SIXTIETH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1995

PROPERTY OF THE UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SIXTIETH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1995

UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402 • 1996

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

NATIONAL LABOR RELATIONS BOARD

Members of the Board

WILLIAM B. GOULD IV, *Chairman*

JAMES M. STEPHENS[1]

MARGARET A. BROWNING

CHARLES I. COHEN

JOHN C. TRUESDALE[2]

Chief Counsels of Board Members

WILLIAM R. STEWART

ELINOR H. STILLMAN

DENNIS P. WALSH

HAROLD J. DATZ

SUSAN Z. HOLIK

JOHN J. TONER,[3] *Acting Executive Secretary*
JEFFREY D. WEDEKIND, *Acting Solicitor*
BERTON B. SUBRIN, *Director, Office of Representation Appeals*
DAVID S. DAVIDSON, *Chief Administrative Law Judge*
DAVID B. PARKER, *Director of Information*

Office of the General Counsel

FREDERICK L. FEINSTEIN, *General Counsel*
MARY JOYCE CARLSON, *Deputy General Counsel*

B. ALLAN BENSON[4]
Acting Associate General Counsel
Division of Operations Management

LINDA R. SHER[5]
Associate General Counsel
Division of Enforcement Litigation

BARRY J. KEARNEY[6]
Associate General Counsel
Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Term expired August 27, 1995.

[2] Recess appointment effective December 23, 1994, to replace Dennis M. Devaney whose term expired December 16, 1994.

[3] Effective June 11, 1995, to replace Joseph E. Moore as Acting Executive Secretary.

[4] Effective May 4, 1995, to replace William G. Stack who retired on May 3, 1995.

[5] Effective July 18, 1995.

[6] Effective August 20, 1995, to replace Robert E. Allen who retired on May 3, 1995.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., January 6, 1996.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixtieth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1995.

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.

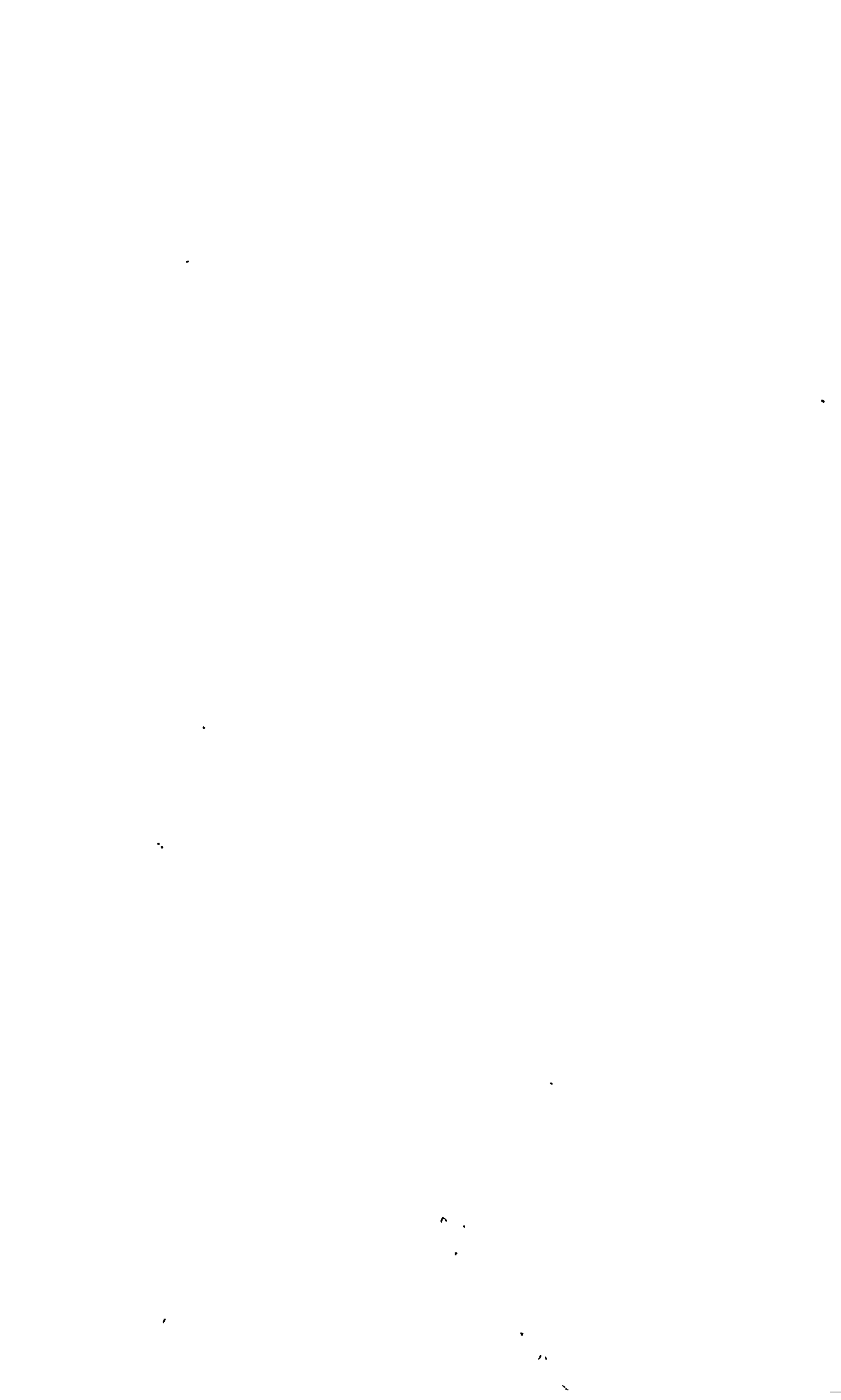


TABLE OF CONTENTS

CHAPTER	PAGE
I. Operations in Fiscal Year 1995	1
A. Summary	1
NLRB Administration	2
B. Operational Highlights	5
1. Unfair Labor Practices	5
2. Representation Cases	11
3. Elections	13
4. Decisions Issued	16
a. The Board	16
b. Regional Directors	17
c. Administrative Law Judges	18
5. Court Litigation	18
a. Appellate Courts	18
b. The Supreme Court	19
c. Contempt Actions	19
d. Miscellaneous Litigation	20
e. Injunction Activity	20
C. Decisional Highlights	21
1. Employers with Close Ties to Exempt Entities	22
2. *Excelsior* List	23
3. Surveillance of Union Activities	23
4. Employer Domination of a Labor Organization	24
5. Unilateral Changes	25
6. Union Interference with Employee Rights	26
7. Reimbursement of Negotiation and Litigation Expenses	27
D. Financial Statement	28
II. Board Procedure	29
A. Motion to Strike Respondent's Answer	29
B. Disciplinary Proceedings	29
III. NLRB Jurisdiction	33
A. Referral to National Mediation Board	33
B. Employers with Close Ties to Exempt Entities	35
C. Political Subdivision	37
IV. Representation Proceedings	39
A. Preelection Hearing	39
B. *Excelsior* List	42
C. Posting of Election Notices	43
D. Appropriate Unit Issues	44
E. Withdrawal from Multiemployer Bargaining Unit	45
F. Bars to an Election	46
1. Contract Bar	46
2. Recognition Agreement	47

CHAPTER PAGE

G. Election Objections 48
H. Mail Ballot Election 50
V. Unfair Labor Practices 53
A. Employer Interference with Employee Rights 53
1. Access to Employer Property 53
2. Surveillance of Union Activities 58
3. State Court Lawsuit 59
B. Employer Domination of a Labor Organization 60
C. Employer Discrimination Against Employees 63
D. Employer Bargaining Obligation 63
1. Continuing Bargaining Obligation 63
2. Multiemployer Bargaining 66
3. Unilateral Changes 70
4. Successor Employer 71
5. Certification Year Rule 72
E. Union Interference with Employee Rights 73
F. Remedial Order Provisions 75
1. Piercing the Corporate Veil 75
2. Liability of Parent Corporation 78
3. Compliance Stage Issues 79
4. Reimbursement of Negotiation and Litigation Expenses 80
5. WARN Payments not Offset to Limited Backpay Remedy 82
6. Failure to Comply with Exclusive Hiring Hall Provisions 83
VI. Supreme Court Litigation 85
VII. Enforcement Litigation 87
A. Protected, Concerted Activity 87
B. Employer's Right to Control Its Property 88
C. Remedial Bargaining Orders 89
VIII Injunction Litigation 93
A. Injunction Litigation Under Section 10(j) 93
B. Injunction Litigation Under Section 10(l) 97
IX. Contempt Litigation 101
X. Special Litigation 103
A. Litigation Under the Privacy Act 103
B. Litigation Concerning the Board's Subpoena Power 103
C. Litigation Concerning Preemption and the Board's Jurisdiction 104
Index of Cases Discussed 107
Appendix:
Glossary of Terms Used in Statistical Tables 109
Subject Index to Annual Report Tables 117
Statistical Tables for Fiscal Year 1995 119

TABLES

TABLE		PAGE
1.	Total Cases Received, Closed, and Pending, Fiscal Year 1995	119
1A.	Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1995	120
1B.	Representation Cases Received, Closed, and Pending, Fiscal Year 1995	121
2.	Types of Unfair Labor Practices Alleged, Fiscal Year 1995	122
3A.	Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1995	124
3B.	Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1995	125
3C.	Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1995	127
4.	Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1995	128
5.	Industrial Distribution of Cases Received, Fiscal Year 1995	130
6A.	Geographic Distribution of Cases Received, Fiscal Year 1995	132
6B.	Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1995	135
7.	Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1995	138
7A.	Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1995	141
8.	Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1995	142
9.	Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1995	143
10.	Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1995	144
10A.	Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1995	145
11.	Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1995	146
11A.	Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1995	147
11B.	Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1995	148
11C.	Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1995	149
11D.	Disposition of Objections in Representation Cases Closed, Fiscal Year 1995	149
11E.	Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1995	150
12.	Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1995	151
13.	Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1995	152
14.	Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1995	155
15A.	Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995	158
15B.	Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1995	161
15C.	Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1995	164
16.	Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995	167

TABLE PAGE

17. Size of Units in Representation Elections in Cases Closed, Fiscal Year 1995 170
18. Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1995 172
19. Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1995; and Cumulative Totals, Fiscal Years 1936 through 1995 174
19A. Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1995, Compared With 5-Year Cumulative Totals, Fiscal Years 1990 through 1994 175
20. Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1995 176
21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1995 177
22. Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1995 179
22A. Disposition of Advisory Opinion Cases, Fiscal Year 1995 179
23. Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1995; and Age of Cases Pending Decision, September 30, 1995 180
24. NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1995 180

CHARTS IN CHAPTER I

CHART PAGE

1. Case Intake by Unfair Labor Practice Charges and Representation Petitions 2
2. ULP Case Intake 4
3. Disposition Pattern for Unfair Labor Practice Cases 5
3A. Disposition Pattern for Meritorious Unfair Labor Practice Cases 7
3B. Disposition Pattern for Unfair Labor Practice Cases After Trial 8
4. Number of Unfair Labor Practice Cases Pending Under Preliminary Investigation, Month to Month 9
5. Unfair Labor Practice Merit Factor 10
6. Complaints Issued in Unfair Labor Practice Proceedings and Median Days From Filing to Complaint 11
7. Unfair Labor Practice Cases Settled 12
8. Administrative Law Judge Hearings and Decisions 13
9. Amount of Backpay Received by Discriminatees 14
10. Time Required to Process Representation Cases From Filing of Petition to Issuance of Decision 15
11. Contested Board Decisions Issued 16
12. Representation Elections Conducted 18
13. Regional Director Decisions Issued in Representation and Related Cases 19
14. Cases Closed 20
15. Comparison of Filings of Unfair Labor Practice Cases and Representation Cases 21

I

Operations In Fiscal Year 1995

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 1995, 39,935 cases were received by the Board.

The public filed 34,040 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 5579 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 316 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 1995, the five-member Board was composed of Chairman William B. Gould IV and Members James M. Stephens, Margaret A. Browning, Charles I. Cohen, and John C. Truesdale. Frederick L. Feinstein served as General Counsel.

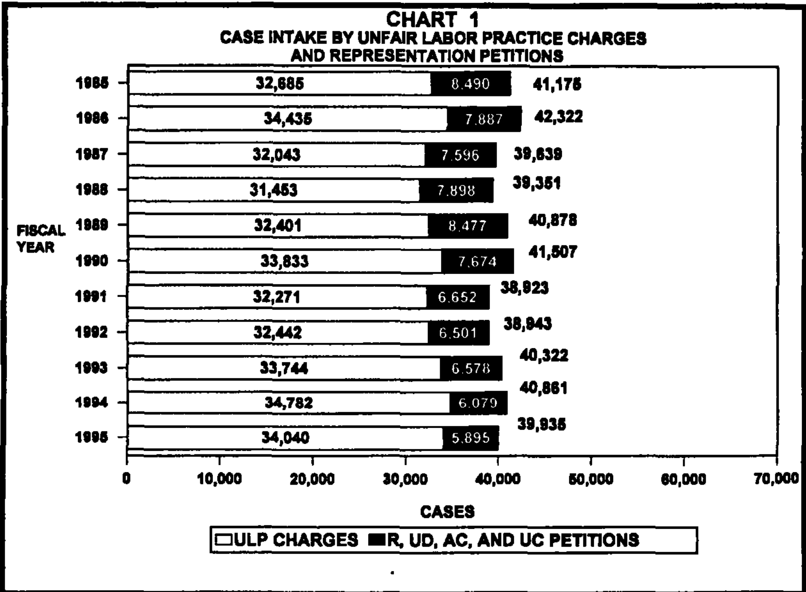
Statistical highlights of NLRB's casehandling activities in fiscal 1995 include:

- The NLRB conducted 3399 conclusive representation elections among some 188,951 employee voters, with workers choosing labor unions as their bargaining agents in 47.4 percent of the elections.
- Although the Agency closed 38,038 cases, 31,921 cases were pending in all stages of processing at the end of the fiscal year. The closings included 31,775 cases involving unfair labor practice charges and 5786 cases affecting employee representation and 477 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,320.

• The amount of $61,530,718 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 6603 offers of job reinstatements, with 4645 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 3618 complaints, setting the cases for hearing.

• NLRB's corps of administrative law judges issued 483 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.

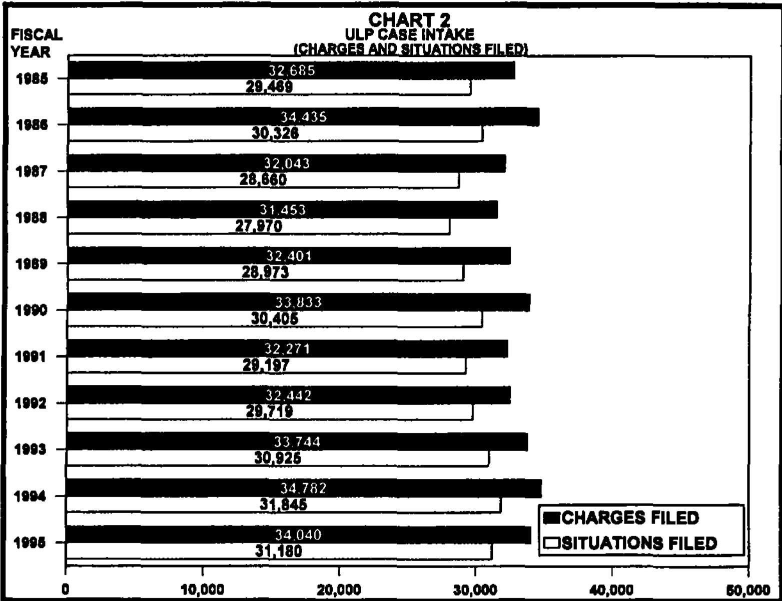
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1995.

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.

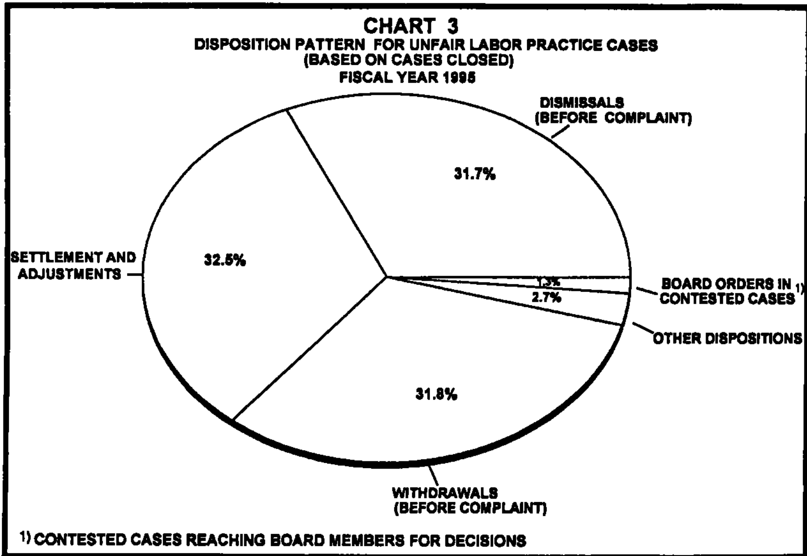
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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

In fiscal year 1995, 34,040 unfair labor practice charges were filed with the NLRB, a decrease of about 2 percent from the 34,782 filed in fiscal year 1994. In situations in which related charges are counted as a single unit, there was a 2.1-percent decrease from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 26,244 cases, about 1 percent more than the 26,058 of 1994. Charges against unions decreased about 11 percent to 7776 from 8697 in 1994.

There were 20 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 13,298 such charges in 55 percent of the total charges that employers committed violations.

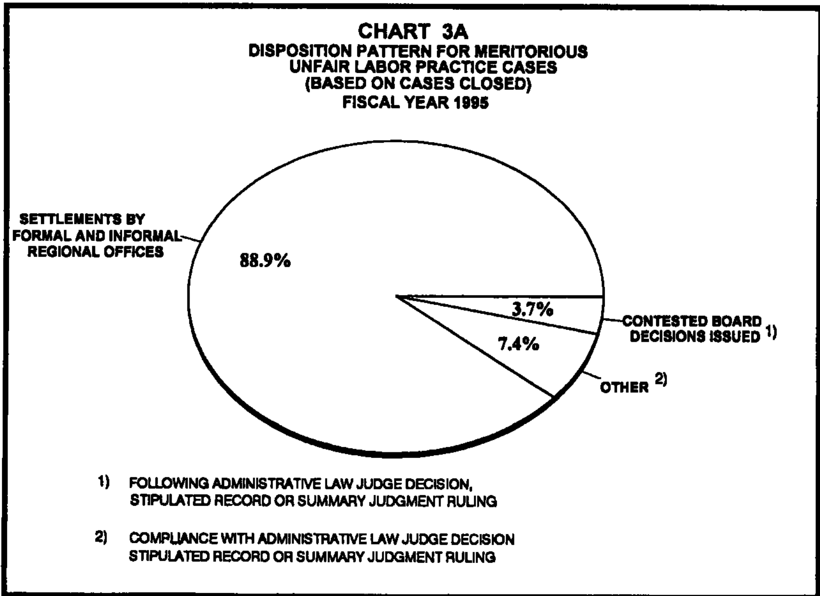
Refusal to bargain was the second largest category of allegations against employers, comprising 10,728 charges, in about 45 percent of the total charges. (Table 2.)

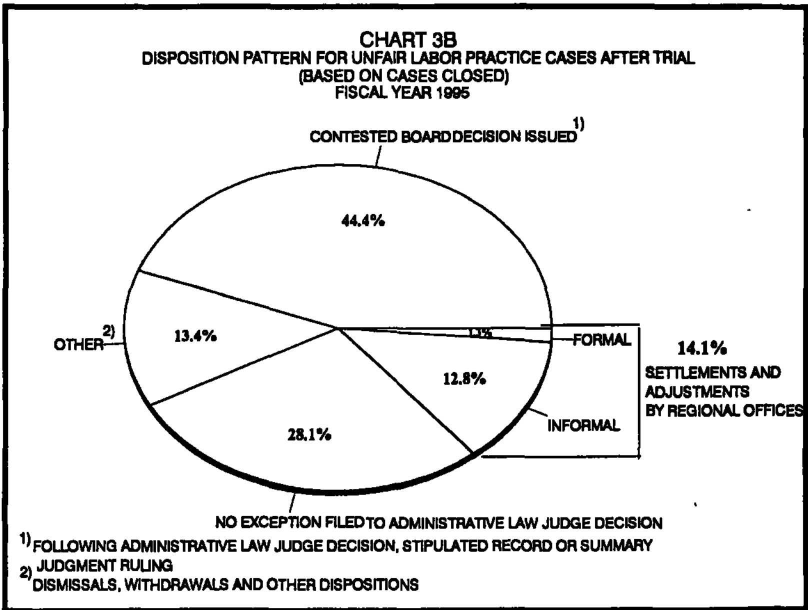
Of charges against unions, the majority (6748) alleged illegal restraint and coercion of employees, about 78 percent. There were 667 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of about 10 percent from the 743 of 1994.

There were 1141 charges (about 13 percent) of illegal union discrimination against employees, an increase of less than 1 percent from the 1134 of 1994. There were 98 charges that unions picketed illegally for recognition or for organizational purposes, compared with 114 charges in 1994. (Table 2.)

In charges filed against employers, unions led with 74 percent of the total. Unions filed 19,525 charges and individuals filed 6719.

Concerning charges against unions, 6180 were filed by individuals, or 79 percent of the total of 7776. Employers filed 1428 and other unions filed the 168 remaining charges.



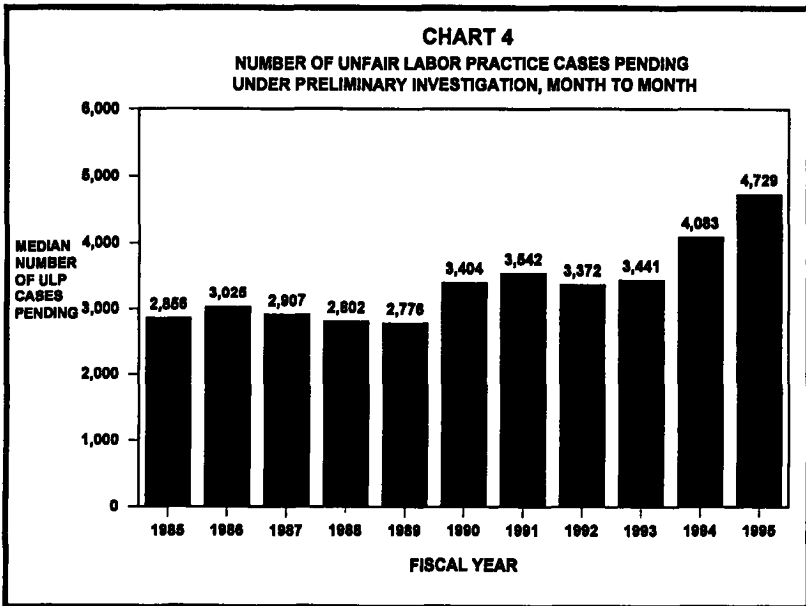


In fiscal year 1995, 31,775 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, the same as in 1994. During the fiscal year, 32.5 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 31.8 percent were withdrawn before complaint, and 31.7 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 1995, 37.5 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1995, precomplaint settlements and adjustments were achieved in 7358 cases, or 22.8 percent of the charges. In 1994, the percentage was 21.6. (Chart 5.)

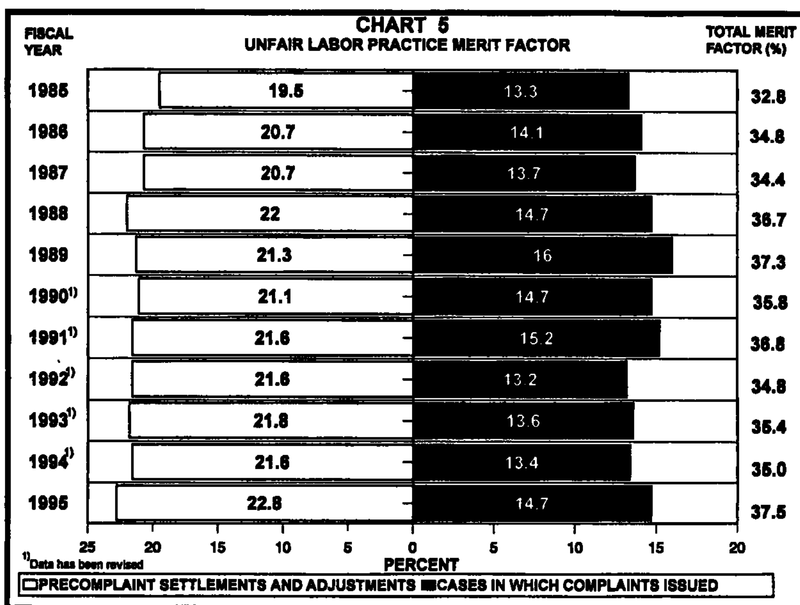
Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1995, 3618 complaints were issued, compared with 3539 in the preceding fiscal year. (Chart 6.)



Of complaints issued, 90.4 percent were against employers and 9.6 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 60 days. The 60 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 483 decisions in 720 cases during 1995. They conducted 492 initial hearings, and 5 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

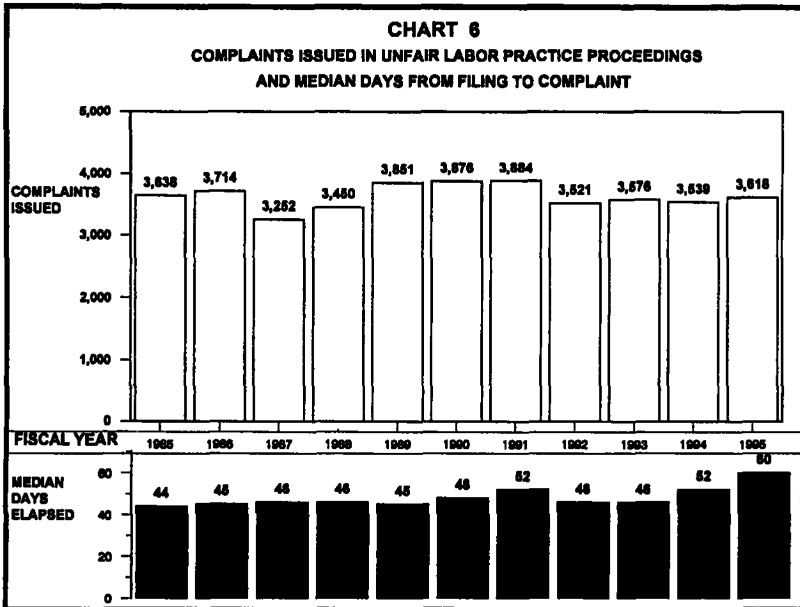


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 1995, the Board issued 657 decisions in unfair labor practice cases contested as to the law or the facts—558 initial decisions, 40 backpay decisions, 24 determinations in jurisdictional work dispute cases, and 35 decisions on supplemental matters. Of the 558 initial decision cases, 499 involved charges filed against employers and 59 had union respondents.

For the year, the NLRB awarded backpay of $60.3 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $1,257,993. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 6603 employees were offered reinstatement, and 70 percent accepted.

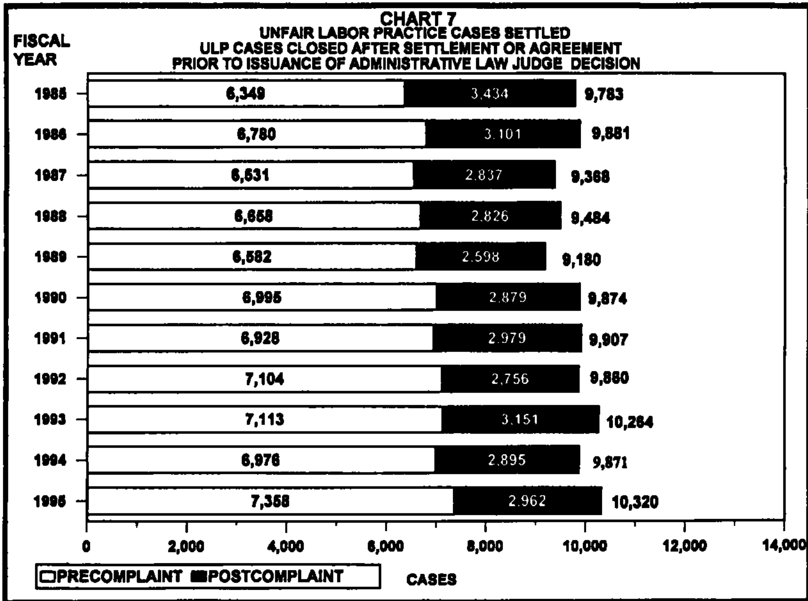
At the end of fiscal 1995, there were 31,921 unfair labor practice cases being processed at all stages by the NLRB, compared to 30,024 cases pending at the beginning of the year.



2. Representation Cases

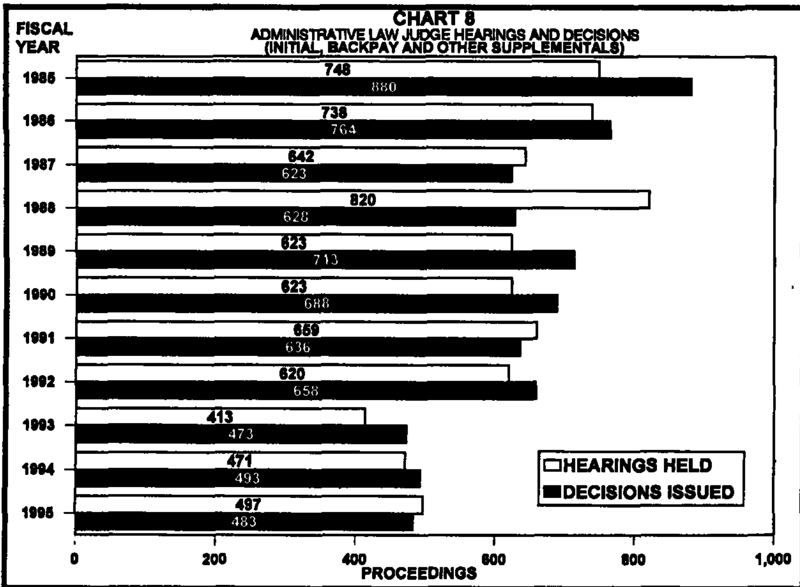
The NLRB received 5895 representation and related case petitions in fiscal 1995, compared to 6079 such petitions a year earlier.

The 1995 total consisted of 4494 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 971 petitions to decertify existing bargaining agents; 114 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 285 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 31 amendment of certification petitions were filed.



During the year, 6263 representation and related cases were closed, compared to 6205 in fiscal 1994. Cases closed included 4756 collective-bargaining election petitions; 1030 decertification election petitions; 110 requests for deauthorization polls; and 367 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 14.4 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 36 cases where the Board directed elections after transfers of cases from the Regional Office. (Table 10.) There was one case that resulted in an expedited election pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

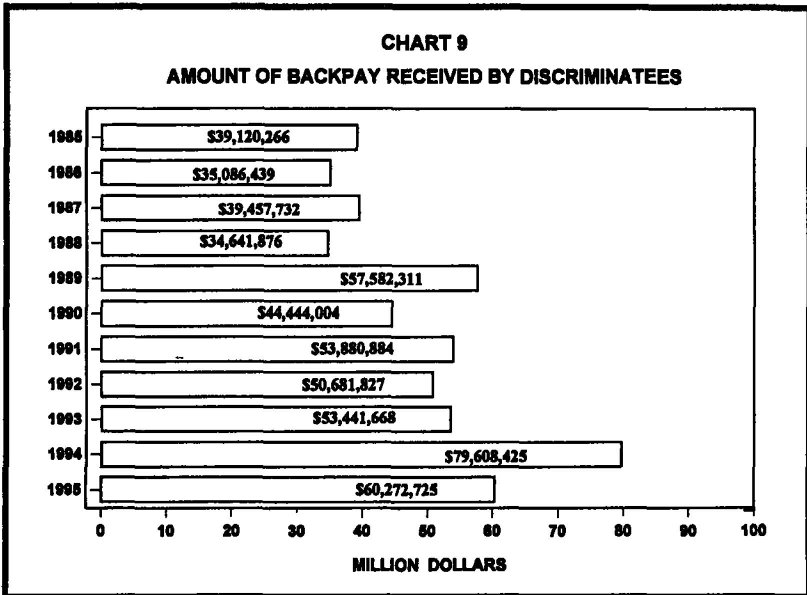


3. Elections

The NLRB conducted 3399 conclusive representation elections in cases closed in fiscal 1995, compared to the 3572 such elections a year earlier. Of 215,137 employees eligible to vote, 188,951 cast ballots, virtually 9 of every 10 eligible.

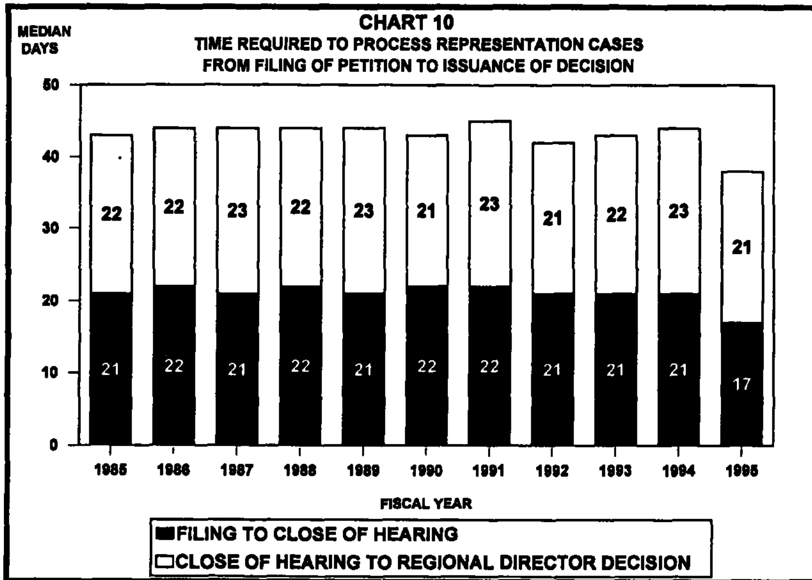
Unions won 1611 representation elections, or 47.4 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 86,678 workers. The employee vote over the course of the year was 88,311 for union representation and 100,640 against.

The representation elections were in two categories—the 2911 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 488 decertification elections determining whether incumbent unions would continue to represent employees.



There were 3296 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1525, or 46.3 percent. In these elections, 82,441 workers voted to have unions as their agents, while 98,795 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 80,017 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 103 multiunion elections, in which 2 or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by 1 of the unions in 86 elections, or 83.5 percent.

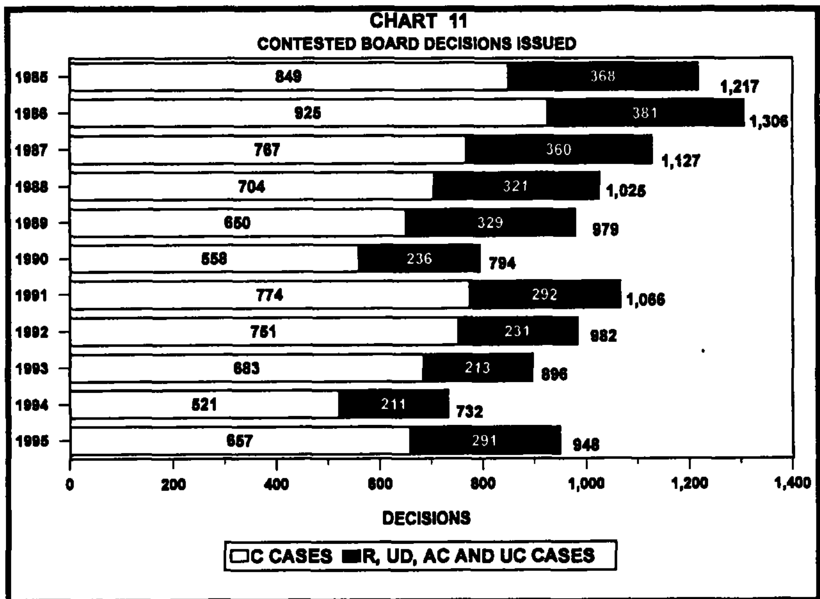


As in previous years, labor organization results brought continued representation by unions in 143 elections, or 29.3 percent, covering 9958 employees. Unions lost representation rights for 12,245 employees in 345 elections, or 70.7 percent. Unions won in bargaining units averaging 70 employees, and lost in units averaging 35 employees. (Table 13.)

Besides the conclusive elections, there were 233 inconclusive representation elections during fiscal year 1995 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 13 referendums, or 41.9 percent, while they maintained the right in the other 18 polls which covered 1141 employees. (Table 12.)

For all types of elections in 1995, the average number of employees voting, per establishment, was 56, compared to 52 in 1994. About 73 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 1371 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1179 decisions rendered during fiscal year 1994.

A breakdown of Board decisions follows:

Total Board decisions			1,371
Contested decisions			948
Unfair labor practice decisions		657	
Initial (includes those based on stipulated record)	558		
Supplemental	35		
Backpay	40		
Determinations in jurisdictional disputes	24		
Representation decisions		275	
After transfer by Regional Directors for initial decision	3		

After review of Regional Director decisions	48		
On objections and/or challenges	224		
Other decisions		16	
Clarification of bargaining unit	13		
Amendment to certification	0		
Union-deauthorization	3		
Noncontested decisions			**423**
Unfair labor practice	240		
Representation	180		
Other	3		

The majority (69 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.)

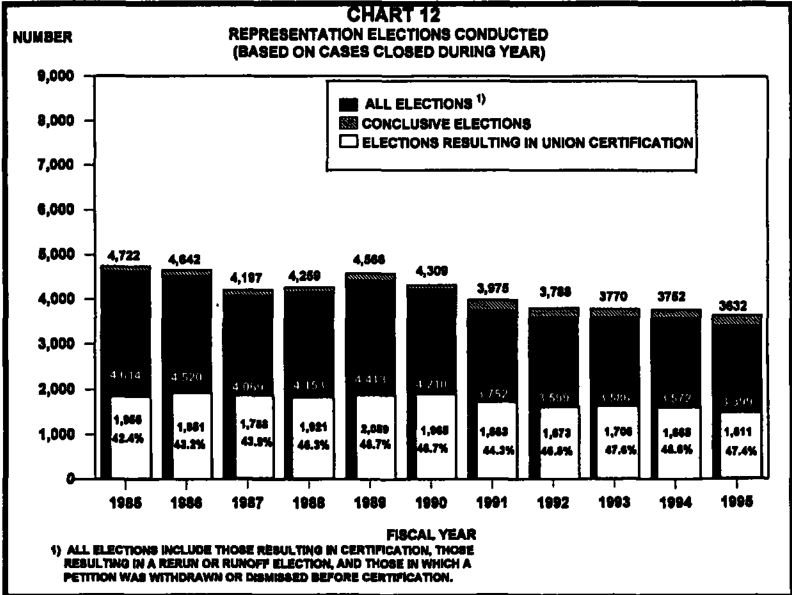
In fiscal 1995 about 4 percent of all meritorious charges and 44 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times longer to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 853 decisions in fiscal 1995, compared to 889 in 1994. (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 403 decisions and conducted 497 hearings. (Chart 8 and Table 3A.)



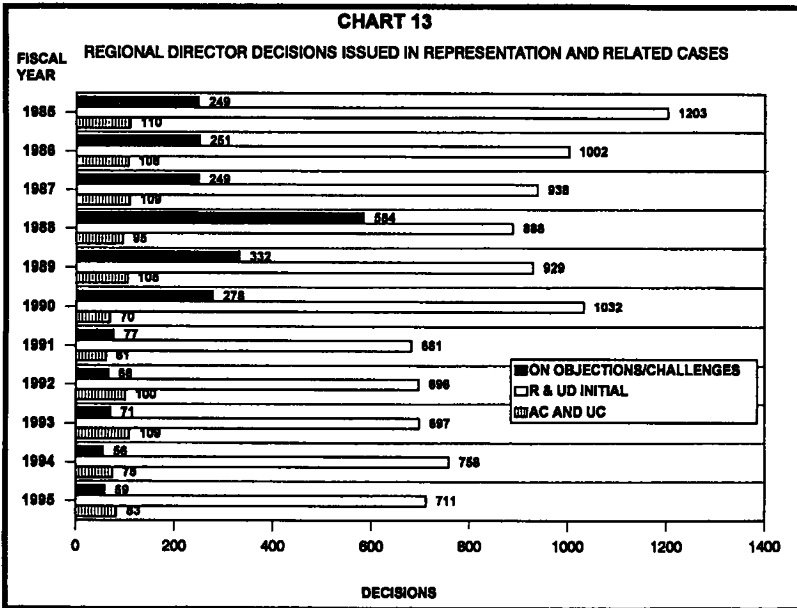
5. Court Litigation

a. Appellate Courts

The National Labor Relations Board is involved in more litigation in the United States courts of appeals than any other Federal administrative agency.

In fiscal year 1995, 120 cases involving the NLRB were decided by the United States courts of appeals compared to 142 in fiscal year 1994. Of these, 72.5 percent were won by NLRB in whole or in part compared to 77.5 percent in fiscal year 1994; 7.5 percent were remanded entirely compared to 7.7 percent in fiscal year 1994; and 20.0

percent were entire losses compared to 14.8 percent in fiscal year 1994.

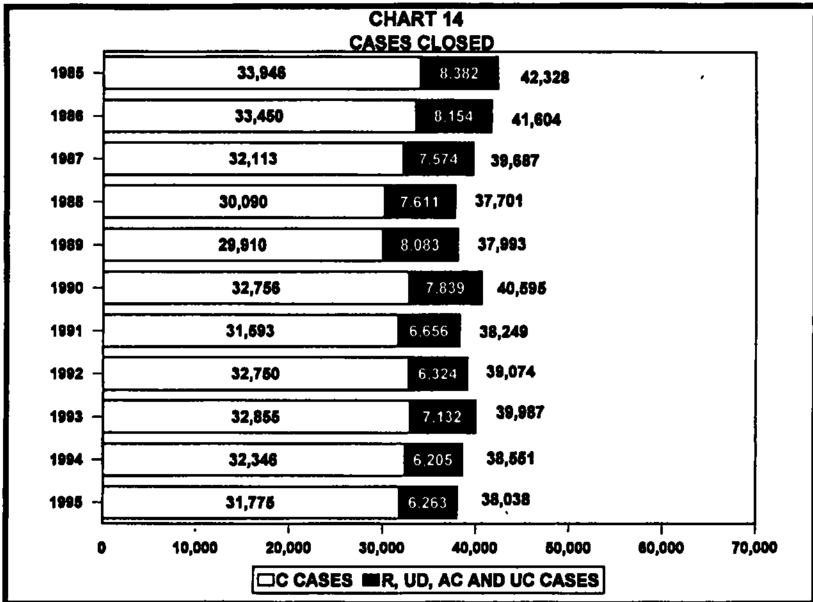


b. The Supreme Court

In fiscal 1995, there were no Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 1995.

c. Contempt Actions

In fiscal 1995, 112 cases were referred to the contempt section for consideration of contempt action. There were 20 contempt proceedings instituted. There were 16 contempt adjudications awarded in favor of the Board; 4 cases in which the court directed compliance without adjudication; and there were no cases in which the petition was withdrawn.



d. Miscellaneous Litigation

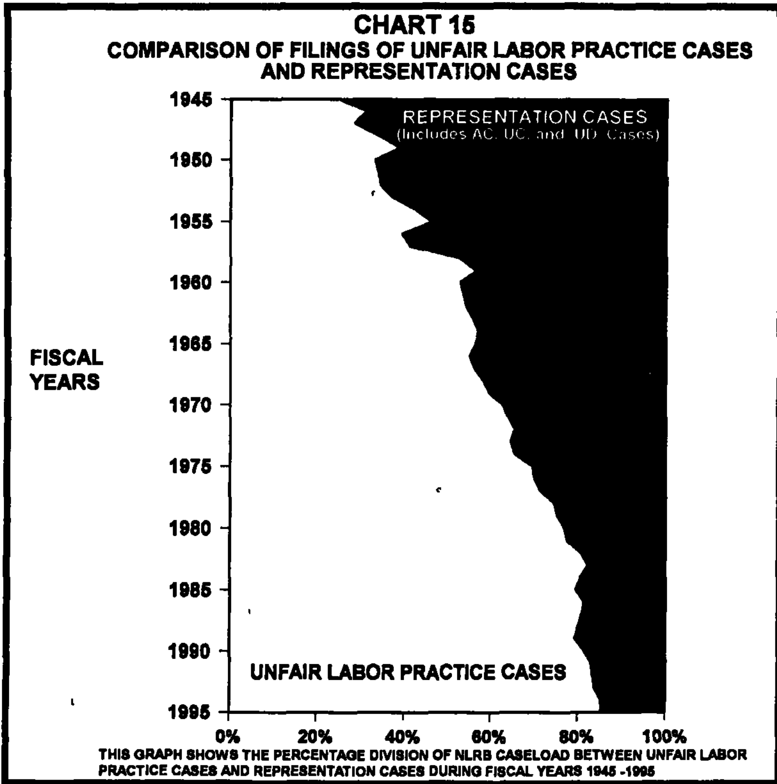
There were 34 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 32 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 104 petitions filed with the U.S. district courts, compared to 82 in fiscal year 1994. (Table 20.) Injunctions were granted in 50, or 78 percent, of the 64 cases litigated to final order.

NLRB injunction activity in district courts in 1994:

Granted	50
Denied	14
Withdrawn	5
Dismissed	2
Settled or placed on court's inactive lists	39
Awaiting action at end of fiscal year	19



C. Decisional Highlights

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

1. Employers with Close Ties to Exempt Entities

In *Management Training Corp.*,[1] the Board asserted jurisdiction over the employer, the operator of a job corps center pursuant to a contract with the United States Department of Labor (DOL). In doing so, the Board overruled *Res-Care, Inc.*[2] and established a new test for the assertion of jurisdiction over employers who operate under contracts with governmental entities. In determining jurisdiction, "the Board will only consider whether the employer meets the definition of 'employer' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards."

The Board had held in *Res-Care* that it would not assert jurisdiction over an employer with close ties to an exempt government entity unless the employer had sufficient control over the employment conditions of its employees to enable it to engage in meaningful bargaining. Bargaining was found meaningful only if the employer retained control over "the entire package of employee compensation, i.e., wages and fringe benefits."[3]

After careful consideration of *Res-Care* and its progeny, the Board decided that the test set forth in *Res-Care* was "unworkable and unrealistic," and that "whether there are sufficient employment matters over which unions and employers can bargain is a question better left to the parties at the bargaining table and, ultimately, to the employee voters in each case."

In reaching this conclusion, the Board noted that it had asserted jurisdiction in other cases where the facts were quite similar to *Res-Care*,[4] and thus "the Board's approach in this area had been far from uniform." The Board also thought that *Res-Care*'s emphasis on economic matters was "an oversimplification of the bargaining process" since the parties' primary interest may be in the noneconomic area. The Board also recognized that effective bargaining already occurs in the public sector where economic benefits play only a minor role. Moreover, the fact that the employer's ability to bargain over wages and benefits is constrained by its contract with the Government does not mean that bargaining is meaningless. In such situations the employers are not unlike other employers whose ability to bargain is circumscribed by limited financial resources or competitive considerations. In addition, by establishing a clear jurisdictional standard, the Board eliminated costly and wasteful litigation concerning an employer's alleged inability to meaningfully bargain about wages and benefits.

---

[1] 317 NLRB 1355 (Chairman Gould and Members Browning and Truesdale; Member Stephens concurring; Member Cohen dissenting).

[2] 280 NLRB 670 (1986).

[3] Id. at 674.

[4] See, for example, *FKW, Inc.*, 308 NLRB 598 (1992); *Community Interactions-Bucks County*, 288 NLRB 1029 (1988); *Community Transit Services*, 290 NLRB 1167 (1988); *Dynaelectron Corp.*, 286 NLRB 302 (1987).

2. *Excelsior* List

In *North Macon Health Care Facility*,[5] the Board held that the employer was required to provide the union with the full names and addresses of eligible employees in an upcoming election under the Board's *Excelsior*[6] rule.

The majority noted that the Board's established *Excelsior* rule requires employers to provide a union petitioning for an election with a list of the names and addresses of unit employees so that the union will be able to communicate with the employees its arguments in favor of representation. Applying these principles to the facts of the case, the Board found that the employer failed to comply with its *Excelsior* obligations when it turned over a list of employees that contained only last names and first initials, as well as addresses.[7] The Board noted that the employer had a list with the full names of employees, but had deliberately replaced the first names with initials in the list to be turned over to the union. Finding nothing in its *Excelsior* decision that would indicate that anything less than full names of employees was called for to comply with the rule, the Board concluded that the employer's deletion of the first names was a violation of the *Excelsior* rule, overruling prior inconsistent cases.[8]

The Board also found that retroactive application of the clarification that *Excelsior* required full names was appropriate in the circumstances. Noting that retroactive application was the normal procedure for application of a rule of law, the Board found no evidence that employers would be prejudiced by retroactive application in this setting. Thus, the Board perceived no evidence that the requirement that full names be provided would impose any additional burden on employers. Moreover, to the extent that retroactive application required the holding of a second election, the Board held that the burden of participating in an election is minor, especially as employers are not required to permit the election to be held during work hours or on their premises. Although the Board recognized that a second election might result in a certification of representative, whereas the first election did not, the Board declined to find prejudice from this possibility as any such certification would reflect the desires of employees concerning representation.

3. Surveillance of Union Activities

In *St. Mary's Hospital*,[9] the Board found that an employer did not engage in unlawful surveillance of union activities where the employer's agent observed nonemployee union organizers distributing leaflets to nonemployees near the employer's property.

---

[5] 315 NLRB 359 (Chairman Gould and Members Stephens and Devaney; Member Cohen dissenting).

[6] *Excelsior Underwear*, 156 NLRB 1236 (1966). See also *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

[7] Twenty-three percent of the addresses on the list provided by the employer were incorrect. Chairman Gould and Member Devaney also would have set aside the election based on the number of incorrect addresses. However, Member Stephens found it unnecessary to reach this issue.

[8] See *St. Francis Hospital*, 249 NLRB 180 (1980).

[9] 316 NLRB 947 (Chairman Gould and Member Cohen; Member Browning dissenting).

Nonemployee union agents leafleted at various locations of the employer's facility, including the visitor's parking garage. After the employer's security guard asked them to leave the employer's property, they leafleted from an adjacent public sidewalk. The security guard stood nearby and observed the leafleting, taking notes when a driver would accept a leaflet.

The Board found that there was no evidence that the employer's activities were directed at, or observed by, any of its employees. The Board distinguished the case from cases involving actual surveillance of employees where the employees were unaware of being observed, as the complaint alleged that the employer "created the impression among its employees that their union activities were under surveillance by [the employer]." Thus evidence of employee awareness of surveillance was necessary to sustain the allegation.

4. Employer Domination of a Labor Organization

In *Keeler Brass Co.*,[10] the full Board held that the Keeler Brass Grievance Committee is a "labor organization" as defined by Section 2(5) of the Act, and that respondent unlawfully dominated the reformation of the committee and unlawfully interfered with its administration thereafter in violation of Section 8(a)(2). Applying *Electromation, Inc.*,[11] and *E. I. du Pont & Co.*,[12] the Board found that actual domination was established by the respondent's specific acts of recreating the committee, modifying and amending it, and determining its structure and function. The Board ordered the respondent to disband the grievance committee set up for plants in Kentwood and Grand Rapids, Michigan.

Parsing the statute, the Board found that a Section 2(5) labor organization is defined in terms of certain critical elements: whether employees participate; whether the entity in question addresses "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work"; and whether it has a purpose, in whole or in part, of "dealing with" the employer about the foregoing subject matters. The Board found all of these elements present.

It was undisputed that employees participated in the committee. The Board found that the committee handled Section 2(5) subject matters. The committee was set up to, and did in fact, address "grievances." In addition, the committee addressed the "no-call, no-show" policy, clearly a term or condition of employment. The Board found that the actual functions of the committee showed that it existed for the purpose, at least in part, of "dealing with" the respondent concerning grievances and other conditions of employment.

The Board relied on *NLRB v. Cabot Carbon Co.*,[13] in which the Supreme Court held that the term "dealing with" in Section 2(5) is

[10] 317 NLRB 1110 (Members Stephens, Browning, Cohen, and Truesdale; Chairman Gould concurring).
[11] 309 NLRB 990 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994).
[12] 311 NLRB 893 (1993).
[13] 360 U.S. 203, 210–211 (1959).

broader than the term "bargaining" and applies to situations beyond the negotiation of a collective-bargaining agreement.

The Board found that the Keeler Brass Committee, like the employee committees in *Cabot Carbon*, existed, at least in part, for the purpose of dealing with the respondent concerning grievances. The Board found that the record reflected several instances within the 10(b) limitations period, in which the respondent and the committee dealt with one another concerning grievances and terms and conditions of employment. The Board found that this record evidence showed that the grievance procedure functioned as a bilateral mechanism, in which the respondent and the committee went back and forth explaining themselves until an acceptable result was achieved. Because the respondent and the committee dealt with one another concerning grievances and other conditions of work and because the committee met all other aspects of the statutory test set forth above, the Board concluded that the Keeler Brass Grievance Committee was a statutory labor organization.

The Board next addressed whether the respondent unlawfully dominated or interfered with the committee, and set aside the administrative law judge's conclusion that the committee was set up in 1983 at the suggestion of employees. It concluded that the judge had ignored strong documentary evidence that the company's human resources department established the original committee, and drafted its purposes and goals. Further, the Board relied on the employer's subsequent remolding of the committee in 1991 to reduce the number of members, to change the days of its meetings, and to require management approval of any special meetings. The Board also observed that management set up elections for committee members, posted sign up sheets, approved the candidates, counted the ballots, and announced the victors.

The Board concluded that the Keeler Brass Grievance Committee, as created in 1983 and reformed in 1991, had no independent authority apart from its dealings with management through consultation or ex parte talks after the making of initial or tentative recommendations on grievances. It concluded that management and the committee dealt with one another concerning grievances or other conditions of work.

5. Unilateral Changes

In *Daily News of Los Angeles*,[14] the Board reaffirmed its original holding[15] that under the Supreme Court's decision in *NLRB v. Katz*[16] the respondent's annual award of discretionary merit wage increases to unit employees was an existing term and condition of employment and that the respondent's unilateral discontinuance of those increases during bargaining for an initial contract violated Section 8(a)(5). The Board's decision was in response to the D.C. Circuit's denial of enforcement and remand of the Board's original decision to reconsider

---

[14] 315 NLRB 1236 (Chairman Gould and Member Browning; Members Stephens and Cohen concurring).
[15] 304 NLRB 511 (1991).
[16] 369 U.S. 736 (1962).
[17] *Daily News of Los Angeles v. NLRB*, 979 F.2d 1571 (D.C. Cir. 1992).

whether *Katz*, which addressed only the prohibition against unilateral *continuance* of discretionary merit wage increases, applied with equal force to situations like *Daily News* involving the unilateral *discontinuance* of merit wages.[17] Relying on well-established Board and court precedent, the Board explained that *Katz* prohibits both the unilateral continuance and the unilateral discontinuance of a discretionary merit raise program, as in *Daily News*, it constitutes a change in employment conditions under Section 8(d) of the Act.

In further response to issues raised by the court's remand, the Board held that unilateral discontinuance of merit increases cannot be regarded as a lawful economic weapon in the same sense that the "harassing tactics" in *NLRB v. Insurance Agents*[18] and the lockout in *American Ship Building Co. v. NLRB*[19] were found to be lawful economic weapons. And with regard to the court's concern as to how, assuming a violation, the Board can devise an acceptable remedy that makes employees whole for a loss of wages that are based on employer discretion, the Board noted that it need only adopt a formula that reasonably approximates the amount due employees and that such a formula was capable of being devised in this case.

6. Union Interference with Employee Rights

In *Laborers Local 324 (AGC of California)*,[20] the Board majority found that the union violated Section 8(b)(1)(A) of the Act by adopting a no-solicitation/no-distribution rule for the sole purpose of prohibiting member Douglas Murray from disseminating dissident literature in which he protested the decisions of the union's officers, criticized their actions, and urged other members to do the same and by threatening Murray with enforcement of the rule.

Douglas Murray, an active member of the union, edits and publishes a newsletter containing articles critical of the union leadership. Beginning in 1988, Murray distributed his literature at the union's three hiring halls. In June 1989, the union called the police to remove Murray from one of the hiring halls. After the police refused to remove Murray in the absence of a rule prohibiting distribution, the union adopted a no-solicitation/no-distribution rule for its hiring halls. Several weeks later, as Murray attempted to distribute his literature outside the hiring hall, the union threatened to call the police if he did not leave.

The majority acknowledged that unions are afforded "wide latitude in promulgating rules governing their internal affairs." Applying *Scofield v. NLRB*,[21] the majority concluded, however, that the union's rule failed to satisfy the test articulated by the Supreme Court for evaluating the lawfulness of a union rule and its enforcement. Noting the absence of any evidence that Murray's distribution of literature disrupted meetings or interfered with the operation of the hiring hall,

[18] 361 U.S. 477 (1960).
[19] 380 U.S. 300 (1965).
[20] 318 NLRB No. 66 (Chairman Gould and Members Stephens and Cohen; Members Browning and Truesdale dissenting).
[21] 394 U.S. 423 (1969).

the admissions by the union's agents that the sole motivation in adopting the rule was to silence Murray, and the adoption of the rule only after the police refused to arrest Murray in the absence of a rule, the majority found that the rule failed to reflect a legitimate union interest. In determining whether a union's conduct impairs the national labor policy, the majority concluded that the Board is free to examine, inter alia, the union's motive for engaging in that conduct, and that the union's no-solicitation/no-distribution rule was aimed at stifling the kind of free speech that Congress sought to protect under the Labor-Management Reporting and Disclosure Act.

The majority noted that, although the union did not subject Murray to any formal internal union disciplinary action or threaten to do so, the union threatened Murray with arrest. Declining to make a distinction between the threat of union discipline for exercising a protected right and the threat of arrest, the majority concluded that the result in either case is unlawful coercion.

7. Reimbursement of Negotiation and Litigation Expenses

In *Frontier Hotel & Casino*,[22] the Board ordered the respondent to reimburse the charging party unions for the negotiation expenses they incurred as a result of the respondent's extreme surface bargaining conduct. The Board held that such reimbursement is appropriate where the respondent has engaged in "unusually aggravated misconduct" that has so "infected the core of the bargaining process" that the Board's traditional remedies cannot eliminate the effects of the unlawful conduct. The Board further ordered the respondent to reimburse the unions and the General Counsel for their litigation expenses, based on the respondent's pursuit of frivolous litigation as well as its egregious bad faith in the litigation and the underlying conduct. In this regard, the Board found that the respondent had engaged in flagrant, deliberate, and pervasive surface bargaining.

In considering the reimbursement of litigation expenses, the Board relied on the standard articulated in *Heck's Inc.*,[23] that the Board will order such reimbursement where the respondent's defenses are "frivolous" rather than "debatable." The Board found that Frontier's defense was not debatable where the testimony of its only witness concerning the surface bargaining allegation "consisted of unresponsive, aggressive, and flagrantly disrespectful remarks," and was deemed by the judge to be utterly lacking in credibility.

The Board further held that, where a respondent has engaged in "flagrant, aggravated, persistent, and pervasive misconduct," such as the extreme surface bargaining by Frontier, the egregiousness of the conduct constitutes an additional basis for ordering the reimbursement of litigation expenses.

---

[22] 318 NLRB No. 60 (Chairman Gould and Members Browning and Truesdale).

[23] 215 NLRB 765 (1974).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1995, are as follows in thousands of dollars:

Item	Amount
Personnel compensation	$115,376
Personnel benefits	20,313
Travel and transportation of persons	3,340
Transportation of things	126
Rent, communications, and utilities	23,860
Printing and reproduction	277
Other services	7,596
Supplies and materials	1,684
Equipment	2,755
Insurance claims and indemnities	95
Total obligations and expenditures[9]	$175,422

[24] Includes $25,615 for reimbursables from Agriculture (Fitness Facility).

II
Board Procedure

A. Motion to Strike Respondent's Answer

In *Coronet Foods*,[1] the Board denied, in part, the General Counsel's motion to strike the respondent's answers to a backpay specification, or alternatively for summary judgment. Although the Board agreed with the General Counsel that the respondent's original answer was procedurally deficient, and that such defective answers usually are struck,[2] it found that the respondent promptly filed an amended answer curing the procedural defects.[3] Similarly, the Board found that although the respondent's original answer contained numerous substantive defects,[4] most defects were cured in subsequent answers which the Board accepted.[5]

The Board did strike some of the respondent's substantive arguments, however, including its claim that backpay could not exceed the rate the respondent paid to subcontractor employees who performed the disciminatees' work during the backpay period. The Board stated that "any lesser wage rates paid subcontractor employees are not an appropriate standard for determining backpay owed the discriminatees."[6] The Board also rejected the respondent's argument that backpay could not be based on hours worked or miles driven that violated state or Federal law. The Board held that the respondent could not rely on its own unlawful conduct as a basis for limiting backpay, and that, in any event, it was "not requiring the Respondent to violate the law; rather, we are ordering it to make whole its 25 employees for that which they would have earned but for the Respondent's discrimination."[7]

B. Disciplinary Proceedings

In re: Joel I. Keiler,[8] the Board found that Joel I. Keiler, the attorney for the respondent at a hearing before an administrative law judge in *Barbary Coast Hotel & Casino*, Case 28–CA–9902, et al., engaged in "misconduct of an .aggravated character" warranting discipline

[1] 316 NLRB 700 (Members Stephens, Cohen, and Truesdale).
[2] *Contractors Excavating*, 270 NLRB 1189, 1190 (1984).
[3] *Vibra-Screw, Inc.*, 308 NLRB 151, 152 (1992).
[4] *Shenandoah Coal Co.*, 312 NLRB 30 (1993).
[5] See generally *Toledo 5 Auto/Truck Plaza*, 306 NLRB 842, 843 (1992).
[6] *Hansen Bros. Enterprises*, 313 NLRB 599, 603 (1993).
[7] *Coronet Foods*, supra at 702.
[8] 316 NLRB 763 (Chairman Gould and Members Stephens, Browning, Cohen, and Truesdale).

under Section 102.44(b) of the National Labor Relations Board's Rules and Regulations in the form of a 1-year suspension from practice before the Board.

At various times during the *Barbary Coast* hearing, Attorney Keiler repeatedly and intentionally labeled counsel for the General Counsel, Cornele Overstreet, a "liar" and accused him of committing "a fraud upon the Court." In one such exchange, Keiler directed the following remarks at counsel for the General Counsel:

> He's [Overstreet's] a liar. He lied to the Board. He's lied to me. Your Honor, you've chastised me very often for calling this gentleman [Overstreet] a liar. I'm doing it again. I think that Mr. Overstreet has committed a fraud upon the Court.

Keiler's misconduct also included obstruction and delay of the hearing and misrepresentations to the judge. The hearing in *Barbary Coast* opened on August 7, 1990. During the week before the hearing opened, the General Counsel sought to serve a subpoena duces tecum on Michael John Gaughah, respondent's managing partner, seeking production of a variety of documents. A receipt showing service was signed by the respondent's general manager, Leo Lewis. Keiler filed a petition to revoke. When Judge Boyce asked Keiler if he was contending that the subpoena was never received, Keiler responded: "No, I'm contending the subpoena was made out to a person, G-U-A-G-H-A-N, there is no such person." The Board found that filing a petition to revoke a subpoena based on a typographical error was "absurd" and "frivolous."

A second subpoena served on the respondent in November 1990 requested production of a variety of documents, including Keiler's notes from collective-bargaining negotiations with the union. Keiler did not comply with the subpoena duces tecum. He also failed to provide any explanation for first promising to do so and later announcing that he had not complied. Keiler's tactics forced the General Counsel to apply to the district court for enforcement which was granted March 13, 1991. Keiler supplied the General Counsel with his bargaining notes on the last day of the hearing, July 17, 1991, 7 months after Judge Boyce directed him to comply. Keiler also prolonged the hearing by refusing to verify subpoenaed documents.

The Board found, in agreement with the judge, that Keiler's conduct "prolong[ed] things pointlessly," that "this sort of thing is obstructionist" and "serves no constructive purpose at all." In deciding to suspend Keiler from practice before the Board for 1 year, the Board, noting Keiler's inappropriate and unprofessional conduct in other Board proceedings, wrote:

> Prior warnings and admonitions clearly have made no impression on Keiler and, indeed, have had little, if any, effect on his behavior before the Board. To the contrary, Keiler has blatantly ignored prior warnings and admonitions and chose to pursue the same course of unprofessional, inappropriate, and unethical conduct

which has marked his appearance in other cases before this Agency.

. . . We are no longer willing, as we have in the past, to limit our expressions of disapproval to a warning or admonition to refrain from such conduct in the future.

Keiler's failure to heed prior warnings and admonitions persuades us that the time has come to impose stronger disciplinary action which, we trust, will drive home to Keiler a simple and straightforward message: the Board will no longer tolerate the type of misconduct that marked Keiler's appearance before the administrative law judge in this case.

III
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. Referral to National Mediation Board

In *Federal Express Corp.*,[6] the Board majority decided to continue its practice, established in *Pan American World Airways*,[7] of referring questions of arguable Railway Labor Act jurisdiction to the National

[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] 317 NLRB 1155 (Members Stephens, Browning, Cohen, and Truesdale; Chairman Gould dissenting).

[7] 115 NLRB 493 (1956).

Mediation Board (NMB) for an advisory opinion as to whether that board would assert jurisdiction.

The United Auto Workers (UAW) filed a petition in August 1991 to represent certain ground service employees who work for Federal Express in its Liberty District. The company moved to dismiss the petition on the ground the Board lacked jurisdiction because it was an air carrier under the Railway Labor Act (RLA) and subject to jurisdiction under that Act. The Board first submitted the case to the NMB for its determination on June 29, 1992. Thereafter, before the NMB rendered its decision, the Board granted the union's motion to reopen the record and requested return of the case from the NMB. Following additional hearings, submission of supplemental briefs from parties and amici, and oral argument, the Board held that the circumstances of this case did not warrant a departure from the Board's practice.

The Board stated that

> [i]n view of [the] clear statutory language [of Section 2(2) and (3) of the National Labor Relations Act defining the terms "employer" and "employee" as excluding any person or individual employed by an employer "subject to the Railway Labor Act"], the first step in considering our jurisdiction under the Act, when a claim of arguable RLA jurisdiction is raised, is the determination [of] whether the employer is subject to the Railway Labor Act. Although occasional departures may be justified, we believe the better policy, particularly where there are difficult questions of interpretation under the RLA, is to refer jurisdictional questions of this type to the National Mediation Board. [Citation omitted.]

The Board noted, however, it was not deciding whether Section 2(2) and (3) *mandated* a referral of the issue to the NMB, but that it was *informed by* the language of that section and that, under the circumstances, referral was the prudent course.

Chairman Gould disagreed. In his dissent, the Chairman stated that "the Board has the authority, the expertise, and the responsibility to decide matters of its own jurisdiction in cases initiated before it." Noting that there is "no statutory requirement that this question of jurisdiction be submitted for answer first to the National Mediation Board,"[8] the Chairman stated that the "exceptions" to the referral practice—those cases in which the Board did not refer the question of possible RLA jurisdiction to the NMB—are consistent with the Board's general practice with respect to jurisdictional claims involving statutes. In no other case, does the Board ask another agency to decide the scope of the Board's own jurisdiction, the Chairman stated.

In *United Parcel Service*,[9] the Board found it appropriate to determine the jurisdictional issue of whether United Parcel Service, Inc. (UPS) is subject to the jurisdiction of the Railway Labor Act (RLA)

[8] *Dobbs Houses, Inc. v. NLRB*, 443 F.2d 1066 (6th Cir. 1971).

[9] 318 NLRB No 97 (Members Stephens, Browning, Cohen, and Truesdale, Chairman Gould concurring).

without referral to the National Mediation Board (NMB) and asserted jurisdiction over UPS and the employees involved in this proceeding.

The Board majority of Members Stephens, Browning, Cohen, and Truesdale observed that, despite a general practice of referring cases to the NMB when a party raises a claim of arguable RLA jurisdiction, the Board has not referred (1) "cases presenting jurisdictional claims in factual situations similar to those where the NMB has previously declined jurisdiction"; (2) "cases which involve employees of an air carrier who are in no way engaged in activity involving airline transportation functions and whose work normally would be covered by the NLRA"; and (3) "cases where the Board has previously exercised uncontested jurisdiction over the employer." Noting the almost 47 years of uncontested jurisdiction over UPS' ground operations and its initial admission of jurisdiction in this case, the Board majority found it reasonable to decide the jurisdictional issue on its own and to place the burden of overcoming a presumption of continued jurisdiction on the party alleging RLA coverage. The Board majority also cited the longstanding history of collective bargaining between UPS and the Teamsters International under the Act as an "important corollary factor justifying an exception to the general practice of referral to the NMB."

Applying NMB precedent to resolve the jurisdictional issue, the Board majority agreed with the administrative law judge that UPS failed to demonstrate that the "trucking service" exception to the RLA does not apply to its ground operations. The Board concluded that, although the ground operations provide an essential service to the air operation by transporting some time-sensitive packages, the ground operations "exist primarily to carry out the core business of UPS, which continues to be the ground transportation of small packages." Accordingly, the majority concluded that the ground operations are not "an integral part" of the air transportation system.

Chairman Gould concurred in the decision not to refer the case to the NMB and to assert jurisdiction. The Chairman noted, however, that for the reasons set forth in his dissent in *Federal Express Corp.*,[10] he would eliminate the Board's general practice of referring cases involving RLA jurisdictional claims to the NMB for an initial ruling.

B. Employers with Close Ties to Exempt Entities

In *Management Training Corp.*,[11] the Board reversed the Regional Director's administrative dismissal of the representation petition and asserted jurisdiction over the employer, the operator of a job corps center pursuant to a contract with the United States Department of Labor (DOL). In doing so, the Board overruled *Res-Care, Inc.*[12] and established a new test for the assertion of jurisdiction over employers

[10] 317 NLRB 1155 (Members Stephens, Browning, Cohen, and Truesdale; Chairman Gould dissenting).

[11] 317 NLRB 1355 (Chairman Gould and Members Browning and Truesdale, Member Stephens concurring; Member Cohen dissenting).

[12] 280 NLRB 670 (1986).

who operate under contracts with governmental entities. In determining jurisdiction, "the Board will only consider whether the employer meets the definition of 'employer' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards."

The Board held in *Res-Care* that it would not assert jurisdiction over an employer with close ties to an exempt government entity unless the employer had sufficient control over the employment conditions of its employees to enable it to engage in meaningful bargaining. Bargaining was found meaningful only if the employer retained control over "the entire package of employee compensation, i.e., wages and fringe benefits."[13] Because the contract between Res-Care and DOL, like the contract between the employer and DOL, set out employee wages and benefits and gave DOL the authority to approve those wages and benefits as well as any changes thereto, the Board concluded that Res-Care lacked the authority to determine economic terms and conditions of employment and thus lacked the ability to engage in meaningful bargaining.

After careful consideration of *Res-Care* and its progeny, the Board decided that the test set forth in *Res-Care* was "unworkable and unrealistic," and that "whether there are sufficient employment matters over which unions and employers can bargain is a question better left to the parties at the bargaining table and, ultimately, to the employee voters in each case."

In reaching this conclusion, the Board noted that it had asserted jurisdiction in other cases where the facts were quite similar to *Res-Care*,[14] and thus "the Board's approach in this area had been far from uniform." The Board also thought that *Res-Care*'s emphasis on economic matters was "an oversimplification of the bargaining process" since the parties' primary interest may be in the noneconomic area. The Board also recognized that effective bargaining already occurs in the public sector where economic benefits play only a minor role. Moreover, the fact that the employer's ability to bargain over wages and benefits is constrained by its contract with the Government does not mean that bargaining is meaningless. In such situations the employers are not unlike other employers whose ability to bargain is circumscribed by limited financial resources or competitive considerations. In addition, by establishing a clear jurisdictional standard, the Board eliminated costly and wasteful litigation concerning an employer's alleged inability to meaningfully bargain about wages and benefits.

In response to the dissent's concern that refusal-to-bargain charges or strikes may arise in connection with matters not within the employer's control, the Board noted that these concerns are speculative, premature, and not relevant to the Board's jurisdiction. In fact, granting employees the right to organize and bargain encourages the coop-

[13] Id. at 674.

[14] See, for example, *FKW, Inc.*, 308 NLRB 598 (1992); *Community Interactions-Bucks County*, 288 NLRB 1029 (1988); *Community Transit Services*, 290 NLRB 1167 (1988), *Dynaelectron Corp.*, 286 NLRB 302 (1987).

erative resolution of disputes and decreases the potential for strikes and other forms of industrial unrest.[15]

In his concurrence, Member Stephens agreed with the Board's assertion of jurisdiction over the employer and its overruling of *Res-Care*, but he would not completely abandon the concept of control and thus would add to the Board's new jurisdictional test the requirement that the employer have "control over at least some terms and conditions of employment, as that phrase is intended in Section 8(d) of the Act."

Member Cohen, dissenting, saw no reason to depart from the Board's *Res-Care* jurisdictional test. In Member Cohen's view, asserting jurisdiction over an employer who does not control all mandatory terms and conditions of employment raises a serious dilemma if 8(a)(5) refusal-to-bargain charges are filed with respect to matters over which the employer has no control or if a union strikes to secure economic terms over which the employer has no control. To find an 8(a)(5) violation or a protected strike, would be in effect ordering an employer to deal with those matters over which it has no control. To do otherwise would do violence to Sections 9 and 8(a)(5), both of which require bargaining over all mandatory subjects, and Sections 7 and 13 which protect the right to strike for better economic terms. If *Res-Care* has not been consistently applied, as the majority argues, the solution is not to abandon the doctrine but to apply it more carefully and with more consistency.

C. Political Subdivision

In *Concordia Electric Cooperative*,[16] the Board unanimously asserted jurisdiction over a nonprofit electrical cooperative, overruling a prior decision finding that such entities were exempt from the Board's jurisdiction as political subdivisions of States.[17]

The employer, a nonprofit corporation, provided electrical power to customers in its service area in rural Louisiana. Under state law and the employer's bylaws, each customer was a member of the cooperative entitled to one vote for the election of the employer's governing board of directors. Overruling its prior decision, the Board found that this voting structure did not qualify the employer for exempt status as a political subdivision of the State.

The Board applied a Supreme Court-approved test under which exempt political subdivision status may be established if the entity is administered by individuals who are responsible to public officials or to the general electorate.[18] However, contrary to its prior decision, the Board found that the fact that the employer's customers were members of the cooperative and thus eligible to vote for its board of directors was not sufficient to establish that the board was responsible to the general electorate. Rather, the Board held that the "responsible

[15] 29 U.S.C. § 151.

[16] 315 NLRB 752 (Chairman Gould and Members Stephens, Devaney, Browning, and Cohen).

[17] *Fayette Electrical Cooperative*, 308 NLRB 1071 (1992).

[18] *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971).

to the general electorate'' requirement is satisfied only if the electorate for the entity's board is ''sufficiently comparable to the electorate for general political elections in the State that the entity in question may be said to be subject to a similar type and degree of popular political control.''

Applying this standard, the Board found that the employer was not responsible to the general electorate, as households with many adult residents would have only one vote, notwithstanding that all the adults would be eligible to vote in political elections. The employer also admitted that individuals who owned property in its service area could vote even though their primary residence for voting purposes was located elsewhere, and that it admitted to membership corporations, government agencies, and other similar entities which are not eligible to vote in political elections.

The Board also concluded that the employer's tax exempt status and its regulation by certain state and Federal agencies did not support, and indeed tended to negate, the employer's claim of exempt status. In this regard, the Board noted that the employer's tax status was the same as other nonprofit entities over which the Board routinely asserts jurisdiction, and that it was subject to safety and service regulations similar to those applied to investor-owned utilities.

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. Preelection Hearing

In *Angelica Healthcare Services Group*,[1] the Board found that the Acting Regional Director erred in directing an election without holding a hearing on whether the petition was contract-barred. Upon the filing of a decertification petition, the Acting Regional Director issued an Order to Show Cause why an election should not be directed. The union thereafter filed a response asserting that the petition should be

[1] 315 NLRB 1320 (Chairman Gould and Members Stephens, Browning, Cohen, and Truesdale).

dismissed because it was contract-barred and alternatively, that a full hearing should be held. The Acting Regional Director rejected the union's contract-bar contentions and did not address the union's request for a hearing. The Acting Regional Director concluded that a question existed and directed an election.

The Board found that the Acting Regional Director erred in failing to hold a preelection hearing under Section 9(c)(1) of the Act and Section 102.63(a) of the Board's Rules and Regulations. Section 9(c)(1) provides that when a representation petition has been filed, "the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice." Section 102.63(a) requires that the Regional Director prepare a notice of hearing if "there is reasonable cause to believe that a question of representation affecting commerce exists, that the policies of the Act will be effectuated, and that an election will reflect the free choice of employees in the appropriate unit." The Board remanded the case to the Regional Director to arrange for a hearing and take further appropriate action.

In *Barre-National, Inc.*,[2] the Board held that the Regional Director erred by affirming the hearing officer's refusal to permit the employer to introduce evidence of its witnesses at the preelection hearing concerning the supervisory status of line and group leaders and ordering that resolution of the supervisory issue be deferred to the postelection challenge procedure, should the ballots of the disputed individuals be determinative of the election results. The Board decided that in the posture of the case at the time of the decision, it would best effectuate the purposes of the Act to open and count the ballots and entertain arguments raised by the employer concerning prejudice resulting from denial of the hearing upon the timely filing of appropriate objections.

The employer contended before and at the scheduled preelection hearing that leaders sought to be included by petitioner in the unit were statutory supervisors. At the hearing, the employer opposed the use of the challenged ballot procedure to resolve the supervisory dispute. Although the employer was present with its witnesses and prepared to introduce evidence in support of its position that the leaders were supervisors, the hearing officer declared that the issue would not be litigated at the hearing and limited the employer to an offer of proof. Because there were no other disputed issues and in order to avoid delay and expense, the hearing officer declared that a Decision and Direction of Election would issue permitting the leaders to vote subject to challenge. The hearing officer closed the hearing without any testimony being received. The employer supplemented its offer of proof in its posthearing brief to the Regional Director.

The Board majority held the preelection hearing in this case did not meet the requirements of Section 9(c)(1) of the Act which pro-

[2] 316 NLRB 877 (Chairman Gould and Members Browning and Truesdale; Member Stephens concurring; Member Cohen dissenting).

vides for an appropriate preelection hearing when a petition is filed seeking a representation election, if the Board on investigation has reasonable cause to believe that a question concerning representation affecting commerce exists. Moreover, the Board majority found that the preelection hearing here did not meet the requirements of Section 102.66(a) of the Board's Rules and Regulations and Section 101.20(c) of the Board's Statements of Procedure entitling parties at such hearings to present witnesses and documentary evidence in support of their positions. The Board also noted Section 102.64(a) of the Board's Rules which provides that it is the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record for the Regional Director and the Board. The Board majority concluded that the Regional Director committed error in curtailing the hearing as he did. However, in the posture of the case at the time of the decision, the elimination of all but one of the earlier contested positions and given the nature of the employer's arguments "it seems most likely to effectuate the purposes of the Act to entertain those claims of prejudice as election objections, should the employer wish to raise them after the election outcome is revealed." The Board therefore reversed the Regional Director's affirmance of the hearing officer's refusal to permit the employer to introduce testimony at the preelection hearing and remanded the case to the Regional Director to open and count the ballots and entertain any timely and properly filed objections.

Member Stephens concurred, noting that the employer does not identify or argue that it possesses any statutory right to a determination on employee status before a Board election, and that the arguments it makes about interference with the election process are akin to supervisory taint contentions that are commonly considered in the objections phase. Member Stephens noted that the employer acted on the premise that the leaders were supervisors, instructed them to refrain from engaging in union activities, and successfully prevented them from voting in the election. Member Stephens emphasized that at the time the Regional Director took the action, he did not have the benefit of the clear direction in the Board's decision in *Angelica Healthcare Services Group*,[3] regarding the provision of an appropriate hearing.

Member Cohen, dissenting, contended that faced with clear error, the Board should have ordered a hearing and vacated the Direction of Election. In his view, the employer was placed in a difficult position of not knowing whether it could lawfully campaign through the leaders; the parties could argue that the electorate was confused about unit composition and the laboratory conditions were destroyed, and the Board's course would create more litigation and confusion. Member Cohen also noted that although in some cases, after a hearing, the Regional Director can defer ruling on the eligibility of a small number of employees, leaving the eligibility issue for the challenge process, he did not believe it permissible or prudent to defer ruling

[3] 315 NLRB 1320 (Chairman Gould and Members Stephens, Browning, Cohen, and Truesdale).

on such basic matters as unit appropriateness. Further, "it is at least imprudent to defer ruling on eligibility issues involving a substantial number of persons."

B. *Excelsior* List

In *North Macon Health Care Facility*,[4] the Board held that the employer was required to provide the union with the full names and addresses of eligible employees in an upcoming election under the Board's *Excelsior*[5] rule.

The majority of Chairman Gould and Members Stephens and Devaney noted that the Board's established *Excelsior* rule requires employers to provide a union petitioning for an election with a list of the names and addresses of unit employees so that the union will be able to communicate with the employees its arguments in favor of representation. Applying these principles to the facts of the case, the Board found that the employer failed to comply with its *Excelsior* obligations when it turned over a list of employees that contained only last names and first initials, as well as addresses.[6] The Board noted that the employer had a list with the full names of employees, but had deliberately replaced the first names with initials in the list to be turned over to the union. Finding nothing in its *Excelsior* decision that would indicate that anything less than full names of employees was called for to comply with the rule, the Board concluded that the employer's deletion of the first names was a violation of the *Excelsior* rule, overruling prior inconsistent cases.[7]

The Board also found that retroactive application of the clarification that *Excelsior* required full names was appropriate in the circumstances. Noting that retroactive application was the normal procedure for application of a rule of law, the Board found no evidence that employers would be prejudiced by retroactive application in this setting. Thus, the Board perceived no evidence that the requirement that full names be provided would impose any additional burden on employers. Moreover, to the extent that retroactive application required the holding of a second election, the Board held that the burden of participating in an election is minor, especially as employers are not required to permit the election to be held during work hours or on their premises. Although the Board recognized that a second election might result in a certification of representative, whereas the first election did not, the Board declined to find prejudice from this possibility as any such certification would reflect the desires of employees concerning representation.

Member Cohen, dissenting, would not have applied the full name requirement retroactively. In his view, it was fundamentally unfair to

[4] 315 NLRB 359 (Chairman Gould and Members Stephens and Devaney; Member Cohen dissenting).

[5] *Excelsior Underwear*, 156 NLRB 1236 (1966). See also *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

[6] Twenty-three percent of the addresses on the list provided by the employer were incorrect. Chairman Gould and Member Devaney also would have set aside the election based on the number of incorrect addresses. However, Member Stephens found it unnecessary to reach this issue.

[7] See *St. Francis Hospital*, 249 NLRB 180 (1980).

apply the new requirement retroactively to an employer who had relied on the prior law and practice. As a result of retroactivity, the employer's election victory is taken away and the employer must undergo a second election. Further, retroactivity is not required in order to accomplish statutory objectives. In this regard, Member Cohen noted that there were 28 years of elections under the prior practice, and there was no suggestion that these elections did not achieve statutory objectives. In view of his position on retroactivity, Member Cohen did not pass on whether the new rule would be appropriate if applied in the future. (In subsequent cases, Member Cohen answered this question affirmatively.)

C. Posting of Election Notices

In *Club Demonstration Services*,[8] the Board majority, over a dissent by Chairman Gould, reaffirmed the holding in *Terrace Gardens Plaza*[9] that the requirement of Section 103.20(a) of the Board's Rules and Regulations that election notices be posted 3 full working days prior to 12:01 a.m. on the day of the election is mandatory, even in mail ballot elections; that substantial compliance arguments will not be considered; and that failure to post by the required time shall constitute grounds for setting the election aside.

Also in *Club Demonstration Services*, the full Board found that Section 103.20(c) of the Board's Rules was ambiguous concerning an employer's obligation to notify the Regional Office 5 working days prior to the commencement of the election that the employer has not received copies of the election notice for posting. The Board clarified the rule to define 5 working days to mean 5 full 24-hour periods (the definition of "working day" set forth in Sec. 103.20(b)) prior to 12:01 a.m. of the day of the election.

The employer admitted that the notice was not posted for 3 full working days prior to 12:01 a.m. of the day of the election and objected to the election on this ground. Because it found that the employer's interpretation of the ambiguous 5-day notification of nonreceipt to the Regional Office requirement was reasonable, the Board majority concluded that the employer was not estopped under Section 103.20(c) from objecting to the late posting, sustained the employer's objection, and directed a second election.

In dissent, Chairman Gould concluded that he would not set the election aside in this case because he would find there was substantial compliance with the rule. He notes that, although the notices were not posted for the full 3 days, the employer did not receive them from the Regional Office soon enough to post them for the required time. Chairman Gould finds that the primary purpose of the posting requirement, which is to assure that employees are fully informed of their rights and the Board's procedures concerning the election, was

[8] 317 NLRB 349 (Members Stephens, Browning, Cohen, and Truesdale; Chairman Gould dissenting in part).

[9] 313 NLRB 571 (1993).

satisfied because the notice was posted for 2 days and because each employee received a notice with his mail ballot.

In *Maple View Manor*,[10] the Board affirmed the Regional Director's finding that, contrary to the intervening union's claim, the employer's alleged failure to post notices of election for the required 3 full working days prior to 12:01 a.m. of the day of the election pursuant to Section 103.20 of the Board's Rules and Regulations in an election involving competing unions was not objectionable, notwithstanding that a literal reading of Section 103.20 would require that the election be set aside. See *Club Demonstration Services*.[11] The Regional Director found that "to apply the Rule in such a manner in cases such as this where more than one union is involved 'invites collusion' because it suggests to any employer who favors one of the competing unions that willful objectionable conduct will result in the favored minority union being able to successfully file objections and secure a second election." The Regional Director further noted that "where, as here, the Employer was apparently responsible for the nonposting, and thus clearly estopped by Rule 103.20(c) from objecting thereto, such a pernicious result would be even more likely to occur," and to set this election aside on this basis would permit the employer "to benefit from its own improper conduct, encourage collusion, and serve no substantial interest of the employees."

D. Appropriate Unit Issues

In *Scolari's Warehouse Markets*,[12] the Board found that the presumption of the appropriateness of a separate meat department unit should not be applied when the meat department employees worked mainly on boxed or case-ready meats and did not exercise the full panoply of traditional meatcutting skills. The Board concluded, nonetheless, that a separate bargaining unit of a supermarket chain's meat department employees is appropriate since the meat department employees enjoyed a sufficiently distinct community of interest to warrant a separate unit. In reaching this conclusion, the Board determined that its previous approach, in which it presumed that the handling of boxed meat required little traditional meatcutting skills, was overly restrictive. The Board found that when a significant amount of meat department work involves handling boxed meat, it is incumbent on the Board to consider the actual work performed by the meatcutters in order to determine whether they continue to exercise substantial, traditional meatcutter skills. To the extent that *Copps Food Center*[13] and *Hall's Super Duper*[14] and related cases differed with this determination, they were overruled.[15]

[10] 319 NLRB No. 15 (Chairman Gould and Members Cohen and Truesdale).

[11] 317 NLRB 349.

[12] 319 NLRB No. 27 (Chairman Gould and Members Browning, Cohen, and Truesdale).

[13] 301 NLRB 398 (1991).

[14] 281 NLRB 1116 (1986).

[15] Member Cohen finds it unnecessary to overrule *Copps* and *Hall's* which he finds did not involve the substantial meatcutter skills and other factors showing a distinct community of interest.

In *Scolari's*, a substantial portion of the employer's meat department business involved boxed meat. The Board found that the following factors: the continued application of specialized meatcutting skills necessary for the processing of the boxed meat (including the handling of large pieces of meat from which many types of cuts can be drawn); the higher level of training of meatcutters; the substantial percentage of the unit engaged in skilled meatcutting work; separate supervision; limited interchange (the employer maintained floater meatcutters to fill in for absent meatcutters) and limited transfers; and higher wages, outweighed the factors of common benefits and limited skills necessary for handling the employer's case-ready meats, and supported a finding that the meat department employees have a distinct community of interest apart from that of the employer's other employees.

Member Browning agreed with the result reached by her colleagues, but found it sufficient that the meatcutters used different skills and performed distinctly different functions than those performed by employees in other departments, in addition to the other community-of-interest factors cited by her colleagues. She thus found it unnecessary to reach the issue of whether the processing of boxed meat involves "specialized meatcutting skills."

E. Withdrawal from Multiemployer Bargaining Unit

In *Chel LaCort*,[16] the Board majority held that a multiemployer association's deliberate failure to notify its employer membership that negotiations over a successor collective-bargaining agreement would begin several months prior to the deadline set in the current contract for notification to reopen, did not constitute "unusual circumstances" within the meaning of *Retail Associates*,[17] justifying an employer's untimely withdrawal from the multiemployer bargaining unit after such negotiations had begun. The Board majority reasoned that the "unusual circumstances" exception had historically been limited to the most extreme situations, such as where the employer is facing bankruptcy or the multiemployer unit has dissipated; that whether and to what extent a multiemployer association communicates with its employer-members is an internal association matter that is properly and readily resolved by and between the multiemployer association and its members; and that the Board would be inserting itself into the association/member relationship unnecessarily and with uncertain consequences were it to effectively impose a notice requirement.

In their separate dissents, Members Stephens and Cohen found that the employer's otherwise untimely withdrawal was justified inasmuch as the association had deliberately concealed the start of negotiations from its membership and had subsequently sent affirmatively misleading newsletters to the membership suggesting that negotiations had not yet begun.

---

[16] 315 NLRB 1036 (Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting).

[17] 120 NLRB 388 (1958).

In *El Cerrito Mill & Lumber Co.*,[18] the Board reversed the Regional Director's decision to honor the petitioner's untimely withdrawal from the historical multiemployer bargaining unit and to direct elections in separate single-employer units. Applying the Supreme Court's decision in *Charles D. Bonanno Linen Service v. NLRB*,[19] the Board found that the parties' bargaining impasse in their successor contract negotiations did not constitute an "unusual circumstance" within the meaning of *Retail Associates*.[20] The Board therefore dismissed the petitions seeking certification in the single-employer units.

For almost 12 years, the petitioner had collective-bargaining agreements with the multiemployer association and its employer-members. When their most recent contract expired in June 1990, the parties engaged in negotiations for a successor contract. No contract was ever reached. In March 1993, the petitioner withdrew from the multiemployer bargaining by filing the separate representation petitions. The petitioner's withdrawal was submitted after the parties had reached a bargaining impasse and after the multiemployer association and its employer-members had implemented their final contract offer. Throughout the relevant period, there was never any strike activity, lockout, or any separate interim agreements between the individual employer-members and the petitioner. Given these facts, the Board, unlike the Regional Director, found the instant case factually similar to *Bonanno* to warrant the same result, i.e., the preservation of the multiemployer bargaining relationship.

F. Bars to an Election

1. Contract Bar

In *Seton Medical Center*,[21] the Board found that there was no contract bar to the petition. In so doing, the Board found that, under *Appalachian Shale Products*,[22] there was no document, formal or informal, reflecting the parties' full agreement.

The hospital's staff nurses had been represented by the intervening union for about 46 years. In 1993, the parties engaged in collective bargaining for a successor agreement. They reached tentative agreements on various issues, and initialed and/or signed and dated the tentative agreements as accord was reached on each issue. The parties reached agreement on all issues, the intervenor prepared a summary of the tentative agreements for presentation to its membership, and the intervenor's members ratified the provisions. Before a formal contract was prepared and executed, the petitioner filed the instant petition seeking to represent the staff nurses.

Disagreeing with the Regional Director, the Board concluded that although the parties initialed tentative agreements on various provisions, there was no signed document that "identifies the totality of

[18] 316 NLRB 1005 (Members Stephens, Cohen, and Truesdale).
[19] 454 U.S. 404 (1982).
[20] 120 NLRB 388 (1958).
[21] 317 NLRB 87 (Members Stephens, Browning, and Truesdale).
[22] 121 NLRB 1160 (1958).

the parties' agreement and shows that their contract negotiations were concluded.'' The Board continued that the ''single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures.''

The Board concluded that there was no signed writing specifying the overall terms of the contract. The Board contrasted this situation with that in a companion case involving the same intervening union and petitioner. In *St. Mary's Hospital*,[23] issued simultaneously with *Seton Medical Center*, the parties followed a similar pattern of signing and dating tentative agreements on each issue when accord was reached. There, unlike *Seton Medical*, when agreement was reached on all issues, the parties signed a comprehensive tentative agreement, which incorporated by reference the signed and dated tentative agreements for the individual issues previously resolved. Thus, in *Seton Medical*, there was an absence of a document or documents to evidence the parties' agreement sufficient to bar the petition.

2. Recognition Agreement

In *Custom Deliveries*,[24] the Board, modifying the *Rheingold Breweries*[25] test, concluded, contrary to the Regional Director, that the employer's voluntary recognition of the intervenor based on a valid card majority, barred the subsequent petition of the nonstranger petitioner because the petitioner failed to demonstrate a substantial claim of interest in representing the employer's employees.

Rheingold established a two-prong test for determining whether an employer's recognition of a union could bar the petition of a nonstranger union. The Board there held that a recognition agreement will not bar the petition where a petitioning union has a substantial claim of interest and was not afforded prior opportunity to demonstrate the extent of its interest by means of an election or through other appropriate procedures. In *Custom Deliveries*, the Board found that the rationale in *Rheingold* for distinguishing between situations in which the petitioning union is a stranger to the unit employees and those in which the petitioning union has previously represented those employees continues to be valid. Where the petitioning union has been representing the unit employees, the choice of the successor's employees as expressed through authorization cards does not exist in isolation but must be weighed against the interests of employees currently or recently represented by the petitioner and the value to be given an established bargaining relationship. Where the petitioning union is a ''stranger'' union, the question of continuity of a prior bargaining relationship is not in issue. However, the Board in *Custom* modified *Rheingold* to clarify the term ''substantial claim of interest''

---

[23] 317 NLRB 89 (Members Stephens, Browning, and Truesdale).
[24] 315 NLRB 1018 (Chairman Gould and Members Stephens, Devaney, Browning, and Cohen).
[25] *Rheingold Breweries*, 162 NLRB 384 (1966).

to require that, as of the date of recognition, 30 percent or more of the recognized unit consists of employees previously represented by the petitioning union. This figure is used by the Board in a number of representation case areas to demonstrate sufficient employee interest in union representation to warrant an election. With this clarification of substantial interest it becomes unnecessary to determine whether a petitioner had the opportunity to demonstrate the extent of its interest, and therefore the Board will no longer apply the second prong of the *Rheingold* test. The evidentiary burden in proving, or disproving, "opportunity" to demonstrate interest is difficult and invites prolonged litigation.

Applying the modified *Rheingold* test to the facts, the Board concluded that the petition is barred by the recognition agreement between the employer and the intervenor. At the time of recognition, only 5 percent of the unit employees formerly had been represented by the petitioner. The Board rejected reliance on any of the other measures relied on by the Regional Director as evidence of substantial interest: the employer's tender of offers of employment to and the training of employees who had been represented by the petitioner when these employees did not become part of the unit; prerecognition preparation to reestablish its historical majority status; and postrecognition securing of a substantial number of authorization cards. The Board reversed the Regional Director's decision, vacated the direction of election, and dismissed the petition.

G. Election Objections

In *Glass Depot, Inc.*,[26] a majority of the Board overruled the Regional Director's decision to set aside a representation election because a snowstorm prevented 4 of 19 employees from voting.

In *Glass Depot*, a representation election was conducted at the employer's main facility where most of the employees work. Two employees who work at another facility and two employees on assignment elsewhere were to travel to the main facility to vote. Just before the polls opened, heavy snow started to fall making driving conditions hazardous. The polls remained opened at the main facility despite the weather. However, the four employees at issue were unable to reach the main facility while the polls were open because of the snowstorm.

Members Stephens and Cohen initially noted that the Board, in *Monte Vista Disposal Co.*,[27] held that an employee who arrived late to the polls was not entitled to have his ballot counted "in the absence of extraordinary circumstances," which included "a showing that one of the parties was responsible for the tardiness of the late-arriving voter."

Members Stephens and Cohen, distinguished the instant case from *Monte Vista*, finding that the issue was not whether employees who

---

[26] 318 NLRB No. 94 (Members Stephens and Cohen; Chairman Gould concurring in the result; Members Browning and Truesdale dissenting).

[27] 307 NLRB 531 (1992).

arrived late at the polls should be allowed to vote, but "whether a snowstorm that prevented 4 of 19 employees from voting warrants a rerun election." In concluding that it did not, Members Stephens and Cohen stated that in determining whether an act of nature is an "extraordinary circumstance" justifying a new election, "we shall examine both the event itself and whether it resulted in a situation where less than a representative complement of employees voted in the election." Members Stephens and Cohen concluded that while the storm in *Glass Depot* may have been an "extraordinary circumstance," it did not prevent a representative complement of voters (15 of 19) from voting.

Chairman Gould agreed that the election should not be set aside because of the snowstorm, which he considered a common event rather than an extraordinary circumstance. Chairman Gould disagreed with his colleagues that a "representative complement" test should be applied. Chairman Gould would find that where there are extraordinary circumstances—such as when the winning party is responsible for the tardiness of the late-arriving voters—resulting in a "determinative number of voters having been denied an opportunity to cast ballots, the election should be set aside without any consideration of how many other employees cast ballots."

Members Browning and Truesdale, dissenting, would rely on *V.I.P. Limousine*[28] and analyze all the circumstances to determine if the snowstorm "or other *force majeure* was so severe that the eligible voters, as a group, did not have an adequate opportunity to vote." Members Browning and Truesdale concluded that the snowstorm in *Glass Depot* had a significant impact on the election. Members Browning and Truesdale would distinguish this case from *Monte Vista* because the employees there arrived late due to their own negligence. Members Browning and Truesdale viewed the representative complement test as unworkable and as inviting unnecessary litigation.

In *Bro-Tech, Corp.*,[29] the Board held that the petitioner's broadcast of Teamsters songs from a soundcar parked outside the employer's facility on the day of the election did not constitute objectionable conduct because the songs were not "campaign speech" prohibited by *Peerless Plywood Co.*[30] Although the songs were audible to the employees within the facility, the Board found the lyrics of the songs unobjectionable because they were more similar to appeals to vote set to music than campaign speech set to music. The Board emphasized that the *Peerless Plywood* prohibition of campaign speeches to massed employees within 24 hours of an election was intended to be a narrow limitation in the parties' freedom of speech. In holding that the Teamsters songs were not "campaign speech," the Board noted that the songs did not make specific campaign promises; did not address collective-bargaining issues; did not refer specifically to the employer; and did not include specific appeals to vote for the petitioner.

---

[28] 274 NLRB 641 (1985).
[29] 315 NLRB 1014 (Chairman Gould and Members Stephens and Devaney).
[30] 107 NLRB 427 (1953).

In a personal footnote, Chairman Gould questioned the applicability of *Peerless Plywood*, but concurred in the result of the case.

H. Mail Ballot Election

In *T & L Leasing*,[31] a panel majority of the Board ordered a new election, finding that the Regional Director materially breached the parties' Stipulated Election Agreement by unilaterally changing the election date and by conducting a mail ballot election rather than the agreed-on manual election.

In *T & L Leasing*, the approved election agreement specified that the election would be conducted on a specified date, at set times, and at a location to be determined by the Regional Director. When it was subsequently determined that the election could not be conducted at the employees' regular workplace—a location which the employer did not own—the employer notified the Regional Director and proposed nearby alternate sites. Although the Regional Director never found that the proposed alternate sites were inappropriate, he ordered a mail ballot election when the union objected to an offsite election, and scheduled the voting period to begin several days before the date specified in the election agreement. The employer repeatedly objected to the changed election terms, and filed objections after the union won the election.

Contrary to the Regional Director's recommendation, the majority sustained the objections and directed a second election. The majority determined that, absent special circumstances not here applicable, election agreements are binding ''contracts'' which must be enforced where their terms are ''clear, unambiguous, and do not contravene express statutory exclusions or established Board policy.''[32] Because election agreements are contracts, the majority further ruled that elections will be set aside where ''material'' terms of the agreement, such as election type (manual or mail ballot) and date, have been breached. The majority concluded by stating that what the Regional Director should have done was ''(1) honor[ ] the terms of the Stipulation or (2) if the Stipulation could not be performed, set the Stipulation aside and proceed[ ] anew. What the Regional Director could *not* do, was to hold a *mail-ballot* election under the aegis of the Stipulation, for the Stipulation contemplated a *manual election.*''[33]

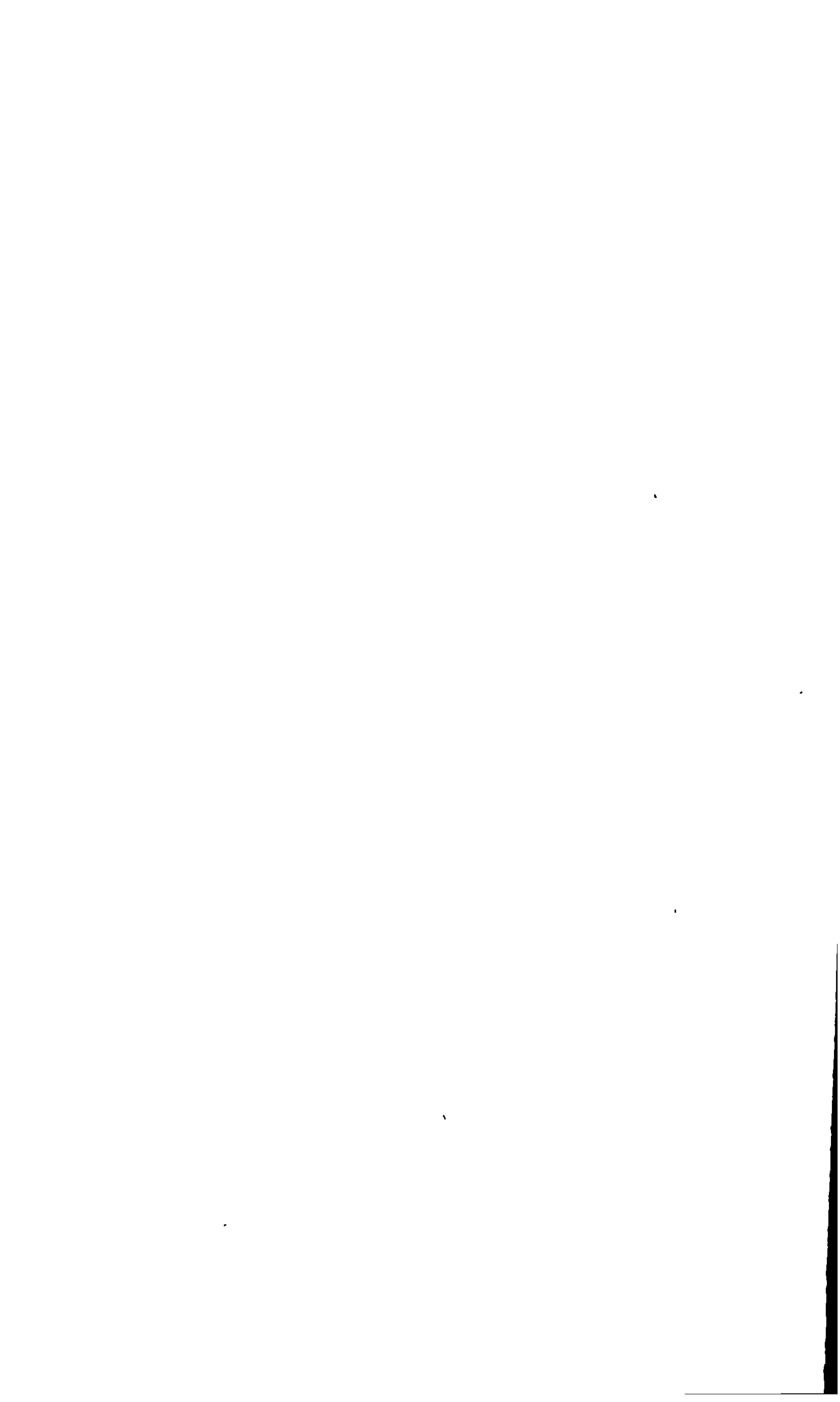
[31] 318 NLRB No. 28 (Members Cohen and Truesdale; Member Browning dissenting).

[32] Id., slip op. at 2, citing *Business Records Corp.*, 300 NLRB 708 (1990); *Granite & Marble World Trade*, 297 NLRB 1020 (1990).

[33] Id., slip op. at 3–4 (emphasis in the original).

In dissent, Member Browning argued that elections should be set aside only where the breach of the election agreement "is material or prejudicial, *in the sense that the conduct causing the breach significantly impairs the fairness of the election process.*"[34] Because there was no evidence that the Regional Director's direction of a mail ballot election deprived employees of the opportunity to freely choose whether to be represented, or affected the election results, Member Browning would not have set it aside.

[34] Id., slip op. at 6, citing *Summa Corp. v. NLRB*, 625 F.2d 623, 625 (9th Cir. 1980).



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 year 1995 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 Property

In two companion cases, *Leslie Homes, Inc.*,[1] and *Loehmann's Plaza (II)*,[2] the Board considered whether the Supreme Court's decision in *Lechmere, Inc. v. NLRB*,[3] which limited nonemployee union organizers' rights of access to employers' private property, also ap-

[1] 316 NLRB 123 (Members Stephens and Cohen; Chairman Gould concurring; Members Browning and Truesdale dissenting).

[2] 316 NLRB 109 (Members Stephens and Cohen; Chairman Gould concurring; Members Browning and Truesdale dissenting).

[3] 502 U.S 527 (1992).

plies to nonemployee union representatives who seek access to employers' property to engage in area standards activities aimed at employers' customers rather than their employees. The majority, for the reasons set forth in *Leslie Homes*, found that *Lechmere* applies in the area standards setting. The dissenters, as they explained principally in *Loehmann's Plaza*, would have limited *Lechmere* to the organizing context.

In *Leslie Homes*, union representatives attempted to distribute area standards handbills inside a residential condominium development. The employer ordered them off the property and called the police when they did not leave. The police advised the union representatives that they could be arrested if they did not leave, but allowed them to distribute the handbills on the shoulder of an adjacent public road near the entrances to the property.

In *Loehmann's Plaza (II)*, union representatives attempted to picket and distribute handbills displaying an area standards message in front of a retail store located in a strip shopping mall. Representatives of both employers—the retail store and the owner of the strip shopping mall—ordered the union representatives "from the premises" to three entrances to the shopping center. The employers also filed for injunctive relief to this same effect in state court.[4]

In *Lechmere*, the Supreme Court held that its earlier decision in *NLRB v. Babcock & Wilcox Co.*[5] meant that nonemployee union organizers could be excluded from an employer's private property if the location of the plant and the employees' living quarters did not put the employees beyond the reach of reasonable, nontrespassory efforts to communicate with them. The Board in *Leslie Homes* found the Court's reasoning in *Lechmere* applicable to area standards activities, rejecting the argument that *Lechmere* applies only in the organizing context. The majority cited the Court's evident concern for protecting employers' property rights, and doubted that its reasoning was limited to organizing cases. Given the Court's earlier indication that the *Babcock* accommodation principle was intended to apply in other settings,[6] the majority thought it unlikely that the Court would narrow the rule's applicability without discussion. The majority also deemed it anomalous that area standards activities, after *Lechmere*, should fare better than organizational activities for access purposes, when the Court had formerly suggested that area standards activities are less favored than organizational activities under *Babcock*.[7]

Assuming, without deciding, that the *Babcock* exception for inaccessible employees also applies to customers in the area standards context, the Board majority in both cases found that the unions had not shown that they lacked reasonable alternative means of commu-

[4] In *Loehmann's Plaza I*, 305 NLRB 663 (1991), the Board applied the analysis of nonemployee access issues set forth in *Jean Country*, 291 NLRB 11 (1988), and found that the respondents violated Sec. 8(a)(1) by restricting access to the respondents' property. The Board further found that the respondents further violated Sec. 8(a)(1) by maintaining the lawsuit for injunctive relief.

[5] 351 U.S. 105 (1956).

[6] Including area standards; see *Sears, Roebuck & Co. v. San Diego County District Council of Carpenters*, 436 U.S. 180, 206 (1978).

[7] Id. at 206 and fn. 42.

nicating with the employers' customers. The majority in *Leslie Homes* found that picketing and placing stationary signs on public property abutting the condominium development, as well as handbilling visitors as they left the condominium property, were reasonable means that were available to the union, and that the union had not shown that it lacked such means.[8]

The majority in *Loehmann's Plaza (II)*, on reconsideration in light of *Lechmere*, reversed *Loehmann's Plaza I*, and found that picketing from three entrances to the shopping mall, to which the employers had directed the union, provided the union with reasonable means of communicating its message, and that the union had not shown that it lacked such means.[9] Noting that "[a]bsent a finding that the picketing and handbilling on private property is protected, a lawsuit to enjoin that activity is not unlawful," the Board also dismissed the allegation that the respondents violated Section 8(a)(1) by the pursuit of their lawsuit seeking to enjoin the union's picketing and handbilling.[10]

In his concurrences to both decisions, Chairman Gould notes that "the majority opinion . . . in *Lechmere* resolves the issue definitively [and]" "creates no distinction and sends no 'signal' that union efforts to reach customers and the public ought to be treated differently from the initiatives undertaken in *Lechmere* itself."[11]

In their dissent in *Loehmann's Plaza (II)*, Members Browning and Truesdale set forth their rationale for their disagreement with the analysis adopted by the majority in *Leslie Homes* and applied in *Loehmann's Plaza (II)*. They found that "[by] extending the access analysis of *Lechmere* [full citation omitted] to the Union's area standards picketing and handbilling . . . or to Section 7 activity other than organizational activity . . . the majority . . . departs from longstanding principles of judicial interpretation and makes new law based entirely on unspoken policy considerations."[12] Thus, in the dissenters' view, "in *Lechmere*, the Supreme Court explicitly limited its holding to situations involving organizing by nonemployee union representatives, and its rationale is dependent on those specific circumstances."[13] In addition, the dissenters believed that "the *Lechmere* decision also depends on the legal principle that the rights of nonemployee organizers are derivative of employee rights protected by Section 7," which principle, according to the dissenters, does not apply to Section 7 activity other than organizational activity. Thus, in the dissenters' view, when union representatives and members are protesting and appealing to the public, as in *Leslie Homes* and *Loehmann's Plaza (II)*, "they are doing so on behalf of themselves and the employees whom they are authorized to represent" and

[8] Member Cohen found only that the union had failed to show the absence of reasonable alternative means of communication with the customers, he did not join Chairman Gould and Member Stephens in finding that reasonable alternative means existed.

[9] Id. at 112–114

[10] Id. at 114.

[11] *Leslie Homes*, supra at 131; *Loehmann's Plaza (II)*, supra at 114.

[12] *Loehmann's Plaza (II)*, supra at 114–115.

[13] Id. at 115.

"[a]s such, they are exercising their own Section 7 rights and those of their principals, not the rights of unrelated third parties who have not yet authorized the action."[14] Finally, the dissenters noted that *Lechmere*'s "analysis of reasonable alternative means of communicating with a finite and identifiable group of employees of a single employer simply does not apply when the intended audience is much broader and more geographically diffuse, as is the general public or the clientele of a particular store," i.e., as in *Leslie Homes* and *Loehmann's Plaza (II)*.[15]

Members Browning and Truesdale also noted that the majority's conclusion that the Court had previously indicated that *Babcock* applies in nonorganizational settings, ignores *Hudgens v. NLRB*,[16] in which the Court recasts the *Babcock* test when applied in nonorganizational settings.[17] "*Hudgens* makes plain that access to private property may be appropriate for activity involving a variety of Sec. 7 rights, participants, and audiences."[18] As for *Sears*, supra, on which the majority also relied, the dissenters noted that that decision "cannot be regarded as conclusive, because [it] concerned a preemption issue and involved access only tangentially."[19] As the dissenters further explained, "although *Sears* suggested that nonemployee access for area standards picketing warranted less protection than that for the 'core' activity of organizational solicitation . . . after *Lechmere*, organizational activity by nonemployees must be viewed as farther down the spectrum of Section 7 rights than previously thought."[20]

Because the dissenters disagreed with the majority's extension of the *Lechmere* strict inaccessibility test to communications by union representatives and members beyond organizational activity, they set forth the access test they would apply in such circumstances. The test they would apply would accommodate Section 7 and property rights, consistent with the Court's admonition in *Babcock*, "with as little destruction of one as is consistent with the maintenance of the other," keeping in mind, consistent with the Court's instruction in *Hudgens*, that the "locus of that accommodation . . . may fall at differing points along the spectrum depending on the nature and strength of the respective Section 7 rights and private property rights."[21] In other words, they would apply "the analysis which the Board applied to union protests . . . directed at either the general or the consuming public prior to its *Jean Country* analysis, and prior to *Lechmere*."[22]

Members Browning and Truesdale, applying this analysis, would have found the 8(a)(1) violations in *Loehmann's Plaza (II)* and *Leslie Homes*. They found in both cases that the unions' protected area

[14] Ibid.
[15] Ibid.
[16] 424 U.S. 507 (1976).
[17] 316 NLRB at 120.
[18] Id. at fn. 24.
[19] Id. at 120.
[20] Ibid.
[21] Id. at 121.
[22] Ibid.

standards activities impinged only minimally on the employers' property rights, which were attenuated by the fact that the properties were open to the public. They also found that the unions lacked reasonable alternative means of communicating with the customers. In *Leslie Homes*, they noted that the union sought to reach a diverse population that was not readily identifiable and that could not be reasonably reached away from the condominium development by direct personal contact, telephone, or mail. In the dissenters' view, the detailed message on the handbills could not be rendered effectively on picket signs or on stationary signs observable by passing motorists, and attempts to handbill occupants of vehicles leaving the property would have been impractical and dangerous. In *Loehmann's Plaza (II)*, the dissenters also found that the audience was not readily identifiable and could not be reasonably reached away from the shopping center by direct personal contact, telephone, or mail, or by a public media campaign. They further agreed with the conclusions in *Loehmann's Plaza I* that picketing and handbilling near the shopping center's entrances was ineffective, possibly dangerous, and enmeshed neutral employers.[23]

In *Riesbeck Food Markets*,[24] a majority of the Board ruled that the respondent violated Section 8(a)(1) of the Act by, pursuant to its policy, forbidding any solicitation or distribution activity on its premises that holds any significant potential of harming the respondent's business, discriminatorily prohibiting union representatives from engaging in informational picketing, and handbilling near the customer entrances to its two stores.

The union representatives had refused, on the respondent's request, to cease the informational picketing and handbilling. The respondent thereafter obtained state court injunctions limiting the union's activity to public property away from the respondent's stores.

The Board majority explained that the respondent's refusal to permit on its premises union solicitation of customers via informational picketing and handbilling while allowing "all kinds of civic and charitable solicitation" on its premises constituted unlawful disparate treatment of union activity.

The Board majority rejected the respondent's contention that its policy did not discriminate based on the union or nonunion nature of the organization seeking to solicit its customers, but rather the policy prohibited the union's do-not-patronize message solely because in the respondent's judgment that message would adversely affect the respondent's business. The Board majority held that an employer's policy that "distinguishes among solicitation based on an employer's assessment of the message to be conveyed is discriminatory . . . because in every instance the employer must specifically approve the solicitation of messages protected by the Act. Thus, the Respondent

[23] Id. at 121–122.

Member Browning also noted that she would find that the respondents' pursuit of their state court lawsuit to enjoin the union's picketing and handbilling violated Sec. 8(a)(1). Id. at fn. 34.

[24] 315 NLRB 940 (Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting).

may under its practice permit the distribution on its property of a wide range of messages while at the same time forbidding the distribution of messages that are protected under the Act." The Board explained that the respondent's policy "amount[ed] to little more than an employer permitting on its property solicitation that it likes and forbidding solicitation that it dislikes."

The Board accordingly concluded that the respondent discriminatorily denied the union access to its property to disseminate its do-not-patronize message, which is protected under Section 8(b)(7)(C) of the Act, while permitting on its property an overwhelming amount of nonunion solicitation.

In dissent, Members Stephens and Cohen would have found that the respondent did not disciminatorily prohibit the union from soliciting on its property. They noted that there is no evidence that the respondent had ever disparately applied its rule barring solicitations with a do-not-patronize message. They observed that the "[r]espondent permits *nonboycott* solicitation by nonunions and unions, and it forbids *boycott* solicitations by unions and nonunions. In our view, such a practice does not discriminate against union activity."

2. Surveillance of Union Activities

In *St. Mary's Hospital*,[25] the Board found that an employer did not engage in unlawful surveillance of union activities where the employer's agent observed nonemployee union organizers distributing leaflets to nonemployees near the employer's property.

Nonemployee union agents leafleted at various locations of the employer's facility, including the visitor's parking garage. After the employer's security guard asked them to leave the employer's property, they leafleted from an adjacent public sidewalk. The security guard stood nearby and observed the leafleting, taking notes when a driver would accept a leaflet.

The Board found that there was no evidence that the employer's activities were directed at, or observed by, any of its employees. The Board distinguished the case from cases involving actual surveillance of employees where the employees were aware of being observed, as the complaint alleged that the employer "created the impression among its employees that their union activities were under surveillance by [the employer]." Thus evidence of employee awareness of surveillance was necessary to sustain the allegation.

Member Browning, dissenting, would have found a violation of Section 8(a)(1) of the Act had been established by giving union organizers the impression that their activities were under surveillance. By deterring the organizers from giving information to the employees, the employer interfered with the employees' right to receive information, thus interfering with their Section 7 rights to self-organization and to communications which could ultimately assist in the employees' mutual aid and protection.

[25] 316 NLRB 947 (Chairman Gould and Member Cohen; Member Browning dissenting).

3. State Court Lawsuit

In *Geske & Sons, Inc.*,[26] the Board affirmed the administrative law judge's decision, pursuant to *Bill Johnson's Restaurants v. NLRB*,[27] that Geske violated Section 8(a)(1) of the Act by filing, maintaining, and prosecuting a state court lawsuit which was without reasonable basis and was motivated by an intent to retaliate against the union for its efforts to organize Geske's employees. The judge also found, in reliance on *Loehmann's Plaza*,[28] that Geske further violated the Act by continuing to maintain the lawsuit after an unfair labor practice complaint had issued. The Board, however, in light of its disposition of the case under *Bill Johnson's*, found it unnecessary to pass on whether the suit was preempted.

The case arose after the union established a peaceful, nontrespassory picket on county-owned property near the entrance to Geske's premises. Pickets carried signs stating that the union was "on strike against Geske for recognition as majority bargaining representative . . . ." Throughout the period of picketing, the union stopped vehicles entering the plant, asked the drivers not to patronize Geske, and referred them to a unionized supplier.

Geske filed a lawsuit against the union in state court, alleging trade libel based on the "on strike" language on the picket signs, and tortious interference with contractual relations and prospective economic advantage. Further, on an ex parte hearing, Geske obtained a temporary restraining order against the union. However, at trial, after the close of Geske's case-in-chief, the state court judge denied Geske's request for injunctive relief pending trial on the merits, finding that its likelihood of success on the merits was "small," and that the message on the picket signs did not constitute trade libel. The state appellate and supreme courts denied Geske's interlocutory appeal of the denial of injunctive relief.

The union filed unfair labor practice charges alleging that Geske filed the state lawsuit with an intent to retaliate against the union's protected, concerted activity (the *Bill Johnson's* allegation), and that, on issuance of an unfair labor practice complaint, the state lawsuit would be preempted (the *Loehmann's Plaza* allegation). Complaint issued alleging, and the administrative law judge found, both the *Bill Johnson's* and *Loehmann's Plaza* violations. In finding the *Bill Johnson's* violation, the administrative law judge relied on the state courts' rulings denying injunctive relief, and on evidence adduced at the unfair labor practice hearing showing that the purpose of the lawsuit was to procure a ban on all picketing.

The Board adopted the judge's finding of the *Bill Johnson's* violation and, accordingly, found it unnecessary to pass on the issue whether the employer's state court lawsuit was preempted, pursuant to *Loehmann's Plaza*.

[26] 317 NLRB 28 (Members Stephens, Browning, and Truesdale).
[27] 461 U.S. 731 (1983).
[28] 305 NLRB 663 (1991).

B. Employer Domination of a Labor Organization

In *Keeler Brass Co.*,[29] the full Board, Chairman Gould concurring, held that the Keeler Brass Grievance Committee is a "labor organization" as defined by Section 2(5) of the Act, and that respondent unlawfully dominated the reformation of the committee and unlawfully interfered with its administration thereafter in violation of Section 8(a)(2). Applying *Electromation, Inc.*,[30] and *E. I. du Pont & Co.*,[31] the Board found that actual domination was established by the respondent's specific acts of recreating the committee, modifying and amending it, and determining its structure and function.[32] The Board ordered the respondent to disband the grievance committee set up for plants in Kentwood and Grand Rapids, Michigan.

Parsing the statute, the Board found that a Section 2(5) labor organization is defined in terms of certain critical elements: whether employees participate; whether the entity in question addresses "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work"; and whether it has a purpose, in whole or in part, of "dealing with" the employer about the foregoing subject matters. The Board reversed the judge and found all of these elements present.

It was undisputed that employees participated in the committee. The Board found that the committee handled Section 2(5) subject matters. The committee was set up to, and did in fact, address "grievances." In addition, the committee addressed the "no-call, no-show" policy, clearly a term or condition of employment.

The more difficult issue was whether the committee's purpose, at least in part, was to "deal with" the respondent concerning grievances and conditions of work. The Board found that the actual functions of the committee showed that it existed for the purpose, at least in part, of "dealing with" the respondent concerning grievances and other conditions of employment.

The Board relied on *NLRB v. Cabot Carbon Co.*[33] In that case, the Supreme Court held that the term "dealing with" in Section 2(5) is broader than the term "bargaining" and applies to situations beyond the negotiation of a collective-bargaining agreement. For example, the Court found that dealing covers such matters as presenting grievances and making recommendations concerning terms and conditions of employment.

Applying these principles, the Board found that the Keeler Brass Committee, like the employee committees in *Cabot Carbon*, existed, at least in part, for the purpose of dealing with the respondent concerning grievances. Focusing on the respondent's actual practice with respect to the committee, the Board found that the record reflected

[29] 317 NLRB 1110 (Members Stephens, Browning, Cohen, and Truesdale; Chairman Gould concurring).

[30] 309 NLRB 990 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994).

[31] 311 NLRB 893 (1993).

[32] Member Cohen cautioned that he does "not necessarily adopt the entire legal analysis" in *Electromation, Inc.* and *E. I. du Pont & Co.*

[33] 360 U.S. 203, 210–211 (1959).

several instances within the 10(b) limitations period, in which the respondent and the committee dealt with one another concerning grievances and terms and conditions of employment, including the grievance procedure, the committee's recommendations concerning an employee's discharge and reinstatement, another employee's discharge grievance, and the future application of the respondent's no-call, no-show policy. The Board found that this record evidence showed that the grievance procedure functioned as a bilateral mechanism, in which the respondent and the committee went back and forth explaining themselves until an acceptable result was achieved.

The Board also found that this "dealing" between the respondent and the committee distinguished the committee from the grievance committees at issue in *Mercy-Memorial Hospital*,[34] and *John Ascuaga's Nugget*.[35] The Board found that the employee committees in those cases could definitively resolve grievances without further recourse to the employer. The Keeler Brass Grievance Committee, by contrast, did not have full grievance handling authority without dealing with management.

Because the respondent and the committee dealt with one another concerning grievances and other conditions of work and because the committee met all other aspects of the statutory test set forth above, the Board concluded that the Keeler Brass Grievance Committee was a statutory labor organization.

The Board next addressed whether the respondent unlawfully dominated or interfered with the committee. "A labor organization that is the creation of management, whose structure and function are essentially determined by management, and whose continued existence depends on the whim of management, is one whose formation or administration has been dominated under Section 8(a)(2)," the Board said, citing its December 1992 holding in *Electromation*.

The Board set aside the administrative law judge's conclusion that the committee was set up in 1983 at the suggestion of employees. It concluded that the judge had ignored strong documentary evidence that the company's human resources department established the original committee, and drafted its purposes and goals. Further, the Board relied on the employer's subsequent remolding of the committee in 1991 to reduce the number of members, to change the days of its meetings, and to require management approval of any special meetings. The Board also observed that management set up elections for committee members, posted sign up sheets, approved the candidates, counted the ballots, and announced the victors.

"This pervasive involvement in the [c]ommittee's composition inherently interferes with the employees' choice of their bargaining representative[s]," the Board said. "Further, management representatives participated in and influenced committee meetings by focusing discussion on particular grievances and conditions of work important to the [employer]."

[34] 231 NLRB 1108 (1977).
[35] 230 NLRB 275 (1977).

The Board concluded that the Keeler Brass Grievance Committee, as created in 1983 and reformed in 1991, had no independent authority apart from its dealings with management through consultation or ex parte talks after the making of initial or tentative recommendations on grievances. It concluded that management and the committee dealt with one another concerning grievances or other conditions of work. In one example, the Board found that the committee had urged reinstatement of an employee with backpay, but when it encountered a negative reaction from management, the committee heard additional evidence and reversed itself. The Board also cited management support of the committee, which met biweekly in a company conference room, with company-provided secretarial and clerical help.

Chairman Gould joined with his colleagues' result, but wrote separately to stress that if the committee were set up as the final arbiter of grievances, he would not find that it is a labor organization within the meaning of the Act. He emphasized that in appropriate cases, the legality of the committee may turn on the degree of independence enjoyed by the employee participation group. The key element in *Electromation,* he said, was that management "controlled all aspects of the committees from their creation to their functioning."

As for unlawful domination of or interference with the labor organization, Chairman Gould endorsed a Seventh Circuit test that requires the Board to prove employer control, rather than the mere potential for control.[36] Chairman Gould opined that past holdings have dealt with cases that represent extremes. As quoted below, he attempted to lay down guidelines to evaluate future cases that do not fall within extremes:

> Much of the initiative for cooperative efforts in the workplace has come from employers, particularly in the nonunion sector. I do not think these efforts are unlawful simply because the employer initiated them. The focus should, instead, be on whether the organization allows for independent employee action and choice. If, for example, the employer did nothing more than tell employees that it wanted their participation in decisions concerning working conditions and suggested that they set up a committee for such participation, I would find no domination provided employees controlled the structure and function of the committee and their participation was voluntary.
>
> Second, the circumstances surrounding the creation of an employee committee are material to a determination of whether there is unlawful domination of the committee. If the employer created an employee participation organization in response to a union organizing campaign, I would draw the inference that the organization was designed to thwart employee independence and free choice.

Sifting through the facts at Keeler Brass, Chairman Gould said that the factors favoring a violation outweighed those favoring dismissal. He found that freedom of choice and independence of action were

[36] *Chicago Rawhide Mfg. Co. v. NLRB,* 221 F.2d 165, 168 (7th Cir. 1955).

"too strictly confined within parameters of the employer's making for the committee to be a genuine expression of democracy in the workplace."

C. Employer Discrimination Against Employees

In *E & L Transport Co.*,[37] the Board held that the respondent violated Section 8(a)(3) and (1) of the Act by refusing to consider for hire and by refusing to hire any of the four discriminatees for the position of confidential secretary. The Board concluded that applicants for a confidential position are within the Act's definition of "employee" under Section 2(3) and are entitled to the Act's protection against a discriminatory denial of employment.

In concluding that applicants for a confidential position are within the Act's definition of "employee," the Board noted that the Supreme Court has broadly interpreted the Act to include applicants for work as well as actual hires within its protection.[38] The Board concluded that assuming arguendo that an employer was able to require that an employee give up his union membership once the employee assumed a confidential position, an employer could not refuse to hire an applicant for a confidential position because of past union activities. The Board thus rejected the respondent's argument that the Board should apply the reasoning of *Pacific American Shipowners Assn.*,[39] which held that those seeking as well as those holding supervisory jobs are excluded from the Act's protection, to applicants for confidential positions. The Board noted in this regard that confidentials are not expressly exempted from the Act's coverage, unlike supervisors.[40]

D. Employer Bargaining Obligation

1. Continuing Bargaining Obligation

In *Auciello Iron Works*,[41] the Board, on remand from the United States Court of Appeals for the First Circuit,[42] reaffirmed the rule that where objective evidence to support a good-faith doubt of a union's majority status is known to an employer before a union's acceptance of the employer's contract offer but the employer does not act on that evidence prior to acceptance, the union's acceptance creates a valid collective-bargaining agreement precluding the employer from raising a good-faith doubt or refusing to bargain with the union during its term.

---

[37] 315 NLRB 303 (Chairman Gould and Members Stephens and Devaney).

[38] *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 182–187 (1941). See also *NLRB v. Town & Country Electric*, 116 S.Ct 450 (1995).

[39] 98 NLRB 582, 596–597 (1952). See also *Ace Machine Co.*, 249 NLRB 623, 624 (1980), *St. Anne's Hospital*, 245 NLRB 1009, 1009–1010 (1979).

[40] Sec. 2(3) of the Act specifically excludes "supervisors" from the definition of "employee."

[41] 317 NLRB 364, enfd. 60 F.3d 24 (1st Cir.) (Chairman Gould and Members Stephens, Browning, Cohen, and Truesdale).

[42] 980 F.2d 804 (1st Cir. 1992), denying enf. 303 NLRB 562 (1991).

The certified union and the employer commenced negotiations for a successor collective-bargaining agreement and a strike ensued. The union subsequently notified the employer that the unit employees had voted to end the strike and to accept the employer's outstanding contract offer. One day later, the employer for the first time asserted a good-faith doubt, relying on events that occurred prior to the acceptance, and refused to sign a collective-bargaining agreement containing the terms of its final contract proposals.

Structuring its analysis to respond to the First Circuit's concerns in asking for a clearer explication of its position, the Board discussed the obligations imposed by Section 8(a)(5) of the Act and concluded that it is inconsistent with the concept of good-faith bargaining to permit an employer to continue to bargain and await the outcome of contract negotiations before deciding whether to raise a doubt of the union's majority support based on grounds that it knew existed prior to the contract's formation. Rather, without an objective manifestation of the doubt by the employer, the Board found that there is no doubt cast on the union's authority to bargain with the employer, and thus no obstacle to the union's binding the employer by accepting its contract offer. Describing the practical difficulties of determining without a timely assertion of doubt when an employer possesses sufficient objective evidence to support an alleged good-faith doubt, the Board reaffirmed "as consistent with our statutory mandate and the practicalities of case litigation" the rule "that, if an employer is aware of objective evidence to support a good-faith doubt *before* the union accepts its offer, it must, for the defense to be timely raised, act on this doubt before the union accepts its offer."

As instructed by the First Circuit, the Board addressed whether a refusal to consider the employer's alleged good-faith doubt violates the principle set forth in *Ladies Garment Workers v. NLRB*,[43] that an employer may not enter into an agreement with a minority union. The Board found that unlike the case before it which concerned a certified union and the employer's obligation to bargain as enforced by Section 8(a)(5), *Ladies Garment Workers* presented a fundamentally different issue involving an employer's inadvertent voluntary recognition of a union the majority of its employees never supported in violation of Section 8(a)(2). Elaborating on these differences, the Board concluded that the employer's conduct did not come within the gravamen of an offense under Section 8(a)(2).

The Board recognized that its establishment of the union's acceptance of an employer's contract offer as the cutoff point for permitting an employer's challenge to the union's majority status does implicate 8(a)(2) concerns, but concluded that "as a policy matter, the stability resulting from this principle outweighs its potential adverse impact on employee freedom of choice." This policy choice, according to the Board, "stabilizes enduring bargaining relationships, and gives the bargaining agreement that was formed while the union's presumed majority status remained unrebutted a chance to succeed."

[43] 366 U.S. 731 (1961).

In *Underground Service Alert*,[44] the Board held that an employer's withdrawal of recognition from the union based on an untainted employee petition was impermissible when it occurred during the contest of an election that the union ultimately won.

The election, held July 23, 1991, resulted in 10 votes for and 8 against the union, and 5 challenged ballots. The Regional Director recommended overruling challenges to four of the ballots and sustaining the challenge to the ballot of Bettenhausen. On exceptions from the union, the Board agreed with overruling the challenges to four of the ballots but it found that the challenge to Bettenhausen's ballot could best be resolved by a hearing. It ordered that the other four ballots be opened and counted and that, if Bettenhausen's ballot remained determinative, a hearing be held on the challenge to it. When the 4 ballots were counted April 6, 1992, a tie vote resulted—11 votes for and 11 votes against the union. Bettenhausen's ballot therefore remained determinative.

On April 14, the respondent received a petition signed by 14 of the 24 unit employees stating that the employees "withdrew recognition" from the union and elected to be represented by the respondent. Two days later the respondent withdrew recognition of the union and notified the employees that the respondent was free to work directly with the employees without the union's involvement.

Following a May 7 hearing, the hearing officer recommended that the challenge to Bettenhausen's ballot be overruled. No exceptions were filed to the hearing officer's report, and the Board adopted the report and ordered that Bettenhausen's ballot be opened and counted. Opening the ballot resulted in a tally of 12 votes for and 11 against the union. Consequently, the Acting Regional Director certified the union as the representative of the bargaining unit. The respondent nevertheless declined to recognize and bargain with the union.

In finding that the respondent's April 16 withdrawal of recognition violated Section 8(a)(5) and (1) of the Act, the Board relied on the well-settled principle that a secret-ballot Board-conducted election is the preferred method of ascertaining employee choice. The Board noted that Board-conducted elections are a more reliable indicator of employee choice partly because they provide an orderly and fair method for resolving questions concerning the fairness of the election process and whether particular individuals are eligible to participate. Noting that some delay between an election and the determination of its outcome inevitably arises from this process, the Board found that:

> [I]t would be incongruous indeed if, during the interval between the holding of the election and, as here, the certification of the Union as bargaining representative, an employer were permitted to withdraw recognition on the basis of some other, less-preferred indicator of employee sentiment, such as an employee petition. Al-

[44] 315 NLRB 958 (Members Stephens, Devaney, and Cohen).

lowing withdrawals of recognition in these circumstances would undermine the election process itself . . . .[45]

The Board distinguished *Atwood & Morrill Co.*,[46] where an employer lawfully withdrew recognition of a union based on employees' written statements that they no longer desired union representation. Although the withdrawal there occurred after an election petition had been filed, the Board noted that, unlike the present case, there was no election process underway when the employees presented their petition to the employer. The Board therefore concluded that the respondent violated the Act by withdrawing recognition of the union during the pendency of a review of an election that ultimately resulted in the union's certification.

The Board additionally found that the respondent's refusal to recognize and bargain with the union after it was certified as the employees' bargaining representative violated Section 8(a)(5) and (1). The Board noted that, following certification, a union possesses a 1-year irrebutable presumption of majority support and that, during that period, a respondent's refusal to bargain with the union is per se an unfair labor practice. The Board rejected the respondent's contention that its prior withdrawal of recognition based on an employee petition took precedence over the Board's subsequent certification of the union based on the outcome of a Board-conducted election.

2. Multiemployer Bargaining

In *James Luterbach Construction Co.*,[47] the Board majority held that an affirmative showing is required to bind an 8(f) employer to a multiemployer successor contract. In this case, the Board found that the employer was bound and that its refusal to honor the agreement violated Section 8(a)(5) and (1) of the Act.

The respondent had been a member of the Associated General Contractors of Greater Milwaukee (AGC) for about 20 years, and had been bound by previous agreements reached through multiemployer bargaining. In 1987, William Luterbach, president of the respondent, served as president of the AGC. During the 1987 bargaining, Luterbach played a role in the negotiations with the union that led to the 1987–1990 contract, which the respondent honored.

Luterbach chaired the AGC's bargaining committee for the first three 1990 negotiating sessions. At the first (April 19) session, the union requested and received a list of employers for whom the AGC had bargaining authority. The respondent's name was on the list. According to Luterbach, the respondent's inclusion was an error that he was unaware of until May 29. Luterbach was absent from the May 30 session, at which the AGC's executive director announced that Bill Emory, an official of another AGC member, was chairman of the

[45] Id. at 961.

[46] 289 NLRB 794 (1988).

[47] 315 NLRB 976 (Members Stephens and Cohen, Chairman Gould concurring; Members Devaney and Browning concurring).

committee. Emory continued to function in that capacity until negotiations concluded. Luterbach did not attend the remaining sessions.

In a May 31 letter to the union's president and business manager, Luterbach announced his withdrawal as chairman and the respondent's intent to conduct its relations with the union as an individual employer. He said that any further role he might play in the negotiations would be as an advisor to the employers (not including the respondent) whose bargaining authority the association held. On May 31, the respondent filed an RM petition naming the union as the labor organization claiming representative status for the relevant unit. On June 28, the committee and the union executed an agreement, effective from June 1, 1990, until May 31, 1993. On July 2 and again on July 3, Luterbach rejected the union's requests that the respondent adhere to the agreement. The respondent persisted in that refusal.

In a plurality opinion, Members Stephens and Cohen declined to apply the rule of *Retail Associates*[48] to 8(f) relationships. They announced a two-part test to decide whether an 8(f) employer has obligated itself to be bound by the results of multiemployer bargaining. First, they would ask whether the employer was part of the multiemployer unit before the dispute giving rise to the case. If so, and if the employer engages in a distinct affirmative act that would reasonably lead the union to believe that the employer intended to be bound by the upcoming or current negotiations, they would deem the employer bound. They found the respondent bound, in light of Luterbach's active participation in the first three 1990 sessions. They did not rely on the respondent's inclusion on the list.

Chairman Gould, concurring, found the plurality's requirement of a distinct affirmative act by the employer too restrictive. He would require an affirmative expression from the association to the union at the beginning of negotiations specifying the employers on whose behalf it was negotiating. From that point forward, he would find the specified employers bound. Here, Chairman Gould found the respondent bound because it was on the list.

Members Devaney and Browning, concurring, disagreed with their colleagues' view that *Retail Associates* should not apply to 8(f) relationships. They concluded that the respondent was bound because it had not notified the union, before negotiations began, of its withdrawal from the multiemployer association.

In *Plumbers Local 669 (Lexington Fire Protection Group)*,[49] the Board majority held that, just prior to the start of multiemployer bargaining, an employer association's providing to the union a list of employers that had authorized the association to represent it in bargaining constituted adequate notice to the union that the association was no longer bargaining on behalf of an employer whose name did not appear on the list. Therefore, the employer, which had timely no-

[48] 120 NLRB 388 (1958) (if an employer wishes to abandon multiemployer bargaining to bargain on a single employer basis, that employer must withdraw from the multiemployer unit in advance of multiemployer negotiations).

[49] 318 NLRB No. 32 (Chairman Gould and Members Stephens and Cohen; Members Browning and Truesdale dissenting).

tified the association that it was withdrawing from multiemployer bargaining, was no longer part of the multiemployer unit. Consequently, a later-formed company that may have been an alter ego of the employer was not part of the multiemployer unit, and the union violated Section 8(b)(3) of the Act by refusing to bargain with that company on a separate basis.

From 1975 until late 1987, the National Fire Sprinkler Association was authorized by Lexington Fire Protection Company (LFP Company) to represent it in bargaining with Road Sprinkler Fitters Local 669 as part of a multiemployer unit. In October 1987, LFP Company wrote the association that it would represent itself in upcoming negotiations for a contract to succeed the one expiring in April 1988. Following customary practice, the association removed LFP Company from the association's "A" list, a 25–30-page list setting forth the approximately 300 employers that had assigned the association their collective-bargaining rights. When the association and the union met in November 1987 to begin contract bargaining, the association, again following customary practice, handed the union the updated "A" list. The parties thereafter began bargaining for a new multiemployer collective-bargaining agreement.

The union subsequently checked the "A" list against its own records and noted that there was nothing in its files showing that LFP Company had withdrawn from the multiemployer unit. In February 1988, the union notified LFP Company by certified mail, with a copy to the association, that, as a member of the multiemployer unit, LFP Company would be bound to the results of the ongoing contract negotiations. The union received no response to its letter. LFP Company honored the terms of the 1988–1991 contract that resulted from the negotiations.

In June 1990, the assets of LFP Company were sold. The new owners, who changed the name to Lexington Fire Protection Group (LFP Group), continued to operate the business with the same employees and customers and observed the terms of the contract.

In January 1991, while negotiations for a new multiemployer collective-bargaining agreement were underway, LFP Group asserted that it was not a member of the multiemployer unit and was not bound to the ongoing negotiations. The union, however, insisting that LFP Group was part of the multiemployer unit, refused LFP Group's request to negotiate a contract on an individual basis.

In finding unlawful the union's refusal to negotiate individually with LFP Group, the majority began its analysis by finding that the association's providing the "A" list to the union just before the start of the November 1987 contract negotiations constituted timely notice of LFP Company's withdrawal from the multiemployer unit under the principles of *Retail Associates*.[50] That case generally permits withdrawals from multiemployer bargaining units only on written notice given prior to the start of contract negotiations. The majority noted that, under established precedent, written notice of withdrawal ten-

[50] 120 NLRB 388 (1958).

dered prior to the exchange of bargaining proposals is considered timely. The majority also found inconsequential that the "A" list that the association provided the union did not mention employers that were withdrawing from the multiemployer unit but, rather, set forth the employers that remained in the unit. The majority reasoned that "to ascertain the names of those who had withdrawn, the Union had only to compare the names on the list with the names that were on the list at the time of the negotiation of the last contract." The majority noted that, while the lists were lengthy, comparison of them was the practice that the parties themselves had historically followed.

The majority further observed that, as the list was provided to the union before the start of substantive negotiations, this was not a case in which an employer "hung back" to see how bargaining would proceed. Therefore, the *Retail Associates* policy of discouraging that practice was not undermined by the majority's finding effective LFP Company's withdrawal from the multiemployer unit. Additionally, the majority found that, as an employer can be a "me too" signatory to a multiemployer contract, LFP Company's adhering to the 1988–1991 contract did not establish that it remained part of the multiemployer unit.

Finally, the majority found that, after LFP Company's withdrawal from the multiemployer unit, neither LFP Company nor LFP Group evidenced a clear intent to be bound by multiemployer bargaining. Consequently, even if LFP Company and LFP Group were, as the union contended, alter egos or a single employer, LFP Group had a right to bargain independently. Accordingly, the majority concluded that the union violated Section 8(b)(3) by refusing LFP Group's request to bargain on a separate basis.

Dissenting, Members Browning and Truesdale would have found that LFP Company did not successfully withdraw from the multiemployer unit. In their view, the absence of LFP Company's name from the list of 300 employers that the association furnished to the union did not provide the notice of withdrawal required under *Retail Associates*. Noting that the list did not name employers that were withdrawing from the unit, the dissent emphasized that the burden was on LFP Company or the association to provide notice of such employers to the union. The union was under no obligation to aid in this task by comparing the two lengthy lists to determine which employers appeared on an earlier list but not on the later list. Further, the absence of an employer's name from the later list would not necessarily indicate that the employer had withdrawn from the multiemployer unit, as employers were omitted from the association's "A" lists for a variety of reasons, including merger with other companies, change in corporate names, and clerical error.

Additionally, the dissent noted that the parties' customary practice was for the union to accept the association's "A" list subject to later review and correction and for the parties subsequently to confer and attempt to resolve discrepancies that the union's review disclosed between the association's "A" list and the union's records. The dissent argued that this practice undermined the majority's view that the as-

sociation's providing this list to the union constituted notice of withdrawal. According to the dissent, it was not reasonable for the majority to treat the association's tendering of the "A" list as instantaneously conveying to the union information that the parties knew the union would be unaware of until later.

Having concluded that LFP Company did not succeed in withdrawing from the multiemployer unit, the dissent would have remanded the case for resolution of whether LFP Group was an alter ego of, or single employer with, LFP Company, as the administrative law judge had erroneously refused to allow introduction of evidence on those issues.

3. Unilateral Changes

In *Daily News of Los Angeles*,[51] the Board reaffirmed its original holding[52] that under the Supreme Court's decision in *NLRB v. Katz*[53] the respondent's annual award of discretionary merit wage increases to unit employees was an existing term and condition of employment and that the respondent's unilateral discontinuance of those increases during bargaining for an initial contract violated Section 8(a)(5). The Board's decision was in response to the D.C. Circuit's denial of enforcement and remand of the Board's original decision to reconsider whether *Katz*, which addressed only the prohibition against unilateral *continuance* of discretionary merit wage increases, applied with equal force to situations like *Daily News* involving the unilateral *discontinuance* of merit wages.[54] Relying on well-established Board and court precedent, the Board explained that *Katz* prohibits both the unilateral continuance and the unilateral discontinuance of a discretionary merit raise program, as in *Daily News*, it constitutes a change in employment conditions under Section 8(d) of the Act.

In further response to issues raised by the court's remand, the Board held that unilateral discontinuance of merit increases cannot be regarded as a lawful economic weapon in the same sense that the "harassing tactics" in *NLRB v. Insurance Agents*[55] and the lockout in *American Ship Building Co. v. NLRB*[56] were found to be lawful economic weapons. And with regard to the court's concern as to how, assuming a violation, the Board can devise an acceptable remedy that makes employees whole for a loss of wages that are based on employer discretion, the Board noted that it need only adopt a formula that reasonably approximates the amount due employees and that such a formula was capable of being devised in this case.

Members Stephens and Cohen filed a concurring opinion addressing the special situation of a past practice of discretionary merit increases that are scheduled to recur while negotiations are in progress for a first contract. In that instance, Members Stephens and Cohen

[51] 315 NLRB 1236 (Chairman Gould and Member Browning; Members Stephens and Cohen concurring).
[52] 304 NLRB 511 (1991).
[53] 369 U.S. 736 (1962).
[54] *Daily News of Los Angeles v. NLRB*, 979 F.2d 1571 (D.C. Cir. 1992).
[55] 361 U S. 477 (1960).
[56] 380 U.S. 300 (1965).

would allow an employer to implement a final nonpermanent proposal on the matter without reaching impasse if the employer first gives reasonable advance notice and opportunity to bargain about the scheduled raise. If, however, the proposal is for a permanent change in the past practice of discretionary wage increases, they would require bargaining to impasse. Concluding that the respondent failed to meet either bargaining standard in this case, Members Stephens and Cohen agreed that the respondent acted unlawfully.

4. Successor Employer

In *Canteen Co.*,[57] a majority of the Board agreed with the administrative law judge that the respondent violated Section 8(a)(5) and (1) of the Act by unilaterally setting initial wage rates that were different from those paid by the predecessor under its collective-bargaining agreement with the union. The majority applied the "perfectly clear" caveat from the Supreme Court's decision in *NLRB v. Burns Security Services*[58] and found that although a successor employer is usually free to set initial terms and conditions of employment, it must first consult with the employees' collective-bargaining representative in those instances where it is "perfectly clear" that the new employer intends to retain all of the employees in the unit.

Canteen was selected to assume the cafeteria services at a college beginning July 1, 1992. The services were previously contracted out to Service America. Prior to assuming operations, Canteen invited the four Service America employees to apply for employment with Canteen. The employees were told to fill out applications and were scheduled for interviews on June 23. Canteen also contacted the Service America employees' collective-bargaining representative to discuss creating a working manager position and to discuss sample contract language. On June 22, the day before the employee interviews, Canteen and the union agreed to meet on June 30 to negotiate a collective-bargaining agreement. Also on June 22, Canteen informed the union that the employees hired would have to serve a probationary period. On June 23, during their interviews, Canteen offered jobs to the three former Service America employees who had applied, but at lower wage rates than those that were paid by Service America.

The majority of the Board, applying the *Burns* "perfectly clear" caveat as interpreted by the Board in *Spruce Up Corp.*,[59] found that by June 22 Canteen "had effectively and clearly communicated to the union its plan to retain the predecessor employees." Because it was "perfectly clear" at that point that Canteen planned to retain the Service America employees, the majority held that Canteen "was not entitled to unilaterally implement new wage rates thereafter."

In his concurrence, Chairman Gould agreed with the majority's finding that Canteen violated the Act by unilaterally setting initial terms and conditions of employment without first consulting with the

[57] 317 NLRB 1052 (Members Browning and Truesdale; Chairman Gould concurring, Members Stephens and Cohen dissenting).

[58] 406 U.S. 272, 294–295 (1972).

[59] 209 NLRB 194 (1974), enfd. on other grounds 529 F.2d 516 (4th Cir. 1975).

union. The Chairman, however, indicated that the *Spruce Up* interpretation of the *Burns* "perfectly clear" caveat is too restrictive. The Chairman agrees with the approach set out in the dissents of Members Fanning and Penello in *Spruce Up*. Thus, "the Supreme Court stated that the [perfectly clear] test was only whether 'the new employer plans to retain all of the employees in the unit'" and the test does not consider in any way "the 'desire' of the employees or their 'willingness' to accept the new employer's offer" in determining whether the new employer plans to retain all the employees in the unit. According to Chairman Gould, if the successor intends to hire its initial work force from the employees currently working at the predecessor's facility, "all that is required by *Burns* is negotiation prior to the commencement of the operation." The successor can then institute unilaterally its own position when its operation commences.

In their dissent, Members Stephens and Cohen stated that they would have reversed the judge and found that *Canteen* did not violate the Act because *Canteen* was not a *Burns* "perfectly clear" successor. Members Stephens and Cohen indicated that they would adhere to the Second Circuit's analysis of the *Spruce Up* doctrine set forth in *Nazereth Regional High School v. NLRB*.[60] Under that analysis, the dissent would limit the "perfectly clear" caveat "to situations in which the employees have been tendered unconditional offers of hire, with no indication that the predecessor's terms will be changed." The dissent would have found in *Canteen* that it was never perfectly clear that the respondent planned to retain the Service America employees without any change in their wages, hours, and conditions of employment. Thus, according to the dissent, the respondent was never obligated to bargain with the union prior to setting initial terms and conditions of employment.

5. Certification Year Rule

In *Americare-New Lexington Health Care Center*,[61] the Board held that the respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain with the union for a continuous full year after a majority of the respondent's unit employees voted in a decertification election for continued representation by the union, Bus, Sales, Truck Drivers, Warehousemen and Helpers, Local Union No. 637.

The majority of Chairman Gould and Member Browning rejected the respondent's argument that the certification year rule applies only to initial certifications. The majority noted that "[t]here is at least as great a need for a guaranteed postelection insular period in which the bargaining relationship can stabilize and succeed" following a certification election. They went on to affirm the Board's "long-standing practice" of applying the certification year rule in every instance in which the Board certifies a union, regardless of whether the same union has previously been certified for the same unit in a prior Board election.

---

[60] 549 F.2d 873, 881–882 (2d Cir. 1977).
[61] 316 NLRB 1226 (Chairman Gould and Member Browning; Member Cohen dissenting).

The union was initially certified on September 3, 1991. It was recertified March 22, 1991, based on the results of a certification election. The respondent subsequently withdrew recognition on May 2, 1991. Bargaining resumed on August 29, 1991, pursuant to an informal settlement. On March 26, 1992, the respondent again withdrew recognition, based on a petition signed by 45 of 74 employees, saying they no longer desired union representation. The majority reasoned that since the union received only about 8 months of bargaining (1 month in early 1991 and 7 months from August 29, 1991, to March 26, 1992), the respondent could not withdraw recognition on March 26, 1992.

Member Cohen, dissenting, believed that a new certification year was not created when the union was recertified. He noted that the certification year principle is based on the premise that a newly established collective-bargaining relationship should be given a chance to succeed. He further noted that in the instant case, the union was already given a chance to succeed after it won the original election in August 1987 and the union's recertification on March 22 was the continuation of an established relationship. He therefore would have permitted the withdrawal of recognition.

E. 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."[62] 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.

In *Laborers Local 324 (AGC of California)*,[63] the Board majority found that the union violated Section 8(b)(1)(A) of the Act by adopting a no-solicitation/no-distribution rule for the sole purpose of prohibiting member Douglas Murray from disseminating dissident lit-

---

[62] *Scofield v. NLRB*, 394 U.S. 423, 429 (1969), *NLRB v. Shipbuilders*, 391 U.S. 418 (1968).

[63] 318 NLRB No. 66 (Chairman Gould and Members Stephens and Cohen; Members Browning and Truesdale dissenting).

erature in which he protested the decisions of the union's officers, criticized their actions, and urged other members to do the same and by threatening Murray with enforcement of the rule.

Douglas Murray, an active member of the union, edits and publishes a newsletter containing articles critical of the union leadership. Beginning in 1988, Murray distributed his literature at the union's three hiring halls. In June 1989, the union called the police to remove Murray from one of the hiring halls. After the police refused to remove Murray in the absence of a rule prohibiting distribution, the union adopted a no-solicitation/no-distribution rule for its hiring halls. Several weeks later, as Murray attempted to distribute his literature outside the hiring hall, the union threatened to call the police if he did not leave.

The majority of Chairman Gould and Members Stephens and Cohen acknowledged that unions are afforded "wide latitude in promulgating rules governing their internal affairs." Applying *Scofield v. NLRB*,[64] the majority concluded, however, that the union's rule failed to satisfy the test articulated by the Supreme Court for evaluating the lawfulness of a union rule and its enforcement. Noting the absence of any evidence that Murray's distribution of literature disrupted meetings or interfered with the operation of the hiring hall, the admissions by the union's agents that the sole motivation in adopting the rule was to silence Murray, and the adoption of the rule only after the police refused to arrest Murray in the absence of a rule, the majority found that the rule failed to reflect a legitimate union interest. In determining whether a union's conduct impairs the national labor policy, the majority concluded that the Board is free to examine, inter alia, the union's motive for engaging in that conduct, and that the union's no-solicitation/no-distribution rule was aimed at stifling the kind of free speech that Congress sought to protect under the Labor-Management Reporting and Disclosure Act.

The Board majority also rejected the dissent's contention that, in the absence of internal union discipline, the Board lacks the authority to determine the propriety of the rule. The majority noted that, although the union did not subject Murray to any formal internal union disciplinary action or threaten to do so, the union threatened Murray with arrest. Declining to make a distinction between the threat of union discipline for exercising a protected right and the threat of arrest, the majority concluded that the result in either case is unlawful coercion.

Members Browning and Truesdale, dissenting, would find that the Board has no authority to examine the motive behind a facially valid union rule relating to purely internal conduct.

According to the dissent, "formal disciplinary action or the threat thereof is the sine qua non of an 8(b)(1)(A) violation under *Scofield*," and the Board majority's extension of the *Scofield* test to cover the union's enactment of a facially valid bylaw fails to observe the limits placed by Congress on the Board's authority to intervene in internal

[64] 394 U.S. 423 (1969).

union conduct. In the view of Members Browning and Truesdale, the majority's standard, that a showing of improper motivation for an internal union rule is sufficient for a finding of a violation, leads to the type of oversight of unions' efforts to administer themselves condemned by the Supreme Court in *Teamsters Local 357 v. NLRB*,[65] and *NLRB v. News Syndicate Co.*[66]

F. Remedial Order Provisions

1. Piercing the Corporate Veil

In *White Oak Coal Co.*,[67] the full Board fashioned a new two-prong test for determining when to pierce the corporate veil to impose personal liability for an unfair labor practice remedy. After reconsidering *Riley Aeronautics Corp.*,[68] the full Board held that the corporate veil may be pierced when shareholders and the corporation have failed to maintain separate identities, and when adherence to corporate structure would sanction fraud, promote injustice, or lead to evasion of legal obligations. The Board found that *Riley*'s multifaceted approach for imposing personal liability was unclear and unwieldy. Applying the new standard, the Board held a husband and wife, as officers and alter egos of an employer that committed various unfair labor practices, jointly and severally liable for remedial and backpay obligations.

In 1981, Jerry and Arlene Deel incorporated White Oak Coal Co. The Deels owned White Oak and were its president and vice president. Patsy Fuller, Arlene's sister, was secretary and treasurer. The Deels and Fuller filled three of the four seats on White Oak's board of directors.

In 1982, White Oak executed a contract mining agreement with Clinchfield Coal Company to mine certain coal reserves. On April 11, 1984, JAP Leasing, Inc. (JAP) was incorporated to hold White Oak's mining equipment and to insulate it from attachment. JAP was 70 percent owned by David Blevins and 30 percent owned by Fuller. JAP's officers were Fuller (president) and Arlene Deel (secretary). JAP's directors were the Deels and Fuller.

After White Oak's agreement with the United Mine Workers expired in 1984, the employees struck. Jack Head was White Oak's agent and chief negotiator for a new contract. Unfair labor practice charges against White Oak were upheld by the Board.[69]

In January 1986, Clinchfield leased the coal reserves being mined by White Oak to Haysi Coal Processing Company. When Haysi refused to permit the Deels or White Oak to continue mining there, White Oak ceased functioning as an operating entity.

On January 28, 1986, Head reached an agreement to mine coal for Haysi and formed Paroki Enterprise Inc. to do the mining. Paroki's

[65] 365 U.S. 667 (1961).
[66] 365 U.S. 695 (1961).
[67] 318 NLRB No. 89 (Chairman Gould and Members Stephens, Browning, Cohen, and Truesdale).
[68] 178 NLRB 495 (1969).
[69] 295 NLRB 567 (1989)

articles of incorporation listed the Deels and Head as directors. Head owned 60 percent of Paroki stock, Arlene Deel owned 30 percent, and the Deels' daughter owned 10 percent.

Head asked Arlene Deel to manage Paroki's day-to-day operations. Arlene Deel, as president of Paroki, applied to the Commonwealth of Virginia for transfer of White Oak's mining permit to Paroki. Jerry Deel, as president of White Oak, relinquished White Oak's rights under the permit to Paroki. Paroki mined from the portal used by White Oak, at a slightly different angle. Ten of Paroki's eleven employees came directly from White Oak.

Haysi terminated Paroki's agreement in 1988. Paroki then contracted to mine for Clinchfield. Clinchfield's mining agreements with Paroki, dated 1988, and with White Oak, dated 1982, were nearly identical. Arlene Deel executed these agreements for Paroki and White Oak. The Paroki agreement said Paroki would pay Clinchfield a maximum of $22,777 for "trespass and White Oak settlement."

Clinchfield, Haysi, and White Oak executed a settlement and release dated August 31, 1988. Pursuant to this document, Clinchfield and Haysi agreed to terminate their lease, under which White Oak purportedly had contracted with Haysi to perform mining operations. In fact, the Haysi contract was with Paroki.

The Deels used JAP funds to pay personal notes. After White Oak ceased operating, they also wrote checks on the White Oak account to Jerry's church and to the International Hot Rod Association. Between 1988 and 1991, the Deels also wrote checks on the Paroki account to Jerry's church. Arlene Deel used $1414 in Paroki funds to buy house trailer furniture. Although she testified that Paroki owned no vehicles, she wrote Paroki checks to the Virginia Department of Motor Vehicles and to a Ford-Mercury dealer.

The Board agreed with the administrative law judge that the Deels were alter egos of, and a single employer with, White Oak, JAP, and Paroki. The Board found, however, that the alter-ego and single-employer findings did not resolve the personal liability issue. The Board stressed that its decision to impose personal liability was based not only on the findings that the Deels were alter egos of White Oak, JAP, and Paroki, but also on findings that the Deels substantially disregarded the corporate form, and that their use of the corporate form as a shield to protect them from personal liability would promote injustice and permit evasion of statutory and remedial obligations.

Adopting the two-prong analytical framework set forth in *NLRB v. Greater Kansas City Roofing*,[70] the Board decided that the corporate veil may be pierced under Federal common law when:

> 1. there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct, *and*

[70] 2 F.3d 1047 (10th Cir. 1993), denying enf. in pertinent part of 305 NLRB 720 (1991).

2. adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

In applying the first prong, the Board stated that it will consider generally the degree to which the corporate legal formalities have been maintained, and the degree to which individual and corporate funds, other assets, and affairs have been commingled. Among the specific factors that the Board will consider are:

1. whether the corporation is operated as a separate entity;
2. the commingling of funds and other assets;
3. the failure to maintain adequate corporate records;
4. the nature of the corporation's ownership and control;
5. the availability and use of corporate assets, the absence of such assets, or undercapitalization;
6. the use of the corporate form as a mere shell, instrumentality, or conduit of an individual or another corporation;
7. disregard of corporate legal formalities and the failure to maintain an arm's-length relationship among related entities;
8. diversion of corporate funds or assets to non-corporate purposes; and . . .
9. transfer or disposal of corporate assets without fair consideration.

Under the second prong, the Board stated that the showing of inequity necessary to warrant the equitable remedy of piercing the corporate veil must flow from misuse of the corporate form. Further, the Board stated that the individuals charged personally with corporate liability must have participated in the fraud, injustice, or inequity that is found.

Applying this analytical framework, the Board pierced the corporate veil and found the Deels jointly and severally liable for White Oak's remedial and backpay obligations. The Board relied on the following findings.

The Deels had extensively disregarded the separate identities of their corporate alter egos. They had maintained significant ownership in, or exercised central and pervasive control over, each of the alter egos, and they misused the corporate structure by diverting corporate assets for personal use. They transferred corporate assets without arm's-length dealing for personal gain. They misrepresented or interchanged corporate identities and obligations in legal documents after they were on notice of White Oak's pending backpay liability. The Board stressed that the transfer of White Oak's mining permit to Paroki without bona fide consideration resulted in personal economic benefit for the Deels. The Board also emphasized that the Deels had misused the corporate form for personal gain by continuously commingling and diverting White Oak, Paroki, and JAP funds for personal purposes.

The Board also emphasized that the Deels failed to maintain adequate corporate records to justify the commingling of personal and corporate finances and affairs. They had disregarded corporate identity and legal formality by executing a settlement and release agreement, which indicated that White Oak was performing certain mining

operations, when in fact Paroki was performing this mining and White Oak had ceased functioning as an operating entity. The Board added that the Deels later caused Paroki to satisfy a White Oak settlement with Clinchfield.

The Board found that the Deels' blurring of separate corporate identities, and their misuse of the corporate assets and structure, were unfair and unjust and resulted in evasion of White Oak's remedial and backpay obligations for unfair labor practices that the Deels committed. The Board concluded that the natural, foreseeable, and inevitable consequence of the Deels' use of corporate assets for personal gain, misuse of the corporate form, and disregard of corporate formality, was the diminished ability of the corporate alter egos to satisfy White Oak's statutory remedial obligations.

For these reasons, the Board held the Deels jointly and severally liable for White Oak's remedial and backpay obligations.

2. Liability of Parent Corporation

In *Esmark, Inc.*,[71] before the Board on remand from the United States Court of Appeals for the Seventh Circuit,[72] the Board overruled the administrative law judge's dismissal of allegations that the respondent, Esmark, the parent corporation of the corporate owners of two meat processing plants at Guymon, Oklahoma, and Moultrie, Georgia, violated Section 8(a)(3) and (1) of the Act by its participation, in the context of a corporate restructuring by Esmark, in the sham closing and reopening of the plants in order to abrogate the applicable collective-bargaining agreement.

In the underlying case, the Board found Esmark, a holding company, liable for its corporate subsidiaries' violations of Section 8(a)(5), (3), and (1) by virtue of its "direct participation" in a plan, executed by the subsidiaries, to rid the two plants of their collective-bargaining agreements in order to increase their attraction to potential purchasers. The court of appeals declined to enforce the Board's finding that Esmark was liable under Section 8(a)(5) for its subsidiary's unfair labor practices, noting that Section 8(a)(5) limited an employer's liability to dealings with the representative of "*his* employees" (emphasis added) and finding that the Board had not adduced sufficient evidence that Esmark had ignored the subsidiaries' corporate formalities to satisfy the court's standard for direct participation. On remand, the Board accepted the court's interpretation of "direct participation" as the law of the case and agreed that the record contained insufficient evidence under that standard to find that Esmark had violated Section 8(a)(5). Noting that the court had left open the possibility that, while the standard for 8(a)(5) liability had not been met, a finding of liability under Section 8(a)(3) might nonetheless be possible, the Board remanded the case to the administrative law judge, who recommended that the case be dismissed.

[71] 315 NLRB 763 (Chairman Gould and Members Devaney and Browning).
[72] *Esmark, Inc. v. NLRB*, 887 F.2d 739 (1989).

The Board disagreed with respect to the 8(a)(3) allegations, and found Esmark liable for the unit employees' losses as a result of the abrogation of their contract through the sham close and reopen scheme. The Board rejected Esmark's defense that it could not be liable as it had not closed the plant itself and noted that under Board law an employer can be liable under Section (8)(a)(3) and (1) for acts directed not at its own employees, but also for those directed at the employees of other employers. The Board noted the frequency of one employer's dependence on another and the concomitant influence the latter employer can exert over the dependent employer's labor policies and found that limiting liability to the direct employer could fail to further the Act's purposes, especially in a case such as this, in which Esmark was determining the extent and nature of the subsidiaries' existence. The Board noted further that, of all the respondents alleged to have been involved in the corporate restructuring and concomitant unfair labor practices, Esmark itself, as the coordinator of the restructuring, was the entity in control of all aspects of the deals and the only one in a position to avert the sham close and reopen scheme. Thus, the Board concluded, a finding under the circumstances of this case that a parent corporation should not be permitted to act through its subsidiaries to discriminate against their employees on the basis of their coverage by a collective-bargaining agreement would further fundamental policies of the Act without endangering the shareholder's protection from the corporation's liabilities that the law of corporations affords.

3. Compliance Stage Issues

In *Intermountain Rural Electric Assn.*,[73] the Board held that a compliance stage presumption concerning backpay applies not only in cases involving unlawful discharges, but also in nondischarge cases in which the unfair labor practice found in the underlying case potentially affects employee compensation. Specifically, the Board held that a finding that an employer has made unlawful unilateral modifications in an overtime selection procedure that created a "potential loss of income to employees by depriving them of overtime opportunities" gives rise to a presumption that at least some backpay is owed the employees subject to the selection procedures. The Board also held that certain documents attached by the General Counsel to his posthearing brief should have been considered by the administrative law judge because they did not constitute new evidence, as the judge found, but were only arithmetic adjustments in the General Counsel's backpay calculations which could not reasonably have surprised the respondent.

In the underlying unfair labor practice case,[74] the Board had found, among other things, that the respondent employer had modified its procedures for determining the order in which employees would be offered two types of overtime (callout and standby overtime), without

[73] 317 NLRB 588 (Chairman Gould and Members Stephens and Browning).

[74] 305 NLRB 783 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993).

first giving the union adequate notice and an opportunity to bargain over the changes. In the original selection procedures, either seniority or recommendations made by an employee committee played a role in determining which employees would first be offered overtime; these were changed to procedures consisting of a simple rotation through the entire unit. The backpay specification embodied a formula which the General Counsel contended would yield an approximation of losses suffered by certain unit employees as a result of the change in procedures. The General Counsel also argued that, under Board precedent, he was aided by a presumption, arising from the unfair labor practice finding, that some backpay was owing. The respondent contended that such a presumption applied only in discharge cases. The administrative law judge stated that he was not ruling on the respondent's contention, but he dismissed the portion of the specification related to the two types of overtime because he found faults in the General Counsel's formula and observed that the respondent had paid certain amounts to the employees for other unfair labor practices found in the case.

The Board reversed, finding that the formula, with recalculations by the General Counsel after he acquiesced in certain objections made by the respondent, produced a reasonable approximation of losses suffered by two unit employees as a result of the modification in procedures. The Board specifically rejected the respondent's argument regarding the inapplicability of the backpay presumption to nondischarge cases, holding, as noted above, that a finding that overtime selection procedures were unlawfully changed gave rise to a presumption that there was some backpay liability. The Board also found that the respondent had not rebutted the presumption in this case as to the two employees for whom the General Counsel sought backpay for callout and standby overtime.

With respect to a procedural issue, the Board reversed the ruling by which the judge had rejected documents that the General Counsel filed with his brief reflecting a recalculation of what was owed to unit employees after accepting the respondent's argument that the General Counsel had erred in including the overtime hours of certain employees in the representative period with which overtime hours in the backpay period were compared. The Board found, contrary to the judge, that the documents did not amount to belatedly proffered new evidence, but rather were only an "arithmetic adjustment" which could not reasonably be said to have "surprised or procedurally disadvantaged" the respondent, since they reflected a reduction of the respondent's backpay liability on the basis of arguments by the respondent in which the General Counsel acquiesced.

4. Reimbursement of Negotiation and Litigation Expenses

In *Frontier Hotel & Casino*,[75] the Board ordered the respondent to reimburse the charging party unions for the negotiation expenses they incurred as a result of the respondent's extreme surface bargaining

[75] 318 NLRB No. 60 (Chairman Gould and Members Browning and Truesdale).

conduct. The Board held that such reimbursement is appropriate where the respondent has engaged in "unusually aggravated misconduct" that has so "infected the core of the bargaining process" that the Board's traditional remedies cannot eliminate the effects of the unlawful conduct. The Board further ordered the respondent to reimburse the unions and the General Counsel for their litigation expenses, based on the respondent's pursuit of frivolous litigation as well as its egregious bad faith in the litigation and the underlying conduct.

The Board found that the respondent engaged in flagrant, deliberate, and pervasive surface bargaining. The respondent's bargaining proposals were, as characterized by the administrative law judge, "regressive and confrontational" and "not designed to reach agreement." The respondent's negotiator repeatedly goaded the unions to strike if they were unwilling to acquiesce to the proposals, declaring that the respondent would be pleased to be rid of the employees and would replace them. In these circumstances, the Board found that the traditional remedies, including a bargaining order, would be insufficient to restore the unions to their former economic strength for meaningful bargaining, and might even allow the respondent to gain a bargaining advantage from weakening the unions financially. In view of these considerations and the direct causal link between the respondent's conduct and the depletion of the unions' resources, the Board concluded that the reimbursement of the unions' negotiating expenses was a necessary additional remedy. The Board overruled inconsistent cases that focused on the frivolousness of the defenses presented rather than the nature of the unlawful conduct.

In considering the reimbursement of litigation expenses, the Board relied on the standard articulated in *Heck's Inc.*,[76] that the Board will order such reimbursement where the respondent's defenses are "frivolous" rather than "debatable." Although *Heck's* indicated that a defense would be found debatable "where the credibility of witnesses leaves an unfair labor practice issue in doubt," the Board found that Frontier's defense was not debatable where the testimony of its only witness concerning the surface bargaining allegation "consisted of unresponsive, aggressive, and flagrantly disrepectful remarks," and was deemed by the judge to be utterly lacking in credibility. Moreover, because the surface bargaining allegation dominated the litigation, the Board found that debatable defenses regarding more minor allegations and the dismissal of two such allegations did not diminish the appropriateness of the reimbursement remedy.

The Board further held that, where a respondent has engaged in "flagrant, aggravated, persistent, and pervasive misconduct," such as the extreme surface bargaining by Frontier, the egregiousness of the conduct constitutes an additional basis for ordering the reimbursement of litigation expenses. The Board found that the American Rule that attorney's fees "are not ordinarily recoverable in the absence of a

[76] 215 NLRB 765 (1974).

statute or enforceable contract providing therefor''[77] did not preclude this remedy, because Congress granted the Board broad statutory authority in remedial matters. In addition, the Board found that awarding the reimbursement remedy was consistent with the bad-faith exception to the American Rule, citing the respondent's bad faith in the underlying surface bargaining conduct, in its adherence to frivolous defenses that necessitated the litigation, and in its presentation of those defenses at the Board hearing.

5. WARN Payments not Offset to Limited Backpay Remedy

In *Dallas Times Herald*,[78] the Board found that payments an employer made to employees pursuant to the Worker Adjustment and Retraining Notification Act of 1988 (WARN), 29 U.S.C. §2101 et seq., are not an offset to the limited backpay remedy the Board traditionally provides pursuant to *Transmarine Navigation Corp.*,[79] for failing to bargain over the effects of a decision to cease operations.

In December 1992, the respondent employer notified the unions that it was ceasing operations immediately and would pay its employees 60 days' wages and benefits. Thereafter, the parties held one bargaining session over the effects of the decision to cease operations, although no agreement was reached on any of the subjects raised at the session.

Noting that no party excepted to the administrative law judge's finding that the respondent's payments to its employees were made pursuant to WARN and that the respondent had violated Section 8(a)(5) and (1) of the Act by failing to engage in meaningful bargaining over the effects of its decision to cease operations, the Board reversed the judge's finding that the limited backpay remedy due under *Transmarine* was offset by the WARN payments to the employees. The Board held that the language of the WARN statute ''makes clear that the [r]espondent's remedial obligations under WARN 'are in addition to, and not in lieu of,' the [r]espondent's remedial obligations under the NLRA, and that WARN remedies 'do not alter or affect' NLRA remedies.''[80] The Board further held that while WARN payments remedy the failure to give employees advance notice of a decision to cease operations, the *Transmarine* payments remedy the failure to allow for meaningful effects bargaining.

In her concurrence, Member Browning agreed that WARN payments are not an offset to the limited backpay of *Transmarine*, but further found that even in circumstances where WARN was not implicated, an employer's final payments to employees should not serve as an offset to *Transmarine* backpay. In so finding, Member Browning would overrule *W. R. Grace & Co.*,[81] to the extent it holds that

---

[77] *Summit Valley Industries v. Carpenters Local 112*, 456 U.S. 717 (1982).

[78] 315 NLRB 700 (Chairman Gould and Members Stephens, Devaney, and Cohen, Member Browning concurring).

[79] 170 NLRB 389 (1968).

[80] 315 NLRB at 702, citing 29 U.S.C. §2105.

[81] 247 NLRB 698, 699 fn. 5 (1980).

severance pay is a proper deduction from backpay due under a *Transmarine* remedy.

6. Failure to Comply with Exclusive Hiring Hall Provisions

The Board in *J. E. Brown Electric*,[82] ordered the respondent, which the Board found to have unlawfully repudiated exclusive hiring hall provisions, to pay lost wages and benefits and reinstate applicants who would have been referred to the respondent for employment through the hiring hall, overruling prior cases limiting remedies to payments for lost wages and benefits.

The respondent and union were parties to an agreement containing an exclusive hiring hall provision. The respondent transferred nonunit employees to perform unit work after the union was unable to refer electricians requested by the respondent. Later, electricians became available through the hiring hall, but the respondent refused to lay off the transferred employees and to replace them with the qualified applicants referred through the hiring hall.

The Board found that the respondent violated Section 8(a)(5) and (1) of the Act by failing to comply with the contract's exclusive hiring hall provisions. The Board found that the transferred employees were required under the parties' contract to be "hired" as "temporary employees" and that when hiring hall applicants were available, the agreement required that the respondent "replace" the "temporary employees" with the qualified applicants referred through the hiring hall. The Board ordered that the respondent make whole the employees for lost wages and benefits and offer reinstatement to applicants who would have been referred to the respondent for employment through the union's hiring hall were it not for the respondent's unlawful conduct, issues which are to be resolved at the compliance stage of the proceedings. The Board thereby overruled a prior line of cases involving repudiation of exclusive hiring hall provisions that limited the respondent's remedial obligation to making employees whole for lost wages and benefits. The Board noted that in *Dean General Contractors*,[83] a case involving a discharge in violation of Section 8(a)(1) of the Act, the Board rejected the precompliance presumption against reinstatement in the construction industry and found that "reinstatement and backpay issues in the construction industry ordinarily will be resolved by a factual inquiry during the compliance process rather than by resorting to a presumption that may or may not accurately reflect the realities of the employment relationship or by resorting to a shift of evidentiary burdens from the adjudicated wrongdoer to the aggrieved employee."[84] The Board stated that it has applied the *Dean General* remedy to employees denied hire in 8(a)(3) cases and found no principled basis for withholding such remedy to employees who were denied hire in violation of Section 8(a)(5).

---

[82] 315 NLRB 620 (Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen concurring).

[83] 285 NLRB 573 (1987).

[84] Id. at 575.

Members Stephens and Cohen concurred in the reinstatement order, but declined to announce a broad new rule that such orders are always appropriate for hiring hall repudiation cases. They noted that in other cases, deciding whom should be ordered to be "reinstated" to existing jobs at the time when implementation of the Board's Order is commenced is likely to present considerable practical problems to the parties.

VI

Supreme Court Litigation

During fiscal year 1995, the Supreme Court decided, on the merits, no cases involving the Board. The Court did, however, grant the Board's petition for certiorari in *Town & Country*,[1] which presented the question whether a "paid union organizer" applying for or holding a job with an employer that he intends to organize is an "employee" within the meaning of Section 2(3) of the National Labor Relations Act and therefore protected against discrimination because of his or her union activity and affiliation. Although the Board has long maintained the position that paid union organizers, often referred to as "salts," are employees protected by the Act, the lower courts that have addressed the question have given conflicting answers. In *Town & Country*, the Eighth Circuit, reversing the Board, held that the statutory word "employee" does not cover (and therefore the Act does not protect from antiunion discrimination) those who work for a company while a union simultaneously pays them to organize the company.[2] Other circuits have interpreted the word "employee" differently.[3] The Supreme Court granted review in *Town & Country* to resolve that conflict of decisions.

On November 28, 1995 (after the close of fiscal year 1995), the Supreme Court, in an unanimous decision, reversed the Eighth Circuit and agreed with the Board that a worker can be a company's "employee," within the terms of Section 2(3) of the Act, even if, at the same time, a union pays that worker to help the union organize the company.[4] Justice Stephen Breyer, writing for the full Court, explained that the broad language of Section 2(3), the policies of the Act, and the Court's prior decisions,[5] all support the Board's position. The Court rejected the argument of the company that the common law of agency required a different result. It agreed with the Board that agency law recognizes that a person may be the servant of two masters at one time as to one act, if service to one does not involve abandonment of service to another, and that service to the union for

---

[1] *NLRB v. Town & Country Electric*, No. 94-947, cert. granted January 23, 1995.

[2] *Town & Country Electric v. NLRB*, 34 F.3d 625 (8th Cir. 1994), revg. 309 NLRB 1250 (1992). Accord· *H. B. Zachry Co. v. NLRB*, 886 F.2d 70 (4th Cir. 1989).

[3] See, e.g., *Willmar Electric Service v. NLRB*, 968 F.2d 1327 (D.C. Cir. 1992), cert. denied 507 U.S. 909 (1993), *NLRB v. Henlopen Mfg. Co.*, 599 F.2d 26, 30 (2d Cir. 1979).

[4] 116 S.Ct. 450.

[5] See, e.g., *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 891 (1984), where the Court, in holding that the Act covers undocumented aliens, wrote that the "breadth of [Sec.] 2(3)'s definition is striking: the Act squarely applies to 'any employee.'"

pay does not involve "abandonment" of service to the company. "[U]nion organizing, when done for pay but during *nonwork* hours," the Court said, "would seem equivalent to simple moonlighting, a practice wholly consistent with a company's control over its workers as to their assigned duties." 116 S.Ct. at 456.

VII

Enforcement Litigation

A. Protected, Concerted Activity

Section 7 of the Act guarantees employees the right to engage in "concerted activity" for the purpose of "mutual aid or protection." Two cases decided this year addressed the meaning of the statutory terms "protected" and "concerted" activity. In *Blue Circle Cement Co. v. NLRB*,[1] the Fifth Circuit upheld the Board's finding that an employee's use of the employer's photocopier to make copies of an article about the hazards of burning toxic waste in cement kilns constituted protected, concerted activity, and that, therefore, the employee's suspension and discharge for that activity was unlawful. Prior to the photocopying incident, the union representing the company's employees had become concerned that the company's plan to burn hazardous waste would pose a threat to the employees' health and safety. Based on those concerns, the union decided to oppose the company's plan, and selected an employee—who also was a founder and member of a local environmental organization—to be the union's environmental officer. The employee solicited the views of coworkers and organized employee rallies to protest the company's plan to burn hazardous waste. The union also sought to enlist the support of nearby residents and the public to fight the company's plan.

The court upheld the Board's finding that the photocopying by the employee serving as the union environmental officer was a "logical outgrowth" of the efforts of that employee and the union to oppose the company's plan to burn hazardous waste. The court further found that it was immaterial that the employee was making the photocopies for members of his environmental organization who had no direct connection with the company, because, in opposing the company's plan, the employee simultaneously "fulfilled two different roles and wore two hats: one was that of [union] environmental officer; the other was that of [environmental organization] activist and spokesman."[2] The court distinguished its prior decision in *NLRB v. Motorola, Inc.*,[3] holding that an employer's ban on distribution of literature on its property by employee-members of an outside organization opposed to mandatory drug testing in the workplace did not violate Section 7 of the Act. There the court found that the literature was not

[1] 41 F.3d 203.

[2] 41 F.3d at 207, 208.

[3] 991 F.2d 278 (5th Cir. 1993).

designed to change the employer's policy. By contrast, in *Blue Cement* the court found that all of the employee's activities, whether on behalf of the union or the environmental organization, in opposing the company's plan to burn hazardous waste were virtually inseparable and "were directly aimed at changing his employer's policy on this issue."[4]

In *NLRB v. Mike Yurosek & Son, Inc.*,[5] the Ninth Circuit sustained the Board's finding that four employees were engaged in concerted activity when they individually, but simultaneously, refused their supervisor's direction to work overtime. The employer discharged the employees the next morning, after separately interviewing each one about his conduct.

The evidence showed that dissatisfaction over work schedules had been a topic of prior discussion and protest among the employees, that the employees were aware that each of the others was also refusing the overtime instruction, and that the employer treated the employee action as a group action, notwithstanding the separate interviews preceding their terminations. The court adopted the Board's conclusion that, despite their lack of discussion at the time of the incident, the employees' consciously parallel conduct amounted to "implicit" support of each other in the face of their supervisor's statement that they were risking discipline.[6] The court also adopted the Board's alternative rationale that the conduct, if deemed individual, was a "logical outgrowth" of the employees' prior protest concerning the work schedule, and therefore concerted. The court rejected as irrelevant the employer's contention that the employees had differing motives for their conduct, and also rejected the argument that the employees' protest amounted to an attempt to set their own schedules, and was therefore insubordinate or otherwise unprotected.[7]

B. Employer's Right to Control Its Property

In *Lechmere, Inc. v. NLRB*,[8] the Supreme Court reaffirmed the general rule that Section 7 of the Act[9] does not protect nonemployee union organizers who trespass on an employer's property to distribute union literature to employees. In *Johnson & Hardin Co. v. NLRB*,[10] the Sixth Circuit agreed with the Board that when an employer does not possess a property interest entitling it to exclude individuals from the property, the employer violates Section 8(a)(1) of the Act[11] by treating nonemployee union organizers as if they were trespassers and preventing them from distributing union literature. Under Ohio law, the employer, who enjoyed only an easement for ingress and egress

[4] 41 F.3d at 210–211.
[5] 53 F.3d 261.
[6] 53 F.3d at 265.
[7] 53 F.3d at 265–266.
[8] 502 U.S. 527 (1992).
[9] Sec. 7 of the Act (29 U.S.C. § 157) grants employees "the right to self-organization, to form, join, or assist labor organizations, [and] to bargain collectively through representatives of their own choosing . . . ."
[10] 49 F.3d 237.
[11] Sec. 8(a)(1) of the Act makes it an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in [Sec. 7]."

over land owned by the State of Ohio, could not prevent even a trespasser from using that land if that use did not impede the employer's use of the land as a right of way.[12] The court enforced, as "rational and consistent with the Act," the Board's decision that, as the union organizers' handbilling did not interfere with the employer's right to use the state-owned driveway for ingress and egress, the employer did not have a property interest sufficient to exclude the organizers.[13]

The Board has held, with court approval, that, although there is no statutory right of employees or a union to use an employer's bulletin board, the employer may not discriminate against the posting of union notices if it otherwise permits the posting of notices relating to personal, nonwork-related matters.[14] In *Guardian Industries Corp. v. NLRB*,[15] where the employer posted on the employees' behalf anonymous cards announcing items for sale, but denied employees' requests to post notices of union meetings, the Seventh Circuit concluded that the Board had "gone too far" in applying its antidiscrimination principle, and held that "[d]istinguishing between for-sale notices and announcements of all meetings, of all organizations, does not discriminate against the employees' right of self-organization."[16]

C. Remedial Bargaining Orders

The Supreme Court, in *NLRB v. Gissel Packing Co.*,[17] upheld, in two categories of cases, the Board's authority to issue bargaining orders where a union has not won a Board election, but has obtained signed authorization cards from a majority of the unit employees. The first category consists of "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices by the employer which are of "such a nature that their coercive effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be had."[18] The second category includes "less extraordinary cases marked by less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." In such cases, a bargaining order is proper if "the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election . . . by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order."[19]

In *Power Inc. v. NLRB*,[20] the District of Columbia Circuit upheld the Board's issuance of a bargaining order based on its determination

[12] 49 F.3d at 242.
[13] Ibid.
[14] See *Union Carbide Corp. v. NLRB*, 714 F.2d 657, 660–661 (6th Cir. 1983); *NLRB v. Honeywell, Inc.*, 722 F.2d 405, 406 (8th Cir. 1983).
[15] 49 F.3d 317.
[16] Id. at 321–322.
[17] 395 U.S. 575 (1969).
[18] Id. at 613–614.
[19] Id. at 614–615.
[20] 40 F.3d 409.

that the employer's unfair labor practices fell into the first category. The unfair labor practices included the permanent layoff of 13 union supporters in an attempt to prevent them from voting in a Board election, repeated statements to the remaining employees that those laid off would not be back, and persistent threats of plant closure in the event of unionization. The court noted that the Board's determination that the case fell within the first category provided most of the reasoned explanation necessary to justify the bargaining order; the only additional requirement was a finding that the detrimental effects of the unfair labor practices would persist over time. By making such a finding, the Board had necessarily concluded that it was impossible for traditional remedies to produce a fair election and that a bargaining order was the only way to prevent the employer from gaining a lasting advantage from its own unlawful conduct and assure employees their right to organize.[21]

The court distinguished this case from those in the second category, where the unfair labor practices are by definition less egregious and the harm to employees' organizational rights less severe. In such cases, detailed factual findings and an explanation why lesser remedies would not be adequate are required in order to ensure that the Board gives appropriate consideration to the employees' statutory right to choose whether to have a union. For similar reasons, the court had imposed the same requirement in cases not arising under *Gissel* where the Board issued a bargaining order to remedy an unlawful refusal to bargain. However, in a first-category *Gissel* case, the employer's unfair labor practices have already made free choice by the employees impossible. Accordingly, no detailed explanation is required for adoption of a remedy which might in theory interfere with the employees' right of free choice.[22]

The court further held that a bargaining order was appropriate even though the union ultimately won the election after the ballots of the unlawfully laid-off employees were counted. The unlawful layoffs had delayed the union's certification until the unfair labor practice charges were resolved, a period of more than 4 years. During this period, the employer had unilaterally subcontracted portions of its work, thereby laying off more employees; only a retroactive bargaining order could provide remedial relief for those employees. Moreover, failure to issue a retroactive bargaining order would put a premium on continued litigation by the employer, whose attorney had threatened just such litigation. In these circumstances, the court held that the Board properly found that withholding a bargaining order would reward the employer for its own wrongdoing.[23]

In *NLRB v. Williams Enterprises*,[24] the Fourth Circuit upheld the Board's issuance of a bargaining order to remedy the unlawful refusal of a successor employer to bargain with the union that had represented the predecessor's employees. The Board, on remand from the

[21] 40 F.3d at 422–423.
[22] 40 F.3d at 424–425
[23] 40 F.3d at 423–424.
[24] 50 F.3d 1280.

District of Columbia Circuit,[25] had pointed out that for over 50 years an affirmative bargaining order had been the standard remedy for an employer's unlawful refusal to bargain with an incumbent union. The court, in agreeing, stressed the difference between incumbent and nonincumbent unions. When a successor employer refuses to bargain with an incumbent union, only an affirmative bargaining order can recreate. the status quo ante, restoring the union's incumbent status and the bargaining opportunity it would have had absent the unlawful refusal to bargain. In contrast, ordering an employer to bargain with a nonincumbent union puts the union in a better position than it would have had absent the unlawful refusal to bargain.[26]

The court further held that an affirmative bargaining order was proper even though it precluded the employees from seeking a decertification election for a reasonable period. In the absence of the unlawful refusal to bargain, the employer and the union might have reached agreement on a contract which would have precluded a decertification election for a longer period. Thus, the employees were in no worse a position, and probably a better position, than they were prior to the unlawful refusal to bargain. The limitation which the bargaining order temporarily imposed on the employees' free choice was less than the potential harm from a premature decertification election, which might take place while the effects of the unlawful refusal to bargain—disruption of employee morale, deterrence of organizational activity, and discouragement of membership in unions—still lingered. Allowing a decertification election in such circumstances would permit an employer to profit from its own wrongdoing and encourage other recalcitrant employers to postpone performance of their statutory obligation to bargain in the hope that employees would vote to decertify their unions. Thus, the Board properly concluded that an affirmative bargaining order was the remedy best calculated to cure the effects of past employer misconduct and to deter similar misconduct in the future.[27]

---

[25] *Williams Enterprises v. NLRB*, 956 F.2d 1226 (D.C Cir 1992).

[26] 50 F.3d at 1289.

[27] 50 F.3d at 1290.

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 1995, the Board filed a total of 81 petitions for temporary relief under the discretionary provisions of Section 10(j): 77 against employers, 3 against labor organizations, and 1 against both an employer and a labor organization. Twenty cases authorized in the prior year were also pending at the beginning of the year. Of these 101 cases, 34 were either settled or adjusted prior to court action. Four cases were withdrawn prior to decision because of changed circumstances. Injunctions were granted in 38 cases and denied in 14 cases. Eleven cases remained pending at the end of the fiscal year.

District courts granted injunctions against employers in 36 cases and against a labor organization in 2 cases. Among the violations were employer interference with nascent organizing campaigns, including several cases where an employer's violations precluded a fair election and warranted a remedial bargaining order based on a union's showing of a majority of authorization cards,[2] several cases where an employer withdrew recognition from an incumbent union, a successor employer's refusal to recognize and bargain with an incumbent union,[3] several cases involving an employer's failure to engage in good-faith collective bargaining, and several cases involving a union's engaging in picket line violence and other misconduct.

One of the cases decided during the fiscal year involved a union organizing campaign among employees of a janitorial service contractor which operated at many building locations in the District of Columbia and suburban Maryland. In *D'Amico v. U.S. Service Industries*,[4] the Board alleged that the employer had responded to the campaign with a wide variety of unlawful interference and discrimination aimed at union activists and unfair labor practice strikers and argued that the violations threatened to irreparably dissipate union support

[1] See, e.g., *Miller v. California Pacific Medical Center*, 19 F.3d 449 (9th Cir. 1994) (en banc), and *Frye v. Specialty Envelope*, 10 F.3d 1221 (6th Cir. 1993), discussed in the 1994 Annual Report.

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

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

[4] 867 F.Supp. 1075 (D.D.C.).

among the employer's employees. Evaluating the case under traditional equitable criteria,[5] the court decided that 10(j) relief was warranted. It found the Regional Director had shown a substantial likelihood of success on the ultimate merits of the administrative complaint allegations underlying the petition.[6] It further found the employees were likely to be irreparably harmed in the exercise of statutory rights. This conclusion was based on several factors including, the transient nature of the work, the vulnerability of the low skill immigrant work force that is relatively unfamiliar with rights under the Act, evidence that former union supporters had stopped associating with the union because of the employer's conduct, a prior unfair labor practice finding against the employer and its public antiunion statements suggested that its unlawful conduct would not cease in the absence of a temporary injunction.[7] The court declined the employer's attempt to inquire into the Board general prosecutorial policy regarding seeking 10(j) relief.[8] The court also rejected delay and "unclean hands" defenses directed against the Board and the charging party union respectively.[9] In addition to a broad cease-and-desist order and an order requiring the interim reinstatement of alleged discriminatees,[10] the court also found appropriate a broad multilocation posting and mailing to all employees of the court's opinion and order in both English and a Spanish translation in order to "dispel the coercive effects of the unfair labor practices."[11]

In *Ahearn v. House of the Good Samaritan*,[12] the Board alleged that an employer had improperly withdrawn recognition from an incumbent union after management agents had assisted with the preparation of an employee decertification petition. Rejecting the employer's defense that delay in bringing the 10(j) proceeding precluded injunctive relief,[13] the court found reasonable cause to believe that the employer had violated its duty to bargain and given unlawful assistance to the employees' decertification efforts.[14] Applying general equitable principles, the court concluded that interim relief, including a bargaining order, was "just and proper." The court noted that the union was in a "vulnerable position" due to the circulation of the decertification petition, the employer's refusal to supply requested bargaining information to the union, and the employer's refusal to recognize and bargain.[15] The court concluded that the employer's continued refusal to bargain could cause erosion of the union's em-

[5] 867 F.Supp. at 1082–1085, discussing *Miller v. California Pacific Medical Center*, supra, and *Kinney v. Pioneer Press*, 881 F.2d 485 (7th Cir. 1989).

[6] Id. at 1088–1091.

[7] Id. at 1085–1088.

[8] Id. at 1085 fn. 7.

[9] Id. at 1086 and 1087.

[10] The court found it would not be burdensome on the employer to reinstate 10 employees in a work force of 1400 with a large turnover rate. 867 F.Supp. at 1092.

[11] Id. at 1092, citing *Bloedorn v. Teamsters Local 695*, 132 LRRM 3102, 3109 (W.D.Wis. 1989).

[12] 884 F.Supp. 654 (N.D.N.Y.).

[13] 884 F.Supp. at 659, citing *DeProspero v. House of Good Samaritan*, 474 F.Supp. 552, 557 (N.D.N.Y. 1978)

[14] Id. at 659–661.

[15] Id. at 662

ployee support which could render the ultimate Board Order "ineffective."[16] The court also noted that there was a public interest in protecting the integrity of the collective-bargaining process which would be harmed by the employer's continued refusal to bargain for a new labor contract.[17]

One case during the year involved an employer's lockout of unit employees during bargaining for a successor collective-bargaining agreement. In *Rivera-Vega v. ConAgra, Inc.*,[18] the employer had locked out its employees after it declared impasse in bargaining and implemented its final bargaining proposal. Although the court disagreed with the Board's contention that the employer had made unlawful bargaining proposals,[19] it agreed with the Board's alternative argument that there was reasonable cause to believe that the employer had failed to provide during bargaining certain relevant financial and sales information which the union had requested.[20] The court further agreed with the Board that there was reasonable cause to believe that the failure to provide information tainted the employer's claimed bargaining impasse.[21] The court also agreed that the union had broken any impasse with a new bargaining proposal.[22] Based on these theories, the court agreed with the Board that the employer acted unlawfully by implementing its final contract offer and otherwise changing existing working conditions,[23] and further that the employer's lockout of unit employees was not privileged under *American Ship Building v. NLRB*[24] but was unlawful discrimination under Section 8(a)(3) of the Act.[25] In these circumstances, the court concluded that 10(j) relief was "just and proper." The court found that the lockout was burdening interstate commerce. Further, the employer's unlawful refusal to bargain in good faith was irreparably harming the union's employee support and was exacerbating the parties' labor dispute.[26] The court concluded that appropriate interim relief included a cessation of the lockout and the reinstatement of the employees,[27] the rescission of all unilateral changes in working conditions, the production of the requested information,[28] and a bargaining order.[29] The employer's requests for a stay of the injunction pending an appeal were denied by

[16] Ibid., citing, inter alia, *Asseo v. El Mundo Corp.*, 706 F.Supp. 116, 129 (D.P.R. 1989).

[17] Id. at 663, citing *Eisenberg v. Wellington Hall Nursing Home*, 651 F.2d 902, 906–907 (3d Cir. 1981).

[18] 876 F.Supp. 1350 (D.P.R.), stay denied 879 F.Supp. 165 (D.P.R.), appeal pending No. 95–1266, stay pending appeal denied (1st Cir.) (unpublished).

[19] 876 F.Supp. at 1362–1364.

[20] Id. at 1364–1367, relying on, inter alia, *Shell Co.*, 313 NLRB 133 (1993), and *Teleprompter Corp. v. NLRB*, 570 F.2d 4 (1st Cir. 1977).

[21] Id. at 1367.

[22] Ibid.

[23] Id. at 1367–1368, citing *NLRB v. Katz*, 369 U.S. 736 (1962).

[24] 380 U.S. 300 (1965).

[25] 876 F.Supp. at 1368–1369, citing, inter alia, *NLRB v. Bagel Bakers Council of Greater New York*, 434 F.2d 884, 888–890 (2d Cir. 1970), cert. denied mem. 402 U.S. 908 (1971).

[26] Id. at 1370, citing *Asseo v. Centro Medico del Turabo, Inc.*, 900 F.2d 445, 454 (1st Cir. 1990).

[27] The court noted that many of the affected employees had become arrears in their loans and whose credit had been irreparably damaged. Id. at 1371.

[28] Based on the employer's alleged proprietary interest in the requested information, the court directed that the union entered into a reasonable confidentiality agreement supervised by the Board. Id. at 1372 fn. 29.

[29] The court also rejected delay and "clean hands" defenses raised by the employer. Id. at 1371–1372.

the district court[30] and the First Circuit. The employer's appeal is pending before the court of appeals.

Finally, the decisions in *Silverman v. Major League Baseball Player Relations Committee*,[31] are noteworthy. The case arose when, several weeks before the 1995 major league baseball season was about to open, the owners' bargaining representative unilaterally abrogated the free agency and salary arbitration provisions of the parties expired collective-bargaining agreement and the players union made clear that, without rescission of these changes, the players' strike, which had begun in August 1994, would continue. The Board's petition for interim rescission of the changes was premised on the claims that there was reasonable cause to believe that free agency and salary arbitration are mandatory subjects of bargaining under the Act, and that the owners had violated the principle, embodied in *NLRB v. Katz*,[32] against unilateral changes in mandatory subjects prior to an impasse in bargaining and, further, that interim relief was just and proper in the circumstances of the case.

The district court agreed that "in the sports context, courts have overwhelmingly held that the constituent parts of reserve/free agency systems are mandatory, not permissive, subjects of bargaining."[33] The owners argued that treating these matters as mandatory undermined their right as a multiemployer group to bargain through an exclusive representative because these provisions entail contracts with individual clubs. Both the district court and the appellate rejected this claim. As the Second Circuit noted, free agency, and the contractual ban on collusion among clubs for free agents, "are one part of a complex method—agreed upon in collective bargaining—by which each major league player's salary is determined . . . . They are analogous to the use of seniority, hours of work, merit increases, or piece work to determine salaries in an industrial context."[34] The court further noted that the injunction did not prevent the owners from bargaining through their designated representative over the elimination or modification of free agency.[35] The district court, affirmed by the circuit court, also concluded there was reasonable cause to believe salary arbitration for reserve players is distinguishable from interest arbitration and, therefore, is a mandatory subject.[36]

The district court further concluded injunctive relief was appropriate to preserve "the public interest in the process of collective bargaining," to permit the parties to salvage some of the important bargaining equality that existed before the commission of the unfair labor practice, and to prevent irreparable injury to the players, including their loss of nonmonetary benefits.[37] The circuit court found no

[30] 879 F.Supp. 165, 166 (D P.R), citing *Hilton v Braunskill*, 481 U.S. 770, 776–777 (1987).
[31] 880 F.Supp. 246 (S.D.N.Y.), affd. 67 F.3d 1054 (2d Cir.).
[32] 369 U.S 736 (1962).
[33] 880 F.Supp. at 256, citing *Wood v. National Basketball Assn.*, 809 F.2d 954 (2d Cir. 1987).
[34] 67 F.3d at 1060. See also 1060–1062.
[35] Id. at 1060.
[36] 880 F.Supp. at 257–258, 67 F.3d at 1062.
[37] 880 F.Supp. at 259–260.

abuse of discretion, noting particularly that irreparable harm was threatened given the short careers of professional athletes.[38]

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[39] or Section 8(b)(7),[40] and against an employer or union charged with a violation of Section 8(e),[41] 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 relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[42] 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, on 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 23 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with five cases pending at the beginning of the period, four cases were settled, two were dismissed, one continued in an inactive status, one was withdrawn, and seven were pending court action at the close of the report year. During this period, 13 petitions went to final order, the courts granting injunctions in 12 cases and denying them in one case. Injunctions were issued in five cases 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). An injunction was granted in one case involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were

---

[38] 67 F.3d at 1062.

[39] 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)).

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

[41] 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.

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

also issued in three cases to proscribe alleged recognitional or organizational picketing in violation of Section 8(b)(7).

Of the one case in which an injunction was denied, none involved 8(b)(4)(B) secondary picketing activity by labor organizations, one involved 8(b)(7)(A) recognitional picketing, and none involved picketing in furtherance of a work jurisdictional claim.

Two appellate decisions dealing with Section 10(l), decided during the fiscal year, are of particular interest. In *Nelson v. Plumbers Local 32*,[43] the Ninth Circuit affirmed a district court injunction against recognitional picketing in violation of Section 8(b)(7)(C). The case involved construction of the so-called "Section 8(a)(2)" proviso to Section 10(l) which precludes injunctive relief against recognitional picketing that violates Section 8(b)(7) where the Region has found reasonable cause to believe that the picketed employer has unlawfully recognized another union in violation of Section 8(a)(2) and that a complaint should issue.

In the subject case, the picketed employer had unlawfully recognized another labor organization, but had promptly ceased doing so and entered into a Board settlement agreement when advised by the Regional Director that its conduct was violative of the Act. The circuit court concluded that the 8(a)(2) proviso was intended to prevent entrenchment of the unlawfully recognized union and to give a competing union access to employees by means of picketing that would otherwise be enjoined.[44] The appellate court concluded that the 8(a)(2) proviso did not bar the district court from issuing the injunction because the alleged misconduct had voluntarily ceased well before the picketing started and the respondent union's picketing was, therefore, not necessary to counterbalance the influence of an entrenched sweetheart union.[45]

A second case, *Pye v. Teamsters Local 122*,[46] involved an unusual form of secondary pressure against liquor retailers—group "shop-ins" by union members engaged in a dispute with a brewery. Large numbers of union members assembled in liquor store parking lots, entered the premises, milled about, purchased small items with large bills, and generally precluded legitimate customers from making purchases. The court agreed that the union's practice of group shopping is "potentially coercive" since by its nature it tends to disrupt normal commercial activity.[47] The court further agreed that the evidence permitted the conclusion that the union's object was to force a cessation of business between the retailers and the primary.[48]

The court rejected the union's contention that its conduct was protected under the First Amendment and the Supreme Court's *DeBartolo*[49] decision, finding little or no evidence that the union's

[43] 35 F.3d 491 (9th Cir.).

[44] 35 F.3d at 493, citing *Kobell v Food & Commercial Workers Local 23*, 788 F.2d 189, 194–195 (3d Cir. 1986).

[45] Id. at 494.

[46] 61 F.3d 1013 (1st Cir.), affg. 875 F.Supp. 921 (D.Mass.).

[47] 61 F.3d at 1021.

[48] Id. at 1022.

[49] *DeBartolo Corp. v. Florida Gulf Coast Trades Council*, 485 U.S. 568 (1988).

object was publicity or that union members were actually engaged in expressive activity.[50] Finally, the court concluded that injunctive relief was just and proper to protect innocent third parties and to prevent disruptions in the flow of commerce.[51]

[50] 61 F.3d at 1023.
[51] Id. at 1024.

IX

Contempt Litigation

In fiscal year 1995, 112 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 122 cases in fiscal year 1994. Voluntary compliance was achieved in 20 cases during the fiscal year, without the necessity of filing a contempt petition, while in 33 others, it was determined that contempt was not warranted.

During the same period, 12 civil contempt proceedings were instituted as compared to 21 civil proceedings in fiscal year 1994. These included two motions for the assessment of fines and/or writs of body attachment. In addition, one motion for a protective restraining order and six garnishment proceedings under the Federal Debt Collection Procedures Act were initiated during the year. Nineteen civil contempt or equivalent adjudications were awarded in favor of the Board, including three where the court ordered the civil arrest of contemnors.

During the fiscal year, the Contempt Litigation Branch collected $66,945 in fines and $10,422,779 in backpay, while recouping $128,750 in court costs and attorneys' fees incurred in contempt litigation.

A number of proceedings during the fiscal year were noteworthy. In *Alaska Pulp Corp.* (APC),[1] the Board used offset procedures to freeze certain funds due APC from the Department of Agriculture in order to assure their use for backpay. After such proceedings and protracted subpoena enforcement proceedings in the District of Columbia District and Circuit Courts, the Board reached a settlement with APC, pursuant to which in excess of $10 million was deposited with the Board to ensure that sufficient funds are available to satisfy backpay claims pending liquidation before the Board.

In *BCTC*,[2] another precedent-setting case arising during the fiscal year, petitioner sought to dissolve three consent judgments and to vacate four consent contempt adjudications because of the passage of nearly 6 years without further violation. The Third Circuit held, in agreement with the Board, that the mere passage of time and temporary compliance are not sufficient to constitute the type of changed circumstances that warrant lifting an injunction, and that the Supreme

---

[1] Opinion Letter, B-259532. There were two discovery-type cases—*NLRB v. Alaska Pulp Corp.*, 149 LRRM 2682 (D.C. Cir.), and 149 LRRM 2684 (D.C. Cir.).

[2] *Building & Construction Trades Council v NLRB*, 150 LRRM 2193.

Court's recent decision in *Rufo v. Inmates of Suffolk County Jail,*[3] which somewhat relaxed the rules for modifying injunctions, does not warrant a different result.

Several bargaining cases during the fiscal year were noteworthy. For example, in *NLRB v. Baby Watson Cheesecake,*[4] the Board successfully obtained in a contempt case a bargaining order requiring respondent to recognize and bargain with a labor organization and an order requiring respondent to cease dealing with a "sweetheart" 8(a)(2) union. One of the novel remedies obtained required respondent to deposit $50,000 in the district court registry and to bargain for 3 months, after which the deposit would be remitted only if respondent reached a contract, or could show good-faith bargaining, short of a contract, or bona fide impasse. The court's order placed the burden of demonstrating good faith on respondent. The parties reached an initial collective-bargaining agreement very quickly following entry of this order. The Board was also awarded $55,000 in attorneys' fees and expenses.

Finally, two criminal contempt proceedings were noteworthy. In *Crystal Window Cleaning Co.,*[5] the Sixth Circuit Court of Appeals rejected the defendant's argument, based on double jeopardy grounds, that the Board was prohibited from criminally prosecuting him as a result of his failure to comply with the circuit court's judgment because he had already been convicted of criminal contempt for not complying with the 10(j) injunction issued by the district order in the underlying case. In *Black Mountain Coal Co.,*[6] the Fourth Circuit Court of Appeals authorized the Board to institute criminal contempt proceedings against the owner of a coal company based on the company's creation of several alter ego coal companies and its failure to make contributions to the United Mine Workers Pension Fund.

[3] 502 U.S. 367 (1992).
[4] 148 LRRM 2907.
[5] No. 94-3982 (*U.S. v. Hochschild*).
[6] No. 89-2626.

X

Special Litigation

A. Litigation Under the Privacy Act

In *Tobey v. NLRB*,[1] the United States Court of Appeals for the District of Columbia Circuit held that the NLRB's internal Case Handling Information Processing System (CHIPS) is not a "system of records" within the meaning of the Federal Privacy Act (5 U.S.C. § 552a) because it does not contain "records," i.e., information "about" individuals. An NLRB employee filed suit in district court alleging that, without notice in the Federal Register, and without following other Privacy Act requirements, the NLRB had maintained and used a "system of records" (CHIPS) to retrieve personal information about the employee and disclose it to others in connection with a grievance arbitration. A managerial employee of the NLRB had conducted a CHIPS computer search for recent cases assigned to the employee, retrieving the data by means of a field search using his initials. However, the court of appeals upheld the district court's conclusion that there was no claim under the Privacy Act because the information retrieved was not a "record" within the meaning of the statute. The Privacy Act defines "record" in pertinent part as "information *about* an individual." The information retrieved by the NLRB was about the cases assigned to the employee, and not about the individual employee.

B. Litigation Concerning the Board's Subpoena Power

In *NLRB v. Line*,[2] the Fifth Circuit affirmed a district court order enforcing a Board subpoena duces tecum. The subpoena sought documents going back 5 years concerning the existence of an alleged collective-bargaining agreement between the respondent employer and the charging party, and concerning the relationship between the respondent and a nonunion company alleged to have been established to divert work away from the unionized employer. Ronny Line's principal argument was that the district court lacked jurisdiction to enforce the subpoena because he, as the asserted subject of the subpoena, was located outside of the district in which the court sat. Ronny Line also raised venue and overbreadth arguments, and claimed that the subpoena improperly was issued to him personally.

[1] 40 F.3d 469 (D.C. Cir.).
[2] 50 F.3d 311 (5th Cir.).

The Fifth Circuit rejected the jurisdictional argument, holding that 29 U.S.C. § 161(2) grants jurisdiction to enforce Board subpoenas to any district court in whose district the General Counsel's investigation was being undertaken. The Fifth Circuit also rejected Ronny Line's other arguments, holding that (1) the general venue provision of 28 U.S.C. § 1391 does not raise additional requirements for Board subpoena enforcement proceedings under § 161(2), and therefore venue is appropriate wherever a district court has jurisdiction; (2) the Act's 6-month statute of limitations did not render the Board's request for documents going back 5 years overbroad; and (3) the Board properly issued the subpoena to Ronny Line because, as president of the company whose documents were sought, he was the official presumed to have custody and control over the documents.

C. Litigation Concerning Preemption and the Board's Jurisdiction

During the computation of a backpay remedy in the Board case underlying the lawsuit in *Moreno Roofing Co. v. Nagle*,[3] the Board's Regional Office included state unemployment benefits in its calculation of employee interim earnings. As a result, the amount of backpay ultimately settled on with the employer was reduced by the amount of state unemployment benefits received.[4] After Moreno paid more than half of the backpay due under the settlement, the California Employment Development Department sent a notice of assessment to the company indicating that Moreno was required to reimburse the State for the employees' unemployment insurance benefits. Moreno then filed suit to enjoin the California agency from recovering unemployment insurance benefits, on the ground that such recovery was preempted by the NLRA. At the same time, Moreno attempted to interplead the Board to determine who was owed the amount of unemployment benefits in question. The district court dismissed Moreno's action, holding that the NLRA does not preempt this application of the California Unemployment Insurance Code § 1382, because the State's effort to collect unemployment benefits paid was separate and apart from Moreno's obligation to pay backpay under its Board settlement. In so finding, the court factually distinguished *NLRB v. Illinois Department of Employment Security*,[5] where the dispute over repayment of unemployment benefits had directly interfered with compliance with the Board's backpay remedy. Accordingly, the court concluded that the California statute was not preempted by the NLRA since it did not interfere with the Board's ability to remedy unfair labor practices. In addition, the court dismissed Moreno's interpleader action against the Board for lack of subject matter jurisdiction. The court noted that absent preemption, there was no Federal claim on which to base the interpleader request. Further, since the

[3] C-94-3121 (N.D.Ca.), currently on appeal No. 95-16044 (9th Cir.).

[4] This unemployment benefit reduction was unusual. See NLRB Casehandling Manual (Part Three) Compliance, Sec. 10542.1.

[5] 988 F.2d 735 (7th Cir. 1993).

amounts owed the NLRB and the state agency did not overlap, this was not, in any event, an appropriate case for interpleader.

In *Hafadai Beach Hotel v. NLRB & the Commonwealth of the Northern Mariana Islands Department of Labor & Immigration*,[6] the district court for the Northern Mariana Islands dismissed a complaint against the Board and the Department of Labor and Immigration of the Northern Mariana Islands (CNMI), seeking a determination that the NLRA conflicts with, and is preempted by, the policies and procedures of the CNMI's Nonresident Workers Act (NWA). The complaint also sought to enjoin the Board from exercising jurisdiction over nonresident employees of the plaintiff. The NWA governs terms and conditions of employment of nonresident workers in the CNMI. An unfair labor practice complaint was pending against plaintiff, and a Decision and Direction of Election had issued asserting Board jurisdiction over plaintiff's employees, including nonresident workers. The district court concluded that there was no justiciable case or controversy since no Board Order had issued which would require the plaintiff to violate the NWA. The district court further concluded that it lacked jurisdiction to enjoin the Board from holding hearings, citing *Myers v. Bethlehem Shipbuilding Corp.*,[7] and noting that representation proceedings are not subject to judicial review. The court thus denied the plaintiff's application for injunctive relief. Concurrently with the issuance of this decision, the court issued a separate order granting the Board's petition for an injunction pursuant to Section 10(j) of the Act.[8]

[6] 149 LRRM 3016 (N.Mar I.).
[7] 303 U.S. 41 (1938).
[8] No. 95-0013 (N.Mar.I.).

INDEX OF CASES DISCUSSED

Page

Ahearn v. House of the Good Samaritan, 884 F.Supp. 654 (N.D.N.Y.) 94
Alaska Pulp Corp.; NLRB v., Opinion Letter, B–259532 (Mar. 6) 101
Americare-New Lexington Health Care Center, 316 NLRB 1226 72
Angelica Healthcare Services Group, 315 NLRB 1320 .... 39, 41
Auciello Iron Works, 317 NLRB 364 63
Baby Watson Cheesecake; NLRB v., 148 LRRM 2907 (2d Cir.) 102
Barre-National, Inc., 316 NLRB 877 40
Black Mountain Coal Co., No. 89-2626 102
Blue Circle Cement Co. v. NLRB, 41 F.3d 203 (5th Cir.) 87
Bro-Tech, Corp., 315 NLRB 1014 49
Building & Construction Trades Council v. NLRB, 150 LRRM 2193 (3d Cir.) 101
Canteen Co., 317 NLRB 1052 71
Chel LaCort, 315 NLRB 1036 45
Club Demonstration Services, 315 NLRB 349 43
Concordia Electric Cooperative, 315 NLRB 752 37
Coronet Foods, 316 NLRB 700 29
Crystal Window Cleaning Co., No. 94-3982 (sub nom. U.S. v. Hochschild) 102
Custom Deliveries, 315 NLRB 1018 47
D'Amico v. U.S. Service Industries, 867 F.Supp. 1075 (D.D.C.) 93
Daily News of Los Angeles, 315 NLRB 1236 .... 25, 70
Dallas Times Herald, 315 NLRB 700 82
E & L Transport Co., 315 NLRB 303 63
El Cerrito Mill & Lumber Co., 316 NLRB 1005 46
Esmark, Inc., 315 NLRB 763 78
Federal Express Corp., 317 NLRB 1155 .... 33, 35
Frontier Hotel & Casino, 318 NLRB No. 60 .... 27, 80
Geske & Sons, Inc., 317 NLRB 28 59
Glass Depot, Inc., 318 NLRB No. 94 48
Guardian Industries Corp. v. NLRB, 49 F.3d 317 (7th Cir.) 89
Hafadai Beach Hotel v. NLRB & the Commonwealth of the Northern Mariana Islands Department of Labor & Immigration, 149 LRRM 3016 (N.Mar.I.) 105
Intermountain Rural Electric Assn., 317 NLRB 588 79
J. E. Brown Electric, 315 NLRB 620 83
James Luterbach Construction Co., 315 NLRB 976 66
Joel I. Keiler (In re:), 316 NLRB 763 29
Johnson & Hardin Co. v. NLRB, 49 F.3d 237 (6th Cir.) 88
Keeler Brass Co., 317 NLRB 1110 .... 24, 60
Laborers Local 324 (AGC of California), 318 NLRB No. 66 .... 26, 73
Leslie Homes, Inc., 316 NLRB 123 53
Line; NLRB v., 50 F.3d 311 (5th Cir.) 103
Loehmann's Plaza (II), 316 NLRB 109 53
Management Training Corp., 317 NLRB 1355 .... 21, 35
Maple View Manor, 319 NLRB No. 15 44
Mike Yurosek & Son, Inc.; NLRB v., 53 F.3d 261 (9th Cir.) 88
Moreno Roofing Co. v. Nagle, C-94-3121 (N.D.Ca.), currently on appeal No. 95-16044 (9th Cir.) 104

Page

Nelson v. Plumbers Local 32, 35 F.3d 491 (9th Cir.) ... 98
North Macon Health Care Facility, 315 NLRB 359 ... 22, 42
Plumbers Local 669 (Lexington Fire Protection Group), 318 NLRB No. 32 ... 67
Power Inc. v. NLRB, 40 F.3d 409 (D.C. Cir.) ... 89
Pye v. Teamsters Local 122, 61 F.3d 1013 (1st Cir.), affg. 875 F.Supp. 921 (D.Mass.) ... 98
Riesbeck Food Markets, 315 NLRB 940 ... 57
Rivera-Vega v. ConAgra, Inc., 876 F.Supp. 1350 (D.P.R.), stay denied 879 F.Supp. 165 (D.P.R.), appeal pending No. 95–1266, stay pending appeal denied (1st Cir.) (unpublished) ... 97
Scolari's Warehouse Markets, 319 NLRB No. 27 ... 44
Seton Medical Center, 317 NLRB 87 ... 46
Silverman v. Major League Baseball Player Relations Committee, 880 F.Supp. 246 (S.D.N.Y.), affd. 67 F.3d 1054 (2d Cir.) ... 96
St. Mary's Hospital, 316 NLRB 947 ... 23, 58
St. Mary's Hospital, 317 NLRB 89 ... 47
T & L Leasing, 318 NLRB No. 28 ... 50
Tobey v. NLRB, 40 F.3d 469 (D.C. Cir.) ... 103
Town & Country Electric; NLRB v., No. 94-947, cert. granted ... 85
Underground Service Alert, 315 NLRB 958 ... 65
United Parcel Service, 318 NLRB No. 97 ... 34
White Oak Coal Co., 318 NLRB No. 89 ... 75
Williams Enterprises; NLRB v., 50 F.3d 1280 (4th Cir.) ... 90

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

All Cases

Received-Closed-Pending 1
Distribution of Intake:
by Industry 5
Geographic 6A,B

Court Litigation

Appellate Decisions 19A
Enforcement and Review 19
Injunction Litigation 20
Miscellaneous Litigation 21

Representation and Union Deauthorization Cases General

Received-Closed-Pending 1,1B
Disposition:
by Method 10
by Stage 9
Formal Action Taken 3B
Processing Time 23

Elections

Final Outcome 13
Geographic Distribution 15A,B
Industrial Distribution 16
Objections/Challenges:
Elections Conducted 11A
Disposition 11D
Party Filing 11C
Rerun Results 11E
Ruled on 11B
Size of units 17
Types of Elections 11
Union-Shop Deauthorization
Polls—Results of 12
Valid Votes Cast 14

Unfair Labor Practice Cases

Received-Closed-Pending 1, 1A
Allegations, Types of 2
Disposition:
by Method 7
by Stage 8
Jurisdictional Dispute Cases ....
(Before Complaint) 7A
Remedial Actions Taken 4
Size of Establishment ....
(Number of Employees) 18
Processing Time 23

Amendment of Certification and Unit Clarification Cases

Received-Closed-Pending 1
Disposition by Method 10A
Formal Actions Taken 3C

Advisory Opinions

Received-Closed-Pending 22
Disposition by Method 22A

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 1995[1]

	Total	Identification of filing party				
		AFL-CIO unions	Other national unions	Other local unions	Individuals	Employers
	All cases					
Pending October 1, 1994	*30,024	16,721	1,199	1,365	9,075	1,664
Received fiscal 1995	39,935	21,598	1,025	1,608	13,984	1,720
On docket fiscal 1995	69,959	38,319	2,224	2,973	23,059	3,384
Closed fiscal 1995	38,038	19,951	949	1,514	13,737	1,887
Pending September 30, 1995	31,921	18,368	1,275	1,459	9,322	1,497
	Unfair labor practice cases[2]					
Pending October 1, 1994	*27,192	14,909	1,109	1,179	8,566	1,429
Received fiscal 1995	34,040	17,589	857	1,251	12,899	1,444
On docket fiscal 1995	61,232	32,498	1,966	2,430	21,465	2,873
Closed fiscal 1995	31,775	15,686	769	1,164	12,597	1,559
Pending September 30, 1995	29,457	16,812	1,197	1,266	8,868	1,314
	Representation cases[3]					
Pending October 1, 1994	*2,533	1,729	83	167	451	103
Received fiscal 1995	5,465	3,830	161	329	971	174
On docket fiscal 1995	7,998	5,559	244	496	1,422	277
Closed fiscal 1995	5,786	4,076	169	326	1,030	185
Pending September 30, 1995	2,212	1,483	75	170	392	92
	Union-shop deauthorization cases					
Pending October 1, 1994	58	—	—	—	58	—
Received fiscal 1995	114	—	—	—	114	—
On docket fiscal 1995	172	—	—	—	172	—
Closed fiscal 1995	110	—	—	—	110	—
Pending September 30, 1995	62	—	—	—	62	—
	Amendment of certification cases					
Pending October 1, 1994	13	7	0	4	0	2
Received fiscal 1995	31	17	2	1	0	11
On docket fiscal 1995	44	24	2	5	0	13
Closed fiscal 1995	30	19	2	1	0	8
Pending September 30, 1995	14	5	0	4	0	5
	Unit clarification cases					
Pending October 1, 1994	*228	76	7	15	0	130
Received fiscal 1995	285	162	5	27	0	91
On docket fiscal 1995	513	238	12	42	0	221
Closed fiscal 1995	337	170	9	23	0	135
Pending September 30, 1995	176	68	3	19	0	86

[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, 1994, 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 1995[1]

	Total	Identification of filing party				
		AFL-CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA cases[*]					
Pending October 1, 1994	*22,244	14,830	1,107	1,133	5,174	0
Received fiscal 1995	26,244	17,492	849	1,184	6,719	0
On docket fiscal 1995	48,488	32,322	1,956	2,317	11,893	0
Closed fiscal 1995	23,862	15,599	766	1,097	6,400	0
Pending September 30, 1995	24,626	16,723	1,190	1,220	5,493	0
	CB cases					
Pending October 1, 1994	*4,214	72	1	36	3,389	716
Received fiscal 1995	6,989	71	1	36	6,180	701
On docket fiscal 1995	11,203	143	2	72	9,569	1,417
Closed fiscal 1995	7,004	62	0	34	6,195	713
Pending September 30, 1995	4,199	81	2	38	3,374	704
	CC cases					
Pending October 1, 1994	*464	2	0	5	0	457
Received fiscal 1995	463	5	3	14	0	441
On docket fiscal 1995	927	7	3	19	0	898
Closed fiscal 1995	522	4	0	15	0	503
Pending September 30, 1995	405	3	3	4	0	395
	CD cases					
Pending October 1, 1994	*156	4	1	2	0	149
Received fiscal 1995	204	19	3	5	0	177
On docket fiscal 1995	360	23	4	7	0	326
Closed fiscal 1995	241	20	2	6	0	213
Pending September 30, 1995	119	3	2	1	0	113
	CE cases					
Pending October 1, 1994	42	0	0	2	3	37
Received fiscal 1995	20	0	0	4	0	16
On docket fiscal 1995	62	0	0	6	3	53
Closed fiscal 1995	28	0	0	4	2	22
Pending September 30, 1995	34	0	0	2	1	31
	CG cases					
Pending October 1, 1994	16	0	0	1	0	15
Received fiscal 1995	22	0	0	1	0	21
On docket fiscal 1995	38	0	0	2	0	36
Closed fiscal 1995	27	0	0	2	0	25
Pending September 30, 1995	11	0	0	0	0	11
	CP cases					
Pending October 1, 1994	56	1	0	0	0	55
Received fiscal 1995	98	2	1	7	0	88
On docket fiscal 1995	154	3	1	7	0	143
Closed fiscal 1995	91	1	1	6	0	83
Pending September 30, 1995	63	2	0	1	0	60

[1] See Glossary of terms for definitions.
* Revised, reflects higher figures than reported pending September 30, 1994, 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 1995[1]

	Total	Identification of filing party				
		AFL-CIO unions	Other national unions	Other local unions	Individuals	Employers
	RC cases					
Pending October 1, 1994	*1,975	1,727	83	165	0	—
Received fiscal 1995	4,320	3,830	161	329	0	—
On docket fiscal 1995	6,295	5,557	244	494	0	—
Closed fiscal 1995	4,571	4,076	169	326	0	—
Pending September 30, 1995	1,724	1,481	75	168	0	—
	RM cases					
Pending October 1, 1994	*103	—	—	—	—	103
Received fiscal 1995	174	—	—	—	—	174
On docket fiscal 1995	277	—	—	—	—	277
Closed fiscal 1995	185	—	—	—	—	185
Pending September 30, 1995	92	—	—	—	—	92
	RD cases					
Pending October 1, 1994	455	2	0	2	451	—
Received fiscal 1995	971	0	0	0	971	—
On docket fiscal 1995	1,426	2	0	2	1,422	—
Closed fiscal 1995	1,030	0	0	0	1,030	—
Pending September 30, 1995	396	2	0	2	392	—

[1] See Glossary of terms for definitions.

* Revised, reflects higher figures than reported pending September 30, 1994, 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 1995

	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	26,244	100.0
8(a)(1)	4,235	16.1
8(a)(1)(2)	228	0.9
8(a)(1)(3)	10,022	38.2
8(a)(1)(4)	167	0.6
8(a)(1)(5)	8,112	30.9
8(a)(1)(2)(3)	177	0.7
8(a)(1)(2)(4)	6	0.0
8(a)(1)(2)(5)	172	0.7
8(a)(1)(3)(4)	665	2.5
8(a)(1)(3)(5)	2,170	8.3
8(a)(1)(4)(5)	22	0.1
8(a)(1)(2)(3)(4)	16	0.1
8(a)(1)(2)(3)(5)	96	0.4
8(a)(1)(2)(4)(5)	4	0.0
8(a)(1)(3)(4)(5)	116	0.4
8(a)(1)(2)(3)(4)(5)	36	0.1
Recapitulation[1]		
8(a)(1)	26,244	100.0
8(a)(2)	735	2.8
8(a)(3)	13,298	50.7
8(a)(4)	1,032	3.9
8(a)(5)	10,728	40.9
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b):		
Total cases	7,754	100.0
8(b)(1)	5,335	68.8
8(b)(2)	46	0.6
8(b)(3)	182	2.3
8(b)(4)	667	8.6
8(b)(5)	6	0.1
8(b)(6)	2	0.0
8(b)(7)	98	1.3
8(b)(1)(2)	813	10.5
8(b)(1)(3)	304	3.9
8(b)(1)(5)	4	0.1
8(b)(1)(6)	10	0.1
8(b)(2)(3)	4	0.1
8(b)(3)(6)	1	0.0
8(b)(1)(2)(3)	271	3.5
8(b)(1)(2)(5)	2	0.0
8(b)(1)(2)(6)	2	0.0
8(b)(1)(3)(6)	4	0.1
8(b)(1)(2)(3)(5)	2	0.0
8(b)(1)(2)(3)(6)	1	0.0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1995—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	6,748	87.0
8(b)(2)	1,141	14.7
8(b)(3)	769	9 9
8(b)(4)	667	8.6
8(b)(5)	14	0 2
8(b)(6)	20	0 3
8(b)(7)	98	1.3
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	667	100.0
8(b)(4)(A)	65	9.7
8(b)(4)(B)	367	55 0
8(b)(4)(C)	7	1.0
8(b)(4)(D)	204	30.6
8(b)(4)(A)(B)	18	2 7
8(b)(4)(A)(C)	1	0 1
8(b)(4)(B)(C)	4	0.6
8(b)(4)(A)(B)(C)	1	0.1
Recapitulation[1]		
8(b)(4)(A)	85	12.7
8(b)(4)(B)	390	58.5
8(b)(4)(C)	13	1.9
8(b)(4)(D)	204	30.6
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	98	100.0
8(b)(7)(A)	30	30.6
8(b)(7)(B)	5	5.1
8(b)(7)(C)	58	59.2
8(b)(7)(A)(B)	1	1.0
8(b)(7)(A)(C)	3	3.1
8(b)(7)(A)(B)(C)	1	1.0
Recapitulation[1]		
8(b)(7)(A)	35	35.7
8(b)(7)(B)	7	7.1
8(b)(7)(C)	62	63.3
C. Charges filed under Sec 8(e)		
Total cases 8(e)	20	100 0
Against unions alone	20	100.0
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	22	100.0

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

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1995[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	49	43	—	—	—	43	—	—	—	—	—	—	—
Complaints issued	4,756	3,618	3,271	246	30	—	10	—	3	14	0	0	44
Backpay specifications issued	93	66	59	5	0	—	0	0	0	0	0	1	1
Hearings completed, total	741	506	465	24	0	9	0	0	2	0	0	0	6
Initial ULP hearings	731	501	460	24	0	9	0	0	2	0	0	0	6
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	10	5	5	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	720	483	450	23	1	—	0	0	2	2	0	0	5
Initial ULP decisions	706	475	442	23	1	—	0	0	2	2	0	0	5
Backpay decisions	14	8	8	0	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	1,722	897	731	64	8	24	2	0	2	2	13	43	8
Upon consent of parties:													
Initial decisions	112	40	28	3	5	—	0	0	0	0	0	0	4
Supplemental decisions	48	16	12	1	0	—	0	0	0	0	1	2	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	291	179	150	13	1	—	0	0	1	1	4	9	0
Backpay decisions	13	5	4	0	0	—	0	0	0	0	0	1	0
Contested:													
Initial ULP decisions	1,032	571	465	42	2	24	1	0	1	0	6	26	4
Decisions based on stipulated record	11	11	8	1	0	—	1	0	0	1	0	0	0
Supplemental ULP decisions	155	35	28	1	0	—	0	0	0	0	2	4	0
Backpay decisions	60	40	36	3	0	—	0	0	0	0	0	1	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1995[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Hearings completed, total	952	916	800	20	96	3
Initial hearings	782	752	657	19	76	1
Hearings on objections and/or challenges	170	164	143	1	20	2
Decisions issued, total	793	761	665	19	77	1
By Regional Directors	736	710	619	17	74	1
Elections directed	649	625	551	11	63	1
Dismissals on record	87	85	68	6	11	0
By Board	57	51	46	2	3	0
Transferred by Regional Directors for initial decision	3	3	3	0	0	0
Elections directed	2	2	2	0	0	0
Dismissals on record	1	1	1	0	0	0
Review of Regional Directors' decisions: Requests for review received	333	320	291	7	22	0
Withdrawn before request ruled upon	18	18	17	0	1	0
Board action on request ruled upon, total	293	283	263	6	14	0
Granted	44	44	40	3	1	0
Denied	231	221	207	3	11	0
Remanded	18	18	16	0	2	0
Withdrawn after request granted, before Board review	1	1	1	0	0	0
Board decision after review, total	54	48	43	2	3	0
Regional Directors' decisions. Affirmed	13	13	11	1	1	0
Modified	14	14	12	1	1	0
Reversed	27	21	20	0	1	0
Outcome: Election directed	45	45	41	2	2	0
Dismissals on record	9	3	2	0	1	0

[1] See Glossary of terms for definitions.
[2] Case counts for UD not included

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1995[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Decisions on objections and/or challenges, total	468	463	413	2	48	6
By Regional Directors	60	59	52	1	6	0
By Board	408	404	361	1	42	6
In stipulated elections	353	350	314	1	35	4
No exceptions to Regional Directors' reports	181	180	155	1	24	3
Exceptions to Regional Directors' reports	172	170	159	0	11	1
In directed elections (after transfer by Regional Director)	53	52	45	0	7	2
Review of Regional Directors' supplemental decisions:						
Request for review received	36	35	30	0	5	1
Withdrawn before request ruled upon	1	1	1	0	0	0
Board action on request ruled upon, total	41	40	33	0	7	0
Granted	2	2	2	0	0	0
Denied	38	37	31	0	6	0
Remanded	1	1	0	0	1	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	2	2	2	0	0	0
Regional Directors' decisions:						
Affirmed	1	1	1	0	0	0
Modified	0	0	0	0	0	0
Reversed	1	1	1	0	0	0

[1] See Glossary of terms for definitions.
[2] Case counts for UD not included.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1995[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	72	7	64
Decisions issued after hearing	100	5	91
By Regional Directors	83	5	78
By Board	17	0	13
Transferred by Regional Directors for initial decision	3	0	1
Review of Regional Directors' decisions:			
Requests for review received	29	0	26
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	35	0	30
Granted	10	0	10
Denied	22	0	19
Remanded	3	0	1
Withdrawn after request granted, before Board review	1	0	1
Board decision after review, total	14	0	12
Regional Directors' decisions:			
Affirmed	1	0	1
Modified	1	0	1
Reversed	12	0	10

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1995[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]10,965	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	2,902	2,420	1,887	114	3	286	130	482	395	33	0	36	18
Recognition or other assistance withdrawn	15	15	11	0	0	3	1	—	—	—	—	—	—
Employer-dominated union disestablished	9	9	7	0	0	2	0	—	—	—	—	—	—
Employees offered reinstatement	807	807	670	47	2	53	35	—	—	—	—	—	—
Employees placed on preferential hiring list	86	86	64	6	0	15	1	—	—	—	—	—	—
Hiring hall rights restored	14	—	—	—	—	—	—	14	14	0	0	0	0
Objections to employment withdrawn	3	—	—	—	—	—	—	139	133	0	0	0	0
Picketing ended	139	—	—	—	—	—	—	139	133	0	0	5	1
Work stoppage ended	24	—	—	—	—	—	—	24	24	0	0	0	0
Collective bargaining begun	2,958	2,800	2,557	78	5	107	53	158	155	0	0	3	0
Backpay distributed	2,140	2,071	1,829	66	7	114	55	69	60	2	0	7	0
Reimbursement of fees, dues, and fines	76	35	33	0	0	1	1	41	37	0	0	3	1
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B By number of employees affected..													
Employees offered reinstatement, total	6,603	6,603	2,953	3,263	8	225	154	—	—	—	—	—	—
Accepted	4,645	4,645	2,477	1,906	8	168	86	—	—	—	—	—	—

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1995[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
Declined	1,958	1,958	476	1,357	0	57	68	—	—	—	—	—	—
Employees placed on preferential hiring list	937	937	620	219	0	90	8	0	0	0	0	0	0
Hiring hall rights restored	16	—	—	—	—	—	—	16	16	0	0	0	0
Objections to employment withdrawn	3	—	—	—	—	—	—	3	3	0	0	0	0
Employees receiving backpay:													
From either employer or union	26,197	26,042	14,786	6,239	163	2,868	1,986	155	146	2	0	7	0
From both employer and union	89	40	40	0	0	0	0	49	49	0	0	0	0
Employees reimbursed for fees, dues, and fines													
From either employer or union	2,311	1,763	1,095	0	0	50	618	548	535	0	0	12	1
From both employer and union	1	0	0	0	0	0	0	1	1	0	0	0	0
C. By amounts of monetary recovery, total	$61,530,718	$61,060,345	$29,696,600	$15,000,604	$54,367	$8,047,434	$8,261,340	$470,373	$339,549	$11,696	$0	$85,192	$33,936
Backpay (includes all monetary payments except fees, dues, and fines)	60,272,725	59,883,258	29,132,127	14,972,242	54,367	7,988,383	7,736,139	389,467	318,274	11,696	0	59,497	0
Reimbursement of fees, dues, and fines	1,257,993	1,177,087	564,473	28,362	0	59,051	525,201	80,906	21,275	0	0	25,695	33,936

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1980 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 1995[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	1,822	1,542	1,184	352	4	2	0	0	0	264	212	5	47	5	1	10
Tobacco manufacturers	13	11	4	7	0	0	0	0	0	2	2	0	0	0	0	0
Textile mill products	206	175	136	39	0	0	0	0	0	31	24	0	7	0	0	0
Apparel and other finished products made from fabric and similar materials	206	185	137	47	1	0	0	0	0	20	19	0	1	1	0	0
Lumber and wood products (except furniture)	289	232	178	50	2	0	1	0	1	53	41	3	9	3	0	1
Furniture and fixtures	271	233	186	46	0	1	0	0	0	36	25	0	11	1	0	1
Paper and allied products	555	495	404	89	1	1	0	0	0	57	43	2	12	1	0	2
Printing, publishing, and allied products	833	716	541	163	7	4	0	0	1	104	69	3	32	2	0	11
Chemicals and allied products	582	500	391	107	2	0	0	0	0	76	61	2	13	1	3	2
Petroleum refining and related industries	193	156	134	19	1	0	1	0	1	24	11	3	10	0	6	7
Rubber and miscellaneous plastic products	610	539	449	90	0	0	0	0	0	69	59	0	10	2	0	0
Leather and leather products	73	66	53	13	0	0	0	0	0	7	6	1	0	0	0	0
Stone, clay, glass, and concrete products	564	467	365	95	4	1	2	0	0	91	65	2	24	4	1	1
Primary metal industries	992	860	611	242	5	2	0	0	0	117	86	4	27	2	2	11
Fabricated metal products (except machinery and transportation equipment)	1,010	845	678	157	7	2	0	0	1	158	120	2	36	7	0	0
Machinery (except electrical)	1,044	912	768	138	2	3	0	0	1	115	84	4	27	11	0	6
Electrical and electronic machinery, equipment, and supplies	621	549	404	142	2	1	0	0	0	67	47	2	18	2	0	3
Aircraft and parts	242	231	133	98	0	0	0	0	0	9	5	0	4	0	1	1
Ship and boat building and repairing	178	167	147	19	1	0	0	0	0	7	6	0	1	1	0	3
Automotive and other transportation equipment	1,085	966	692	266	5	2	0	0	1	115	99	3	13	0	0	4
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	178	151	111	37	0	0	3	0	0	20	11	1	8	2	1	4
Miscellaneous manufacturing industries	224	195	157	36	2	0	0	0	0	25	17	0	8	3	0	1
Manufacturing	11,791	10,193	7,863	2,252	46	19	7	0	6	1,467	1,112	37	318	48	15	68
Metal mining	59	54	37	16	0	0	0	0	1	5	5	0	0	0	0	0
Coal mining	204	197	168	16	10	1	0	0	2	7	4	1	2	0	0	0
Oil and gas extraction	56	49	40	9	0	0	0	0	0	7	5	1	1	0	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	95	77	62	12	2	1	0	0	0	18	12	1	5	0	0	0
Mining	414	377	307	53	12	2	0	0	3	37	26	3	8	0	0	0
Construction	5,106	4,539	3,419	696	212	142	4	0	66	555	454	48	53	0	2	10

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1995[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases: All C cases	CA	CB	CC	CD	CE	CG	CP	Representation cases: All R cases	RC	RM	RD	Union deauthorization cases: UD	Amendment of certification cases: AC	Unit clarification cases: UC
Wholesale trade	1,636	1,296	1,008	272	12	1	1	0	2	322	249	9	64	7	0	11
Retail trade	2,633	2,117	1,614	468	24	3	0	0	8	485	355	16	114	11	1	19
Finance, insurance, and real estate	649	539	410	118	11	0	0	0	0	103	75	11	17	1	0	6
U.S. Postal Service	2,975	2,974	2,295	679	0	0	0	0	0	1	1	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	667	493	410	77	6	0	0	0	0	170	139	4	27	2	0	2
Motor freight transportation and warehousing	2,789	2,285	1,828	405	42	7	2	0	1	484	406	11	67	3	1	16
Water transportation	259	233	112	108	7	3	1	0	2	24	22	0	2	0	1	1
Other transportation	417	325	220	85	12	8	0	0	0	86	70	2	14	1	0	5
Communication	921	808	613	191	3	1	0	0	0	102	75	3	24	1	0	10
Electric, gas, and sanitary services	1,070	897	678	204	8	3	1	0	3	161	136	2	23	1	0	11
Transportation, communication, and other utilities	6,123	5,041	3,861	1,070	78	22	4	0	6	1,027	848	22	157	8	2	45
Hotels, rooming houses, camps, and other lodging places	972	846	654	173	19	0	0	0	0	121	99	5	17	1	0	4
Personal services	278	221	185	35	1	0	0	0	0	49	39	0	10	2	5	1
Automotive repair, services, and garages	399	277	230	46	1	0	0	0	0	117	84	2	31	3	0	2
Motion pictures	179	157	87	66	2	1	0	0	1	22	15	1	6	0	0	0
Amusement and recreation services (except motion pictures)	408	323	240	76	4	1	1	0	1	79	66	2	11	3	0	3
Health services	3,073	2,529	2,141	357	7	0	2	22	0	456	369	10	77	10	2	76
Educational services	248	201	172	26	2	1	0	0	0	41	37	1	3	1	1	4
Membership organizations	549	463	261	196	4	2	0	0	0	68	59	0	9	3	0	15
Business services	1,776	1,411	1,047	325	24	10	0	0	5	343	297	3	43	14	1	7
Miscellaneous repair services	97	75	63	12	0	0	0	0	0	22	19	0	3	0	0	0
Legal services	60	44	42	2	0	0	0	0	0	14	9	0	5	0	0	2
Museums, art galleries, and botanical and zoological gardens	17	12	9	3	0	0	0	0	0	5	2	0	3	0	0	0
Social services	341	253	227	25	1	0	0	0	0	76	62	1	13	2	0	10
Miscellaneous services	104	76	48	25	2	0	1	0	0	26	17	2	7	0	2	0
Services	8,501	6,888	5,406	1,367	67	15	4	22	7	1,439	1,174	27	238	39	11	124
Public administration	108	76	61	14	1	0	0	0	0	30	27	1	2	0	0	2
Total, all industrial groups	39,936	34,040	26,244	6,989	463	204	20	22	98	5,466	4,321	174	971	114	31	285

[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 1995[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	178	159	131	28	0	0	0	0	0	17	11	1	5	0	0	2
New Hampshire	73	57	50	7	0	0	0	0	0	14	11	1	2	0	0	2
Vermont	90	82	81	1	0	0	0	0	0	6	6	0	0	0	0	2
Massachusetts	1,316	1,172	954	178	25	13	1	0	1	120	98	1	21	0	4	20
Rhode Island	167	134	119	11	3	0	0	1	0	27	23	1	3	0	1	5
Connecticut	730	640	529	100	11	0	0	0	0	83	74	2	7	1	0	6
New England	2,554	2,244	1,864	325	39	13	1	1	1	267	223	6	38	1	5	37
New York	4,442	3,843	2,792	950	46	37	3	4	11	536	428	20	88	20	1	42
New Jersey	1,745	1,451	1,027	368	30	16	4	0	6	263	204	4	55	18	2	11
Pennsylvania	2,513	2,141	1,695	364	47	28	0	5	2	346	284	4	58	10	1	15
Middle Atlantic	8,700	7,435	5,514	1,682	123	81	7	9	19	1,145	916	28	201	48	4	68
Ohio	2,323	1,968	1,608	349	5	1	0	4	1	334	253	11	70	5	3	13
Indiana	1,455	1,267	961	262	24	11	1	0	8	179	137	7	35	5	0	4
Illinois	2,335	1,950	1,390	428	71	29	5	0	27	368	285	17	66	8	0	9
Michigan	2,247	1,887	1,433	438	14	1	0	1	0	334	265	15	54	5	2	19
Wisconsin	773	622	498	117	4	1	0	1	1	140	109	4	27	4	0	7
East North Central	9,133	7,694	5,890	1,594	118	43	6	6	37	1,355	1,049	54	252	27	5	52
Iowa	237	185	152	31	1	1	0	0	0	47	31	0	16	0	2	3
Minnesota	623	447	355	76	15	0	0	0	1	165	131	5	29	5	0	6
Missouri	1,082	915	680	176	28	23	0	0	8	163	120	8	35	1	1	2
North Dakota	48	33	31	2	0	0	0	0	0	15	13	0	2	0	0	0
South Dakota	38	27	26	1	0	0	0	0	0	11	9	0	2	0	0	0
Nebraska	124	105	94	11	0	0	0	0	0	19	14	0	5	0	0	0
Kansas	316	266	180	84	2	0	0	0	0	50	32	1	17	0	0	0
West North Central	2,468	1,978	1,518	381	46	24	0	0	9	470	350	14	106	6	3	11
Delaware	121	104	91	13	0	0	0	0	0	15	10	1	4	0	0	2
Maryland	691	581	428	151	2	0	0	0	0	102	87	3	12	1	1	6

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1995[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
District of Columbia	175	153	118	30	5	0	0	0	0	22	19	0	3	0	0	0
Virginia	478	414	340	74	0	0	0	0	0	64	54	2	8	0	0	0
West Virginia	633	581	497	61	18	2	0	0	3	41	34	1	6	7	0	4
North Carolina	349	323	264	59	0	0	0	0	0	26	24	1	1	0	0	0
South Carolina	166	147	118	29	0	0	0	0	0	19	16	0	3	0	0	0
Georgia	615	551	428	121	1	0	0	0	1	63	48	2	13	0	1	0
Florida	1,181	1,045	880	162	2	0	0	1	0	130	117	2	11	0	0	6
South Atlantic	4,409	3,899	3,164	700	28	2	0	1	4	482	409	12	61	8	2	18
Kentucky	724	636	541	88	5	1	0	1	0	84	65	2	17	1	0	3
Tennessee	762	672	571	97	2	1	1	0	0	88	74	1	13	0	0	2
Alabama	469	413	351	62	0	0	0	0	0	53	44	0	9	0	0	3
Mississippi	176	144	125	19	0	0	0	0	0	32	31	0	1	0	0	0
East South Central	2,131	1,865	1,588	266	7	2	1	1	0	257	214	3	40	1	0	8
Arkansas	171	154	118	36	0	0	0	0	0	16	12	0	4	0	0	1
Louisiana	389	339	270	69	0	0	0	0	0	49	46	0	3	0	0	1
Oklahoma	202	166	144	22	0	0	0	0	0	33	24	0	9	2	0	1
Texas	1,099	968	733	230	4	0	0	0	1	114	84	2	28	0	6	11
West South Central	1,861	1,627	1,265	357	4	0	0	0	1	212	166	2	44	2	6	14
Montana	145	108	96	11	1	0	0	0	0	34	21	3	10	1	0	2
Idaho	126	107	100	7	0	0	0	0	0	19	16	1	2	0	0	0
Wyoming	51	43	41	2	0	0	0	0	0	7	6	0	1	0	0	1
Colorado	598	529	442	83	3	0	0	0	1	65	55	0	10	0	0	4
New Mexico	192	160	117	43	0	0	0	0	0	29	25	0	4	0	0	3
Arizona	320	282	217	64	0	0	0	0	1	35	28	0	7	0	0	3
Utah	183	160	135	24	0	1	0	0	0	22	13	1	8	0	0	1
Nevada	508	448	319	118	6	5	0	0	0	60	56	0	4	0	0	0
Mountain	2,123	1,837	1,467	352	10	6	0	0	2	271	220	5	46	1	0	14

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1995[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	826	631	469	153	5	1	1	0	2	184	133	8	43	3	3	5
Oregon	453	347	230	105	7	4	0	0	1	90	65	6	19	3	1	12
California	4,338	3,732	2,697	930	67	11	1	4	22	560	425	29	106	12	2	32
Alaska	113	80	55	21	2	1	1	0	0	29	25	1	3	0	0	4
Hawaii	399	345	247	76	5	16	1	0	0	47	37	3	7	2	0	5
Guam	41	35	35	0	0	0	0	0	0	6	6	0	0	0	0	0
Pacific	6,170	5,170	3,733	1,285	86	33	4	4	25	916	691	47	178	20	6	58
Puerto Rico	346	269	222	44	2	0	1	0	0	73	70	1	2	0	0	4
Virgin Islands	32	22	19	3	0	0	0	0	0	10	7	1	2	0	0	0
Outlying areas	378	291	241	47	2	0	1	0	0	83	77	2	4	0	0	4
Total, all States and areas	39,927	34,040	26,244	6,989	463	204	20	22	98	5,458	4,315	173	970	114	31	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 1995[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	730	640	529	100	11	0	0	0	0	83	74	2	7	1	0	6
Maine	178	159	131	28	0	0	0	0	0	17	11	1	5	0	0	2
Massachusetts	1,316	1,172	954	178	25	13	1	0	1	120	98	1	21	0	4	20
New Hampshire	73	57	50	7	0	0	0	0	0	14	11	1	2	0	0	2
Rhode Island	167	134	119	11	3	0	0	1	0	27	23	1	3	0	1	5
Vermont	90	82	81	1	0	0	0	0	0	6	6	0	0	0	0	2
Region I	2,554	2,244	1,864	325	39	13	1	1	1	267	223	6	38	1	5	37
Delaware	121	104	91	13	0	0	0	0	0	15	10	1	4	0	0	2
New Jersey	1,745	1,451	1,027	368	30	16	4	0	6	263	204	4	55	18	2	11
New York	4,442	3,843	2,792	950	46	37	3	4	11	536	428	20	88	20	1	42
Puerto Rico	346	269	222	44	2	0	1	0	0	73	70	1	2	0	0	4
Virgin Islands	32	22	19	3	0	0	0	0	0	10	7	1	2	0	0	0
Region II	6,686	5,689	4,151	1,378	78	53	8	4	17	897	719	27	151	38	3	59
District of Columbia	175	153	118	30	5	0	0	0	0	22	19	0	3	0	0	0
Maryland	691	581	428	151	2	0	0	0	0	102	87	3	12	1	1	6
Pennsylvania	2,513	2,141	1,695	364	47	28	0	5	2	346	284	4	58	10	1	15
Virginia	478	414	340	74	0	0	0	0	0	64	54	2	8	0	0	0
West Virginia	633	581	497	61	18	2	0	0	3	41	34	1	6	7	0	4
Region III	4,490	3,870	3,078	680	72	30	0	5	5	575	478	10	87	18	2	25
Alabama	469	413	351	62	0	0	0	0	0	53	44	0	9	0	0	3
Florida	1,181	1,045	880	162	2	0	0	1	0	130	117	2	11	0	0	6
Georgia	615	551	428	121	1	0	0	0	1	63	48	2	13	0	1	0
Kentucky	724	636	541	88	5	1	0	1	0	84	65	2	17	1	0	3
Mississippi	176	144	125	19	0	0	0	0	0	32	31	0	1	0	0	0
North Carolina	349	323	264	59	0	0	0	0	0	26	24	1	1	0	0	0

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1995[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	166	147	118	29	0	0	0	0	0	19	16	0	3	0	0	0
Tennessee	762	672	571	97	2	1	1	0	0	88	74	1	13	0	0	2
Region IV	4,442	3,931	3,278	637	10	2	1	2	1	495	419	8	68	1	1	14
Illinois	2,335	1,950	1,390	428	71	29	5	0	27	368	285	17	66	8	0	9
Indiana	1,455	1,267	961	262	24	11	1	0	8	179	137	7	35	5	0	4
Michigan	2,247	1,887	1,433	438	14	1	0	1	0	334	265	15	54	5	2	19
Minnesota	623	447	355	76	15	0	0	0	1	165	131	5	29	5	0	6
Ohio	2,323	1,968	1,608	349	5	1	0	4	1	334	253	11	70	5	3	13
Wisconsin	773	622	498	117	4	1	0	1	1	140	109	4	27	4	0	7
Region V	9,756	8,141	6,245	1,670	133	43	6	6	38	1,520	1,180	59	281	32	5	58
Arkansas	171	154	118	36	0	0	0	0	0	16	12	0	4	0	0	1
Louisiana	389	339	270	69	0	0	0	0	0	49	46	0	3	0	0	1
New Mexico	192	160	117	43	0	0	0	0	0	29	25	0	4	0	0	3
Oklahoma	202	166	144	22	0	0	0	0	0	33	24	0	9	2	0	1
Texas	1,099	968	733	230	4	0	0	0	1	114	84	2	28	0	6	11
Region VI	2,053	1,787	1,382	400	4	0	0	0	1	241	191	2	48	2	6	17
Iowa	237	185	152	31	1	1	0	0	0	47	31	0	16	0	2	3
Kansas	316	266	180	84	2	0	0	0	0	50	32	1	17	0	0	0
Missouri	1,082	915	680	176	28	23	0	0	8	163	120	8	35	1	1	2
Nebraska	124	105	94	11	0	0	0	0	0	19	14	0	5	0	0	0
Region VII	1,759	1,471	1,106	302	31	24	0	0	8	279	197	9	73	1	3	5
Colorado	598	529	442	83	3	0	0	0	1	65	55	0	10	0	0	4
Montana	145	108	96	11	1	0	0	0	0	34	21	3	10	1	0	2
North Dakota	48	33	31	2	0	0	0	0	0	15	13	0	2	0	0	0
South Dakota	38	27	26	1	0	0	0	0	0	11	9	0	2	0	0	0
Utah	183	160	135	24	0	1	0	0	0	22	13	1	8	0	0	1
Wyoming	51	43	41	2	0	0	0	0	0	7	6	0	1	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1995[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Region VIII	1,063	900	771	123	4	1	0	0	1	154	117	4	33	1	0	8
Arizona	320	282	217	64	0	0	0	0	1	35	28	0	7	0	0	3
California	4,338	3,732	2,697	930	67	11	1	4	22	560	425	29	106	12	2	32
Hawaii	399	345	247	76	5	16	1	0	0	47	37	3	7	2	0	5
Guam	41	35	35	0	0	0	0	0	0	6	6	0	0	0	0	0
Nevada	508	448	319	118	6	5	0	0	0	60	56	0	4	0	0	0
Region IX	5,606	4,842	3,515	1,188	78	32	2	4	23	708	552	32	124	14	2	40
Alaska	113	80	55	21	2	1	1	0	0	29	25	1	3	0	0	4
Idaho	126	107	100	7	0	0	0	0	0	19	16	1	2	0	0	0
Oregon	453	347	230	105	7	4	0	0	1	90	65	6	19	3	1	12
Washington	826	631	469	153	5	1	1	0	2	184	133	8	43	3	3	5
Region X	1,518	1,165	854	286	14	6	2	0	3	322	239	16	67	6	4	21
Total, all States and areas	39,927	34,040	26,244	6,989	463	204	20	22	98	5,458	4,315	173	970	114	31	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 1995[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	31,775	100.0	0.0	23,862	100.0	7,004	100.0	522	100.0	241	100.0	28	100.0	27	100.0	91	100.0
Agreement of the parties	10,224	32.2	100.0	8,870	37.1	1,059	15.1	242	46.3	3	1.2	12	42.8	9	33.3	29	31.8
Informal settlement	10,164	32.0	99.4	8,834	37.0	1,050	14.9	228	43.6	2	0.8	12	42.8	9	33.3	29	31.8
Before issuance of complaint	7,262	22.9	71.0	6,296	26.3	765	10.9	173	33.1	(2)	—	1	3.5	6	22.2	21	23.0
After issuance of complaint, before opening of hearing	2,779	8.7	27.2	2,420	10.1	280	3.9	55	10.5	2	0.8	11	39.2	3	11.1	8	8.7
After hearing opened, before issuance of administrative law judge's decision	123	0.4	1.2	118	0.4	5	0.0	0	—	0	—	0	—	0	—	0	—
Formal settlement	60	0.2	0.6	36	0.1	9	0.1	14	2.6	1	0.4	0	—	0	—	0	—
After issuance of complaint, before opening of hearing	48	0.2	0.5	25	0.1	9	0.1	13	2.4	1	0.4	0	—	0	—	0	—
Stipulated decision	1	0.0	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	47	0.1	0.5	24	0.1	9	0.1	13	2.4	1	0.4	0	—	0	—	0	—
After hearing opened	12	0.0	0.1	11	0.0	0	—	1	0.1	0	—	0	—	0	—	0	—
Stipulated decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	12	0.0	0.1	11	0.0	0	—	1	0.1	0	—	0	—	0	—	0	—
Compliance with	595	1.9	100.0	523	2.1	50	0.7	12	2.2	2	0.8	0	—	3	11.1	5	5.4

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1995[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	8	0.0	1.3	7	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
Board decision	413	1.3	69.4	356	1.4	43	0.6	7	1.3	0	—	0	—	3	11.1	4	4.3
Adopting administrative law judge's decision (no exceptions filed)	221	0.7	37.1	185	0.7	28	0.3	4	0.7	0	—	0	—	2	7.4	2	2.1
Contested	192	0.6	32.3	171	0.7	15	0.2	3	0.5	0	—	0	—	1	3.7	2	2.1
Circuit court of appeals decree	173	0.5	29.1	159	0.6	6	0.0	5	0.9	2	0.8	0	—	0	—	1	1.0
Supreme Court action	1	0.0	0.2	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	10,349	32.5	100.0	8,175	34.2	1,920	27.4	198	37.9	2	0.8	10	35.7	9	33.3	35	38.4
Before issuance of complaint	10,003	31.5	96.7	7,876	33.0	1,884	26.8	193	36.9	(2)	—	9	32.1	7	25.9	34	37.3
After issuance of complaint, before opening of hearing	315	1.0	3.0	270	1.1	34	0.4	5	0.9	2	0.8	1	3.5	2	7.4	1	1.0
After hearing opened, before administrative law judge's decision	25	0.1	0.2	25	0.1	0	—	0	—	0	—	0	—	0	—	0	—
After administrative law judge's decision, before Board decision	6	0.0	0.1	4	0.0	2	0.0	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	10,292	32.4	100.0	6,213	26.0	3,975	56.7	70	13.4	0	—	6	21.4	6	22.2	22	24.1
Before issuance of complaint	10,042	31.6	97.5	6,008	25.1	3,934	56.2	67	12.8	(2)	—	5	17.8	6	22.2	22	24.1
After issuance of complaint, before opening of hearing	132	0.4	1.3	104	0.4	26	0.3	2	0.3	0	—	0	—	0	—	0	—
After hearing opened, before administrative law judge's decision	8	0.0	0.1	7	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
By administrative law judge's decision	1	0.0	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By Board decision	92	0.3	0.9	76	0.3	14	0.1	1	0.1	0	—	1	3.5	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	49	0.2	0.5	44	0.2	5	0.0	0	—	0	—	0	—	0	—	0	—
Contested	43	0.1	0.4	32	0.1	9	0.1	1	0.1	0	—	1	3.5	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1995[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	17	0.1	0.2	17	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)	234	0.7	0.0	0	—	0	—	0	—	234	97.0	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	81	0.3	0.0	80	0.3	1	0.0	0	—	0	—	0	—	0	—	0	—

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

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1995[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	234	100.0
Agreement of the parties—informal settlement	95	40.4
Before 10(k) notice	76	32.4
After 10(k) notice, before opening of 10(k) hearing	18	7.6
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.4
Compliance with Board decision and determination of dispute	1	0.4
Withdrawal	92	39.2
Before 10(k) notice	67	28.6
After 10(k) notice, before opening of 10(k) hearing	15	6.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	6	2.5
After Board decision and determination of dispute	4	1.7
Dismissal	46	20.0
Before 10(k) notice	36	15.3
After 10(k) notice, before opening of 10(k) hearing	4	1.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	—
By Board decision and determination of dispute	6	2.6

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1995[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	31,775	100.0	23,862	100.0	7,004	100.0	522	100.0	241	100.0	28	100.0	27	100.0	91	100.0
Before issuance of complaint	27,568	86.8	20,203	84.7	6,587	94.0	433	83.0	234	97.1	15	53.6	19	70.4	77	84.6
After issuance of complaint, before opening of hearing	3,268	10.3	2,816	11.8	347	5.0	74	14.2	5	2.1	12	42.9	5	18.5	9	9.9
After hearing opened, before issuance of administrative law judge's decision	158	0.5	151	0.6	6	0.1	1	0.2	0	—	0	—	0	—	0	—
After administrative law judge's decision, before issuance of Board decision	23	0.1	22	0.1	1	0.0	0	—	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	253	0.8	213	0.9	31	0.4	5	1.0	0	—	0	—	2	7.4	2	2.2
After Board decision, before circuit court decree	277	0.9	244	1.0	25	0.4	4	0.8	0	—	1	3.6	1	3.7	2	2.2
After circuit court decree, before Supreme Court action	214	0.7	200	0.8	6	0.1	5	1.0	2	0.8	0	—	0	—	1	1.1
After Supreme Court action	1	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1995[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	5,786	100.0	4,571	100.0	185	100.0	1,030	100.0	110	100.0
Before issuance of notice of hearing	1,686	29.1	1,088	23.8	96	51.9	502	48.7	90	81.8
After issuance of notice, before close of hearing	3,257	56.3	2,746	60.1	70	37.8	441	42.8	8	7.3
After hearing closed, before issuance of decision	67	1.2	56	1.2	2	1.1	9	0.9	0	—
After issuance of Regional Director's decision	773	13.4	678	14.8	17	9.2	78	7.6	12	10.9
After issuance of Board decision	3	0.1	3	0.1	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 1995[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	5,786	100.0	4,571	100.0	185	100.0	1,030	100.0	110	100.0
Certification issued, total	3,587	62.0	3,004	65.7	67	36.2	516	50.1	47	42.7
After:										
Consent election	14	0.2	12	0.3	0	—	2	0.2	2	1.8
Before notice of hearing	4	0.1	3	0.1	0	—	1	0.1	2	1.8
After notice of hearing, before hearing closed	10	0.2	9	0.2	0	—	1	0.1	0	—
After hearing closed, before decision	0	—	0	—	0	—	0	—	0	—
Stipulated election	3,026	52.3	2,509	54.9	57	30.8	460	44.7	33	30.0
Before notice of hearing	866	15.0	622	13.6	32	17.3	212	20.6	31	28.2
After notice of hearing, before hearing closed	2,139	37.0	1,870	40.9	25	13.5	244	23.7	2	1.8
After hearing closed, before decision	21	0.4	17	0.4	0	—	4	0.4	0	—
Expedited election	1	0.0	0	—	1	0.5	0	—	0	—
Regional Director-directed election	510	8.8	453	10.0	9	4.9	48	4.6	12	10.9
Board-directed election	36	0.6	30	0.6	0	—	6	0.6	0	—
By withdrawal, total	1,818	31.4	1,406	30.8	73	39.5	339	32.9	54	49.1
Before notice of hearing	638	11.0	424	9.3	36	19.5	178	17.3	48	43.6
After notice of hearing, before hearing closed	1,028	17.8	843	18.4	35	18.9	150	14.6	6	5.5
After hearing closed, before decision	39	0.7	34	0.7	2	1.1	3	0.3	0	—
After Regional Director's decision and direction of election	113	2.0	105	2.3	0	—	8	0.8	0	—
After Board decision and direction of election	0	—	0	—	0	—	0	—	0	—
By dismissal, total	377	6.5	159	3.5	45	24.3	173	16.8	9	8.2
Before notice of hearing	177	3.1	39	0.9	27	14.6	111	10.8	9	8.2
After notice of hearing, before hearing closed	77	1.3	23	0.5	10	5.4	44	4.3	0	—
After hearing closed, before decision	4	0.1	2	0.0	0	—	2	0.2	0	—
By Regional Director's decision	116	2.0	92	2.0	8	4.3	16	1.6	0	—
By Board decision	3	0.1	3	0.1	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 1995

	AC	UC
Total, all	30	337
Certification amended or unit clarified	6	38
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	6	38
By Regional Director's decision	6	38
By Board decision	0	0
Dismissed	4	88
Before hearing	2	15
By Regional Director's decision	2	15
By Board decision	0	0
After hearing	2	73
By Regional Director's decision	2	73
By Board decision	0	0
Withdrawn	20	211
Before hearing	15	202
After hearing	5	9

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1995[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	3,430	12	2,863	5	549	1
Eligible voters	216,692	461	170,616	307	45,193	115
Valid votes	190,299	428	151,482	210	38,112	67
RC cases:						
Elections	2,860	10	2,372	5	473	0
Eligible voters	191,825	394	149,939	307	41,185	0
Valid votes	169,214	372	133,656	210	34,976	0
RM cases.						
Elections	51	0	40	0	10	1
Eligible voters	1,109	0	746	0	248	115
Valid votes	951	0	675	0	209	67
RD cases						
Elections	488	2	431	0	55	0
Eligible voters	22,203	67	19,025	0	3,111	0
Valid votes	18,786	56	16,361	0	2,369	0
UD cases						
Elections	31	0	20	0	11	—
Eligible voters	1,555	0	906	0	649	—
Valid votes	1,348	0	790	0	558	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1995

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	3,632	116	117	3,399	3,073	110	103	2,860	52	0	1	51	507	6	13	488
Rerun required	—	—	101	—	—	—	90	—	—	—	0	—	—	—	11	—
Runoff required	—	—	16	—	—	—	13	—	—	—	1	—	—	—	2	—
Consent elections	13	0	1	12	11	0	1	10	0	0	0	0	2	0	0	2
Rerun required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	2,997	75	79	2,843	2,513	71	70	2,372	40	0	0	40	444	4	9	431
Rerun required	—	—	69	—	—	—	62	—	—	—	0	—	—	—	7	—
Runoff required	—	—	10	—	—	—	8	—	—	—	0	—	—	—	2	—
Regional Director-directed	615	41	36	538	543	39	31	473	11	0	1	10	61	2	4	55
Rerun required	—	—	30	—	—	—	26	—	—	—	0	—	—	—	4	—
Runoff required	—	—	6	—	—	—	5	—	—	—	1	—	—	—	0	—
Board-directed	6	0	1	5	6	0	1	5	0	0	0	0	0	0	0	0
Rerun required	—	—	1	—	—	—	1	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	1	0	0	1	0	0	0	0	1	0	0	1	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 1995

	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	3,632	185	5.1	63	1.7	36	1.0	221	6 1	99	2.7
By type of case:											
In RC cases	3,073	161	5.2	57	1.9	32	1.0	193	6.3	89	2 9
In RM cases	52	3	5.8	1	1.9	0	—	3	5.8	1	1 9
In RD cases	507	21	4.1	5	1.0	4	0.8	25	4.9	9	1 8
By type of election:											
Consent elections	13	0	—	0	—	1	7.7	1	7.7	1	7.7
Stipulated elections	2,997	127	4 2	49	1.6	27	0 9	154	5.1	76	2 5
Expedited elections	1	1	100.0	0	—	0	—	1	100.0	0	—
Regional Director-directed elections	615	57	9.3	14	2.3	8	1.3	65	10.6	22	3 6
Board-directed elections	6	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 1995[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	322	100.0	130	40.4	185	57.4	7	2.2
By type of case:								
RC cases	287	100.0	122	42.5	160	55.8	5	1.7
RM cases	3	100.0	2	66.7	1	33 3	0	—
RD cases	32	100 0	6	18 8	24	75.0	2	6.2
By type of election								
Consent elections	1	100.0	0	—	1	100.0	0	—
Stipulated elections	227	100.0	91	40.1	132	58.1	4	1.8
Expedited elections	1	100.0	0	—	1	100.0	0	—
Regional Director-directed elections	93	100.0	39	41.9	51	54.9	3	3.2
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 1995[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	322	101	221	160	72 4	61	27.6
By type of case:							
RC cases	287	94	193	140	72.5	53	27.5
RM cases	3	0	3	3	100.0	0	—
RD cases	32	7	25	17	68 0	8	32.0
By type of election:							
Consent elections	1	0	1	0	—	1	100 0
Stipulated elections	227	73	154	110	71 4	44	28.6
Expedited elections	1	0	1	1	100.0	0	—
Regional Director-directed elections	93	28	65	49	75.4	16	24.6
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 4 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 1995[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	94	100 0	31	33.0	63	67.0	38	40 4
By type of case:								
RC cases	83	100.0	28	33.7	55	66 3	33	38 0
RM cases	0	—	0	—	0	—	0	—
RD cases	11	100 0	3	27.3	8	72.7	5	45.5
By type of election:								
Consent elections	1	100 0	1	100 0	0	—	1	100.0
Stipulated elections	69	100 0	22	31.9	47	68.1	26	37.7
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	24	100.0	8	33.3	16	66.7	11	45.8
Board-directed elections	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 7 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1995

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	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	31	13	41.9	18	58.1	1,555	414	26.6	1,141	73.4	1,348	86.7	347	22.3
AFL-CIO unions	25	10	40.0	15	60.0	1,163	360	31.0	803	69.0	1,000	86.0	301	25.9
Other national unions	1	1	100.0	0	—	12	12	100.0	0	—	10	83.3	10	83.3
Other local unions	5	2	40.6	3	60.0	380	42	11.1	338	88.9	338	88.9	36	9.5

[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 1995[1]

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL–CIO unions	Other national unions	Other local unions	In elections where no representative chosen
A. All representation elections													
AFL–CIO	3,022	45.2	1,366	1,366	—	—	1,656	186,842	71,658	71,658	—	—	115,184
Other national unions	88	50 0	44	—	44	—	44	6,420	2,576	—	2,576	—	3,844
Other local unions	186	61 8	115	—	—	115	71	12,591	5,783	—	—	5,783	6,808
1-union elections	3,296	46 3	1,525	1,366	44	115	1,771	205,853	80,017	71,658	2,576	5,783	125,836
AFL–CIO v. AFL–CIO	40	72 5	29	29	—	—	11	3,219	1,583	1,583	—	—	1,636
AFL–CIO v. National	12	83.3	10	5	5	—	2	904	593	180	413	—	311
AFL–CIO v. Local	39	89 7	35	20	—	15	4	3,554	2,878	1,827	—	1,051	676
National v. Local	2	100 0	2	—	0	2	0	751	751	—	0	751	0
Local v. Local	9	100.0	9	—	—	9	0	588	588	—	—	588	0
2-union elections	102	83.3	85	54	5	26	17	9,016	6,393	3,590	413	2,390	2,623
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	0	—	1	0	268	268	0	—	268	0
3 (or more)-union elections	1	100 0	1	0	0	1	0	268	268	0	0	268	0
Total representation elections	3,399	47 4	1,611	1,420	49	142	1,788	215,137	86,678	75,248	2,989	8,441	128,459
B Elections in RC cases													
AFL–CIO	2,518	48 6	1,224	1,224	—	—	1,294	165,841	62,594	62,594	—	—	103,247
Other national unions	84	51.2	43	—	43	—	41	5,726	2,384	—	2,384	—	3,342
Other local unions	161	67.1	108	—	—	108	53	11,235	4,983	—	—	4,983	6,252
1-union elections	2,763	49.8	1,375	1,224	43	108	1,388	182,802	69,961	62,594	2,384	4,983	112,841
AFL–CIO v. AFL–CIO	35	71.4	25	25	—	—	10	3,049	1,415	1,415	—	—	1,634
AFL–CIO v. National	12	83.3	10	5	5	—	2	904	593	180	413	—	311
AFL–CIO v. Local	38	89.5	34	19	—	15	4	3,463	2,787	1,736	—	1,051	676
National v. Local	2	100.0	2	—	0	2	0	751	751	—	0	751	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1995[1]—Continued

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL–CIO unions	Other national unions	Other local unions	In elections where no representative chosen
Local v. Local	9	100 0	9	—	—	9	0	588	588	—	—	588	0
2-union elections	96	83.3	80	49	5	26	16	8,755	6,134	3,331	413	2,390	2,621
AFL–CIO v. AFL–CIO v. Local	1	100.0	1	0	—	1	0	268	268	0	—	268	0
3 (or more)-union elections	1	100 0	1	0	0	1	0	268	268	0	0	268	0
Total RC elections	2,860	50.9	1,456	1,273	48	135	1,404	191,825	76,363	65,925	2,797	7,641	115,462
C Elections in RM cases													
AFL–CIO	44	15.9	7	7	—	—	37	913	179	179	—	—	734
Other local unions	3	33.3	1	—	—	1	2	28	10	—	—	10	18
1-union elections	47	17.0	8	7	0	1	39	941	189	179	0	10	752
AFL–CIO v. AFL–CIO	4	100.0	4	4	—	—	0	168	168	168	—	—	0
2-union elections	4	100.0	4	4	0	0	0	168	168	168	0	0	0
Total RM elections	51	23.5	12	11	0	1	39	1,109	357	347	0	10	752
D. Elections in RD cases													
AFL–CIO	460	29.3	135	135	—	—	325	20,088	8,885	8,885	—	—	11,203
Other national unions	4	25.0	1	—	1	—	3	694	192	—	192	—	502
Other local unions	22	27.3	6	—	—	6	16	1,328	790	—	—	790	538
1-union elections	486	29.2	142	135	1	6	344	22,110	9,867	8,885	192	790	12,243
AFL–CIO v. AFL–CIO	1	0.0	0	0	—	—	1	2	0	0	—	—	2
AFL–CIO v. Local	1	100 0	1	1	—	0	0	91	91	91	—	0	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1995[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	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
2-union elections	2	50.0	1	1	0	0	1	93	91	91	0	0	2
Total RD elections	488	29.3	143	136	1	6	345	22,203	9,958	8,976	192	790	12,245

[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 1995[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won: Votes for unions: Total	Won: AFL-CIO unions	Won: Other national unions	Won: Other local unions	Won: Total votes for no union	Valid votes cast in elections lost: Votes for unions: Total	Lost: AFL-CIO unions	Lost: Other national unions	Lost: Other local unions	Lost: Total votes for no union
A. All representation elections											
AFL-CIO	164,844	40,529	40,529	—	—	20,953	34,168	34,168	—	—	69,194
Other national unions	5,764	1,470	—	1,470	—	811	1,117	—	1,117	—	2,366
Other local unions	10,628	3,278	—	—	3,278	1,354	1,879	—	—	1,879	4,117
1-union elections	181,236	45,277	40,529	1,470	3,278	23,118	37,164	34,168	1,117	1,879	75,677
AFL-CIO v. AFL-CIO	2,708	1,207	1,207	—	—	100	565	565	—	—	836
AFL-CIO v. National	811	466	179	287	—	67	131	117	14	—	147
AFL-CIO v. Local	2,998	2,274	1,335	—	939	181	159	86	—	73	384
National v. Local	563	518	—	218	300	45	0	—	0	0	0
Local v. Local	431	346	—	—	346	85	0	—	—	0	0
2-union elections	7,511	4,811	2,721	505	1,585	478	855	768	14	73	1,367
AFL-CIO v. AFL-CIO v. Local	204	204	67	—	137	0	0	0	—	0	0
3 (or more)-union elections	204	204	67	0	137	0	0	0	0	0	0
Total representation elections	188,951	50,292	43,317	1,975	5,000	23,596	38,019	34,936	1,131	1,952	77,044
B. Elections in RC cases											
AFL-CIO	147,144	35,499	35,499	—	—	18,451	30,986	30,986	—	—	62,208
Other national unions	5,119	1,374	—	1,374	—	719	961	—	961	—	2,065
Other local unions	9,469	2,847	—	—	2,847	1,113	1,777	—	—	1,777	3,732
1-union elections	161,732	39,720	35,499	1,374	2,847	20,283	33,724	30,986	961	1,777	68,005
AFL-CIO v. AFL-CIO	2,566	1,077	1,077	—	—	90	565	565	—	—	834
AFL-CIO v. National	811	466	179	287	—	67	131	117	14	—	147
AFL-CIO v. Local	2,907	2,226	1,287	—	939	138	159	86	—	73	384
National v. Local	563	518	—	218	300	45	0	—	0	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1995[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	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
Local v. Local	431	346	—	—	346	85	0	—	—	0	0
2-union elections	7,278	4,633	2,543	505	1,585	425	855	768	14	73	1,365
AFL–CIO v AFL–CIO v. Local	204	204	67	—	137	0	0	0	—	0	0
3 (or more)-union elections	204	204	67	0	137	0	0	0	0	0	0
Total RC elections	169,214	44,557	38,109	1,879	4,569	20,708	34,579	31,754	975	1,850	69,370
	C. Elections in RM cases										
AFL–CIO	784	113	113	—	—	33	115	115	—	—	523
Other local unions	27	5	—	—	5	4	1	—	—	1	17
1-union elections	811	118	113	0	5	37	116	115	0	1	540
AFL–CIO v. AFL–CIO	140	130	130	—	—	10	0	0	—	—	0
2-union elections	140	130	130	0	0	10	0	0	0	0	0
Total RM elections	951	248	243	0	5	47	116	115	0	1	540
	D Elections in RD cases										
AFL–CIO	16,916	4,917	4,917	—	—	2,469	3,067	3,067	—	—	6,463
Other national unions	645	96	—	96	—	92	156	—	156	—	301
Other local unions	1,132	426	—	—	426	237	101	—	—	101	368
1-union elections	18,693	5,439	4,917	96	426	2,798	3,324	3,067	156	101	7,132
AFL–CIO v. AFL–CIO	2	0	0	—	—	0	0	0	—	—	2
AFL–CIO v. Local	91	48	48	—	0	43	0	0	—	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1995[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	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
2-union elections	93	48	48	0	0	43	0	0	0	0	2
Total RD elections	18,786	5,487	4,965	96	426	2,841	3,324	3,067	156	101	7,134

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	11	2	2	0	0	9	1,914	1,795	700	700	0	0	1,095	157
New Hampshire	12	5	5	0	0	7	541	530	221	221	0	0	309	69
Vermont	6	3	2	1	0	3	266	250	148	115	33	0	102	215
Massachusetts	83	38	36	2	0	45	5,685	5,143	2,714	2,440	274	0	2,429	3,072
Rhode Island	16	9	7	2	0	7	1,042	984	552	451	101	0	432	635
Connecticut	47	26	22	0	4	21	1,940	1,662	844	813	0	31	818	961
New England	175	83	74	5	4	92	11,388	10,364	5,179	4,740	408	31	5,185	5,109
New York	288	152	118	7	27	136	13,122	10,671	5,729	4,295	269	1,165	4,942	7,524
New Jersey	153	62	53	4	5	91	7,439	6,191	2,850	2,397	211	242	3,341	3,073
Pennsylvania	265	125	102	8	15	140	12,025	10,710	4,990	3,679	436	875	5,720	4,521
Middle Atlantic	706	339	273	19	47	367	32,586	27,572	13,569	10,371	916	2,282	14,003	15,118
Ohio	210	83	80	2	1	127	16,839	15,430	6,804	6,493	253	58	8,626	5,204
Indiana	97	49	48	0	1	48	5,767	5,306	2,581	2,539	0	42	2,725	2,206
Illinois	200	98	88	2	8	102	8,916	7,858	3,699	3,278	176	245	4,159	3,938
Michigan	219	108	97	5	6	111	12,880	11,430	5,584	5,262	170	152	5,846	5,445
Wisconsin	107	43	40	1	2	64	7,349	6,461	3,283	2,975	70	238	3,178	3,163
East North Central	833	381	353	10	18	452	51,751	46,485	21,951	20,547	669	735	24,534	19,956
Iowa	40	19	17	0	2	21	1,898	1,539	827	777	29	21	712	1,100
Minnesota	88	34	32	0	2	54	5,861	4,966	2,271	2,145	0	126	2,695	1,745
Missouri	111	49	44	2	3	62	7,255	5,782	2,694	2,595	52	47	3,088	2,635
North Dakota	9	4	3	0	1	5	822	647	305	88	0	217	342	569
South Dakota	9	7	7	0	0	2	182	172	82	82	0	0	90	86
Nebraska	15	6	6	0	0	9	946	835	295	165	130	0	540	91
Kansas	23	8	8	0	0	15	1,387	1,300	477	477	0	0	823	419
West North Central	295	127	117	2	8	168	18,351	15,241	6,951	6,329	211	411	8,290	6,645

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	15	6	6	0	0	9	744	670	273	272	0	1	397	349
Maryland	49	22	16	0	6	27	3,906	3,421	1,468	1,099	0	369	1,953	1,438
District of Columbia	17	13	8	0	5	4	1,166	981	572	222	0	350	409	933
Virginia	37	14	12	0	2	23	5,106	4,523	1,931	885	218	828	2,592	1,202
West Virginia	32	16	14	2	0	16	1,436	1,240	497	442	55	0	743	375
North Carolina	18	7	7	0	0	11	5,452	4,882	1,999	1,990	0	9	2,883	1,635
South Carolina	9	4	4	0	0	5	1,177	1,027	541	541	0	0	486	576
Georgia	45	20	19	0	1	25	4,726	4,304	1,986	1,968	0	18	2,318	1,969
Florida	83	49	41	1	7	34	5,403	5,220	2,180	1,897	33	250	3,040	1,686
South Atlantic	305	151	127	3	21	154	29,116	26,268	11,447	9,316	306	1,825	14,821	10,163
Kentucky	45	18	16	2	0	27	3,355	3,108	1,210	1,166	44	0	1,898	657
Tennessee	63	28	26	0	2	35	5,405	5,069	2,256	2,203	0	53	2,813	1,377
Alabama	24	13	13	0	0	11	1,669	1,500	633	588	45	0	867	390
Mississippi	17	5	5	0	0	12	1,421	1,291	525	517	0	8	766	526
East South Central	149	64	60	2	2	85	11,850	10,968	4,624	4,474	89	61	6,344	2,950
Arkansas	18	9	9	0	0	9	2,262	1,979	1,022	1,022	0	0	957	1,041
Louisiana	25	11	11	0	0	14	1,531	1,183	554	554	0	0	629	844
Oklahoma	13	5	5	0	0	8	1,029	901	434	428	0	6	467	655
Texas	78	27	27	0	0	51	8,361	7,530	3,326	3,244	12	70	4,204	2,975
West South Central	134	52	52	0	0	82	13,183	11,593	5,336	5,248	12	76	6,257	5,515
Montana	23	10	10	0	0	13	741	654	275	273	0	2	379	264
Idaho	8	3	3	0	0	5	345	321	169	165	4	0	152	147
Wyoming	4	2	2	0	0	2	480	435	139	139	0	0	296	46
Colorado	35	15	13	1	1	20	955	857	415	351	20	44	442	385
New Mexico	16	9	9	0	0	7	928	878	486	486	0	0	392	552
Arizona	21	13	11	0	2	8	769	677	384	358	0	26	293	484
Utah	9	2	1	0	1	7	349	301	112	110	0	2	189	71
Nevada	43	21	20	1	0	22	6,177	5,335	2,629	2,534	90	5	2,706	3,644

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Mountain	159	75	69	2	4	84	10,744	9,458	4,609	4,416	114	79	4,849	5,593
Washington	131	71	66	2	3	60	6,392	5,659	2,995	2,742	21	232	2,664	3,825
Oregon	59	27	24	0	3	32	2,131	1,887	860	762	0	98	1,027	692
California	328	162	153	2	7	166	17,843	15,393	7,093	6,536	260	297	8,300	7,283
Alaska	19	14	14	0	0	5	641	553	311	311	0	0	242	509
Hawaii	47	26	20	2	4	21	2,625	2,080	1,044	814	100	130	1,036	1,072
Guam	3	2	2	0	0	1	2,660	2,277	732	732	0	0	1,545	180
Pacific	587	302	279	6	17	285	32,292	27,849	13,035	11,897	381	757	14,814	13,561
Puerto Rico	48	31	10	0	21	17	3,575	2,919	1,450	755	0	695	1,469	1,845
Virgin Islands	8	6	6	0	0	2	301	234	160	160	0	0	74	223
Outlying Areas	56	37	16	0	21	19	3,876	3,153	1,610	915	0	695	1,543	2,068
Total, all States and areas	3,399	1,611	1,420	49	142	1,788	215,137	188,951	88,311	78,253	3,106	6,952	100,640	86,678

[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 1995

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	8	1	1	0	0	7	1,723	1,627	639	639	0	0	988	77
New Hampshire	11	5	5	0	0	6	534	523	220	220	0	0	303	69
Vermont	6	3	2	1	0	3	266	250	148	115	33	0	102	215
Massachusetts	74	34	32	2	0	40	5,322	4,798	2,539	2,265	274	0	2,259	2,827
Rhode Island	14	9	7	2	0	5	1,001	945	534	433	101	0	411	635
Connecticut	44	26	22	0	4	18	1,897	1,625	834	803	0	31	791	961
New England	157	78	69	5	4	79	10,743	9,768	4,914	4,475	408	31	4,854	4,784
New York	243	141	109	7	25	102	10,730	8,722	4,710	3,555	269	886	4,012	5,967
New Jersey	132	59	50	4	5	73	6,824	5,658	2,679	2,227	211	241	2,979	3,022
Pennsylvania	228	112	90	8	14	116	11,035	9,829	4,604	3,329	436	839	5,225	4,077
Middle Atlantic	603	312	249	19	44	291	28,589	24,209	11,993	9,111	916	1,966	12,216	13,066
Ohio	179	74	71	2	1	105	15,796	14,527	6,378	6,076	244	58	8,149	4,732
Indiana	83	46	45	0	1	37	5,311	4,910	2,412	2,370	0	42	2,498	2,149
Illinois	174	89	81	1	7	85	7,725	6,826	3,298	3,027	80	191	3,528	3,486
Michigan	177	92	81	5	6	85	11,141	9,968	4,800	4,495	153	152	5,168	4,560
Wisconsin	83	39	36	1	2	44	6,060	5,299	2,730	2,422	70	238	2,569	2,849
East North Central	696	340	314	9	17	356	46,033	41,530	19,618	18,390	547	681	21,912	17,776
Iowa	32	18	16	0	2	14	1,574	1,266	698	648	29	21	568	915
Minnesota	71	28	26	0	2	43	5,153	4,345	1,941	1,815	0	126	2,404	1,334
Missouri	89	45	40	2	3	44	6,130	5,018	2,421	2,331	52	38	2,597	2,415
North Dakota	9	4	3	0	1	5	822	647	305	88	0	217	342	569
South Dakota	9	7	7	0	0	2	182	172	82	82	0	0	90	86
Nebraska	12	5	5	0	0	7	465	396	145	145	0	0	251	70
Kansas	17	6	6	0	0	11	1,209	1,135	406	406	0	0	729	371
West North Central	239	113	103	2	8	126	15,535	12,979	5,998	5,515	81	402	6,981	5,760

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	13	6	6	0	0	7	661	592	266	265	0	1	326	349
Maryland	42	20	15	0	5	22	3,547	3,127	1,306	988	0	318	1,821	1,281
District of Columbia	16	12	7	0	5	4	1,111	937	547	197	0	350	390	878
Virginia	32	11	9	0	2	21	4,987	4,416	1,866	820	218	828	2,550	1,111
West Virginia	31	15	13	2	0	16	1,390	1,197	467	412	55	0	730	329
North Carolina	17	7	7	0	0	10	5,322	4,755	1,939	1,930	0	9	2,816	1,635
South Carolina	7	3	3	0	0	4	816	695	348	348	0	0	347	487
Georgia	38	19	18	0	1	19	4,139	3,776	1,719	1,701	0	18	2,057	1,751
Florida	80	46	38	1	7	34	5,303	5,120	2,116	1,833	33	250	3,004	1,586
South Atlantic	276	139	116	3	20	137	27,276	24,615	10,574	8,494	306	1,774	14,041	9,407
Kentucky	41	18	16	2	0	23	3,096	2,857	1,118	1,074	44	0	1,739	657
Tennessee	56	26	24	0	2	30	5,100	4,783	2,165	2,112	0	53	2,618	1,329
Alabama	20	13	13	0	0	7	1,510	1,386	592	547	45	0	794	390
Mississippi	17	5	5	0	0	12	1,421	1,291	525	517	0	8	766	526
East South Central	134	62	58	2	2	72	11,127	10,317	4,400	4,250	89	61	5,917	2,902
Arkansas	14	7	7	0	0	7	2,012	1,793	968	968	0	0	825	1,004
Louisiana	24	10	10	0	0	14	1,503	1,164	535	535	0	0	629	816
Oklahoma	10	5	5	0	0	5	999	871	428	422	0	6	443	655
Texas	65	25	25	0	0	40	7,929	7,171	3,213	3,138	12	63	3,958	2,887
West South Central	113	47	47	0	0	66	12,443	10,999	5,144	5,063	12	69	5,855	5,362
Montana	18	9	9	0	0	9	632	560	242	242	0	0	318	243
Idaho	8	3	3	0	0	5	345	321	169	165	4	0	152	147
Wyoming	4	2	2	0	0	2	480	435	139	139	0	0	296	46
Colorado	29	14	12	1	1	15	785	711	358	294	20	44	353	367
New Mexico	14	9	9	0	0	5	674	633	390	390	0	0	243	552
Arizona	17	11	9	0	2	6	383	327	181	155	0	26	146	230
Utah	6	1	0	0	1	5	231	214	74	72	0	2	140	8
Nevada	39	19	18	1	0	20	5,330	4,816	2,319	2,224	90	5	2,497	2,901

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1995—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL–CIO unions	Other national unions	Other local 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	AFL–CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
Mountain	135	68	62	2	4	67	8,860	8,017	3,872	3,681	114	77	4,145	4,494
Washington	105	62	57	2	3	43	5,021	4,429	2,408	2,155	21	232	2,021	2,899
Oregon	50	25	22	0	3	25	1,775	1,602	738	651	0	87	864	591
California	284	148	140	2	6	136	16,106	13,897	6,630	5,850	260	220	7,567	6,201
Alaska	17	12	12	0	0	5	598	517	291	291	0	0	226	466
Hawaii	44	24	18	2	4	20	2,361	1,896	908	678	100	130	988	833
Guam	3	2	2	0	0	1	2,660	2,277	732	732	0	0	1,545	180
Pacific	503	273	251	6	16	230	28,521	24,618	11,407	10,357	381	669	13,211	11,170
Puerto Rico	48	31	10	0	21	17	3,575	2,919	1,450	755	0	695	1,469	1,845
Virgin Islands	7	5	5	0	0	2	232	194	130	130	0	0	64	154
Outlying Areas	55	36	15	0	21	19	3,807	3,113	1,580	885	0	695	1,533	1,999
Total, all States and area	2,911	1,468	1,284	48	136	1,443	192,934	170,165	79,500	70,221	2,854	6,425	90,665	76,720

[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 1995

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Maine	3	1	1	0	0	2	191	168	61	61	0	0	107	80
New Hampshire	1	0	0	0	0	1	7	7	1	1	0	0	6	0
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	9	4	4	0	0	5	363	345	175	175	0	0	170	245
Rhode Island	2	0	0	0	0	2	41	39	18	18	0	0	21	0
Connecticut	3	0	0	0	0	3	43	37	10	10	0	0	27	0
New England	18	5	5	0	0	13	645	596	265	265	0	0	331	325
New York	45	11	9	0	2	34	2,392	1,949	1,019	740	0	279	930	1,557
New Jersey	21	3	3	0	0	18	615	533	171	170	0	1	362	51
Pennsylvania	37	13	12	0	1	24	990	881	386	350	0	36	495	444
Middle Atlantic	103	27	24	0	3	76	3,997	3,363	1,576	1,260	0	316	1,787	2,052
Ohio	31	9	9	0	0	22	1,043	903	426	417	9	0	477	472
Indiana	14	3	3	0	0	11	456	396	169	169	0	0	227	57
Illinois	26	9	7	1	1	17	1,191	1,032	401	251	96	54	631	452
Michigan	42	16	16	0	0	26	1,739	1,462	784	767	17	0	678	885
Wisconsin	24	4	4	0	0	20	1,289	1,162	553	553	0	0	609	314
East North Central	137	41	39	1	1	96	5,718	4,955	2,333	2,157	122	54	2,622	2,180
Iowa	8	1	1	0	0	7	324	273	129	129	0	0	144	185
Minnesota	17	6	6	0	0	11	708	621	330	330	0	0	291	411
Missouri	22	4	4	0	0	18	1,125	764	273	264	0	9	491	220
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1995—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL–CIO unions	Other national unions	Other local 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	AFL–CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	3	1	1	0	0	2	481	439	150	20	130	0	289	21
Kansas	6	2	2	0	0	4	178	165	71	71	0	0	94	48
West North Central	56	14	14	0	0	42	2,816	2,262	953	814	130	9	1,309	885
Delaware	2	0	0	0	0	2	83	78	7	7	0	0	71	0
Maryland	7	2	1	0	1	5	359	294	162	111	0	51	132	157
District of Columbia	1	1	1	0	0	0	55	44	25	25	0	0	19	55
Virginia	5	3	3	0	0	2	119	107	65	65	0	0	42	91
West Virginia	1	1	1	0	0	0	46	43	30	30	0	0	13	46
North Carolina	1	0	0	0	0	1-	130	127	60	60	0	0	67	0
South Carolina	2	1	1	0	0	1	361	332	193	193	0	0	139	89
Georgia	7	1	1	0	0	6	587	528	267	267	0	0	261	218
Florida	3	3	3	0	0	0	100	100	64	64	0	0	36	100
South Atlantic	29	12	11	0	1	17	1,840	1,653	873	822	0	51	780	756
Kentucky	4	0	0	0	0	4	259	251	92	92	0	0	159	0
Tennessee	7	2	2	0	0	5	305	286	91	91	0	0	195	48
Alabama	4	0	0	0	0	4	159	114	41	41	0	0	73	0
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0	0
East South Central	15	2	2	0	0	13	723	651	224	224	0	0	427	48
Arkansas	4	2	2	0	0	2	250	186	54	54	0	0	132	37
Louisiana	1	1	1	0	0	0	28	19	19	19	0	0	0	28
Oklahoma	3	0	0	0	0	3	30	30	6	6	0	0	24	0
Texas	13	2	2	0	0	11	432	359	113	106	0	7	246	88
West South Central	21	5	5	0	0	16	740	594	192	185	0	7	402	153
Montana	5	1	1	0	0	4	109	94	33	31	0	2	61	21
Idaho	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Colorado	6	1	1	0	0	5	170	146	57	57	0	0	89	18
New Mexico	2	0	0	0	0	2	254	245	96	96	0	0	149	0
Arizona	4	2	2	0	0	2	386	350	203	203	0	0	147	254
Utah	3	1	1	0	0	2	118	87	38	38	0	0	49	63
Nevada	4	2	2	0	0	2	847	519	310	310	0	0	209	743
Mountain	24	7	7	0	0	17	1,884	1,441	737	735	0	2	704	1,099
Washington	26	9	9	0	0	17	1,371	1,230	587	587	0	0	643	926
Oregon	9	2	2	0	0	7	356	285	122	111	0	11	163	101
California	44	14	13	0	1	30	1,737	1,496	763	686	0	77	733	1,082
Alaska	2	2	2	0	0	0	43	36	20	20	0	0	16	43
Hawaii	3	2	2	0	0	1	264	184	136	136	0	0	48	239
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	84	29	28	0	1	55	3,771	3,231	1,628	1,540	0	88	1,603	2,391
Puerto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	1	1	1	0	0	0	69	40	30	30	0	0	10	69
Outlying Areas	1	1	1	0	0	0	69	40	30	30	0	0	10	69
Total, all States and areas	488	143	136	1	6	345	22,203	18,786	8,811	8,032	252	527	9,975	9,958

[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 1995

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Food and kindred products	184	84	83	1	0	100	16,831	15,048	6,666	6,477	117	72	8,382	6,004
Tobacco manufacturers	3	1	1	0	0	2	199	184	50	50	0	0	134	4
Textile mill products	24	9	8	0	1	15	4,284	3,901	1,720	1,644	0	76	2,181	1,297
Apparel and other finished products made from fabric and similar materials	16	7	6	0	1	9	1,562	1,396	625	620	0	5	771	465
Lumber and wood products (except furniture)	40	17	17	0	0	23	2,547	2,296	997	997	0	0	1,299	1,003
Furniture and fixtures	26	10	9	1	0	16	1,875	1,677	936	898	37	1	741	1,167
Paper and allied products	38	13	13	0	0	25	2,967	2,736	1,018	966	52	0	1,718	570
Printing, publishing, and allied products	63	27	24	1	2	36	2,357	2,176	1,034	974	20	40	1,142	922
Chemicals and allied products	43	12	10	1	1	31	4,794	4,351	2,028	1,340	224	464	2,323	1,650
Petroleum refining and related industries	11	6	6	0	0	5	407	388	208	208	0	0	180	302
Rubber and miscellaneous plastic products	48	14	13	0	1	34	6,637	6,130	2,159	2,152	0	7	3,971	1,322
Leather and leather products	2	2	0	0	2	0	62	41	41	8	0	33	0	62
Stone, clay, glass, and concrete products	62	25	24	1	0	37	4,179	3,817	1,742	1,698	19	25	2,075	1,557
Primary metal industries	71	34	32	0	2	37	5,649	4,941	2,359	2,204	0	155	2,582	2,816
Fabricated metal products (except machinery and transportation equipment)	106	35	33	0	2	71	7,969	7,357	3,295	3,033	9	253	4,062	1,912
Machinery (except electrical)	90	33	29	0	4	57	5,817	5,502	2,458	2,223	85	150	3,044	1,340
Electrical and electronic machinery, equipment, and supplies	39	19	19	0	0	20	3,110	2,813	1,525	1,483	0	42	1,288	1,685
Aircraft and parts	71	32	28	1	3	39	9,307	8,755	3,680	3,531	56	93	5,075	2,731
Ship and boat building and repairing	3	0	0	0	0	3	480	409	159	159	0	0	250	0
Automotive and other transportation equipment	16	10	10	0	0	6	2,477	2,289	1,213	1,213	0	0	1,076	1,512
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	9	4	4	0	0	5	328	295	175	161	0	14	120	211
Miscellaneous manufacturing industries	11	6	6	0	0	5	1,079	960	565	565	0	0	395	876
Manufacturing	976	400	375	6	19	576	84,917	77,462	34,653	32,604	619	1,430	42,809	29,408

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Metal mining	3	0	0	0	0	3	396	375	143	143	0	0	232	0
Coal mining	5	3	1	2	0	2	473	456	192	60	132	0	264	173
Oil and gas extraction	6	2	2	0	0	4	255	232	104	104	0	0	128	153
Mining and quarrying of nonmetallic minerals (except fuels)	10	6	5	0	1	4	590	534	214	200	0	14	320	154
Mining	24	11	8	2	1	13	1,714	1,597	653	507	132	14	944	480
Construction	250	113	104	1	8	137	6,956	5,539	2,491	2,317	50	124	3,048	2,800
Wholesale trade	245	105	98	4	3	140	15,567	14,072	5,956	5,653	229	74	8,116	4,365
Retail trade	288	116	113	2	1	172	11,294	10,034	4,385	3,924	131	330	5,649	3,505
Finance, insurance, and real estate	62	36	34	0	2	26	1,095	979	466	416	7	43	513	390
U.S Postal Service	1	0	0	0	0	1	656	640	183	183	0	0	457	0
Local and suburban transit and interurban highway passenger transportation	112	58	55	1	2	54	9,019	7,347	3,675	3,492	99	84	3,672	3,624
Motor freight transportation and warehousing	267	116	108	2	6	151	13,256	11,707	5,078	4,408	295	375	6,629	4,269
Water transportation	13	9	8	0	1	4	597	475	248	225	0	23	227	242
Other transportation	47	27	22	0	5	20	3,186	2,803	1,656	1,478	0	178	1,147	2,197
Communication	70	39	36	1	2	31	3,917	3,381	1,748	1,703	6	39	1,633	2,670
Electric, gas, and sanitary services	115	54	54	0	0	61	3,755	3,449	1,734	1,734	0	0	1,715	1,447
Transportation, communication, and other utilities	624	303	283	4	16	321	33,730	29,162	14,139	13,040	400	699	15,023	14,449
Hotels, rooming houses, camps, and other lodging places	88	33	30	1	2	55	9,518	8,013	3,700	3,529	87	84	4,313	4,292
Personal services	28	18	17	0	1	10	1,257	941	585	553	0	32	356	831
Automotive repair, services, and garages	68	33	32	0	1	35	1,488	1,307	656	651	0	5	651	684
Motion pictures	15	6	6	0	0	9	329	303	116	116	0	0	187	68
Amusement and recreation services (except motion pictures)	46	29	24	0	5	17	3,900	2,750	1,822	1,179	37	606	928	2,981
Health services	291	156	123	6	27	135	25,827	21,642	10,872	7,789	740	2,343	10,770	12,918
Educational services	27	15	11	0	4	12	1,347	1,169	679	526	15	138	490	808
Membership organizations	46	32	19	1	12	14	1,480	1,237	645	512	13	120	592	766
Business services	208	135	87	16	32	73	9,761	8,406	4,281	3,074	473	734	4,125	5,318
Miscellaneous repair services	14	4	3	1	0	10	541	511	158	152	6	0	353	55

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1995—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	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Museums, art galleries, botanical and zoological gardens	2	2	1	1	0	0	202	192	117	62	55	0	75	202
Legal services	7	7	6	0	1	0	134	122	80	70	0	10	42	134
Social services	56	39	32	4	3	17	2,566	2,155	1,351	1,137	100	114	804	1,845
Miscellaneous services	12	7	5	0	2	5	175	119	68	40	0	28	51	133
Services	908	516	396	30	90	392	58,525	48,867	25,130	19,390	1,526	4,214	23,737	31,035
Public administration	21	11	9	0	2	10	683	599	255	219	12	24	344	246
Total, all industrial groups	3,399	1,611	1,420	49	142	1,788	215,137	188,951	88,311	78,253	3,106	6,952	100,640	86,678

[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 1995[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		Other national unions		Other local unions			
					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	192,934	2,911	100.0	—	1,284	100.0	48	100 0	136	100.0	1,443	100 0
Under 10	3,280	606	20.8	20 8	349	27.2	6	12.5	29	21.3	222	15.4
10 to 19	8,073	568	19 5	40.3	284	22.2	6	12.5	27	19.9	251	17.4
20 to 29	8,106	332	11.4	51.7	143	11.1	7	14.5	18	13 2	164	11.4
30 to 39	8,565	252	8.7	60.4	103	8 0	5	10.3	14	10 3	130	9 0
40 to 49	8,035	181	6.2	66.6	58	4.5	6	12.5	12	8.8	105	7 3
50 to 59	8,368	154	5.3	71.9	62	4.8	6	12.5	5	3.8	81	5 6
60 to 69	6,850	107	3.7	75.6	49	3.8	1	2.1	4	2.9	53	3.7
70 to 79	7,176	96	3 3	78.9	43	3.3	1	2.1	3	2.2	49	3.4
80 to 89	6,461	77	2.6	81.5	25	1.9	1	2.1	6	4.5	45	3.1
90 to 99	4,816	51	1.8	83.3	17	1.3	0	—	0	—	34	2.4
100 to 109	3,635	35	1.2	84.5	15	1.2	1	2.1	1	0.7	18	1.2
110 to 119	4,447	39	1.3	85.8	15	1.2	0	—	1	0.7	23	1.6
120 to 129	5,336	43	1.5	87.3	12	0.9	2	4.2	0	—	29	2.0
130 to 139	5,783	43	1 5	88.8	17	1.3	2	4.2	4	2.9	20	1.4
140 to 149	3,767	26	0.9	89.7	5	0.4	0	—	2	1.5	19	1.3
150 to 159	3,088	20	0.7	90.4	6	0 5	1	2.1	1	0.7	12	0.8
160 to 169	3,263	20	0.7	91.1	5	0 4	0	—	1	0 7	14	1.0
170 to 179	3,331	19	0.7	91 8	5	0.4	0	—	0	—	14	1.0
180 to 189	3,693	20	0.7	92 5	6	0.5	2	4.2	0	—	12	0.8
190 to 199	2,904	15	0.5	93.0	4	0.3	0	—	2	1.5	9	0.6
200 to 299	23,343	97	3.3	96.3	25	1.9	0	—	2	1.5	70	4 8
300 to 399	14,341	41	1.4	97.7	11	0.9	1	2.1	1	0.7	28	1.9
400 to 499	11,051	25	0.9	98.6	9	0.7	0	—	0	—	16	1.1
500 to 599	6,987	13	0.4	99.0	5	0.4	0	—	2	1 5	6	0.4
600 to 799	10,741	16	0.5	99.5	7	0.5	0	—	1	0 7	8	0.6
800 to 999	5,093	6	0.2	99.7	2	0.2	0	—	0	—	4	0.3
1,000 to 1,999	9,921	8	0 3	100.0	2	0.2	0	—	0	—	6	0.4
2,000 to 2,999	2,480	1	0 0	100.0	0	—	0	—	0	—	1	0.1

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1995[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: AFL–CIO unions		Other national unions		Other local unions		Elections in which no representative was chosen	
					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	22,203	488	100.0	—	136	100 0	1	100 0	6	100.0	345	100.0
Under 10	640	110	22.5	22.5	13	9.6	0	—	0	—	97	28 1
10 to 19	1,501	106	21.7	44.2	24	17.6	0	—	0	—	82	23 8
20 to 29	1,510	63	12.9	57.1	21	15 4	0	—	0	—	42	12 2
30 to 39	1,328	39	8.0	65.1	10	7 4	0	—	0	—	29	8 4
40 to 49	1,808	41	8.4	73 5	15	11 0	0	—	1	16.7	25	7.2
50 to 59	1,305	24	4.9	78 4	9	6 7	0	—	1	16.7	14	4.1
60 to 69	1,485	23	4.7	83.1	8	5.9	0	—	0	—	15	4.3
70 to 79	964	13	2.7	85.8	3	2.2	0	—	0	—	10	2.9
80 to 89	1,103	13	2 7	88.5	5	3.7	0	—	1	16.7	7	2.0
90 to 99	849	9	1 8	90.3	3	2.2	0	—	2	33 2	4	1.1
100 to 109	518	5	1.0	91.3	1	0.7	0	—	0	—	4	1.1
110 to 119	344	3	0.6	91.9	1	0.7	0	—	0	—	2	0 6
120 to 129	376	3	0.6	92.5	1	0.7	0	—	0	—	2	0 6
130 to 139	928	7	1.4	93.9	4	2.9	0	—	0	—	3	0 9
140 to 149	572	4	0.9	94.8	4	2 9	0	—	0	—	0	—
150 to 159	623	4	0.9	95.7	3	2 2	0	—	0	—	1	0.3
160 to 169	488	3	0.6	96.3	2	1 5	0	—	0	—	1	0.3
170 to 199	1,111	6	1.2	97.5	3	2 2	1	100.0	0	—	2	0 6
200 to 299	937	4	0.9	98.4	2	1.5	0	—	0	—	2	0 6
300 to 499	2,036	5	1.0	99.4	2	1.5	0	—	1	16.7	2	30 6
500 to 799	1,777	3	0 6	100.0	2	1.5	0	—	0	—	1	0.3

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1995[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]31,180	100.0	—	23,734	100.0	6,023	100.0	405	100.0	184	100.0	19	100 0	22	100.0	84	100.0	682	100 0	27	100.0
Under 10	3,294	10.6	10.6	2,548	10.7	565	9.4	64	15.8	50	27.2	6	31.6	0	—	16	19.0	41	6.0	4	14.8
10–19	2,795	9.0	19.6	2,238	9.4	400	6.6	58	14.3	35	19.0	3	15.8	1	4.5	18	21.4	37	5.4	5	18 5
20–29	2,280	7.3	26.9	1,823	7.7	316	5.2	69	17.0	23	12.5	1	5.3	1	4 5	12	14.3	34	5.0	1	3 7
30–39	1,619	5.2	32.1	1,306	5 5	234	3 9	21	5.2	14	7.6	0	—	0	—	10	11.9	28	4 2	6	22.3
40–49	1,246	4.0	36.1	1,030	4.3	166	2.8	17	4.2	5	2.8	1	5.3	0	—	8	9.6	17	2.5	2	7.4
50–59	1,851	5.9	42.0	1,447	6 1	326	5.4	23	5.7	7	3.8	1	5.3	0	—	6	7.1	39	5.7	2	7.4
60–69	882	2 8	44.8	728	3 1	127	2.1	4	1.0	4	2.2	0	—	0	—	0	—	19	2 8	0	—
70–79	833	2.7	47.5	666	2.9	133	2.2	7	1.7	5	2.8	1	5.3	0	—	2	2.4	19	2.8	0	—
80–89	617	2.0	49.5	498	2.1	103	1.7	4	1.0	2	1.1	0	—	0	—	0	—	10	1.5	0	—
90–99	319	1 0	50.5	285	1.2	30	0.5	3	0.7	0	—	0	—	0	—	0	—	1	0.1	0	—
100–109	2,338	7.5	58.0	1,640	6.9	593	9 8	28	6.9	11	6.1	1	5 3	4	18.3	7	8.3	52	7.6	2	7.4
110–119	253	0.8	58.8	231	1.0	18	0.3	0	—	0	—	0	—	0	—	0	—	4	0 6	0	—
120–129	558	1.8	60.6	462	1.9	76	1.3	0	—	2	1.1	0	—	3	13.7	1	1.2	12	1 8	2	7.4
130–139	259	0.8	61.4	215	0.9	36	0.6	4	1.0	1	0.5	0	—	0	—	0	—	3	0.4	0	—
140–149	179	0.6	62.0	152	0.6	19	0.3	4	1.0	1	0.5	1	5.3	0	—	0	—	2	0 3	0	—
150–159	759	2 4	64.4	594	2.5	141	2.3	8	2.0	2	1.1	1	5.3	2	9.1	1	1.2	10	1.5	0	—
160–169	202	0.6	65.0	175	0.7	26	0.4	0	—	0	—	0	—	0	—	0	—	1	0.1	0	—
170–179	186	0.6	65.6	158	0.7	27	0.4	0	—	0	—	0	—	0	—	0	—	1	0.1	0	—
180–189	191	0.6	66.2	153	0.6	34	0.6	1	0.2	1	0.5	0	—	1	4.5	0	—	1	0.1	0	—
190–199	69	0.2	66.4	57	0 2	11	0.2	0	—	1	0.5	0	—	0	—	0	—	0	—	0	—
200–299	2,100	6.7	73.1	1,559	6.6	470	7.8	14	3.6	7	3.8	0	—	1	4.5	0	—	47	6.9	2	7.4
300–399	1,380	4.4	77.5	987	4.2	322	5.3	14	3.6	2	1.1	2	10 2	0	—	1	1.2	52	7.6	0	—
400–499	826	2.6	80.1	598	2.5	193	3.2	10	2.5	2	1.1	0	—	2	9.1	0	—	21	3.1	0	—
500–599	927	3.0	83.1	601	2 5	286	4.7	13	3.2	3	1.6	0	—	0	—	0	—	24	3 5	0	—
600–699	381	1.2	84.3	277	1.2	88	1.5	1	0.2	1	0.5	0	—	0	—	0	—	14	2.1	0	—
700–799	317	1.0	85.3	223	0.9	76	1.3	0	—	0	—	0	—	0	—	0	—	18	2.6	0	—

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1995—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
800–899	268	0.9	86.2	190	0.8	68	1.1	1	0.2	1	0.5	0	—	0	—	0	—	8	1.2	0	—
900–999	127	0.4	86.6	73	0.3	42	0.7	1	0.2	0	—	0	—	1	4.5	2	2.4	8	1 2	0	—
1,000–1,999	1,814	5.8	92.4	1,212	5.1	511	8.6	23	5.7	3	1.6	1	5.3	5	22.8	0	—	58	8.5	1	3.7
2,000–2,999	746	2 4	94.8	517	2.2	194	3.2	3	0.7	1	0.5	0	—	0	—	0	—	31	4 5	0	—
3,000–3,999	350	1.1	95 9	214	0.9	112	1.9	2	0.5	0	—	0	—	1	4.5	0	—	21	3.1	0	—
4,000–4,999	151	0.5	96 4	90	0.5	52	0.9	3	0.7	0	—	0	—	0	—	0	—	6	0 9	0	—
5,000–9,999	499	1.7	98.1	351	1.5	121	2.0	3	0.7	0	—	0	—	0	—	0	—	24	3 5	0	—
Over 9,999	564	1.9	100.0	436	1.8	107	1.8	2	0.5	0	—	0	—	0	—	0	—	19	2 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 1995; and Cumulative Totals, Fiscal Years 1936 Through 1995

	Fiscal Year 1995									July 5, 1935–Sept. 30, 1995	
	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	158	135	19	0	4	—	—	—	—	—	—
On petitions for review and/or enforcement	120	101	15	0	4	100.0	100.0	—	100 0	10,779	100.0
Board orders affirmed in full	73	61	10	0	2	60.4	66.7	—	50.0	7,096	65.8
Board orders affirmed with modification	10	10	0	0	0	9.9	—	—	—	1,454	13.5
Remanded to Board	9	5	2	0	2	5.0	13.3	—	50.0	538	5.0
Board orders partially affirmed and partially remanded	4	4	0	0	0	4 0	—	—	—	221	2.1
Board orders set aside	24	21	3	0	0	20.8	20.0	—	—	1,470	13.6
On petitions for contempt	38	34	4	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	12	12	0	0	0	35.3	—	—	—	—	—
Court orders holding respondent in contempt	16	14	2	0	0	41.2	50.0	—	—	—	—
Court orders denying petition	6	5	1	0	0	14.7	25.0	—	—	—	—
Court orders directing compliance without contempt adjudication	4	3	1	0	0	8.8	25 0	—	—	—	—
Contempt petitions withdrawn without compliance	0	0	0	0	0	—	—	—	—	—	—
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	0	—	—	—	—	253	100.0
Board orders affirmed in full	0	0	0	0	0	—	—	—	—	152	60 1
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.1
Board orders set aside	0	0	0	0	0	—	—	—	—	45	17.8
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.5
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.3
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 0 case[s].

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1995, Compared With 5-Year Cumulative Totals, Fiscal Years 1990 Through 1994[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1995	Total fiscal years 1990–1994	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1995		Cumulative fiscal years 1990–1994		Fiscal Year 1995		Cumulative fiscal years 1990–1994		Fiscal Year 1995		Cumulative fiscal years 1990–1994		Fiscal Year 1995		Cumulative fiscal years 1990–1994		Fiscal Year 1995		Cumulative fiscal years 1990–1994	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	120	821	73	60.8	610	74.3	10	8.3	60	7.3	9	7.5	45	5.5	4	3 3	31	3.8	24	20.0	75	9 1
1. Boston, MA	4	21	4	100.0	14	66.7	0	—	2	9.5	0	—	4	19 0	0	—	0	—	0	—	1	4.8
2. New York, NY	9	88	7	77 8	67	76.1	0	—	10	11 4	1	11.1	5	5.7	0	—	0	—	1	11.1	6	6.8
3. Philadelphia, PA	12	86	9	75.0	75	87.2	0	—	2	2.3	0	—	4	4.7	1	8 3	3	3.5	2	16.7	2	2 3
4. Richmond, VA	9	64	7	77.8	43	67.2	0	—	7	10.9	0	—	4	6 3	0	—	2	3.1	2	22 2	8	12 5
5. New Orleans, LA	2	51	1	50.0	36	70.6	1	50.0	4	7.8	0	—	4	7.8	0	—	3	5.9	0	—	4	7.8
6. Cincinnati, OH	17	119	5	29.4	79	66.4	5	29 4	9	7.6	1	5.9	7	5.9	0	—	5	4.2	6	35.3	19	16.0
7. Chicago, IL	7	99	4	57.1	79	79 8	1	14.3	8	8.1	1	14.3	2	2 0	0	—	3	3.0	1	14.3	7	7.1
8. St. Louis, MO	2	46	0	—	30	65.2	1	50.0	4	8.7	0	—	0	—	0	—	0	—	1	50 0	12	26.1
9. San Francisco, CA	26	91	20	76 9	78	85.7	1	3 8	4	4.4	1	3.8	4	4.4	1	3.8	3	3.3	3	11.5	2	2.2
10. Denver, CO	2	32	2	100.0	23	71.9	0	—	3	9.4	0	—	0	—	0	—	1	3.1	0	—	5	15.6
11. Atlanta, GA	1	26	1	100.0	25	96.2	0	—	0	—	0	—	0	—	0	—	1	3.8	0	—	0	—
Washington, DC	29	98	13	44.8	61	62.2	1	3.4	7	7.1	5	17.2	11	11.2	2	6.9	10	10.2	8	27 6	9	9.2

[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 1995

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1995
		Pending in district court Oct 1, 1994	Filed in district court fiscal year 1995		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	[1]3	0	3	3	2	1	0	0	0	0	0
Under Sec. 10(j) total	101	20	81	89	38	13	34	4	0	0	12
8(a)(1)	3	1	2	3	1	0	1	1	0	0	0
8(a)(1)(3)	33	12	21	30	10	3	17	0	0	0	3
8(a)(1)(5)	21	2	19	20	11	3	5	1	0	0	1
8(a)(1)(2)(3)	3	0	3	2	1	0	0	1	0	0	1
8(a)(1)(3)(4)	2	1	1	2	0	0	2	0	0	0	0
8(a)(1)(3)(5)	31	2	29	25	13	5	6	1	0	0	6
8(a)(1)(2)(3)(5)	2	0	2	2	0	0	2	0	0	0	0
8(a)(1)(2)(3) 8(b)(1)(A) 8(b)(2)	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(3)(5) 8(b)(1)(A) 8(b)(2)	1	1	0	1	0	0	1	0	0	0	0
8(b)(1)(A)	4	1	3	4	2	2	0	0	0	0	0
Under Sec. 10(l) total	28	5	23	21	12	1	4	1	2	1	7
8(b)(1)(A) 8(b)(4)(B) 8(b)(4)(D)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B)	10	3	7	7	5	0	1	1	0	0	3
8(b)(4)(B) 8(b)(7)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(B) 8(e)	1	0	1	0	0	0	0	0	0	0	1
8(b)(4)(D)	7	2	5	4	1	0	0	0	2	1	3
8(b)(4)(D) 8(b)(7)(A)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(A)	2	0	2	2	1	0	1	0	0	0	0
8(b)(7)(C)	5	0	5	5	2	1	2	0	0	0	0

[1] In courts of appeals.

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1995

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination: Upholding Board position	Court determination: Contrary to Board position	Number decided	Court determination: Upholding Board position	Court determination: Contrary to Board position	Number decided	Court determination: Upholding Board position	Court determination: Contrary to Board position	Number decided	Court determination: Upholding Board position	Court determination: Contrary to Board position
Totals—all types	34	32	2	8	8	0	20	19	1	6	5	1
NLRB-initiated actions or interventions	5	3	2	0	1	0	3	2	1	1	0	1
To assist debtors' recovery of U dues unlawfully withheld	1	0	1	0	0	0	0	0	0	1	0	1
To enforce subpoena	3	3	0	1	1	0	2	2	0	0	0	0
To stay collateral action	1	0	1	0	0	0	1	0	1	0	0	0
Action by other parties	29	29	0	7	7	0	17	17	0	0	0	0
To review nonfinal orders	3	3	0	1	1	0	2	2	0	0	0	0
Attorney disciplineorders	1	1	0	0	0	0	1	1	0	0	0	0
To restrain NLRB from	5	5	0	0	0	0	4	4	0	1	1	0
Proceeding in R case	2	2	0	0	0	0	2	2	0	0	0	0
Proceeding in unfair labor practice case	2	2	0	0	0	0	1	1	0	1	1	0
Collecting pursuant to settlement agreement	1	1	0	0	0	0	1	1	0	0	0	0
To compel NLRB to	13	13	0	4	4	0	9	9	0	0	0	0
Issue complaint	5	5	0	2	2	0	3	3	0	0	0	0
Take action in R case	2	2	0	1	1	0	1	1	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	4	4	0	0	0	0	4	4	0	0	0	0
Take action in compliance proceeding	1	1	0	0	0	0	1	1	0	0	0	0
Comply with Privacy Act	1	1	0	1	1	0	0	0	0	0	0	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1995—Continued

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
Other	7	7	0	2	2	0	1	1	0	4	4	0
Objection to Board's Proof of Claim	2	2	0	0	0	0	0	0	0	2	2	0
Mandamus recusal of Board members	1	1	0	1	1	0	0	0	0	0	0	0
Intervention in § 301 suit	1	1	0	1	1	0	0	0	0	0	0	0
Suit to compel distribution of recovered preference moneys to administrative claimants	1	1	0	0	0	0	1	1	0	0	0	0
Opposition to § 1113 motion	1	1	0	0	0	0	0	0	0	1	1	0
Motion to dismiss bankruptcy petition	1	1	0	0	0	0	0	0	0	1	1	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 1995[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1994	0	0	0	0	0
Received fiscal 1995	15	15	0	0	0
On docket fiscal 1995	15	15	0	0	0
Closed fiscal 1995	14	14	0	0	0
Pending September 30, 1995	1	1	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1995[1]

Action taken	Total cases closed
	15
Board would assert jurisdiction	10
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	2
Dismissed	1
Withdrawn	1
Denied	1

[1] See Glossary for of terms definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1995; and Age of Cases Pending Decision, September 30, 1995

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	60
2. Complaint to close of hearing	199
3. Close of hearing to issuance of administrative law judge's decision	114
4. Administrative law judge's decision to issuance of Board decision	213
5. Originating document to Board decision	147
6. Filing of charge to issuance of Board decision	586
B. Age of cases pending administrative law judge's decision, September 30, 1995.	
1. From filing of charge	369
2. From close of hearing	74
C. Age of cases pending Board decision, September 30, 1995.	
1. From filing of charge	893
2. From originating document	242
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	5
2. Notice of hearing to close of hearing	12
3. Close of hearing to Regional Director's decision issued	21
4. Close of preelection hearing to Board's decision issued	197
5 Close of post-election hearing to Board's decision issued	182
6. Filing of petition to—	
a. Board decision issued	286
b. Regional Director's decision issued	43
7. Originating document to Board decision	147
B. Age of cases pending Board decision, September 30, 1995.	
1. From filing of petition	305
2. From originating document	169
C. Age of cases pending Regional Director's decision, September 30, 1995	155

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1995

I. Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
A. Number of applications filed	9
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	3
Denying fees	4
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$246,467.96
Recovered	$36,552.50
II. Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	0
III. Applications for fees and expenses before the circuit courts of appeals 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
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412.	
A. Awards granting fees (includes settlements)	1
B. Awards denying fees	0
C. Amount of fees and expenses recovered	$13,300.00