SIXTY-THIRD

ANNUAL REPORT

OF THE

# NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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# NATIONAL LABOR RELATIONS BOARD

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SARAH M. FOX[2] — WILMA B. LIEBMAN[3]
PETER J. HURTGEN[4] — J. ROBERT BRAME III[5]

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*Division of Advice*

GLORIA J. JOSEPH
*Director*
*Division of Administration*

[1]Term expired August 27, 1998.
[2]Recess appointment as a Board Member on January 19, 1996, confirmed by Senate on November 8, 1997.
[3]Confirmed by Senate on November 8, 1997.
[4]Confirmed by Senate on November 8, 1997.
[5]Confirmed by Senate on November 8, 1997.
[6]Term expired March 2, 1998, was designated Acting General Counsel on March 3, 1998.

# LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
*Washington, D.C., May 24, 1999.*

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Third Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1998.

Respectfully submitted,
JOHN C. TRUESDALE, *Chairman*

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

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# Operations In Fiscal Year 1998

## 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 1998, 36,657 cases were received by the Board.

The public filed 30,439 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 5,933 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 285 amendment to certification and unit clarification cases.

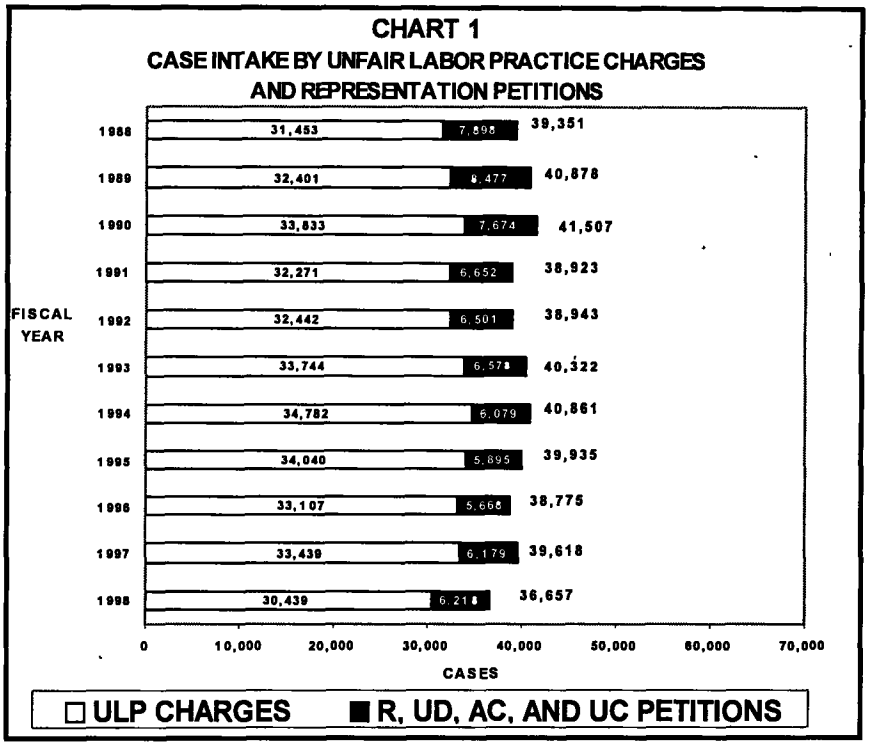
After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

During fiscal year 1998, the five-member Board was composed of Chairman William B. Gould IV and Members Sarah M. Fox, Wilma B. Liebman, Peter J. Hurtgen, and J. Robert Brame III. Frederick L. Feinstein served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1998 include:

- The NLRB conducted 3795 conclusive representation elections among some 217,595 employee voters, with workers choosing labor unions as their bargaining agents in 48.9 percent of the elections.
- Although the Agency closed 39,587 cases, 34,664 cases were pending in all stages of processing at the end of the fiscal year. The closings included 33,287 cases involving unfair labor practice charges and 5915 cases affecting employee representation and 385 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 11,027.

- The amount of $92,133,616 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 2528 offers of job reinstatements, with 1955 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 2775 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 538 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.

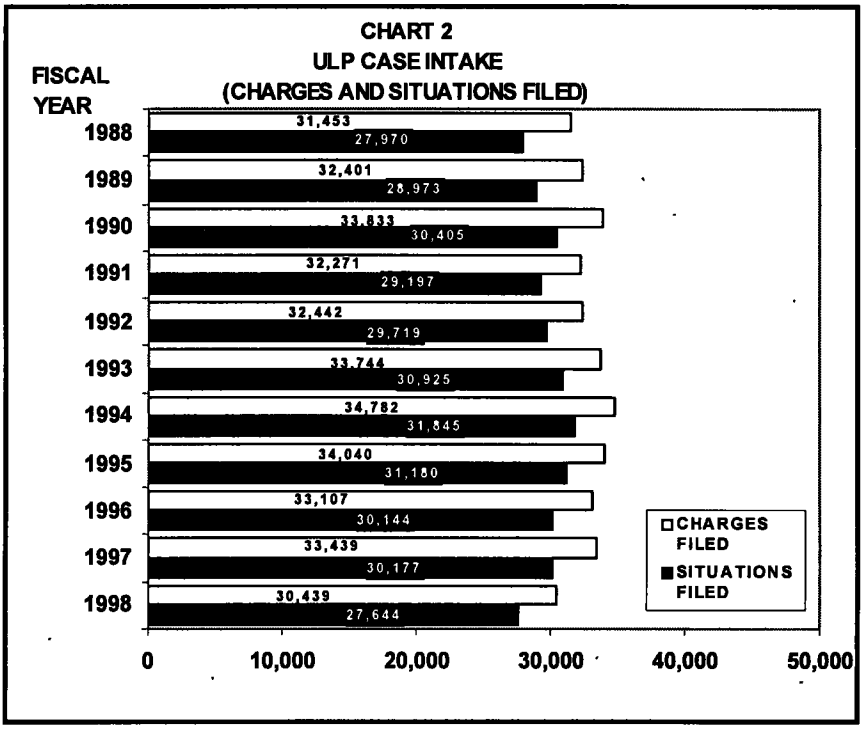
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1998.

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.

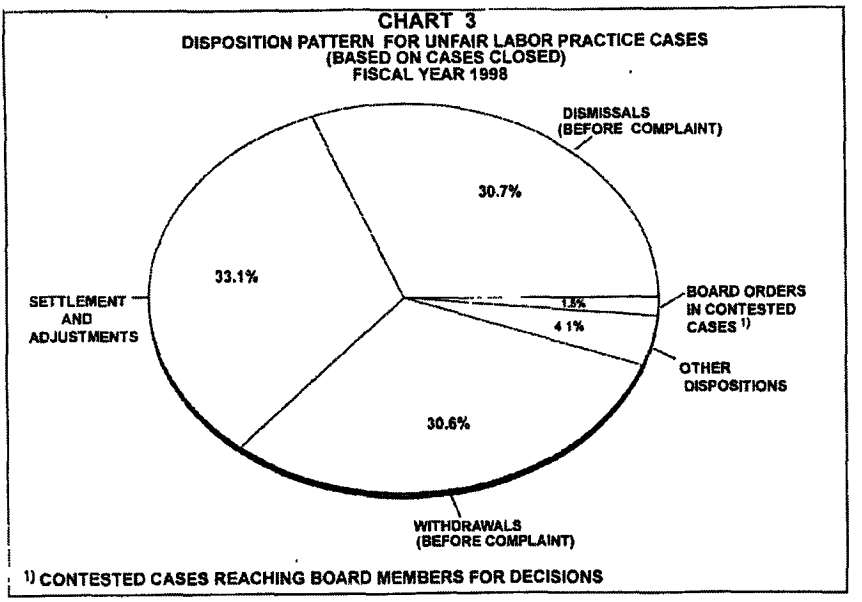
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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

In fiscal year 1998, 30,439 unfair labor practice charges were filed with the NLRB, a decrease of 9 percent from the 33,439 filed in fiscal year 1997. In situations in which related charges are counted as a single unit, there was a decrease of 8 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 23,630 cases, a decrease of 8 percent from the 25,809 of 1997. Charges against unions decreased 11 percent to 6751 from 7595 in 1997.

There were 58 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 11,673 such charges in 55 percent of the total charges that employers committed violations.

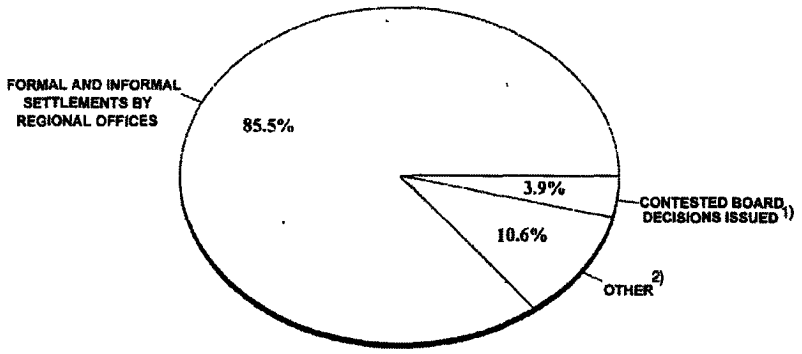
Refusal to bargain was the second largest category of allegations against employers, comprising 9617 charges, in about 45 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5720) alleged illegal restraint and coercion of employees, 79 percent. There were 669 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 12 percent from the 760 of 1997.

There were 711 charges (about 10 percent) of illegal union discrimination against employees, a decrease of 9 percent from the 783 of 1997. There were 121 charges that unions picketed illegally for recognition or for organizational purposes, compared with 130 charges in 1997. (Table 2.)

In charges filed against employers, unions led with about 76 percent of the total. Unions filed 17,838 charges and individuals filed 5792.

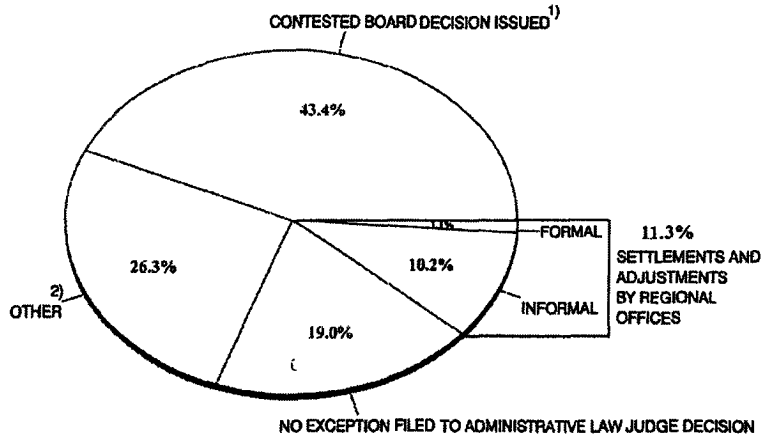
## CHART 3A
DISPOSITION PATTERN FOR MERITORIOUS
UNFAIR LABOR PRACTICE CASES
(BASED ON CASES CLOSED)
FISCAL YEAR 1998




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

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

## CHART 3B
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(BASED ON CASES CLOSED)
FISCAL YEAR 1998




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

2) DISMISSALS, WITHDRAWALS AND OTHER DISPOSITIONS

Concerning charges against unions, 5243 were filed by individuals, or about 78 percent of the total of 6751. Employers filed 1383 and other unions filed the 125 remaining charges.

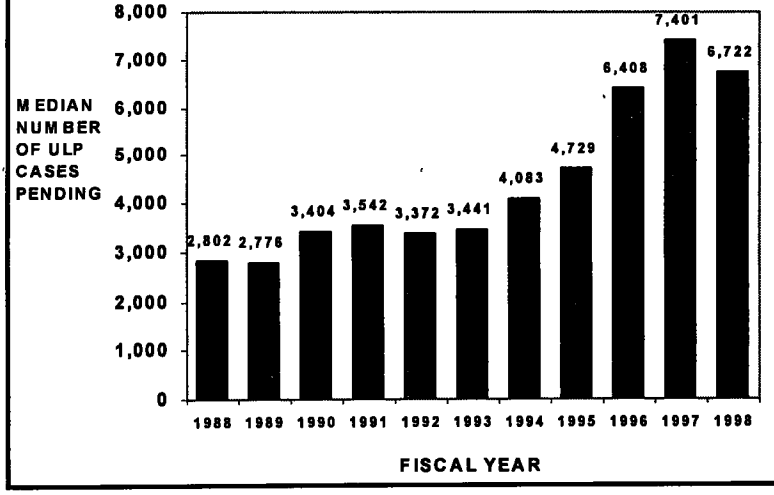
In fiscal year 1998, 33,287 unfair labor practice cases were closed. Over 94 percent were closed by NLRB Regional Offices, 2 percent less than the previous year. During the fiscal year, 33.1 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.6 percent were withdrawn before complaint, and 30.7 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 1998, 36.3 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 1998, precomplaint settlements and adjustments were achieved in 8003 cases, or 25.0 percent of the charges. In 1998, the percentage was 27.0. (Chart 5.)

CHART 4

NUMBER OF UNFAIR LABOR PRACTICE CASES PENDING

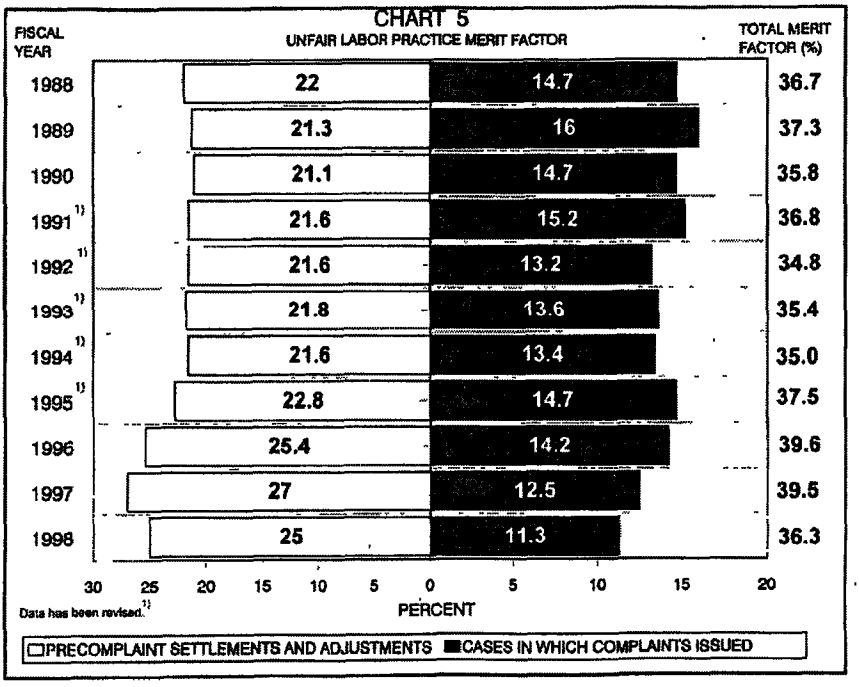


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1998, 2775 complaints were issued, compared with 3035 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 92.8 percent were against employers and 7.2 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 87 days. The 87 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 538 decisions in 1152 cases during 1998. They conducted 436 initial hearings, and 3 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

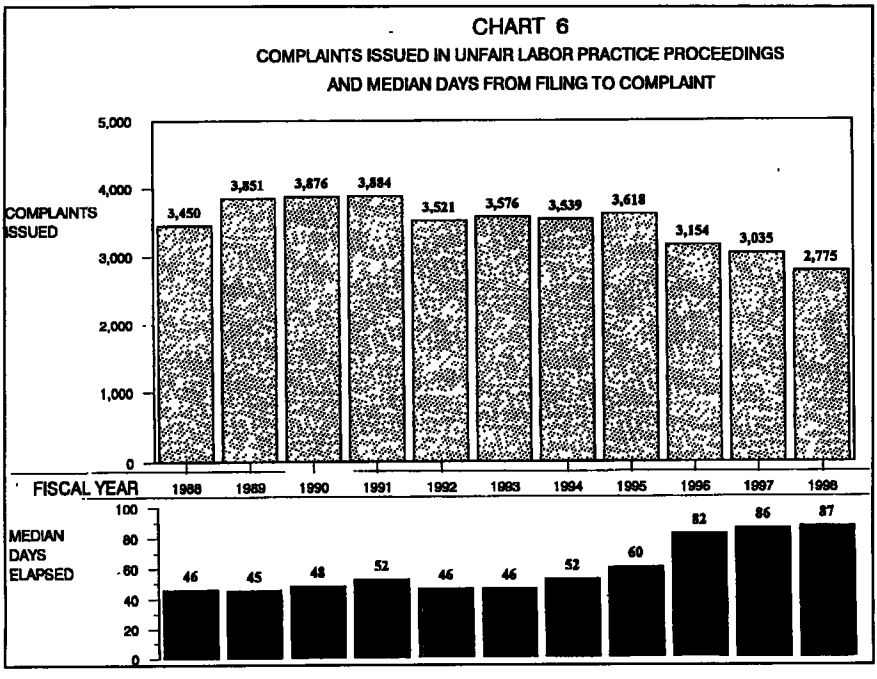


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 1998, the Board issued 426 decisions in unfair labor practice cases contested as to the law or the facts—379 initial decisions, 12 backpay decisions, 17 determinations in jurisdictional work dispute cases, and 18 decisions on supplemental matters. Of the 379 initial decision cases, 327 involved charges filed against employers and 52 had union respondents.

For the year, the NLRB awarded backpay of $89.9 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $2.3 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 2528 employees were offered reinstatement, and about 77 percent accepted.

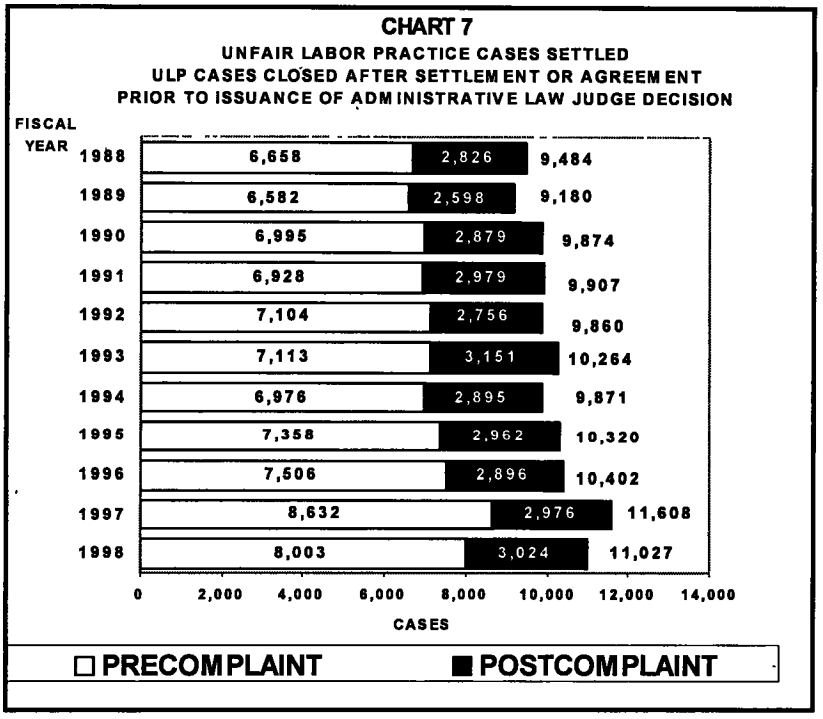
At the end of fiscal 1998, there were 32,110 unfair labor practice cases being processed at all stages by the NLRB, compared to 34,958 cases pending at the beginning of the year.



## 2. Representation Cases

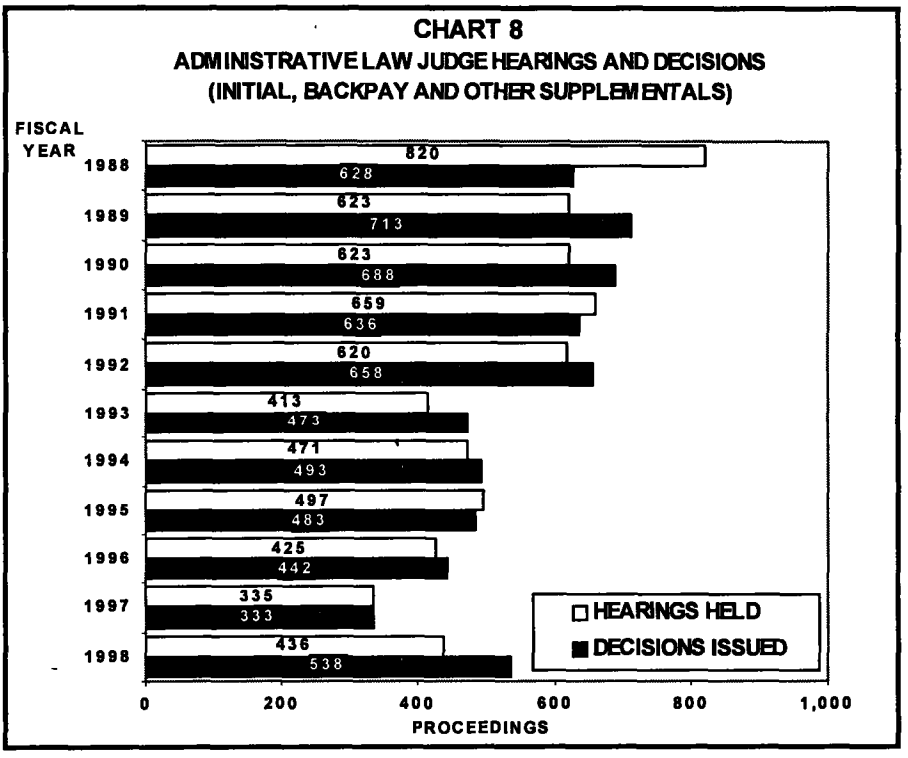
The NLRB received 6218 representation and related case petitions in fiscal 1998, compared to 6179 such petitions a year earlier.

The 1998 total consisted of 4982 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 849 petitions to decertify existing bargaining agents; 102 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 273 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 12 amendment of certification petitions were filed.




During the year, 6300 representation and related cases were closed, compared to 6096 in fiscal 1997. Cases closed included 5082 collective-bargaining election petitions; 833 decertification election petitions; 92 requests for deauthorization polls; and 293 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 12.9 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There was one case where the Board directed an election after transfer of a case from the Regional Office. (Table 10.) There were two cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.



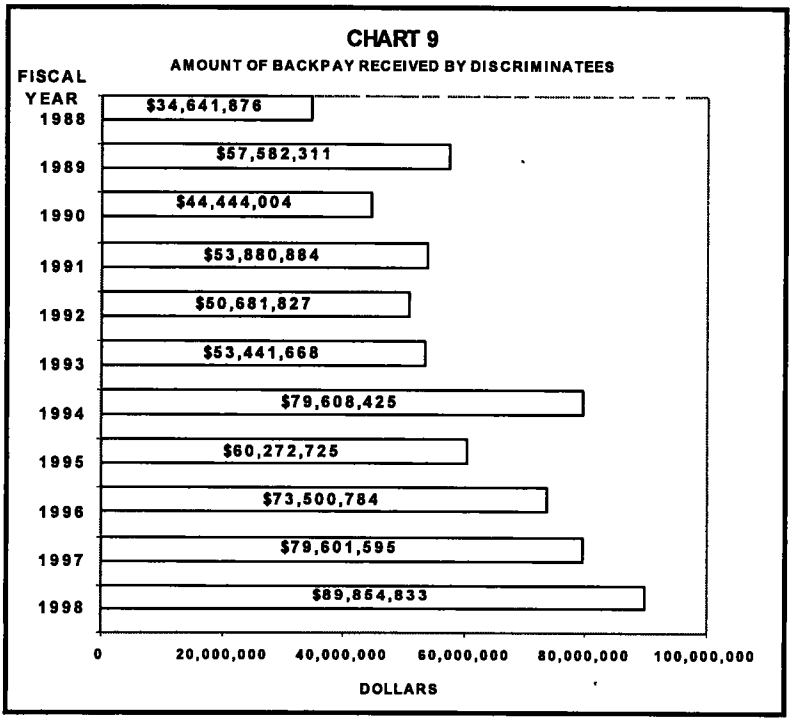

## 3. Elections

The NLRB conducted 3795 conclusive representation elections in cases closed in fiscal 1998, compared to the 3480 such elections a year earlier. Of 250,726 employees eligible to vote, 217,595 cast ballots, virtually 9 of every 10 eligible.

Unions won 1856 representation elections, or 48.9 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 100,535 workers.

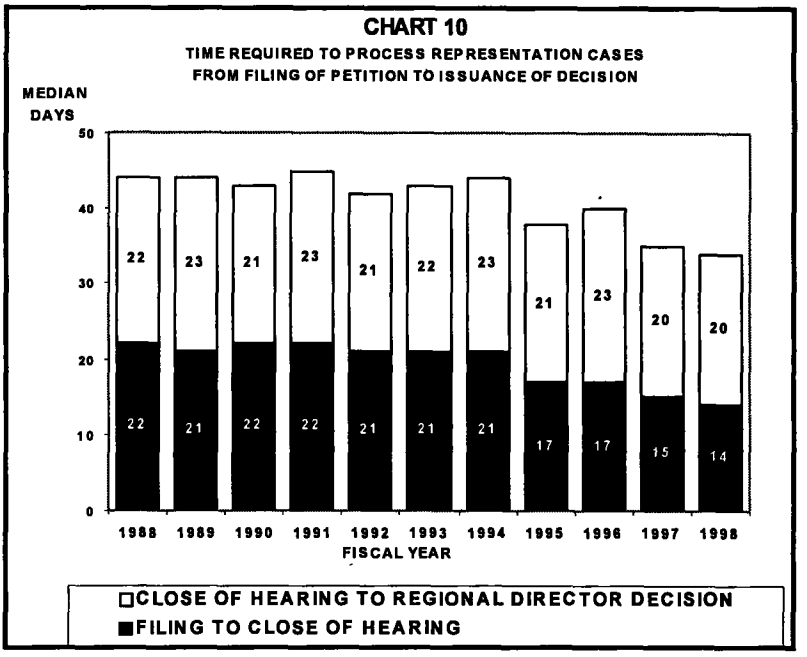
The employee vote over the course of the year was 105,313 for union representation and 112,282 against.

The representation elections were in two categories—the 3339 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 456 decertification elections determining whether incumbent unions would continue to represent employees.




There were 3695 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1775, or 48.0 percent. In these elections, 95,868 workers voted to have unions as their agents, while 108,743 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 90,642 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 100 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 81 elections, or 81.0 percent.

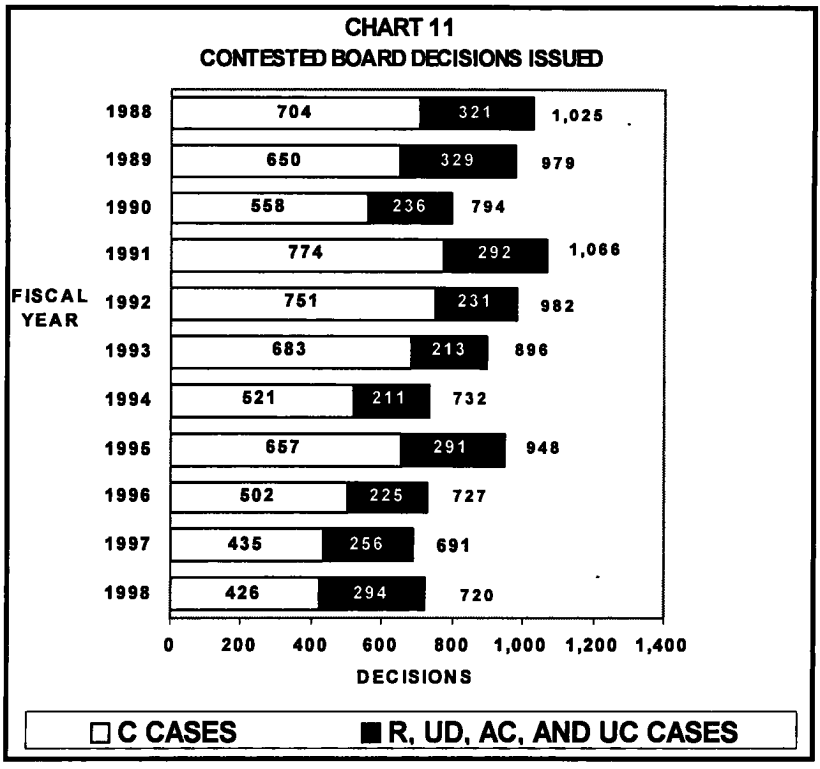



As in previous years, labor organization results brought continued representation by unions in 147 elections, or 32.2 percent, covering 9877 employees. Unions lost representation rights for 12,178 employees in 309 elections, or 67.8 percent. Unions won in bargaining units averaging 67 employees, and lost in units averaging 39 employees. (Table 13.)

Besides the conclusive elections, there were 206 inconclusive representation elections during fiscal year 1998 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 18 referendums, or 40.0 percent, while they maintained the right in the other 27 polls which covered 2455 employees. (Table 12.)

For all types of elections in 1998, the average number of employees voting, per establishment, was 57, compared to 59 in 1997. About 71 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 1139 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1065 decisions rendered during fiscal year 1997.

A breakdown of Board decisions follows:

| | | |
|---|---|---|
| Total Board decisions | | **1139** |
| Contested decisions | | **720** |
| Unfair labor practice decisions | 426 | |
| Initial (includes those based on stipulated record) | 379 | |
| Supplemental | 18 | |

| | | |
|---|---|---|
| Backpay | 12 | |
| Determinations in jurisdictional disputes | 17 | |
| Representation decisions | | 287 |
| After transfer by Regional Directors for initial decision | 2 | |
| After review of Regional Director decisions | 56 | |
| On objections and/or challenges | 229 | |
| Other decisions | | 7 |
| Clarification of bargaining unit | 5 | |
| Amendment to certification | 0 | |
| Union-deauthorization | 2 | |
| Noncontested decisions | | 419 |
| Unfair labor practice | 199 | |
| Representation | 216 | |
| Other | 4 | |

The majority (63 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.)

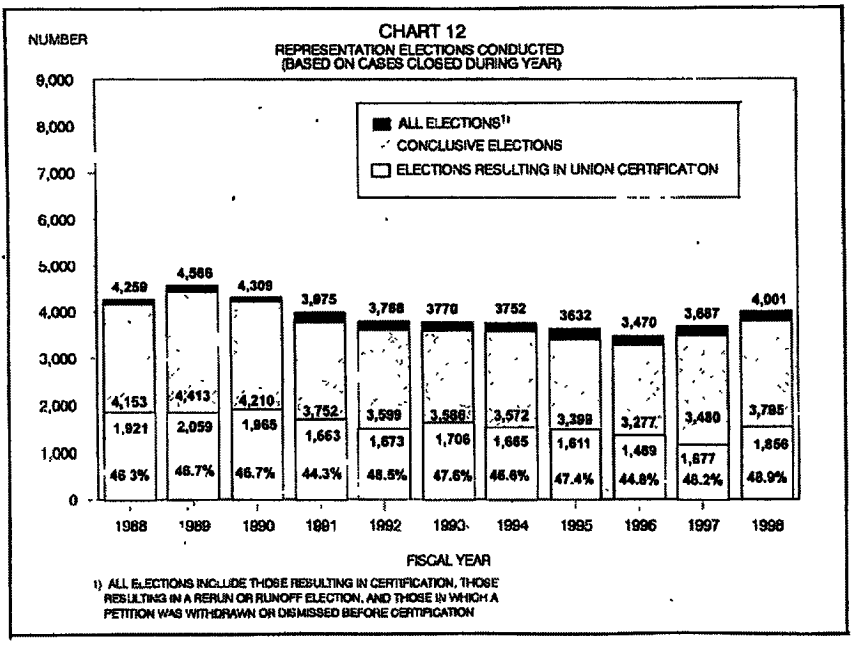
In fiscal 1998, 4 percent of all meritorious charges and 43 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

### b. Regional Directors

NLRB Regional Directors issued 752 decisions in fiscal 1998, compared to 778 in 1997. (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 538 decisions and conducted 436 hearings. (Chart 8 and Table 3A.)

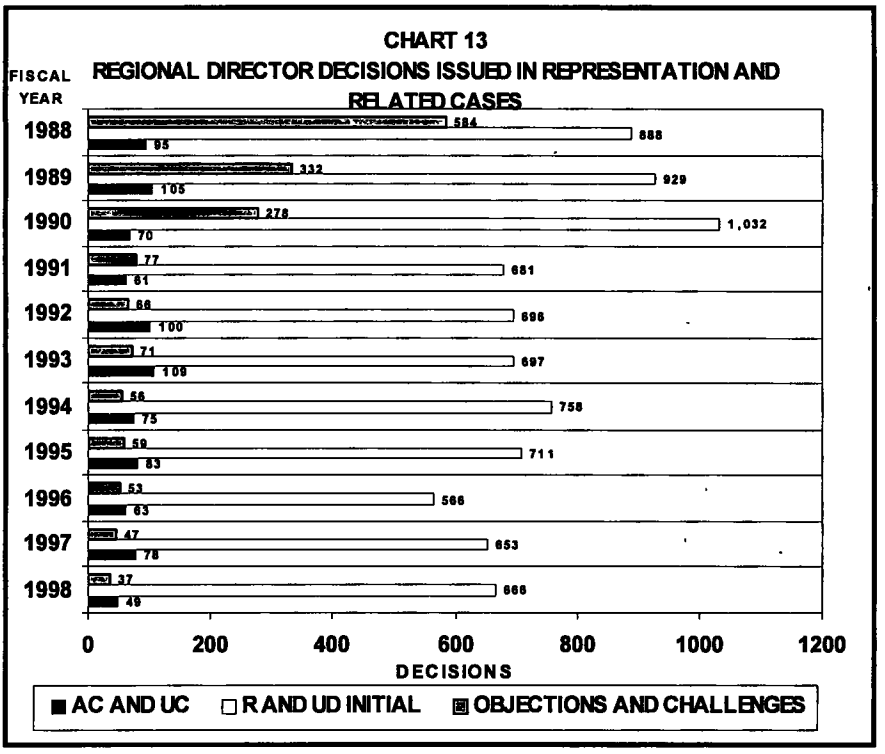



## 5. Court Litigation

### 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 1998, 144 cases involving the NLRB were decided by the United States courts of appeals compared to 166 in fiscal year 1997. Of these, 83.4 percent were won by NLRB in whole or in part compared to 83.8 percent in fiscal year 1997; 5.6 percent were remanded entirely compared to 4.2 percent in fiscal year 1997; and 11.0 percent were entire losses compared to 12.0 percent in fiscal year 1997.

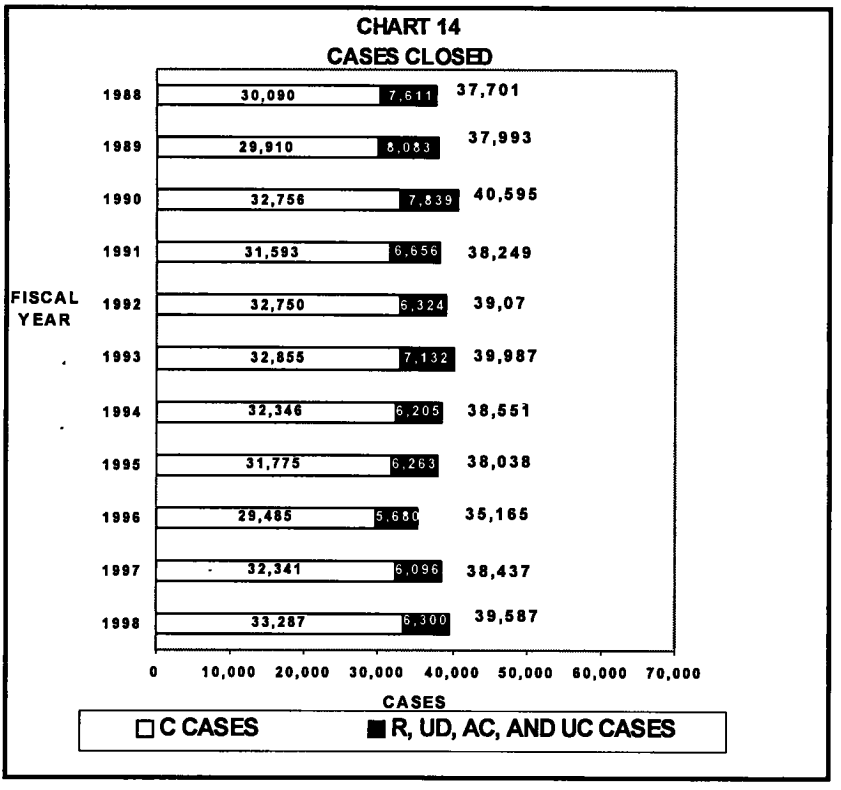



b. The Supreme Court

In fiscal 1998, there was one Board case decided by the Supreme Court. The Board participated as amicus in one case in fiscal 1998.

c. Contempt Actions

In fiscal 1998, 170 cases were referred to the contempt section for consideration of contempt action. There were 17 contempt proceedings instituted. There were 10 contempt adjudications awarded in favor of the Board; 8 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 27 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 22 cases. (Table 21.)

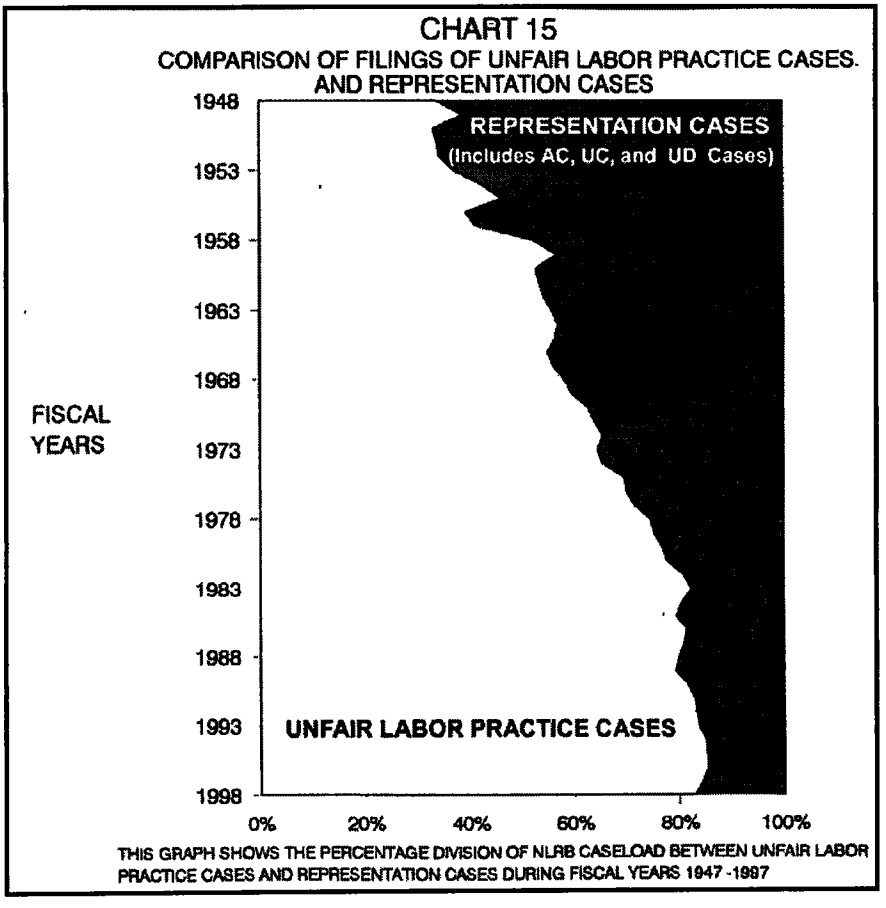
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 45 petitions filed with the U.S. district courts, compared to 52 in fiscal year 1997. (Table 20.) Injunctions were granted in 24, or 89 percent, of the 27 cases litigated to final order.

NLRB injunction activity in district courts in 1998:

| | |
|---|---|
| Granted | 24 |
| Denied | 3 |
| Withdrawn | 5 |

| | |
|---|---|
| Dismissed | 0 |
| Settled or placed on court's inactive lists | 9 |
| Awaiting action at end of fiscal year | 6 |




## 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. Subpoena Enforcement

In *Best Western City View Motor Inn*,[1] a Board majority held that the Regional Director was not obligated to institute contempt proceedings against a witness who failed to honor an enforced subpoena where no party had requested that contempt proceedings be instituted.

The employer had subpoenaed a former employee to testify in a postelection hearing concerning alleged objectionable conduct on the part of the union or its alleged agents. When the witness failed to appear, the employer requested that subpoena enforcement proceedings be instituted, and the Regional Director obtained a court order enforcing the subpoena. Although properly served with a copy of the court's order, the witness still failed to comply, but the Regional Office did not institute contempt proceedings against the witness and no party requested that contempt proceedings be instituted. The hearing officer found that it was the employer's burden to institute contempt proceedings, and drew an adverse inference against the employer because it failed to do so.

The Board majority held, contrary to the hearing officer, that it is the responsibility of the Regional Director to institute subpoena enforcement and contempt proceedings, if the party on whose behalf the subpoena was issued so requests. Section 102.31(d) of the Board's Rules and Regulations provides that the Board shall institute enforcement proceedings upon the failure of a person to comply with a subpoena issued on the request of a private party unless it would be inconsistent with law and with the policies of the Act to do so. In the absence of any express provision dealing with the matter, the majority reasoned that this same rule also governed the institution of subpoena enforcement contempt proceedings where a witness fails to comply with an enforced subpoena, and the party on whose behalf the subpoena was issued requests that such proceedings be instituted. In this case, however, no party had requested that such contempt proceedings be instituted.

[1] 325 NLRB No. 215 (Chairman Gould and Members Fox, Liebman, Hurtgen, and Brame).

### 2. Employers with Close Ties to Exempt Entities

In *Casa Italiana Language School*,[2] a Board panel found that a foreign language school located on property owned by the Archdiocese of Washington, D.C. adjacent to Holy Rosary Roman Catholic Church is not an exempt religious entity, and thus assertion of jurisdiction over the employer is proper under *NLRB v. Catholic Bishop of Chicago*.[3]

The facts showed that the purpose of the school is not the promulgation of the Roman Catholic faith but the provision of Italian language instruction on a nondenominational and commercial basis. The employer's staff consists of Italian language teachers who are not required to have any particular religious background or training. There was no showing that any employee is directly or indirectly involved in the teaching of a religious philosophy. Nor was there any evidence that students or teachers are asked or encouraged to participate in the Church's religious affairs. The evidence presented shows that the students come from many religious backgrounds and that they typically have secular rather than religious reasons for wanting to take courses in the Italian language, such as travel to Italy.

Noting that there is no evidence that the school proselytizes, or inculcates by instruction, any religious doctrine or belief, the Board found that the sensitive First Amendment issues surrounding the dispute over Board jurisdiction found in *Catholic Bishop* were not present in asserting jurisdiction here. Rather, jurisdiction was found to be appropriate under the line of cases where the Board has historically and routinely asserted jurisdiction over retail operations operated by religious institutions.

### 3. Contract Bar

In *DePaul Adult Care Communities*,[4] a Board panel held, in agreement with the Regional Director, that there was no contract bar to a decertification petition filed by an individual, because the collective-bargaining agreement between the union and the employer was not signed prior to the filing of the petition.

The employer and the union had been parties to a collective-bargaining agreement which, by its terms, expired on December 31, 1997. After negotiations for a new agreement via the telephone, the union memorialized the employer's final contract offer in a letter dated January 6, 1998, which was faxed to the employer's vice president on that same date. The next day the union's members ratified the

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[2] 326 NLRB No. 14 (Chairman Gould and Members Fox and Liebman).
[3] 440 U.S. 490 (1979)
[4] 325 NLRB No. 132 (Chairman Gould and Members Fox and Liebman)

employer's offer and this was communicated to the employer on January 14 or 15, along with the message that the union was "all set." Both parties agreed that as of then all of the issues had been resolved and there were none left to be negotiated. By letter dated January 21, the employer proposed a February 4 meeting date. On January 22, the union faxed to the employer's attorney draft language for the contract articles that were to be changed to reflect the employer's offer, and the employer admits that the language contained therein was an accurate reflection of its offer. However, the employer never signed any document containing the contractual revisions, nor did the parties ever meet to formalize or sign an agreement. The decertification petition was filed on January 22, 1998.

The Board found that the agreement between the union and the employer did not meet the formal requirements necessary to establish it as a bar to the petition. Although it was clear that the parties had orally resolved all outstanding issues as of January 15, the employer failed to sign the proposed revisions, or reduce to writing or sign any of its contract proposals. The Board has made it clear that unsigned contracts will not bar a petition, notwithstanding that the parties consider the contract properly concluded and even put into effect some or all of its provisions.

### 4. Voter Eligibility

In *Air Liquide America Corp.*,[5] the Board overruled the challenge to the ballot of an employee who was allegedly on a leave of absence for union business at the time of the election. In finding the employee eligible to vote, the Board majority applied the test set forth in *Red Arrow Freight Lines*,[6] under which an employee is presumed to continue in sick or maternity leave status unless the presumption is rebutted by an affirmative showing that the employee has resigned or been discharged. The Board majority found that the *Red Arrow* test applies by analogy to other types of leaves of absence, including leaves of absence for union business.

Applying the *Red Arrow* test, the Board majority found, in agreement with the hearing officer, that there was no evidence that the employee had quit his employment or that the employer had communicated to him that his employment had been terminated. The Board majority also found that a finding of constructive termination was not warranted because the surrounding circumstances failed to make clear that the

[5] 324 NLRB 661 (Chairman Gould and Members Fox and Higgins)
[6] 278 NLRB 965 (1986)

employee's employment had ended. Under *Red Arrow*, therefore, the Board majority concluded that the employer had not rebutted the presumption of continued employee status, and therefore the employee was an eligible voter.

### 5. Continuing Bargaining Obligation

In *Waymouth Farms*,[7] the Board held that the employer failed to bargain in good faith in violation of Section 8(a)(5) and (1) of the Act by misrepresenting to the union its intentions regarding the relocation of the employer's facility.

The parties' collective-bargaining agreement provided that the employer recognized the union as the bargaining representative of the unit employees "in its Plymouth, Minnesota, plant, and at no other geographical locations." The employer then moved its facility to New Hope, Minnesota (6 miles away from the old location), declared the collective-bargaining agreement void, and ceased recognition when the relocation occurred. Although the employer had notified the union of its intention to relocate, it had represented that it was uncertain of the site of the new location, and had emphasized that it was considering locations outside the State of Minnesota. While the employer was making these representations to the union, it in fact was taking steps to purchase the new facility just 6 miles distant from the old location. The parties then negotiated a plant closure agreement granting different severance benefits depending on whether the employer relocated more than, or less than, 20 miles from the original facility in Plymouth.

The Board, in agreement with the administrative law judge, determined that the employer had misrepresented to the union its true intentions and plans regarding plant relocation while engaged in negotiations with the union for the plant closure agreement. The Board concluded therefore that the agreement had been obtained via the employer's bad-faith bargaining, and must be set aside. The Board ordered that the appropriate remedy must include a provision that the employer recognize and bargain with the union as the representative of the unit employees at the new location. Moreover, the Board refused to give effect to the parties' contractual geographical limitation clause because the employer had unlawfully misled the union about its relocation plans.

[7] 324 NLRB 960 (Chairman Gould and Members Fox and Higgins).

### 6. Reimbursement of Litigation Costs and Attorneys' Fees

In *Lake Holiday Manor*,[8] a Board panel awarded litigation costs and fees to the General Counsel pursuant to the "bad-faith" exception to the American Rule because the employer exhibited bad faith in its conduct of litigation with the Board.

Following court enforcement of the Board's bargaining order deriving from a successful union election, the employer engaged in multiple statutory violations. The Board hearing on those violations resulted in a tentative settlement agreement. However, the employer reneged on its agreement to finalize the settlement and the Board was forced to schedule a second hearing. At the second hearing the administrative law judge approved the settlement agreement, but the employer again later reneged citing the boilerplate language in the notice. The Board then scheduled a third hearing with the judge admonishing that the parties must engage in no further delay. Nevertheless 2 weeks prior to the third hearing's commencement, the employer's attorney withdrew from the case, and 2 days before the scheduled commencement of the hearing, the employer's new attorney sought a 60-day continuance. The judge denied the request and proceeded with the hearing at which the employer appeared without counsel and refused the judge's offer for the employer to cross-examine the General Counsel's witnesses.

Based on these facts, the Board noted that the employer continually engaged in tactics designed to delay and frustrate the Board processes, including reneging on not just one but two settlement agreements, and seeking delays in the third hearing when the employer knew that the judge would not countenance this blatant prolongation of the legal process.

The Board dated the employer's reimbursement obligation to the General Counsel from the second settlement. This settlement was formally approved by the judge and the employer reneged because of boilerplate language in the notice about which the employer had not objected with respect to the first settlement. The Board found that the employer's objection to the second settlement appeared not to be genuine. Accordingly, the employer bore the responsibility for grossly prolonging the litigation of the case and therefore was obligated to pay the General Counsel's litigation costs subsequent to the second settlement.

[8] 325 NLRB No 67 (Chairman Gould and Members Fox and Hurtgen).

## D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1998, are as follows:

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| Personnel compensation | $118,185,585 |
| Personnel benefits | 22,448,603 |
| Benefits for former personnel | 20,000 |
| Travel and transportation of persons | 1,786,906 |
| Transportation of things | 85,443 |
| Rent, communications, and utilities | 22,256,148 |
| Printing and reproduction | 119,202 |
| Other services | 6,484,909 |
| Supplies and materials | 1,269,809 |
| Equipment | 1,744,959 |
| Insurance claims and indemnities | 215,824 |
| Total obligations and expenditures[9] | $174,617,388 |

[9] Includes $202,009 for reimbursables for casehandling in Saipan. Also includes $28,610 for reimbursables from Agriculture (Fitness Facility).

# II

# Board Procedure

## A. Subpoena Enforcement

In *Best Western City View Motor Inn,*[1] a panel majority of Chairman Gould and Members Fox, Liebman, and Brame held that the Regional Director was not obligated to institute contempt proceedings against a witness who failed to honor an enforced subpoena where no party had requested that contempt proceedings be instituted. The majority rejected the hearing officer's finding that the employer had the burden of instituting contempt proceedings itself, or the drawing of an adverse inference against the employer because it failed to do so.

The employer had subpoenaed a former employee to testify in a post-election hearing concerning alleged objectionable conduct on the part of the union or its alleged agents. When the witness failed to appear, the employer requested that subpoena enforcement proceedings be instituted. Upon proof of service of the subpoena, the Regional Director obtained a court order enforcing the subpoena. Although properly served with a copy of the court's order, the witness failed to comply. The Regional Office did not institute contempt proceedings against the witness. The hearing officer found that it was the employer's burden to institute contempt proceedings, and drew an adverse inference against the employer because it failed to do so.

The panel majority found that it is the responsibility of the Regional Director to institute subpoena enforcement and contempt proceedings. The Board's Rules and Regulations provide that the Board shall institute enforcement proceedings upon the failure of a person to comply with a subpoena issued on the request of a private party unless it would be inconsistent with law and with the policies of the Act to do so. In the absence of any express provision dealing with the matter, the majority applied this rule to the institution of subpoena enforcement contempt proceedings where a witness fails to comply with an enforced subpoena. Accordingly, the majority did not adopt the hearing officer's finding that it was the employer's burden to institute contempt proceedings, or the drawing of an adverse inference against the employer for its failure to do so.

Members Fox and Liebman further indicated that, in their view, a Regional Director is obligated to institute contempt proceedings on

[1] 325 NLRB No. 215 (Chairman Gould and Members Fox, Liebman, Hurtgen, and Brame).

request of a party unless, as is the case with the underlying enforcement proceedings, to do so would be inconsistent with law and with the policies of the Act. Chairman Gould and Member Brame agreed that contempt proceedings were not warranted because the employer did not request them, but found it unnecessary to pass on the circumstances in which such proceedings would be required when a request is made.

Member Hurtgen, dissenting, would require Regional Directors to institute contempt proceedings, or at least inquire into the matter in all cases, regardless of whether a request for contempt proceedings is made. In Member Hurtgen's view, the Board should take action without waiting for a party's request when a witness fails to honor an enforced subpoena in order to carry out its responsibility of ascertaining the facts in a representation case and because the court order enforcing the subpoena runs to the Board. Member Hurtgen would not require contempt proceedings if the witness is no longer desired by the private party who served the subpoena and is not needed by the Board.

## B. Consolidation of Complaints

In *Service Employees Local 87 (Cresleigh Management)*,[2] the Board majority held that the judge had properly refused to dismiss the complaints simply because they had not been consolidated with the complaint in another case involving the same parties. The Board noted that the General Counsel has wide discretion under Section 102.33 of the Board's Rules and Regulations in determining whether to consolidate proceedings. The Board also held that the principle favoring consolidation of pending allegations in one proceeding is not absolute.[3]

The complaints alleged unlawful picketing by the respondent union in violation of Section 8(b)(4)(B) of the Act. A complaint in a different case, involving the same parties, alleged improper union organizing and card solicitation by a supervisor in violation of Section 8(b)(1)(A). Although the cases were tried in separate hearings a few weeks apart, the respondent apparently did not attempt to have all the cases consolidated in one proceeding, but instead moved for the dismissal of the 8(b)(4)(B) complaints at the hearing in that proceeding. The judge denied the motion on the ground that the 8(b)(4)(B) and 8(b)(1)(A) allegations were not sufficiently closely related to require consolidation.

The Board affirmed the judge, but on different grounds. It cited the General Counsel's wide discretion in deciding whether to consolidate proceedings, and noted that the Board had previously recognized that a

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[2] 324 NLRB 774 (Chairman Gould and Member Fox, Member Higgins dissenting).

[3] Cf. *Jefferson Chemical Co*, 200 NLRB 992 (1972), *Peyton Packing Co.*, 129 NLRB 1358 (1961).

blanket rule in favor of consolidation would improperly interfere with that discretion and, in some instances, could actually delay the disposition of pending cases.[4] The Board also relied on the fact that the judge in an unfair labor practice hearing has the authority, on motion by a party, to order proceedings consolidated or severed;[5] therefore, the General Counsel's exercise of discretion is subject to review by the judge. (The Board noted in particular that the respondent had apparently failed to pursue this option.) The Board shared the dissent's concern for efficient casehandling, conservation of the Board's resources, and avoiding harassment of or prejudice to respondents, but rejected the argument that those factors require consolidation of most pending cases.[6]

In dissent, Member Higgins found that the 8(b)(4)(B) case should have been consolidated with the 8(b)(1)(A) case. He found such "piecemeal" litigation incompatible with the *Jefferson Chemical/Peyton Packing* principle requiring consolidation of all pending charges into one complaint except in unusual circumstances. Member Higgins noted that the Board has its own interest in judicial efficiency and economy, which should not be abandoned despite the respondent's apparent failure to attempt to consolidate the cases into one proceeding.

## C. Effect of Settlement Agreement

In *Flint Iceland Arenas*,[7] the Board majority disapproved a non-Board settlement agreement that had been executed by the respondent and the charging party union and approved by the judge at the beginning of the hearing over the General Counsel's objection. The General Counsel objected to the settlement on the grounds that while the complaint alleged numerous violations of Section 8(a)(1), (3), and (5) of the Act affecting the entire unit, the settlement only provided a remedy for the three named discriminatees who allegedly were unlawfully discharged or otherwise discriminated against.

The Board majority, Members Fox and Liebman, Member Hurtgen concurring, granted the General Counsel's appeal and revoked the judge's approval of the settlement. Members Fox and Liebman found that the settlement should be disapproved under the standards set forth in *Independent Stave Co.*,[8] given the settlement's failure to remedy most of

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[4] See *Maremont Corp.*, 249 NLRB 216 (1980); *Harrison Steel Castings Co.*, 255 NLRB 1426 (1981)

[5] See Sec. 102.35 (a)(8) of the Board's Rules and Regulations.

[6] The Board overruled *Highland Yarn Mills*, 310 NLRB 644 (1993), vacated as moot 315 NLRB 1169 (1994), and *Best Lock Corp.*, 305 NLRB 648 (1991), to the extent they indicate that issues normally must be consolidated if they are sufficiently closely related.

[7] 325 NLRB No 43 (Members Fox and Liebman; Member Hurtgen concurring; Chairman Gould and Member Brame separately dissenting).

[8] 287 NLRB 740 (1987).

the alleged violations or provide for any notices or assurances to employees against similar conduct and the General Counsel's opposition to the settlement.

Member Hurtgen, concurring, also found that the settlement should be disapproved given that significant and important parts of the case were wholly untouched by the settlement and that the General Counsel, representing the public interest and all of the employees, objected to the settlement. In addition, he noted that while the complaint allegations had not yet been established, they were not wholly untested since the General Counsel had sought and obtained interim injunctive relief under Section 10(j) of the Act in Federal district court.

Dissenting, Chairman Gould and Member Brame would have upheld the judge's approval of the settlement. Contrary to the majority, Chairman Gould found that neither the settlement's failure to remedy all the allegations or the absence of a notice was a basis for disapproving the settlement under *Independent Stave*.[9] In his view, the settlement warranted approval under the standards set forth in that case given that the charging party union, all the named discriminatees, and the respondent had agreed to be bound by the settlement; there was no showing that the settlement was entered into through fraud or coercion; the Union had agreed in the settlement to disclaim interest in representing the employees and to abandon its certification; and the settlement was executed at an early stage of the litigation.

Member Brame also found that the settlement's failure to remedy all of the allegations did not compel disapproval of the settlement under *Independent Stave*.[10] Further, like the Chairman, he found that the settlement should be approved under the standards set forth in that case given that the charging party, the named discriminatees, and the judge were satisfied with the settlement; there was no hint in the record of any fraud or coercion in reaching the settlement; the union had disclaimed interest in representing the unit employees; and given the risks inherent in litigation. In addition, Member Brame noted that to the extent the settlement failed to address certain allegations relating to harassment, violence or threats of violence, the individuals were not without recourse given the existence of criminal and civil remedies available to them.

In *B&K Builders*,[11] the Board reversed the judge, to hold that the settlement agreement executed by the parties did not bar the litigation of prior violations in a subsequent charge that the respondent committed unfair labor practices.

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[9] Id. at slip op. 4.

[10] Id at slip op. 7.

[11] 325 NLRB No. 128 (Chairman Gould and Members Fox and Liebman).

The unions filed unfair labor practice charges against the respondent alleging that subsequent to the execution of a settlement agreement the respondent discriminatorily laid off employee Richard Abel in violation of Section 8(a)(3) and (1). The charge also alleged that, prior to the execution of the settlement agreement, the respondent had violated Section 8(a)(3) and (1) by discriminatorily refusing to assign Abel to a higher paying job, and had violated Section 8(a)(1) by granting wage increases to two apprentices and by creating the impression that employees' union activities were under surveillance.

The "Scope of the Agreement" language contained in the settlement agreement executed by the parties stated:

> This Agreement settles only the allegations in the above-captioned case(s), and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

The Board found that the language of the settlement agreement is sufficiently specific to avoid application of the broad *Hollywood Roosevelt Hotel*[12] rule. The agreement expressly stated that the agreement settled only the allegations in the cases referenced in the agreement, and the language of the agreement clearly reserved any person's right to file new postsettlement charges of unlawful presettlement conduct. The Board found that the "Scope of Agreement" clause also permits the General Counsel to investigate and issue a complaint based on the charges filed, regardless of whether the newly alleged conduct was already known to the General Counsel or readily discoverable. The Board found that the clear and specific terms of the reservation language in the settlement agreement permit litigation of the allegations of unlawful presettlement wage increases and surveillance. The Board concluded that "there can be no other reasonable

[12] 235 NLRB 1397 (1978) In that case, the Board held that "a settlement, if complied with, will be held to bar subsequent litigation of all prior violations except where they were not known to the General Counsel or readily discoverable by investigation or were specifically reserved from the settlement by mutual understanding of the parties."

interpretation of the meaning of this language, to which all parties to the settlement agreed."

# 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. Employers with Close Ties to Exempt Entities

In *Casa Italiana Language School*,[6] the Board found that a foreign language school located on property owned by the Archdiocese of Washington, D.C. and located adjacent to Holy Rosary Roman Catholic Church is not an exempt religious entity, and thus assertion of

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[1] See Secs 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Sec 2(6) and (7), respectively. Under Sec 2(2) the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, 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] 326 NLRB No 14 (Chairman Gould and Members Fox and Liebman)

jurisdiction over the employer is proper under *NLRB v. Catholic Bishop of Chicago.*[7]

The purpose of the school is not the promulgation of the Roman Catholic faith but the provision of Italian language instruction on a nondenominational and commercial basis. The employer's staff consists of Italian language teachers who are not required to have any particular religious background or training. There was no showing that any employee is directly or indirectly involved in the teaching of a religious philosophy. Nor was any evidence presented that students or teachers are asked or encouraged to participate in the Church's religious affairs. The evidence presented shows that the students come from many religious backgrounds and that they typically have secular rather than religious reasons for wanting to take courses in the Italian language, e.g., they are planning to travel to Italy.

Noting that there is no evidence that the school proselytizes, or inculcates by instruction, any religious doctrine or belief, the Board found that the sensitive First Amendment issues surrounding the dispute over Board jurisdiction found in *Catholic Bishop* were not present in asserting jurisdiction here. Rather, jurisdiction was found to be appropriate under the line of cases where the Board has historically and routinely asserted jurisdiction over retail operations operated by religious institutions.[8]

The Board distinguished *Motherhouse of the Sisters of Charity*[9] where jurisdiction was declined, since the school, unlike the nursing home in *Motherhouse*, does not exist for the purpose of enabling the consumers—in this case the students—to participate in or practice their religion.

The Board also distinguished *Riverside Church.*[10] Unlike the employees in *Riverside*, 100 percent of the teachers' time is spent performing the employer's commercial activity—teaching Italian. Members Gould and Fox indicated that they would overrule *Riverside*.

## B. Political Subdivision

In *Enrichment Services Program,*[11] the Board asserted jurisdiction over a nonprofit organization established under the Federal Community Services Block Grant (CSBG) Act. The Board rejected the employer's claim that it was exempt as a political subdivision of a state, and a majority of Chairman Gould and Members Fox, Liebman, and Brame

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[7] 440 U.S. 490 (1979).
[8] See, e g , *First Church of Christ*, 194 NLRB 1006 (1972); and *World Evangelism, Inc.*, 248 NLRB 909 (1980), enfd. 656 F.2d 1349 (9th Cir 1981).
[9] 232 NLRB 318 (1977)
[10] 309 NLRB 806 (1992).
[11] 325 NLRB No. 154 (Chairman Gould and Members Fox, Liebman, Hurtgen, and Brame)

overruled cases such as *Woodbury County Community Action Agency,*[12] and *Economic Security Corp.,*[13] which held that similar entities were exempt political subdivisions.

The majority applied the test set forth in *NLRB v. Natural Gas Utility District of Hawkins County,*[14] under which a finding of political subdivision status requires proof that an employer is either created directly by the state, or is administered by individuals who are responsible to public officials or to the general electorate. Relying on *Concordia Electric Cooperative,*[15] the majority stated that

> An electorate comprised, as here, of members of various low income neighborhoods and, in *Economic Security Corp.* and *Woodbury County,* of "all poor" persons is not comparable to the electorate for general political elections. An "electorate" of all poor persons or groups thereof does not include all individuals in the area served who would be eligible to vote in general political elections.

The majority further noted that the employer was not considered to be a political subdivision of the State of Georgia under state law, or treated as a political subdivision for the purposes of other Federal statutes.

Chairman Gould and Member Fox, concurring, also stated that they would overrule *Salt River Project*[16] and *Electrical District No. 2,*[17] where entities were held to be political subdivisions where electorates comprised a limited number of persons owning specified amounts of land within the districts served. In their view, these cases also involved electorates comprised of a limited group of voters and hence were inconsistent with the Board's holding that entities with limited electorates were not exempt as political subdivisions.

Members Liebman and Brame found that the entities at issue in *Salt River Project* and *Electrical District No. 2* were distinguishable from the employer because the entities were considered to be political subdivisions under state law. They further noted that these entities were created using a public election process, and had the power to levy taxes and to condemn public and private property. These factors were not present in this case.

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[12] 299 NLRB 554 (1990)
[13] 299 NLRB 562 (1990).
[14] 402 U.S 600 (1971).
[15] 315 NLRB 752 (1994), bargaining order enfd 95 F.3d 46 (5th Cir 1996).
[16] 231 NLRB 11 (1977)
[17] 224 NLRB 904 (1976).

Member Hurtgen also joined in asserting jurisdiction over the employer, but without overruling any cases or relying on the limited scope of the employer's "electorate." Rather, Member Hurtgen concluded that the employer's private, rather than public, status, was affirmatively established by its status as a nonprofit charity, rather than a state political subdivision, under the Internal Revenue Code, as well as the fact that it had no authority to levy taxes or to condemn property, and was created by private individuals under the state's nonprofit corporation laws.

# 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. *Excelsior* List

In *Thiele Industries*,[1] a Board majority announced that it found that an employer who failed to comply fully with its obligations under the *Excelsior* rule is foreclosed from filing an objection to an election based on such a failure.

The tally of ballots showed 32 for and 30 against the petitioner, with 4 challenged ballots. The Board agent challenged the ballots of probationary employees Davison and Yuhas on the ground that their names did not appear on the *Excelsior* list. The employer's Objection 10

[1] 325 NLRB No. 211 (Chairman Gould and Members Fox, Liebman, and Brame)

alleged that probationary employees had been improperly excluded from the voting list. The hearing officer recommended that Objection 10 be overruled because the omission was caused by the employer's own misconduct. In adopting the hearing officer's recommendation to overrule the challenge to Objection 10, the majority did not agree with the hearing officer's finding of "misconduct." The majority held, however, that where, as here, a union has won an election, "the Employer is foreclosed from filing an objection based solely on its failure, even if inadvertent, to comply fully with its obligation under the *Excelsior* rule to include all eligible voters on the *Excelsior* list."

In a concurring opinion, Chairman Gould analogized an employer's obligation to furnish a complete and accurate list of eligible voters to its obligation to post copies of the Board's official notice of election for at least 3 full working days prior to an election. Noting that under the Board's Rules a party is estopped from objecting to nonposting of notices if it is responsible for the nonposting, Chairman Gould found that "[t]he same estoppel principle is applicable under the *Excelsior* rule" because "[a] party should not be able to assert its own failure to meet its obligation as a basis for setting aside the election."

Member Brame, concurring in the result, disagreed with the "broad rule" announced by his colleagues. In Member Brame's view, "the majority, by understandably seeking to ensure that a party does not benefit from its own mistake, undermines the very purpose of the *Excelsior* rule—to protect the Section 7 rights of employees to make a free and fully informed choice in an election—by foreclosing an objection to an election based on the breach of the *Excelsior* rule." Finding, however, that the purposes of the *Excelsior* rule were satisfied here, Member Brame agreed with his colleagues that the employer's Objection 10 should be overruled.

## B. Appropriate Unit Issues

### 1. Independent Contractors[1]

In *Dial-A-Mattress Operating Corp.*,[2] the Board majority found that an employer's owner-operators—who provide customer delivery services—were independent contractors under the common-law agency test as discussed in the companion *Roadway Package System*[3] case.

The employer used a telemarketing campaign aimed at selling its products, via telephone sales, to customers in the New York City metropolitan area. The employer had 39 owner-operators who used their

[2] 326 NLRB No 75 (Members Fox, Liebman, and Brame, Chairman Gould dissenting)
[3] 326 NLRB No 72 (Members Fox, Liebman, and Brame, Chairman Gould concurring).

own equipment and the assistance of a helper and/or driver to deliver its products. The union petitioned to represent the owner-operators in a unit with their helpers and drivers, while the employer argued that the owner-operators should be excluded from the unit because they were independent contractors or statutory supervisors. The Regional Director found that the owner-operators were not independent contractors, but he deferred ruling on the supervisory question. The Board majority reversed the Regional Director.

Analyzing the factors weighing in favor of independent contractor status for the owner-operators, the Board majority stated:[4]

> In the process of outsourcing its delivery functions, Dial has structured its relationship with the owner-operators to allow them (with very little external controls) to make an entrepreneurial profit beyond a return on their labor and their capital investment. The owner-operators arrange their own training, hire their own employees, and have sole control over and complete responsibility for their employees, including setting their terms and conditions of employment. Dial also plays no part in the selection, acquisition, ownership, financing, inspection, or maintenance of the vehicles used by the owner-operators. There is no minimum compensation guaranteed the owner-operators to minimize their risk of performing deliveries for Dial, and they can decline orders without penalty. The owner-operators are not required to provide delivery services each scheduled workday. In short, their separateness from Dial is manifested in many ways, including significant entrepreneurial opportunity for gain or loss.

In dissent, Chairman Gould agreed with the Regional Director that the owner-operators are not independent contractors. He maintained "[t]here are a number of areas where Dial has exerted significant control over the manner and means used by the owner-operators in timely delivering mattresses. Such control traditionally points toward an employee-employer relationship." He further found a "striking similarity" between the facts of this case and *Roadway*. In his view,[5]

> Dial's control of the route schedules, call-in requirements, demand that owner-operators be present when scheduled for loading and not refuse to make any deliveries, discipline through suspension of owner-operators who fail to meet its demands or follow its policies, involvement with the selection of helpers and payment of workers'

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[4] 326 NLRB No 75, slip op at 8.
[5] Id., slip op at 14.

compensation insurance, and the absence of genuine opportunities to engage in entrepreneurial activities vastly outweigh any factors which might suggest independent contractor status.

In *Roadway Package System,*[6] the Board affirmed the Regional Director's finding that petitioned-for pickup and delivery drivers are employees and not independent contractors. The Board applied the common-law agency test and, consistent with the Supreme Court's decision in *NLRB v. United Insurance Co. of America,*[7] considered "all the incidents of the individual's relationship to the employing entity" to find that the drivers are employees. The Board explained that the common-law agency test encompasses a careful examination of all factors and not just those that involve the right of control. The Board rejected the employer's argument that "right of control" factor should predominate.

Analyzing the factors the Board stated:

> As in *United Insurance*, the drivers here do not operate independent businesses, but perform functions that are an essential part of one company's normal operations; they need not have any prior training or experience, but receive training from the company; they do business in the company's name with assistance and guidance from it; they do not ordinarily engage in outside business; they constitute an integral part of the company's business under its substantial control; they have no substantial proprietary interest beyond their investment in their trucks; and they have no significant entrepreneurial opportunity for gain or loss.[8]

Although *Roadway* argued that it had effectuated changes since a prior case in which its drivers were found to be employees,[9] the Board found that none of these changes required a finding of independent contractor status.

Chairman Gould concurred in the majority's application of the common-law agency test to find that the drivers are employees. He disagreed, however, with the majority's finding that the drivers here differ from the owner-operators in *Dial-A-Mattress,*[10] in which he dissented from a finding that the owner-operators are independent contractors.

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[6] 326 NLRB No 72.
[7] 390 U S 254 (1968).
[8] 326 NLRB No 72, slip op at 10
[9] *Roadway Package System,* 288 NLRB 196 (1988).
[10] 326 NLRB No 75.

2. Work-Release Inmates

In *Speedrack Products Group*,[11] the Board held, in light of a remand by the United States Court of Appeals for the District of Columbia Circuit,[12] that work-release prisoners who cast challenged ballots in a representation election in a unit that included nonprisoner employees were eligible to vote. In so holding, the Board applied *Winsett-Simmonds Engineers*[13] which reasoned that work-release prisoners who worked alongside the so-called "free world" employees under the same supervision and who enjoyed the same wages, benefits, and terms and conditions of employment have a sufficient community of interest with fellow employees and should not be excluded from a bargaining unit merely because of their status as prisoners.

The Board rejected the petitioner union's contention that a Department of Corrections (DOC) policy ostensibly restricting the work-release prisoners' participation in union activities was grounds for excluding them. The Board noted that a formal opinion from a DOC commissioner stated that the State had no objection to the prisoners' being represented by a collective-bargaining representative in the bargaining unit.

Member Fox, concurring, would modify the *Winsett-Simmonds* test to consider also whether, even apart from employee working conditions, there are constraints on prisoners' "freedom to attend union meetings after working hours, to participate fully in the collective-bargaining process and to engage in other collective efforts to affect workplace conditions." She joined the majority because she was satisfied that there was insufficient evidence in the record, even under this modified test, to establish that the work-release prisoners at issue here lacked a community of interest.

In his concurrence, Chairman Gould took issue with Member Fox's expanded test, stating that he "would find that such correctional authority constraints are irrelevant to the community-of-interest analysis where those constraints do not differentiate work-release employees from other employees *in their relationship to their employer.*" (Emphasis in original; footnote omitted.)

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[11] 325 NLRB No 109 (Chairman Gould and Members Fox and Hurtgen, with additional opinions concurring by Chairman Gould and Member Fox)

[12] 114 F 3d 1276 (D C Cir 1997)

[13] 164 NLRB 611 (1967).

### 3. Supervisory Status

In *Union Square Theatre Management*,[14] a panel majority of the Board held that the employer's technical directors were Section 2(11) supervisors because a significant part of their function was to find and hire temporary employees on behalf of the employer, set their rates of pay, and determine their duration of employment.

The employer provided theatrical management services for four off-Broadway theaters. At each theater it employed a technical director, whose duties included the upkeep and maintenance of the theater, providing service to the shows that rented the facility, assisting in installing and removing the show and in its production, and serving as a member of the crew during the production.

The technical directors' principal duties involved performing physical tasks of a craft or technical nature, much of which consisted of repair and maintenance work that the technical directors did themselves. However, sometimes there were craft and maintenance jobs requiring more than one person to perform, and for which the technical directors obtained individual employees or even crews to work on a temporary basis. In fact, all of the individuals who served as technical directors at or near the time of the hearing had recently hired either single individuals or crews. The technical directors also determined the wage rates of temporary employees based on the prevailing rates of pay in the area for similar kinds of work.

The Board majority held that the technical directors were supervisors, because "a significant, if irregular, part of the technical directors' function [was to find and hire those workers on the employer's] behalf, set their pay rates, and determine their duration of employment," and because the exercise of their authority involved the use of independent judgment. Thus, the technical directors had complete discretion as to whom to hire, based on their assessments of the individuals' skills and qualifications and those required for the particular job.

Finally, the majority found, contrary to the dissent, that the technical directors' exercise of supervisory authority was not sporadic, but instead was "part and parcel of [their] 'primary work product.'"[15] In other words, the technical directors were hired with the understanding that they would be responsible for recruiting and hiring casual employees as needed in the employer's interest.

In dissent, Chairman Gould would have found the technical directors to be statutory employees. He found their exercise of hiring authority too sporadic to render them supervisors. He also found that there was no

[14] 326 NLRB No. 17 (Members Fox and Hurtgen, Chairman Gould dissenting).

[15] See *Detroit College of Business*, 296 NLRB 318, 321 (1989), cited in the decision.

risk of a conflict of interest if the technical directors were held to be employees, because the casual employees they hired would not have been in the unit (comprising solely the technical directors) sought by the union.[16]

## C. Bars to an Election

### Contract Bar

In *DePaul Adult Care Communities*,[17] the Board held that there was no contract bar to the petition as the collective-bargaining agreement between the union and the employer was not signed prior to the filing of the petition.

In *DePaul,* the employer and the union had been parties to a collective-bargaining agreement, which, by its terms, was effective from September 27, 1996, through December 31, 1997. After the union notified the employer of its desire to reopen negotiations for a new agreement the parties had contractual discussions via telephone during the fall and winter of 1997. The union memorialized the employer's final contract offer in a letter dated January 6, 1998, which was faxed to the employer's vice president on that same date. The letter indicated that the union intended to present the employer's offer to its members on January 7, 1998, and, in the event of the members' approval, the union would be requesting a brief negotiating meeting to formalize its acceptance of the employer's offer. The union's members ratified the employer's offer on January 7, 1998, which was communicated to the employer on January 14 or 15, along with the message that the union was "all set." Both parties agreed that as of then, all of the issues had been resolved and there were none left to be negotiated. By letter dated January 28, 1998, the employer proposed a February 4, 1998 meeting date. On January 22, the union faxed to the employer's attorney draft language for the contract articles that were to be changed to reflect the employer's offer. The employer never signed any document containing the contractual revisions, nor did the parties ever meet to formalize or sign an agreement. The petition was filed on January 22, 1998.

It is well established that to constitute a bar to an election, an agreement containing substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship must be signed

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[16] Chairman Gould cited *Clothing & Textile Workers*, 210 NLRB 928 (1974), and his concurring and dissenting opinions in *Legal Aid Society of Alameda County*, 324 NLRB 796, and *Rite Aid Corp.*, 325 NLRB No 134.

[17] 325 NLRB No. 132

by the parties prior to the filing of the petition.[18] In *DePaul,* the Board found that the agreement between the union and the employer did not meet the formal requirement sufficient to establish it as a bar to the petition. Although it was clear that the parties orally resolved all outstanding issues as of January 15, 1998, the employer failed to sign either of the proposed revisions, or reduce to writing or sign any of its contract proposals. The Board has made clear that unsigned contracts would not bar a petition, although the parties considered the contract properly concluded and even put into effect some or all of its provisions.[19] The Board found the argument set forth in *Auciello Iron Works,*[20] relied on by the union, to be unpersuasive. Although the moment of contract formation may determine when an employer may, absent unfair labor practices, raise a good-faith doubt as to a union's majority status, absent the employer's signature on the contract, or some document referring hereto, an unsigned collective-bargaining agreement is insufficient to act as a bar.

## D. Election Objections

In *Hale Nani Rehabilitation & Nursing Center,*[21] a Board majority held that the employer did not engage in objectionable conduct when its supervisors handed out flyers to employees in work areas at a time when the employer was enforcing its otherwise valid no-distribution rule against employees.

The employer's no-distribution rule stated in pertinent part:

> Employees are not permitted to distribute advertising material, handbills, printed or written literature of any kind at all times in immediate patient care areas or any other work areas of the facility.

Contrary to the hearing officer, the Board majority found this rule to be presumptively valid. The Board majority also concluded that the employer did not engage in objectionable conduct when its supervisors handed out flyers in the timeclock areas and in the dietary, housekeeping, and laundry departments. The reasons for reaching this result were set forth in separate opinions.

Members Fox and Liebman, concurring, held that "there may be circumstances where the enforcement of a no-solicitation or no-distribution rule by an employer who is at the same time engaging in antiunion solicitation creates such an imbalance in opportunities for

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[18] *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

[19] Id. at 1162

[20] 303 NLRB 562 (1991), remanded *NLRB v. Auciello Iron Works,* 980 F 2d 804 (1st Cir. 1992), supp. op 317 NLRB 364 (1995), enfd 60 F.3d 24 (1st Cir. 1995), affd. 517 U.S. 781 (1996).

[21] 326 NLRB No 37 (Chairman Gould and Members Fox, Liebman, Hurtgen, and Brame)

communication about unionization that enforcement of the rule is either objectionable or unlawful." They interpreted *NLRB v. Steelworkers (Nutone)*,[22] as requiring a case-by-case analysis of whether the rules "truly diminished the ability of the labor organizations involved to carry their messages to the employees." Thus, the presence or absence of alternative channels available to unions to communicate with employees would be relevant to such a determination, as would evidence of whether the employees, or the union on their behalf, had asked the employer to make an exception to allow prounion solicitation. Members Fox and Liebman analyzed the facts in light of the factors the *Nutone* court deemed to be relevant and found that the employer's maintenance of its no-distribution rule was not objectionable. No attempt had been made to show that the inability of union supporters to distribute literature in the areas the employer's supervisors were allowed to distribute significantly diminished the ability of the union to get its message to employees, or that the employer's enforcement of its rule to any considerable degree created an imbalance in the relative abilities of the union and the employer to communicate with the employees. Further, there was no evidence that any exception was requested.

In his concurrence, Member Hurtgen stated that "for almost 40 years, the law has been that an employer's valid rule against *employee* distribution is not rendered unlawful simply because the *employer* chooses to use its own premises to engage in its own distribution" and he would not reverse this precedent. Member Hurtgen noted that no party sought departure from this precedent, and there has been no "showing that extant precedent is manifestly unjust." Member Hurtgen found "no necessity for proscribing the employer from using its own property to express its own views about unionization" and "no basis for the Government to proscribe employer free speech on employer private property." Member Hurtgen found nothing under NLRA law requiring that rules for employees must be the same as rules for employer agents. Member Hurtgen stated that "an employer does not forfeit its right to prohibit employee distribution in working areas simply because the employer exercises its right to engage in free speech on its own property." Member Hurtgen further disagreed with the suggestion of Members Fox and Liebman that the case turns on the extent to which there is an imbalance in the relative abilities of the union and the employer to communicate with the employees. Member Hurtgen stated that the law requires only reasonable opportunities to communicate, rather than equality of opportunity.

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[22] 357 U.S. 357 (1958)

Member Brame, concurring in the result, stated that the position of the dissent "threatens not only constitutionally protected speech, but also employer property rights, along with the concomitant management prerogative to maintain production, order, and discipline. Under the dissent's view, employers must finance union organizational activities by surrendering their employees' working time for prounion solicitation and distribution or forego any representation election campaign of their own." Member Brame also noted that Members Fox and Liebman "would also upset long recognized employer free speech and property rights, and expose every noncoercive employer election campaign to uncertainty and litigation." Member Brame would apply a two-pronged test that must be satisfied before an employer's enforcement of valid no-distribution rules against employees would be found unlawful under *Nutone*. First, a request must be made for an exception to the rule, and second, there must be a showing that the employees cannot be reached through traditional channels of communication. Member Brame further found that "[l]abor organizations do not generally lack a wide range of avenues with which to carry their message to employees. If unions today are having more difficulty organizing than in the past, something other than the methods of communication may be to blame. The answer, however, is not to disrupt four decades of relative stability and certainty, and to require that employers subsidize union campaigns at the cost of presenting their side of the story to their own workers on company time and premises."

In dissent, Chairman Gould found that the employer's disparate enforcement of its no-distribution rule constituted objectionable conduct in view of the supervisors' distribution of antiunion literature. Chairman Gould stated that the majority conclusion that there was no objectionable conduct "is inconsistent with basic principles of democracy in our political system and in the workplace." The majority "allows employers to apply a standard for themselves which is contrary to that existing for all others and thus places employers above the law." Chairman Gould stated that the *Nutone* court "in no uncertain terms indicated that in the proper circumstances, an employer could be found to have engaged in unlawful conduct by enforcing an otherwise valid no-distribution rule while at the same time engaging in antiunion distribution of its own." (Footnote omitted.) Applying the principles set forth in *Nutone*, Chairman Gould found "actualities" providing a basis for finding that the employer's enforcement of its no-distribution rule is objectionable. The employees understood that any request to distribute union materials would have been futile. Further, the employer's "broad prohibition against 'talking' about union activity on company facilities burdens

employee communication rights." Chairman Gould stated that to the extent that prior Board cases have held it not unlawful for an employer to distribute literature to employees in the face of a no-distribution rule, he disagrees with that precedent and would overrule it.

In *Midwest Canvas Corp.*,[23] the Board majority did not sustain the recommendation to set aside an election, but found that a hearing was warranted to determine whether the number of eligible voters possibly excluded from voting as a result of the late opening of the polls proved determinative of the election results. Relying on *Jobbers Meat Packing Co.*,[24] the Board majority noted that the Board "does not set aside an election based solely on the fact that the Board agent conducting the election arrived at the polling place later than scheduled, thereby causing the election to be delayed."[25] Instead, the Board has set aside elections where, inter alia, "the votes of those possibly excluded could have been determinative."[26]

The Regional Director recommended that the October 3, 1997 election be set aside on the basis that the late opening of the polls (20 minutes after the scheduled time) deviated from the election procedure and made it impossible to determine whether the election's late start affected the election results. Based on the evidence, the Board majority remanded this case to receive evidence concerning the eligibility status of the employees the petitioner alleged were terminated or quit, and whether the number of eligible employees possibly excluded from voting as a result of the polls' late opening proved determinative of the election results.[27] The Board majority noted that even though the polls should have opened at the scheduled time, if the number of possibly disenfranchised employees would not be determinative of the election results, there would be no reason to set aside the election. On the other hand, if the number of possibly disenfranchised employees is sufficient to affect the election results, the election should be set aside and a new election held.

The Board majority found that its approach followed Board precedent. In *Nyack Hospital*,[28] the Board adopted the Regional Director's finding that the number of voters possibly disenfranchised by

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[23] 326 NLRB No 12 (Chairman Gould and Member Liebman, Member Brame dissenting).
[24] 252 NLRB 41 (1980), and more recently in *Wolverine Dispatch, Inc*., 321 NLRB 796 (1996).
[25] Id.
[26] Id
[27] The petitioner alleged that at least 19 employees were terminated or quit between August 31, 1997, when the *Excelsior* list was created, and the day of the election, and that if there were only 141 eligible voters (rather than 160 eligible employees on the *Excelsior* list), the number of possibly disenfranchised voters would be insufficient to affect the election results
[28] 238 NLRB 257, 258–260 (1978).

the late opening of the polls was sufficient to have affected the outcome of the election. The Board majority noted that similar to its approach in this case the Regional Director in *Nyack Hospital* subtracted the number of employees who had been terminated or excluded from the unit prior to the election from the number of employees on the eligibility lists. Further, the Board majority noted that in *Jim Kraut Chevrolet,*[29] the Board did not set aside the election, although the polls opened late, because there was no evidence that any employee was disenfranchised and the number of valid votes counted plus the challenged ballot equaled the approximate number of eligible voters.

In dissent, Member Brame would have set aside the election based on the late opening of the polls and the possible disenfranchisement of the voters. Member Brame noted that where it is frequently impossible to determine the impact on employees of the late opening of the polls and where doubts have been cast on the election results, the election should be set aside even where the votes of possibly disenfranchised eligible employees could not have been determinative. Member Brame concluded that the Board majority's approach was "mathematical" and "mechanical" and an unnecessary expenditure of the Board's limited resources.

## E. Voter Eligibility

In *Air Liquide America Corp.,*[30] the Board overruled the challenge to the ballot of Edward R. Bumanglag Jr. Bumanglag was allegedly on a leave of absence for union business at the time of the election. In finding that Bumanglag was eligible to vote, the Board majority applied the test set forth in *Red Arrow Freight Lines,*[31] under which an employee is presumed to continue in sick or maternity leave status unless the presumption is rebutted by an affirmative showing that the employee has resigned or been discharged. The Board majority found that the *Red Arrow* test applies by analogy to other types of leaves of absence, including leaves of absence for union business.

Applying the *Red Arrow* test, the Board majority found, in agreement with the hearing officer, that there was no evidence that Bumanglag quit his employment or that the employer communicated to him—either formally or informally—that his employment had been terminated. The Board majority also found that a finding of constructive termination was not warranted because the surrounding circumstances failed to make clear that Bumanglag's employment had ended. Under *Red Arrow,*

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[29] 240 NLRB 460 (1979)
[30] 324 NLRB 661 (Chairman Gould and Members Fox and Higgins)
[31] 278 NLRB 965 (1986)

therefore, the Board majority concluded that the employer had not rebutted the presumption of continued employee status, and that Bumanglag was an eligible voter.

Member Higgins agreed with this result, but he did not agree with *Red Arrow*. In his view, the appropriate test is whether the employee has a "reasonable expectancy" of continued employment. Member Higgins found that the evidence supported a finding that Bumanglag lacked a reasonable expectancy of continued employment.

The Board also applied the test set forth in *Berea Publishing Co.*,[32] and found, contrary to the hearing officer, that employee Vernon Abe was a dual function employee who performed unit work for a sufficient number of hours and that, despite his title change, he had a substantial interest in the unit's terms and conditions of employment. The Board accordingly found that Abe was an eligible voter.

## F. Mail Ballot Election

In *San Diego Gas & Electric*,[33] the Board set forth new guidelines for Regional Directors to utilize when deciding whether to conduct an election manually, by mail, or by a mixture of mail and manual ballots. The current NLRB Casehandling Manual advises that "the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election." It also states that "[p]articularly where long distances are involved, or where eligible voters are scattered because of their duties, the possibility [of conducting the election by mail, in whole or in part] should be explored."[34] In *San Diego Gas*, the Board majority revised these guidelines, as follows:

> When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, lockout, or picketing in progress. If any of these foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and

[32] 140 NLRB 516, 518–519 (1963)

[33] 325 NLRB No 218 (Chairman Gould and Members Fox and Liebman, Members Hurtgen and Brame dissenting)

[34] NLRB Casehandling Manual (Part Two), Representation Proceedings, § 11336.

understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern.

Chairman Gould, in concurrence, agreed with these guidelines, but went further and held that he "would not limit the use of a mail ballot to only these circumstances. I would find the use of mail ballots appropriate in all situations where the prevailing conditions are such that they are necessary to conserve Agency resources and/or enfranchise employees." Thus, Chairman Gould would find that mail balloting is appropriate where the efficient and economical use of Board resources is the only concern. The Board majority agreed that the Regional Director has the discretion, within the guidelines set forth by the Board, to decide whether to utilize mail or manual balloting, and thus the Regional Director's decision is not to be overturned unless the party who challenges the decision shows that the Regional Director abused that discretion. Finally, the Board held that the Casehandling Manual should be revised to reflect these more "flexible" guidelines, and in particular, the provision that states that mail balloting should only be utilized where the circumstances indicate the "infeasibility" of conducting the election manually, should be deleted.

In dissent, Members Hurtgen and Brame asserted that they would maintain the guidelines for mail ballot elections as they now exist in the Casehandling Manual. In their view, the Board has, until recently, properly applied those guidelines restrictively by conducting most mail ballot elections at the workplace, under the supervision of a Board agent. They stated:

> Although the Manual provisions do not have the binding force of law, they nonetheless reflect the Board's historical wisdom of favoring manual elections. That wisdom has its roots in the fundamental purpose of the Act—to provide for workplace democracy in which employees can select or reject a union as bargaining representative. At bottom, our difference with our colleagues is that we believe that manual elections, as compared to mail ballot elections, are far more likely to achieve that goal. We would therefore generally restrict mail ballot elections to those limited situations mentioned in the Manual.

Although Members Hurtgen and Brame agreed that the Regional Director has discretion in deciding whether to conduct an election by mail ballot, they did not agree that the party who is appealing the Regional Director's decision always must show an abuse of that discretion:

> [A]s our colleagues recognize, "that discretion is to be exercised within certain guidelines." In sum, if the Regional Director is acting within those guidelines, he has discretion to order a mail or manual ballot, and the appealing party must show an abuse of discretion. But, as to the issue of *whether* the Regional Director has acted within the guidelines, we believe that the burden of proof is on the party who wishes to depart from the norm of a manual ballot.

The Board majority found that the Acting Regional Director, applying either the revised guidelines or the guidelines as set forth in the current Casehandling Manual, did not abuse his discretion by holding the election by mail ballot, where the employees were "scattered" over eight different locations, which were as much as 80 miles apart. Members Hurtgen and Brame disagreed, on the grounds that, under the current Casehandling Manual, a manual election would not have been "infeasible," since a single Board agent could have conducted the election by traveling to all eight locations and back to the San Diego office of the Board in a single day.

# 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 1998 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's Property

The issue in *Nicks'*,[1] was whether the respondent could lawfully eject nonemployee union organizers from the snack bar inside its grocery store.[2] The Board's long-held special position on this issue was that nonemployee organizers were entitled to solicit in an employer's public food service establishment located on its premises, so long as the organizers conducted themselves in a manner consistent with the facility's intended use and were not disruptive. See *Montgomery Ward & Co.*, and cases cited therein.[3]

In *Nicks'*, a Board majority consisting of Members Hurtgen and Brame and Chairman Gould concurring, concluded that the holding in *Montgomery Ward* has effectively been overruled by *Lechmere v. NLRB.*[4] They agreed with the Sixth Circuit in *Oakwood Hospital v. NLRB,*[5] that "[i]f the owner of an outdoor parking lot can bar nonemployee union organizers [as in *Lechmere*], it follows *a fortiori* that the owner of an indoor cafeteria can do so."

The majority held that the same rules in *Lechmere* governing access to outside property applied equally to an employer's in-store public facility. Those rules preclude access unless an employer's property is generally inaccessible (e.g., mining camps, oil rigs, etc.) or an employer's access policy discriminates against the union.

Neither exception was established in *Nicks'*. With respect to the discrimination exception, the majority noted that there was no evidence that the respondent refused the union access to the snack bar while allowing nonunion groups to solicit there.

In his concurrence, Chairman Gould reiterated the view which he expressed in *Leslie Homes, Inc.*,[6] that "*Lechmere* is bad law and contrary to basic policies of the National Labor Relations Act which support not only the collective-bargaining process itself but also the ability of employees to learn the strengths and weaknesses of union representation, and an ability to learn from unions as well as employers." Nevertheless, the Chairman reluctantly concluded that *Lechmere* resolves the snack bar access issue in *Nicks'* and that, although "*Lechmere* did not reverse

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[1] 326 NLRB No. 81 (Members Hurtgen and Brame, Chairman Gould concurring; Members Fox and Liebman concurring in part and dissenting in part).

[2] A secondary issue in *Nicks'* was whether the respondent possessed a sufficient property interest in sidewalks outside several of its stores authorizing it to lawfully exclude the organizers. The Board unanimously held that in deciding that issue, the Board must consult state property law.

[3] 288 NLRB 126 (1988).

[4] 502 U.S. 527 (1992).

[5] 983 F.2d 698 (1993)

[6] 316 NLRB 123 (1995)

*Montgomery Ward* . . . the tenor of the Court's opinion and its logic reverse that holding."

In a concurring and dissenting opinion, Members Fox and Liebman agreed that it was not unlawful to eject the organizers from the snack bar. The basis for their conclusion, however, was not that *Montgomery Ward* was overruled by *Lechmere*. To the contrary, they opined that *Lechmere* did not affect *Montgomery Ward* and that its holding remains valid. They concluded that because the organizers had unlawfully trespassed on the respondent's property 2 weeks prior to their ejection from the snack bar, and because trespass warrants were still pending against them, the respondent was justified in removing them.

In *Gayfers Department Store*,[7] the Board held that the same test that governs the access rights of employees of a subcontractor who distributes handbills at their workplace to customers of a property owner who is not their employer is the same test that applies to solicitation by employees of their own employer.

In *Gayfers*, employees of an electrical subcontractor that an IBEW local was seeking to organize and who performed work in part of a shopping mall where a Gayfers Department Store was situated distributed handbills to Gayfers' customers at the private entrances to the store. The handbills told customers that Gayfers was using an electrical subcontractor who paid its employees less than wages established for area electricians by the union. The employer told the organizers to discontinue their handbilling and then caused the police to threaten their arrest. The union filed 8(a)(1) charges.

The majority rejected the contentions of the General Counsel and the employer that standards governing the access rights of nonemployees applied to the electrical subcontractor employees. The majority found that the subcontractor employees reported only to the Gayfers Department Store and that they performed work there pursuant to the employee relationship. They were, therefore, the majority held, not "strangers to the [employer's] property, but rightfully on it pursuant to the employment relationship." Their right to engage in conduct protected by Section 7, the majority concluded, is governed by the standard established by the Supreme Court's decision in *Republic Aviation Corp. v. NLRB*.[8] Under that standard, an employer may not bar the distribution of union literature in nonworking areas during nonworking time unless it can justify its rule as necessary to maintain discipline and production.

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[7] 324 NLRB 1246 (Chairman Gould and Member Fox, Member Higgins dissenting in part).
[8] 324 U.S 793 (1945).

Member Higgins dissented, rejecting the application of *Republic Aviation*[9] to this case. According to Member Higgins, the substance of the handbillers' message is relevant in balancing Section 7 rights and the employer's property rights: asking for a consumer boycott of an employer because of standards maintained by the employer's contractor is not on a par with the Section 7 right to organize fellow employees.

In *Price Chopper*,[10] a majority of the Board held that an employer violated Section 8(a)(1) of the Act by refusing to allow nonemployee union organizers to contact employees on the employer's property when it had allowed numerous other nonemployee organizations to solicit on the property, even if the nonunion organizations had solicited the employer's customers and not its employees.

The employer operates grocery stores in the Kansas City area. It has a written no-solicitation and no-distribution policy which prohibits solicitation of employees by employees during working time; solicitation and distribution of literature by nonemployees in customer service areas, working areas, and areas restricted to employees; and solicitation and distribution of literature by anyone in customer service areas or shopping areas during business hours. In addition, "no solicitation" signs were posted at the Roeland Park, Kansas and Grandview, Missouri stores, where the union was attempting to organize. However, the employer had allowed the Salvation Army and the Shriners to solicit extensively at both the Roeland Park and Grandview stores. In addition, a community group had been allowed to sell tickets for a pancake supper at the Roeland Park store on one occasion, and the Cub Scouts were allowed to sell mugs or cups at the Grandview store on one occasion.

Union organizers attempted to distribute literature to employees inside both stores but were promptly ejected by the store managers. At Roeland Park, the organizers then attempted to solicit and distribute literature outside the store, but were told by the store manager that they would have to leave and go to the outside of the parking lot. At Grandview, the organizers came back to the store several weeks after being ejected and told the store manager that they were there to talk to employees in front of the store and in the parking lot as they were going to and from work or on breaks. The manager replied that they could not talk to employees on company property, and that if they attempted to do so he would call the police and have them removed.

The administrative law judge found that the employer had not unlawfully discriminated against the union organizers by prohibiting them from contacting its off-duty employees on the sidewalks and in the

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[9] Id

[10] 325 NLRB No 20 (Chairman Gould and Member Fox; Members Higgins dissenting)

parking lots in front of the two stores.[11] He found that, even though the employer had allowed other outside organizations to solicit on company property, those groups had solicited the employer's customers, not its employees. The judge therefore found no disparity in treatment of the organizers and recommended that the complaint be dismissed.

The majority found, contrary to the judge, that the record did not establish that the nonunion outside organizations had solicited only the employer's customers. In fact, the majority found that most of those solicitations were of the type directed to all passers-by, and took place at the store entrances where employees normally would be expected to enter and leave the stores. Thus, the majority found that the employer had allowed nonunion groups to contact its off-duty employees outside the stores, and that it violated Section 8(a)(1) by denying the union organizers the same privilege.[12]

But, even if the nonunion solicitations had been directed solely at customers, the majority found the employer still had unlawfully discriminated against the union organizers by denying them access to off-duty employees in the parking lots and on the sidewalks. In those circumstances, the majority found no material distinction between off-duty employees and customers. Accordingly, by allowing nonunion organizations to contact customers on its property, but prohibiting union organizers from contacting employees, the employer had effectively discriminated against union solicitation on the basis of its content, in violation of Section 8(a)(1). In arriving at that conclusion, the majority found no significance in the fact that the employer had previously refused to allow nonunion organizations to contact on-duty employees in work areas, because such contacts would have violated the employer's written no-solicitation/no-distribution policy. By contrast, the union's attempted solicitation of off-duty employees outside the stores would not have violated the written policy, and the employer did not contend that it had ever prevented nonunion organizations from soliciting employees in those circumstances.

In dissent, Member Higgins found that the General Counsel had failed to demonstrate that the employer had, in fact, allowed nonunion organizations to solicit its employees. He therefore agreed with the judge that the evidence established only that the employer had allowed those organizations to solicit its customers. As there was no evidence that unions had been forbidden to solicit customers, Member Higgins

[11] The complaint did not allege that the organizers were denied access to employees inside the stores

[12] See *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956).

found that the General Counsel had failed to show any discrimination along Section 7 lines,[13] and he would have dismissed the complaint.

### 2. Unacceptable Conduct Rules

In *Lafayette Park Hotel*,[14] a majority of the Board found that the respondent did not violate Section 8(a)(1) of the Act by maintaining five "unacceptable conduct" rules[15] in its employee handbook, absent any contention that the rules were initiated in response to any union and/or protected concerted activity or that any employee had been disciplined under the rules for engaging in union and/or protected concerted activity. A different majority of the Board found that the maintenance of standard of conduct rule 18 violated Section 8(a)(1). The Board unanimously found that the respondent violated Section 8(a)(1) by maintaining scheduling and attendance rule, paragraph 4 in its employee handbook.

Chairman Gould and Members Hurtgen and Brame found that the maintenance of standards of conduct 6, 7, and 31 and rules 6 and 7[16] did not violate Section 8(a)(1). They found that the mere maintenance of the rules "would not reasonably tend to chill employees in the exercise of their Section 7 rights." The majority overruled *Cincinnati Suburban Press*[17] to the extent that it "can be read as tantamount to a finding that the rule in question is unlawful even in the absence of the activity with which it was viewed in context."

Members Fox and Liebman dissented, finding that their colleagues applied the appropriate standard "in such a way as to enable employers lawfully to maintain rules that have the likely effect of chilling Section 7 activity." They found that all the rules are "overly broad and equally ambiguous as to their reach. . . . As a result, each has a reasonable tendency to cause employees to refrain from engaging in protected activities."

Chairman Gould, further concurring, stated that the analysis in the dissent by Members Fox and Liebman failed "to appreciate the importance of civility and good manners for all people, including

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[13] See, e g , *Guardian Industries v. NLRB*, 49 F.3d 317 (7th Cir. 1995), *Riesbeck Food Markets v NLRB*, 91 F 3d 132 (4th Cir 1996).

[14] 326 NLRB No. 69 (Member Brame, Chairman Gould concurring; Members Fox and Liebman dissenting in part, Member Hurtgen concurring in part and dissenting part).

[15] Standards of conduct 6, 7, and 31 and rules 6 and 7.

[16] In brief, these rules prohibit, inter alia, the following kinds of employee activity "conduct that does not support [the Hotel's] goals and objectives", "divulging Hotel-private information" to unauthorized individuals, "unlawful or improper conduct off the Hotel's premises or during nonworking hours"; use of the restaurant or lounge for entertaining guests without prior approval; and fraternizing with hotel guests on hotel property.

[17] 289 NLRB 966 (1988).

employees." Chairman Gould noted that "these are rules for life, not for Section 7 conduct."

Chairman Gould and Members Fox and Liebman found that the maintenance of standard of conduct 18[18] violated Section 8(a)(1). They relied on Board precedent[19] which invalidated similar provisions. Members Hurtgen and Brame dissented. Member Hurtgen noted "that there are no unfair labor practices of a kind which would cause a reasonable employee to believe that standard 18 would be unlawfully construed and applied." Member Brame stated (at fn. 15) that "employees reasonably would recognize that the rule . . . is directed at a legitimate employer interest and not Sec. 7 activity." Member Brame would overrule the cases relied on by the majority to the extent that they hold that the mere maintenance of a rule prohibiting the making of false statements violates Section 8(a)(1).

All five Members of the Board found the maintenance of scheduling and attendance rule, paragraph 4[20] violated Section 8(a)(1). The Board found that because the rule did not meet the requirements set forth in *Tri-County Medical Center*,[21] the maintenance of the rule would reasonably tend to chill employees in the exercise of their Section 7 rights.

### 3. Concerted Nature of Employee Activity

In *Pikes Peak Pain Program*,[22] a Board majority (Members Fox, Liebman, and Brame) adopted without comment the administrative law judge's finding that the respondent did not violate Section 8(a)(1) of the Act by warning charging party McKeon on February 2, 1996, by reducing her hours on February 21, and by discharging her on March 7 because of her alleged protected concerted activities. Member Hurtgen filed a concurring opinion and Chairman Gould filed a dissent.

The respondent, a clinic in Colorado Springs, Colorado, added a short-term/long-term employee disability plan (the Plan) in September 1995 as a new employee benefit. Uncertain of whether the employees bore the cost of the Plan, charging party McKeon and other employees contacted the respondent's insurance provider on January 18, 1996, to clarify this issue. Subsequently, at a January 23 staff meeting, McKeon repeatedly, but without success, asked for discussion of the Plan.

On February 2, the respondent's officials met with McKeon to discuss her leaving the facility without notifying the receptionist where she was

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[18] This rule prohibits making "false" statements concerning the hotel or its employees.

[19] E.g., *Cincinnati Suburban Press*, supra at 975

[20] This rule prohibits remaining on the premises after the completion of the employee's shift.

[21] 222 NLRB 1089 (1976).

[22] 326 NLRB No 28 (Members Fox, Liebman, and Brame; Member Hurtgen concurring, Chairman Gould dissenting)

going and for how long. The respondent warned McKeon that if her behavior continued she would be changed from a salaried or full-time employee to an hourly employee.

On February 7, McKeon received her paycheck for the payroll period ending January 29. It indicated that she had worked 4 hours fewer than normal. In response to McKeon's request for clarification, the respondent explained that McKeon had been absent for an entire day (8 hours), but had only been docked 4 hours of pay because she had worked 4 hours on a Sunday. On February 20, McKeon filed a state wage claim with the Colorado Department of Labor (CDOL) against the respondent respecting the 4 hours of docked pay. On February 21, a CDOL official contacted the respondent regarding McKeon's wage claim. Later on February 21, the respondent's officials met with McKeon and informed her that her hours would be reduced from 8 to 3 hours a day. On March 7, the respondent's officials met with McKeon to discuss various "incidents." As a result of the meeting, the respondent terminated McKeon.

Although the judge found that McKeon's actions on January 18 and 23 constituted protected concerted activity, he found that her filing of the charge with CDOL did not constitute protected concerted activity. In this regard, the judge rejected the General Counsel's request that he apply the theory of constructive concerted activity set out in *Alleluia Cushion Co.*,[23] overruled in *Meyers Industries* (*Meyers I*).[24] Noting that many of the nonsupervisory employees of the respondent were salaried, the judge stated that if the *Alleluia Cushion* doctrine of constructive concerted activity were current law, it would "clearly apply to the actions of McKeon's [sic] in contacting the Colorado State Department of Labor respecting a claim based on an employer's actions in docking a salaried employee's wages." The judge, however, rejected the General Counsel's request, in effect, that he overrule *Meyers* and return to the *Alleluia* standard for concerted activity. Explaining that *Meyers* "squarely holds that individual actions such as those of McKeon in dealing with the Colorado State Department of Labor are not concerted activities and therefore are not protected under the Act," the judge found that McKeon's filing of the wage claim with CDOL was not concerted activity and therefore was not protected under the Act.

Finally, the judge found that although McKeon's actions of January 18 and 23 constituted protected concerted activity, he also found that the

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[23] 221 NLRB 999 (1975).

[24] 268 NLRB 493 (1984), remanded sub nom. *Prill v. NLRB (Prill I)*, 755 F.2d 941 (D.C. Cir. 1985), *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom. *Prill v. NLRB (Prill II)*, 835 F 2d 1481 (D C Cir 1987), cert. denied mem *Meyers Industries*, 487 U.S 1205 (1988).

respondent had carried its burden under *Wright Line*,[25] of showing that it would have taken the same actions against McKeon even if she had not engaged in such activity. Accordingly, the judge found that the respondent had not violated Section 8(a)(1) as alleged and dismissed the complaint.

In concurrence, Member Hurtgen, noting that *Meyers* "[had] been on the books for 14 years, and no court [had] overturned it," stated that "[i]n the interests of stability and predictability, [he saw] no warrant for upsetting precedent, absent a compelling need to do so." Member Hurtgen also observed that "to the extent that individual employees have been discharged in reprisal for their resort to state or Federal agencies, it would appear that *those agencies themselves* would have the primary responsibility for protecting access to their own processes." (Emphasis in original.) Thus, absent a showing that a significant number of agencies do not afford such protection, Member Hurtgen saw no need for Federal (NLRB) intrusion in this area.

In dissent, Chairman Gould stated that he would abandon the "restrictive interpretation of concerted activity adopted by the Board in *Meyers Industries*" and return to the theory of concerted activity set forth in *Alleluia Cushion* because "[t]he concept of implied concerted activity in *Alleluia* expands the reach of Section 7 of the Act to individual action that asserts a collective right and requires the Board to accommodate other labor laws by protecting individual employees who assert rights created for all employees by workplace-related statutes." By contrast, Chairman Gould found that the *Meyers* theory of concerted activity "restricts the reach of Section 7 to employee action which has a direct link to actual group action and confines the Board's role to that of a highly technical arbiter of the statute it administers."

## B. Employer Discrimination Against Employees

In *Silver State Disposal Service*,[26] a majority of the Board held that the employer violated Section 8(a)(3) by terminating employees for engaging in a wildcat strike to protest the termination of a coworker. The Board rejected the employer's contention that the walkout was unprotected because it sought to compel the employer to bargain directly with employees, instead of through the union. The Board also rejected the employer's contention that the strike was unprotected because it violated a contractual no-strike clause. In light of this finding, the

[25] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir 1981), cert denied 455 U.S. 989 (1982)

[26] 326 NLRB No. 25 (Members Fox, Liebman, and Brame; Chairman Gould concurring; Member Hurtgen dissenting).

majority did not pass on whether the conduct had been condoned by the employer.

Beginning in 1993, some of the employer's employees formed a committee as a means of expressing their dissatisfaction with their treatment by the employer and their representation by the union. Shortly thereafter, the employer terminated the committee's president, Albert Crockett, for taking an item left out for removal as garbage. The union immediately filed a grievance seeking Crockett's reinstatement. A few days later, Crockett arrived at the employer's premises to pick up his paycheck. Employees began congregating around him to discuss his termination and then-pending grievance. Despite several pleas from the employer's supervisors, the employees failed to report for work at the usual time. Shortly thereafter, the employees attempted to report for work, in response to another plea from a supervisor, but were turned away and later told they had been terminated for violating the no-strike clause of the collective-bargaining agreement, which provided that "[t]he Union shall neither call, encourage nor condone any work stoppage, work slowdown, or picketing of the Employer's several premises or its trucks."

The Board found that the employees' January 5 work stoppage was protected activity. Citing *Emporium Capwell Co. v. Western Addition Community Organization,*[27] the employer claimed that the work stoppage was an unprotected attempt by the employees to bargain directly with the employer. A majority of the Board rejected this position because the work stoppage was unrelated to the employees' prior expressions of dissatisfaction and was instead an attempt to pressure the employer to reinstate Crockett, a goal consistent with the union's position.

The Board also rejected the employer's claim that the work stoppage was unprotected because it violated the contractual no-strike clause. The Board stated that a contractual waiver of the right to strike must be "clear and unmistakable," and that an employer seeking to rely on a contractual no-strike clause to justify the termination of employees for engaging in a work stoppage has the burden of showing that the no-strike clause is applicable. While emphasizing that this standard does not call for "more elaborate evidentiary support than simply placing an objective construction on a contract," and that words must be given their "ordinary and reasonable meaning," the Board concluded that the clause applied to actions on the part of the union and thus was not applicable to the employees' unauthorized, wildcat strike.

The majority also rejected the position that the strike was unprotected because it concerned a matter that was subject to binding grievance

[27] 420 U.S 50 (1975).

arbitration. While agreeing that a no-strike obligation normally will be implied from a grievance arbitration clause under *Teamsters Local 174 v. Lucas Flour Co.*,[28] the majority stated that this principle is inapplicable where, as in this case, the parties have negotiated an express no-strike clause.

Chairman Gould, concurring, would have overruled precedent to find that a work stoppage is unprotected under *Emporium Capwell* unless "there is some consistency or accord between the union and the strikers on the question of strategy and timing" as well as the ultimate goal. Because he found that the employer had condoned the work stoppage by its supervisor's final appeal to the employees to return to work, however, the Chairman agreed that these considerations were unnecessary to the disposition of the case.

Member Hurtgen, dissenting, concluded that the issue of whether the no-strike clause applied to unauthorized work stoppages was not before the Board because it had not been litigated before the administrative law judge. Member Hurtgen also stated that "there is at least an issue" whether the *Lucas Flour* implied no-strike obligation would apply even in the presence of an express no-strike clause. Finally, Member Hurtgen stated that he would not find condonation established by the equivocal words of a low level supervisor in the heat of the moment.

## C. Employer Bargaining Obligation

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

### 1. Continuing Bargaining Obligation

In *Waymouth Farms*,[29] the Board held that the respondent refused to bargain in good faith in violation of Section 8(a)(5) and (1) the Act by misrepresenting to the union its intentions regarding relocation of the respondent's facility.

The parties' collective-bargaining agreement provided that the respondent recognizes the union as the bargaining representative of the unit employees "in its Plymouth, Minnesota, plant, and at no other geographical locations." The respondent moved its facility to New Hope, Minnesota, and declared the collective-bargaining agreement void

[28] 369 U.S 95 (1962).
[29] 324 NLRB 960 (Chairman Gould and Members Fox and Higgins)

and ceased recognition when the relocation occurred. The new facility is located only 6 miles away from the old location. While the respondent notified the union of its intention to relocate, it represented that it was uncertain of the site of the new location, and emphasized that it was considering locations outside the State of Minnesota. While the respondent was making these representations to the union, the respondent in fact was taking steps to purchase the new facility just 6 miles' distant from the old location. The parties negotiated a plant closure agreement granting different severance benefits depending on whether the respondent relocated more than, or less than, 20 miles from the Plymouth facility.

The Board affirmed the finding of the administrative law judge that the respondent misrepresented to the union its intentions and plans regarding plant relocation while engaged in negotiations with the union for a plant closure agreement, that the agreement had thus been obtained via the respondent's bad-faith bargaining, and must therefore be set aside.

The Board ordered that appropriate remedial relief must include that the respondent recognize and bargain with the union as the representative of the unit employees at the new location. The Board refused to honor the parties' contractual geographic limitation clause because the respondent unlawfully misled the union about its relocation plans. The Board declared "that the Respondent is precluded from enforcing the waiver as a shield against its bargaining obligation."[30] The Board explained that the effect of the respondent's unlawful misrepresentations was to preclude the union from timely commencing organizing the employees at the new location. The Board concluded that the respondent's deception thus breached the essence of the arrangement agreed to by the parties' union waiver of the employees' right to continued representation at the new location, and that the respondent would fulfill its duty to bargain in good faith, including dealing truthfully with the union over the critical issue of when and where the relocation would occur.

### 2. Implementation on Bargaining Impasse

In *Telescope Casual Furniture*,[31] a panel majority of the Board affirmed the administrative law judge's finding that the respondent did not violate Section 8(a)(5) and (1) of the Act by implementing its alternative bargaining position on October 18, 1994, following the

[30] Id , slip op at 4

[31] 326 NLRB No. 60 (Member Hurtgen, Chairman Gould concurring, Member Liebman dissenting).

union's rejection of the respondent's final contract offer on September 16.

The respondent, in addition to its final contract offer, also presented the union with its alternative position, which it said it would implement in order to run its operation if its final offer were rejected. The alternative position's terms were less favorable to the union than the final offer's terms. During negotiations, the union objected to this tactic and stated that it would not negotiate on the alternative position. At the September 16 meeting when the union membership rejected the final contract offer, the union's bargaining committee advised the membership that no action was required on the respondent's alternative proposal because it was worse than the final offer. A strike began that day and continued until February 16, 1995. The parties continued to meet. The respondent offered changes to its alternative proposal and also indicated its willingness to put the final offer back on the table.

On September 26, the parties agreed that they were at impasse over the respondent's final offer, and the respondent said that the alternative proposal was the offer on the table. The union did not seek discussion of the terms of the alternative proposal. In a letter to the union dated October 3, the respondent stated its intent to implement part of its alternative proposal, and said that it would begin using replacements as of October 17. At an October 9 union meeting, the membership voted not to return to work under the alternative proposal. On October 18, the respondent resumed production with replacement workers and some returning employees, under the terms of the alternative proposal.

The judge found lawful the respondent's implementation of its alternative proposal, since its provisions, although harsher than those of the final proposal, had been proposed or discussed during the negotiations and were "reasonably comprehended," as provided in *Taft Broadcasting Co.*,[32] by the respondent's earlier proposals.

Member Hurtgen noted that regressive bargaining is not per se unlawful and that in the instant case the respondent used its alternative proposal not to avoid agreement, but rather to press the union to come to an agreement. He also noted that the respondent made the alternative proposal available to the union and offered to bargain about its contents and, indeed, offered to modify its terms in several respects to make it more acceptable to the union.

Chairman Gould, concurring, stated that "tough and sometimes distasteful tactics engaged in by employers and unions throughout the collective-bargaining process are frequently not unlawful under the

[32] 163 NLRB 475 (1967), enfd. sub nom. *Television Artists AFTRA v NLRB*, 395 F.2d 622 (D C Cir 1968).

National Labor Relations Act." He also noted that the alternative terms were announced well before their implementation, and that the parties had an adequate opportunity to bargain over either of the two offers, final or alternative. Concluding that the record evidence did not show that the respondent's tactics were designed to (or did) affect the existence of the union and the collective-bargaining process and the ability of the union to function effectively, Chairman Gould stated that he could find no violation and would therefore dismiss the complaint.

Member Liebman, dissenting, stated that the respondent implemented changes far more onerous than, and not reasonably encompassed by, its final offer. She also said that she did not believe that the respondent intended bargaining about its alternative position to occur. Rather, Member Liebman stated, the respondent's alternative position constituted not an offer to engage in bargaining, but a club to force the union to accept the terms of the respondent's final offer.

### 3. Successor Employer

In *Bronx Health Plan*,[33] the Board, reversing the administrative law judge, found that the respondent is a successor employer of Montefiore Hospital. Based on that finding, the Board concluded that the respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the union and by unilaterally setting different terms and conditions of employment for its unit employees.[34]

Respondent, prior to July 1, 1993, operated as a health care services insurance plan. After July 1, 1993, the respondent continued the same operations. The respondent remained in the same location, using the same name, offering the same services, and hired the same employees and supervisors to perform the same duties, with no hiatus in its operations. When the respondent began operations on July 1, 1993, the clerical employees it hired had all been bargaining unit employees at Montefiore. From the perspective of the respondent's employees, there is no difference in their job situation. Although, before July 1, 1993, the employees were considered to be employees of Montefiore, the entity for whom they worked held itself out as "The Bronx Health Plan" and as of July 1, 1993, and thereafter, the entity continued to hold itself out as "The Bronx Health Plan." Therefore, the Board found that there was substantial continuity between the employing enterprises.

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[33] 326 NLRB No. 68 (Chairman Gould and Member Liebman, Member Hurtgen dissenting in part).

[34] The Board unanimously agreed with the judge that the respondent and Montefiore are not joint employers of the unit employees

The criteria for determining whether a new employer is the successor to the prior employing entity was set forth by the Supreme Court in *NLRB v. Burns Security Services*,[35] and revisited in *Fall River Dyeing Corp. v. NLRB*.[36] In both cases, the Court instructed that a "substantial continuity" between the enterprises must exist to warrant a finding that the new employer is a successor. The Supreme Court, summarizing the factors relevant to determining when a substantial continuity exists, noted that the Board should analyze the facts primarily from the prospective of the employees.

In dissent, Member Hurtgen would affirm the judge's finding that the respondent is not a *Burns*[37] successor to Montefiore. Noting that the respondent only hired 16 employees from Montefiore, Member Hurtgen agreed with the judge that, given the extreme diminution of the respondent's unit and the fact that it was functionally distinct, it was unfair to presume that the Union had a continuing majority status among that small group of people. Citing *Mondovi Foods Corp.*,[38] Member Hurtgen stated that "the key inquiry is whether, as a result of transitional changes between the predecessor and the new employer, it reasonably may be presumed that the employees of the new employer desire the same union representation."

Member Hurtgen, relying on the facts that the character of the unit had changed and the nature of the employer had changed, noted that the following facts militated strongly against a finding of successorship:

> 1. Under Montefiore, the unit was a diverse one, with hundreds of classifications. Under the Respondent the unit is restricted to the narrow clerical category.
> 2. Under Montefiore, the unit had 3500 employees. Under the Respondent the unit has 16 employees.
> 3. The business of Montefiore was operating a large, complex hospital. The business of the Respondent is offering distinct HMO services to a different client base."

In agreement with the judge that the complaint should be dismissed, Member Hurtgen would find that the respondent was not a successor to Montefiore. Member Hurtgen, also, would let the employees decide for themselves whether they want union representation.

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[35] 406 U S 272 (1972)
[36] 482 U.S. 27 (1987).
[37] *NLRB v. Burns Security Services*, supra.
[38] 235 NLRB 1080, 1082 (1978).

### 4. Construction Industry Agreement

In *Oklahoma Installation Co.*,[39] the Board was presented with the question of whether the respondent, a construction industry employer, voluntarily recognized the union as the Section 9(a) representative of its employees by signing a "Recognition Agreement and Letter of Assent" binding it to an existing collective-bargaining agreement between the union and another employer. The letter of assent stated in relevant part that: "The Union has submitted, and the Employer is satisfied that the Union represents a majority of its employees in a unit that is appropriate for collective bargaining."

The judge found that the foregoing language "would certainly suggest that a 9(a) relationship existed between Respondent and Union." Nevertheless, he concluded that the union did not attain 9(a) status because it never established through authorization cards, an employee poll, or a majority-supported election petition that it, in fact, represented a majority of unit employees.

A panel majority, consisting of Chairman Gould and Member Fox, reversed. They noted that although the Board, under *Deklewa*,[40] presumes that bargaining relationships in the construction industry are governed by Section 8(f), they noted also that in *Deklewa* and subsequent cases the Board explained that a 9(a) relationship will be found if a union can show that it unequivocally demanded 9(a) recognition and that an employer unequivocally granted it. The majority concluded that the language of the letter of assent constituted "sufficient proof of the Union's unequivocal demand for recognition as a 9(a) bargaining representative and the Respondent's voluntary acceptance of the demand." By thereafter repudiating its obligation to recognize and bargain with the union as the 9(a) representative of its employees and refusing to adhere to the terms of the bargaining agreement after its expiration, the respondent was found to have violated Section 8(a)(5).

Contrary to the judge, the majority explained that neither *Deklewa* nor any subsequent case held or suggested that contract language alone, such as the letter of assent, is insufficient to attain 9(a) status. Nor did it matter that the letter of assent did not contain a specific reference to Section 9(a). "Where, as here, an employer expressly recognizes a union in writing as the *majority* representative of unit employees, i.e., the very essence of 9(a) status, it is unnecessary that specific reference be made to Section 9(a) itself."

In a dissenting opinion, Member Hurtgen found that the parties' relationship began and remained an 8(f) relationship. In his view, the

[39] 325 NLRB No. 140 (Chairman Gould and Member Fox; Member Hurtgen dissenting).
[40] *John Deklewa & Sons*, 282 NLRB 1375 (1987).

letter of assent did not clearly state that a contemporary showing of majority support was made. Nor did the union ever submit evidence that it had the majority support of unit employees. Accordingly, because the collective-bargaining agreement was "classically an 8(f) contract," Member Hurtgen found that the "Respondent was free to withdraw recognition at the end of that contract" and did not violate Section 8(a)(5) by doing so.

## D. Union Interference with Employee *Beck* 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."[41] 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 *Connecticut Limousine Service*,[42] the Board held that a union satisfies its duty of fair representation by providing objecting nonmembers covered by a union-security clause with information disclosing the union's major categories of expenditures and by designating which expenditures or portions thereof it deems to be representational and therefore chargeable to objectors.

Twelve employees who were nonmembers of the union resigned their memberships in the union and notified the union that, under *Communications Workers v. Beck*,[43] they objected to the union's alleged use of their dues and fees for activities unrelated to collective bargaining, contract administration, or grievance adjustment. In response to the objections, the union offered the objectors a reduced fee and, in support

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

[42] *Teamsters Local 443(Connecticut Limousine Service)*, 324 NLRB 633 (Members Fox and Higgins, Chairman Gould dissenting in part).

[43] 487 U.S 735 (1988).

of that reduction, furnished them, inter alia, an accounting consisting of a breakdown of the union's expenditures into 13 categories taken from its LM-2 report to the Department of Labor for the prior year. Expenditures in each category were in turn broken down into "chargeable" and "non-chargeable" amounts. The breakdowns did not, however, specify which of the expenditures had been incurred specifically in representing employees in the Connecticut Limousine bargaining unit.

Reversing an administrative law judge, the Board held that the information provided to the objectors meets the duty of fair representation standard with respect to all major categories of expenditures. The accounting that the union furnished the objectors together with supporting schedules was, according to the Board, sufficiently detailed to comport with the requirement set forth in *California Saw & Knife Works,*[44] that a union provide "major category" expenditures. With the information that they received from the union, the objectors were sufficiently informed to make a decision whether to accept and pay the reduced fee calculated by the union, the Board reasoned.

The majority also remanded to the judge a number of complaint allegations, including whether organizing expenses are chargeable to *Beck* objectors. Chairman Gould dissented to that portion of the remand order, stating that the Supreme Court has resolved the issue against the view of the Board and that the Board is bound by that holding.

In *Group Health, Inc.,*[45] the Board, on remand, granted a motion to amend settlement agreements, approved the second revised settlements, and held that a union-security clause that requires employees to become and remain members of the union and concurrently sets forth the limitations of that requirement, satisfies the concerns expressed by the Eighth Circuit in *Bloom v. NLRB,*[46] as well as the Board's *Independent Stave Co.*[47] standards for approval of a settlement agreement.

The majority noted that the language at issue in the original collective-bargaining agreement, that "All employees of the Employer . . . hall, as a condition of continued employment, become and remain members in good standing in the Union"[48] had been expunged in the

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[44] 320 NLRB 224 (1995).

[45] 325 NLRB No 49 (Members Fox, Liebman, and Hurtgen; Chairman Gould concurring, Member Brame dissenting)

[46] 30 F 3d 1001 (8th Cir 1994) In *Bloom*, the Eighth Circuit denied enforcement of an earlier Board order approving settlements solely on the ground that "[b]ecause the overly broad union security clause was unlawfully interpreted and applied, an adequate remedy in this case requires the expunction of the offending clause "

[47] 287 NLRB 740 (1987)

[48] 325 NLRB No 49, slip op at 1

second revised settlements, and new language substituted. The new language provided:

> All Employees of the Employer subject to the terms of this Agreement shall, as a condition of continued employment, become and remain members in the Union, and all such Employees subsequently hired shall become members of the Union within thirty-one (31) calendar days, within the requirements of the National Labor Relations Act. Union membership is required only to the extent that Employees must pay either (i) the Union's initiation fees and periodic dues or (ii) service fees which in the case of a regular service fee payer shall be equal to the Union's initiation fees and periodic dues and in the case of an objecting service fee payer shall be the proportion of the initiation fees and dues corresponding to the proportion of the Union's total expenditures that support representational activities.[49]

The majority found that the substitute language above met the Eighth Circuit's concerns, and rejected the Charging Party's assertions that the substitute language was as misleading as the original language because of its statement that employees must become "members" of the union.

The Chairman concurred because the union-security clause presented by the revised settlements was in accord with his views that union-security clauses requiring unit employees to become "members" or "members in good standing," without concurrent definition, are facially invalid under the Act, and with the Eighth Circuit's opinion in *Bloom*. Member Brame would have disapproved the revised settlement agreements because in his view they did not remedy the defects identified by the Eighth Circuit, and because they put the Board in the business of issuing advisory opinions in unfair labor practice proceedings without litigation of the issues.

In *Automotive & Allied Industries Local 618 (Sears, Roebuck & Co.)*,[50] a Board majority held that a union did not violate Section 8(b)(1)(A) by soliciting, maintaining, and enforcing contracts with individual employees requiring that any employee who joined the union pay "financial core" dues to the union until "the termination of my employment at Sears or at such time as the Union is no longer my collective-bargaining representative, whichever is earlier." The Board found that the agreement was individually and voluntarily entered into

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[49] Id

[50] 324 NLRB 865 (Chairman Gould and Member Fox, Member Higgins dissenting)

and the payment of such dues was not related to union membership. Thus, the Board concluded that there was no impermissible infringement on the employee's Section 7 rights.

Prior to the expiration of its collective-bargaining agreement with Sears, the union informed the unit employees it represented that unless more employees joined the union and paid dues the union could not afford to represent them any longer. Employees were not required to join the union, and were not restricted from resigning. However, those employees who did join the union were required to sign an individual contract with the union agreeing to pay financial core dues for the duration of the union's representation of the employee or the duration of the employee's employment with Sears. The judge found that although these agreements were voluntarily entered into they were not lawful because they were not revocable by the employees after a "reasonable period of time." The judge concluded that the open-ended duration of the agreement was contrary to the statutory scheme because it restricted the employee's right to refrain from assisting the union.

The Board reversed the judge, finding that the situation was similar to that in *Scofield v. NLRB,*[51] involving internal union rules. There, the Court stated that "Section 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule."[52] Applying this framework in *Sears,* the Board found that the agreement at issue involved an internal union matter: a contract between the charging party and his union, individually and voluntarily entered into, which reflected a legitimate union interest in gaining financial support from an employee it represented. The Board noted that the only arguable infringement on the charging party's Section 7 rights was the agreement to pay financial core dues for an indefinite period of time. In this regard, the Board held that even if the financial core agreement did impose such a restriction, the charging party had "clearly and unequivocally waived his right to refrain from supporting the union, and no violation occurred because there is nothing in the national labor policy against such an agreement."

Member Higgins dissented, arguing that a restriction on an employee's right to refrain from paying dues to the union impairs Section 7 rights just as does a restriction on resigning from the union, which was found unlawful in *Pattern Makers v. NLRB.*[53] He maintained

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[51] 394 U S. 423 (1969)
[52] Id at 430
[53] 473 U S 95 (1985).

that it made no difference that the employee voluntarily entered into the agreement to pay dues indefinitely, because the overriding concern is that the employee be free thereafter to exercise the Section 7 right to refrain from supporting the union by paying dues.

## E. Union Coercion of Employer

In *Electrical Workers IBEW Local 666 (Stokes Electrical Service),*[54] a Board majority dismissed a complaint alleging that the union violated Section 8(b)(1)(B) of the Act by unilaterally invoking the interest arbitration clause in its multiemployer agreements with the employer after the employer had withdrawn both its assignment of bargaining rights to the multiemployer association and its recognition of the union as the 9(a) bargaining representative of its employees. The majority also dismissed an 8(b)(1)(B) allegation based on the union's attempt to obtain court enforcement of the collective-bargaining agreements imposed by those interest arbitration awards.

The stipulated facts show that the employer became bound to a number of "Inside Construction" and "Residential" labor agreements between National Electrical Contractors Association (NECA) and the union, which contained, in addition to an expiration clause, provisions for: automatic renewal, absent changes or termination; submission of unresolved issues in negotiations for adjudication by the Council on Industrial Relations (CIR); and continuation beyond their anniversary dates until a conclusion was reached respecting proposed changes. The employer also concurrently recognized the union as the 9(a) exclusive bargaining representative of its employees on the basis of signed authorization cards.

Prior to the expiration date of the agreements, the employer withdrew NECA's authority to act as its bargaining agent, and timely served on the union notification of its desire to terminate the agreements upon their expiration. The union timely served written notification of its intent to make changes in the existing agreements together with copies of the proposed successor agreements with the desired changes.

Also prior to the expiration date of the agreements, the employer informed the union that it no longer believed that it represented a majority of the employees, and filed an RM election petition. The employer and the union thereafter entered into a stipulated election agreement which was approved by the Regional Director; however, after the employer refused the union's demand to honor its statutory and contractual bargaining obligations, including submission of the

[54] 326 NLRB No. 44 (Chairman Gould and Members Fox and Liebman; Member Hurtgen dissenting)

unresolved bargaining issues to the CIR for interest arbitration, the union filed an 8(a)(5) refusal to bargain charge against the employer.

The Regional Director thereafter dismissed the refusal to bargain charge, based on the employer's good-faith doubt of the union's majority, and he subsequently dismissed the RM petition. Neither action by the Regional Director was appealed by either party. Subsequently, the union unilaterally invoked the interest arbitration procedure; hearings were held, and arbitration decisions issued, stating that "the CIR had decided to assert jurisdiction because, even assuming that the Employer had a good-faith doubt of the Union's majority status, 'that alone would not relieve it of its *contractual* commitment which it entered into to have unresolved issues of negotiations, including a request for termination, to be adjudicated by the CIR.'" Thereafter, when the union sent the employer the new wage and fringe benefit rates, the employer refused to comply and, instead, filed the unfair labor practice charges in this case. The union filed a suit in District Court to enforce the interest arbitration awards of the CIR.

The majority found that, inasmuch as this interest arbitration clause is virtually identical to the one at issue in *Collier Electric*,[55] the clause, at least on its face, arguably binds the employer to interest arbitration for a successor contract, and that the union, like the union in *Baylor Heating*,[56] was merely exercising a contractual right to employ interest arbitration for a successor contract in the absence of mutual resolution of issues on the table for negotiation. The Board majority stressed that it was not proven here that the union had actually lost the majority status on which the original 9(a) recognition had rested, stating:

> The Regional Director's administrative dismissal of the Employer's 8(a)(5) charge established only that he agreed with the Employer's contention that it had a good-faith doubt of the Union's majority status and that the Employer could thereafter decline to recognize and bargain with the Union without running afoul of Section 8(d) and 8(a)(5) of the Act. Even treating this administrative dismissal as a binding legal finding, however, we cannot equate it with a finding of actual loss of majority; that requires more than a finding that an employer has objective considerations for doubting a union's continuing majority support.[57]

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[55] *Electrical Workers IBEW Local 113 (Collier Electric)*, 296 NLRB 1095 (1989).
[56] *Sheet Metal Workers Local 20 (Baylor Heating)*, 301 NLRB 258 (1991)
[57] 326 NLRB No 44, slip op at 4-5

In dissent, Member Hurtgen stated that he disagreed with the majority positions in *Collier* and *Baylor* and, a fortiori, would not extend those precedents.

## F. Illegal Secondary Conduct

In *Oil Workers Local 1-591 (Burlington Northern Railroad)*,[58] the Board held that the union, which was engaged in a labor dispute with a subcontractor of a neutral refinery, violated Section 8(b)(4)(B) of the Act by picketing at the refinery gate reserved for the neutral railroad that transported the product produced in significant part by the subcontractor.

Texaco Refining and Marketing, Inc. operated an oil refinery in Anacortes, Washington. Within the refinery, Texaco owned the delayed coking unit (DCU), which was used to produce petroleum coke. Texaco subcontracted a significant portion of the operations of the DCU to Western Plant Services, Inc. (WPS). Texaco employees filled the DCU with heavy petroleum, which they "cracked" in the DCU. They then piped the refined petroleum into the rest of the refinery, leaving the coke in the DCU. Employees of WPS then cut, processed, and crushed the coke into a commercially usable substance, stored the processed coke in storage areas, and loaded it into trucks or rail cars for shipment to Texaco's customers. When the coke was shipped by truck, WPS employed independent trucking contractors and arranged for the trucks' arrivals and departures. When the coke was shipped by rail, Texaco customers arranged with Burlington Northern Railroad for the services of rail cars and paid for the railroad's services.

Texaco maintained a reserve gate system. The main gate was reserved for Texaco, its employees, and suppliers. There were eight other reserved gates. Gate 6 was reserved for WPS, and gate 7 was reserved for the independent trucking contractors employed by WPS. There was a separate gate reserved for Burlington's "coke spur," a short railroad track that led from the main line into the refinery and thence to the DCU. The coke spur did not service any other facilities or employers besides the DCU; the main line, however, served other businesses.

In furtherance of its dispute with WPS, the union picketed gates 6 and 7, as well as the gate reserved for Burlington. On the instructions of law enforcement officials, the pickets moved off Texaco's property to the nearest point on public property, which was on the Burlington main line before the coke spur branched off en route to the DCU. The pickets

[58] 325 NLRB No 45 (Members Hurtgen and Brame, Chairman Gould concurring; Members Fox and Liebman dissenting)

explained that their dispute was solely with WPS and not with other employers. All picketing was peaceful.

The Board found that the picketing was common situs picketing because it took place at the refinery, which was owned by Texaco, a neutral, and occupied by Texaco and other neutral contractors and suppliers, as well as WPS. Accordingly, under the *Moore Dry Dock*[59] test, which applies in common situs cases, the Board majority found that the union was required to confine its picketing to places reasonably close to the situs of the primary dispute, i.e., gates 6 and 7. Because the union had also picketed at the gate reserved for Burlington and later at the Burlington main line, the majority found the picketing secondary and unlawful.

In so holding, the majority rejected the union's contention that, because it occupied the DCU, the DCU was the relevant premises and the picketing was primary situs picketing. Accordingly, it also rejected the union's argument that the picketing was primary picketing under the "related work" test, which holds that picketing at a gate used by a secondary employer is primary if the premises are those of the primary and if the duties of the secondary's employees are connected with the normal operations of the primary.[60]

The majority also rejected the union's argument that, even under *Moore Dry Dock*, the picketing of Burlington was primary and lawful because Burlington was a supplier of rail cars to WPS and/or the hauler-away of the coke produced by WPS.[61] They found that Burlington could not be picketed because it was not providing materials that were essential to WPS' normal operations or solely for the use of WPS' employees.[62] Thus, because WPS was not hired to transport the coke by rail, it could fully perform its obligations to Texaco without using Burlington's rail services. Further, even though Burlington transported the coke away from the DCU, the majority noted that the service was supplied to neutral Texaco, which owned the coke, not to WPS, and that WPS was not the sole producer of the coke. Therefore, the disruption caused by the union's picketing was not confined to WPS, but was foreseeably intended to affect the business of neutrals Texaco and Burlington.

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[59] *Sailors Union (Moore Dry Dock)*, 92 NLRB 547 (1950).

[60] *Steelworkers (Carrier Corp.) v NLRB*, 376 U S. 492 (1964), *Electrical Workers Local 761 (General Electric) v. NLRB*, 366 U.S. 667 (1961)

[61] See *Operating Engineers Local 450 (Linbeck Constr.)*, 219 NLRB 997 (1975), enfd. 550 F.2d 311 (5th Cir 1977); *Electrical Workers Local 323 (J F Hoff Electric)*, 241 NLRB 694 (1979), enfd. 642 F 2d 1266 (D C Cir 1980).

[62] *Iron Workers Local 433 (Chris Crane)*, 294 NLRB 182 (1989), enfd. mem. 931 F.2d 897 (9th Cir 1991).

Concurring with the majority, Chairman Gould contended that the dissenters' contrary view would amount to a sub silentio reversal of *Denver Building Trades*[63] and *Moore Dry Dock*'s progeny, a step properly left to Congress and the President rather than the Board.

In dissent, Members Fox and Liebman found that, as the transporter of the coke produced by WPS, Burlington was a legitimate target of primary picketing. They noted that the Supreme Court has held that carriers who pick up and haul away the products of a struck employer may be picketed as they attempt to make the pickups, at least where the situs of the dispute is at the primary's facility.[64] The dissenters saw no reason to hold otherwise in the common situs context, since unions may lawfully picket gates used by suppliers of materials that are essential to the normal operations of a primary employer at a common situs.[65]

Members Fox and Liebman found it irrelevant that Texaco, and not WPS, was the owner of the coke, noting that the Board and courts had rejected similar arguments in the supplier cases.[66] The dissenters also found, contrary to the majority, that Burlington's services were essential to WPS' operations; that those services were for the sole use of WPS' employees; and that it was immaterial that WPS was not the sole producer of the coke.

## G. Remedial Order Provisions

### 1. Broad Order

In *Wire Products Mfg. Corp.*,[67] the Board issued a broad remedial order against corespondent labor consultants R. T. Blankenship & Associates and Rayford T. Blankenship (Blankenship).

The Board found that Blankenship and corespondent/employer Wire Products violated Section 8(a)(1) of the Act by informing employees that a wage increase would be delayed because the union had filed charges against the respondents, by falsely informing employees that the union had lost its majority status and would no longer represent them, and by coercively interrogating employees; and that they violated Section 8(a)(5) by withdrawing recognition from the union and by refusing to meet and negotiate. The Board found that the corespondent/employer Wire Products committed an additional violation of Section 8(a)(1) by

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[63] *Denver Building Trades Council v NLRB*, 341 U S 675 (1951).

[64] *Steelworkers (Carrier Corp )*, supra at 499

[65] See the Board and court decisions in *Linbeck Construction* and *Hoff Electric*, supra. As the dissenters noted, *Carrier*, which was relied on in the supplier cases, involved the picketing of a railroad that hauled away the products of the primary

[66] See, e g , *Linbeck Construction Corp* , supra at 318.

[67] 326 NLRB No 62 (Chairman Gould and Member Fox, Member Hurtgen concurring in part and dissenting in part).

sending employees a letter encouraging them to decertify the union, and that it also violated Section 8(a)(5) and (1) by announcing that it intended to implement an employee stock ownership plan without giving the union notice or an opportunity to bargain. Member Hurtgen, concurring in part and dissenting in part, agreed with the majority that the employer's letter encouraging employees to decertify the union was unlawful because it informed employees that they could circulate a decertification petition on nonworking time in nonwork areas, while the employer was at the same time maintaining and enforcing a rule (found to be unlawful) prohibiting the distribution of union literature and conducting union business on company premises. Contrary to the majority, however, Member Hurtgen would have found that other statements in the employer's letter which expressed antiunion views and imparted information on how employees could rid themselves of the union were expressions of free speech protected by Section 8(c), and thus, were lawful.

The Board ordered Blankenship to cease and desist from "in any other manner" interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

In issuing this remedy, the Board acknowledged that it had recently declined in another case[68] to issue a broad order against Blankenship. However, the Board noted that the earlier case, in contrast with the case here, involved only 8(a)(1) violations. The Board agreed with the General Counsel that a broad remedial order is warranted given the seriousness of the violations and Blankenship's demonstrated proclivity to violate the Act.

### 2. Effects Bargaining

In *Melody Toyota*,[69] the Board clarified the language of the standard *Transmarine*[70] remedy in effects bargaining cases and made clear--as explained in *Emsing's Supermarket*[71]—that a union has 5 days from after *receipt* of the Board's decision to request bargaining, not simply 5 days from the date *of* the Board's decision. As the Board stated in *Emsing's*:[72]

> [T]he countdown for the 5-day period for requesting bargaining begins on the first business day after the *date of receipt* of the Board's Decision and Order by the legal representative of the

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[68] *Blankenship & Associates*, 306 NLRB 994 (1992), enfd. 999 F 2d 248 (7th Cir. 1993).
[69] 325 NLRB No 158 (Chairman Gould and Members Fox and Liebman).
[70] *Transmarine Navigation Corp*, 70 NLRB 389 (1968)
[71] 307 NLRB 421, 421–422 (1992)
[72] Id

party obligated to request bargaining. . . . In addition, intervening Saturdays, Sundays, or legal state or Federal holidays shall be excluded in computing the 5-day period.

Melody Toyota and the charging party union had a long-standing collective-bargaining relationship. Their most recent contract was effective from July 1993 through July 1997. During the summer and fall of 1995, the union's business representative began hearing rumors that the respondent had placed its automobile dealership up for sale and that the union-represented employees would soon be laid off. Despite repeated assurances from management to the union's business representative in response to his inquiries that no sale and/or layoffs were imminent, the sale was consummated on October 30 without notice to or effects bargaining with the union. All attempts by the union to contact any of respondent's representatives proved futile. The Board, in agreement with the administrative law judge, found that the respondent had violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide the union with notice of the sale of its business and an opportunity to bargain concerning the effects of the cessation of operations and sale of its automobile dealership on its represented employees.

In ordering the standard *Transmarine* remedy in the instant case, the Board was concerned that the language of the remedy made it unclear exactly what period of time was available to a union to request effects bargaining in such situations. Though this was clarified in *Emsing's*, the Board determined that it would be clearer and simpler to include the clarifying *Emsing's* language in the remedy itself.

### 3. Reimbursement of Litigation Costs and Attorneys' Fees

In *Lake Holiday Manor*,[73] the Board awarded litigation costs and fees to the General Counsel pursuant to the "bad-faith" exception to the American Rule because the employer exhibited bad faith in its conduct of litigation with the Board.

Specifically, after a circuit court enforced the Board's bargaining order deriving from a successful union election, the employer engaged in multiple statutory violations. The Board hearing on the violations resulted in a tentative settlement agreement. However, the employer reneged on its agreement to finalize the settlement and the Board was forced to schedule a second hearing. This time the judge approved the settlement, but, the employer again reneged citing the boilerplate

[73] 325 NLRB No 67 (Chairman Gould and Members Fox and Hurtgen)

language in the notice. The Board then scheduled a third hearing with the judge admonishing that the parties must engage in no further delay. Nevertheless, 2 weeks before this third hearing was scheduled to commence, the employer's attorney withdrew from the case, and 2 days before scheduled commencement, the employer's new attorney sought a 60-day continuance. The judge denied the request and proceeded with the hearing at which the employer appeared without counsel and refused the judge's offer for the employer to cross-examine the General Counsel's witnesses.

The Board noted that the employer continually engaged in tactics designed to delay and frustrate the Board processes, including reneging on fulfilling its responsibilities pursuant to not just one but two settlement agreements, and seeking delays in the third hearing scheduled by the Board when the employer knew the judge could not countenance this blatant prolongation of the legal process.

The Board dated the employer's reimbursement obligation to the General Counsel from the second settlement. This settlement was formally approved by the judge and the employer reneged because of boilerplate language in the notice about which the employer had not objected with respect to the first settlement. The Board found such objection to the second settlement false. The employer bore responsibility for grossly prolonging the litigation of the case and was obligated to pay the General Counsel's litigation costs subsequent to the second settlement, the Board said.

### 4. Failure to Process a Grievance

In *Iron Workers Local 377 (California Iron Workers Employers Council)*,[74] the Board unanimously agreed to revise the remedial formula to be used in 8(b)(1)(A) cases involving a union's unlawful failure to process a grievance. The Board abandoned the approach set forth in *Rubber Workers Local 250 (Mack-Wayne Closures)*,[75] noting that that formula "does not allocate evidentiary burdens appropriately among the parties and therefore runs the risk of imposing essentially punitive liability on the union and granting a windfall to the grievant discriminatee." Adopting instead an approach akin to that used by the courts in adjudicating hybrid duty of fair representation/Section 301 breach of contract actions, the Board will now require the General Counsel to establish the meritoriousness of the grievance before it will assess backpay liability against the union. In addition, a Board majority

[74] 326 NLRB No 54 (Members Fox and Liebman, Chairman Gould concurring in part and dissenting in part, Members Hurtgen and Brame dissenting in part).

[75] 290 NLRB 817 (1988).

(Chairman Gould and Members Fox and Liebman) determined that the Board would follow the Supreme Court's model of limiting a union's liability to that portion of the employee's damages which are shown to have been caused by the union's mishandling of the grievance. The Board majority (Members Fox, Liebman, Hurtgen, and Brame) also decided that the merits of the mishandled grievance will ordinarily not be litigated until the compliance stage of the unfair labor practice proceeding, after the union has had an opportunity to resolve it through the contractual procedure.

In concurrence, Chairman Gould noted additional reasons for abandoning the *Mack-Wayne* formula and identified specific methods he would find appropriate for limiting the union's liability. In partial dissent, he would not presume that the merits of the grievance will ordinarily be litigated at the compliance stage, but rather he would allow the judge alone to determine whether to hear the merits during the unfair labor practice hearing or defer to compliance.

Members Hurtgen and Brame dissented with respect to the limitation of make-whole liability, stating their adherence "to the well-established Board policy of seeking full relief for the victims of unfair labor practices."

# VI

# Supreme Court Litigation

During fiscal year 1998, the Supreme Court decided one case in which the Board was a party, and one case in which the Board participated as amicus curiae.

## A. The Board's "good-faith reasonable doubt" Test for Employer Polling

In *Allentown*,[1] the Supreme Court, by a divided vote, held that the Board's "good-faith reasonable doubt" test for employer polling is facially rational and consistent with the Act, but its factual finding that the employer lacked such a doubt is not supported by substantial evidence on the record as a whole.

The opinion for the Court was written by Justice Scalia. The first part of the opinion, upholding the polling standard, was joined by Justices Stevens, Souter, Ginsburg, and Breyer. The second part of the opinion, rejecting the Board's evidentiary finding, was joined by Chief Justice Rehnquist and Justices O'Connor, Kennedy, and Thomas.

The Court majority rejected Allentown's contention that, because the "good-faith reasonable doubt" standard for polls is the same as the standard for unilateral withdrawal of recognition and for a Board-supervised (RM) election, the Board irrationally permits employers to poll only when it would be unnecessary and legally pointless to do so. While the Board's adoption of this unitary standard makes "polling useless as a means of insulating a contemplated withdrawal of recognition against an unfair-labor-practice charge," the Court stated, there are other reasons why an employer may want to conduct a poll. Thus, an employer concerned with good employee relations may recognize that abrupt withdrawal of recognition "will certainly antagonize union supporters, and perhaps even alienate employees who are on the fence."[2] Moreover, an employer whose evidence met the "good-faith reasonable doubt" standard might nonetheless want to withdraw recognition "only if he had conclusive evidence that the union *in fact* lacked majority support, lest he go through the time and expense

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[1] *Allentown Mack Sales & Service v NLRB*, 118 S.Ct. 818, revg. and remanding 83 F.3d 1483 (D.C. Cir 1996). See 62 NLRB Ann. Rep 61 (1997)

[2] Id at 822.

The Court added that, "while the Board's preference for RM elections over polls should logically produce a more rigorous standard for polling, there are other reasons why the standard for polling ought to be *less* rigorous than the standard for Board elections." For one thing, "if the union loses an employer poll it can still request a Board election, but if the union loses a formal election it is barred from seeking another for a year."[4] "If it would be rational for the Board to set the polling standard either higher or lower than the threshold for an RM election, then surely it is not irrational for the Board to split the difference."[5]

A different court majority was not so deferential to the Board in reviewing its conclusion that Allentown had not demonstrated that it had a reasonable doubt, based on objective considerations, that the Union continued to enjoy majority support. Defining "doubt" to mean "uncertainty," rather than "disbelief," the Court stated that the question is "whether, on the evidence presented to the Board, a reasonable jury could have found that Allentown lacked a genuine, reasonable uncertainty about whether [the union] enjoyed the continuing support of a majority of unit employees."[6] The Court concluded that "the answer is no," and that the Board's contrary finding "rests on a refusal to credit probative circumstantial evidence, and on evidentiary demands that go beyond the substantive standard the Board purports to apply."[7]

The Court acknowledged that the Board can "forthrightly and explicitly adopt counterfactual evidentiary presumptions (which are in effect substantive rules of law) as a way of furthering particular legal or policy goals," or adopt "a rule of evidence that categorically excludes certain testimony on policy grounds, without reference to its inherent probative value."[8] But, when as here, "the Board purports to be engaged in simple factfinding unconstrained by substantive presumptions or evidentiary rules of exclusion, it is not free to prescribe what inferences from the evidence it will accept and reject, but must draw all those inferences that the evidence fairly demands."[9]

In dissenting from the Court's rejection of the Board's conclusion that Allentown lacked a reasonable doubt that the union continued to enjoy majority support, Justice Breyer charged that the Court had omitted the words "objective considerations," key words "of a technical sort that the

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[4] Id at 823
[5] Id
[6] Id
[7] Id. at 824.
[8] Id. at 828.
[9] Id. at 829.

Board has used in hundreds of opinions written over several decades" and had left in their place "an ordinary jury standard that might reflect, not an agency's specialized knowledge of the workplace, but a court's common understanding of human psychology."[10]

## B. The Jurisdiction of a Court under Section 301(a) of the Labor Management Relations Act to Decide Issues of Contract Invalidity

In *Textron*,[11] the Court held that Section 301(a) of the Labor Management Act, 29 U.S.C. 185(a), which confers Federal jurisdiction over "suits for violation of contracts between an employer and a labor organization," does not authorize a union to sue in Federal court to declare a collective-bargaining agreement voidable because the union was fraudulently induced to sign it.

Textron and the union had entered into a collective-bargaining agreement that prohibited the union from striking for any reason and permitted the employer (upon notification to the union) to subcontract out work that would otherwise be performed by the union-represented employees. After learning that Textron planned to subcontract out enough work to cause about one-half of the employees to lose their jobs, the union filed suit in a Federal district court, under Section 301(a). The complaint alleged that Textron had fraudulently induced the union to sign the collective-bargaining agreement by concealing its extensive subcontracting plan from the union during contract negotiations, and it sought damages and a declaratory judgment that the agreement was voidable at the union's option.

In concluding that the district court lacked subject-matter jurisdiction, the Court acknowledged that a Federal court may, in the course of resolving a dispute concerning alleged violation of a collective, adjudicate the affirmative defense that the contract was invalid. The Court held, however, that Section 301 jurisdiction does not lie to resolve the invalidity issue where, as in this case, the union neither alleged that the employer has violated the contract, nor seeks declaratory relief from its own alleged violation of the contract.

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[10] 118 S.Ct at 823–824.

[11] *Textron v Automobile Workers*, 118 S Ct. 1626, revg 117 F 3d 119 (3d Cir. 1997).

# VII

# Enforcement Litigation

## A. Unilateral Changes After a Bargaining Impasse

The general rule permitting an employer to implement its proposals on mandatory subjects of bargaining after bargaining to impasse with the union that represents its employees is well settled. See, for example, *Taft Broadcasting Co.*[1] In *McClatchy Newspapers, Inc. v. NLRB*,[2] the Court of Appeals for the District of Columbia Circuit held that the Board acted within its "wide latitude to monitor the bargaining process," in finding that an exception to that rule is warranted where the employer unilaterally awards individual merit pay increases to employees after bargaining to impasse over a proposal leaving to its sole discretion the amount of, and criteria for, granting such increases. Accordingly, the court affirmed the Board's determinations that the employer's grant of such merit wage increases in two cases (which were consolidated on appeal) violated Section 8(a)(5) and (1) of the Act.

In so holding, the court upheld as reasonable the Board's recognition that the exception at issue was necessary to preserve the integrity of the collective-bargaining process. After first noting that neither the statute nor its conclusive interpretations by the Supreme Court precluded the Board's interpretation of Section 8(a)(5), the court agreed that the Board could reasonably conclude that implementation of the discretionary merit pay proposals "might well irreparably undermine the union's ability to bargain," and further that it was "within the Board's authority to prevent this development," even though an effect of that decision was to deny the employer the "economic weapon" of implementation after impasse.[3]

The court also emphasized, as the Board had, that the exception before it was limited to merit pay plans without objective substantive criteria, and noted that "it seems hard to challenge in a reviewing court" the Board's statement that "wages are 'a key term and condition of employment and a primary basis of negotiations.'" Rejecting one of the employer's arguments, the court did not fault the Board for not passing on whether, and under what circumstances, it might find other exceptions to the implementation-after-impasse rule to be warranted, stating that it

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[1] 163 NLRB 475, 478 (1967), enfd sub nom *Television Artists AFTRA v. NLRB*, 395 F 2d 622 (D C Cir 1968).

[2] 131 F.3d 1026, 1031–1032, cert denied 118 S.Ct. 2341

[3] 131 F 3d at 1032.

"appreciat[ed] the Board's desire to proceed cautiously" in limiting its ruling to the proposals before it in the two cases.[4]

## B. Fraudulent Concealment of Joint Bargaining

In *Don Lee Distributor, Inc. v. NLRB*,[5] the Sixth Circuit upheld the Board's finding that a group of Detroit-area beer distributors engaged in unlawful joint bargaining without the union's consent. The employers had withdrawn from their established multiemployer bargaining association and insisted on individual bargaining for new contracts. Without the union's knowledge, however, the employers entered into a secret agreement with each other to insist on 22 common contract terms. The employers agreed to enforce compliance with the agreement's terms through a substantial financial penalty provision. Despite the union's frequent requests for information about the employers' bargaining relationship, the employers did not reveal the existence of the agreement to the union or to the Board until the unfair labor practice hearing had commenced.

In sustaining the Board, the court noted that joint bargaining without the other bargaining party's consent is unlawful in that it constitutes an insistence on a nonmandatory subject of bargaining—the scope of the bargaining unit.[6] However, coordinated bargaining in which parties share information and strategies, but retain individual bargaining autonomy is lawful.[7] The court observed that the essential question presented by the case was whether the employers' agreement created an unlawful group bargaining relationship or whether it merely reflected a lawful agreement to coordinate bargaining.[8] In light of the employers' strict adherence to the terms of their agreement and the existence of a $1.6 million penalty for any violation of the agreement, the court concluded that there was "overwhelming evidence" to support the Board's conclusion that the employers engaged in unlawful group bargaining.[9]

The court also held that the Board properly permitted the complaint amendment to go forward despite the lapse of more than 6 months between the unlawful bargaining and the amendment of the complaint to include the unlawful joint bargaining allegation. First, the court found that the unlawful joint bargaining allegation was "closely related" to the

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[4] 131 F.3d at 1035

[5] 145 F.3d 834, enfg 322 NLRB 470 (1996)

[6] *Utility Workers Local 111 (Ohio Power)*, 203 NLRB 230, 238 (1973), enfd 490 F 2d 1383 (6th Cir 1974)

[7] *General Electric Co*, 173 NLRB 253 (1968), enfd 412 F 2d 512 (2d Cir 1969)

[8] 145 F 3d at 843

[9] Id at 844.

pending, timely filed charges alleging implementation without a valid impasse, and accordingly, not subject to the 10(b) limitations period.[10] Moreover, the court found that it "would be hard-pressed to disagree with the [Board's] finding that the [employers] fraudulently concealed the terms of [their] Pact."[11] Fraudulent concealment of a material fact underlying an unfair labor practice charge tolls the 6-month limitations period.[12] The court also rejected the employers' contention that the limitations period began to run when the union became aware of the existence of "some agreement" between the employers. Because the union could not know whether the employer had crossed the line from lawful coordinated bargaining to unlawful joint bargaining unless it knew the exact terms of the employers' agreement, the court agreed with the Board that the limitations period began to run only when the employers revealed those terms. Moreover, the court refused to fault the General Counsel's efforts to obtain the pact, calling the employers' allegation that the union and the General Counsel failed to exercise due diligence "border[ing] on the disingenuous."[13]

Finally, the court refused to assess the quality of the union's bargaining. The employers argued that the union's alleged bad-faith bargaining precluded a finding against them. The court, however, affirmed the Board's holding that where one party imposes an unlawful precondition to bargaining, such conduct excuses the other party's obligation to bargain in good faith.[14]

## C. Remedies for Undocumented Aliens

In *A.P.R.A. Fuel Oil Buyers Group*,[15] the Board ordered the employer to offer reinstatement to two undocumented aliens who had been unlawfully discharged for engaging in union organizing activity and who had remained in the United States after their discharges. The Board, however, conditioned the employer's obligation to reinstate them on their satisfaction of the normal verification of eligibility requirements prescribed by the Immigration Reform and Control Act of 1986 (IRCA). More specifically, the Board held that the employer would be obligated to reinstate them only if they completed the Immigration and Naturalization Service (INS) Form I-9 and presented the appropriate supporting documents to the employer "within a reasonable time" so that

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[10] Id. at 844–845

[11] Id at 845

[12] *Ducane Heating Corp*, 273 NLRB 1389, 1390 (1985), enfd 785 F.2d 304 (4th Cir. 1986)

[13] 145 F 3d at 845

[14] Id. at 846.

[15] 320 NLRB 408 (1995).

the employer could meet its obligation under IRCA to verify that they were eligible for employment in the United States.[16] The Board also ordered the employer to pay the two employees backpay from the date of their discharges until "the earliest of the following: their reinstatement by the [employer], subject to compliance with the [employer's] normal obligations under IRCA, or their failure after a reasonable time to produce the documents enabling the [employer] to meet its obligations under IRCA."[17]

During this fiscal year, the Court of Appeals for the Second Circuit affirmed the Board's remedy.[18] The court first addressed the impact of *Sure-Tan, Inc. v. NLRB*,[19] a decision issued by the Supreme Court prior to the enactment of IRCA. In that case, the employer unlawfully reported five undocumented aliens to the INS in retaliation for their union activity, and the aliens voluntarily left the United States to avoid deportation. The Supreme Court held that the aliens were statutory employees who were entitled to the Act's protection, but also held that they must be deemed ineligible for backpay "during any period when they were not lawfully entitled to be present and employed in the United States."[20]

That holding, the Second Circuit concluded, did not preclude backpay for the two unlawfully discharged aliens in *A.P.R.A.* The court pointed out that the Ninth Circuit's decision in *Garment Workers Local 512 v. NLRB*,[21] and its own decision in *Rios v. Local 638*,[22] found that the Supreme Court's holding in *Sure-Tan* applied only to backpay for "undocumented employees who have left the country."[23] *Sure-Tan* did not apply, the court held, to backpay awards for undocumented aliens who—like the two in *A.P.R.A.*—remained in the United States after their discharges.[24]

The Second Circuit also found that the Board's remedy was consistent with the purposes underlying the enactment of IRCA. As the court observed, a congressional report found that the willingness of undocumented aliens to accept low wages and substandard working conditions created economic incentives for employers to hire them, to the detriment of American workers who lost job opportunities and suffered depressed wages. To eliminate those economic incentives, the court

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[16] 320 NLRB at 415.
[17] 320 NLRB at 416.
[18] 134 F 3d 50
[19] 467 U S 883 (1984)
[20] 467 U S at 903
[21] 795 F 2d 705, 716–717 (9th Cir 1986)
[22] 860 F.2d 1168, 1173 (2d Cir 1988)
[23] 134 F 3d at 54.
[24] 134 F.3d at 54–55.

pointed out, Congress adopted a multifaceted strategy. First, IRCA made it illegal for employers to hire undocumented aliens and provided for the imposition of fines on employers who did so. In addition, as the court observed, a congressional report made it clear that Congress wanted to preserve for undocumented aliens all the statutory protections and remedies that are available for American citizens. More specifically, the court explained, the congressional report stated that IRCA was not intended to limit the scope of the term "employee" under the Act or to limit the powers of the Board and other federal agencies to remedy unlawful actions taken against undocumented workers. Citing that congressional intent, the Second Circuit held "without hesitation that IRCA did not diminish the Board's power to craft remedies for violations of the NLRA, provided that the Board's remedies do not conflict with the requirements of IRCA."[25]

The Second Circuit further held that the Board's remedy avoided any conflict with the specific provisions of IRCA. As the court observed, the Board's order required the employer to reinstate the two aliens only if they produced the documentation necessary to prove their eligibility for employment in the United States. Given that provision, the court pointed out, "the Board's order quite clearly tailors the remedy for the violation of the NLRA to the restrictions of [IRCA]."[26]

The Second Circuit also held that the Board's backpay remedy was tailored to promote the policy goals of both IRCA and the Act while avoiding any conflict with IRCA. By providing that backpay would be tolled if the aliens failed to produce the necessary documentation after a reasonable period of time, the court observed, the Board ensured that the employer would not feel pressured to reinstate them in violation of IRCA in order to reduce its backpay liability. The court also pointed out that prohibiting backpay would increase the incentives for employers to hire undocumented aliens. If backpay were prohibited, as the court explained, many employers might consider IRCA's monetary penalties to be a "reasonable expense more than offset by the savings of employing undocumented workers or the perceived benefits of union avoidance."[27]

Prohibiting backpay, the Second Circuit continued, would also tempt employers to "intimidate United States citizens and other lawful residents by targeting undocumented workers for antiunion discharges."[28] In addition, the court held that the backpay remedy compensates the

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[25] 134 F 3d at 56.
[26] 134 F 3d at 57
[27] 134 F 3d at 57, quoting 320 NLRB at 415.
[28] 134 F.3d at 58

aliens for "the economic injury they suffered as a result of the [employer's] unlawful discrimination" without requiring "the reestablishment of an employment relationship in contravention of IRCA."[29] The court explicitly disagreed with the decision in *Del Rey Tortilleria v. NLRB*,[30] where the Seventh Circuit held that IRCA imposed a blanket prohibition on all awards of backpay to undocumented aliens. Finally, the Second Circuit rejected the employer's additional claim that post-IRCA amendments to the immigration laws precluded the Board's remedy.[31] One judge dissented in part, stating that undocumented aliens should be entitled to backpay only from the date on which they establish their eligibility for employment under the immigration laws.[32]

## D. Unions' Duties to Represent Fairly Nonmembers

In *Communications Workers v. Beck*,[33] the Supreme Court held that a union that negotiates a union-security clause under the Act may not obligate nonmembers, over their objection, to support union activities that are not germane to collective bargaining, contract administration, and grievance adjustment. In accordance with the *Beck* decision, nonmembers who raise such objections are entitled to a reduction in the "agency" fees they are required to pay pursuant to the union-security clause. Following *Beck*, the Board in *California Saw & Knife Works*,[34] formulated a number of rules governing unions' obligations to nonmembers.

In *Machinists v. NLRB*,[35] the Seventh Circuit upheld the challenged portions of the Board's *California Saw* decision. First, the court sustained the Board's finding that a union does not violate its duty of fair representation by pooling all of its expenditures (including its extra unit litigation expenditures) that are related to collective bargaining, and by "in effect divid[ing] the pool by the number of workers that the union represents, to compute the basic agency fee." The court rejected the claim that a union must engage in unit-by-unit accounting, a procedure that would require the union to charge an objecting nonmember only for the collective-bargaining expenditures incurred directly on behalf of the nonmember's own bargaining unit. The court found that the claim "overlooks the economic interdependence of bargaining units" and that

[29] 134 F 3d at 58
[30] 976 F 2d 1115, 1121–1122 (7th Cir 1992).
[31] 134 F.3d at 58–59.
[32] 134 F 3d at 62
[33] 487 U.S. 735 (1988).
[34] 320 NLRB 224 (1995), 321 NLRB 731
[35] 133 F.3d 1012.

the union's "aggregation" of expenditures "is the only feasible alternative to ignoring interdependence altogether."[36]

The Seventh Circuit also affirmed the Board's finding that a union does not violate its duty of fair representation by using its staff auditors instead of outside certified public accountants to audit its calculation of the agency fee. The court found that it was not unreasonable for the Board "to experiment with allowing the [union] to use the cheaper informal method of auditing" the calculation of that fee.[37] The court disagreed with *Ferriso v. NLRB*,[38] a decision in which the District of Columbia Circuit had reached the opposite conclusion based on the Supreme Court's suggestion in *Chicago Teachers Union Local 1 v. Hudson*[39] that a public-sector union must have its agency-fee information verified by an "independent" audit. As the Seventh Circuit pointed out, *Hudson* "does not specify what an 'independent' audit means," and other cases have held that objecting nonmembers "are not entitled to the highest level of audit services that the market offers."[40]

Additionally, the Seventh Circuit upheld the Board's finding that the union satisfied its obligation to notify employees of their *Beck* rights by publishing a statement of those rights in the December issue of a monthly in-house newsletter that it sends to all the employees it represents. The court observed that there was no record evidence showing that the notice was "ineffectual," and it declined "[to] entangle [itself] in excessively particularistic inquiries into the details of the notification process."[41]

Finally, the court upheld the Board's finding that the union violated its duty of fair representation by the manner in which it applied its annual, 1-month "window period"—that is, the period each year in which nonmembers who wish to have their fees reduced must file their objections with the union. The court affirmed the Board's finding that employees who resign from the union after the expiration of the window period should be permitted to file objections immediately, and that the union acted unlawfully by requiring such employees to wait until the next window period to object.[42]

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[36] 133 F 3d at 1016
[37] 133 F 3d at 1017.
[38] 125 F 3d 865 (D C Cir 1997).
[39] 475 U S. 292, 307 fn 18 (1986).
[40] 133 F.3d at 1017
[41] 133 F.3d at 1018–1019.
[42] 133 F.3d at 1019.

# 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 practice proceeding, while the case is pending before the Board.[1] In fiscal 1998, the Board filed a total of 32 petitions for temporary injunctive relief under the discretionary provisions of Section 10(j). Of these petitions, 31 were filed against employers and 1 was filed against a labor organization. Five cases authorized in the prior year were also pending in court at the beginning of the year. Of these 37 cases, 10 were either settled or adjusted prior to court action. Two cases were withdrawn prior to court action because of changed circumstances. Injunctions were granted in 19 cases and denied in 2 cases. Four cases remained pending in district court at the end of the fiscal year.

District courts granted injunctions against employers in 18 cases. Among the violations enjoined were employer interference with nascent union organizing campaigns, including cases where the violations precluded a fair election and warranted a remedial bargaining order,[2] improper withdrawal of recognition from incumbent unions, a successor employer's refusal to recognize and bargain with an incumbent union,[3] and a sequestration of assets proceeding to protect the Board's backpay remedy. One district court granted an injunction against a labor organization which was allegedly failing to bargain in good faith in a multiemployer association bargaining unit.

One case during the period involved an alleged discriminatory subcontracting of unit work during a union's organizing campaign. In *Bernstein v. Carter & Sons Freightways,*[4] the court found reasonable cause to believe that the employer had terminated most of the drivers at the affected trucking terminal and had subcontracted the unit work in order to retaliate against the employees' union activities. The court further concluded that it was "just and proper" to order the reinstatement

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[1] See, e g , *NLRB v Electro-Voice, Inc* , 83 F 3d 1559 (7th Cir 1996), cert denied mem. 117 S.Ct. 683 (1997), *Frye v Specialty Envelope,* 10 F 3d 1221 (6th Cir 1993); and *Lineback v. Printpack, Inc* , 979 F Supp 831 (S.D.Ind 1997), discussed in the 1997 Annual Report

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

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

[4] 983 F Supp. 994 (D Kan ).

of the alleged discriminatees, the restoration of the subcontracted work to the unit, and a remedial bargaining order under a *Gissel* theory based on the organizing union's card majority. The court concluded that the interim relief granted would cause no "undue burden" on the respondent and that further delay in remedying the alleged violations "will do nothing to further the purposes of the National Labor Relations Act."[5]

Three cases decided during the period involved the proper scope of a party's statutory obligation to bargain in good faith. In the first case, *Calatrello v. Defiance Hospital, Inc.*,[6] an employer refused to deal with one union that represented a unit jointly with another union. When the case first arose, interim relief was not considered necessary because the employer was complying with the parties' then current labor agreement and dealing with the second union on contract administration matters. Upon the expiration of the parties' contract, the second union agreed to bargain for a new contract and the unions did not insist that, as a condition of bargaining, the employer recognize the first union as joint bargaining representative. The second union did, however, designate an officer of the first union as one of the second union's bargaining agents at the negotiating table. The employer then refused to meet with any union unless the designated agent from the first union was excluded. At that point, the Board argued, and the district court agreed, interim relief was necessary. The district court concluded that there was reasonable cause to believe that the employer was not privileged to refuse to meet and deal with the second union's chosen bargaining agent.[7] It also found injunctive relief appropriate because the union and the employees would suffer irreparable harm in the absence of collective bargaining for a new labor agreement. The court concluded that "injunctive relief is necessary to return the parties to the status quo."

The second case in this category, *Dunbar v. Colony Liquor & Wine Distributors*,[8] dealt with the aftermath of an employer's decision to close a unionized facility and relocate its entire business operation into an existing nonunion facility in another city. The Board alleged that the employer had discriminated against the union-represented employees of the facility which was closing, regarding their right to transfer to the nonunion facility in the other city. It was also alleged that the employer had failed to bargain in good faith with the union over the "effects" of the plant closing and work relocation decisions on the unit employees. The district court agreed with the Board and concluded that there was

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[5] 983 F.Supp at 1007

[6] Case No. 3:97-CV-7683 (N D Oh W D.).

[7] See, e.g., *Colfor, Inc. v NLRB*, 838 F 2d 164, 166-167 (6th Cir 1988); *General Electric Co v NLRB*, 412 F 2d 512, 517 (2d Cir 1969)

[8] 158 LRRM 3124 (N D.N Y ).

reasonable cause to believe that the employer had hired additional nonunion employees at the relocated operation and had failed to offer transfers to the union-represented employees in order to "use the relocation as a pretext to rid itself of the bargaining unit employees because of their union membership."[9] The court also found reasonable cause to believe that the employer had failed to bargain in good faith with the union over the effects of the plant closing and work relocation decisions on unit employees, including the right to transfer to the other location.[10] The court further concluded that there was a "compelling necessity" to preserve the status quo and prevent irreparable harm to employee statutory rights.[11] The court ordered the employer to offer interim positions to its former employees at the new location at their wages and benefits existing at the time of their terminations. The employer was also ordered to bargain in good faith with the union concerning the "effects" of the plant closing and the relocation of operations to the other facility, maintaining the transferred unit employees' terms or conditions of employment as they existed at the time of their discharge/layoff until a new agreement or a lawful impasse is reached.[12]

In the third case, *Friend v. Painters, District Council 8,*[13] a union was bargaining jointly with another union and a multiemployer association for a contract in a multiemployer bargaining unit.[14] The respondent union attempted to repudiate the agreement reached in multiemployer bargaining and demanded that certain members of the multiemployer association bargain with it individually. It picketed and struck employers which refused to sign individual interim agreements with it. The district court concluded that the Regional Director had demonstrated a likelihood of success on the merits of the administrative complaint that the union's conduct violated its duty to bargain in good faith in the multiemployer unit.[15] The court also concluded that 10(j) relief was warranted to protect the efficacy of the multiemployer association unit and to prevent the unwarranted labor unrest. It ordered the union on an interim basis to rescind the interim contracts it had entered into with individual

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[9] 158 LRRM at 3133, citing *Allied Mills, Inc*, 218 NLRB 281 (1975)
[10] Id. at 3134-3135, citing *Cooper Thermometer Co v. NLRB*, 376 F.2d 684, 688 (2d Cir. 1967).
[11] Id at 3135, relying on, inter alia, *Dunbar v. Northern Lights Enterprises*, 942 F Supp 138 (W D N Y 1996)
[12] Id at 3137
[13] 157 LRRM 2753 (N.D.Ca.).
[14] See generally *Retail Associates, Inc*, 120 NLRB 388 (1958).
[15] 157 LRRM at 2759-2760, relying on, inter alia, *Teamsters Local 70 (California Trucking Assn.)*, 194 NLRB 674, 682 (1971), enfd. 470 F 2d 509 (9th Cir 1972), cert denied mem. 414 U S 821 (1973).

association members and to comply with the terms of the new multiemployer association labor agreement.[16]

Several cases decided during the year involved an allegedly improper employer withdrawal of recognition from an incumbent union, where the evidence on which the employers relied to claim a "good-faith doubt" of the union's majority status was "tainted" by the employers' own prior unremedied unfair labor practices.[17] In these cases the district courts found either reasonable cause to believe, or a likelihood of success on the merits of the administrative complaint, that the employers had committed violations that produced employee disaffection from the incumbent unions and thus "tainted" the employers' claim of a "good-faith doubt" of the unions' majority status and the employers' withdrawal of recognition. The district courts concluded that interim bargaining orders in favor of the incumbent unions were just and proper to protect and restore the status quo and prevent harm to the parties' bargaining relationships.[18]

Finally, one case during the year presented a somewhat unusual situation where injunctive relief was considered necessary to protect the Board's backpay remedy.[19] In *Blyer v. Unitron Color Graphics of New York*,[20] the respondent had already sold its business before the unfair labor practice trial. The alleged unfair labor practices would give rise to a Board backpay remedy. The respondent's only available asset was the right to receive scheduled payments from the purchaser of its assets over the following several months. The respondent refused to hold these payments intact pending the completion of the Board proceedings. Accordingly, the Board sought, and the district court granted, an order directing that the payments be placed directly into the registry of the district court pending final Board adjudication.

Several noteworthy 10(j) appellate decisions also issued during this fiscal year. In *Hirsch v. Dorsey Trailers, Inc.*,[21] the Third Circuit, reversing the district court, found it just and proper to enjoin the employer, which had allegedly unlawfully relocated its manufacturing operation, from selling or otherwise alienating its unused plant pending a

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[16] Id at 2763, citing, inter alia, *Kennedy v Operating Engineers Local 12*, 73 LRRM 2755 (C D.Ca. 1970)

[17] See generally *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996), affd in relevant part 117 F.3d 1454, 1459 (D.C. Cir 1997), *Sullivan Industries*, 322 NLRB 925, 926 (1997); and *Medo Photo Supply Corp v. NLRB*, 321 U S 678, 687 (1944)

[18] See *Dunbar v Hill Park Health Care Center*, 98-CV-525 (FJS)(GJD)(N.D N Y.), appeal pending No. 98-6212 (2d Cir.); *D'Amico v Townsend Culinary, Inc.*, Civil Action No . AW 98-2673 (D Md S D ); and *Overstreet v Tucson Ready Mix*, CIV 98-180 TUC ACM (D.Az.)

[19] See generally *Jensen v Chamtech Services Center*, 155 LRRM 2058 (C D.Ca 1997), discussed in the 1997 Annual Report.

[20] 98-CV-1778 (JG)(E D.N Y )

[21] 147 F 3d 243 (3d Cir.).

Board order. The court found this limited "mothball" relief necessary to preserve the potential Board restoration remedy and rejected the employer's argument that it would be unduly burdensome. The court also held that the filing of the 10(j) petition 14 months after the relocation did not constitute undue delay warranting denial of the injunction.

During this fiscal year, appellate courts affirmed two cases, discussed in last year's annual report, involving the temporary reinstatement of large numbers of strikers. In *Kobell v. Beverly Health Services,*[22] the district court found reasonable cause to believe that the employer had engaged in unfair labor practices that caused the strike and ordered the employer to reinstate over 200 unfair labor practice strikers to their former positions and to give the unions access to bulletin boards at the nursing homes. The Third Circuit summarily affirmed the district court's decision and order. In the second case, *Schaub v. Detroit Newspaper Agency,*[23] the Sixth Circuit declined to review the district court's failure to find reasonable cause to believe that the Newspapers had unlawfully refused to reinstate hundreds of strikers. The Court found that, in any event, the evidence supported the district court's conclusions that interim relief was not just and proper because collective bargaining would not be stymied by the absence of strikers from the workplace and scattering of the remaining strikers was unlikely and would not have a significant impact on the status of the unions.

The scope of discovery continued to be an issue in 10(j) litigation during this fiscal year. Although the discovery provisions of the Federal Rules of Civil Procedure are applicable to 10(j) proceedings, the Board does not initiate discovery. Rather, the Board seeks to limit respondent discovery consistent with the district court's limited inquiry in a 10(j) proceeding and with the expedited nature of these proceedings. Consistent with this approach, in *Dunbar v. Landis Plastics, Inc.,*[24] the district court denied the employer's request for extensive pretrial discovery, including a deposition of the Regional Director and disclosure of material in Regional Office files. This decision is consistent with the views of other courts that depositions of Agency personnel and requests to produce internal Board memoranda and communications are irrelevant to the issues before the district court or are protected by the attorney-client privilege, the attorney work-product privilege and/or the

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[22] Nos. 97-3200 and 97-3357 (3d Cir ), rehearing and rehearing en banc denied cert. pending No 98-492.

[23] 154 F 3d 276 (6th Cir.).

[24] 977 F.Supp. 169, 176-177 (N.D N Y 1997), and 996 F.Supp. 174, 178 (N.D.N.Y.), remanded for further consideration in light of intervening administrative law judge decision (mem ) 152 F.3d 917 (2d Cir )

deliberative process privilege. See, e.g., *U.S. v. Electro-Voice, Inc.*,[25] and *D'Amico v. Cox Creek Refining Co.*[26]

## 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),[27] or Section 8(b)(7),[28] and against an employer or union charged with a violation of Section 8(e),[29] 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.[30] 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 13 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with 7 cases pending at the beginning of the period, 6 cases were settled, no cases were dismissed, 3 continued in an inactive status, 3 were withdrawn, and 2 were pending court action at the close of the report year. During this period, 6 petitions went to final order, the courts

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[25] 879 F Supp. 919, 924 (N D Ind. 1995)

[26] 719 F Supp 403 (D Md 1989)

[27] 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).

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

[29] 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.

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

granting injunctions in 5 cases and denying them in 1 case. Injunctions were issued in 2 cases involving secondary boycott action proscribed by Section 8(b)(4)(B), and one case involving hot-cargo agreements. There were no injunctions granted in cases involving jurisdictional disputes in violation of Section 8(b)(4)(D) or cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7). There was one case involving jurisdictional disputes in violation of Section 8(b)(4)(D).

# IX

# Contempt Litigation

In fiscal year 1998, 323 cases were referred to the Contempt Litigation and Compliance Branch (CLCB or the Branch) for advice, or for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 210 cases in fiscal year 1997, an increase of more than 50 percent. In addition, CLCB conducted 187 asset/entity database investigations to assist Regions in their compliance efforts, as compared to 124 in fiscal year 1997.

Voluntary compliance was achieved in 20 cases during the fiscal year, without the necessity of filing a contempt petition. During the same period, 19 civil contempt or equivalent proceedings were instituted as compared to 15 such proceedings in fiscal year 1997. These included two motions for writs of body attachment. A number of other proceedings were also instituted during this period, including one criminal contempt proceeding; three requests for writs of pre- or post-judgment garnishment under the Federal Debt Collection Procedures Act (FDCPA); one request for issuance of an emergency protective restraining order; one complaint for nondischargeability of a debt in bankruptcy; one adversary proceeding to object to a free and clear sale in bankruptcy; three proceedings to enforce administrative subpoenas; and two motions to initiate Rule 2004 examinations in bankruptcy. Sixteen civil contempt or equivalent adjudications were awarded in favor of the Board, including three writs of body attachment. A criminal contempt conviction, an emergency protective restraining order, and four writs of pre- or post-judgment garnishment were also obtained by CLCB.

During the fiscal year, CLCB collected $56,230 in fines and $1,504,433 in backpay, while recouping $55,807 in court costs and attorneys' fees incurred in contempt litigation.

The substantial increase in caseload is largely explained by the "reinvention" of the CLCB during the fiscal year, in which the General Counsel approved placing greater emphasis on the Branch proactively assisting the Regions in their compliance work, particularly during the earlier stages of case processing. This resulted in a number of noteworthy cases during the year. In *Champ/Chamtech*,[1] for example, the CLCB, in conjunction with Region 21, negotiated and received $1

[1] 157 LRRM 2299 (C.D. Ca.)

million in backpay in settlement of a 19-year-old dispute stemming from the discharge of 61 strikers in 1979 and 1980. The pre-settlement backpay collection efforts featured litigation to unravel a complex financial web involving both individuals and businesses (including issuance of Sec. 11 subpoenas, defending the subpoenas against motions to quash and taking depositions); obtaining an extraordinary ex parte asset freeze under Section 10(j) from a United States District Court[2] and political and legal steps to undo an offshore trust in the Cook Islands which was serving as a safe haven for funds that could have been used to satisfy the backpay obligation.

The CLCB also successfully collaborated with Region 24 to obtain an ex parte protective restraining order from the First Circuit in *NLRB v. Horizons Hotel Corp.*[3] The order was secured through an emergency motion filed by CLCB and effectively freezes the assets of various respondents against whom supplemental proceedings are pending. It is believed to be only the fourth such order ever obtained by the Agency on an ex parte basis. See also *NLRB v. Burnette Castings Co;*[4] *NLRB v. A.N. Electric Corp.;*[5] and *Chamtech.*[6]

The CLCB and the Regions also collaborated in a number of other successful collection efforts. In *Genesee Coney Island Restaurant,*[7] for example, the CLCB assisted Region 7 in preparing garnishment papers in a case where the Region obtained a pre-judgment garnishment order under the FDCPA. This required payment to the Board of over $100,000 that would otherwise have been paid to respondent by the purchaser of the business. And in *United Enviro Systems,*[8] the CLCB worked with Region 22 in its successful effort to obtain a post-judgment garnishment order that resulted in recovery of 100 percent of backpay and interest (in excess of $100,000), plus a 10-percent surcharge.

Finally, the Branch continued to aggressively pursue its more traditional contempt litigation. Continuing to build on its successful criminal contempt prosecutions in *Crystal Window Cleaning Co.*[9] (sentence of 18 months imprisonment against employer's owner for failure to comply with Sixth Circuit order), and *Waldon Mirror & Blinds*[10] (sentence of 500 hours of community service and $19,000 in

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[2] Id.

[3] Nos 94-1294, 94-1227, and 96-2095 (1st Cir ).

[4] 24 LRRM 2354 (6th Cir 1949).

[5] 141 LRRM 2386 (2d Cir 1992).

[6] Supra

[7] Civil No 95-5978 (6th Cir.).

[8] Civil No 97-3393 (3d Cir.).

[9] Affd mem. sub nom. *U.S. v Hochschild,* 129 F.3d 1266 (6th Cir.), cert denied 118 S.Ct 1325.

[10] 96 CR 1080 (JBW) (E D.N.Y.)

restitution payment among other terms) against the employer and its two owners for failure to comply with a Second Circuit judgment), the CLCB obtained authorization from the Fourth Circuit to institute grand jury proceedings against a company supervisor who had harassed union agents as they tried to distribute leaflets at the employer's facility.

# X

# Special Litigation

The Board participates in a number of cases which fall outside the normal process of statutory enforcement and review. The following represents the most significant of these cases litigated this year.

## A. Freedom of Information Act Litigation

In *Avondale Industries v. NLRB*,[1] the District Court for the Eastern District of Louisiana granted the Board's Motion for Summary Judgment and denied Avondale's Cross-Motion for Summary Judgment, entering final judgment on behalf of the Board on all of Avondale's claims. Among the documents sought by Avondale, and claimed as exempt by the Board, were several predecisional drafts of a Hearing Officer's Report on Objections and Challenged Ballots and Recommendations to the Board (the Report), memoranda and draft reports circulated between the Board Hearing Officer and an attorney in another Region who assisted in the preparation of the Report, and memoranda detailing pertinent portions of the representation hearing transcript. Avondale having conceded that the requested documents were "predecisional" and "deliberative" within the meaning of the deliberative process privilege under FOIA Exemption 5, the District Court rejected Avondale's remaining arguments against the applicability of the privilege. Specifically, the court rejected Avondale's assertion that the Board's *Vaughn* Index[2] of documents withheld must be prepared by the author of the documents listed in the *Vaughn* Index. Further, the court found nothing improper with the Hearing Officer obtaining assistance in drafting the Report from the attorney from another Region. Therefore, the court declined to address whether evidence of malfeasance may constitute an exception to the deliberative process privilege, as the court found that Avondale had failed to present any evidence of Board malfeasance in any event. Finally, the court upheld the Board's classification of Avondale's use of the requested documents as a "commercial use" for purposes of assessing Avondale with duplication, search and review costs. The court found that Avondale's intent to use the documents in the course of contesting the results of the representation election and/or defending itself in unfair labor practice proceedings constituted a commercial use within the meaning of 5 U.S.C. § 552(a)(4). The court rejected Avondale's argument that the documents would have

[1] Civil Action No 96-1227, sec. "S."

[2] See *Vaughn v Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied 415 U.S. 977 (1974)

to be utilized in connection with Avondale's primary business of shipbuilding in order to constitute a commercial use.

In *Perdue Farms, Inc. v. NLRB*,[3] the District Court for the Eastern District of North Carolina largely adopted a prior recommendation of a United States Magistrate Judge. The court granted the Board's Motion for Partial Summary Judgment and denied Perdue's Cross-Motion for Partial Summary Judgment as to all but one document, finding that various handwritten notes, drafts, letters, and emails were properly withheld or redacted under Exemption 5, and that other documents were properly withheld or redacted under Exemption 7(A) as investigatory records compiled for law enforcement purposes and/or under Exemption 7(C) as documents pertaining to and containing the names of individuals allegedly involved in an ongoing criminal investigation. As to the single document, whose source and genesis were unknown both at the time the Board initially submitted its motion and when the Magistrate Judge issued his recommendation, the court denied the Board's Motion for Partial Summary Judgment, and instead granted Perdue's motion for limited discovery with respect to the circumstances under which the document was created and placed in the Board's files, and granted Perdue's Cross-Motion for Partial Summary Judgment "only as to the discoverability" of the document. The court denied Perdue's motion to strike the Board's affidavits, finding that the court possessed discretion to consider the Board's supplemental affidavits submitted with its reply brief rather than its opening brief. Finally, the court denied Perdue's motion for attorney's fees, finding that Perdue satisfied neither the eligibility nor entitlement tests for fees under FOIA. The court found Perdue not eligible because the majority of the Board's disclosures were discretionary rather than mandated by the court. The court also found that even if Perdue had satisfactorily demonstrated its eligibility, Perdue would not be entitled to fees as its action did not produce any substantial public benefit.

## B. Litigation Under the Equal Access to Justice Act

In *Altercare of Hartville v. NLRB*,[4] the Sixth Circuit–in the context of an employer's refusal to bargain to test the certification of the bargaining unit–granted the employer's application under the Equal Access to Justice Act (the EAJA) for attorney's fees and expenses. In the underlying case, the Board found that licensed practical nurses were statutory employees and were properly included in the bargaining unit.[5]

[3] 1997 U S Dist. LEXIS 14579 (E D.N.C.)
[4] 150 F.3d 628 (6th Cir.).
[5] 321 NLRB 847 (1996).

The Sixth Circuit denied enforcement of the Board's decision and order to bargain, finding that it was contrary to circuit precedent holding that nurses are statutory supervisors.[6] In so doing, the court invited the employer to apply for attorney's fees pursuant to the EAJA. In the subsequent EAJA proceeding, the Board did not argue that its position in the underlying litigation was substantially justified. The Board contended, however, that an employer's net worth and number of employees must be aggregated with that of affiliated entities for purposes of determining whether a company meets the statutory definition of a "party" under the EAJA. Based on such aggregation of other nursing homes affiliated with the employer, the Board argued that the employer exceeded the statutory eligibility requirements. Initially, the court found that the EAJA does not include a general aggregation requirement for affiliated entities. Moreover, while recognizing that aggregation may be appropriate where, for example, an association participates in litigation on behalf of its members, the court distinguished the case before it. Relying on the facts that the employer was a separately incorporated entity and that the merits of the underlying case involved a bargaining unit consisting solely of the employer's employees, the court concluded that the employer clearly was litigating on its own behalf. The court therefore declined to aggregate the net worth or employees of affiliated entities to determine the employer's eligibility for fees and costs. Turning to the amount of the fee request, the court found that the employer calculated its attorney's fees at a rate that exceeded the EAJA's statutory cap, and reduced the award accordingly.

## C. Litigation to Enforce Board Subpoenas

A frequent subject of subpoena litigation this year was the issue of whether the Board may force a newspaper to disclose the identity of an employer charged with failing to hire union applicants who had responded to an anonymous classified advertisement placed by the employer.

In *NLRB v. Bakersfield Californian*,[7] the Ninth Circuit reversed a district court order denying enforcement of a Board investigatory subpoena, issued to a newspaper, for the identity of an anonymous advertiser charged with unlawful discrimination by failing to contact union applicants responding to the advertisement. The court rejected the district court's conclusion that Section 11 of the NLRA, 29 U.S.C. § 161, does not authorize the Board to issue investigative subpoenas to a nonparty. Joining the Fourth and Seventh Circuits, the court held that

[6] 129 F.3d 365 (6th Cir.).
[7] 128 F 3d 1339 (9th Cir.)

Section 11 gives the Board the power to issue to nonparties investigatory subpoenas compelling the production of any relevant evidence.[8] The court also rejected the district court's finding that the anonymity of the employer coupled with its rejection of a few union applicants did not create an inference of illegality sufficient to satisfy Section 11's relevancy requirement. The court held that the identity of the advertiser was "material and within the NLRB's province to investigate."[9] The court emphasized that, without the information, the Board would almost certainly be unable to identify the anonymous employer, and the investigation could not proceed.[10]

In *NLRB v. Midland Daily News*, [11] the court affirmed a district court order denying enforcement of a similar subpoena. In this case, two electricians, disclosing their union affiliation, submitted resumes in response to an anonymous employment advertisement. Three days later, the union filed a failure to hire charge against the anonymous employer. The Board issued a subpoena for the name of the employer after the newspaper refused to disclose its advertiser's identity. The newspaper neither complied with the subpoena nor filed a petition to revoke, and the Board applied for enforcement. In affirming the district court's denial of enforcement, the Sixth Circuit first held that the court properly exercised its discretion to address Midland's first amendment defense notwithstanding the newspaper's failure to petition to revoke the subpoena.[12] On the merits, the court found that the heightened scrutiny test of *Central Hudson Gas & Elec. Corp. v. Public Service Commission*,[13] was appropriate because enforcement of the subpoena "may discourage anonymous employment advertisements generally and thereby chill the lawful commercial speech of periodicals and employers nationwide."[14] Relying heavily on its conclusion that the union had filed a "spurious complaint . . . lacking any factual support," the court held that the Board had not "demonstrat[ed] a reasonable basis" for seeking the name of the employer and therefore that "the chilling effect [of enforcement] on the ability of every newspaper and periodical to publish lawful advertisements would clearly violate the Constitution."[15] Contrary to the conclusion of the Ninth Circuit in *Bakersfield*, the Sixth Circuit rejected the argument that the Board had no other reasonable

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[8] Id at 1342.
[9] Id
[10] Id
[11] 151 F 3d 472 (6th Cir.)
[12] Id at 474
[13] 447 U.S 557, 566 (1980)
[14] Id. at 475
[15] Id. at 473 and 475

manner of obtaining the information, and held that the agency had failed to demonstrate that a subpoena was the "least extensive means by which the Board could reasonably expect to proceed."[16]

In *NLRB v. Toledo Blade*,[17] a district court enforced a Board subpoena in a situation very similar to those in *Bakersfield* and *Midland*. The issue before the court in this case was whether a "reporter's privilege" authorizes a newspaper to refuse to comply with a Board subpoena for the name of an advertiser charged with unlawful discrimination, where the information sought was obtained by the newspaper with the understanding that it would be kept confidential. The court concluded that the issue was controlled by the Supreme Court's decision in *Branzburg v. Hayes*[18] and the Sixth Circuit's decision in *Grand Jury Proceedings*.[19] The court held that those two cases stand for the proposition that, in the Sixth Circuit, "reporters have no qualified privilege to avoid testifying about information derived from confidential sources, even in civil proceedings."[20] The court concluded with the finding that the Rule should be no different where the confidential information is sought by the Board rather than a grand jury or a private party.

## D. Bankruptcy Litigation Under Section 1113 of the Bankruptcy Code

In *Hudson Refrigerating Co.*,[21] the United States Bankruptcy Court for the District of New Jersey rejected an employer-debtor's attempt to reject a collective-bargaining agreement under Section 1113 of the Bankruptcy Code.[22] The debtor sought to reject the agreement as of the date it expired, in order to avoid the debtor's obligation to maintain the agreement's terms and conditions of employment. The court reasoned that once an agreement has expired, the parties remain *statutorily* obligated to continue their collective-bargaining relationship. Accordingly, the court concluded that it could not order the rejection, since to do so would go beyond the court's limited jurisdiction to authorize rejection of existing collective-bargaining agreements, and would interfere with the national labor policy regarding collective-bargaining relationships.

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[16] Id. at 475
[17] No 97-7153 (N D Oh.) (mem.).
[18] 408 U S 665 (1972).
[19] 810 F 2d 580 (6th Cir. 1987).
[20] No 97-7153 (N.D.Oh ), slip op. at 5-6 (mem ).
[21] No 95-27077(WFT) (D N J.)
[22] 11 U S.C § 1113.

## E. Board Proceedings Involving Attorney Discipline

In *Joel I. Keiler v. NLRB*,[23] a federal district court held that a former Board disciplinary rule[24] was unconstitutionally vague on its face. The *Keiler* case arose from a General Counsel's complaint about an attorney's conduct during an unfair labor practice hearing. The attorney's conduct became the subject of an agency disciplinary case, which resulted in the Board decision[25] reviewed by the district court. In its decision in the disciplinary case, the Board found that attorney Joel Keiler had engaged in "misconduct of an aggravated character" within the meaning of former disciplinary Rule Section 102.44. The Board found that Keiler had made various derogatory comments to counsel for the General Counsel, and had engaged in several acts with the sole purpose and effect of obstructing and delaying the unfair labor practice hearing in which he was participating.[26] The Board suspended Keiler from practice before the agency for 1 year. On review of the Board's suspension order, the district court held that Section 102.44 was unconstitutionally vague. The court found that the Rule provided "no guidance as to what 'aggravated' means," and that the Board's history of dealing with similar attorney transgressions had not given sufficient definition to the rule to defeat a vagueness challenge.[27] The court noted that the Board's position was undercut by its failure to discipline Keiler for his previous, similar litigation tactics, and that the offending phrase "misconduct of an aggravated character" did not incorporate any existing approved ethical codes of conduct, such as the American Bar Association's Model Rules.[28]

## F. Litigation Concerning the Board's Representation and Unfair Labor Practice Case Jurisdiction

In *Central Cartage Co. v. Teamsters Local 407*,[29] Central Cartage filed several amended complaints seeking, inter alia, to enjoin the Board from exercising its discretion to process a representation petition filed by Local 407, to enjoin Local 407 from seeking representation at Central, and to obtain a declaration from the court that a collective-bargaining agreement existed between Local 964 and Central. Both the Board and

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[23] No 96-0181 (D.D C ), revg 316 NLRB 763 (1995)

[24] Former Sec.102.44 of the Board's Rules and Regulations, 29 CFR § 102.44. This Rule provided that "misconduct of an aggravated character" at any hearing shall be ground for suspension or disbarment by the Board from further practice before the agency

[25] *Joel Keiler*, 316 NLRB 763 (1995)

[26] Id at 766-767 and 770

[27] No 96-0181 (D D.C.), slip op at 4-5 (mem )

[28] Id at 5-6. Former Sec 102 44 has been amended and renumbered as Sec. 102 177, 29 CFR § 102.177.

[29] No 1 94 CV 283 (N.D Oh )

Local 407 moved to dismiss Central's action. The district court concluded that Central had failed to assert a proper basis for subject matter jurisdiction for its claims against the Board and Local 407, and accordingly, granted their motions to dismiss. Specifically, the court found that the crux of Central's complaint was a representation issue within the exclusive jurisdiction of the Board, not the district court, under 29 U.S.C. §159(c), since it concerned which union represented Central's employees; that Central improperly attempted to frame a union representation dispute as a contract issue under 29 U.S.C. §185; and that Central was precluded from using either 28 U.S.C. §1337 or 28 U.S.C. §2201 (the Declaratory Judgment Act) as a basis on which the court could exercise jurisdiction to interfere with the representation issues that were currently pending in the Board proceeding. In so holding, the court also concluded that if Central wished to contest the Board's representation order, Central was required under the Act to seek review in the court of appeals.

In *Bello v. Kentov*,[30] the United States District Court for the Southern District of Florida dismissed a complaint for injunctive relief to compel a Regional Director to reinstate and process a decertification petition which the Regional Director dismissed, subject to reinstatement after final disposition of pending unfair labor practice complaints. The plaintiffs contended that by invoking the "blocking charge" policy, the Regional Director violated the Act and deprived them of their constitutional due process and equal protection rights. The court rejected these contentions, and found that it lacked jurisdiction over the complaint. It concluded that jurisdiction could not be based on the narrow exception of *Leedom v. Kyne*,[31] where the Board's issuance of complaint and invocation of the blocking charge policy was "precisely the course of conduct the Act sets out for the Board to follow in such matters." Nor did the plaintiffs establish constitutional violations. The court noted that the plaintiffs were "obviously unsatisfied with the Regional Director's investigation of the charges," but found that it could not reasonably be concluded that "there was no investigation, as Plaintiffs allege . . . [or] that the investigation conducted was so unacceptable as to create constitutional deprivation." The court thus found no evidence that the Regional Director's application of her adjudicative powers was inconsistent, discriminatory, or otherwise violative of the equal protection rights of the plaintiffs, and plaintiffs failed to present the required "clear and strong showing" that the Board's actions deprived them of any due-process rights.

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[30] No 97-1548 (S.D.Fla.)
[31] 358 U.S 184 (1958).

*Journeymen & Apprentices Local 577 v. Ross Bros. Construction Co.*,[32] involved an action commenced by Local 577 to enforce a collective-bargaining agreement with its employer, Ross. Ross filed two counterclaims which the district court stayed pending a decision by the Sixth Circuit in an enforcement proceeding regarding the Board's decision and order in a related unfair labor practice case. In the unfair labor practice case, as a result of the charges filed by Local 577, an administrative law judge found, and the Board affirmed, that Ross, in conjunction with various other employers, had violated Section 8(a)(1) and (5) of the Act, 29 U.S.C. §158(a)(1) and (5), by its failure to pay wages and benefits which they were obligated to pay by the terms of the collective-bargaining agreement, and ordered Ross to cease and desist from such unfair labor practices, and to reimburse its employees and Local 577 for losses suffered, including lost wages and underpayments to fringe benefit funds.[33] Following the Sixth Circuit's decision enforcing the Board's Order, Local 577 filed a motion to dismiss Ross' counterclaims. In support of Local 577's motion, the Board, as intervenor, filed a reply memorandum asserting that litigation of Ross' counterclaims was barred by the collateral estoppel effect of the Board and Sixth Circuit decisions.[34]

The district court granted Local 577's motion to dismiss. Specifically, the court concluded that as to Ross' second counterclaim, the Board and the Sixth Circuit had already ruled that Ross was obligated, under the binding contract, to pay certain wages and fringe benefits. Moreover, in deciding not to hear the counterclaim, the court acknowledged Ross' argument that the district court had concurrent jurisdiction over the contract interpretation claims made by Ross, but concluded that no substantial reason had been propounded as to why the court should revisit the same issues addressed and resolved by the Board. The court therefore found that collateral estoppel was appropriate in this case to preclude a relitigation of the same issues resolved by the Board and the Sixth Circuit, since it was "more than satisfied" that all five of the factors required under *U.S. v. Utah Construction Co.*,[35] had been met. Further, as to the first counterclaim, the court concluded that inasmuch as the matters alleged in the first counterclaim arose under the collective bargaining agreement, Ross had failed to exhaust its remedies pursuant to the grievance arbitration procedure under the agreement. Accordingly, the district court dismissed both of Ross' counterclaims.

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[32] No C2-92-705 (S.D.Oh.)

[33] *Den-Ral, Inc*, 315 NLRB 538 (1994).

[34] *NLRB v Ross Bros Construction Co.*, 113 F.3d 1235 (6th Cir. 1997), enfg. mem. *Den-Ral, Inc*, supra

[35] 384 U.S 394, 421-422 (1966)

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# APPENDIX

## GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

### Adjusted Cases

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

### Advisory Opinion Cases

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

### Agreement of Parties

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

### Amendment of Certification Cases

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

### Backpay

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

### Backpay Hearing

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

### Backpay Specification

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

## Case

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

## Certification

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

## Challenges

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

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

## Charge

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

## Complaint

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

## Election, Runoff

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

## Election, Stipulated

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

## Eligible Voters

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

## Fees, Dues, and Fines

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

## Fines

See "Fees, Dues, and Fines."

## Formal Action

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

## Formal Agreement (in unfair labor practice cases)

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

## Compliance

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

## Dismissed Cases

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

## Dues

See "Fees, Dues, and Fines."

## Election, Consent

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

## Election, Directed

## Board-Directed

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

## Regional Director-Directed

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

## Election, Expedited

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

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

## Election, Rerun

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

## Informal Agreement (in unfair labor practice cases)

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

## Injunction Petitions

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

## Jurisdictional Disputes

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

## Objections

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

## Petition

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

## Proceeding

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

## Representation Cases

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

## Representation Election

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

## Situation

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

## Types of Cases

General:

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

## C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

## R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

## Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

## UD Cases

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

## Unfair Labor Practice Cases

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

## Union Deauthorization Cases

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

## Union-Shop Agreement

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

## Unit, Appropriate Bargaining

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

## Valid Vote

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

## Withdrawn Cases

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

# SUBJECT INDEX TO ANNUAL REPORT TABLES



Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW., Washington, D.C. 20570.

Table 1 –Total Cases Received, Closed, and Pending, Fiscal Year 1998[1]

| | Total | AFL-CIO Unions | Other National Unions | Other Local Unions | Individuals | Employers |
|---|---|---|---|---|---|---|
| | All cases | | | | | |
| Pending October 1, 1997 | 37,594 | 22,068 | 1,171 | 1,776 | 11,007 | 1,572 |
| Received fiscal 1998 | 36,657 | 20,428 | 747 | 1,802 | 11,989 | 1,691 |
| On docket fiscal 1998 | 74,251 | 42,496 | 1,918 | 3,578 | 22,996 | 3,263 |
| Closed fiscal 1998 | 39,587 | 22,325 | 861 | 1,693 | 12,823 | 1,885 |
| Pending September 30, 1998 | 34,664 | 20,171 | 1,057 | 1,885 | 10,173 | 1,378 |
| | Unfair labor practice cases[2] | | | | | |
| Pending October 1, 1997 | 34,958 | 20,310 | 1,091 | 1,573 | 10,595 | 1,389 |
| Received fiscal 1998 | 30,439 | 16,024 | 601 | 1,340 | 11,038 | 1,436 |
| On docket fiscal 1998 | 65,397 | 36,334 | 1,692 | 2,913 | 21,633 | 2,825 |
| Closed fiscal 1998 | 33,287 | 17,812 | 713 | 1,243 | 11,901 | 1,618 |
| Pending September 30, 1998 | 32,110 | 18,522 | 979 | 1,670 | 9,732 | 1,207 |
| | Representation cases[3] | | | | | |
| Pending October 1, 1997 | 2,368 | 1,669 | 78 | 189 | 352 | 80 |
| Received fiscal 1998 | 5,831 | 4,243 | 140 | 424 | 849 | 175 |
| On docket fiscal 1998 | 8,199 | 5,912 | 218 | 613 | 1,201 | 255 |
| Closed fiscal 1998 | 5,915 | 4,359 | 144 | 417 | 830 | 165 |
| Pending September 30, 1998 | 2,284 | 1,553 | 74 | 196 | 371 | 90 |
| | Union-shop deauthorization cases | | | | | |
| Pending October 1, 1997 | 60 | ------ | ------ | ------ | 60 | ------ |
| Received fiscal 1998 | 102 | ------ | ------ | ------ | 102 | ------ |
| On docket fiscal 1998 | 162 | ------ | ------ | ------ | 162 | ------ |
| Closed fiscal 1998 | 92 | ------ | ------ | ------ | 92 | ------ |
| Pending September 30, 1998 | 70 | ------ | ------ | ------ | 70 | ------ |
| | Amendment of certification cases | | | | | |
| Pending October 1, 1997 | 10 | 4 | 0 | 3 | 0 | 3 |
| Received fiscal 1998 | 12 | 7 | 1 | 3 | 0 | 1 |
| On docket fiscal 1998 | 22 | 11 | 1 | 6 | 0 | 4 |
| Closed fiscal 1998 | 12 | 7 | 1 | 3 | 0 | 1 |
| Pending September 30, 1998 | 10 | 4 | 0 | 3 | 0 | 3 |
| | Unit clarification cases | | | | | |
| Pending October 1, 1997 | 198 | 85 | 2 | 11 | 0 | 100 |
| Received fiscal 1998 | 273 | 154 | 5 | 35 | 0 | 79 |
| On docket fiscal 1998 | 471 | 239 | 7 | 46 | 0 | 179 |
| Closed fiscal 1998 | 281 | 147 | 3 | 30 | 0 | 101 |
| Pending September 30, 1998 | 190 | 92 | 4 | 16 | 0 | 78 |

[1] See Glossary of terms for definitions Advisory Opinion (AO) cases not included See Table 22
[2] See Table 1B for totals by types of cases
[3] See Table 1A for totals by types of cases
*Revised, reflects higher figures than reported pending, September 30, 1997, 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 1998[1]

| | Total | Identification of filing party | | | | |
|---|---|---|---|---|---|---|
| | | AFL-CIO Unions | Other National Unions | Other local Unions | Individuals | Employers |
| | CA Cases | | | | | |
| Pending October 1, 1997 | 29,467 | 20,213 | 1,089 | 1,543 | 6,622 | 0 |
| Received fiscal 1998 | 23,630 | 15,952 | 596 | 1,290 | 5,792 | 0 |
| On docket fiscal 1998 | 53,097 | 36,165 | 1,685 | 2,833 | 12,414 | 0 |
| Closed fiscal 1998 | 25,928 | 17,744 | 708 | 1,206 | 6,270 | 0 |
| Pending September 30, 1998 | 27,169 | 18,421 | 977 | 1,627 | 6,144 | 0 |
| | CB Cases[2] | | | | | |
| Pending October 1, 1997 | 4,780 | 84 | 2 | 24 | 3,971 | 699 |
| Received fiscal 1998 | 5,936 | 54 | 1 | 39 | 5,243 | 599 |
| On docket fiscal 1998 | 10,716 | 138 | 3 | 63 | 9,214 | 1,298 |
| Closed fiscal 1998 | 6,449 | 48 | 2 | 28 | 5,629 | 742 |
| Pending September 30, 1998 | 4,267 | 90 | 1 | 35 | 3,585 | 556 |
| | CC Cases | | | | | |
| Pending October 1, 1997 | 442 | 2 | 0 | 3 | 0 | 437 |
| Received fiscal 1998 | 503 | 6 | 3 | 9 | 0 | 485 |
| On docket fiscal 1998 | 945 | 8 | 3 | 12 | 0 | 922 |
| Closed fiscal 1998 | 529 | 5 | 2 | 6 | 0 | 516 |
| Pending September 30, 1998 | 416 | 3 | 1 | 6 | 0 | 406 |
| | CD Cases | | | | | |
| Pending October 1, 1997 | 135 | 8 | 0 | 2 | 0 | 125 |
| Received fiscal 1998 | 166 | 10 | 0 | 2 | 0 | 154 |
| On docket fiscal 1998 | 301 | 18 | 0 | 4 | 0 | 279 |
| Closed fiscal 1998 | 183 | 13 | 0 | 2 | 0 | 168 |
| Pending September 30, 1998 | 118 | 5 | 0 | 2 | 0 | 111 |
| | CE Cases | | | | | |
| Pending October 1, 1997 | 29 | 2 | 0 | 0 | 2 | 25 |
| Received fiscal 1998 | 58 | 1 | 1 | 0 | 3 | 53 |
| On docket fiscal 1998 | 87 | 3 | 1 | 0 | 5 | 78 |
| Closed fiscal 1998 | 26 | 1 | 1 | 0 | 2 | 22 |
| Pending September 30, 1998 | 61 | 2 | 0 | 0 | 3 | 56 |
| | CG Cases | | | | | |
| Pending October 1, 1997 | 26 | 0 | 0 | 0 | 0 | 26 |
| Received fiscal 1998 | 25 | 0 | 0 | 0 | 0 | 25 |
| On docket fiscal 1998 | 51 | 0 | 0 | 0 | 0 | 51 |
| Closed fiscal 1998 | 32 | 0 | 0 | 0 | 0 | 32 |
| Pending September 30, 1998 | 19 | 0 | 0 | 0 | 0 | 19 |
| | CP Cases | | | | | |
| Pending October 1, 1997 | 79 | 1 | 0 | 1 | 0 | 77 |
| Received fiscal 1998 | 121 | 1 | 0 | 0 | 0 | 120 |
| On docket fiscal 1998 | 200 | 2 | 0 | 1 | 0 | 197 |
| Closed fiscal 1998 | 140 | 1 | 0 | 1 | 0 | 138 |
| Pending September 30, 1998 | 60 | 1 | 0 | 0 | 0 | 59 |

[1] See Glossary of terms for definitions

*Revised, reflects higher figures than reported pending September 30, 1997, 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 1998[1]

| | Total | Identification of filing party | | | | |
|---|---|---|---|---|---|---|
| | | AFL-CIO Unions | Other National Unions | Other local Unions | Individuals | Employers |
| | RC cases | | | | | |
| Pending October 1, 1997 | 1,933 | 1,667 | 78 | 188 | 0 | ----- |
| Received fiscal 1998 | 4,807 | 4,243 | 140 | 424 | 0 | ----- |
| On docket fiscal 1998 | 6,740 | 5,910 | 218 | 612 | 0 | ----- |
| Closed fiscal 1998 | 4,917 | 4,357 | 144 | 416 | 0 | ----- |
| Pending September 30, 1998 | 1,823 | 1,553 | 74 | 196 | 0 | ----- |
| | RM cases | | | | | |
| Pending October 1, 1997 | 80 | ----- | ----- | ----- | ----- | 80 |
| Received fiscal 1998 | 175 | ----- | ----- | ----- | ----- | 175 |
| On docket fiscal 1998 | 255 | ----- | ----- | ----- | ----- | 255 |
| Closed fiscal 1998 | 165 | ----- | ----- | ----- | ----- | 165 |
| Pending September 30, 1998 | 90 | ----- | ----- | ----- | ----- | 90 |
| | RD cases | | | | | |
| Pending October 1, 1997 | 355 | 2 | 0 | 1 | 352 | ------ |
| Received fiscal 1998 | 849 | 0 | 0 | 0 | 849 | ------ |
| On docket fiscal 1998 | 1,204 | 2 | 0 | 1 | 1,201 | ------ |
| Closed fiscal 1998 | 833 | 2 | 0 | 1 | 830 | ------ |
| Pending September 30, 1998 | 371 | 0 | 0 | 0 | 371 | ------ |

[1] See Glossary of terms for definitions

*Revised, reflects higher figures than reported pending September 30, 1997, 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 1998

| | Number of cases showing-specific allegations | Percent of total cases |
|---|---|---|
| A Charges filed against employers under Sec. 8(a) | | |
| Subsections of Sec 8(a) Total cases | 23,630 | 100 0 |
| 8(a)(1) | 4,238 | 17 9 |
| 8(a)(1)(2) | 213 | 0 9 |
| 8(a)(1)(3) | 8,734 | 37 0 |
| 8(a)(1)(4) | 176 | 0 7 |
| 8(a)(1)(5) | 7,187 | 30 4 |
| 8(a)(1)(2)(3) | 112 | 0 5 |
| 8(a)(1)(2)(4) | 6 | 0 0 |
| 8(a)(1)(2)(5) | 106 | 0 4 |
| 8(a)(1)(3)(4) | 520 | 2 2 |
| 8(a)(1)(3)(5) | 2,113 | 8 9 |
| 8(a)(1)(4)(5) | 28 | 0 1 |
| 8(a)(1)(2)(3)(4) | 14 | 0 1 |
| 8(a)(1)(2)(3)(5) | 85 | 0 4 |
| 8(a)(1)(2)(4)(5) | 3 | 0 0 |
| 8(a)(1)(3)(4)(5) | 82 | 0 3 |
| 8(a)(1)(2)(3)(4)(5) | 13 | 0 1 |
| Recapitulation[1] | | |
| 8(a)(1) | 23,630 | 100 0 |
| 8(a)(2) | 552 | 2 3 |
| 8(a)(3) | 11,673 | 49 4 |
| 8(a)(4) | 842 | 3 6 |
| 8(a)(5) | 9,617 | 40 7 |
| B. Charges filed against unions under Sec 8(b) | | |
| Subsections of Sec 8(b) Total cases | 6,726 | 100 0 |
| 8(b)(1) | 4,794 | 71 3 |
| 8(b)(2) | 38 | 0 6 |
| 8(b)(3) | 172 | 2 6 |
| 8(b)(4) | 669 | 9 9 |
| 8(b)(5) | 3 | 0 0 |
| 8(b)(7) | 121 | 1 8 |
| 8(b)(1)(2) | 637 | 9 5 |
| 8(b)(1)(3) | 237 | 3 5 |
| 8(b)(1)(5) | 10 | 0 1 |
| 8(b)(1)(6) | 7 | 0 1 |
| 8(b)(2)(3) | 2 | 0 0 |
| 8(b)(1)(2)(3) | 22 | 0 3 |
| 8(b)(1)(2)(5) | 7 | 0 1 |
| 8(b)(1)(2)(6) | 2 | 0 0 |
| 8(b)(1)(2)(3)(5) | 1 | 0 0 |
| 8(b)(1)(2)(3)(6) | 2 | 0 0 |
| 8(b)(2)(3)(5)(6) | 1 | 0 0 |
| 8(b)(1)(2)(3)(5)(6) | 1 | 0 0 |

Table 2 –Types of Unfair Labor Practices Alleged, Fiscal Year 1998—Continued

| | Number of cases showing-specific allegations | Percent of total cases |
|---|---|---|
| Recapitulation[1] | | |
| 8(b)(1) | 5,720 | 85 0 |
| 8(b)(2) | 711 | 10 6 |
| 8(b)(3) | 440 | 6 5 |
| 8(b)(4) | 669 | 9 9 |
| 8(b)(5) | 23 | 0 3 |
| 8(b)(6) | 13 | 0 2 |
| 8(b)(7) | 121 | 1 8 |
| B1 Analysis of 8 (b)(4) | | |
| Total cases 8(b)(4) | 669 | 100 0 |
| 8(b)(4)(A) | 52 | 7 8 |
| 8(b)(4)(B) | 410 | 61 3 |
| 8(b)(4)(C) | 13 | 1 9 |
| 8(b)(4)(D) | 166 | 24 8 |
| 8(b)(4)(A)(B) | 25 | 3 7 |
| 8(b)(4)(A)(C) | 1 | 0 1 |
| 8(b)(4)(B)(C) | 1 | 0 1 |
| 8(b)(4)(A)(B)(C) | 1 | 0 1 |
| Recapitulation[1] | | |
| 8(b)(4)(A) | 79 | 11 8 |
| 8(b)(4)(B) | 437 | 65 3 |
| 8(b)(4)(C) | 16 | 2 4 |
| 8(b)(4)(D) | 166 | 24 8 |
| B2. Analysis of 8(b)(7) | | |
| Total cases 8(b)(7) | 121 | 100 0 |
| 8(b)(7)(A) | 37 | 30 6 |
| 8(b)(7)(B) | 11 | 9 1 |
| 8(b)(7)(C) | 62 | 51 2 |
| 8(b)(7)(A)(B) | 9 | 7 4 |
| 8(b)(7)(A)(C) | 1 | 0 8 |
| 8(b)(7)(A)(B)(C) | 1 | 0 8 |
| Recapitulation[1] | | |
| 8(b)(7)(A) | 47 | 38 8 |
| 8(b)(7)(B) | 13 | 10 7 |
| 8(b)(7)(C) | 73 | 60 3 |
| C. Charges filed under Sec 8(e) | | |
| Total cases 8(e) | 58 | 100 0 |
| Against unions alone | 58 | 100 0 |
| D. Charges filed under Sec. 8(g) | | |
| Total cases 8(g) | 25 | 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 1998[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 | 31 | 31 | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- |
| Complaints issued | 3,632 | 2,775 | 2,575 | 139 | 29 | ---- | 4 | 2 | 1 | 7 | 0 | 0 | 18 |
| Backpay specifications issued | 42 | 32 | 32 | 0 | 0 | ---- | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hearings completed, total | 787 | 436 | 387 | 28 | 0 | 0 | 0 | 1 | 1 | 1 | 10 | 6 | 2 |
| Initial ULP hearings | 779 | 428 | 379 | 28 | 0 | 0 | 0 | 1 | 1 | 1 | 10 | 6 | 2 |
| Backpay hearings | 5 | 5 | 5 | 0 | 0 | ---- | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other hearings | 3 | 3 | 3 | 0 | 0 | ---- | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Decisions by administrative law judges, total | 1152 | 538 | 465 | 31 | 1 | 0 | 0 | 0 | 1 | 1 | 9 | 26 | 43 |
| Initial ULP decisions | 1084 | 502 | 431 | 31 | 1 | 0 | 0 | 0 | 1 | 0 | 9 | 25 | 4 |
| Backpay decisions | 20 | 8 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Supplemental decisions | 48 | 28 | 26 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Decisions and orders by the Board, total | 1186 | 625 | 522 | 27 | 19 | 17 | 0 | 0 | 0 | 1 | 10 | 24 | 2 |
| Upon consent of parties | | | | | | | | | | | | | |
| Initial decisions | 93 | 25 | 19 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Supplemental decisions | 21 | 12 | 11 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Adopting administrative law judges' decisions (no exceptions filed) | | | | | | | | | | | | | |
| Initial ULP decisions | 275 | 157 | 133 | 0 | 14 | 0 | 0 | 0 | 0 | 0 | 3 | 7 | 0 |
| Backpay decisions | 8 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Contested | | | | | | | | | | | | | |
| Initial ULP decisions | 706 | 387 | 323 | 17 | 3 | 17 | 0 | 3 | 0 | 1 | 6 | 15 | 2 |
| Decisions based on stipulated record | 10 | 9 | 6 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Supplemental ULP decisions | 40 | 18 | 14 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Backpay decisions | 33 | 12 | 11 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary of terms for definitions

Table 3B –Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1998[1]

| Types of formal actions taken | Formal actions taken by type of case | | | | | |
|---|---|---|---|---|---|---|
| | Cases in which formal actions taken | Total formal actions taken[2] | RC | RM | RD | UD |
| Hearings completed, total | 853 | 838 | 770 | 16 | 52 | 8 |
| Initial hearings | 695 | 683 | 628 | 15 | 40 | 8 |
| Hearings on objections and/or challenges | 158 | 155 | 142 | 1 | 12 | 0 |
| Decisions issued, total | 726 | 717 | 657 | 19 | 41 | 7 |
| By Regional Director | 666 | 659 | 603 | 18 | 38 | 7 |
| Elections directed | 603 | 596 | 551 | 13 | 32 | 7 |
| Dismissals on record | 63 | 63 | 52 | 5 | 6 | 0 |
| By Board | 60 | 58 | 54 | 1 | 3 | 0 |
| Transferred by Regional Directors for initial decision | 2 | 2 | 2 | 0 | 0 | 0 |
| Elections directed | 1 | 1 | 1 | 0 | 0 | 0 |
| Dismissals on record | 1 | 1 | 1 | 0 | 0 | 0 |
| Review of Regional Directors' decisions | | | | | | |
| Requests for review received | 473 | 427 | 367 | 16 | 44 | 4 |
| Withdrawn before request ruled upon | 47 | 46 | 40 | 3 | 3 | 0 |
| Board action on request ruled upon, total | 389 | 349 | 306 | 10 | 33 | 2 |
| Granted | 74 | 73 | 68 | 0 | 5 | 0 |
| Denied | 303 | 266 | 229 | 9 | 28 | 2 |
| Remanded | 12 | 10 | 9 | 1 | 0 | 0 |
| Withdrawn after request granted, before Board review | 3 | 3 | 3 | 0 | 0 | 0 |
| Board decision after review, total | 58 | 56 | 52 | 1 | 3 | 0 |
| Regional Directors' decisions | | | | | | |
| Affirmed | 39 | 38 | 35 | 0 | 3 | 0 |
| Modified | 4 | 4 | 3 | 1 | 0 | 0 |
| Reversed | 15 | 14 | 14 | 0 | 0 | 0 |
| Outcome | | | | | | |
| Election directed | 53 | 51 | 48 | 1 | 2 | 0 |
| Dismissals on record | 5 | 5 | 4 | 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 1998[1]—Continued

| Types of formal actions taken | Formal actions taken by type of case | | | | | |
|---|---|---|---|---|---|---|
| | Cases in which formal actions taken | Total formal actions taken[2] | RC | RM | RD | UD |
| Decision on objections and/or challenges, total | 198 | 195 | 186 | 0 | 9 | 1 |
| By Regional Directors | 39 | 37 | 34 | 0 | 3 | 0 |
| By Board | 457 | 445 | 403 | 4 | 38 | 6 |
| In stipulated elections | 410 | 403 | 361 | 4 | 38 | 5 |
| No exceptions to Regional Directors' reports | 218 | 216 | 191 | 2 | 23 | 4 |
| Exceptions to Regional Directors' reports | 192 | 187 | 170 | 2 | 15 | 1 |
| In directed elections (after transfer by Regional Director) | 40 | 35 | 35 | 0 | 0 | 1 |
| Review of Regional Directors' supplemental decisions | | | | | | |
| Request for review received | 39 | 38 | 35 | 0 | 3 | 2 |
| Withdrawn before request ruled upon | 1 | 1 | 1 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 33 | 32 | 29 | 0 | 3 | 0 |
| Granted | 5 | 5 | 5 | 0 | 0 | 0 |
| Denied | 25 | 25 | 22 | 0 | 3 | 0 |
| Remanded | 3 | 2 | 2 | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decision after review, total | 7 | 7 | 7 | 0 | 0 | 0 |
| Regional Directors' decisions | | | | | | |
| Affirmed | 4 | 4 | 4 | 0 | 0 | 0 |
| Modified | 1 | 1 | 1 | 0 | 0 | 0 |
| Reversed | 2 | 2 | 2 | 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 1998[1]

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | |
|---|---|---|---|
| | | AC | UC |
| Hearings completed | 56 | 3 | 51 |
| Decisions issued after hearing | 54 | 3 | 51 |
| By Regional Directors | 49 | 3 | 46 |
| By Board | 5 | 0 | 5 |
| Transferred by Regional Directors for initial decision | 0 | 0 | 0 |
| Review of Regional Directors' decisions | | | |
| Requests for review received | 43 | 3 | 37 |
| Withdrawn before request ruled upon | 5 | 0 | 5 |
| Board action on requests ruled upon, total | 30 | 1 | 27 |
| Granted | 4 | 0 | 4 |
| Denied | 25 | 1 | 22 |
| Remanded | 1 | 0 | 1 |
| Withdrawn after request granted, before Board review | 1 | 0 | 1 |
| Board decision after review, total | 5 | 0 | 5 |
| Regional Directors' decisions | | | |
| Affirmed | 3 | 0 | 3 |
| Modified | 1 | 0 | 1 |
| Reversed | 1 | 0 | 1 |

[1] See Glossary of terms for definitions

Table 4 –Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1998[1]

| Action taken | Total all | Remedial action taken by– | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | |
| | | Total | Pursuant– | | | | | 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 | 11,910 | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- | ---- |
| Notice posted | 3,402 | 2,938 | 2,319 | 86 | 11 | 276 | 246 | 464 | 395 | 18 | 0 | 39 | 12 |
| Recognition or other assistance withdrawn | 14 | 14 | 5 | 2 | 0 | 5 | 2 | ---- | ---- | ---- | ---- | ---- | ---- |
| Employer–dominated union Disestablished | 7 | 7 | 3 | 0 | 0 | 4 | 0 | ---- | ---- | ---- | ---- | ---- | ---- |
| Employees offered reinstatement | 926 | 926 | 782 | 20 | 5 | 60 | 59 | ---- | ---- | ---- | ---- | ---- | ---- |
| Employees placed on preferential hiring list | 121 | 121 | 105 | 1 | 0 | 4 | 11 | ---- | ---- | ---- | ---- | ---- | ---- |
| Hiring hall rights restored | 15 | ---- | ---- | ---- | ---- | ---- | ---- | 15 | 8 | 0 | 0 | 7 | 0 |
| Objections to employment withdrawn | 4 | ---- | ---- | ---- | ---- | ---- | ---- | 4 | 4 | 0 | 0 | 0 | 0 |
| Picketing ended | 93 | ---- | ---- | ---- | ---- | ---- | ---- | 93 | 84 | 2 | 0 | 1 | 6 |
| Work stoppage ended | 12 | ---- | ---- | ---- | ---- | ---- | ---- | 12 | 9 | 0 | 0 | 0 | 3 |
| Collective bargaining begun | 2,878 | 2,720 | 2,477 | 27 | 2 | 95 | 119 | 158 | 154 | 0 | 0 | 4 | 0 |
| Backpay distributed | 2,839 | 2,736 | 2,376 | 61 | 9 | 157 | 133 | 103 | 85 | 4 | 0 | 9 | 5 |
| Reimbursement of fees, dues, and fines | 77 | 33 | 23 | 2 | 0 | 5 | 3 | 44 | 37 | 0 | 0 | 7 | 0 |
| 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 | 2,528 | 2,528 | 1,641 | 38 | 4 | 180 | 665 | ---- | ---- | ---- | ---- | ---- | ---- |
| Accepted | 1,955 | 1,955 | 1,249 | 28 | 4 | 98 | 576 | ---- | ---- | ---- | ---- | ---- | ---- |

Table 4 —Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1998[1]—Continued

| Action taken | Total all | Remedial action taken by– | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | | |
| | | Total | Pursuant– | | | | | 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 | 573 | 573 | 392 | 10 | 0 | 82 | 89 | ---- | ---- | ---- | ---- | ---- | ---- | ---- |
| Employees placed on preferential hiring list | 723 | 723 | 670 | 11 | 0 | 8 | 34 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Hiring hall rights restored | 22 | ---- | ---- | ---- | ---- | ---- | ---- | 22 | 19 | 0 | 0 | 3 | 0 | |
| Objections to employment withdrawn | 4 | ---- | ---- | ---- | ---- | ---- | ---- | 4 | 4 | 0 | 0 | 0 | 0 | |
| Employees receiving backpay | | | | | | | | | | 1 | 0 | 396 | 9 | |
| From either employer or union | 24,190 | 23,682 | 17,739 | 196 | 1,024 | 2,415 | 2,308 | 508 | 102 | 0 | 0 | 0 | 0 | |
| From both employer and union | 261 | 259 | 259 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 2 | 0 | |
| Employees reimbursed for fees, dues, and fines | | | | | | | | | | 0 | 0 | 0 | 0 | |
| From either employer or union | 2,366 | 2,137 | 84 | 2 | 0 | 59 | 1,992 | 229 | 227 | 21,783 | 0 | 73,538 | 507,918 | |
| From both employer and union | 132 | 132 | 0 | 0 | 0 | 132 | 0 | 0 | 0 | 0 | 0 | 8,935 | 0 | |
| C By amounts of monetary recovery, total | 92,133,616 | 91,125,849 | 44,210,255 | 1,779,643 | 184,882 | 14,308 | 642,969 | 1,007,767 | 404,528 | ---- | ---- | ---- | ---- | |
| Backpay (includes all monetary payments except fees, dues, and fines) | 89,854,833 | 88,944,010 | 43,937,744 | 1,759,823 | 184,882 | 13,683458 | 29,378,103 | 910,823 | 316,519 | 21,783 | 0 | 64,6032 | 507,918 | |
| Reimbursement of fees, dues, and fines | 2,278,783 | 2,181,839 | 272,511 | 19,820 | 0 | 634,642 | 1,264,866 | 96,944 | 88,009 | 0 | 0 | 8,935 | 0 | |

[1] See Glossary of terms for definitions Data in this table are based on unfair labor practice cases that were closed during fiscal year 1998 after the company and/or union had satisfied all remedial action requirments
[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 1998[1]

| Industrial groups[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 | 1,455 | 1,192 | 962 | 221 | 8 | 1 | 0 | 0 | 0 | 245 | 199 | 5 | 41 | 6 | 0 | 12 |
| Tobacco manufacturers | 4 | 3 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| Textile mill products | 171 | 154 | 133 | 21 | 0 | 0 | 0 | 0 | 0 | 15 | 10 | 1 | 4 | 0 | 0 | 2 |
| Apparel and other finished products made from fabric and similar materials | 135 | 122 | 100 | 22 | 0 | 0 | 0 | 0 | 0 | 12 | 7 | 2 | 3 | 0 | 0 | 1 |
| Lumber and wood products (except furniture) | 310 | 242 | 212 | 28 | 2 | 0 | 0 | 0 | 0 | 65 | 54 | 1 | 10 | 2 | 0 | 1 |
| Furniture and fixtures | 232 | 199 | 173 | 22 | 3 | 0 | 0 | 0 | 1 | 33 | 26 | 1 | 6 | 0 | 0 | 0 |
| Paper and allied products | 414 | 357 | 279 | 77 | 1 | 0 | 0 | 0 | 0 | 55 | 46 | 1 | 8 | 0 | 0 | 2 |
| Printing, publishing, and allied products | 714 | 609 | 499 | 101 | 8 | 1 | 0 | 0 | 0 | 88 | 50 | 5 | 33 | 3 | 1 | 13 |
| Chemicals and allied products | 556 | 457 | 387 | 63 | 5 | 1 | 0 | 0 | 1 | 97 | 78 | 3 | 16 | 1 | 0 | 1 |
| Petroleum refining and related industries | 173 | 151 | 132 | 18 | 1 | 0 | 0 | 0 | 0 | 21 | 19 | 0 | 2 | 0 | 0 | 1 |
| Rubber and miscellaneous plastic products | 391 | 326 | 285 | 41 | 0 | 0 | 0 | 0 | 0 | 63 | 46 | 2 | 15 | 1 | 0 | 1 |
| Leather and leather products | 22 | 20 | 16 | 4 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 |
| Stone, clay, glass, and concrete products | 573 | 457 | 367 | 79 | 9 | 0 | 0 | 0 | 2 | 113 | 93 | 0 | 20 | 1 | 0 | 2 |
| Primary metal industries | 1,002 | 878 | 683 | 186 | 9 | 0 | 0 | 0 | 0 | 117 | 97 | 1 | 19 | 1 | 1 | 5 |
| Fabricated metal products (except machinery and transportation equipment) | 964 | 819 | 672 | 141 | 4 | 2 | 0 | 0 | 0 | 137 | 104 | 3 | 30 | 3 | 0 | 5 |
| Machinery (except electrical) | 851 | 709 | 541 | 127 | 18 | 18 | 0 | 0 | 5 | 132 | 104 | 2 | 26 | 5 | 0 | 5 |
| Electrical and electronic machinery, equipment and supplies | 573 | 514 | 406 | 104 | 2 | 0 | 1 | 0 | 1 | 52 | 34 | 3 | 15 | 1 | 0 | 6 |
| Aircraft and parts | 168 | 157 | 88 | 69 | 0 | 0 | 0 | 0 | 0 | 10 | 9 | 0 | 1 | 1 | 0 | 0 |
| Ship and boat building and repairing | 121 | 109 | 89 | 19 | 0 | 0 | 0 | 0 | 1 | 12 | 10 | 0 | 2 | 0 | 0 | 0 |
| Automotive and other transportation equipment | 1,037 | 921 | 607 | 290 | 16 | 4 | 1 | 0 | 3 | 111 | 99 | 1 | 11 | 2 | 0 | 3 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical | 128 | 98 | 72 | 26 | 0 | 0 | 0 | 0 | 0 | 30 | 26 | 0 | 4 | 0 | 0 | 0 |
| Miscellaneous manufacturing industries | 215 | 150 | 120 | 30 | 0 | 0 | 0 | 0 | 0 | 62 | 49 | 1 | 12 | 1 | 0 | 2 |
| Manufacturing | 10,209 | 8,644 | 6,824 | 1,691 | 86 | 27 | 2 | 0 | 14 | 1,473 | 1,163 | 32 | 278 | 28 | 2 | 62 |
| Metal mining | 53 | 46 | 41 | 5 | 0 | 0 | 0 | 0 | 0 | 7 | 5 | 0 | 2 | 0 | 0 | 0 |
| Coal mining | 101 | 95 | 71 | 17 | 6 | 0 | 0 | 0 | 1 | 6 | 5 | 0 | 1 | 0 | 0 | 0 |
| Oil and gas extraction | 39 | 26 | 17 | 8 | 1 | 0 | 0 | 0 | 0 | 13 | 9 | 0 | 4 | 0 | 0 | 0 |
| Mining and quarrying of nonmetallic minerals (except fules) | 91 | 73 | 62 | 10 | 0 | 0 | 0 | 0 | 1 | 17 | 14 | 0 | 3 | 1 | 0 | 0 |
| Mining | 284 | 240 | 191 | 40 | 7 | 0 | 0 | 0 | 2 | 43 | 33 | 0 | 10 | 1 | 0 | 0 |
| Construction | 4,564 | 3,925 | 2,989 | 544 | 225 | 99 | 10 | 0 | 58 | 630 | 537 | 42 | 51 | 3 | 0 | 6 |

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 1998[1]—Continued

| Industrial groups[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 |
| Wholesale trade | 1,530 | 1,224 | 966 | 238 | 12 | 3 | 0 | 0 | 5 | 283 | 221 | 6 | 56 | 11 | 0 | 12 |
| Retail trade | 2,180 | 1,699 | 1,341 | 325 | 18 | 4 | 2 | 0 | 9 | 457 | 345 | 30 | 82 | 11 | 0 | 13 |
| Finance, insurance, and real estate | 560 | 449 | 343 | 94 | 7 | 2 | 0 | 0 | 3 | 99 | 77 | 10 | 12 | 3 | 1 | 8 |
| U.S. Postal Service | 2,370 | 2,365 | 1,691 | 672 | 2 | 0 | 0 | 0 | 0 | 4 | 3 | 0 | 1 | 0 | 0 | 1 |
| Local and suburban transit and interurban highway passenger transportation | 821 | 620 | 502 | 113 | 3 | 1 | 0 | 0 | 1 | 189 | 165 | 1 | 23 | 6 | 1 | 5 |
| Motor freight transportation and warehousing | 2,520 | 2,083 | 1,560 | 463 | 39 | 4 | 15 | 0 | 2 | 420 | 361 | 9 | 50 | 5 | 1 | 11 |
| Water transportation | 298 | 269 | 172 | 94 | 2 | 0 | 0 | 0 | 1 | 25 | 18 | 2 | 5 | 1 | 0 | 3 |
| Other transportation | 479 | 372 | 284 | 79 | 7 | 2 | 0 | 0 | 0 | 101 | 84 | 0 | 17 | 1 | 1 | 4 |
| Communication | 868 | 744 | 585 | 151 | 5 | 2 | 1 | 0 | 0 | 112 | 89 | 1 | 22 | 0 | 0 | 12 |
| Electric, gas, and sanitary services | 936 | 743 | 604 | 127 | 10 | 2 | 0 | 0 | 0 | 179 | 156 | 6 | 17 | 2 | 0 | 12 |
| Transportation, communication, and other utilities | 5,922 | 4,831 | 3,707 | 1,027 | 66 | 11 | 16 | 0 | 4 | 1,026 | 873 | 19 | 134 | 15 | 3 | 47 |
| Hotels, rooming houses, camps, and other lodging places | 721 | 594 | 462 | 123 | 3 | 2 | 1 | 0 | 3 | 124 | 110 | 3 | 11 | 0 | 0 | 3 |
| Personal services | 238 | 170 | 144 | 26 | 0 | 0 | 0 | 0 | 0 | 66 | 45 | 2 | 19 | 2 | 0 | 0 |
| Automotive repair, services, and garages | 337 | 219 | 175 | 40 | 3 | 0 | 1 | 0 | 0 | 116 | 100 | 0 | 16 | 2 | 0 | 0 |
| Motion pictures | 153 | 129 | 89 | 38 | 1 | 0 | 0 | 0 | 1 | 21 | 15 | 0 | 6 | 0 | 2 | 1 |
| Amusement and recreation services (exception motion pictures) | 423 | 339 | 249 | 82 | 5 | 2 | 0 | 0 | 1 | 78 | 65 | 1 | 12 | 2 | 0 | 4 |
| Health services | 3,365 | 2,563 | 2,180 | 344 | 9 | 2 | 1 | 25 | 2 | 718 | 630 | 11 | 77 | 12 | 2 | 70 |
| Educational services | 273 | 208 | 171 | 31 | 4 | 1 | 0 | 0 | 1 | 57 | 50 | 2 | 5 | 0 | 0 | 8 |
| Membership organizations | 553 | 482 | 287 | 167 | 6 | 0 | 22 | 0 | 0 | 53 | 43 | 0 | 10 | 1 | 1 | 16 |
| Business services | 2,275 | 1,847 | 1,389 | 380 | 47 | 11 | 2 | 0 | 18 | 404 | 345 | 15 | 44 | 7 | 1 | 16 |
| Miscellaneous repair services | 55 | 39 | 30 | 9 | 0 | 0 | 0 | 0 | 0 | 16 | 9 | 0 | 7 | 0 | 0 | 0 |
| Legal services | 33 | 29 | 21 | 7 | 0 | 1 | 0 | 0 | 0 | 4 | 3 | 0 | 1 | 0 | 0 | 0 |
| Museums, art galleries, and botanical and zoological gardens | 18 | 11 | 8 | 3 | 0 | 0 | 0 | 0 | 0 | 7 | 7 | 0 | 0 | 0 | 0 | 0 |
| Social services | 381 | 281 | 248 | 33 | 0 | 0 | 0 | 0 | 0 | 96 | 84 | 1 | 11 | 2 | 0 | 2 |
| Miscellaneous services | 99 | 74 | 57 | 14 | 2 | 0 | 1 | 0 | 0 | 23 | 18 | 1 | 4 | 1 | 0 | 1 |
| Services | 8,924 | 6,985 | 5,510 | 1,297 | 80 | 19 | 28 | 25 | 26 | 1,783 | 1,524 | 36 | 223 | 29 | 6 | 121 |
| Public administration | 114 | 77 | 68 | 8 | 0 | 1 | 0 | 0 | 0 | 33 | 31 | 0 | 2 | 1 | 0 | 3 |
| Total, all industrial groups | 36,657 | 30,439 | 23,630 | 5,936 | 503 | 166 | 58 | 25 | 121 | 5,831 | 4,807 | 175 | 849 | 102 | 12 | 273 |

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

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1998[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 | 131 | 112 | 100 | 12 | 0 | 0 | 0 | 0 | 0 | 19 | 17 | 0 | 2 | 0 | 0 | 0 |
| New Hampshire | 71 | 62 | 58 | 4 | 0 | 0 | 0 | 0 | 0 | 9 | 8 | 0 | 1 | 0 | 0 | 0 |
| Vermont | 42 | 31 | 29 | 2 | 0 | 0 | 0 | 0 | 0 | 11 | 11 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | 1,107 | 949 | 764 | 154 | 17 | 8 | 1 | 2 | 3 | 147 | 133 | 2 | 12 | 2 | 0 | 9 |
| Rhode Island | 170 | 146 | 118 | 25 | 3 | 0 | 0 | 0 | 0 | 22 | 20 | 0 | 2 | 1 | 0 | 1 |
| Connecticut | 816 | 664 | 529 | 114 | 14 | 1 | 3 | 2 | 1 | 145 | 130 | 1 | 14 | 1 | 0 | 6 |
| New England | 2,337 | 1,964 | 1,598 | 311 | 34 | 9 | 4 | 4 | 4 | 353 | 319 | 3 | 31 | 4 | 0 | 16 |
| New York | 4,040 | 3,462 | 2,355 | 921 | 103 | 46 | 3 | 4 | 30 | 530 | 428 | 27 | 75 | 9 | 0 | 39 |
| New Jersey | 1,444 | 1,107 | 870 | 199 | 22 | 9 | 3 | 0 | 4 | 316 | 268 | 3 | 45 | 7 | 1 | 13 |
| Pennsylvania | 2,212 | 1,830 | 1,466 | 291 | 41 | 20 | 2 | 2 | 8 | 362 | 305 | 10 | 47 | 6 | 1 | 13 |
| Middle Atlantic | 7,696 | 6,399 | 4,691 | 1,411 | 166 | 75 | 8 | 6 | 42 | 1,208 | 1,001 | 40 | 167 | 22 | 2 | 65 |
| Ohio | 2,213 | 1,856 | 1,469 | 330 | 25 | 6 | 22 | 1 | 3 | 327 | 262 | 4 | 61 | 6 | 1 | 23 |
| Indiana | 1,157 | 980 | 827 | 117 | 20 | 9 | 1 | 0 | 6 | 167 | 134 | 8 | 25 | 5 | 0 | 5 |
| Illinois | 2,273 | 1,801 | 1,306 | 370 | 77 | 14 | 6 | 2 | 26 | 449 | 348 | 35 | 66 | 6 | 1 | 16 |
| Michigan | 2,046 | 1,684 | 1,278 | 376 | 18 | 8 | 0 | 1 | 3 | 330 | 282 | 2 | 46 | 9 | 0 | 23 |
| Wisconsin | 695 | 535 | 416 | 93 | 17 | 1 | 7 | 0 | 1 | 150 | 117 | 3 | 30 | 2 | 0 | 8 |
| East North Central | 8,384 | 6,856 | 5,296 | 1,286 | 157 | 38 | 36 | 4 | 39 | 1,423 | 1,143 | 52 | 228 | 28 | 2 | 75 |
| Iowa | 260 | 196 | 168 | 25 | 1 | 1 | 0 | 0 | 1 | 63 | 49 | 1 | 13 | 0 | 0 | 1 |
| Minnesota | 494 | 320 | 249 | 60 | 7 | 0 | 1 | 1 | 2 | 164 | 120 | 2 | 42 | 3 | 0 | 7 |
| Missouri | 987 | 807 | 603 | 154 | 29 | 13 | 2 | 0 | 6 | 172 | 132 | 6 | 34 | 6 | 1 | 1 |
| North Dakota | 23 | 11 | 8 | 3 | 0 | 0 | 0 | 0 | 0 | 11 | 9 | 0 | 2 | 0 | 0 | 1 |
| South Dakota | 19 | 13 | 11 | 2 | 0 | 0 | 0 | 0 | 0 | 6 | 5 | 1 | 0 | 0 | 0 | 0 |
| Nebraska | 88 | 69 | 67 | 2 | 0 | 0 | 0 | 0 | 0 | 19 | 14 | 1 | 4 | 0 | 0 | 0 |
| Kansas | 240 | 191 | 151 | 39 | 1 | 0 | 0 | 0 | 0 | 46 | 39 | 2 | 5 | 0 | 0 | 3 |
| West North Central | 2,111 | 1,607 | 1,257 | 285 | 38 | 14 | 3 | 1 | 9 | 481 | 368 | 13 | 100 | 9 | 1 | 13 |
| Delaware | 120 | 91 | 84 | 7 | 0 | 0 | 0 | 0 | 0 | 28 | 26 | 1 | 1 | 1 | 0 | 0 |
| Maryland | 425 | 316 | 253 | 61 | 2 | 0 | 0 | 0 | 0 | 104 | 97 | 1 | 6 | 2 | 0 | 3 |

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1998[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 | 122 | 92 | 65 | 27 | 0 | 0 | 0 | 0 | 0 | 28 | 26 | 0 | 2 | 0 | 0 | 2 |
| Virginia | 343 | 273 | 218 | 51 | 1 | 0 | 0 | 0 | 3 | 70 | 62 | 1 | 7 | 0 | 0 | 0 |
| West Virginia | 451 | 401 | 332 | 61 | 4 | 0 | 0 | 1 | 3 | 46 | 41 | 1 | 4 | 0 | 0 | 4 |
| North Carolina | 292 | 250 | 201 | 49 | 0 | 0 | 0 | 0 | 0 | 40 | 37 | 0 | 3 | 0 | 0 | 2 |
| South Carolina | 120 | 108 | 94 | 12 | 2 | 0 | 0 | 0 | 0 | 12 | 12 | 0 | 0 | 0 | 0 | 0 |
| Georgia | 615 | 550 | 417 | 133 | 0 | 0 | 0 | 0 | 0 | 63 | 54 | 1 | 8 | 0 | 0 | 2 |
| Florida | 1,101 | 963 | 774 | 182 | 5 | 2 | 0 | 0 | 0 | 131 | 116 | 0 | 15 | 0 | 0 | 7 |
| South Atlantic | 3,589 | 3,044 | 2,438 | 583 | 14 | 2 | 0 | 1 | 6 | 522 | 471 | 5 | 46 | 3 | 0 | 20 |
| Kentucky | 571 | 480 | 408 | 59 | 9 | 1 | 1 | 0 | 2 | 85 | 70 | 3 | 12 | 4 | 0 | 2 |
| Tennessee | 651 | 577 | 489 | 85 | 2 | 1 | 0 | 0 | 0 | 70 | 59 | 4 | 7 | 0 | 1 | 3 |
| Alabama | 430 | 363 | 283 | 79 | 1 | 0 | 0 | 0 | 0 | 67 | 59 | 0 | 8 | 0 | 0 | 0 |
| Mississippi | 212 | 191 | 159 | 32 | 0 | 0 | 0 | 0 | 0 | 21 | 17 | 0 | 4 | 0 | 0 | 0 |
| East South Central | 1,864 | 1,611 | 1,339 | 255 | 12 | 2 | 1 | 0 | 2 | 243 | 205 | 7 | 31 | 4 | 1 | 5 |
| Arkansas | 120 | 96 | 79 | 17 | 0 | 0 | 0 | 0 | 0 | 24 | 16 | 1 | 7 | 0 | 0 | 0 |
| Louisiana | 486 | 430 | 371 | 59 | 0 | 0 | 0 | 0 | 0 | 56 | 50 | 0 | 6 | 0 | 0 | 0 |
| Oklahoma | 233 | 200 | 147 | 52 | 1 | 0 | 0 | 0 | 0 | 29 | 25 | 0 | 4 | 1 | 0 | 3 |
| Texas | 1,124 | 1,007 | 805 | 200 | 1 | 0 | 1 | 0 | 0 | 111 | 88 | 4 | 19 | 0 | 0 | 6 |
| West South Central | 1,963 | 1,733 | 1,402 | 328 | 2 | 0 | 1 | 0 | 0 | 220 | 179 | 5 | 36 | 1 | 0 | 9 |
| Montana | 139 | 105 | 87 | 16 | 1 | 0 | 0 | 0 | 1 | 33 | 23 | 2 | 8 | 0 | 0 | 1 |
| Idaho | 61 | 51 | 47 | 4 | 0 | 0 | 0 | 0 | 0 | 10 | 9 | 0 | 1 | 0 | 0 | 0 |
| Wyoming | 32 | 27 | 20 | 7 | 0 | 0 | 0 | 0 | 0 | 4 | 4 | 0 | 0 | 0 | 0 | 1 |
| Colorado | 696 | 651 | 487 | 155 | 8 | 0 | 1 | 0 | 0 | 43 | 35 | 0 | 8 | 1 | 0 | 1 |
| New Mexico | 161 | 134 | 104 | 29 | 1 | 0 | 0 | 0 | 0 | 23 | 20 | 1 | 2 | 2 | 0 | 2 |
| Arizona | 389 | 344 | 283 | 60 | 0 | 0 | 0 | 0 | 1 | 43 | 34 | 1 | 8 | 0 | 0 | 2 |
| Utah | 96 | 80 | 70 | 9 | 0 | 1 | 0 | 0 | 0 | 15 | 14 | 0 | 1 | 0 | 0 | 1 |
| Nevada | 672 | 586 | 474 | 94 | 14 | 3 | 1 | 0 | 0 | 81 | 75 | 3 | 3 | 0 | 0 | 5 |
| Mountain | 2,246 | 1,978 | 1,572 | 374 | 24 | 4 | 2 | 0 | 2 | 252 | 214 | 7 | 31 | 3 | 0 | 13 |

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1998[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 | 828 | 600 | 493 | 103 | 2 | 0 | 0 | 1 | 1 | 200 | 147 | 7 | 46 | 9 | 2 | 17 |
| Oregon | 386 | 286 | 226 | 50 | 6 | 4 | 0 | 0 | 0 | 93 | 67 | 8 | 18 | 1 | 0 | 6 |
| California | 3,989 | 3,312 | 2,462 | 769 | 45 | 14 | 2 | 5 | 15 | 632 | 518 | 23 | 91 | 15 | 4 | 26 |
| Alaska | 148 | 110 | 67 | 43 | 0 | 0 | 0 | 0 | 0 | 35 | 32 | 0 | 3 | 0 | 0 | 3 |
| Hawaii | 553 | 488 | 431 | 50 | 1 | 4 | 0 | 1 | 1 | 64 | 52 | 4 | 8 | 0 | 0 | 1 |
| Guam | 36 | 35 | 35 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| Pacific | 5,940 | 4,831 | 3,714 | 1,015 | 54 | 22 | 2 | 7 | 17 | 1,025 | 817 | 42 | 166 | 25 | 6 | 53 |
| Puerto Rico | 476 | 380 | 302 | 73 | 2 | 0 | 1 | 2 | 0 | 90 | 77 | 1 | 12 | 3 | 0 | 3 |
| Virgin Islands | 31 | 18 | 13 | 5 | 0 | 0 | 0 | 0 | 0 | 12 | 12 | 0 | 0 | 0 | 0 | 1 |
| Outlying areas | 507 | 398 | 315 | 78 | 2 | 0 | 1 | 2 | 0 | 102 | 89 | 1 | 12 | 3 | 0 | 4 |
| Total, all States and areas | 36,637 | 30,421 | 23,622 | 5,926 | 503 | 166 | 58 | 25 | 121 | 5,829 | 4,806 | 175 | 848 | 102 | 12 | 273 |

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

Table 6B –Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1998[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 | 816 | 664 | 529 | 114 | 14 | 1 | 3 | 2 | 1 | 145 | 130 | 1 | 14 | 1 | 0 | 6 |
| Maine | 131 | 112 | 100 | 12 | 0 | 0 | 0 | 0 | 0 | 19 | 17 | 0 | 2 | 0 | 0 | 0 |
| Massachusetts | 1,107 | 949 | 764 | 154 | 17 | 8 | 1 | 2 | 3 | 147 | 133 | 2 | 12 | 2 | 0 | 9 |
| New Hampshire | 71 | 62 | 58 | 4 | 0 | 0 | 0 | 0 | 0 | 9 | 8 | 0 | 1 | 0 | 0 | 0 |
| Rhode Island | 170 | 146 | 118 | 25 | 3 | 0 | 0 | 0 | 0 | 22 | 20 | 0 | 2 | 1 | 0 | 1 |
| Vermont | 42 | 31 | 29 | 2 | 0 | 0 | 0 | 0 | 0 | 11 | 11 | 0 | 0 | 0 | 0 | 0 |
| Region I | 2,337 | 1,964 | 1,598 | 311 | 34 | 9 | 4 | 4 | 4 | 353 | 319 | 3 | 31 | 4 | 0 | 16 |
| Delaware | 120 | 91 | 84 | 7 | 0 | 0 | 0 | 0 | 0 | 28 | 26 | 1 | 1 | 1 | 0 | 0 |
| New Jersey | 1,444 | 1,107 | 870 | 199 | 22 | 9 | 3 | 0 | 4 | 316 | 268 | 3 | 45 | 7 | 1 | 13 |
| New York | 4,040 | 3,462 | 2,355 | 921 | 103 | 46 | 3 | 4 | 30 | 530 | 428 | 27 | 75 | 9 | 0 | 39 |
| Puerto Rico | 476 | 380 | 302 | 73 | 2 | 0 | 1 | 2 | 0 | 90 | 77 | 1 | 12 | 3 | 0 | 3 |
| Virgin Islands | 31 | 18 | 13 | 5 | 0 | 0 | 0 | 0 | 0 | 12 | 12 | 0 | 0 | 0 | 0 | 1 |
| Region II | 6,111 | 5,058 | 3,624 | 1,205 | 127 | 55 | 7 | 6 | 34 | 976 | 811 | 32 | 133 | 20 | 1 | 56 |
| District of Columbia | 122 | 92 | 65 | 27 | 0 | 0 | 0 | 0 | 0 | 28 | 26 | 0 | 2 | 0 | 0 | 2 |
| Maryland | 425 | 316 | 253 | 61 | 2 | 0 | 0 | 0 | 0 | 104 | 97 | 1 | 6 | 2 | 0 | 3 |
| Pennsylvania | 2,212 | 1,830 | 1,466 | 291 | 41 | 20 | 2 | 2 | 8 | 362 | 305 | 10 | 47 | 6 | 1 | 13 |
| Virginia | 343 | 273 | 218 | 51 | 1 | 0 | 0 | 0 | 3 | 70 | 62 | 1 | 7 | 0 | 0 | 0 |
| West Virginia | 451 | 401 | 332 | 61 | 4 | 0 | 0 | 1 | 3 | 46 | 41 | 1 | 4 | 0 | 0 | 4 |
| Region III | 3,553 | 2,912 | 2,334 | 491 | 48 | 20 | 2 | 3 | 14 | 610 | 531 | 13 | 66 | 8 | 1 | 22 |
| Alabama | 430 | 363 | 283 | 79 | 1 | 0 | 0 | 0 | 0 | 67 | 59 | 0 | 8 | 0 | 0 | 0 |
| Florida | 1,101 | 963 | 774 | 182 | 5 | 2 | 0 | 0 | 0 | 131 | 116 | 0 | 15 | 0 | 0 | 7 |
| Georgia | 615 | 550 | 417 | 133 | 0 | 0 | 0 | 0 | 0 | 63 | 54 | 1 | 8 | 0 | 0 | 2 |
| Kentucky | 571 | 480 | 408 | 59 | 9 | 1 | 1 | 0 | 2 | 85 | 70 | 3 | 12 | 4 | 0 | 2 |
| Mississippi | 212 | 191 | 159 | 32 | 0 | 0 | 0 | 0 | 0 | 21 | 17 | 0 | 4 | 0 | 0 | 0 |
| North Carolina | 292 | 250 | 201 | 49 | 0 | 0 | 0 | 0 | 0 | 40 | 37 | 0 | 3 | 0 | 0 | 2 |
| South Carolina | 120 | 108 | 94 | 12 | 2 | 0 | 0 | 0 | 0 | 12 | 12 | 0 | 0 | 0 | 0 | 0 |
| Tennessee | 651 | 577 | 489 | 85 | 2 | 1 | 0 | 0 | 0 | 70 | 59 | 4 | 7 | 0 | 1 | 3 |
| Region IV | 3,992 | 3,482 | 2,825 | 631 | 19 | 4 | 1 | 0 | 2 | 489 | 424 | 8 | 57 | 4 | 1 | 16 |

Table 6B –Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1998[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 |
| Illinois | 2,273 | 1,801 | 1,306 | 370 | 77 | 14 | 6 | 2 | 26 | 449 | 348 | 35 | 66 | 6 | 1 | 16 |
| Indiana | 1,157 | 980 | 827 | 117 | 20 | 9 | 1 | 0 | 6 | 167 | 134 | 8 | 25 | 5 | 0 | 5 |
| Michigan | 2,046 | 1,684 | 1,278 | 376 | 18 | 8 | 0 | 1 | 3 | 330 | 282 | 2 | 46 | 9 | 0 | 23 |
| Minnesota | 494 | 320 | 249 | 60 | 7 | 0 | 1 | 1 | 2 | 164 | 120 | 2 | 42 | 3 | 0 | 7 |
| Ohio | 2,213 | 1,856 | 1,469 | 330 | 25 | 6 | 22 | 1 | 3 | 327 | 262 | 4 | 61 | 6 | 1 | 23 |
| Wisconsin | 695 | 535 | 416 | 93 | 17 | 1 | 7 | 0 | 1 | 150 | 117 | 3 | 30 | 2 | 0 | 8 |
| Region V | 8,878 | 7,176 | 5,545 | 1,346 | 164 | 38 | 37 | 5 | 41 | 1,587 | 1,263 | 54 | 270 | 31 | 2 | 82 |
| Arkansas | 120 | 96 | 79 | 17 | 0 | 0 | 0 | 0 | 0 | 24 | 16 | 1 | 7 | 0 | 0 | 0 |
| Louisiana | 486 | 430 | 371 | 59 | 0 | 0 | 0 | 0 | 0 | 56 | 50 | 0 | 6 | 0 | 0 | 0 |
| New Mexico | 161 | 134 | 104 | 29 | 1 | 0 | 0 | 0 | 0 | 23 | 20 | 1 | 2 | 2 | 0 | 2 |
| Oklahoma | 233 | 200 | 147 | 52 | 1 | 0 | 0 | 0 | 0 | 29 | 25 | 0 | 4 | 1 | 0 | 3 |
| Texas | 1,124 | 1,007 | 805 | 200 | 1 | 0 | 1 | 0 | 0 | 111 | 88 | 4 | 19 | 0 | 0 | 6 |
| Region VI | 2,124 | 1,867 | 1,506 | 357 | 3 | 0 | 1 | 0 | 0 | 243 | 199 | 6 | 38 | 3 | 0 | 11 |
| Iowa | 260 | 196 | 168 | 25 | 1 | 1 | 0 | 0 | 1 | 63 | 49 | 1 | 13 | 0 | 0 | 1 |
| Kansas | 240 | 191 | 151 | 39 | 1 | 0 | 0 | 0 | 0 | 46 | 39 | 2 | 5 | 0 | 0 | 3 |
| Missouri | 987 | 807 | 603 | 154 | 29 | 13 | 2 | 0 | 6 | 172 | 132 | 6 | 34 | 6 | 1 | 1 |
| Nebraska | 88 | 69 | 67 | 2 | 0 | 0 | 0 | 0 | 0 | 19 | 14 | 1 | 4 | 0 | 0 | 0 |
| Region VII | 1,575 | 1,263 | 989 | 220 | 31 | 14 | 2 | 0 | 7 | 300 | 234 | 10 | 56 | 6 | 1 | 5 |
| Colorado | 696 | 651 | 487 | 155 | 8 | 0 | 1 | 0 | 0 | 43 | 35 | 0 | 8 | 1 | 0 | 1 |
| Montana | 139 | 105 | 87 | 16 | 1 | 0 | 0 | 0 | 1 | 33 | 23 | 2 | 8 | 0 | 0 | 1 |
| North Dakota | 23 | 11 | 8 | 3 | 0 | 0 | 0 | 0 | 0 | 11 | 9 | 0 | 2 | 0 | 0 | 1 |
| South Dakota | 19 | 13 | 11 | 2 | 0 | 0 | 0 | 0 | 0 | 6 | 5 | 1 | 0 | 0 | 0 | 0 |
| Utah | 96 | 80 | 70 | 9 | 0 | 1 | 0 | 0 | 0 | 15 | 14 | 0 | 1 | 0 | 0 | 1 |
| Wyoming | 32 | 27 | 20 | 7 | 0 | 0 | 0 | 0 | 0 | 4 | 4 | 0 | 0 | 0 | 0 | 1 |
| Region VIII | 1,005 | 887 | 683 | 192 | 9 | 1 | 1 | 0 | 1 | 112 | 90 | 3 | 19 | 1 | 0 | 5 |

Table 6B –Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1998[1] –Continued

| Standard Federal Regions[2] | All cases | Unfair labor practice cases | | | | | | | | Representation cases | | | | Union deauthorization cases | Amendment of certification cases | Unit clarification cases |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | All C cases | CA | CB | CC | CD | CE | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Arizona | 389 | 344 | 283 | 60 | 0 | 0 | 0 | 0 | 1 | 43 | 34 | 1 | 8 | 0 | 0 | 2 |
| California | 3,989 | 3,312 | 2,462 | 769 | 45 | 14 | 2 | 5 | 15 | 632 | 518 | 23 | 91 | 15 | 4 | 26 |
| Hawaii | 553 | 488 | 431 | 50 | 1 | 4 | 0 | 1 | 1 | 64 | 52 | 4 | 8 | 0 | 0 | 1 |
| Guam | 36 | 35 | 35 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| Nevada | 672 | 586 | 474 | 94 | 14 | 3 | 1 | 0 | 0 | 81 | 75 | 3 | 3 | 0 | 0 | 5 |
| Region IX | 5,639 | 4,765 | 3,685 | 973 | 60 | 21 | 3 | 6 | 17 | 821 | 680 | 31 | 110 | 15 | 4 | 34 |
| Alaska | 148 | 110 | 67 | 43 | 0 | 0 | 0 | 0 | 0 | 35 | 32 | 0 | 3 | 0 | 0 | 3 |
| Idaho | 61 | 51 | 47 | 4 | 0 | 0 | 0 | 0 | 0 | 10 | 9 | 0 | 1 | 0 | 0 | 0 |
| Oregon | 386 | 286 | 226 | 50 | 6 | 4 | 0 | 0 | 0 | 93 | 67 | 8 | 18 | 1 | 0 | 6 |
| Washington | 828 | 600 | 493 | 103 | 2 | 0 | 0 | 1 | 1 | 200 | 147 | 7 | 46 | 9 | 2 | 17 |
| Region X | 1,423 | 1,047 | 833 | 200 | 8 | 4 | 0 | 1 | 1 | 338 | 255 | 15 | 68 | 10 | 2 | 26 |
| Total, all States and areas | 36,637 | 30,421 | 23,622 | 5,926 | 503 | 166 | 58 | 25 | 121 | 5,829 | 4,806 | 175 | 848 | 102 | 12 | 273 |

[1] See Glossary for definitions of terms
[2] The States are grouped according to the 10 Standard Federal Administrative Regions

## Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1998[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 | 33,287 | 100 0 | — | 25,928 | 100 0 | 6,449 | 100 0 | 529 | 100 0 | 183 | 100 0 | 26 | 100 0 | 32 | 100 0 | 140 | 100 0 |
| Agreement of the parties | 10,959 | 32 9 | 100 0 | 9,581 | 36 9 | 1,076 | 16 6 | 236 | 44 6 | 5 | 2 7 | 5 | 19 2 | 13 | 40 6 | 43 | 30 7 |
| Informal settlement | 10,904 | 32 8 | 99 5 | 9,542 | 36 8 | 1,063 | 16,4 | 234 | 44 2 | 5 | 2 7 | 5 | 19 2 | 13 | 40 6 | 42 | 30 0 |
| Before issuance of complaint | 7,935 | 23 8 | 72 4 | 6,823 | 26 3 | 869 | 13 4 | 196 | 37 0 | (2) | — | 4 | 15 3 | 10 | 31 2 | 33 | 23 5 |
| After issuance of complaint, before opening of hearing | 2,852 | 8 6 | 26 0 | 2,607 | 10 0 | 193 | 2 9 | 36 | 6 8 | 5 | 2 7 | 1 | 3 8 | 3 | 9 3 | 7 | 5 0 |
| After hearing opened, before issuance of administrative law judge's decision | 117 | 0 4 | 1 1 | 112 | 0 4 | 1 | 0 0 | 2 | 0 3 | 0 | — | 0 | — | 0 | — | 2 | 1 4 |
| Formal settlement | 55 | 0 2 | 0 5 | 39 | 0 1 | 13 | 0 2 | 2 | 0 3 | 0 | — | 0 | — | 0 | — | 1 | 0 7 |
| Before opening of hearing | 42 | 0 1 | 0 4 | 29 | 0 1 | 10 | 0 1 | 2 | 0 3 | 0 | — | 0 | — | 0 | — | 1 | 0 7 |
| Stipulated decision | 0 | — | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Consent decree | 42 | 0 1 | 0 4 | 29 | 0 1 | 10 | 0 1 | 2 | 0 3 | 0 | — | 0 | — | 0 | — | 1 | 0 7 |
| After hearing opened | 13 | 0 0 | 0 1 | 10 | 0 0 | 3 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Stipulated decision | 0 | — | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Consent decree | 13 | 0 0 | 0 1 | 10 | 0 0 | 3 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Compliance with | 665 | 2 0 | 100 0 | 612 | 2 3 | 38 | 0 5 | 10 | 1 8 | 0 | — | 0 | — | 1 | 3 1 | 4 | 2 8 |
| Administrative law judge's decision | 18 | 0 1 | 2 7 | 18 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Board decision | 360 | 1 1 | 54 1 | 319 | 1 2 | 31 | 0 4 | 7 | 1 3 | 0 | — | 0 | — | 0 | — | 3 | 2 1 |
| Adopting administrative law judge's decision (no exceptions filed) | 181 | 0 5 | 27 2 | 168 | 0 6 | 13 | 0 2 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Contested | 179 | 0 5 | 26 9 | 151 | 0 5 | 18 | 0 2 | 7 | 1 3 | 0 | — | 0 | — | 0 | — | 3 | 2 1 |

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1998[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 |
| Circuit court of appeals decree | 283 | 0 9 | 42 6 | 271 | 1 0 | 7 | 0 1 | 3 | 0 5 | 0 | — | 0 | — | 1 | 3 1 | 1 | 0 7 |
| Supreme Court action | 4 | 0 0 | 0 6 | 4 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Withdrawal | 10,871 | 32 7 | 100 0 | 8,908 | 34 3 | 1,717 | 26 6 | 168 | 31 7 | 0 | — | 15 | 57 6 | 12 | 37 5 | 51 | 36 4 |
| Before issuance of complaint | 10,107 | 30 4 | 93 0 | 8,178 | 31 5 | 1,686 | 26 1 | 165 | 31 1 | (2) | — | 15 | 57 6 | 12 | 37 5 | 51 | 36 4 |
| After issuance of complaint, before opening of hearing | 713 | 2 1 | 6 6 | 683 | 2 6 | 27 | 0 4 | 3 | 0 5 | 0 | — | 0 | — | 0 | — | 0 | — |
| After hearing opened, before administrative law judge's decision | 51 | 0 2 | 0 5 | 47 | 0 1 | 4 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| After administrative law judge's decision, before Board decision | 0 | — | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| After Board or court decision | 0 | — | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Dismissal | 10,404 | 31 3 | 100 0 | 6,620 | 25 5 | 3,615 | 56 0 | 115 | 21 7 | 0 | — | 6 | 23 0 | 6 | 18 7 | 42 | 30 0 |
| Before issuance of complaint | 10,181 | 30 6 | 97 8 | 6,447 | 24 8 | 3,585 | 55 5 | 103 | 19 4 | (2) | — | 6 | 23 0 | 6 | 18 7 | 34 | 24 2 |
| After issuance of complaint, before opening of hearing | 128 | 0 4 | 1 2 | 91 | 0 3 | 17 | 0 2 | 12 | 2 2 | 0 | — | 0 | — | 0 | — | 8 | 5 7 |
| After hearing opened, before administrative law judge's decision | 21 | 0 1 | 0 2 | 19 | 0 0 | 2 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| By administrative law judge's decision | 4 | 0 0 | 0 0 | 3 | 0 0 | 1 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| By Board decision | 55 | 0 2 | 0 5 | 48 | 0 1 | 7 | 0 1 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Adopting administrative law judge's decision (no exceptions filed) | 37 | 0 1 | 0 4 | 33 | 0 1 | 4 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |
| Contested | 18 | 0 1 | 0 2 | 15 | 0 0 | 3 | 0 0 | 0 | — | 0 | — | 0 | — | 0 | — | 0 | — |

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1998[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 | 15 | 0 0 | 0 1 | 12 | 0 0 | 3 | 0 0 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| By Supreme Court action | 1 | 0 0 | 0 0 | 1 | 0 0 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| 10(k) actions (see Table 7A for details of dispositions) | 178 | 0 5 | 0 0 | 0 | ---- | 0 | ---- | 0 | ---- | 178 | 97 2 | 0 | ---- | 0 | ---- | 0 | ---- |
| Otherwise (compliance with order of administrative law judge or Board not achieved-firm went out of business | 209 | 0 6 | 0 0 | 206 | 0 7 | 3 | 0 0 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |

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

Table 7A.–Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1998[1]

| Method and stage of disposition | Number of cases | Percent of total closed |
|---|---|---|
| Total number of cases closed before issuance of complaint | 178 | 100 0 |
| Agreement of the parties-informal settlement | 63 | 35 4 |
| Before 10(k) notice | 49 | 27 5 |
| After 10(k) notice, before opening of 10(k) hearing | 11 | 6 2 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 3 | 1 7 |
| Compliance with Board decision and determination of dispute | 5 | 2 8 |
| Withdrawal | 72 | 40 4 |
| Before 10(k) notice | 66 | 37 1 |
| After 10(k) notice, before opening of 10(k) hearing | 5 | 2 8 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 1 | 0 6 |
| After Board decision and determination of dispute | 0 | 0 0 |
| Dismissal | 38 | 21 3 |
| Before 10(k) notice | 32 | 18 0 |
| After 10(k) notice, before opening of 10(k) hearing | 5 | 2 8 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 1 | 0 6 |
| By Board decision and determination of dispute | 0 | 0 0 |

[1] See Glossary of terms for definitions

## Table 8 - Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1998[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 | 33,287 | 100 0 | 25,928 | 100 0 | 6,449 | 100 0 | 529 | 100 0 | 183 | 100 0 | 26 | 100 0 | 32 | 100 0 | 140 | 100 0 |
| Before issuance of complaint | 28,401 | 85 3 | 21,448 | 82 7 | 6,140 | 95 2 | 464 | 87 7 | 178 | 97 3 | 25 | 96 2 | 28 | 87 5 | 118 | 84 3 |
| After issuance of complaint, before opening of hearing | 3,738 | 11 2 | 3,413 | 13 2 | 247 | 3 8 | 53 | 10 0 | 5 | 2 7 | 1 | 3 8 | 3 | 9 4 | 16 | 11 4 |
| After hearing opened, before issuance of administrative law judge's decision | 202 | 0 6 | 188 | 0 7 | 10 | 0 2 | 2 | 0 4 | 0 | ---- | 0 | ---- | 0 | ---- | 2 | 1 4 |
| After administrative law judge's decision, before issuance of Board decision | 51 | 0 2 | 48 | 0 2 | 3 | 0 0 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| After Board order adopting administrative law judge's decision in absence of exceptions | 275 | 0 8 | 258 | 1 0 | 17 | 0 3 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| After Board decision, before circuit court decree | 244 | 0 7 | 211 | 0 8 | 22 | 0 3 | 7 | 1 3 | 0 | ---- | 0 | ---- | 0 | ---- | 4 | 2 9 |
| After circuit court decree, before Supreme Court action | 370 | 1 1 | 356 | 1 4 | 10 | 0 2 | 3 | 0 6 | 0 | ---- | 0 | ---- | 1 | 3 1 | 0 | ---- |
| After Supreme Court action | 6 | 0 0 | 6 | 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 1998[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 | Per-cent of cases closed | Number of cases | Percent of cases closed |
| Total number of cases closed | 5,915 | 100 0 | 4,917 | 100 0 | 165 | 100 0 | 833 | 100 0 | 92 | 100 0 |
| Before issuance of notice of hearing | 1,361 | 23 0 | 970 | 19 7 | 71 | 43 0 | 320 | 38 4 | 62 | 67 4 |
| After issuance of notice, before close of hearing | 3,846 | 65 0 | 3,301 | 67 1 | 78 | 47 3 | 467 | 56 1 | 7 | 7 6 |
| After hearing closed, before issuance of decision | 42 | 7 | 40 | 8 | 0 | 0 | 2 | 2 | 0 | 0 |
| After issuance of Regional Director's decision | 664 | 11 2 | 604 | 12 3 | 16 | 9 7 | 44 | 5 3 | 23 | 25 0 |
| After issuance of Board decision | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary of terms for definitions

Table 10.– Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1998[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 | 5,915 | 100 0 | 4,917 | 100 0 | 165 | 100 0 | 833 | 100 0 | 92 | 100 0 |
| Certification issued, total | 3,781 | 63 9 | 3,263 | 66 4 | 57 | 34 5 | 461 | 55 3 | 63 | 68 5 |
| After | | | | | | | | | | |
| Consent election | 14 | 2 | 11 | 2 | 1 | 6 | 2 | 2 | 3 | 3 3 |
| Before notice of hearing | 2 | 0 | 0 | 0 | 1 | 6 | 1 | 1 | 3 | 3 3 |
| After notice of hearing, before hearing closed | 12 | 2 | 11 | 2 | 0 | 0 | 1 | 1 | 0 | 0 |
| After hearing closed, before decision | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Stipulated election | 3,293 | 55 7 | 2,814 | 57 2 | 46 | 27 9 | 433 | 52 0 | 37 | 40 2 |
| Before notice of hearing | 794 | 13 4 | 629 | 12 8 | 17 | 10 3 | 148 | 17 8 | 34 | 37 0 |
| After notice of hearing, before hearing closed | 2,484 | 42 0 | 2,171 | 44 2 | 29 | 17 6 | 284 | 34 1 | 3 | 3 3 |
| After hearing closed, before decision | 15 | 3 | 14 | 3 | 0 | 0 | 1 | 1 | 0 | 0 |
| Expedited election | 2 | 0 | 0 | 0 | 2 | 1 2 | 0 | 0 | 0 | 0 |
| Regional Director-directed election | 471 | 8 0 | 437 | 8 9 | 8 | 4 8 | 26 | 3 1 | 23 | 25 0 |
| Board-directed election | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| By withdrawal, total | 1,916 | 32 4 | 1,559 | 31 7 | 76 | 46 1 | 281 | 33 7 | 24 | 26 1 |
| Before notice of hearing | 495 | 8 4 | 333 | 6 8 | 35 | 21 2 | 127 | 15 2 | 21 | 22 8 |
| After notice of hearing, before hearing closed | 1,284 | 21 7 | 1,098 | 22 3 | 39 | 23 6 | 147 | 17 6 | 3 | 3 3 |
| After hearing closed, before decision | 25 | 4 | 24 | 5 | 0 | 0 | 1 | 1 | 0 | 0 |
| After Regional Director's decision and direction of election | 112 | 1 9 | 104 | 2 1 | 2 | 1 2 | 6 | 7 | 0 | 0 |
| After Board decision and direction of election | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| By dismissal, total | 217 | 3 7 | 94 | 1 9 | 32 | 19 4 | 91 | 10 9 | 5 | 5 4 |
| Before notice of hearing | 69 | 1 2 | 8 | 2 | 17 | 10 3 | 44 | 5 3 | 4 | 4 3 |
| After notice of hearing, before hearing closed | 65 | 1 1 | 21 | 4 | 9 | 5 5 | 35 | 4 2 | 1 | 1 1 |
| After hearing closed, before decision | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| By Regional Director's decision | 81 | 1 4 | 63 | 1 3 | 6 | 3 6 | 12 | 1 4 | 0 | 0 |
| By Board decision | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary of terms for definitions

Table 10A -Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1998[1]

| | AC | UC |
|---|---|---|
| Total, all | 12 | 281 |
| Certification amended or unit clarified | 3 | 29 |
| Before hearing | 0 | 0 |
| By Regional Director's decision | 0 | 0 |
| By Board decision | 0 | 0 |
| After hearing | 3 | 29 |
| By Regional Director's decision | 3 | 29 |
| By Board decision | 0 | 0 |
| Dismissed | 2 | 71 |
| Before hearing | 1 | 17 |
| By Regional Director's decision | 1 | 17 |
| By Board decision | 0 | 0 |
| After hearing | 1 | 54 |
| By Regional Director's decision | 1 | 54 |
| By Board decision | 0 | 0 |
| Withdrawn | 7 | 181 |
| Before hearing | 7 | 171 |
| After hearing | 0 | 10 |

## Table 11.-Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1998[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 | 3,840 | 18 | 3,259 | 8 | 553 | 2 |
| Eligible voters | 254,094 | 436 | 203,433 | 1,655 | 48,556 | 14 |
| Valid votes | 220,130 | 355 | 178,118 | 1,523 | 40,121 | 13 |
| RC cases | | | | | | |
| Elections | 3,289 | 13 | 2,773 | 8 | 495 | 0 |
| Eligible voters | 227,390 | 318 | 179,495 | 1,655 | 45,922 | 0 |
| Valid votes | 197,344 | 258 | 157,536 | 1,523 | 38,027 | 0 |
| RM cases | | | | | | |
| Elections | 50 | 1 | 40 | 0 | 7 | 2 |
| Eligible voters | 1,281 | 7 | 1,135 | 0 | 125 | 14 |
| Valid votes | 1,132 | 6 | 1,017 | 0 | 96 | 13 |
| RD cases | | | | | | |
| Elections | 456 | 2 | 422 | 0 | 32 | 0 |
| Eligible voters | 22,055 | 55 | 20,790 | 0 | 1,210 | 0 |
| Valid votes | 19,119 | 48 | 18,047 | 0 | 1,024 | 0 |
| UD cases | | | | | | |
| Elections | 45 | 2 | 24 | 0 | 19 | ---- |
| Eligible voters | 3,368 | 56 | 2,013 | 0 | 1,299 | ---- |
| Valid votes | 2,535 | 43 | 1,518 | 0 | 974 | ---- |

[1] See Glossary of terms for definitions

Table 11A.–Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1998

| Type of election | All R elections | | | | RC elections | | | | RM elections | | | | RD elections | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Elections conducted | | | | Elections conducted | | | | Elections conducted | | | | Elections conducted | | | |
| | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification[1] | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification |
| All types | 4,001 | 92 | 114 | 3,795 | 3,483 | 91 | 103 | 3,289 | 51 | 0 | 1 | 50 | 467 | 1 | 10 | 456 |
| Rerun required | ---- | ---- | 97 | ---- | ---- | ---- | 87 | ---- | ---- | ---- | 1 | ---- | ---- | ---- | 9 | ---- |
| Runoff required | ---- | ---- | 17 | ---- | ---- | ---- | 16 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 1 | ---- |
| Consent elections | 17 | 1 | 0 | 16 | 14 | 1 | 0 | 13 | 1 | 0 | 0 | 1 | 2 | 0 | 0 | 2 |
| Rerun required | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- |
| Runoff required | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- |
| Stipulated elections | 3,396 | 71 | 90 | 3,235 | 2,925 | 71 | 81 | 2,773 | 41 | 0 | 1 | 40 | 430 | 0 | 8 | 422 |
| Rerun required | ---- | ---- | 75 | ---- | ---- | ---- | 67 | ---- | ---- | ---- | 1 | ---- | ---- | ---- | 7 | ---- |
| Runoff required | ---- | ---- | 15 | ---- | ---- | ---- | 14 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 1 | ---- |
| Regional Director–directed | 578 | 20 | 24 | 534 | 536 | 19 | 22 | 495 | 7 | 0 | 0 | 7 | 35 | 1 | 2 | 32 |
| Rerun required | ---- | ---- | 22 | ---- | ---- | ---- | 20 | ---- | ---- | ---- | 20 | ---- | ---- | ---- | 2 | ---- |
| Runoff required | ---- | ---- | 2 | ---- | ---- | ---- | 2 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- |
| Board–directed | 8 | 0 | 0 | 8 | 8 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Rerun required | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- |
| Runoff required | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- | ---- | ---- | 0 | ---- |
| Expedited–Sec 8(b)(7)(C) | 2 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 2 | 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 total in Table 11

Table 11B.–Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1998

| Method and stage of disposition | 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 | 3,795 | 177 | 4 7 | 53 | 1 4 | 17 | 0 4 | 194 | 5 1 | 70 | 1 8 |
| By type of cases | | | | | | | | | | | |
| In RC cases | 3,289 | 168 | 5 1 | 51 | 1 6 | 16 | 0 5 | 184 | 5 6 | 67 | 2 0 |
| In RM cases | 50 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| In RD cases | 456 | 9 | 2 0 | 2 | 0 4 | 1 | 0 2 | 10 | 2 2 | 3 | 0 7 |
| By type of election | | | | | | | | | | | |
| Consent elections | 16 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Stipulated elections | 3,235 | 146 | 4 5 | 43 | 1 3 | 12 | 0 4 | 158 | 4 9 | 55 | 1 7 |
| Expedited elections | 2 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Regional Director-directed elections | 534 | 31 | 5 8 | 10 | 1 9 | 5 | 0 9 | 36 | 6 7 | 15 | 2 8 |
| Board-directed elections | 8 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |

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

Table 11C.–Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1998[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 | 254 | 100 0 | 110 | 43 3 | 134 | 52 8 | 10 | 3 9 |
| By type of case | | | | | | | | |
| RC cases | 239 | 100 0 | 107 | 44 8 | 122 | 51 0 | 10 | 4 2 |
| RM cases | 2 | 100 0 | 0 | ---- | 2 | 100 0 | 0 | ---- |
| RD cases | 13 | 100 0 | 3 | 23 1 | 10 | 76 9 | 0 | ---- |
| By type of election | | | | | | | | |
| Consent elections | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Stipulated elections | 213 | 100 0 | 92 | 43 2 | 113 | 53 1 | 8 | 3 7 |
| Expedited elections | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Regional Director-directed elections | 41 | 100 0 | 18 | 43 9 | 21 | 51 2 | 2 | 4 9 |
| 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 1998[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 | 254 | 60 | 194 | 154 | 79 4 | 40 | 20 6 |
| By type of case | | | | | | | |
| RC cases | 239 | 55 | 184 | 149 | 81 0 | 35 | 19 0 |
| RM cases | 2 | 2 | 0 | 0 | ---- | 0 | ---- |
| RD cases | 13 | 3 | 10 | 5 | 50 0 | 5 | 50 0 |
| By type of election | | | | | | | |
| Consent elections | 0 | 0 | 0 | 0 | ---- | 0 | ---- |
| Stipulated elections | 213 | 55 | 158 | 125 | 79 1 | 33 | 20 9 |
| Expedited elections | 0 | 0 | 0 | 0 | ---- | 0 | ---- |
| Regional Director-directed elections | 41 | 5 | 36 | 29 | 80 6 | 7 | 19 4 |
| 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 3 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 1998[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 | 89 | 100 0 | 24 | 27 0 | 65 | 73 0 | 27 | 30 3 |
| By type of case | | | | | | | | |
| RC cases | 80 | 100 0 | 20 | 25 0 | 60 | 75 0 | 22 | 27 5 |
| RM cases | 1 | 100 0 | 0 | ---- | 1 | 100 0 | 1 | 100 0 |
| RD cases | 8 | 100 0 | 4 | 50 0 | 4 | 50 0 | 4 | 50 0 |
| By type of election | | | | | | | | |
| Consent elections | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Stipulated elections | 69 | 100 0 | 20 | 29 0 | 49 | 71 0 | 25 | 36 2 |
| Expedited elections | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |
| Regional Director-directed elections | 20 | 100 0 | 4 | 20 0 | 16 | 80 0 | 2 | 10 0 |
| Board-directed elections | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- |

[1] See Glossary of terms for definitions
[2] More than 1 rerun election was conducted in 8 cases, however, only the final election is included in this table

## Table 12.–Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1998[1]

| 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 | 45 | 18 | 40 0 | 27 | 60 0 | 3,368 | 913 | 27 1 | 2,455 | 72 9 | 2,535 | 75 3 | 725 | 21 5 |
| AFL-CIO unions | 42 | 16 | 38 1 | 26 | 61 9 | 3,075 | 718 | 23 3 | 3,357 | 76 7 | 2,358 | 76 7 | 581 | 18 9 |
| Other national unions | 1 | 1 | 100 0 | 0 | ---- | 138 | 138 | 100 0 | 0 | ---- | 104 | 75 4 | 104 | 75 4 |
| Other local unions | 2 | 1 | 50 0 | 1 | 50 0 | 155 | 57 | 36 8 | 98 | 63 2 | 73 | 47 1 | 40 | 25 8 |

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 Election, in Cases Closed, Fiscal Year 1998[1]

| Participating unions | Total elections[2] | Elections won by unions | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Other national unions | Other local unions | | Total | In elections won | In units won by AFL-CIO unions | In units won by Other national unions | In units won by Other local unions | |
| **A All representation elections** | | | | | | | | | | | | | |
| AFL-CIO | 3,371 | 47 5 | 1,602 | 1,602 | ---- | ---- | 1,769 | 205,638 | 76,288 | 76,288 | ---- | ---- | 129,350 |
| Other national unions | 83 | 55 4 | 46 | ---- | 46 | ---- | 37 | 8,103 | 3,984 | ---- | 3,984 | ---- | 4,119 |
| Other local unions | 241 | 52 7 | 127 | ---- | ---- | 127 | 114 | 20,776 | 10,370 | ---- | ---- | 10,730 | 10,406 |
| 1-union elections | 3,695 | 48 0 | 1,775 | 1,602 | 46 | 127 | 1,920 | 234,517 | 90,642 | 76,288 | 3,984 | 10,370 | 143,875 |
| AFL-CIO v AFL-CIO | 33 | 69 7 | 23 | 23 | ---- | ---- | 10 | 3,038 | 1,981 | 1,981 | ---- | ---- | 1,057 |
| AFL-CIO v National | 9 | 88 9 | 8 | 1 | 7 | ---- | 1 | 1,989 | 1,868 | 8 | 1,860 | ---- | 121 |
| AFL-CIO v Local | 43 | 81 4 | 35 | 21 | ---- | 14 | 8 | 8,952 | 3,814 | 3,042 | ---- | 772 | 5,138 |
| National v Local | 2 | 100 0 | 2 | ---- | 1 | 1 | 0 | 53 | 53 | ---- | 12 | 41 | 0 |
| Local v Local | 8 | 100 0 | 8 | ---- | ---- | 8 | 0 | 1,455 | 1,455 | ---- | ---- | 1,455 | 0 |
| 2-union elections | 95 | 80 0 | 76 | 45 | 8 | 23 | 19 | 15,487 | 9,171 | 5,031 | 1,872 | 2,268 | 6,316 |
| AFL-CIO v AFL-CIO v AFL-CIO | 2 | 100 0 | 2 | 2 | ---- | ---- | 0 | 184 | 184 | 184 | ---- | ---- | 0 |
| AFL-CIO v AFL-CIO v Local | 2 | 100 0 | 2 | 1 | ---- | 1 | 0 | 417 | 417 | 23 | ---- | 394 | 0 |
| AFL-CIO v Local v Local | 1 | 100 0 | 1 | 0 | ---- | 1 | 0 | 121 | 121 | 0 | ---- | 121 | 0 |
| 3 (or more)-union elections | 5 | 100 0 | 5 | 3 | 0 | 2 | 0 | 722 | 722 | 207 | 0 | 515 | 0 |
| Total representation elections | 3,795 | 48 9 | 1,856 | 1,650 | 54 | 152 | 1,939 | 250,726 | 100,535 | 81,526 | 5,856 | 13,153 | 150,191 |
| **B. Elections in RC cases** | | | | | | | | | | | | | |
| AFL-CIO | 2,925 | 49 9 | 1,461 | 1,461 | ---- | ---- | 1,464 | 185,101 | 66,902 | 66,902 | ---- | ---- | 118,199 |
| Other national unions | 72 | 62 5 | 45 | ---- | 45 | ---- | 27 | 7,729 | 3,949 | ---- | 3,949 | ---- | 3,780 |
| Other local unions | 204 | 57 8 | 118 | ---- | ---- | 118 | 86 | 18,797 | 9,903 | ---- | ---- | 9,903 | 8,894 |
| 1-union elections | 3,201 | 50 7 | 1,624 | 1,461 | 45 | 118 | 1,577 | 211,627 | 80,754 | 66,902 | 3,949 | 9,903 | 130,873 |
| AFL-CIO v AFL-CIO | 27 | 66 7 | 18 | 18 | ---- | ---- | 9 | 2,696 | 1,658 | 1,658 | ---- | ---- | 1,038 |
| AFL-CIO v National | 9 | 88 9 | 8 | 1 | 7 | ---- | 1 | 1,989 | 1,868 | 8 | 1,860 | ---- | 121 |

Table 13.–Final Outcome of Representation Election, in Cases Closed, Fiscal Year 1998[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 | In units won by Other national unions | In units won by Other local unions | |
| AFL-CIO v Local | 39 | 84 6 | 33 | 20 | ---- | 13 | 6 | 8,894 | 3,784 | 3,035 | ---- | 749 | 5,110 |
| National v Local | 2 | 100 0 | 2 | ---- | 1 | 1 | 0 | 53 | 53 | ---- | 12 | 41 | 0 |
| Local v Local | 7 | 100 0 | 7 | ---- | ---- | 7 | 0 | 1,427 | 1,427 | ---- | ---- | 1,427 | 0 |
| 2-union elections | 84 | 81 0 | 68 | 39 | 8 | 21 | 16 | 15,059 | 8,790 | 4,701 | 1,872 | 2,217 | 6,269 |
| AFL-CIO v AFL-CIO v AFL-CIO | 1 | 100 0 | 1 | 1 | ---- | ---- | 0 | 166 | 166 | 166 | ---- | ---- | 0 |
| AFL-CIO v AFL-CIO v Local | 2 | 100 0 | 2 | 1 | ---- | 1 | 0 | 417 | 417 | 23 | ---- | 394 | 0 |
| AFL-CIO v Local v Local | 1 | 100 0 | 1 | 0 | ---- | 1 | 0 | 121 | 121 | 0 | ---- | 121 | 0 |
| 3 (or more)-union elections | 4 | 100 0 | 4 | 2 | 0 | 2 | 0 | 704 | 704 | 189 | 0 | 515 | 0 |
| Total RC elections | 3,289 | 51 6 | 1,696 | 1,502 | 53 | 141 | 1,593 | 227,390 | 90,248 | 71,792 | 5,821 | 12,635 | 137,142 |
| C Elections in RM cases | | | | | | | | | | | | | |
| AFL-CIO | 45 | 24 4 | 11 | 11 | ---- | ---- | 34 | 1,146 | 387 | 387 | ---- | ---- | 759 |
| Other National unions | 1 | 0 0 | 0 | ---- | 0 | ---- | 1 | 85 | 0 | ---- | 0 | ---- | 85 |
| Other local unions | 2 | 0 0 | 0 | ---- | ---- | 0 | 2 | 27 | 0 | ---- | ---- | 0 | 27 |
| 1-union elections | 48 | 22 9 | 11 | 11 | 0 | 0 | 37 | 1,258 | 387 | 387 | 0 | 0 | 871 |
| AFL-CIO v AFL-CIO | 1 | 100 0 | 1 | 1 | ---- | ---- | 0 | 5 | 5 | 5 | ---- | ---- | 0 |
| 2-union elections | 1 | 100 0 | 1 | 1 | 0 | 0 | 0 | 5 | 5 | 5 | 0 | 0 | 0 |
| AFL-CIO v AFL-CIO v AFL-CIO | 1 | 100 0 | 1 | 1 | ---- | ---- | 0 | 18 | 18 | 18 | ---- | ---- | 0 |
| 3 (or more) union elections | 1 | 100 0 | 1 | 1 | 0 | 0 | 0 | 18 | 18 | 18 | 0 | 0 | 0 |
| Total RM elections | 50 | 26 0 | 13 | 13 | 0 | 0 | 37 | 1,281 | 410 | 410 | 0 | 0 | 871 |
| D Elections in RD cases | | | | | | | | | | | | | |
| AFL-CIO | 401 | 32 4 | 130 | 130 | ---- | ---- | 271 | 19,391 | 8,999 | 8,999 | ---- | ---- | 10,392 |
| Other national unions | 10 | 10 0 | 1 | ---- | 1 | ---- | 9 | 289 | 35 | ---- | 35 | ---- | 254 |
| Other local unions | 35 | 25 7 | 9 | ---- | ---- | 9 | 26 | 1,952 | 467 | ---- | ---- | 467 | 1,485 |

Table 13.– Final Outcome of Representation Election, in Cases Closed, Fiscal Year 1998[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 | |
| 1-union elections | 446 | 31 4 | 140 | 130 | 1 | 9 | 306 | 21,632 | 9,501 | 8,999 | 35 | 467 | 12,131 |
| AFL-CIO v AFL-CIO | 5 | 80 0 | 4 | 4 | ---- | ---- | 1 | 337 | 318 | 318 | ---- | ---- | 19 |
| AFL-CIO v Local | 4 | 50 0 | 2 | 1 | ---- | 1 | 2 | 58 | 30 | 7 | ---- | 23 | 28 |
| Local v Local | 1 | 100 0 | 1 | ---- | ---- | 1 | 0 | 28 | 28 | ---- | ---- | 28 | 0 |
| 2-union elections | 10 | 70 0 | 7 | 5 | 0 | 2 | 3 | 423 | 376 | 325 | 0 | 51 | 47 |
| Total RD Elections | 456 | 32 2 | 147 | 135 | 1 | 11 | 309 | 22,055 | 9,877 | 9,324 | 35 | 518 | 12,178 |

[1] See Glossary for definitions of terms

[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 1998[1]

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | Valid votes cast in elections lost | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | Total votes for no union | Votes for unions | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Other national unions | Other local unions | | Total | AFL-CIO unions | Other national unions | Other local unions | |
| **A. All representation elections** | | | | | | | | | | | |
| AFL-CIO | 180,219 | 44,462 | 44,462 | ---- | ---- | 21,222 | 39,015 | 39,015 | ---- | ---- | 75,520 |
| Other national unions | 7,290 | 2,311 | ---- | 2,311 | ---- | 1,140 | 1,412 | ---- | 1,412 | ---- | 2,427 |
| Other local unions | 17,102 | 5,502 | ---- | ---- | 5,502 | 2,769 | 3,166 | ---- | ---- | 3,166 | 5,665 |
| 1-union elections | 204,611 | 52,275 | 44,462 | 2,311 | 5,502 | 25,131 | 43,593 | 39,015 | 1,412 | 3,166 | 83,612 |
| AFL-CIO v AFL-CIO | 2,632 | 1,573 | 1,573 | ---- | ---- | 97 | 363 | 363 | ---- | ---- | 599 |
| AFL-CIO v National | 1,607 | 1,461 | 641 | 820 | ---- | 41 | 46 | 4 | 42 | ---- | 59 |
| AFL-CIO v Local | 7,427 | 2,808 | 2,075 | ---- | 733 | 116 | 1,938 | 787 | ---- | 1,151 | 2,565 |
| National v Local | 39 | 38 | ---- | 17 | 21 | 1 | 0 | ---- | 0 | 0 | 0 |
| Local v Local | 757 | 704 | ---- | ---- | 704 | 53 | 0 | ---- | ---- | 0 | 0 |
| 2-union elections | 12,462 | 6,584 | 4,289 | 837 | 1,458 | 308 | 2,347 | 1,154 | 42 | 1,151 | 3,223 |
| AFL-CIO v AFL-CIO v AFL-CIO | 122 | 121 | 121 | ---- | ---- | 1 | 0 | 0 | ---- | ---- | 0 |
| AFL-CIO v AFL-CIO v Local | 313 | 307 | 148 | ---- | 159 | 6 | 0 | 0 | ---- | 0 | 0 |
| AFL-CIO v National v Local | 87 | 86 | 3 | ---- | 83 | 1 | 0 | 0 | ---- | 0 | 0 |
| 3 (or more)-union elections | 522 | 514 | 272 | 0 | 242 | 8 | 0 | 0 | 0 | 0 | 0 |
| Total representation elections | 217,595 | 59,373 | 49,023 | 3,148 | 7,202 | 25,447 | 45,940 | 40,169 | 1,454 | 4,317 | 86,835 |
| **B. Elections in RC cases** | | | | | | | | | | | |
| AFL-CIO | 162,146 | 39,114 | 39,114 | ---- | ---- | 18,287 | 35,654 | 35,654 | ---- | ---- | 69,091 |
| Other national unions | 6,983 | 2,297 | ---- | 2,297 | ---- | 1,129 | 1,318 | ---- | 1,318 | ---- | 2,239 |
| Other local unions | 15,575 | 5,272 | ---- | ---- | 5,272 | 2,671 | 2,732 | ---- | ---- | 2,732 | 4,900 |
| 1-union elections | 184,704 | 46,683 | 39,114 | 2,297 | 5,272 | 22,087 | 39,704 | 35,654 | 1,318 | 2,732 | 76,230 |
| AFL-CIO v AFL-CIO | 2,369 | 1,349 | 1,349 | ---- | ---- | 76 | 361 | 361 | ---- | ---- | 583 |
| AFL-CIO v National | 1,607 | 1,461 | 641 | 820 | ---- | 41 | 46 | 4 | 42 | ---- | 59 |

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1998[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 | |
| AFL-CIO v Local | 7,378 | 2,784 | 2,068 | ---- | 716 | 116 | 1,934 | 783 | ---- | 1,151 | 2,544 |
| National v Local | 39 | 38 | ---- | 17 | 21 | 1 | 0 | ---- | 0 | 0 | 0 |
| Local v Local | 735 | 682 | ---- | ---- | 682 | 53 | 0 | ---- | ---- | 0 | 0 |
| 2-union elections | 12,128 | 6,314 | 4,058 | 837 | 1,419 | 287 | 2,341 | 1,148 | 42 | 1,151 | 3,186 |
| AFL-CIO v AFL-CIO v AFL-CIO | 112 | 112 | 112 | ---- | ---- | 0 | 0 | 0 | ---- | ---- | 0 |
| AFL-CIO v AFL-CIO v Local | 313 | 307 | 148 | ---- | 159 | 6 | 0 | 0 | ---- | 0 | 0 |
| AFL-CIO v Local v Local | 87 | 86 | 3 | ---- | 83 | 1 | 0 | 0 | ---- | 0 | 0 |
| 3 (or more)-union elections | 512 | 505 | 263 | 0 | 242 | 7 | 0 | 0 | 0 | 0 | 0 |
| Total RC elections | 197,344 | 53,502 | 43,435 | 3,134 | 6,933 | 22,381 | 42,045 | 36,802 | 1,360 | 3,883 | 79,416 |
| C. Elections in RM cases | | | | | | | | | | | |
| AFL-CIO | 1,014 | 230 | 230 | ---- | ---- | 123 | 222 | 222 | ---- | ---- | 439 |
| Other national unions | 81 | 0 | ---- | 0 | ---- | 0 | 26 | ---- | 26 | ---- | 55 |
| Other local unions | 23 | 0 | ---- | ---- | 0 | 0 | 8 | ---- | ---- | 8 | 15 |
| 1-union elections | 1,118 | 230 | 230 | 0 | 0 | 123 | 256 | 222 | 26 | 8 | 509 |
| AFL-CIO v AFL-CIO | 4 | 4 | 4 | ---- | ---- | 0 | 0 | 0 | ---- | ---- | 0 |
| 2-union elections | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| AFL-CIO v AFL-CIO v AFL-CIO | 10 | 9 | 9 | ---- | ---- | 1 | 0 | 0 | 0 | 0 | 0 |
| 3 (or more) union elections | 10 | 9 | 9 | 0 | 0 | 1 | 0 | 0 | ---- | ---- | 0 |
| Total RM elections | 1,132 | 243 | 243 | 0 | 0 | 124 | 256 | 222 | 26 | 8 | 509 |
| D Elections in RD cases | | | | | | | | | | | |
| AFL-CIO | 17,059 | 5,118 | 5,118 | ---- | ---- | 2,812 | 3,139 | 3,139 | ---- | ---- | 5,990 |
| Other national unions . | 226 | 14 | ---- | 14 | ---- | 11 | 68 | ---- | 68 | ---- | 133 |
| Other local unions | 1,504 | 230 | ---- | ---- | 230 | 98 | 426 | ---- | ---- | 426 | 750 |
| 1-union elections | 18,789 | 5,362 | 5,118 | 14 | 230 | 2,921 | 3,633 | 3,139 | 68 | 426 | 6,873 |

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1998[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 | |
| AFL-CIO v AFL-CIO | 259 | 220 | 220 | ---- | ---- | 21 | 2 | 2 | ---- | ---- | 16 |
| AFL-CIO v Local | 49 | 24 | 7 | ---- | 17 | 0 | 4 | 4 | ---- | 0 | 21 |
| Local v Local | 22 | 22 | ---- | ---- | 22 | 0 | 0 | ---- | ---- | 0 | 0 |
| 2-union elections | 330 | 266 | 227 | 0 | 39 | 21 | 6 | 6 | 0 | 0 | 37 |
| Total RD elections | 19,119 | 5,628 | 5,345 | 14 | 269 | 2,942 | 3,639 | 3,145 | 68 | 426 | 6,910 |

[1] See Glossary of terms for definitions

## Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1998

| 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 | 18 | 7 | 7 | 0 | 0 | 11 | 1,524 | 1,491 | 600 | 553 | 47 | 0 | 891 | 164 |
| New Hampshire | 6 | 2 | 2 | 0 | 0 | 4 | 405 | 400 | 160 | 160 | 0 | 0 | 240 | 66 |
| Vermont | 6 | 2 | 2 | 0 | 0 | 4 | 682 | 665 | 272 | 272 | 0 | 0 | 393 | 332 |
| Massachusetts | 98 | 56 | 50 | 6 | 0 | 42 | 6,075 | 5,878 | 3,066 | 2,200 | 866 | 0 | 2,812 | 3,454 |
| Rhode Island | 19 | 8 | 7 | 0 | 1 | 11 | 1,116 | 1,048 | 529 | 519 | 0 | 10 | 519 | 432 |
| Connecticut | 96 | 60 | 50 | 0 | 10 | 36 | 6,275 | 5,424 | 2,992 | 2,178 | 31 | 783 | 2,432 | 4,330 |
| New England | 243 | 135 | 118 | 6 | 11 | 108 | 16,077 | 14,906 | 7,619 | 5,882 | 944 | 793 | 7,287 | 8,778 |
| New York | 322 | 164 | 128 | 5 | 31 | 158 | 18,854 | 14,826 | 7,265 | 5,324 | 263 | 1,678 | 7,561 | 9,142 |
| New Jersey | 199 | 91 | 78 | 2 | 11 | 108 | 9,077 | 7,718 | 3,635 | 3,151 | 118 | 366 | 4,083 | 3,253 |
| Pennsylvania | 228 | 106 | 95 | 3 | 8 | 122 | 12,972 | 11,338 | 5,248 | 4,069 | 102 | 1,077 | 6,090 | 4,857 |
| Middle Atlantic | 749 | 361 | 301 | 10 | 50 | 388 | 40,903 | 33,882 | 16,148 | 12,544 | 483 | 3,121 | 17,734 | 17,252 |
| Ohio | 228 | 93 | 90 | 2 | 1 | 135 | 15,999 | 14,593 | 6,759 | 6,306 | 447 | 6 | 7,834 | 4,428 |
| Indiana | 112 | 57 | 56 | 1 | 0 | 55 | 5,262 | 4,691 | 2,345 | 2,333 | 12 | 0 | 2,346 | 2,143 |
| Illinois | 305 | 155 | 137 | 10 | 8 | 150 | 21,443 | 18,601 | 10,096 | 7,951 | 1,063 | 1,082 | 8,505 | 10,530 |
| Michigan | 196 | 87 | 85 | 1 | 1 | 109 | 13,217 | 9,544 | 4,489 | 4,280 | 89 | 120 | 5,055 | 3,878 |
| Wisconsin | 110 | 47 | 43 | 1 | 3 | 63 | 6,256 | 5,557 | 2,779 | 2,647 | 36 | 96 | 2,778 | 2,109 |
| East North Central | 951 | 439 | 411 | 15 | 13 | 512 | 62,177 | 52,986 | 26,468 | 23,517 | 1,647 | 1,304 | 26,518 | 23,088 |
| Iowa | 43 | 20 | 19 | 1 | 0 | 23 | 2,675 | 2,316 | 1,278 | 1,203 | 75 | 0 | 1,038 | 1,752 |
| Minnesota | 105 | 54 | 48 | 1 | 5 | 51 | 7,296 | 6,443 | 3,066 | 2,682 | 24 | 360 | 3,377 | 3,018 |
| Missouri | 118 | 60 | 50 | 1 | 9 | 58 | 5,785 | 5,207 | 2,782 | 1,985 | 50 | 747 | 2,425 | 3,413 |
| North Dakota | 8 | 0 | 0 | 0 | 0 | 8 | 672 | 580 | 223 | 77 | 0 | 146 | 357 | 0 |
| South Dakota | 5 | 2 | 2 | 0 | 0 | 3 | 62 | 40 | 23 | 23 | 0 | 0 | 17 | 29 |
| Nebraska | 11 | 5 | 5 | 0 | 0 | 6 | 480 | 370 | 195 | 195 | 0 | 0 | 175 | 353 |
| Kansas | 36 | 15 | 14 | 1 | 0 | 21 | 6,461 | 5,723 | 2,561 | 1,380 | 52 | 1,129 | 3,162 | 567 |
| West North Central | 326 | 156 | 138 | 4 | 14 | 170 | 23,431 | 20,679 | 10,128 | 7,545 | 201 | 2,382 | 10,551 | 9,132 |

## Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1998—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 | 16 | 4 | 4 | 0 | 0 | 12 | 1,166 | 1,041 | 358 | 358 | 0 | 0 | 683 | 210 |
| Maryland | 48 | 22 | 22 | 0 | 0 | 26 | 2,620 | 2,303 | 1,141 | 1,104 | 0 | 37 | 1,162 | 908 |
| District of Columbia | 16 | 14 | 10 | 0 | 4 | 2 | 997 | 678 | 564 | 111 | 0 | 453 | 114 | 982 |
| Virginia | 30 | 19 | 18 | 0 | 1 | 11 | 5,227 | 4,851 | 1,674 | 1,661 | 0 | 13 | 3,177 | 1,394 |
| West Virginia | 39 | 22 | 20 | 1 | 1 | 17 | 3,281 | 2,946 | 1,385 | 1,172 | 191 | 22 | 1,561 | 897 |
| North Carolina | 26 | 7 | 5 | 1 | 1 | 19 | 4,383 | 4,067 | 1,595 | 1,536 | 39 | 20 | 2,472 | 238 |
| South Carolina | 10 | 4 | 4 | 0 | 0 | 6 | 748 | 711 | 328 | 328 | 0 | 0 | 383 | 296 |
| Georgia | 42 | 20 | 17 | 1 | 2 | 22 | 3,445 | 2,957 | 1,497 | 1,445 | 39 | 13 | 1,460 | 1,923 |
| Florida | 98 | 51 | 46 | 2 | 3 | 47 | 7,723 | 7,480 | 3,510 | 3,384 | 40 | 86 | 3,970 | 2,816 |
| South Atlantic | 325 | 163 | 146 | 5 | 12 | 162 | 29,590 | 27,034 | 12,052 | 11,099 | 309 | 644 | 14,982 | 9,664 |
| Kentucky | 59 | 28 | 23 | 5 | 0 | 31 | 6,611 | 5,912 | 2,536 | 2,362 | 174 | 0 | 3,376 | 2,173 |
| Tennessee | 51 | 29 | 27 | 1 | 1 | 22 | 3,112 | 2,861 | 1,514 | 1,484 | 13 | 17 | 1,347 | 1,995 |
| Alabama | 43 | 21 | 20 | 0 | 1 | 22 | 6,395 | 6,045 | 2,179 | 2 132 | 42 | 5 | 3,866 | 1,004 |
| Mississippi | 13 | 6 | 5 | 0 | 1 | 7 | 1,278 | 1,150 | 489 | 473 | 0 | 16 | 661 | 363 |
| East South Central | 166 | 84 | 75 | 6 | 3 | 82 | 17,396 | 15,968 | 6,718 | 6,451 | 229 | 38 | 9,250 | 5,535 |
| Arkansas | 24 | 11 | 11 | 0 | 0 | 13 | 2,393 | 2,221 | 1,129 | 1,120 | 0 | 9 | 1,092 | 1,396 |
| Louisiana | 30 | 16 | 13 | 2 | 1 | 14 | 2,101 | 1,807 | 833 | 690 | 100 | 43 | 974 | 844 |
| Oklahoma | 21 | 6 | 6 | 0 | 0 | 15 | 1,589 | 1,395 | 535 | 532 | 3 | 0 | 860 | 242 |
| Texas | 69 | 31 | 28 | 0 | 3 | 38 | 5,578 | 4,957 | 2,313 | 2,188 | 4 | 121 | 2,644 | 1,894 |
| West South Central | 144 | 64 | 58 | 2 | 4 | 80 | 11,661 | 10,380 | 4,810 | 4,530 | 107 | 173 | 5,570 | 4,376 |
| Montana | 21 | 12 | 11 | 0 | 1 | 9 | 593 | 496 | 276 | 218 | 0 | 58 | 220 | 290 |
| Idaho | 8 | 5 | 4 | 0 | 1 | 3 | 183 | 139 | 100 | 91 | 0 | 9 | 39 | 163 |
| Wyoming | 4 | 1 | 1 | 0 | 0 | 3 | 270 | 237 | 85 | 85 | 0 | 0 | 152 | 4 |
| Colorado | 23 | 12 | 12 | 0 | 0 | 11 | 695 | 596 | 272 | 270 | 2 | 0 | 324 | 374 |
| New Mexico | 17 | 10 | 9 | 1 | 0 | 7 | 1,598 | 1,476 | 948 | 940 | 8 | 0 | 528 | 1,236 |
| Arizona | 25 | 12 | 11 | 1 | 0 | 13 | 2,920 | 2,525 | 1,432 | 1,412 | 20 | 0 | 1,093 | 1,520 |
| Utah | 6 | 2 | 2 | 0 | 0 | 4 | 144 | 134 | 48 | 48 | 0 | 0 | 86 | 35 |
| Nevada | 36 | 19 | 19 | 0 | 0 | 17 | 1,118 | 934 | 442 | 442 | 0 | 0 | 492 | 418 |

## Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1998—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 | 140 | 73 | 69 | 2 | 2 | 67 | 7,521 | 6,537 | 3,603 | 3,506 | 30 | 67 | 2,934 | 4,040 |
| Washington | 142 | 64 | 60 | 1 | 3 | 78 | 8,116 | 6,605 | 3,478 | 3,023 | 345 | 110 | 3,127 | 4,057 |
| Oregon | 64 | 26 | 22 | 2 | 2 | 38 | 2,645 | 2,297 | 1,123 | 901 | 69 | 153 | 1,174 | 1,085 |
| California | 410 | 218 | 206 | 1 | 11 | 192 | 23,309 | 19,619 | 9,788 | 8,410 | 238 | 1,140 | 9,831 | 10,077 |
| Alaska | 29 | 15 | 15 | 0 | 0 | 14 | 1,044 | 850 | 455 | 455 | 0 | 0 | 395 | 394 |
| Hawaii | 49 | 23 | 20 | 0 | 3 | 26 | 2,512 | 2,114 | 1,016 | 717 | 0 | 299 | 1,098 | 1,049 |
| Guam | 4 | 1 | 1 | 0 | 0 | 3 | 771 | 680 | 238 | 238 | 0 | 0 | 442 | 84 |
| Pacific | 698 | 347 | 324 | 4 | 19 | 351 | 38,397 | 32,165 | 16,098 | 13,744 | 652 | 1,702 | 16,067 | 16,746 |
| Perto Rico | 46 | 29 | 5 | 0 | 24 | 17 | 3,056 | 2,653 | 1,457 | 162 | 0 | 1,295 | 1,196 | 1,695 |
| Virgin Island | 7 | 5 | 5 | 0 | 0 | 2 | 517 | 405 | 212 | 212 | 0 | 0 | 193 | 229 |
| Outlying Areas | 53 | 34 | 10 | 0 | 24 | 19 | 3,573 | 3,058 | 1,669 | 374 | 0 | 1,295 | 1,389 | 1,924 |
| Total, all States and areas | 3,795 | 1,856 | 1,650 | 54 | 152 | 1,939 | 250,726 | 217,595 | 105,313 | 89,192 | 4,602 | 11,519 | 112,282 | 100,535 |

[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 1998

| 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 | 17 | 6 | 6 | 0 | 0 | 11 | 1,508 | 1,476 | 588 | 541 | 47 | 0 | 888 | 148 |
| New Hampshire | 6 | 2 | 2 | 0 | 0 | 4 | 405 | 400 | 160 | 160 | 0 | 0 | 240 | 66 |
| Vermont | 6 | 2 | 2 | 0 | 0 | 4 | 682 | 665 | 272 | 272 | 0 | 0 | 393 | 332 |
| Massachusetts | 90 | 54 | 48 | 6 | 0 | 36 | 5,844 | 5,651 | 2,974 | 2,108 | 866 | 0 | 2,677 | 3,387 |
| Rhode Island | 18 | 8 | 7 | 0 | 1 | 10 | 1,082 | 1,014 | 517 | 507 | 0 | 10 | 497 | 432 |
| Connecticut | 91 | 57 | 50 | 6 | 7 | 34 | 6,190 | 5,345 | 2,945 | 2,176 | 31 | 738 | 2,400 | 4,255 |
| New England | 228 | 129 | 115 | 6 | 8 | 99 | 15,711 | 14,551 | 7,456 | 5,764 | 944 | 748 | 7,095 | 8,620 |
| New York | 278 | 152 | 122 | 4 | 26 | 126 | 16,878 | 13,266 | 6,596 | 4,903 | 204 | 1,489 | 6,670 | 8,461 |
| New Jersey | 177 | 83 | 71 | 2 | 10 | 94 | 8,357 | 7,103 | 3,319 | 2,842 | 118 | 359 | 3,784 | 2,899 |
| Pennsylvania | 208 | 100 | 90 | 3 | 7 | 108 | 12,434 | 10,874 | 5,041 | 3,886 | 102 | 1,053 | 5,833 | 4,646 |
| Middle Atlantic | 663 | 335 | 283 | 9 | 43 | 328 | 37,669 | 31,243 | 14,956 | 11,631 | 424 | 2,901 | 16,287 | 16,006 |
| Ohio | 200 | 86 | 83 | 2 | 1 | 114 | 14,765 | 13,489 | 6,307 | 5,856 | 447 | 4 | 7,182 | 4,123 |
| Indiana | 93 | 47 | 46 | 1 | 0 | 46 | 4,266 | 3,840 | 1,809 | 1,799 | 10 | 0 | 2,031 | 1,395 |
| Illinois | 266 | 144 | 126 | 10 | 8 | 122 | 19,898 | 17,306 | 9,492 | 7,395 | 1,042 | 1,055 | 7,814 | 9,740 |
| Michigan | 170 | 80 | 78 | 1 | 1 | 90 | 12,556 | 8,986 | 4,228 | 4,019 | 89 | 120 | 4,758 | 3,602 |
| Wisconsin | 92 | 40 | 36 | 1 | 3 | 52 | 5,411 | 4,824 | 2,411 | 2,279 | 36 | 96 | 2,413 | 1,712 |
| East North Central | 821 | 397 | 369 | 15 | 13 | 424 | 56,896 | 48,445 | 24,247 | 21,348 | 1,624 | 1,275 | 24,198 | 20,572 |
| Iowa | 34 | 17 | 16 | 1 | 0 | 17 | 2,336 | 2,037 | 1,150 | 1,075 | 75 | 0 | 887 | 1,541 |
| Minnesota | 83 | 45 | 39 | 1 | 5 | 38 | 5,713 | 5,018 | 2,520 | 2,136 | 24 | 360 | 2,498 | 2,603 |
| Missouri | 98 | 53 | 43 | 1 | 9 | 45 | 5,011 | 4,497 | 2,352 | 1,555 | 50 | 747 | 2,145 | 2,925 |
| North Dakota | 7 | 0 | 0 | 0 | 0 | 7 | 260 | 242 | 77 | 77 | 0 | 0 | 165 | 0 |
| South Dakota | 5 | 2 | 2 | 0 | 0 | 3 | 62 | 40 | 23 | 23 | 0 | 0 | 17 | 29 |
| Nebraska | 9 | 3 | 3 | 0 | 0 | 6 | 211 | 183 | 94 | 94 | 0 | 0 | 89 | 84 |
| Kansas | 32 | 14 | 13 | 1 | 0 | 18 | 6,381 | 5,650 | 2,528 | 1,347 | 52 | 1,129 | 3,122 | 559 |
| West North Central | 268 | 134 | 116 | 4 | 14 | 134 | 19,974 | 17,667 | 8,744 | 6,307 | 201 | 2,236 | 8,923 | 7,741 |

Table 15B –Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1998—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 | 16 | 4 | 4 | 0 | 0 | 12 | 1,166 | 1,041 | 358 | 358 | 0 | 0 | 683 | 210 |
| Maryland | 47 | 21 | 21 | 0 | 0 | 26 | 2,600 | 2,284 | 1,131 | 1,094 | 0 | 37 | 1,153 | 888 |
| District of Columbia | 16 | 14 | 10 | 0 | 4 | 2 | 997 | 678 | 564 | 111 | 0 | 453 | 114 | 982 |
| Virginia | 27 | 16 | 15 | 0 | 1 | 11 | 5,140 | 4,770 | 1,623 | 1,610 | 0 | 13 | 3,147 | 1,307 |
| West Virginia | 36 | 20 | 18 | 1 | 1 | 16 | 3,180 | 2,857 | 1,327 | 1,114 | 191 | 22 | 1,530 | 805 |
| North Carolina | 25 | 7 | 5 | 1 | 1 | 18 | 4,198 | 3,901 | 1,527 | 1,468 | 39 | 20 | 2,374 | 238 |
| South Carolina | 9 | 3 | 3 | 0 | 0 | 6 | 574 | 540 | 229 | 229 | 0 | 0 | 311 | 122 |
| Georgia | 39 | 20 | 17 | 1 | 2 | 19 | 3,178 | 2,712 | 1,390 | 1,338 | 39 | 13 | 1,322 | 1,923 |
| Florida | 87 | 47 | 42 | 2 | 3 | 40 | 7,117 | 6,919 | 3,154 | 3,028 | 40 | 86 | 3,765 | 2,374 |
| South Atlantic | 302 | 152 | 135 | 5 | 12 | 150 | 28,150 | 25,702 | 11,303 | 10,350 | 309 | 644 | 14,399 | 8,849 |
| Kentucky | 54 | 27 | 22 | 5 | 0 | 27 | 6,496 | 5,802 | 2,487 | 2,313 | 174 | 0 | 3,315 | 2,152 |
| Tennessee | 49 | 27 | 25 | 1 | 1 | 22 | 2,966 | 2,724 | 1,424 | 1,394 | 13 | 17 | 1,300 | 1,849 |
| Alabama | 39 | 20 | 19 | 0 | 1 | 19 | 6,249 | 5,906 | 2,121 | 2,074 | 42 | 5 | 3,785 | 960 |
| Mississippi | 9 | 5 | 4 | 0 | 1 | 4 | 836 | 761 | 310 | 294 | 0 | 16 | 451 | 268 |
| East South Central | 151 | 79 | 70 | 6 | 3 | 72 | 16,547 | 15,193 | 6,342 | 6,075 | 229 | 38 | 8,851 | 5,229 |
| Arkansas | 15 | 8 | 8 | 0 | 0 | 7 | 1,455 | 1,337 | 674 | 674 | 0 | 0 | 663 | 604 |
| Louisiana | 26 | 15 | 12 | 2 | 1 | 11 | 1,809 | 1,539 | 684 | 552 | 100 | 32 | 855 | 623 |
| Oklahoma | 19 | 5 | 5 | 0 | 0 | 14 | 1,486 | 1,298 | 478 | 475 | 3 | 0 | 820 | 155 |
| Texas | 59 | 27 | 24 | 0 | 3 | 32 | 4,861 | 4,315 | 1,925 | 1,836 | 4 | 85 | 2,390 | 1,434 |
| West South Central | 119 | 55 | 49 | 2 | 4 | 64 | 9,611 | 8,489 | 3,761 | 3,537 | 107 | 117 | 4,728 | 2,816 |
| Montana | 18 | 10 | 10 | 0 | 0 | 8 | 468 | 385 | 195 | 195 | 0 | 0 | 190 | 170 |
| Idaho | 7 | 5 | 4 | 0 | 1 | 2 | 176 | 133 | 97 | 88 | 0 | 9 | 36 | 163 |
| Wyoming | 4 | 1 | 1 | 0 | 0 | 3 | 270 | 237 | 85 | 85 | 0 | 0 | 152 | 4 |
| Colorado | 21 | 12 | 12 | 0 | 0 | 9 | 665 | 567 | 266 | 264 | 2 | 0 | 301 | 374 |
| New Mexico | 15 | 8 | 7 | 1 | 0 | 7 | 974 | 905 | 576 | 568 | 8 | 0 | 329 | 612 |
| Arizona | 20 | 9 | 8 | 1 | 0 | 11 | 2,653 | 2,339 | 1,315 | 1,295 | 20 | 0 | 1,024 | 1,277 |
| Utah | 6 | 2 | 2 | 0 | 0 | 4 | 144 | 134 | 48 | 48 | 0 | 0 | 86 | 35 |
| Nevada | 35 | 19 | 19 | 0 | 0 | 16 | 1,110 | 926 | 440 | 440 | 0 | 0 | 486 | 418 |

Table 15B –Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1998—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 | 126 | 66 | 63 | 2 | 1 | 60 | 6,460 | 5,626 | 3,022 | 2,983 | 30 | 9 | 2,604 | 3,053 |
| Washington | 114 | 58 | 54 | 1 | 3 | 56 | 7,408 | 6,027 | 3,267 | 2,812 | 345 | 110 | 2,760 | 3,895 |
| Oregon | 50 | 24 | 20 | 2 | 2 | 26 | 1,811 | 1,575 | 842 | 620 | 69 | 153 | 733 | 929 |
| California | 371 | 209 | 197 | 1 | 11 | 162 | 20,971 | 17,593 | 8,877 | 7,545 | 238 | 1,094 | 8,716 | 9,529 |
| Alaska | 28 | 15 | 15 | 0 | 0 | 13 | 945 | 780 | 423 | 423 | 0 | 0 | 357 | 394 |
| Hawaii | 42 | 21 | 18 | 0 | 3 | 21 | 2,185 | 1,856 | 902 | 698 | 0 | 204 | 954 | 1,017 |
| Guam | 4 | 1 | 1 | 0 | 0 | 3 | 771 | 680 | 238 | 238 | 0 | 0 | 442 | 84 |
| Pacific | 609 | 328 | 305 | 4 | 19 | 281 | 34,091 | 28,511 | 14,549 | 12,336 | 652 | 1,561 | 13,962 | 15,848 |
| Perto Rico | 45 | 29 | 5 | 0 | 24 | 16 | 3,045 | 2,644 | 1,454 | 159 | 0 | 1,295 | 1,190 | 1,695 |
| Virgin Island | 7 | 5 | 5 | 0 | 0 | 2 | 517 | 405 | 212 | 212 | 0 | 0 | 193 | 229 |
| Outlying Areas | 52 | 34 | 10 | 0 | 24 | 18 | 3,562 | 3,049 | 1,666 | 371 | 0 | 1,295 | 1,383 | 1,924 |
| Total, all States and areas | 3,339 | 1,709 | 1,515 | 53 | 141 | 1,630 | 228,671 | 198,476 | 96,046 | 80,702 | 4,520 | 10,824 | 102,430 | 90,658 |

[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 1998

| Division and State[1] | Total elections | Number of elections in which representation rights were won by unions | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Other national unions | Other local unions | | |
| Maine | 1 | 1 | 1 | 0 | 0 | 0 | 16 | 15 | 12 | 12 | 0 | 0 | 3 | 16 |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Massachusetts | 8 | 2 | 2 | 0 | 0 | 6 | 231 | 227 | 92 | 92 | 0 | 0 | 135 | 67 |
| Rhode Island | 1 | 0 | 0 | 0 | 0 | 1 | 34 | 34 | 12 | 12 | 0 | 0 | 22 | 0 |
| Connecticut | 5 | 3 | 0 | 0 | 3 | 2 | 85 | 79 | 47 | 2 | 0 | 45 | 32 | 75 |
| New England | 15 | 6 | 3 | 0 | 3 | 9 | 366 | 355 | 163 | 118 | 0 | 45 | 192 | 158 |
| New York | 44 | 12 | 6 | 1 | 5 | 32 | 1,976 | 1,560 | 669 | 421 | 59 | 189 | 891 | 681 |
| New Jersey | 22 | 8 | 7 | 0 | 1 | 14 | 720 | 615 | 316 | 309 | 0 | 7 | 299 | 354 |
| Pennsylvania | 20 | 6 | 5 | 0 | 1 | 14 | 538 | 464 | 207 | 183 | 0 | 24 | 257 | 211 |
| Middle Atlantic | 86 | 26 | 18 | 1 | 7 | 60 | 3,234 | 2,639 | 1,192 | 913 | 59 | 220 | 1,447 | 1,246 |
| Ohio | 28 | 7 | 7 | 0 | 0 | 21 | 1,234 | 1,104 | 452 | 450 | 0 | 2 | 652 | 305 |
| Indiana | 19 | 10 | 10 | 0 | 0 | 9 | 996 | 851 | 536 | 534 | 2 | 0 | 315 | 748 |
| Illinois | 39 | 11 | 11 | 0 | 0 | 28 | 1,545 | 1,295 | 604 | 556 | 21 | 27 | 691 | 790 |
| Michigan | 26 | 7 | 7 | 0 | 0 | 19 | 661 | 558 | 261 | 261 | 0 | 0 | 297 | 276 |
| Wisconsin | 18 | 7 | 7 | 0 | 0 | 11 | 845 | 733 | 368 | 368 | 0 | 0 | 365 | 397 |
| East North Central | 130 | 42 | 42 | 0 | 0 | 88 | 5,281 | 4,541 | 2,221 | 2,169 | 23 | 29 | 2,320 | 2,516 |
| Iowa | 9 | 3 | 3 | 0 | 0 | 6 | 339 | 279 | 128 | 128 | 0 | 0 | 151 | 211 |
| Minnesota | 22 | 9 | 9 | 0 | 0 | 13 | 1,583 | 1,425 | 546 | 546 | 0 | 0 | 879 | 415 |
| Missouri | 20 | 7 | 7 | 0 | 0 | 13 | 774 | 710 | 430 | 430 | 0 | 0 | 280 | 488 |
| North Dakota | 1 | 0 | 0 | 0 | 0 | 1 | 412 | 338 | 146 | 0 | 0 | 146 | 192 | 0 |

Table 15C –Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1998—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 | | |
| South Dakota | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nebraska | 2 | 2 | 2 | 0 | 0 | 0 | 269 | 187 | 101 | 101 | 0 | 0 | 86 | 269 |
| Kansas | 4 | 1 | 1 | 0 | 0 | 3 | 80 | 73 | 33 | 33 | 0 | 0 | 40 | 8 |
| West North Central | 58 | 22 | 22 | 0 | 0 | 36 | 3,457 | 3,012 | 1,384 | 1,238 | 0 | 146 | 1,628 | 1,391 |
| Delaware | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | 1 | 1 | 1 | 0 | 0 | 0 | 20 | 19 | 10 | 10 | 0 | 0 | 9 | 20 |
| District of Columbia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Virginia | 3 | 3 | 3 | 0 | 0 | 0 | 87 | 81 | 51 | 51 | 0 | 0 | 30 | 87 |
| West Virginia | 3 | 2 | 2 | 0 | 0 | 1 | 101 | 89 | 58 | 58 | 0 | 0 | 31 | 92 |
| North Carolina | 1 | 0 | 0 | 0 | 0 | 1 | 185 | 166 | 68 | 68 | 0 | 0 | 98 | 0 |
| South Carolina | 1 | 1 | 1 | 0 | 0 | 0 | 174 | 171 | 99 | 99 | 0 | 0 | 72 | 174 |
| Georgia | 3 | 0 | 0 | 0 | 0 | 3 | 267 | 245 | 107 | 107 | 0 | 0 | 138 | 0 |
| Florida | 11 | 4 | 4 | 0 | 0 | 7 | 606 | 561 | 356 | 356 | 0 | 0 | 205 | 442 |
| South Atlantic | 23 | 11 | 11 | 0 | 0 | 12 | 1,440 | 1,332 | 749 | 749 | 0 | 0 | 583 | 815 |
| Kentucky | 5 | 1 | 1 | 0 | 0 | 4 | 115 | 110 | 49 | 49 | 0 | 0 | 61 | 21 |
| Tennessee | 2 | 2 | 2 | 0 | 0 | 0 | 146 | 137 | 90 | 90 | 0 | 0 | 47 | 146 |
| Alabama | 4 | 1 | 1 | 0 | 0 | 3 | 146 | 139 | 58 | 58 | 0 | 0 | 81 | 44 |
| Mississippi | 4 | 1 | 1 | 0 | 0 | 3 | 442 | 389 | 179 | 179 | 0 | 0 | 210 | 95 |
| East South Central | 15 | 5 | 5 | 0 | 0 | 10 | 849 | 775 | 376 | 376 | 0 | 0 | 399 | 306 |
| Arkansas | 9 | 3 | 3 | 0 | 0 | 6 | 938 | 884 | 455 | 446 | 0 | 9 | 429 | 792 |
| Louisiana | 4 | 1 | 1 | 0 | 0 | 3 | 292 | 268 | 149 | 138 | 0 | 11 | 119 | 221 |
| Oklahoma | 2 | 1 | 1 | 0 | 0 | 1 | 103 | 97 | 57 | 57 | 0 | 0 | 40 | 87 |
| Texas | 10 | 4 | 4 | 0 | 0 | 6 | 717 | 642 | 388 | 352 | 0 | 36 | 254 | 460 |
| West South Central | 25 | 9 | 9 | 0 | 0 | 16 | 2,050 | 1,891 | 1,049 | 993 | 0 | 56 | 842 | 1,560 |
| Montana | 3 | 2 | 1 | 0 | 1 | 1 | 125 | 111 | 81 | 23 | 0 | 58 | 30 | 120 |
| Idaho | 1 | 0 | 0 | 0 | 0 | 1 | 7 | 6 | 3 | 3 | 0 | 0 | 3 | 0 |
| Wyoming | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | 2 | 0 | 0 | 0 | 0 | 2 | 30 | 29 | 6 | 6 | 0 | 0 | 23 | 0 |

Table 15C –Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1998—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 | | |
| New Mexico | 2 | 2 | 2 | 0 | 0 | 0 | 624 | 571 | 372 | 372 | 0 | 0 | 199 | 624 |
| Arizona | 5 | 3 | 3 | 0 | 0 | 2 | 267 | 186 | 117 | 117 | 0 | 0 | 69 | 243 |
| Utah | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nevada | 1 | 0 | 0 | 0 | 0 | 1 | 8 | 8 | 2 | 2 | 0 | 0 | 6 | 0 |
| Mountain | 14 | 7 | 6 | 0 | 1 | 7 | 1,061 | 911 | 581 | 523 | 0 | 58 | 330 | 987 |
| Washington | 28 | 6 | 6 | 0 | 0 | 22 | 708 | 578 | 211 | 211 | 0 | 0 | 367 | 162 |
| Oregon | 14 | 2 | 2 | 0 | 0 | 12 | 834 | 722 | 281 | 281 | 0 | 0 | 441 | 156 |
| California | 39 | 9 | 9 | 0 | 0 | 30 | 2,338 | 2,026 | 911 | 865 | 0 | 46 | 1,115 | 548 |
| Alaska | 1 | 0 | 0 | 0 | 0 | 1 | 99 | 70 | 32 | 32 | 0 | 0 | 38 | 0 |
| Hawaii | 7 | 2 | 2 | 0 | 0 | 5 | 327 | 258 | 114 | 19 | 0 | 95 | 144 | 32 |
| Guam | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Pacific | 89 | 19 | 19 | 0 | 0 | 70 | 4,306 | 3,654 | 1,549 | 1,408 | 0 | 141 | 2,105 | 898 |
| Perto Rico | 1 | 0 | 0 | 0 | 0 | 1 | 11 | 9 | 3 | 3 | 0 | 0 | 6 | 0 |
| Virgin Island | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Outlying Areas | 1 | 0 | 0 | 0 | 0 | 1 | 11 | 9 | 3 | 3 | 0 | 0 | 6 | 0 |
| Total, all States and areas | 456 | 147 | 135 | 1 | 11 | 309 | 22,055 | 19,119 | 9,267 | 8,490 | 82 | 695 | 9,852 | 9,877 |

[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 1998

| 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 | | |
| Food and kindred products | 187 | 88 | 86 | 0 | 2 | 99 | 15,013 | 13,243 | 6,421 | 5,951 | 0 | 470 | 6,822 | 5,483 |
| Tobacco manufacturers | 1 | 0 | 0 | 0 | 0 | 1 | 25 | 22 | 4 | 4 | 0 | 0 | 18 | 0 |
| Textile mill products | 9 | 3 | 1 | 0 | 2 | 6 | 816 | 796 | 339 | 150 | 58 | 131 | 457 | 166 |
| Apparel and other finished products made from fabric and similar materials | 10 | 3 | 3 | 0 | 0 | 7 | 1,029 | 952 | 373 | 373 | 0 | 0 | 579 | 124 |
| Lumber and wood products (except furniture) | 42 | 15 | 14 | 1 | 0 | 27 | 3,309 | 3,095 | 1,339 | 1,006 | 319 | 14 | 1,756 | 851 |
| Furniture and fixtures | 32 | 13 | 9 | 0 | 4 | 19 | 2,703 | 2,403 | 1,056 | 918 | 0 | 138 | 1,347 | 742 |
| Paper and allied products | 44 | 13 | 13 | 0 | 0 | 31 | 2,910 | 2,736 | 1,067 | 1,042 | 0 | 25 | 1,669 | 486 |
| Printing, publishing, and allied products | 49 | 17 | 17 | 0 | 0 | 32 | 3,228 | 2,916 | 1,281 | 1,157 | 5 | 119 | 1,635 | 462 |
| Chemicals and allied products | 61 | 29 | 27 | 0 | 2 | 32 | 3,461 | 3,172 | 1,329 | 1,238 | 0 | 91 | 1,843 | 917 |
| Petroleum refining and related industries | 18 | 7 | 7 | 0 | 0 | 11 | 714 | 660 | 294 | 294 | 0 | 0 | 366 | 131 |
| Rubber and miscellaneous plastic products | 47 | 13 | 10 | 1 | 2 | 34 | 6,351 | 5,982 | 2,485 | 2,117 | 73 | 295 | 3,497 | 885 |
| Leather and leather products | 1 | 0 | 0 | 0 | 0 | 1 | 31 | 25 | 7 | 7 | 0 | 0 | 18 | 0 |
| Stone, clay, glass, and concrete products | 73 | 27 | 27 | 0 | 0 | 46 | 7,397 | 6,791 | 2,859 | 2,838 | 21 | 0 | 3,932 | 1,808 |
| Primary metal industries | 90 | 46 | 42 | 3 | 1 | 44 | 7,423 | 6,897 | 3,415 | 3,180 | 117 | 118 | 3,482 | 2,761 |
| Fabricated metal products (except machinery and transportation equipment) | 109 | 40 | 39 | 0 | 1 | 69 | 9,522 | 8,844 | 4,280 | 4,218 | 3 | 59 | 4,564 | 4,496 |
| Machinery (except electrical) | 90 | 30 | 25 | 3 | 2 | 60 | 11,273 | 10,200 | 4,177 | 3,497 | 563 | 117 | 6,023 | 3,244 |
| Electrical and electronic machinery, equipment, and supplies | 35 | 14 | 13 | 0 | 1 | 21 | 5,729 | 5,224 | 2,290 | 1,855 | 2 | 433 | 2 934 | 2,634 |
| Aircraft and parts | 73 | 39 | 35 | 2 | 2 | 34 | 15,832 | 12,348 | 5,410 | 4,080 | 123 | 1,207 | 6,938 | 2,348 |
| Ship and boat building and repairing | 11 | 2 | 1 | 1 | 0 | 9 | 598 | 480 | 152 | 132 | 8 | 12 | 328 | 13 |
| Automotive and other transportation equipment | 11 | 6 | 6 | 0 | 0 | 5 | 2,351 | 2,264 | 916 | 892 | 24 | 0 | 1,348 | 370 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 16 | 4 | 4 | 0 | 0 | 12 | 1,471 | 1,337 | 583 | 583 | 0 | 0 | 754 | 267 |
| Miscellaneous manufacturing industries | 36 | 17 | 17 | 0 | 0 | 19 | 1,636 | 1,561 | 698 | 696 | 0 | 2 | 863 | 713 |
| Manufacturing | 1,045 | 426 | 396 | 11 | 19 | 619 | 102,842 | 91,948 | 40,775 | 36,228 | 1,316 | 3,231 | 51,173 | 28,901 |

## Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1998–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 | | |
| Metal mining | 4 | 4 | 4 | 0 | 0 | 0 | 752 | 676 | 439 | 439 | 0 | 0 | 237 | 752 |
| Coal mining | 4 | 3 | 1 | 2 | 0 | 1 | 604 | 578 | 219 | 36 | 183 | 0 | 359 | 122 |
| Oil and gas extraction | 8 | 2 | 2 | 0 | 0 | 6 | 155 | 145 | 49 | 38 | 0 | 11 | 96 | 24 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 9 | 2 | 2 | 0 | 0 | 7 | 433 | 409 | 162 | 158 | 4 | 0 | 247 | 63 |
| Mining | 25 | 11 | 9 | 2 | 0 | 14 | 1,944 | 1,808 | 869 | 671 | 187 | 11 | 939 | 961 |
| Construction | 337 | 155 | 150 | 2 | 3 | 182 | 8,980 | 7,068 | 3,363 | 3,231 | 19 | 113 | 3,705 | 3,971 |
| Wholesale trade | 200 | 75 | 70 | 1 | 4 | 125 | 12,951 | 11,732 | 5,179 | 4,858 | 123 | 198 | 6,553 | 4,424 |
| Retail trade | 299 | 146 | 139 | 2 | 5 | 153 | 11,562 | 10,144 | 4,666 | 4,129 | 131 | 406 | 5,478 | 4,108 |
| Finance, insurance, and real estate | 64 | 47 | 43 | 0 | 4 | 17 | 1,575 | 1,391 | 727 | 652 | 0 | 75 | 664 | 664 |
| U S Postal Service | 2 | 0 | 0 | 0 | 0 | 2 | 79 | 75 | 31 | 0 | 31 | 0 | 44 | 0 |
| Local and suburban transit and interurban highway passenger transportation | 133 | 81 | 76 | 0 | 5 | 52 | 9,304 | 7,814 | 4,516 | 4,125 | 7 | 384 | 3,298 | 6,343 |
| Motor freight transportation and warehousing | 256 | 112 | 106 | 3 | 3 | 144 | 12,225 | 10,881 | 5,268 | 4,977 | 165 | 126 | 5,613 | 5,132 |
| Water transportation | 15 | 8 | 8 | 0 | 0 | 7 | 434 | 340 | 170 | 170 | 0 | 0 | 170 | 208 |
| Other transportation | 67 | 37 | 34 | 0 | 3 | 30 | 2,601 | 2,210 | 1,070 | 1,022 | 35 | 13 | 1,140 | 753 |
| Communication | 59 | 28 | 27 | 0 | 1 | 31 | 2,772 | 2,415 | 1,218 | 1,206 | 7 | 5 | 1,197 | 1,144 |
| Electric, gas, and sanitary services | 133 | 71 | 65 | 0 | 6 | 62 | 5,696 | 5,186 | 2,642 | 2,401 | 0 | 241 | 2,544 | 2,525 |
| Transportation, communication, and other utilities | 663 | 337 | 316 | 3 | 18 | 326 | 33,032 | 28,846 | 14,884 | 13,901 | 214 | 769 | 13,962 | 16,105 |
| Hotels, rooming houses, camps, and other lodging places | 68 | 34 | 32 | 0 | 2 | 34 | 4,358 | 3,684 | 1,552 | 1,495 | 0 | 57 | 2,132 | 1,386 |
| Personal services | 36 | 15 | 13 | 0 | 2 | 21 | 2,487 | 1,963 | 901 | 813 | 0 | 88 | 1,062 | 1,098 |
| Automotive repair, services, and garages | 72 | 38 | 37 | 0 | 1 | 34 | 2,150 | 1,776 | 929 | 712 | 6 | 211 | 847 | 1,550 |
| Motion pictures | 16 | 4 | 4 | 0 | 0 | 12 | 784 | 654 | 293 | 154 | 0 | 139 | 361 | 34 |
| Amusement and recreation services (except motion pictures) | 43 | 23 | 20 | 2 | 1 | 20 | 2,801 | 2,262 | 1,278 | 1,097 | 123 | 58 | 984 | 2,045 |
| Health services | 486 | 290 | 249 | 11 | 30 | 196 | 45,858 | 38,891 | 20,966 | 15,536 | 1,840 | 3,590 | 17,925 | 23,916 |
| Educational services | 37 | 24 | 17 | 1 | 6 | 13 | 2,093 | 1,803 | 1,050 | 493 | 28 | 529 | 753 | 1,314 |
| Membership organizations | 27 | 15 | 11 | 1 | 3 | 12 | 754 | 681 | 364 | 306 | 27 | 31 | 317 | 381 |
| Business services | 236 | 145 | 82 | 17 | 46 | 91 | 10,509 | 7,765 | 4,692 | 2,488 | 510 | 1,694 | 3,073 | 6,855 |

## Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1998–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 | | |
| Miscellaneous repair services | 12 | 3 | 3 | 0 | 0 | 9 | 593 | 556 | 213 | 213 | 0 | 0 | 343 | 46 |
| Museums, art galleries, botanical and zoological gardens | 1 | 0 | 0 | 0 | 0 | 1 | 66 | 46 | 16 | 16 | 0 | 0 | 30 | 0 |
| Legal services | 9 | 8 | 7 | 0 | 1 | 1 | 109 | 97 | 69 | 56 | 0 | 13 | 28 | 99 |
| Social services | 87 | 41 | 38 | 0 | 3 | 46 | 3,814 | 3,120 | 1,709 | 1,589 | 33 | 87 | 1,411 | 1,832 |
| Miscellaneous services | 11 | 5 | 5 | 0 | 0 | 6 | 438 | 397 | 175 | 158 | 0 | 17 | 222 | 56 |
| Services | 1,141 | 645 | 518 | 32 | 95 | 496 | 76,814 | 63,695 | 34,207 | 25,126 | 2,567 | 6,514 | 29,488 | 40,612 |
| Public administration | 19 | 14 | 9 | 1 | 4 | 5 | 947 | 888 | 612 | 396 | 14 | 202 | 276 | 789 |
| Total, all industrial groups | 3,795 | 1,856 | 1,650 | 54 | 152 | 1,939 | 250,726 | 217,595 | 105,313 | 89,192 | 4,602 | 11,519 | 112,282 | 100,535 |

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 1998[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 by size class | Number | Percent by size class |
| | A Certification elections (RC and RM) | | | | | | | | | | | |
| Total RC and RM elections | 228,671 | 3,339 | 100 0 | --- | 1,515 | 100 0 | 53 | 100 0 | 141 | 100 0 | 1,630 | 100 0 |
| Under 10 | 3,769 | 666 | 19 9 | 19 9 | 381 | 25 1 | 5 | 9 4 | 23 | 16 3 | 257 | 15 8 |
| 10 to 19 | 9,533 | 678 | 20 3 | 40 2 | 371 | 24 5 | 11 | 20 8 | 22 | 15 7 | 274 | 16 8 |
| 20 to 29 | 9,505 | 394 | 11 8 | 52 0 | 174 | 11 5 | 1 | 1 9 | 14 | 9 9 | 205 | 12 6 |
| 30 to 39 | 7,860 | 231 | 6 9 | 58 9 | 101 | 6 7 | 4 | 7 5 | 15 | 10 6 | 111 | 6 8 |
| 40 to 49 | 8,983 | 203 | 6 1 | 65 0 | 77 | 5 1 | 3 | 5 7 | 8 | 5 7 | 115 | 7 1 |
| 50 to 59 | 8,962 | 165 | 4 9 | 69 9 | 69 | 4 6 | 4 | 7 5 | 5 | 3 5 | 87 | 5 3 |
| 60 to 69 | 10,120 | 157 | 4 7 | 74 6 | 67 | 4 4 | 6 | 11 3 | 4 | 2 8 | 80 | 4 9 |
| 70 to 79 | 7,796 | 105 | 3 1 | 77 7 | 36 | 2 4 | 4 | 7 5 | 5 | 3 5 | 60 | 3 6 |
| 80 to 89 | 6,719 | 80 | 2 4 | 80 1 | 35 | 2 3 | 4 | 7 5 | 5 | 3 5 | 36 | 2 2 |
| 90 to 99 | 6,995 | 74 | 2 2 | 82 3 | 32 | 2 1 | 1 | 1 9 | 3 | 2 2 | 38 | 2 3 |
| 100 to 109 | 7,086 | 68 | 2 0 | 84 3 | 19 | 1 3 | 1 | 1 9 | 3 | 2 2 | 45 | 2 8 |
| 110 to 119 | 5,577 | 49 | 1 5 | 85 8 | 15 | 1 0 | 0 | --- | 4 | 2 8 | 30 | 1 8 |
| 120 to 129 | 7,095 | 57 | 1 7 | 87 5 | 18 | 1 2 | 1 | 1 9 | 7 | 5 0 | 31 | 1 9 |
| 130 to 139 | 6,457 | 48 | 1 4 | 88 9 | 19 | 1 3 | 0 | --- | 3 | 2 2 | 26 | 1 6 |
| 140 to 149 | 5,486 | 38 | 1 1 | 90 0 | 9 | 0 6 | 1 | 1 9 | 1 | 0 7 | 27 | 1 7 |
| 150 to 159 | 3,982 | 26 | 0 8 | 90 8 | 9 | 0 6 | 1 | 1 9 | 2 | 1 4 | 14 | 0 8 |
| 160 to 169 | 4,082 | 25 | 0 7 | 91 5 | 7 | 0 5 | 0 | --- | 0 | --- | 18 | 1 1 |
| 170 to 179 | 3,478 | 20 | 0 6 | 92 1 | 4 | 0 3 | 0 | --- | 2 | 1 4 | 14 | 0 8 |
| 180 to 189 | 1,847 | 10 | 0 3 | 92 4 | 4 | 0 3 | 0 | --- | 0 | --- | 6 | 0 4 |
| 190 to 199 | 2,890 | 15 | 0 4 | 92 8 | 8 | 0 5 | 0 | --- | 0 | --- | 7 | 0 4 |
| 200 to 299 | 23,126 | 98 | 2 9 | 95 7 | 25 | 1 5 | 2 | 3 8 | 3 | 2 2 | 68 | 4 2 |
| 300 to 399 | 18,785 | 54 | 1 6 | 97 3 | 23 | 1 3 | 0 | --- | 4 | 2 8 | 27 | 1 7 |
| 400 to 499 | 13,140 | 29 | 0 9 | 98 2 | 3 | 0 2 | 0 | --- | 5 | 3 5 | 21 | 1 3 |
| 500 to 599 | 9,343 | 17 | 0 5 | 98 7 | 3 | 0 2 | 2 | 3 8 | 1 | 0 7 | 11 | 0 7 |
| 600 to 799 | 9,028 | 13 | 0 4 | 99 1 | 4 | 0 3 | 1 | 1 9 | 2 | 1 4 | 6 | 0 4 |
| 800 to 999 | 7,058 | 8 | 0 3 | 99 4 | 1 | 0 1 | 0 | --- | 0 | --- | 7 | 0 4 |
| 1,000 to 1,999 | 12,610 | 9 | 0 4 | 99 8 | 1 | 0 1 | 1 | 1 9 | 0 | --- | 7 | 0 4 |
| 2,000 to 2,999 | 2,543 | 1 | 0 1 | 99 9 | 0 | --- | 0 | --- | 0 | --- | 1 | 0 1 |
| 3,000 to 9,999 | 4,816 | 1 | 0 1 | 100 0 | 0 | --- | 0 | --- | 0 | --- | 1 | 0 1 |

## Table 17.–Size of Units in Representation Elections in Cases Closed, Fiscal Year 1998[1]–Continued

| Size of unit (number of employees) | Number eligible to vote | Total elections | Percent of total | Cumulative percent of total | Elections in which representation rights were won by | | | | | | Elections in which no representative was chosen | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | AFL-CIO unions | | Other national unions | | Other local unions | | | |
| | | | | | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class |
| | B. Decertification elections (RD) | | | | | | | | | | | |
| Total RD elections | 22,055 | 456 | 100 0 | ---- | 135 | 100 0 | 1 | 100 0 | 11 | 100 0 | 309 | 100 0 |
| Under 10 | 587 | 102 | 22 4 | 22 4 | 11 | 81 1 | 0 | ---- | 2 | 18 2 | 89 | 28 8 |
| 10 to 19 | 1,520 | 107 | 23 5 | 45 9 | 23 | 17 0 | 0 | ---- | 2 | 18 2 | 82 | 26 5 |
| 20 to 29 | 1,387 | 58 | 12 7 | 58 6 | 17 | 12 6 | 0 | ---- | 3 | 27 2 | 38 | 12 3 |
| 30 to 39 | 1,245 | 36 | 7 9 | 66 5 | 10 | 7 4 | 1 | 100 | 1 | 9 1 | 24 | 7 8 |
| 40 to 49 | 1,031 | 23 | 5 0 | 71 5 | 12 | 8 9 | 0 | ---- | 1 | 9 1 | 10 | 3 3 |
| 50 to 59 | 1,267 | 23 | 5 0 | 76 5 | 13 | 9 6 | 0 | ---- | 0 | ---- | 10 | 3 3 |
| 60 to 69 | 758 | 12 | 2 6 | 79 1 | 6 | 4 4 | 0 | ---- | 0 | ---- | 6 | 1 9 |
| 70 to 79 | 1,551 | 21 | 4 6 | 83 7 | 7 | 5 2 | 0 | ---- | 0 | ---- | 14 | 4 5 |
| 80 to 89 | 1,023 | 12 | 2 6 | 86 3 | 3 | 2 2 | 0 | ---- | 1 | 9 1 | 8 | 2 6 |
| 90 to 99 | 844 | 9 | 2 0 | 88 3 | 4 | 3 0 | 0 | ---- | 0 | ---- | 5 | 1 6 |
| 100 to 109 | 926 | 9 | 2 0 | 90 3 | 6 | 4 4 | 0 | ---- | 0 | ---- | 3 | 1 0 |
| 110 to 119 | 232 | 2 | 0 4 | 90 7 | 1 | 0 7 | 0 | ---- | 0 | ---- | 1 | 0 3 |
| 120 to 129 | 507 | 4 | 0 9 | 91 6 | 1 | 0 7 | 0 | ---- | 0 | ---- | 3 | 1 0 |
| 130 to 139 | 260 | 2 | 0 4 | 92 0 | 1 | 0 7 | 0 | ---- | 0 | ---- | 1 | 0 3 |
| 140 to 149 | 285 | 2 | 0 4 | 92 4 | 2 | 1 6 | 0 | ---- | 0 | ---- | 0 | ---- |
| 150 to 159 | 1,066 | 7 | 1 5 | 93 9 | 5 | 3 7 | 0 | ---- | 0 | ---- | 2 | 0 6 |
| 160 to 169 | 324 | 2 | 0 4 | 94 3 | 2 | 1 6 | 0 | ---- | 0 | ---- | 0 | ---- |
| 170 to 199 | 1,069 | 6 | 1 3 | 95 6 | 3 | 2 2 | 0 | ---- | 0 | ---- | 3 | 1 0 |
| 200 to 299 | 3,092 | 13 | 2 9 | 98 5 | 5 | 3 7 | 0 | ---- | 1 | 9 1 | 7 | 2 3 |
| 300 to 499 | 1,682 | 4 | 0 9 | 99 4 | 2 | 1 6 | 0 | ---- | 0 | ---- | 2 | 0 6 |
| 500 to 799 | 555 | 1 | 0 3 | 99 7 | 1 | 0 7 | 0 | ---- | 0 | ---- | 0 | ---- |
| 800 and Over | 844 | 1 | 0 3 | 100 0 | 0 | ---- | 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 1998[1]

| Size of establishment (number of employes) | 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 | 27,644 | 100 0 | | 21,144 | 100 0 | 5,135 | 100 0 | 450 | 100 0 | 148 | 100 0 | 50 | 100 0 | 23 | 100 0 | 112 | 100 0 | 554 | 100 0 | 28 | 100 0 |
| Under 10 | 2,703 | 9 8 | 9 8 | 2,113 | 10 0 | 403 | 7 8 | 81 | 18 0 | 24 | 16 2 | 29 | 58 0 | 1 | 4 3 | 22 | 19 6 | 25 | 4 5 | 5 | 17 9 |
| 10-19 | 2,533 | 9 2 | 19 0 | 2,008 | 9 5 | 353 | 6 9 | 82 | 18 2 | 35 | 23 6 | 6 | 12 0 | 1 | 4 3 | 21 | 18 8 | 26 | 4 7 | 1 | 3 6 |
| 20-29 | 1,994 | 7 2 | 26 2 | 1,603 | 7 6 | 256 | 5 0 | 58 | 12 9 | 25 | 16 9 | 2 | 4 0 | 0 | ---- | 14 | 12 5 | 28 | 5 1 | 8 | 28 6 |
| 30-39 | 1,233 | 4 5 | 30 7 | 1,003 | 4 7 | 161 | 3 1 | 27 | 6 0 | 7 | 4 7 | 2 | 4 0 | 0 | ---- | 10 | 8 9 | 19 | 3 4 | 4 | 14 3 |
| 40-49 | 1,042 | 3 8 | 34 5 | 870 | 4 1 | 140 | 2 7 | 14 | 3 1 | 6 | 4 1 | 0 | ---- | 1 | 4 3 | 7 | 6 3 | 4 | 7 | 0 | ---- |
| 50-59 | 1,545 | 5 6 | 40 1 | 1,203 | 5 7 | 276 | 5 4 | 23 | 5 1 | 6 | 4 1 | 2 | 4 0 | 0 | ---- | 6 | 5 4 | 25 | 4 5 | 4 | 14 3 |
| 60-69 | 771 | 2 8 | 42 9 | 623 | 2 9 | 101 | 2 0 | 25 | 5 6 | 15 | 10 1 | 1 | 2 0 | 0 | ---- | 0 | ---- | 6 | 1 1 | 0 | ---- |
| 70-79 | 729 | 2 6 | 45 5 | 595 | 2 8 | 111 | 2 2 | 6 | 1 3 | 0 | ---- | 1 | 2 0 | 0 | ---- | 2 | 1 8 | 12 | 2 2 | 2 | 7 1 |
| 80-89 | 599 | 2 2 | 47 7 | 495 | 2 3 | 85 | 1 7 | 5 | 1 1 | 1 | 7 | 0 | ---- | 0 | ---- | 3 | 2 7 | 10 | 1 8 | 0 | ---- |
| 90-99 | 342 | 1 2 | 48 9 | 294 | 1 4 | 41 | 8 | 3 | 7 | 0 | ---- | 0 | ---- | 1 | 4 3 | 0 | ---- | 3 | 5 | 0 | ---- |
| 100-109 | 2,323 | 8 4 | 57 3 | 1,649 | 7 8 | 561 | 10 9 | 33 | 7 3 | 11 | 7 4 | 2 | 4 0 | 3 | 13 0 | 3 | 2 7 | 60 | 10 8 | 1 | 3 6 |
| 110-119 | 183 | 7 | 58 0 | 158 | 7 | 21 | 4 | 2 | 4 | 1 | 7 | 0 | ---- | 0 | ---- | 0 | ---- | 1 | 2 | 0 | ---- |
| 120-129 | 516 | 1 9 | 59 9 | 442 | 2 1 | 62 | 1 2 | 5 | 1 1 | 1 | 7 | 0 | ---- | 2 | 8 7 | 0 | ---- | 4 | 7 | 0 | ---- |
| 130-139 | 236 | 9 | 60 8 | 195 | 9 | 25 | 5 | 7 | 1 6 | 1 | 7 | 0 | ---- | 0 | ---- | 3 | 2 7 | 5 | 9 | 0 | ---- |
| 140-149 | 228 | 8 | 61 6 | 200 | 9 | 21 | 4 | 0 | ---- | 1 | 7 | 0 | ---- | 0 | ---- | 3 | 2 7 | 3 | 5 | 0 | ---- |
| 150-159 | 660 | 2 4 | 64 0 | 490 | 2 3 | 143 | 2 8 | 4 | 9 | 2 | 1 4 | 1 | 2 0 | 0 | ---- | 1 | 9 | 19 | 3 4 | 0 | ---- |
| 160-169 | 164 | 6 | 64 6 | 146 | 7 | 13 | 3 | 3 | 7 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 2 | 4 | 0 | ---- |
| 170-179 | 161 | 6 | 65 2 | 130 | 6 | 28 | 5 | 2 | 4 | 0 | ---- | 0 | ---- | 1 | 4 3 | 0 | ---- | 0 | ---- | 0 | ---- |
| 180-189 | 168 | 6 | 65 8 | 147 | 7 | 18 | 4 | 1 | 2 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 2 | 4 | 0 | ---- |
| 190-199 | 65 | 2 | 66 0 | 57 | 3 | 4 | 1 | 1 | 2 | 0 | ---- | 0 | ---- | 1 | 4 3 | 1 | 9 | 1 | 2 | 0 | ---- |
| 200-299 | 2,024 | 7 3 | 73 3 | 1,540 | 7 3 | 423 | 8 2 | 15 | 3 3 | 2 | 1 4 | 1 | 2 0 | 1 | 4 3 | 7 | 6 3 | 35 | 6 3 | 0 | ---- |
| 300-399 | 1,234 | 4 5 | 77 8 | 920 | 4 4 | 271 | 5 3 | 6 | 1 3 | 1 | 7 | 0 | ---- | 1 | 4 3 | 1 | 9 | 34 | 6 1 | 0 | ---- |
| 400-499 | 798 | 2 9 | 80 7 | 620 | 2 9 | 146 | 2 8 | 5 | 1 1 | 0 | ---- | 1 | 2 0 | 1 | 4 3 | 0 | ---- | 25 | 4 5 | 0 | ---- |
| 500-599 | 889 | 3 2 | 83 9 | 625 | 3 0 | 217 | 4 2 | 11 | 2 4 | 2 | 1 4 | 1 | 2 0 | 0 | ---- | 5 | 4 5 | 28 | 5 1 | 0 | ---- |
| 600-699 | 414 | 1 5 | 85 4 | 338 | 1 6 | 59 | 1 1 | 3 | 7 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 14 | 2 5 | 0 | ---- |
| 700-799 | 197 | 7 | 86 1 | 147 | 7 | 44 | 9 | 1 | 2 | 0 | ---- | 0 | ---- | 1 | 4 3 | 0 | ---- | 4 | 7 | 0 | ---- |
| 800-899 | 266 | 1 0 | 87 1 | 185 | 9 | 67 | 1 3 | 2 | 4 | 0 | ---- | 0 | ---- | 1 | 4 3 | 1 | 9 | 10 | 1 8 | 0 | ---- |
| 900-999 | 154 | 6 | 87 7 | 119 | 6 | 21 | 4 | 4 | 9 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 10 | 1 8 | 0 | ---- |
| 1,000-1,999 | 1,663 | 6 0 | 93 7 | 1,065 | 5 0 | 512 | 10 0 | 10 | 2 2 | 3 | 2 0 | 0 | ---- | 6 | 26 1 | 0 | ---- | 67 | 12 1 | 0 | ---- |
| 2,000-2,999 | 589 | 2 1 | 95 8 | 406 | 1 9 | 156 | 3 0 | 2 | 4 | 1 | 7 | 0 | ---- | 1 | 4 3 | 0 | ---- | 22 | 4 0 | 1 | 3 6 |
| 3,000-3,999 | 357 | 1 3 | 97 1 | 220 | 1 0 | 117 | 2 3 | 2 | 4 | 1 | 7 | 0 | ---- | 0 | ---- | 2 | 1 8 | 14 | 2 5 | 1 | 3 6 |
| 4,000-4,999 | 123 | 4 | 97 5 | 62 | 3 | 47 | 9 | 3 | 7 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 11 | 2 0 | 0 | ---- |
| 5,000-9,999 | 336 | 1 2 | 98 7 | 194 | 9 | 118 | 2 3 | 4 | 9 | 2 | 1 4 | 1 | 2 0 | 0 | ---- | 0 | ---- | 16 | 2 9 | 1 | 3 6 |
| Over 9,999 | 405 | 1 5 | 100 2 | 282 | 1 3 | 114 | 2 2 | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 0 | ---- | 9 | 1 6 | 0 | ---- |

[1] See Glossary of terms for definitions

Table 19.–Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1998; and Cumulative Totals, Fiscal Years 1936 through 1998

| | Fiscal Year 1998 | | | | | | | | | July 5, 1935–Sept. 30, 1998 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 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 | 196 | 184 | 13 | 1 | 3 | ---- | ---- | ---- | ---- | ---- | ---- |
| On petitions for review and/or enforcement | 144 | 136 | 7 | 1 | 3 | 100 0 | 100 0 | 100 0 | 100 0 | 11236 | 100 0 |
| Board orders affirmed in full | 94 | 89 | 4 | 1 | 2 | 65 4 | 57 1 | 100 0 | 66 7 | 7403 | 65 9 |
| Board orders affirmed with modification | 18 | 17 | 1 | 0 | 0 | 12 5 | 14 3 | 0 0 | 0 0 | 1506 | 13 4 |
| Remanded to Board | 8 | 8 | 0 | 0 | 0 | 5 9 | 0 0 | 0 0 | 0 0 | 559 | 5 0 |
| Board orders partially affirmed and partially remanded | 8 | 7 | 1 | 0 | 1 | 5 2 | 14 3 | 0 0 | 33 3 | 244 | 2 1 |
| Board orders set aside | 16 | 15 | 1 | 0 | 0 | 11 0 | 14 3 | 0 0 | 0 0 | 1524 | 13 6 |
| On petitions for contempt | 17 | 15 | 2 | 0 | 0 | ---- | ---- | ---- | ---- | ---- | ---- |
| Total Court Orders | 35 | 33 | 4 | 0 | 0 | 100 0 | 100 0 | ---- | ---- | ---- | ---- |
| Compliance after filing of petition, before court order | 15 | 15 | 2 | 0 | 0 | 45 4 | 50 0 | ---- | ---- | ---- | ---- |
| Court orders holding respondent in contempt | 10 | 10 | 0 | 0 | 0 | 30 3 | 0 0 | ---- | ---- | ---- | ---- |
| Court orders denying petition | 2 | 2 | 0 | 0 | 0 | 6 1 | 0 0 | ---- | ---- | ---- | ---- |
| Court orders directing compliance without contempt adjudication | 8 | 6 | 2 | 0 | 0 | 18 2 | 50 0 | ---- | ---- | ---- | ---- |
| Proceedings decided by U S Supreme Court[3] | 1 | 1 | 0 | 0 | 0 | 100 0 | ---- | ---- | ---- | 257 | 100 0 |
| Board orders affirmed in full | 0 | 0 | 0 | 0 | 0 | ---- | ---- | ---- | ---- | 155 | 60 3 |
| Board orders affirmed with modification | 0 | 0 | 0 | 0 | 0 | ---- | ---- | ---- | ---- | 18 | 7 0 |
| Board orders set aside | 0 | 0 | 0 | 0 | 0 | ---- | ---- | ---- | ---- | 45 | 17 5 |
| Remanded to Board | 1 | 1 | 0 | 0 | 0 | 100 0 | ---- | ---- | ---- | 20 | 7 8 |
| Remanded to court of appeals | 0 | 0 | 0 | 0 | 0 | ---- | ---- | ---- | ---- | 16 | 6 2 |
| 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 "proceedings" often includes more than one "case" See Glossary of terms for definitions

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

[3] The Board appeared as "amicus curiae" in 1 case

## Table 19A.–Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1998, Compared With 5-Year Cumulative Totals, 1993 Through 1997[1]

| Circuit courts of appeals (headquarters) | Total fiscal year 1998 | Total fiscal years 1993-1997 | Affirmed in full | | | | Modified | | | | Remanded in full | | | | Affirmed in part and remanded in part | | | | Set aside | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Fiscal Year 1998 | | Cumulative fiscal years 1993-1997 | | Fiscal Year 1998 | | Cumulative fiscal years 1993-1997 | | Fiscal Year 1998 | | Cumulative fiscal years 1993-1997 | | Fiscal Year 1998 | | Cumulative fiscal years 1993-1997 | | Fiscal Year 1998 | | Cumulative fiscal years 1993-1997 | |
| | | | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total all circuits | 144 | 754 | 94 | 65 3 | 515 | 68 3 | 18 | 12 5 | 73 | 9 7 | 8 | 5 6 | 43 | 5 7 | 8 | 5 6 | 30 | 4 0 | 16 | 11 0 | 93 | 12 3 |
| 1 Boston, MA | 3 | 29 | 3 | 100 0 | 22 | 75 9 | 0 | 0 0 | 2 | 7 0 | 0 | 0 0 | 3 | 10 3 | 0 | 0 0 | 1 | 3 4 | 0 | 0 0 | 1 | 3 4 |
| 2 New York, NY | 13 | 67 | 8 | 61 5 | 49 | 73 1 | 2 | 15 4 | 10 | 14 9 | 0 | 0 0 | 2 | 3 0 | 1 | 7 7 | 1 | 1 5 | 2 | 15 4 | 5 | 7 5 |
| 3 Philadelphia, PA | 11 | 71 | 8 | 72 7 | 60 | 84 5 | 1 | 9 1 | 1 | 1 5 | 0 | 0 0 | 4 | 5 6 | 1 | 9 1 | 2 | 2 8 | 1 | 9 1 | 4 | 5 6 |
| 4 Richmond, VA | 14 | 62 | 7 | 50 0 | 42 | 67 7 | 3 | 21 4 | 7 | 11 3 | 0 | 0 0 | 2 | 3 2 | 1 | 7 2 | 4 | 6 5 | 3 | 21 4 | 7 | 11 3 |
| 5 New Orleans, LA | 4 | 43 | 2 | 50 0 | 29 | 67 4 | 1 | 25 0 | 4 | 9 3 | 1 | 25 0 | 3 | 7 0 | 0 | 0 0 | 1 | 2 3 | 0 | 0 0 | 6 | 14 0 |
| 6 Cincinnati, OH | 35 | 119 | 25 | 71 4 | 67 | 56 3 | 4 | 11 4 | 16 | 13 4 | 1 | 2 9 | 9 | 7 6 | 1 | 2 9 | 3 | 2 5 | 4 | 11 4 | 24 | 20 2 |
| 7 Chicago, IL | 13 | 59 | 11 | 84 6 | 43 | 72 9 | 1 | 7 7 | 7 | 11 8 | 0 | 0 0 | 3 | 5 1 | 0 | 0 0 | 3 | 5 1 | 1 | 7 7 | 3 | 5 1 |
| 8 St Louis, MO | 5 | 38 | 4 | 80 0 | 22 | 57 9 | 0 | 0 0 | 3 | 7 9 | 1 | 20 0 | 2 | 5 3 | 0 | 0 0 | 0 | 0 0 | 0 | 0 0 | 11 | 28 9 |
| 9 San Francisco, CA | 12 | 95 | 9 | 75 0 | 77 | 81 0 | 2 | 16 7 | 5 | 5 3 | 0 | 0 0 | 3 | 3 2 | 0 | 0 0 | 1 | 1 0 | 1 | 8 3 | 9 | 9 5 |
| 10 Denver, CO | 3 | 20 | 0 | 0 0 | 15 | 75 0 | 0 | 0 0 | 2 | 10 0 | 2 | 66 7 | 0 | 0 0 | 1 | 33 3 | 0 | 0 0 | 0 | 0 0 | 3 | 15 0 |
| 11 Atlanta, GA | 6 | 21 | 4 | 66 6 | 21 | 100 0 | 1 | 16 7 | 0 | 0 0 | 0 | 0 0 | 0 | 0 0 | 0 | 0 0 | 0 | 0 0 | 1 | 16 7 | 0 | 0 0 |
| Washington, DC | 25 | 130 | 13 | 52 0 | 68 | 52 3 | 3 | 12 0 | 16 | 12 3 | 3 | 12 0 | 12 | 9 2 | 3 | 12 0 | 14 | 10 8 | 3 | 12 0 | 20 | 15 4 |

[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 1998

| | Total proceedings | Injunction proceedings | | Total dispositions | Disposition of injunctions | | | | | | Pending in district court Sept 30, 1998 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Pending in district court Oct 1, 1997 | Filed in district court fiscal year 1998 | | Granted | Denied | Settled | Withdrawn | Dismissed | Inactive | |
| Under Sec 10(e) total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Under Sec 10(j) total | 37 | 5 | 32 | 33 | 19 | 2 | 10 | 2 | 0 | 0 | 4 |
| 8(a)(1) | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(a)(1)(3) | 11 | 4 | 7 | 11 | 6 | 1 | 4 | 0 | 0 | 0 | 0 |
| 8(a)(1)(3)(4) | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(a)(1)(3)(4)(5) | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(a)(1)(3)(5) | 13 | 0 | 13 | 11 | 5 | 1 | 4 | 1 | 0 | 0 | 2 |
| 8(a)(1)(5) | 9 | 0 | 9 | 8 | 6 | 0 | 1 | 1 | 0 | 0 | 1 |
| 8(b)(3) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Under Sec 10(l) total | 20 | 7 | 13 | 18 | 5 | 1 | 6 | 3 | 0 | 3 | 2 |
| 8(b)(4) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B) | 7 | 4 | 3 | 7 | 2 | 0 | 3 | 1 | 0 | 1 | 0 |
| 8(b)(4)(D) | 6 | 1 | 5 | 6 | 0 | 1 | 2 | 2 | 0 | 1 | 0 |
| 8(b)(4)(A) 8(b)(7)(C) | 2 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| 8(b)(4)(B) 8(b)(4)(D) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B) 8(b)(7)(A) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(7)(A) | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(7)(C) | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(e) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |

Table 21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 1998.

| Type of Litigation | Number of Proceedings | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total -- all courts | | | In courts of appeals | | | In district courts | | | In bankruptcy courts | | |
| | | Court Determination | | | Court Determination | | | Court Determination | | | Court Determination | |
| | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position |
| Totals -- all types | 27 | 22 | 5 | 13 | 10 | 3 | 13 | 11 | 2 | 1 | 1 | 0 |
| NLRB-initiated actions or interventions | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To quash district court subpoena | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| To enforce subpoena or contempt of subpoena | 3 | 2 | 1 | 2 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| To dismiss action within Board's exclusive jurisdiction | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To compel compliance with reorganization plan | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |
| To determine Board's claim to be nondischargeable | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Action by other parties | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To review | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Prosecutorial discretion | 3 | 3 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Nonfinal/representation order | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Attorney discipline orders | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |
| To restrain NLRB from | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Enforcing Board subpoenas | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in R case | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Proceeding in unfair labor practice case | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| To compel NLRB to | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Issue complaint | 5 | 5 | 0 | 2 | 2 | 0 | 3 | 3 | 0 | 0 | 0 | 0 |
| Take action in R case | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| Comply with freedom of Information Act[1] | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| Take action in compliance proceeding | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

[1] FOIA cases are categorized as to court determination depending on whether NLRB substantially prevailed

## Table 21 Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 1998

| Type of Litigation | Number of Proceedings | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total -- all courts | | | In courts of appeals | | | In district courts | | | In bankruptcy courts | | |
| | | Court Determination | | | Court Determination | | | Court Determination | | | Court Determination | |
| | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position | Number decided | Upholding Board position | Contrary to Board position |
| Other | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Objection to Board's proof of claim | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Intervention in §301 suit | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| §1113 Motion to reject expired contract | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| EAJA | 2 | 0 | 2 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Denying stay pending appeal | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Denying stay pending interlocutory review | 1 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Denying attorney's fees in FOIA | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| Denying stay in FOIA case | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |

Table 22 -Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1998[1]

| | Total | Number of cases | | | |
|---|---|---|---|---|---|
| | | Identification of petitioner | | | |
| | | Employer | Union | Courts | State board |
| Pending October 1, 1997 | 0 | 0 | 0 | 0 | 0 |
| Received fiscal 1998 | 1 | 1 | 0 | 0 | 0 |
| On docket fiscal 1998 | 1 | 1 | 0 | 0 | 0 |
| Closed fiscal 1998 | 1 | 1 | 0 | 0 | 0 |
| Pending September 30, 1998 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

Table 22A.-Disposition of Advisory Opinion Cases, Fiscal Year 1998[1]

| Action taken | Total cases Closed |
|---|---|
| | 1 |
| Board would assert jurisdiction | 0 |
| Board would not assert jurisdiction | 0 |
| Unresolved because of insufficient evidence submitted | 0 |
| Dismissed | 1 |
| Withdrawn | 0 |
| Denied | 0 |

[1] See Glossary for definitions of terms

## Table 23 -Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1998; And Age of Cases Pending Decision, September 30, 1998

| | Stage | Media days |
|---|---|---|
| I | Unfair labor practice cases | |
| | A Major stages completed- | |
| | 1 Filing of charge to issuance of complaint | 87 |
| | 2 Complaint to close of hearing | 179 |
| | 3 Close of hearing of administrative law judge's decision | 112 |
| | 4 Receipt of briefs or submissions to issuance of administrative law judge's decision | 56 |
| | 5 Administrative law judge's decision to issuance of Board decision | 304 |
| | 6 Originating document to Board decision | 165 |
| | 7 Assignment to Board's decision | 121 |
| | 8 Filing of charge to issuance of Board decision | 658 |
| | B Age of cases pending administrative law judge's decision, September 30, 1998 | |
| | 1 From filing of charge | 364 |
| | 2 From close of hearing | 105 |
| | C Age of cases pending Board decision, September 30, 1998 | |
| | 1 From filing of charge | 985 |
| | 2 From originating document | 361 |
| | 3 From assignment | 286 |
| II | Representation cases | |
| | A Major stages completed- | |
| | 1 Filing of petition of notice of hearing issued | 1 |
| | 2 Notice of hearing to close of hearing | 13 |
| | 3 Close of hearing to Regional Director's decision issued | 20 |
| | 4 Close of pre-election hearing to Board's decision issued | 216 |
| | 5 Close of post-election hearing to Board's decision issued | 174 |
| | 6 Filing of petition to- | |
| | a Board decision issued | 246 |
| | b Regional Director's decision issued | 39 |
| | 7 Originating document to Board decision | 119 |
| | 8 Assignment to Board's decision | 97 |
| | B Age of cases pending Board decision, September 30, 1998 | |
| | 1 From filing of petition | 473 |
| | 2 From originating document | 314 |
| | 3 From assignment | 260 |
| | C Age of cases pending Regional Director's decision, September 30, 1998 | 190 |

## Table 24.-NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1998

| | | |
|---|---|---|
| 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 | 0 |
| | Denying fees | 2 |
| | C Amount of fees and expenses in cases listed in B, above | |
| | Claimed | $95,286 24 |
| | Recovered | $0 00 |
| II | Petitions for review of Board Orders denying fees under 5 U S C § 504 | |
| | A Awards granting fees (includes settlements) | 1 |
| | 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) | $55,000 00 |
| III | Applications for fees and expenses before the circuit courts of appeals under 5 U S C § 2412 | |
| | A Awards granting fees (includes settlements) | 4 |
| | B Awards denying fees | 1 |
| | C Amount of fees and expenses recovered | $96,385 62 |
| 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 | $16,000 00 |

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