	33,148	0
RM cases:						
Elections	66	0	56	0	7	3
Eligible voters	1,691	0	1,541	0	103	47
Valid votes	1,428	0	1,306	0	76	46
RD cases:						
Elections	606	5	523	1	77	0
Eligible voters	34,174	103	29,258	104	4,709	0
Valid votes	30,386	71	26,248	99	3,968	0
UD cases:						
Elections	61	0	44	0	17	—
Eligible voters	3,819	0	2,887	0	932	—
Valid votes	2,931	0	2,285	0	646	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1992

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	3,788	83	106	3,599	3,094	76	91	2,927	69	1	2	66	625	6	13	606
Rerun required	—	—	90	—	—	—	75	—	—	—	2	—	—	—	13	—
Runoff required	—	—	16	—	—	—	16	—	—	—	0	—	—	—	0	—
Consent elections	33	0	0	33	28	0	0	28	0	0	0	0	5	0	0	5
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,083	50	78	2,955	2,490	43	71	2,376	58	1	1	56	535	6	6	523
Rerun required	—	—	66	—	—	—	59	—	—	—	1	—	—	—	6	—
Runoff required	—	—	12	—	—	—	12	—	—	—	0	—	—	—	0	—
Regional Director-directed	661	33	26	602	571	33	20	518	8	0	1	7	82	0	5	77
Rerun required	—	—	22	—	—	—	16	—	—	—	1	—	—	—	5	—
Runoff required	—	—	4	—	—	—	4	—	—	—	0	—	—	—	0	—
Board-directed	8	0	2	6	5	0	0	5	0	0	0	0	3	0	2	1
Rerun required	—	—	2	—	—	—	0	—	—	—	0	—	—	—	2	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	3	0	0	3	0	0	0	0	3	0	0	3	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 1992

	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	3,788	161	4.3	105	2.8	43	1.1	204	5.4	148	3.9
By type of case:											
In RC cases	3,094	129	4.2	91	2.9	38	1.2	167	5.4	129	4.2
In RM cases	69	5	7.2	3	4.3	0	—	5	7.2	3	4.3
In RD cases	625	27	4.3	11	1.8	5	0.8	32	5.1	16	2.6
By type of election:											
Consent elections	33	0	—	2	6.1	0	—	0	—	2	6.1
Stipulated elections	3,083	117	3.8	82	2.7	35	1.1	152	4.9	117	3.8
Expedited elections	3	1	33.3	1	33.3	0	—	1	33.3	1	33.3
Regional Director-directed elections	661	43	6.5	20	3.0	8	1.2	51	7.7	28	4.2
Board-directed elections	8	0	—	0	—	0	—	0	—	0	—

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1992[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	328	100.0	104	31.7	213	64.9	11	3.4
By type of case:								
RC cases	284	100.0	93	32.8	185	65.1	6	2.1
RM cases	5	100.0	3	60.0	2	40.0	0	—
RD cases	39	100.0	8	20.5	26	66.7	5	12.8
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	249	100.0	69	27.7	169	67.9	11	4.4
Expedited elections	1	100.0	0	—	1	100.0	0	—
Regional Director-directed elections	78	100.0	35	44.9	43	55.1	0	—
Board-directed elections	0	—	0	—	0	—	0	—

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1992[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	328	124	204	141	69.1	63	30.9
By type of case:							
RC cases	284	117	167	110	65.9	57	34.1
RM cases	5	0	5	5	100.0	0	—
RD cases	39	7	32	26	81.2	6	18.8
By type of election:							
Consent elections	0	0	0	0	—	0	—
Stipulated elections	249	97	152	99	65.1	53	34.9
Expedited elections	1	0	1	1	100.0	0	—
Regional Director-directed elections	78	27	51	41	80.4	10	19.6
Board-directed elections	0	0	0	0	—	0	—

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained. In 8 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 1992[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	84	100.0	28	33.3	56	66.7	21	25.0
By type of case:								
RC cases	71	100.0	24	33.8	47	66.2	18	25.4
RM cases	2	100.0	0	—	2	100.0	0	—
RD cases	11	100.0	4	36.4	7	63.6	3	27.3
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	63	100.0	20	31.7	43	68.3	17	30.0
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	20	100.0	8	40.0	12	60.0	4	20.0
Board-directed elections	1	100.0	0	—	1	100.0	0	—

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 6 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1992

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	61	28	45.9	33	54.1	3,819	846	22.2	2,973	77.8	2,931	76.7	717	18.8
AFL–CIO unions	43	23	53.5	20	46.5	2,528	808	32.0	1,720	68.0	1,964	77.7	682	27.0
Teamsters	11	2	18.2	9	81.8	721	13	1.8	708	98.2	543	75.3	12	1.7
Other national unions	1	0	—	1	100.0	226	0	—	226	100.0	217	96.0	0	—
Other local unions	6	3	50.0	3	50.0	344	25	7.3	319	92.7	207	60.2	23	6.7

[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 1992[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	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
	A. All representation elections														
AFL–CIO	2,118	46.2	978	978	—	—	—	1,140	144,343	51,582	51,582	—	—	—	92,761
Teamsters	1,084	39.6	429	—	429	—	—	655	44,170	12,097	—	12,097	—	—	32,073
Other national unions	95	55.8	53	—	—	53	—	42	6,376	2,911	—	—	2,911	—	3,465
Other local unions	145	53.8	78	—	—	—	78	67	6,400	2,706	—	—	—	2,706	3,694
1-union elections	3,442	44.7	1,538	978	429	53	78	1,904	201,289	69,296	51,582	12,097	2,911	2,706	131,993
AFL–CIO v. AFL–CIO	22	86.4	19	19	—	—	—	3	2,561	1,952	1,952	—	—	—	609
AFL–CIO v. Teamsters	41	78.0	32	16	16	—	—	9	3,611	1,853	823	1,030	—	—	1,758
AFL–CIO v. National	12	100.0	12	8	—	4	—	0	306	306	117	—	189	—	0
AFL–CIO v. Local	44	88.6	39	23	—	—	16	5	8,015	6,425	3,426	—	—	2,999	1,590
Teamsters v. Local	9	77.8	7	—	3	—	4	2	454	418	—	239	—	179	36
Teamsters v. Teamsters	8	87.5	7	—	7	—	—	1	236	185	—	185	—	—	51
National v. Local	4	100.0	4	—	—	4	0	0	924	924	—	—	924	0	0
Local v. Local	11	81.8	9	—	—	—	9	2	1,228	914	—	—	—	914	314
2-union elections	151	85.4	129	66	26	8	29	22	17,335	12,977	6,318	1,454	1,113	4,092	4,358
AFL–CIO v. AFL–CIO v. Teamsters	2	100.0	2	2	0	—	—	0	122	122	122	0	—	—	0
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	1	—	—	0	0	282	282	282	—	—	0	0
AFL–CIO v. Local v. Local	1	100.0	1	1	—	—	0	0	591	591	591	—	—	0	0
Teamsters v. Local v. Local	1	100.0	1	—	1	—	0	0	47	47	—	47	—	0	0
National v. Local v. Local	1	100.0	1	—	—	0	1	0	64	64	—	—	0	64	0
3 (or more)-union elections	6	100.0	6	4	1	0	1	0	1,106	1,106	995	47	0	64	0
Total representation elections	3,599	46.5	1,673	1,048	456	61	108	1,926	219,730	83,379	58,895	13,598	4,024	6,862	136,351

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1992[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	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
	B. Elections in RC cases														
AFL–CIO	1,704	49.8	849	849	—	—	—	855	118,289	39,111	39,111	—	—	—	79,178
Teamsters	875	43.8	383	—	383	—	—	492	37,448	9,989	—	9,989	—	—	27,459
Other national unions	89	57.3	51	—	—	51	—	38	6,090	2,770	—	—	2,770	—	3,320
Other local unions	117	60.7	71	—	—	—	71	46	5,178	2,563	—	—	—	2,563	2,615
1-union elections	2,785	48.6	1,354	849	383	51	71	1,431	167,005	54,433	39,111	9,989	2,770	2,563	112,572
AFL–CIO v. AFL–CIO	20	85.0	17	17	—	—	—	3	2,497	1,888	1,888	—	—	—	609
AFL–CIO v. Teamsters	36	77.8	28	15	13	—	—	8	3,410	1,664	758	906	—	—	1,746
AFL–CIO v. National	12	100.0	12	8	—	4	—	0	306	306	117	—	189	—	0
AFL–CIO v. Local	38	89.5	34	19	—	—	15	4	7,337	5,784	2,891	—	—	2,893	1,553
Teamsters v. Local	9	77.8	7	—	3	—	4	2	454	418	—	239	—	179	36
Teamsters v. Teamsters	8	87.5	7	—	7	—	—	1	236	185	—	185	—	—	51
National v. Local	4	100.0	4	—	—	4	0	0	924	924	—	—	924	0	0
Local v. Local	11	81.8	9	—	—	—	9	2	1,228	914	—	—	—	914	314
2-union elections	138	85.5	118	59	23	8	28	20	16,392	12,083	5,654	1,330	1,113	3,986	4,309
AFL–CIO v. AFL–CIO v. Teamsters	2	100.0	2	2	0	—	—	0	122	122	122	0	—	—	0
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	1	—	—	0	0	282	282	282	—	—	0	0
National v. Local v. Local	1	100.0	1	—	—	0	1	0	64	64	—	—	0	64	0
3 (or more)-union elections	4	100.0	4	3	0	0	1	0	468	468	404	0	0	64	0
Total RC elections	2,927	50.4	1,476	911	406	59	100	1,451	183,865	66,984	45,169	11,319	3,883	6,613	116,881
	C. Elections in RM cases														
AFL–CIO	44	15.9	7	7	—	—	—	37	1,277	183	183	—	—	—	1,094
Teamsters	17	29.4	5	—	5	—	—	12	241	115	—	115	—	—	126
Other national unions	1	100.0	1	—	—	1	—	0	11	11	—	—	11	—	0
Other local unions	1	0.0	0	—	—	—	0	1	85	0	—	—	—	0	85
1-union elections	63	20.6	13	7	5	1	0	50	1,614	309	183	155	11	0	1,305

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1992[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	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
AFL–CIO v. AFL–CIO	1	100.0	1	1	—	—	—	0	9	9	9	—	—	—	0
AFL–CIO v. Teamsters	1	100.0	1	1	0	—	—	0	65	65	65	0	—	—	0
AFL–CIO v. Local	1	100.0	1	1	—	—	0	0	3	3	3	—	—	0	0
2-union elections	3	100.0	3	3	0	0	0	0	77	77	77	0	0	0	0
Total RM elections	66	24.2	16	10	5	1	0	50	1,691	386	260	115	11	0	1,305
	D. Elections in RD cases														
AFL–CIO	370	33.0	122	122	—	—	—	248	24,777	12,288	12,288	—	—	—	12,489
Teamsters	192	21.4	41	—	41	—	—	151	6,481	1,993	—	1,993	—	—	4,488
Other national unions	5	20.0	1	—	—	1	—	4	275	130	—	—	130	—	145
Other local unions	27	25.9	7	—	—	—	7	20	1,137	143	—	—	—	143	994
1-union elections	594	28.8	171	122	41	1	7	423	32,670	14,554	12,288	1,993	130	143	18,116
AFL–CIO v. AFL–CIO	1	100.0	1	1	—	—	—	0	55	55	55	—	—	—	0
AFL–CIO v. Teamsters	4	75.0	3	0	3	—	—	1	136	124	0	124	—	—	12
AFL–CIO v. Local	5	80.0	4	3	—	—	1	1	675	638	532	—	—	106	37
2-union elections	10	80.0	8	4	3	0	1	2	866	817	587	124	0	106	49
AFL–CIO v. Local v. Local	1	100.0	1	1	—	—	0	0	591	591	591	—	—	0	0
Teamsters v. Local v. Local	1	100.0	1	—	1	—	0	0	47	47	—	47	—	0	0
3 (or more) union elections	2	100.0	2	1	1	0	0	0	638	638	591	47	0	0	0
Total RD elections	606	29.9	181	127	45	1	8	425	34,174	16,009	13,466	2,164	130	249	18,165

[1] See Glossary of terms for definitions.
[2] Includes each unit in which a choice regarding collective-bargaining agent was made; for example, there may have been more than one 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 1992[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	127,873	29,514	29,514	—	—	—	14,657	27,964	27,964	—	—	—	55,738
Teamsters	39,182	7,329	—	7,329	—	—	3,356	8,960	—	8,960	—	—	19,537
Other national unions	5,611	1,734	—	—	1,734	—	731	1,120	—	—	1,120	—	2,026
Other local unions	5,356	1,670	—	—	—	1,670	486	1,037	—	—	—	1,037	2,163
1-union elections	178,022	40,247	29,514	7,329	1,734	1,670	19,230	39,081	27,964	8,960	1,120	1,037	79,464
AFL–CIO v. AFL–CIO	1,928	1,349	1,349	—	—	—	96	98	98	—	—	—	385
AFL–CIO v. Teamsters	3,209	1,460	687	773	—	—	105	463	301	162	—	—	1,181
AFL–CIO v. National	243	227	96	—	131	—	16	0	0	—	0	—	0
AFL–CIO v. Local	6,536	4,732	2,285	—	—	2,447	418	436	358	—	—	78	950
Teamsters v. Local	426	387	—	234	—	153	12	9	—	9	—	0	18
Teamsters v. Teamsters	230	161	—	161	—	—	19	21	—	21	—	—	29
National v. Local	620	614	—	—	336	278	6	0	—	—	0	0	0
Local v. Local	998	692	—	—	—	692	33	108	—	—	—	108	165
2-union elections	14,190	9,622	4,417	1,168	467	3,570	705	1,135	757	192	0	186	2,728
AFL–CIO v. AFL–CIO v. Teamsters	120	119	81	38	—	—	1	0	0	0	—	—	0
AFL–CIO v. AFL–CIO v. Local	202	201	117	—	—	84	1	0	0	—	—	0	0
AFL–CIO v. Local v. Local	437	433	329	—	—	104	4	0	0	—	—	0	0
Teamsters v. Local v. Local	32	32	—	32	—	0	0	0	—	0	—	0	0
National v. Local v. Local	32	30	—	—	1	29	2	0	—	—	0	0	0
3 (or more)-union elections	823	815	527	70	1	217	8	0	0	0	0	0	0
Total representation elections	193,035	50,684	34,458	8,567	2,202	5,457	19,943	40,216	28,721	9,152	1,120	1,223	82,192

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1992[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	104,665	22,420	22,420	—	—	—	10,606	23,744	23,744	—	—	—	47,895
Teamsters	33,194	6,037	—	6,037	—	—	2,689	7,820	—	7,820	—	—	16,648
Other national unions	5,362	1,647	—	—	1,647	—	700	1,085	—	—	1,085	—	1,930
Other local unions	4,313	1,584	—	—	—	1,584	445	751	—	—	—	751	1,533
1-union elections	147,534	31,688	22,420	6,037	1,647	1,584	14,440	33,400	23,744	7,820	1,085	751	68,006
AFL–CIO v. AFL–CIO	1,870	1,293	1,293	—	—	—	94	98	98	—	—	—	385
AFL–CIO v. Teamsters	3,024	1,292	629	663	—	—	100	463	301	162	—	—	1,169
AFL–CIO v. National	243	227	96	—	131	—	16	0	0	—	0	—	0
AFL–CIO v. Local	5,922	4,157	2,000	—	—	2,157	408	426	358	—	—	68	931
Teamsters v. Local	426	387	—	234	—	153	12	9	—	9	—	0	18
Teamsters v. Teamsters	230	161	—	161	—	—	19	21	—	21	—	—	29
National v. Local	620	614	—	—	336	278	6	0	—	—	0	0	0
Local v. Local	998	692	—	—	—	692	33	108	—	—	—	108	165
2-union elections	13,333	8,823	4,018	1,058	467	3,280	688	1,125	757	192	0	176	2,697
AFL–CIO v. AFL–CIO v. Teamsters	120	119	81	38	—	—	1	0	0	0	—	—	0
AFL–CIO v. AFL–CIO v. Local	202	201	117	—	—	84	1	0	0	—	—	0	0
National v. Local v Local	32	30	—	—	1	29	2	0	—	—	0	0	0
3 (or more)-union elections	354	350	198	38	1	113	4	0	0	0	0	0	0
Total RC elections	161,221	40,861	26,636	7,133	2,115	4,977	15,132	34,525	24,501	8,012	1,085	927	70,703
C. Elections in RM cases													
AFL–CIO	1,074	111	111	—	—	—	63	264	264	—	—	—	636
Teamsters	227	84	—	84	—	—	27	21	—	21	—	—	95
Other national unions	11	8	—	—	8	—	3	0	—	—	0	—	0
Other local unions	57	0	—	—	—	0	0	28	—	—	—	28	29
1-union elections	1,369	203	111	84	8	0	93	313	264	21	0	28	760

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1992[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. AFL–CIO	7	7	7	—	—	—	0	0	0	—	—	—	0
AFL–CIO v. Teamsters	49	47	37	10	—	—	2	0	0	0	—	—	0
AFL–CIO v. Local	3	3	3	—	—	0	0	0	0	—	—	0	0
2-union elections	59	57	47	10	0	0	2	0	0	0	0	0	0
Total RM elections	1,428	260	158	94	8	0	95	313	264	21	0	28	760
	D. Elections in RD cases												
AFL–CIO	22,134	6,983	6,983	—	—	—	3,988	3,956	3,956	—	—	—	7,207
Teamsters	5,761	1,208	—	1,208	—	—	640	1,119	—	1,119	—	—	2,794
Other national unions	238	79	—	—	79	—	28	35	—	—	35	—	96
Other local unions	986	86	—	—	—	86	41	258	—	—	—	258	601
1-union elections	29,119	8,356	6,983	1,208	79	86	4,697	5,368	3,956	1,119	35	258	10,698
AFL–CIO v. AFL–CIO	51	49	49	—	—	—	2	0	0	—	—	—	0
AFL–CIO v. Teamsters	136	121	21	100	—	—	3	0	0	0	—	—	12
AFL–CIO v. Local	611	572	282	—	—	290	10	10	0	—	—	10	19
2-union elections	798	742	352	100	0	290	15	10	0	0	0	10	31
AFL–CIO v. Local v. Local	437	433	329	—	—	104	4	0	0	—	—	0	0
Teamsters v. Local v. Local	32	32	—	32	—	0	0	0	—	0	—	0	0
3 (or more) union elections	469	465	329	32	0	104	4	0	0	0	0	0	0
Total RD elections	30,386	9,563	7,664	1,340	79	480	4,716	5,378	3,956	1,119	35	268	10,729

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1992

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	9	8	4	3	1	0	1	363	347	168	64	61	43	0	179	170
New Hampshire	8	6	4	0	0	2	2	605	587	220	169	37	0	14	367	251
Vermont	1	0	0	0	0	0	1	173	90	0	0	0	0	0	90	0
Massachusetts	87	48	31	13	1	3	39	3,493	3,345	1,826	1,250	269	183	124	1,519	1,821
Rhode Island	13	7	5	2	0	0	6	316	300	160	142	18	0	0	140	162
Connecticut	32	12	10	2	0	0	20	1,084	982	497	385	90	0	22	485	440
New England	150	81	54	20	2	5	69	6,034	5,651	2,871	2,010	475	226	160	2,780	2,844
New York	278	143	83	33	10	17	135	15,187	12,311	6,574	4,499	1,033	487	555	5,737	7,225
New Jersey	161	90	54	28	1	7	71	8,466	7,186	4,138	2,836	780	109	413	3,048	4,853
Pennsylvania	253	123	69	31	8	15	130	14,650	12,912	6,410	4,095	1,161	421	733	6,502	5,633
Middle Atlantic	692	356	206	92	19	39	336	38,303	32,409	17,122	11,430	2,974	1,017	1,701	15,287	17,711
Ohio	196	88	57	26	4	1	108	10,772	9,779	4,075	3,269	654	67	85	5,704	2,824
Indiana	111	48	27	17	4	0	63	5,648	5,349	2,260	1,634	531	95	0	3,089	1,537
Illinois	223	96	57	22	6	11	127	13,780	12,248	5,580	3,146	1,148	465	821	6,668	5,019
Michigan	201	93	61	31	1	0	108	11,843	10,618	5,207	3,929	887	192	199	5,411	4,445
Wisconsin	125	60	43	15	0	2	65	6,174	5,468	2,705	2,203	356	0	146	2,763	2,506
East North Central	856	385	245	111	15	14	471	48,217	43,462	19,827	14,181	3,576	819	1,251	23,635	16,331
Iowa	50	24	16	8	0	0	26	2,389	2,104	954	437	516	0	1	1,150	889
Minnesota	113	63	46	12	2	3	50	4,693	4,231	2,060	1,585	381	27	67	2,171	1,761
Missouri	111	43	30	11	2	0	68	4,885	4,238	1,759	1,297	418	44	0	2,479	1,290
North Dakota	8	5	3	2	0	0	3	748	652	313	180	133	0	0	339	292
South Dakota	9	3	2	1	0	0	6	311	288	92	83	9	0	0	196	52
Nebraska	10	4	3	1	0	0	6	416	351	172	144	28	0	0	179	114
Kansas	41	20	13	7	0	0	21	2,675	2,452	1,074	860	214	0	0	1,378	760
West North Central	342	162	113	42	4	3	180	16,117	14,316	6,424	4,586	1,699	71	68	7,892	5,158

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1992—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	14	5	4	1	0	0	9	502	465	246	184	62	0	0	219	306
Maryland	69	26	15	9	0	2	43	3,579	3,227	1,329	885	336	52	56	1,898	871
District of Columbia	7	4	2	0	0	2	3	1,606	1,330	1,260	263	6	0	991	70	1,545
Virginia	34	18	13	3	1	1	16	3,130	2,806	1,421	1,209	95	94	23	1,385	1,057
West Virginia	37	14	11	2	1	0	23	3,257	2,979	1,205	1,090	88	27	0	1,774	702
North Carolina	33	11	9	2	0	0	22	2,943	2,568	895	671	224	0	0	1,673	694
South Carolina	8	1	1	0	0	0	7	930	878	255	255	0	0	0	623	71
Georgia	48	26	18	7	1	0	22	3,057	2,650	1,399	1,049	334	14	2	1,251	1,818
Florida	69	24	15	4	2	3	45	3,834	3,663	1,527	743	488	71	225	2,136	808
South Atlantic	319	129	88	28	5	8	190	22,838	20,566	9,537	6,349	1,633	258	1,297	11,029	7,872
Kentucky	68	35	23	11	1	0	33	4,483	4,154	2,090	1,678	356	56	0	2,064	2,432
Tennessee	60	24	14	6	4	0	36	8,998	8,238	3,958	3,351	420	133	54	4,280	5,174
Alabama	45	16	15	1	0	0	29	2,394	2,228	1,093	991	86	0	16	1,135	836
Mississippi	29	18	14	4	0	0	11	4,475	4,152	1,998	1,861	122	15	0	2,154	2,309
East South Central	202	93	66	22	5	0	109	20,350	18,772	9,139	7,881	984	204	70	9,633	10,751
Arkansas	20	9	9	0	0	0	11	2,255	2,109	973	966	7	0	0	1,136	1,137
Louisiana	32	14	11	1	0	2	18	3,958	3,638	1,300	1,198	14	0	88	2,338	599
Oklahoma	29	10	8	2	0	0	19	2,425	2,057	858	658	200	0	0	1,199	271
Texas	95	42	25	13	0	4	53	11,305	10,231	4,111	2,482	1,546	0	83	6,120	2,252
West South Central	176	75	53	16	0	6	101	19,943	18,035	7,242	5,304	1,767	0	171	10,793	4,259
Montana	41	19	15	3	0	1	22	1,604	1,342	606	464	66	0	76	736	443
Idaho	10	5	5	0	0	0	5	295	257	137	135	2	0	0	120	201
Wyoming	8	4	2	1	1	0	4	219	200	78	55	15	8	0	122	42
Colorado	52	26	12	12	2	0	26	3,799	3,363	1,579	979	447	90	63	1,784	1,566
New Mexico	20	9	4	3	2	0	11	1,011	921	375	276	62	37	0	546	254
Arizona	29	11	7	3	0	1	18	4,687	3,753	1,836	1,309	388	0	139	1,917	1,411
Utah	10	1	1	0	0	0	9	752	604	171	113	45	13	0	433	7
Nevada	24	10	4	6	0	0	14	1,039	960	418	258	160	0	0	542	298
Mountain	194	85	50	28	5	2	109	13,406	11,400	5,200	3,589	1,185	148	278	6,200	4,222

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1992—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		
Washington	125	52	30	13	0	9	73	5,099	4,290	2,287	1,497	344	17	429	2,003	2,443
Oregon	67	27	13	7	3	4	40	3,078	2,604	1,406	673	237	232	264	1,198	1,376
California	390	182	107	65	3	7	208	21,979	17,787	7,891	4,808	2,546	328	209	9,896	8,750
Alaska	19	5	2	3	0	0	14	1,011	806	291	212	79	0	0	515	44
Hawaii	22	16	14	2	0	0	6	845	713	308	252	54	2	0	405	387
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	623	282	166	90	6	20	341	32,012	26,200	12,183	7,442	3,260	579	902	14,017	13,000
Puerto Rico	40	23	6	7	0	10	17	2,394	2,125	1,315	389	166	0	760	810	1,214
Virgin Islands	5	2	1	0	0	1	3	116	99	40	18	0	0	22	59	17
Outlying Areas	45	25	7	7	0	11	20	2,510	2,224	1,355	407	166	0	782	869	1,231
Total, all States and areas	3,599	1,673	1,048	456	61	108	1,926	219,730	193,035	90,900	63,179	17,719	3,322	6,680	102,135	83,379

[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 1992

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	9	8	4	3	1	0	1	363	347	168	64	61	43	0	179	170
New Hampshire	7	5	4	0	0	1	2	597	580	213	169	37	0	7	367	243
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	73	41	26	11	1	3	32	2,436	2,304	1,202	701	201	183	117	1,102	980
Rhode Island	11	7	5	2	0	0	4	305	289	159	141	18	0	0	130	162
Connecticut	27	12	10	2	0	0	15	919	825	433	321	90	0	22	392	440
New England	127	73	49	18	2	4	54	4,620	4,345	2,175	1,396	407	226	146	2,170	1,995
New York	244	131	75	30	10	16	113	13,867	11,144	5,953	4,059	937	484	473	5,191	6,511
New Jersey	146	83	50	25	1	7	63	7,821	6,590	3,770	2,687	649	109	325	2,820	4,380
Pennsylvania	210	108	59	28	8	13	102	12,521	11,040	5,268	3,253	1,044	421	550	5,772	4,384
Middle Atlantic	600	322	184	83	19	36	278	34,209	28,774	14,991	9,999	2,630	1,014	1,348	13,783	15,275
Ohio	165	83	56	22	4	1	82	9,760	8,830	3,699	3,103	444	67	85	5,131	2,489
Indiana	91	43	25	14	4	0	48	5,007	4,759	1,973	1,477	401	95	0	2,786	1,333
Illinois	184	86	51	19	5	11	98	11,720	10,436	4,639	2,397	1,064	386	792	5,797	3,578
Michigan	162	80	50	29	1	0	82	9,215	8,348	3,847	2,749	814	192	92	4,501	2,888
Wisconsin	94	47	32	13	0	2	47	3,673	3,280	1,586	1,178	264	0	144	1,694	1,236
East North Central	696	339	214	97	14	14	357	39,375	35,653	15,744	10,904	2,987	740	1,113	19,909	11,524
Iowa	45	24	16	8	0	0	21	2,085	1,833	853	406	446	0	1	980	889
Minnesota	92	57	43	9	2	3	35	3,962	3,593	1,757	1,334	329	27	67	1,836	1,622
Missouri	79	36	26	8	2	0	43	3,738	3,309	1,294	929	321	44	0	2,015	785
North Dakota	7	5	3	2	0	0	2	734	639	308	175	133	0	0	331	292
South Dakota	8	3	2	1	0	0	5	301	279	91	83	8	0	0	188	52
Nebraska	8	4	3	1	0	0	4	297	239	128	100	28	0	0	111	114
Kansas	37	19	12	7	0	0	18	2,321	2,131	897	709	188	0	0	1,234	582
West North Central	276	148	105	36	4	3	128	13,438	12,023	5,328	3,736	1,453	71	68	6,695	4,336

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1992—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	13	5	4	1	0	0	8	498	461	246	184	62	0	0	215	306
Maryland	60	24	13	9	0	2	36	3,333	3,005	1,242	831	309	52	50	1,763	822
District of Columbia	6	4	2	0	0	2	2	1,588	1,313	1,257	260	6	0	991	56	1,545
Virginia	32	16	11	3	1	1	16	2,855	2,560	1,285	1,073	95	94	23	1,275	782
West Virginia	34	14	11	2	1	0	20	3,230	2,953	1,200	1,090	83	27	0	1,753	702
North Carolina	27	9	8	1	0	0	18	2,628	2,281	803	596	207	0	0	1,478	620
South Carolina	8	1	1	0	0	0	7	930	878	255	255	0	0	0	623	71
Georgia	41	24	17	6	1	0	17	2,513	2,157	1,125	847	264	14	0	1,032	1,463
Florida	61	21	13	3	2	3	40	3,563	3,396	1,384	657	431	71	225	2,012	679
South Atlantic	282	118	80	25	5	8	164	21,138	19,004	8,797	5,793	1,457	258	1,289	10,207	6,990
Kentucky	57	31	19	11	1	0	26	3,262	3,020	1,476	1,086	334	56	0	1,544	1,340
Tennessee	47	21	12	5	4	0	26	7,699	7,023	3,360	2,857	316	133	54	3,663	4,357
Alabama	37	13	12	1	0	0	24	1,770	1,644	800	714	86	0	0	844	354
Mississippi	26	17	13	4	0	0	9	4,128	3,833	1,836	1,699	122	15	0	1,997	2,031
East South Central	167	82	56	21	5	0	85	16,859	15,520	7,472	6,356	858	204	54	8,048	8,082
Arkansas	16	6	6	0	0	0	10	1,992	1,866	820	813	7	0	0	1,046	904
Louisiana	27	13	10	1	0	2	14	3,714	3,404	1,211	1,120	3	0	88	2,193	517
Oklahoma	22	9	7	2	0	0	13	1,376	1,242	504	319	185	0	0	738	205
Texas	72	34	20	11	0	3	38	8,680	7,758	3,090	1,554	1,466	0	70	4,668	1,579
West South Central	137	62	43	14	0	5	75	15,762	14,270	5,625	3,806	1,661	0	158	8,645	3,205
Montana	33	15	11	3	0	1	18	1,461	1,206	525	383	66	0	76	681	341
Idaho	9	4	4	0	0	0	5	260	226	109	107	2	0	0	117	166
Wyoming	8	4	2	1	1	0	4	219	200	78	55	15	8	0	122	42
Colorado	42	20	9	9	2	0	22	3,184	2,798	1,237	728	356	90	63	1,561	1,189
New Mexico	19	8	3	3	2	0	11	979	889	355	256	62	37	0	534	222
Arizona	24	10	6	3	0	1	14	4,492	3,566	1,769	1,250	380	0	139	1,797	1,310
Utah	8	1	1	0	0	0	7	377	358	126	113	0	13	0	232	7
Nevada	21	9	3	6	0	0	12	932	862	365	211	154	0	0	497	214
Mountain	164	71	39	25	5	2	93	11,904	10,105	4,564	3,103	1,035	148	278	5,541	3,491

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1992—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		
Washington	91	44	26	11	0	7	47	4,232	3,575	1,976	1,253	302	17	404	1,599	2,171
Oregon	51	21	9	6	3	3	30	2,063	1,758	1,040	434	154	200	252	718	1,068
California	318	166	93	63	3	7	152	18,082	14,347	6,469	3,915	2,017	328	209	7,878	7,571
Alaska	19	5	2	3	0	0	14	1,011	806	291	212	79	0	0	515	44
Hawaii	22	16	14	2	0	0	6	845	713	308	252	54	2	0	405	387
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	501	252	144	85	6	17	249	26,233	21,199	10,084	6,066	2,606	547	865	11,115	11,241
Puerto Rico	39	23	6	7	0	10	16	1,934	1,689	1,146	389	166	0	591	543	1,214
Virgin Islands	4	2	1	0	0	1	2	84	67	33	11	0	0	22	34	17
Outlying Areas	43	25	7	7	0	11	18	2,018	1,756	1,179	400	166	0	613	577	1,231
Total, all States and area	2,993	1,492	921	411	60	100	1,501	185,556	162,649	75,959	51,559	15,260	3,208	5,932	86,690	67,370

[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 1992

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		
New Hampshire	1	1	0	0	0	1	0	8	7	7	0	0	0	7	0	8
Vermont	1	0	0	0	0	0	1	173	90	0	0	0	0	0	90	0
Massachusetts	14	7	5	2	0	0	7	1,057	1,041	624	549	68	0	7	417	841
Rhode Island	2	0	0	0	0	0	2	11	11	1	1	0	0	0	10	0
Connecticut	5	0	0	0	0	0	5	165	157	64	64	0	0	0	93	0
New England	23	8	5	2	0	1	15	1,414	1,306	696	614	68	0	14	610	849
New York	34	12	8	3	0	1	22	1,320	1,167	621	440	96	3	82	546	714
New Jersey	15	7	4	3	0	0	8	645	596	368	149	131	0	88	228	473
Pennsylvania	43	15	10	3	0	2	28	2,129	1,872	1,142	842	117	0	183	730	1,249
Middle Atlantic	92	34	22	9	0	3	58	4,094	3,635	2,131	1,431	344	3	353	1,504	2,436
Ohio	31	5	1	4	0	0	26	1,012	949	376	166	210	0	0	573	335
Indiana	20	5	2	3	0	0	15	641	590	287	157	130	0	0	303	204
Illinois	39	10	6	3	1	0	29	2,060	1,812	941	749	84	79	29	871	1,441
Michigan	39	13	11	2	0	0	26	2,628	2,270	1,360	1,180	73	0	107	910	1,557
Wisconsin	31	13	11	2	0	0	18	2,501	2,188	1,119	1,025	92	0	2	1,069	1,270
East North Central	160	46	31	14	1	0	114	8,842	7,809	4,083	3,277	589	79	138	3,726	4,807
Iowa	5	0	0	0	0	0	5	304	271	101	31	70	0	0	170	0
Minnesota	21	6	3	3	0	0	15	731	638	303	251	52	0	0	335	139
Missouri	32	7	4	3	0	0	25	1,147	929	465	368	97	0	0	464	505
North Dakota	1	0	0	0	0	0	1	14	13	5	5	0	0	0	8	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1992—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		
South Dakota	1	0	0	0	0	0	1	10	9	1	0	1	0	0	8	0
Nebraska	2	0	0	0	0	0	2	119	112	44	44	0	0	0	68	0
Kansas	4	1	1	0	0	0	3	354	321	177	151	26	0	0	144	178
West North Central	66	14	8	6	0	0	52	2,679	2,293	1,096	850	246	0	0	1,197	822
Delaware	1	0	0	0	0	0	1	4	4	0	0	0	0	0	4	0
Maryland	9	2	2	0	0	0	7	246	222	87	54	27	0	6	135	49
District of Columbia	1	0	0	0	0	0	1	18	17	3	3	0	0	0	14	0
Virginia	2	2	2	0	0	0	0	275	246	136	136	0	0	0	110	275
West Virginia	3	0	0	0	0	0	3	27	26	5	0	5	0	0	21	0
North Carolina	6	2	1	1	0	0	4	315	287	92	75	17	0	0	195	74
South Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Georgia	7	2	1	1	0	0	5	544	493	274	202	70	0	2	219	355
Florida	8	3	2	1	0	0	5	271	267	143	86	57	0	0	124	129
South Atlantic	37	11	8	3	0	0	26	1,700	1,562	740	556	176	0	8	822	882
Kentucky	11	4	4	0	0	0	7	1,221	1,134	614	592	22	0	0	520	1,092
Tennessee	13	3	2	1	0	0	10	1,299	1,215	598	494	104	0	0	617	817
Alabama	8	3	3	0	0	0	5	624	584	293	277	0	0	16	291	482
Mississippi	3	1	1	0	0	0	2	347	319	162	162	0	0	0	157	278
East South Central	35	11	10	1	0	0	24	3,491	3,252	1,667	1,525	126	0	16	1,585	2,669
Arkansas	4	3	3	0	0	0	1	263	243	153	153	0	0	0	90	233
Louisiana	5	1	1	0	0	0	4	244	234	89	78	11	0	0	145	82
Oklahoma	7	1	1	0	0	0	6	1,049	815	354	339	15	0	0	461	66
Texas	23	8	5	2	0	1	15	2,625	2,473	1,021	928	80	0	13	1,452	673
West South Central	39	13	10	2	0	1	26	4,181	3,765	1,617	1,498	106	0	13	2,148	1,054
Montana	8	4	4	0	0	0	4	143	136	81	81	0	0	0	55	102
Idaho	1	1	1	0	0	0	0	35	31	28	28	0	0	0	3	35
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	10	6	3	3	0	0	4	615	565	342	251	91	0	0	223	377
New Mexico	1	1	1	0	0	0	0	32	32	20	20	0	0	0	12	32

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1992—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		
Arizona	5	1	1	0	0	0	4	195	187	67	59	8	0	0	120	101
Utah	2	0	0	0	0	0	2	375	246	45	0	45	0	0	201	0
Nevada	3	1	1	0	0	0	2	107	98	53	47	6	0	0	45	84
Mountain	30	14	11	3	0	0	16	1,502	1,295	636	486	150	0	0	659	731
Washington	34	8	4	2	0	2	26	867	715	311	244	42	0	25	404	272
Oregon	16	6	4	1	0	1	10	1,015	846	366	239	83	32	12	480	308
California	72	16	14	2	0	0	56	3,897	3,440	1,422	893	529	0	0	2,018	1,179
Alaska	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	122	30	22	5	0	3	92	5,779	5,001	2,099	1,376	654	32	37	2,902	1,759
Puerto Rico	1	0	0	0	0	0	1	460	436	169	0	0	0	169	267	0
Virgin Islands	1	0	0	0	0	0	1	32	32	7	7	0	0	0	25	0
Outlying Areas	2	0	0	0	0	0	2	492	468	176	7	0	0	169	292	0
Total, all States and areas	606	181	127	45	1	8	425	34,174	30,386	14,941	11,620	2,459	114	748	15,445	16,009

[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 1992

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	157	73	38	32	1	2	84	14,417	12,719	5,978	4,335	933	287	423	6,741	5,884
Textile mill products	25	9	7	1	1	0	16	3,415	2,998	1,429	1,175	131	43	80	1,569	913
Apparel and other finished products made from fabric and similar materials	23	8	8	0	0	0	15	4,332	4,072	1,535	1,534	1	0	0	2,537	1,251
Lumber and wood products (except furniture)	58	20	10	9	1	0	38	3,941	3,605	1,550	1,131	293	100	26	2,055	1,174
Furniture and fixtures	37	16	14	1	0	1	21	4,706	4,337	1,711	1,311	285	1	114	2,626	752
Paper and allied products	43	20	13	7	0	0	23	2,692	2,549	1,276	936	264	72	4	1,273	1,119
Printing, publishing, and allied products	76	30	25	2	1	2	46	5,094	4,607	2,249	1,982	181	58	28	2,358	2,179
Chemicals and allied products	54	17	11	5	0	1	37	2,618	2,410	1,052	852	167	9	24	1,358	875
Petroleum refining and related industries	17	6	3	1	1	1	11	692	646	464	235	33	27	169	182	459
Rubber and miscellaneous plastic products	55	15	10	4	1	0	40	4,764	4,406	1,834	1,536	285	13	0	2,572	992
Leather and leather products	7	2	2	0	0	0	5	991	854	418	249	0	0	169	436	306
Stone, clay, glass, and concrete products	68	20	12	5	0	3	48	3,270	2,989	1,453	919	377	0	157	1,536	1,146
Primary metal industries	89	34	26	3	1	4	55	9,672	8,984	3,574	3,171	312	15	76	5,410	2,097
Fabricated metal products (except machinery and transportation equipment)	96	42	36	5	0	1	54	6,718	6,071	2,659	2,324	302	0	33	3,412	1,867
Machinery (except electrical)	106	41	29	6	1	5	65	6,679	6,164	2,497	1,839	556	32	70	3,667	1,604
Electrical and electronic machinery, equipment, and supplies	38	10	7	1	1	1	28	3,720	3,492	1,317	1,165	35	10	107	2,175	587
Aircraft and parts	61	24	18	5	0	1	37	6,279	5,868	2,758	2,431	175	24	128	3,110	2,399
Ship and boat building and repairing	6	3	2	0	0	1	3	344	294	127	125	0	0	2	167	76
Automotive and other transportation equipment	15	6	5	0	1	0	9	3,660	3,221	1,889	1,837	14	27	11	1,332	3,192
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	19	7	6	1	0	0	12	1,036	965	332	133	179	20	0	633	92
Miscellaneous manufacturing industries	24	11	9	2	0	0	13	2,127	1,881	988	852	85	12	39	893	1,450
Manufacturing	1,074	414	291	90	10	23	660	91,167	83,132	37,090	30,072	4,608	750	1,660	46,042	30,414
Metal mining	2	0	0	0	0	0	2	293	277	118	100	18	0	0	159	0
Coal mining	9	4	0	0	4	0	5	653	627	236	0	0	236	0	391	154
Oil and gas extraction	7	2	1	1	0	0	5	142	131	42	7	35	0	0	89	12
Mining and quarrying of nonmetallic minerals (except fuels)	12	4	3	1	0	0	8	243	220	97	47	47	3	0	123	90

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1992—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	30	10	4	2	4	0	20	1,331	1,255	493	154	100	239	0	762	256
Construction	337	177	143	26	2	6	160	8,729	6,629	3,330	2,650	521	6	153	3,299	4,194
Wholesale trade	215	80	40	37	0	3	135	12,430	11,122	4,867	3,502	1,237	14	114	6,255	3,150
Retail trade	286	133	74	44	8	7	153	12,121	10,608	5,109	2,921	1,619	271	298	5,499	4,479
Finance, insurance, and real estate	74	45	32	6	2	5	29	2,338	2,099	950	563	298	19	70	1,149	704
U.S. Postal Service	4	2	0	1	0	1	2	382	308	243	0	35	0	208	65	320
Local and suburban transit and interurban highway passenger transportation	81	42	22	17	1	2	39	6,713	5,460	2,794	1,529	900	156	6 209	2,666	3,088
Motor freight transportation and warehousing	288	115	21	92	0	2	173	13,262	11,718	4,950	856	3,906	18	170	6,768	3,772
Water transportation	11	8	4	2	0	2	3	272	255	112	82	16	0	14	143	57
Other transportation	39	22	9	10	1	2	17	2,095	1,625	888	478	333	56	21	737	1,237
Communication	79	32	26	3	1	2	47	2,849	2,563	1,097	903	142	9	43	1,466	826
Electric, gas, and sanitary services	135	64	37	24	2	1	71	8,681	7,814	3,910	2,430	679	18	783	3,904	2,948
Transportation, communication, and other utilities	633	283	119	148	5	11	350	33,872	29,435	13,751	6,278	5,976	257	1,240	15,684	11,928
Hotels, rooming houses, camps, and other lodging places	56	28	21	4	1	2	28	4,895	4,097	1,963	1,474	338	12	139	2,134	1,765
Personal services	37	18	5	13	0	0	19	1,119	1,050	540	267	271	2	0	510	666
Automotive repair, services, and garages	81	46	12	34	0	0	35	2,429	2,002	976	311	665	0	0	1,026	1,191
Motion pictures	7	2	2	0	0	0	5	169	161	75	42	33	0	0	86	34
Amusement and recreation services (except motion pictures)	35	20	17	1	1	1	15	1,547	1,272	639	400	52	115	72	633	795
Health services	299	163	122	9	10	22	136	29,138	24,653	12,599	9,279	773	993	1,554	12,054	13,562
Educational services	28	17	7	3	2	5	11	1,321	1,187	495	290	61	37	107	692	508
Membership organizations	24	18	12	4	1	1	6	921	747	408	216	58	108	26	339	564
Business services	244	142	85	23	14	20	102	10,401	8,594	4,754	2,930	590	488	746	3,840	5,650
Miscellaneous repair services	21	7	4	3	0	0	14	733	677	282	138	81	0	63	395	273
Museums, art galleries, botanical and zoological gardens	5	3	2	0	1	0	2	163	142	101	90	0	11	0	41	136

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1992—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		
Legal services	6	6	5	0	0	1	0	189	181	161	60	0	0	101	20	189
Social services	64	39	35	4	0	0	25	2,588	2,125	1,191	916	238	0	37	934	1,559
Miscellaneous services	20	10	8	2	0	0	10	739	650	269	178	91	0	0	381	334
Services	927	519	337	100	30	52	408	56,352	47,538	24,453	16,591	3,251	1,766	2,845	23,085	27,226
Public administration	19	10	8	2	0	0	9	1,008	909	614	448	74	0	92	295	708
Total, all industrial groups	3,599	1,673	1,048	456	61	108	1,926	219,730	193,035	90,900	63,179	17,719	3,322	6,680	102,135	83,379

[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 1992[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	185,556	2,993	100.0	—	921	100.0	411	100.0	60	100.0	100	100.0	1,501	100.0
Under 10	3,765	676	22.6	22.6	251	27.3	142	34.5	11	18.3	17	17.0	255	17.0
10 to 19	8,709	624	20.8	43.4	210	22.8	108	26.3	14	23.3	18	18.0	274	18.3
20 to 29	8,411	352	11.8	55.2	105	11.4	46	11.2	9	15.0	16	16.0	176	11.7
30 to 39	8,715	254	8.5	63.7	75	8.1	28	6.8	4	6.7	8	8.0	139	9.3
40 to 49	7,135	162	5.4	69.1	43	4.7	21	5.1	3	5.0	7	7.0	88	5.9
50 to 59	8,160	152	5.1	74 2	41	4.5	17	4.1	3	5.0	8	8.0	83	5.5
60 to 69	6,812	106	3.5	77.7	32	3.5	11	2.8	2	3.3	5	5.0	56	3.7
70 to 79	7,399	100	3.3	81.0	26	2.8	7	1.8	2	3.3	2	2.0	63	4.2
80 to 89	5,722	68	2.3	83.3	20	2.2	6	1.6	1	1.7	1	1.0	40	2.7
90 to 99	7,068	75	2.5	85.8	17	1.8	8	1.9	1	1.7	3	3.0	46	3.1
100 to 109	4,802	46	1.5	87.3	15	1.6	3	0.7	2	3.3	2	2.0	24	1.6
110 to 119	3,562	31	1.0	88.3	6	0.7	2	0.5	0	—	4	4.0	19	1.3
120 to 129	5,231	42	1.4	89.7	15	1.6	2	0.5	3	5.0	2	2.0	20	1.3
130 to 139	2,413	18	0.6	90.3	6	0.7	1	0.2	0	—	0	—	11	0.7
140 to 149	3,319	23	0.8	91.1	7	0.8	1	0.2	0	—	0	—	15	1.0
150 to 159	3,847	25	0.8	91.9	6	0.7	1	0.2	0	—	1	1.0	17	1.1
160 to 169	1,974	12	0.4	92.3	2	0.2	0	—	0	—	0	—	10	0.7
170 to 179	2,087	12	0.4	92.7	3	0.3	1	0.2	0	—	1	1.0	7	0.4
180 to 189	1,840	10	0.3	93.0	2	0.2	1	0.2	0	—	0	—	7	0.4
190 to 199	3,490	18	0.6	93.6	5	0.5	1	0.2	0	—	0	—	12	0.8
200 to 299	22,298	91	3.0	96.6	15	1.6	4	1.0	3	5.0	2	2.0	67	4.5
300 to 399	9,947	29	1.0	97.6	9	1.0	0	—	0	—	1	1.0	19	1.3
400 to 499	10,514	24	0.8	98.4	4	0.4	0	—	1	1 7	0	—	19	1.3
500 to 599	5,884	11	0.4	98.8	1	0.1	0	—	0	—	0	—	10	0.7
600 to 799	8,070	12	0.4	99.2	2	0.2	0	—	0	—	1	1.0	9	0.6
800 to 999	7,817	9	0.3	99.5	1	0.1	0	—	1	1.7	0	—	7	0.4
1000 to 1,999	10,423	9	0.3	99.8	1	0.1	0	—	0	—	1	1.0	7	0.4
2,000 to 2,999	3,042	1	0.1	99.9	1	0.1	0	—	0	—	0	—	0	—
3,000 to 9,999	3,100	1	0.1	100.0	0	—	0	—	0	—	0	—	1	0.1

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1992[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	34,174	606	100.0	—	127	100.0	45	100.0	1	100.0	8	100.0	425	100.0
Under 10	813	150	24.8	24.8	9	7.1	3	6.7	0	—	2	25.0	136	32.0
10 to 19	1,781	128	21.1	45.9	13	10.2	9	20.0	0	—	1	12.5	105	24.7
20 to 29	1,573	65	10.7	56.6	18	14.2	3	6.7	0	—	2	25.0	42	9.9
30 to 39	1,652	48	7.9	64.5	11	8.7	6	13.3	0	—	2	25.0	29	6.8
40 to 49	1,933	44	7.3	71.8	12	9.4	7	15.6	0	—	0	—	25	5.9
50 to 59	1,280	24	4.0	75.8	6	4.7	5	11.1	0	—	0	—	13	3.1
60 to 69	1,422	22	3.6	79.4	6	4.7	3	6.7	0	—	0	—	13	3.1
70 to 79	1,269	17	2.8	82.2	7	5.5	3	6.7	0	—	0	—	7	1.6
80 to 89	1,002	12	2.0	84.2	6	4.7	0	—	0	—	0	—	6	1.4
90 to 99	937	10	1.7	85.9	3	2.4	2	4.4	0	—	0	—	5	1.2
100 to 109	1,244	12	2.0	87.9	5	3.9	0	—	0	—	1	12.5	6	1.4
110 to 119	924	8	1.3	89.2	1	0.8	1	2.2	0	—	0	—	6	1.4
120 to 129	1,002	8	1.3	90.5	1	0.8	2	4.4	0	—	0	—	5	1.2
130 to 139	806	6	1.0	91.5	3	2.4	0	—	1	100.0	0	—	2	0.5
140 to 149	432	3	0.5	92.0	1	0.8	0	—	0	—	0	—	2	0.5
150 to 159	611	4	0.7	92.7	1	0.8	0	—	0	—	0	—	3	0.7
160 to 169	330	2	0.3	93.0	1	0.8	0	—	0	—	0	—	1	0.2
170 to 199	1,640	9	1.5	94.5	4	3.1	1	2.2	0	—	0	—	4	0.9
200 to 299	3,652	15	2.3	96.8	10	7.9	0	—	0	—	0	—	5	1.2
300 to 499	4,566	12	2.0	98.8	5	3.9	0	—	0	—	0	—	7	1.6
500 to 799	2,682	4	0.7	99.5	2	1.6	0	—	0	—	0	—	2	0.5
800 and over	2,623	3	0.5	100.0	2	1.6	0	—	0	—	0	—	1	0.2

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1992[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	[2]29,719	100.0	—	20,963	100.0	6,764	100.0	584	100.0	250	100.0	38	100.0	27	100.0	183	100.0	884	100.0	26	100.0
Under 10	4,761	16.0	16.0	3,223	15.4	1,124	16.6	172	29.5	85	34.0	8	21.1	4	14.8	41	22.4	100	11.3	4	15.4
10–19	2,749	9.2	25.2	2,062	9.8	460	6.8	93	15.9	36	14.4	10	26.3	0	—	35	19.1	47	5.3	6	23.1
20–29	2,178	7.3	32.5	1,595	7.6	392	5.8	67	11.5	30	12.0	3	7.9	0	—	29	15.8	62	7.0	0	—
30–39	1,426	4.8	37.3	1,107	5.3	242	3.6	25	4.3	9	3.6	2	5.3	0	—	10	5.5	29	3.3	2	7.7
40–49	1,108	3.7	41.0	901	4.3	159	2.4	13	2.2	8	3.2	0	—	1	3.7	6	3.3	18	2.0	2	7.7
50–59	1,538	5.2	46.2	1,108	5.3	321	4.7	45	7.7	14	5.6	1	2.6	3	11.1	14	7.7	32	3.6	0	—
60–69	884	3.0	49.2	696	3.3	142	2.1	14	2.4	4	1.6	0	—	3	11.1	5	2.7	19	2.1	1	3.8
70–79	735	2.5	51.7	581	2.8	123	1.8	11	1.9	5	2.0	0	—	0	—	5	2.7	10	1.1	0	—
80–89	578	1.9	53.6	464	2.2	97	1.4	2	0.3	1	0.4	0	—	0	—	2	1.1	12	1.4	0	—
90–99	525	1.8	55.4	403	1.9	103	1.5	7	1.2	4	1.6	1	2.6	0	—	2	1.1	5	0.6	0	—
100–109	1,880	6.3	61.7	1,199	5.7	538	8.0	26	4.5	20	8.0	3	7.9	0	—	11	6.0	82	9.3	1	3.8
110–119	214	0.7	62.4	178	0.8	26	0.4	0	—	1	0.4	0	—	1	3.7	1	0.5	6	0.7	1	3.8
120–129	541	1.8	64.2	396	1.9	103	1.5	10	1.7	4	1.6	0	—	3	11.1	3	1.6	22	2.5	0	—
130–139	172	0.6	64.8	130	0.6	31	0.5	2	0.3	1	0.4	0	—	0	—	2	1.1	6	0.7	0	—
140–149	140	0.5	65.3	106	0.5	24	0.4	2	0.3	3	1.2	0	—	0	—	0	—	5	0.6	0	—
150–159	595	2.0	67.3	418	2.0	145	2.1	8	1.4	3	1.2	0	—	0	—	2	1.1	17	1.9	2	7.7
160–169	140	0.5	67.8	115	0.5	25	0.4	0	—	0	—	0	—	0	—	0	—	0	—	0	—
170–179	155	0.5	68.3	124	0.6	27	0.4	2	0.3	0	—	0	—	0	—	0	—	2	0.2	0	—
180–189	139	0.5	68.8	118	0.6	19	0.3	0	—	0	—	0	—	0	—	0	—	1	0.1	1	3.8
190–199	54	0.2	69.0	43	0.2	9	0.1	1	0.2	0	—	0	—	0	—	0	—	1	0.1	0	—
200–299	1,836	6.2	75.2	1,323	6.3	420	6.2	19	3.3	5	2.0	0	—	0	—	5	2.7	62	7.0	2	7.7
300–399	1,196	4.0	79.2	815	3.9	306	4.5	7	1.2	2	0.8	4	10.5	3	11.1	4	2.2	55	6.2	0	—
400–499	659	2.2	81.4	447	2.1	180	2.7	1	0.2	1	0.4	0	—	1	3.7	2	1.1	27	3.1	0	—
500–599	900	3.0	84.4	625	3.0	233	3.4	3	0.5	2	0.8	0	—	0	—	1	0.5	34	3.8	2	7.7
600–699	373	1.3	85.7	264	1.3	95	1.4	2	0.3	1	0.4	0	—	2	7.4	0	—	9	1.0	0	—
700–799	221	0.7	86.4	143	0.7	64	0.9	3	0.5	0	—	0	—	0	—	0	—	11	1.2	0	—

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1992—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
800–899	269	0.9	87.3	203	1.0	55	0.8	3	0.5	0	—	0	—	1	3.7	0	—	7	0.8	0	—
900–999	131	0.4	87.7	82	0.4	38	0.6	2	0.3	0	—	0	—	0	—	1	0.5	8	0.9	0	—
1,000–1,999	1,569	5.3	93.0	901	4.3	551	8.1	19	3.3	7	2.8	3	7.9	1	3.7	2	1.1	83	9.4	2	7.7
2,000–2,999	577	1.9	94.9	323	1.5	201	3.0	11	1.9	2	0.8	2	5.3	2	7.4	0	—	36	4.1	0	—
3,000–3,999	279	0.9	95.8	178	0.8	79	1.2	3	0.5	0	—	0	—	1	3.7	0	—	18	2.0	0	—
4,000–4,999	173	0.6	96.4	91	0.4	64	0.9	2	0.3	0	—	0	—	0	—	0	—	16	1.8	0	—
5,000–9,999	487	1.6	98.0	290	1.4	168	2.5	2	0.3	0	—	0	—	1	3.7	0	—	26	2.9	0	—
Over 9,999	537	1.8	99.8	311	1.5	200	3.0	7	1.2	2	0.8	1	2.6	0	—	0	—	16	1.8	0	—

[1] See Glossary of terms for definitions.

[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings as compared to situations shown in charts 1 and 2 of Chapter 1, which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1992; and Cumulative Totals, Fiscal Years 1936 Through 1992

	Fiscal Year 1992									July 5, 1935–Sept. 30, 1992	
	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	180	149	28	1	2	—	—	—	—	—	—
On petitions for review and/or enforcement	161	133	25	1	2	100.0	100.0	100.0	100.0	10,338	100.0
Board orders affirmed in full	118	98	20	0	0	73.7	80.0	0.0	0.0	6,794	65.7
Board orders affirmed with modification	12	11	0	1	0	8.3	0.0	100.0	0.0	1,415	13.7
Remanded to Board	8	5	3	0	0	3.8	12.0	0.0	0.0	508	4.9
Board orders partially affirmed and partially remanded	5	4	0	0	1	3.0	0.0	0.0	50.0	206	2.0
Board orders set aside	18	15	2	0	1	11.3	8.0	0.0	50 0	1,415	13.7
On petitions for contempt	19	16	3	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	1	1	0	0	0	6.3	0.0	—	—	—	—
Court orders holding respondent in contempt	13	11	2	0	0	68.8	66.7	—	—	—	—
Court orders denying petition	0	0	0	0	0	0.0	0.0	—	—	—	—
Court orders directing compliance without contempt adjudication	5	4	1	0	0	25.0	33.3	—	—	—	—
Contempt petitions withdrawn without compliance	0	0	0	0	0	0.0	0.0	—	—	—	—
Proceedings decided by U.S. Supreme Court[3]	1	1	0	0	0	100.0	—	—	—	251	100.0
Board orders affirmed in full	0	0	0	0	0	—	—	—	—	151	60.2
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.2
Board orders set aside	1	1	0	0	0	100.0	—	—	—	44	17.5
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.6
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.4
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases enforced	0	0	0	0	0	—	—	—	—	1	0.4

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.

[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.

[3] The Board appeared as "amicus curiae" in zero cases.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1992, Compared With 5-Year Cumulative Totals, Fiscal Years 1987 Through 1991[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1992	Total fiscal years 1987–1991	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1992		Cumulative fiscal years 1987–1991		Fiscal Year 1992		Cumulative fiscal years 1987–1991		Fiscal Year 1992		Cumulative fiscal years 1987–1991		Fiscal Year 1992		Cumulative fiscal years 1987–1991		Fiscal Year 1992		Cumulative fiscal years 1987–1991	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	161	884	118	73.3	686	77.6	12	7.5	48	5.4	8	4.9	46	5.2	5	3.1	29	3.3	18	11.2	75	8.5
1. Boston, MA	2	21	1	50.0	17	81.0	0	—	1	4.8	1	50.0	1	4.7	0	—	0	—	0	—	2	9.5
2. New York, NY	12	105	10	83.3	84	80.0	0	—	7	6.7	0	—	7	6.6	0	—	0	—	2	16.7	7	6.7
3. Phila., PA	17	98	15	88.2	91	93.0	0	—	2	2.0	1	5.9	2	2.0	0	—	2	2.0	1	5.9	1	1.0
4. Richmond, VA	12	64	7	58.3	42	65.6	2	16.7	6	9.4	0	—	4	6.3	0	—	1	1.6	3	25.0	11	17.1
5. New Orleans, LA	11	47	7	63.6	34	72.3	1	9.1	4	8.5	1	9.1	2	4.3	0	—	4	8.5	2	18.2	3	6.4
6. Cincinnati, OH	21	152	15	71.4	108	71.1	1	4.8	12	7.8	1	4.7	6	4.0	0	—	7	4.6	4	19.1	19	12.5
7. Chicago, IL	22	91	15	68.1	74	81.3	3	14.0	2	2.2	1	4.6	5	5.5	0	—	2	2.2	3	13.6	8	8.8
8. St. Louis, MO	13	42	9	69.2	28	66.7	3	23.1	5	11.9	0	—	0	—	0	—	0	—	1	7.7	9	21.4
9. San Francisco, CA	15	124	13	86.7	105	84.7	2	13.3	2	1.6	0	—	10	8.1	0	—	5	4.0	0	—	2	1.6
10. Denver, CO	6	25	5	83.3	19	76.0	0	—	2	8.0	0	—	1	4.0	1	16.7	0	—	0	—	3	12.0
11. Atlanta, GA	7	33	6	85.7	30	90.9	0	—	0	—	0	—	0	—	1	14.3	0	—	0	—	3	9.1
Washington, DC	23	82	15	65.2	54	65.8	0	—	5	6.1	3	13.0	8	9.8	3	13.0	8	9.8	2	9.0	7	8.5

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

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1992

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1992
		Pending in district court Oct. 1, 1991	Filed in district court fiscal year 1992		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total	34	10	24	29	17	4	8	0	0	0	5
8(a)(1)	1	1	0	1	0	0	1	0	0	0	0
8(a)(1)(3)	5	3	2	5	2	1	2	0	0	0	0
8(a)(1)(5)	8	1	7	6	4	1	1	0	0	0	2
8(a)(1)(2)(3)	1	1	0	0	0	0	0	0	0	0	1
8(a)(1)(2)(5)	3	3	0	3	0	0	3	0	0	0	0
8(a)(1)(3)(4)	0	0	0	0	0	0	0	0	0	0	0
8(a)(1)(3)(5)	12	0	12	10	8	2	0	0	0	0	2
8(a)(1)(2)(3)(5)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)(4)(5)	1	1	0	1	1	0	0	0	0	0	0
8(b)(1)	2	0	2	2	1	0	1	0	0	0	0
Under Sec. 10(l) total	26	7	19	21	2	2	9	3	3	2	5
8(b)(4)(A)	1	1	0	1	0	0	0	0	0	1	0
8(b)(4)(B)	15	4	11	12	1	1	6	2	2	0	3
8(b)(4)(D)	4	1	3	2	0	0	0	1	1	0	2
8(b)(7)(C)	4	0	4	4	1	0	3	0	0	0	0
8(e)	2	1	1	2	0	1	0	0	0	1	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1992

Type of litigation	Number of proceedings											
	Total—*all courts*			In *courts of appeals*			In *district courts*			In bankruptcy courts		
	Number decided	Court determination		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		Upholding Board position	Contrary to Board position
Totals—all types	21	17	4	9	6	3	12	11	1	0	0	0
NLRB-initiated actions or interventions	2	2	0	1	1	0	1	1	0	0	0	0
To enforce subpoena	2	2	0	1	1	0	1	1	0	0	0	0
To defend Board's jurisdiction	0	0	0	0	0	0	0	0	0	0	0	0
To prevent conflict between NLRA and other statutes	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	19	15	4	8	5	3	11	10	1	0	0	0
To review nonfinal orders	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from	6	6	0	2	2	0	4	4	0	0	0	0
Proceeding in R case	3	3	0	2	2	0	1	1	0	0	0	0
Proceeding in unfair labor practice case	2	2	0	0	0	0	2	2	0	0	0	0
Enforcing subpoena	0	0	0	0	0	0	0	0	0	0	0	0
Other; Post judgement discovery	1	1	0	0	0	0	1	1	0	0	0	0
To compel NLRB to	6	5.5	0.5	2	1.5	0.5	4	4	0	0	0	0
Issue complaint or prosecute complaint	3	3	0	1	1	0	2	2	0	0	0	0
Take action in R case	0	0	0	0	0	0	0	0	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	3	2.5	0.5	1	0.5	0.5	2	2	0	0	0	0
Other—Testify in D.C. Ct. action	0	0	0	0	0	0	0	0	0	0	0	0
Other	7	3.5	3.5	4	1.5	2.5	3	2	1	0	0	0
Application for EAJA fees	2	0.5	1.5	2	0.5	1.5	0	0	0	0	0	0
Nash Finch complaint	2	2	0	—	—	—	2	2	0	0	0	0
Contempt of discovery in FOIA	1	1	0	1	1	0	0	0	0	0	0	0
Motion to intervene in District Ct.	1	0	1	—	0	0	1	—	1	0	0	0
Objection to Board claim in bankruptcy	1	0	1	1	—	1	0	0	0	0	0	0

[1] FOIA cases are categorized regarding court determination depending on whether NLRB substantially prevailed.

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1992[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1991	0	0	0	0	0
Received fiscal 1992	10	9	1	0	0
On docket fiscal 1992	10	9	1	0	0
Closed fiscal 1992	10	9	1	0	0
Pending September 30, 1992	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1992[1]

Action taken	Total cases closed
	10
Board would assert jurisdiction	9
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	0
Denied	0

[1] See Glossary for of terms definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1992; and Age of Cases Pending Decision, September 30, 1992

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	46
2. Complaint to close of hearing	169
3. Close of hearing to issuance of administrative law judge's decision	153
4. Administrative law judge's decision to issuance of Board decision	216
5. Filing of charge to issuance of Board decision	509
B. Age[1] of cases pending administrative law judge's decision, September 30, 1992	417
C. Age[1] of cases pending Board decision, September 30, 1992	693
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	7
2. Notice of hearing to close of hearing	14
3. Close of hearing to—	
Board decision issued	200
Regional Director's decision issued	21
4. Filing of petition to—	
Board decision issued	272
Regional Director's decision issued	44
B. Age[2] of cases pending Board decision, September 30, 1992	177
C. Age[2] of cases pending Regional Director's decision, September 30, 1992	151

[1] From filing of charge.
[2] From filing of petition.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1992

I. Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
A. Number of applications filed	10
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	3
Denying fees	6
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$149,660.45
Recovered	$60,821.66
II. Petitions for review of Board Orders denying fees under 5 U.S.C. § 504.	
A. Awards granting fees (includes settlements)	3
B. Awards denying fees	0
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	$97,428.20
III. Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
A. Awards granting fees (includes settlements)	1
B. Awards denying fees	1
C. Amount of fees and expenses recovered	$10,000.00
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered	0