SIXTY-FIFTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2000

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NATIONAL LABOR RELATIONS BOARD

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Associate General Counsel
Division of Enforcement Litigation

BARRY J. KEARNEY
Associate General Counsel
Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Term expired August 27, 2000.
[2] Retired May 3, 2000.
[3] Retired August 3, 2000.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., June 17, 2002.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Fifth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2000.

Respectfully submitted,
PETER J. HURTGEN, *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 2000

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 2000, 35,249 cases were received by the Board.

The public filed 29,188 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 5774 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 287 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.

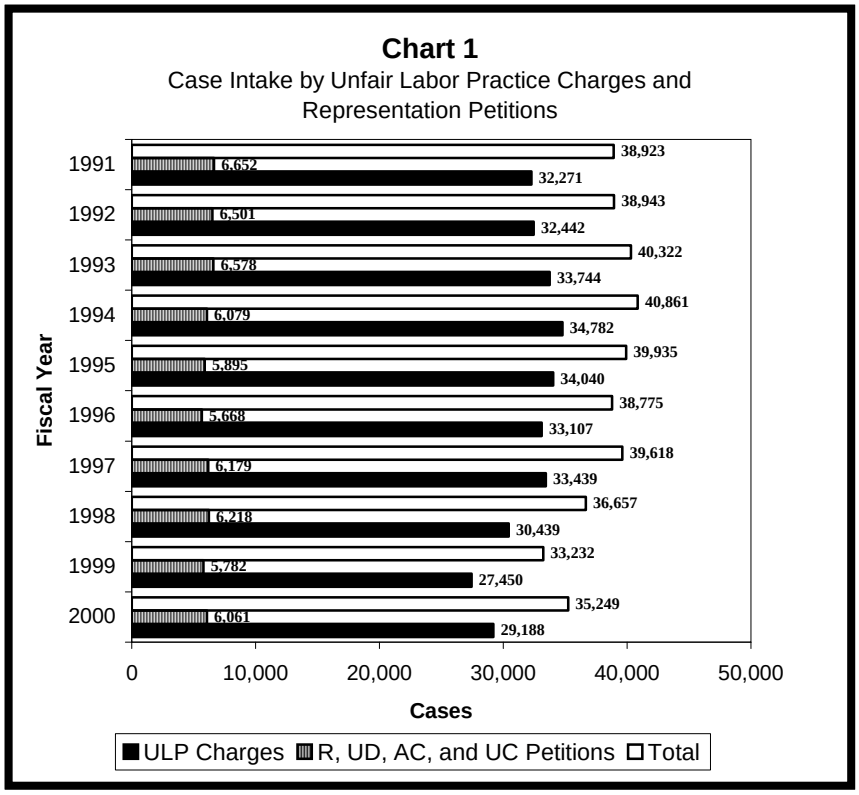
During fiscal year 2000, the five-member Board was composed of Chairman John C. Truesdale and Members Sarah M. Fox, Wilma B. Liebman, Peter J. Hurtgen, and J. Robert Brame III. Leonard R. Page served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2000 include:

- The NLRB conducted 3368 conclusive representation elections among some 224,731 employee voters, with workers choosing labor unions as their bargaining agents in 50.0 percent of the elections.
- Although the Agency closed 35,034 cases, 27,627 cases were pending in all stages of processing at the end of the fiscal year. The closings included 29,241 cases involving unfair labor practice charges and 5,442 cases affecting employee representation and 351 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,235.
- The amount of $109,545,919 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 4549 offers of job reinstatements, with 3857 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 2556 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 398 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.

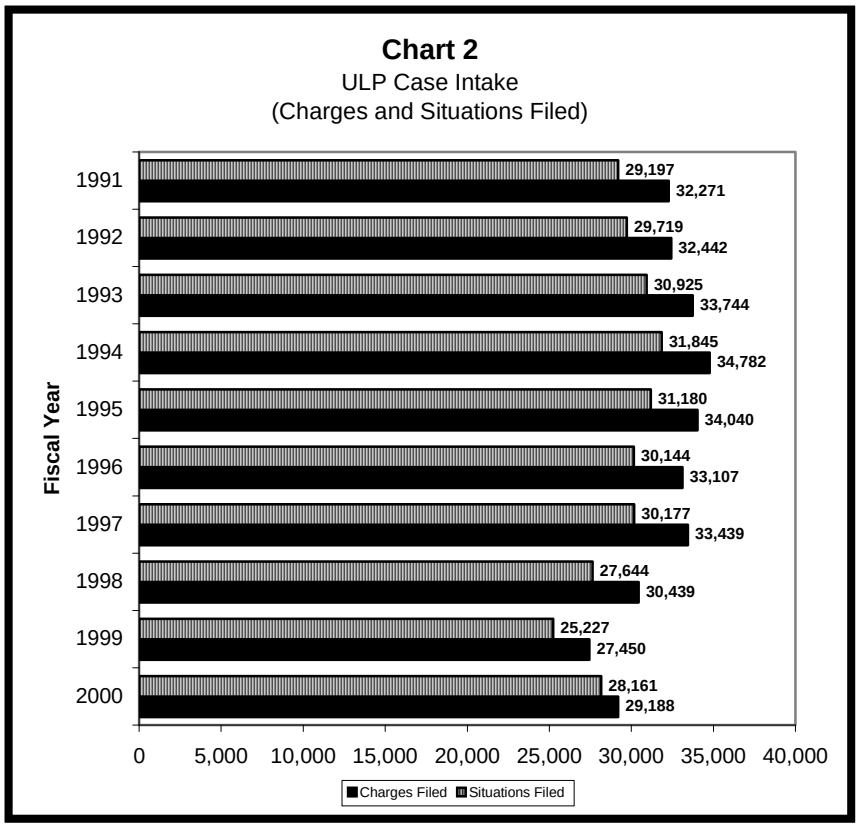
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2000.

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.

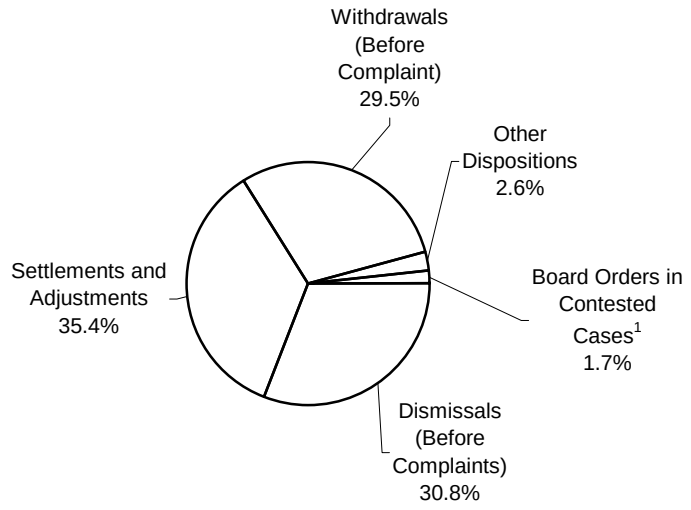
NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints 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.

Chart 3
Disposition Pattern for Unfair Labor Practice Cases
(Based on Cases Closed)
Fiscal Year 2000



[1] Contested Cases Reaching Board Members For Decisions

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.

Approximately 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 104 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 2000, 29,188 unfair labor practice charges were filed with the NLRB, an increase of about 6 percent from the 27,450 filed in fiscal year 1999. In situations in which related charges are counted as a single unit, there was an increase of 12 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 22,095 cases, an increase of 5 percent from the 21,063 of 1999. Charges against unions increased 14 percent to 7052 from 6204 in 1999.

There were 22 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 10,456 such charges in 52 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 9665 charges, in about 48 percent of the total charges. (Table 2.)

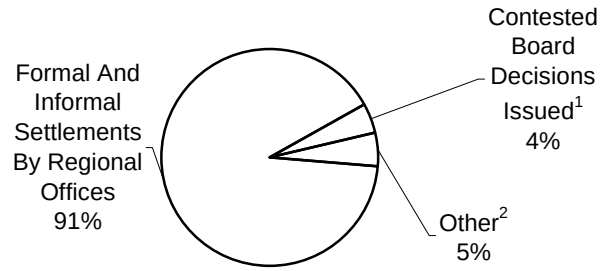
Of charges against unions, the majority (5721) alleged illegal restraint and coercion of employees, about 78 percent. There were 789 charges against unions for illegal secondary boycotts and jurisdictional disputes, an increase of 28 percent from the 616 of 1999.

There were 670 charges (about 9 percent) of illegal union discrimination against employees, an increase of 1 percent from the 662 of 1999. There were 140 charges that unions picketed illegally for recognition or for organizational purposes, compared with 80 charges in 1999. (Table 2.)

In charges filed against employers, unions led with about 77 percent of the total. Unions filed 16,920 charges and individuals filed 5114.

Chart 3A

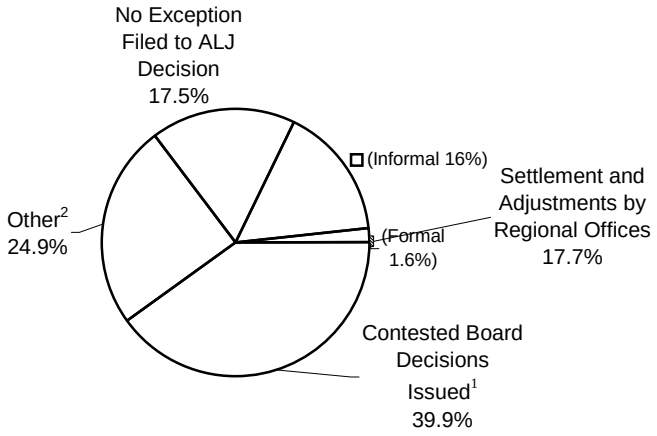
Disposition Pattern for Meritorious Unfair Labor Practics Cases
(Based on Cases Closed)
Fiscal Year 2000



[1] Following Administrative Law Judge Decision, Stipulated Record or Summary Judgement Ruling.
[2] Compliance with Administrative Law Judge Decision Stipulated Record or Summary Judgement Ruling.

Chart 3B

Disposition Pattern for Unfair Labor Practice Cases After Trial
(Based On Cases Closed) Fiscal Year 2000



[1] Following Administrative Law Judge Decision, Stipulated Record or Summary Judgement Ruling.
[2] Dismissals, Withdrawals and Other Dispositions.

Concerning charges against unions, 5374 were filed by individuals, or about 76 percent of the total of 7072. Employers filed 1565 and other unions filed the 133 remaining charges.

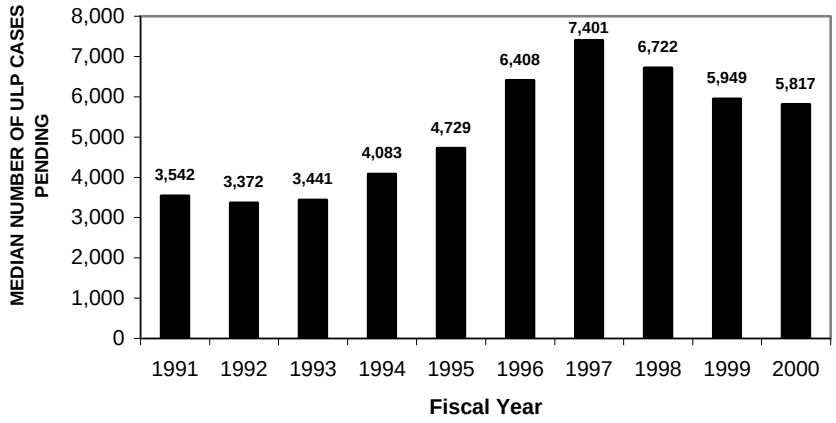
In fiscal year 2000, 29,241 unfair labor practice cases were closed. Over 95 percent were closed by NLRB Regional Offices, about the same as the previous year. During the fiscal year, 35.4 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 29.5 percent were withdrawn before complaint, and 30.8 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 2000, 40.0 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 2000, precomplaint settlements and adjustments were achieved in 7853 cases, or 27.0 percent of the charges. In 1999, the percentage was 29.0. (Chart 5.)

Chart 4

Number of Unfair Labor Practice Cases Pending Under Preliminary Investigation

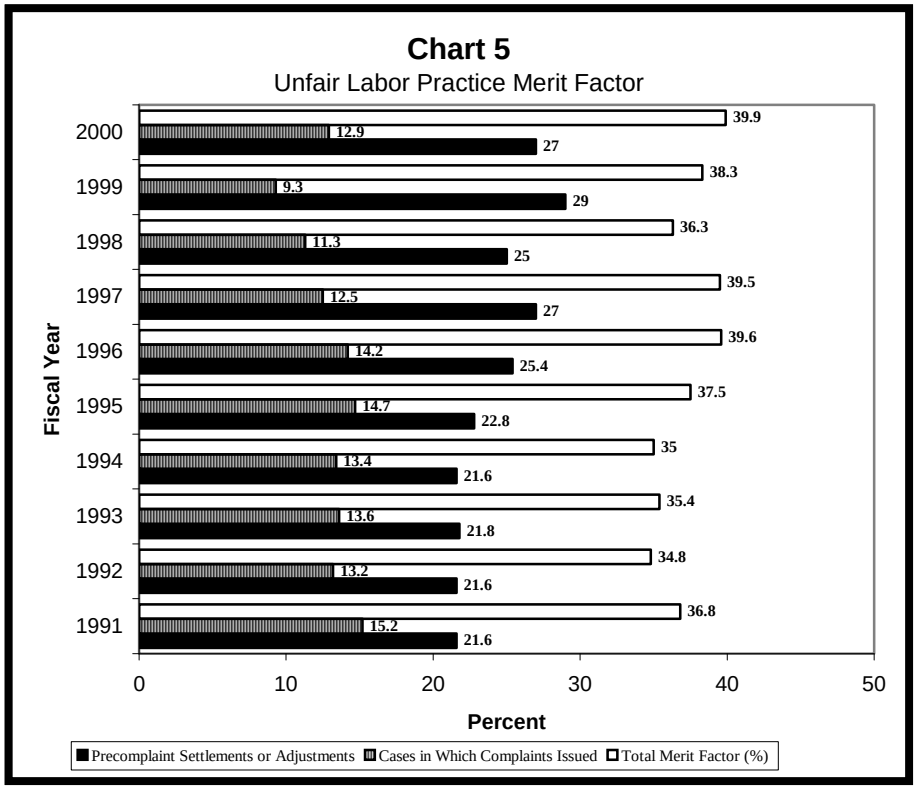


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2000, 2556 complaints were issued, compared with 2226 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 90.5 percent were against employers and 8.9 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 108 days. The 108 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 398 decisions in 981 cases during 2000. They conducted 369 initial hearings, and 31 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

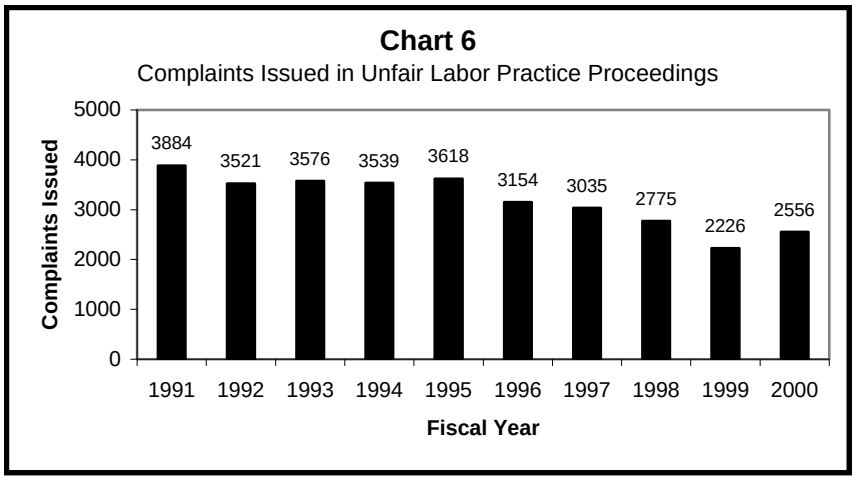


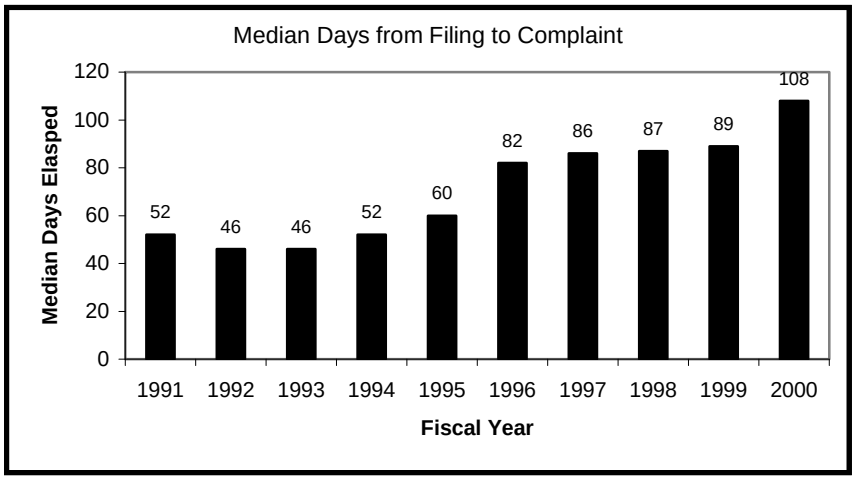
By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2000, the Board issued 472 decisions in unfair labor practice cases contested as to the law or the facts—424 initial decisions, 21 backpay decisions, 11 determinations in jurisdictional work dispute cases, and 16 decisions on supplemental matters. Of the 424 initial decision cases, 388 involved charges filed against employers and 36 had union respondents.

For the year, the NLRB awarded backpay of $107.9 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another $1.6 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 4549 employees were offered reinstatement, and about 85 percent accepted.

At the end of fiscal 2000, there were 25,490 unfair labor practice cases being processed at all stages by the NLRB, compared to 25,543 cases pending at the beginning of the year.

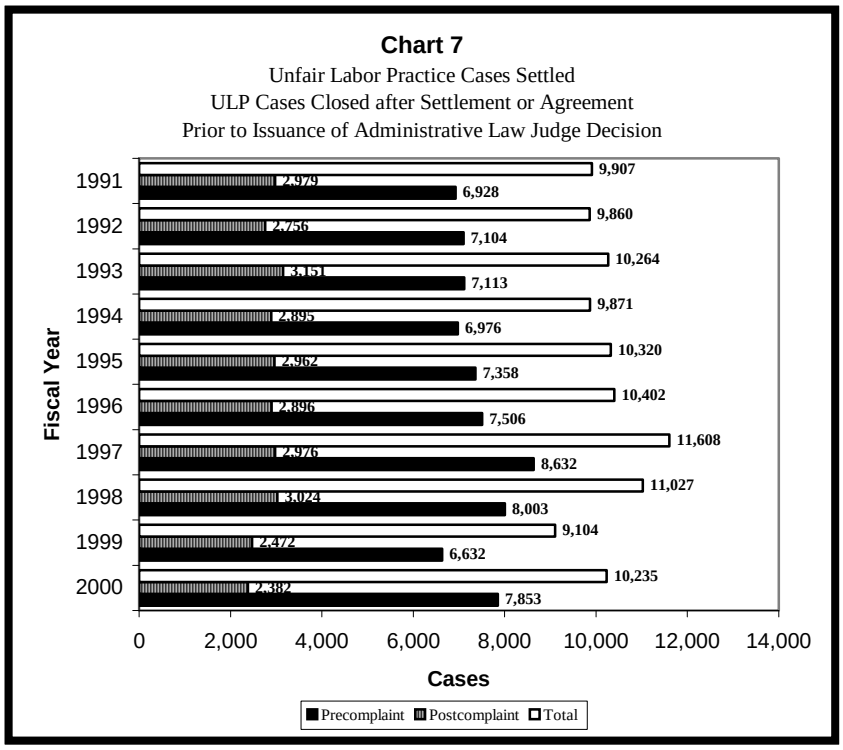




2. Representation Cases

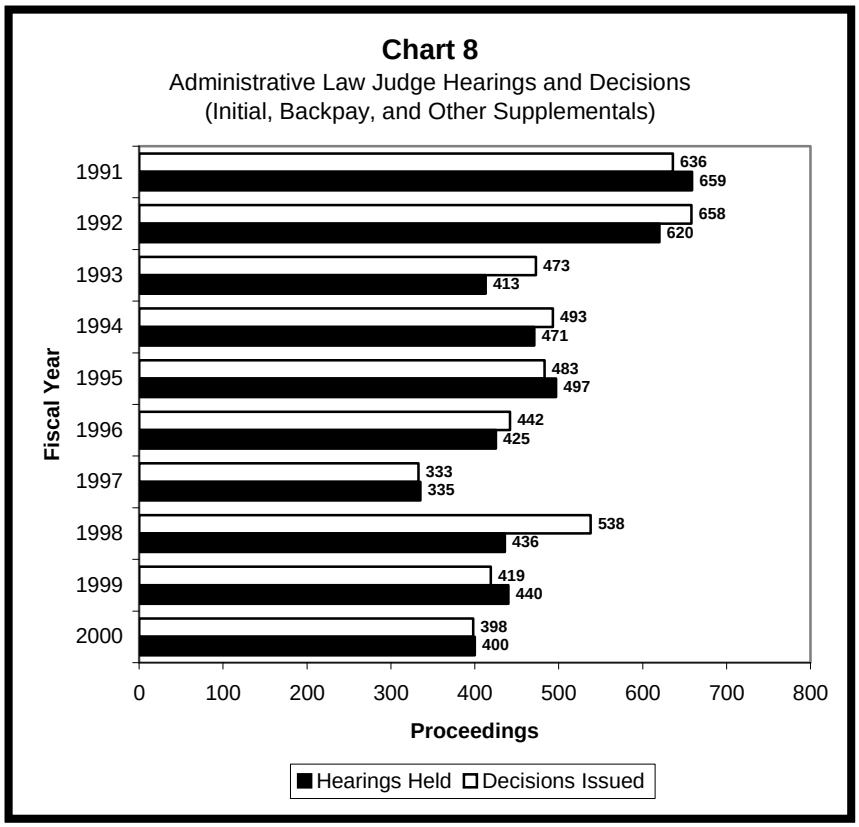
The NLRB received 6061 representation and related case petitions in fiscal 2000, compared to 5782 such petitions a year earlier.

The 2000 total consisted of 4756 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 915 petitions to decertify existing bargaining agents; 103 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 250 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 37 amendment of certification petitions were filed.



During the year, 5793 representation and related cases were closed, compared to 6065 in fiscal 1999. Cases closed included 4659 collective-bargaining election petitions; 783 decertification election petitions; 98 requests for deauthorization polls; and 253 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 11.3 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 78 cases where the Board directed an election after transfer of a case from the Regional Office. (Table 10.) There were three cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

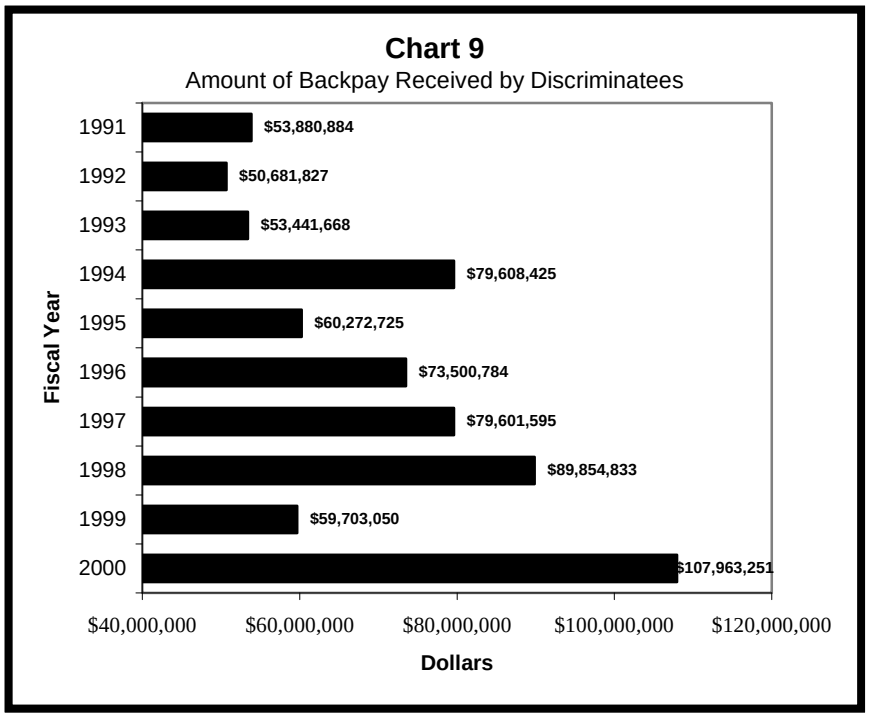


3. Elections

The NLRB conducted 3368 conclusive representation elections in cases closed in fiscal 2000, compared to the 3585 such elections a year earlier. Of 259,534 employees eligible to vote, 224,731 cast ballots, virtually 9 of every 10 eligible.

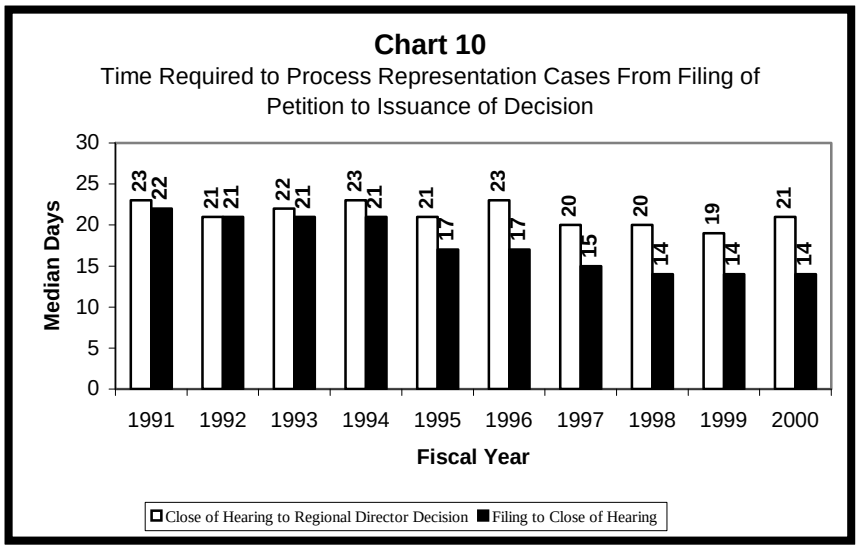
Unions won 1685 representation elections, or 50.0 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 120,525 workers. The employee vote over the course of the year was 110,911 for union representation and 113,820 against.

The representation elections were in two categories—the 2988 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 380 decertification elections determining whether incumbent unions would continue to represent employees.



There were 3205 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1559, or 48.6 percent. In these elections, 99,135 workers voted to have unions as their agents, while 106,751 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 109,119 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 163 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 126 elections, or 77.3 percent.

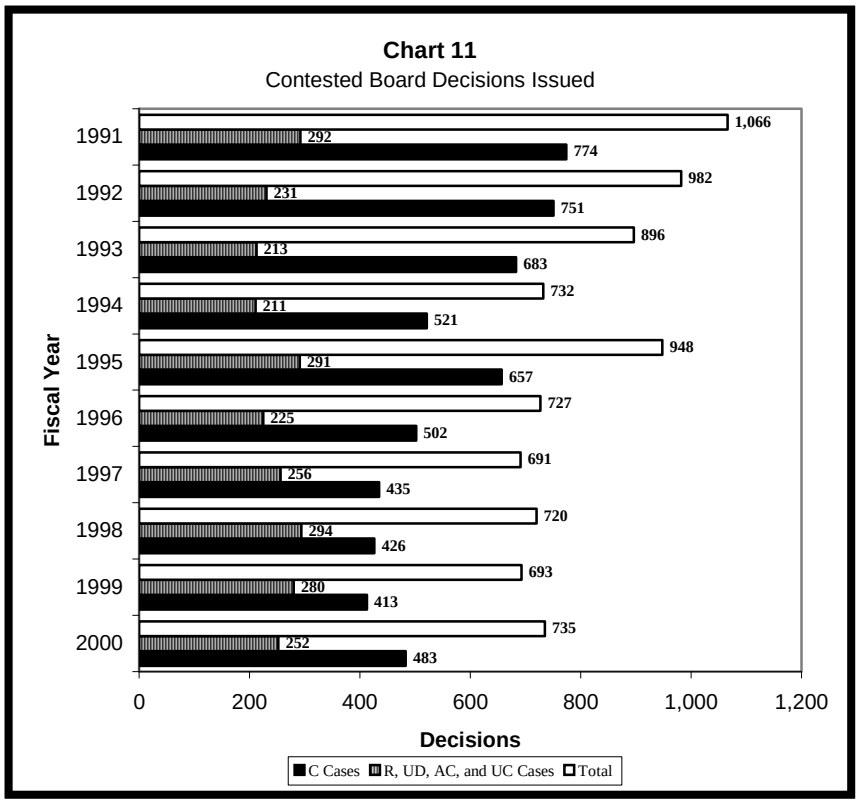


As in previous years, labor organization results brought continued representation by unions in 136 elections, or 35.8 percent, covering 13,166 employees. Unions lost representation rights for 10,511 employees in 244 elections, or 64.2 percent. Unions won in bargaining units averaging 97 employees, and lost in units averaging 43 employees. (Table 13.)

Besides the conclusive elections, there were 169 inconclusive representation elections during fiscal year 2000 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 8 referendums, or 17.4 percent, while they maintained the right in the other 38 polls which covered 2515 employees. (Table 12.)

For all types of elections in 2000, the average number of employees voting, per establishment, was 67, compared to 59 in 1999. About 70 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 957 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1050 decisions rendered during fiscal year 1999.

A breakdown of Board decisions follows:

Total Board decisions.....		**957**
Contested decisions		**657**
Unfair labor practice decisions	405	
Initial (includes those based on stipulated record) 362		

Supplemental 11
Backpay 21
Determinations in jurisdictional disputes 11

Representation decisions 236
After transfer by Regional Directors for initial decision 0
After review of Regional Director decisions.....57
On objections and/or challenges ...179

Other decisions 16
Clarification of bargaining unit.....14
Amendment to certification 1
Union-deauthorization 1

Noncontested decisions **300**
Unfair labor practice 135
Representation 165
Other 0

The majority (69 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

In fiscal 2000, about 4.4 percent of all meritorious charges and about 40 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.

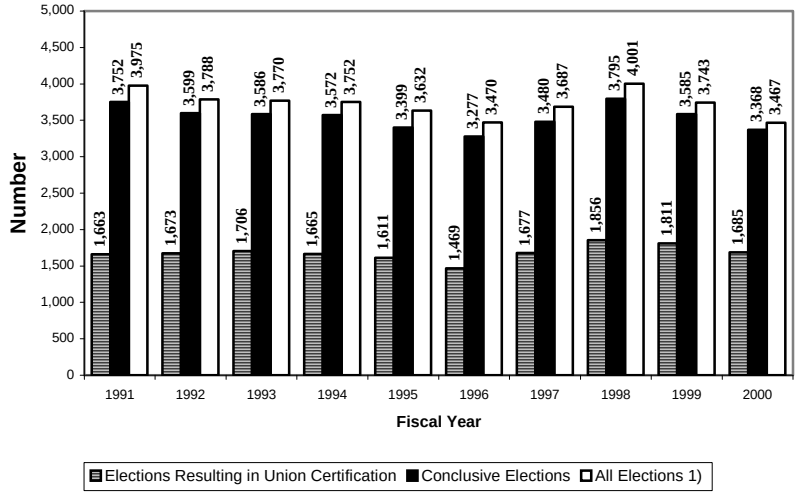
b. Regional Directors

NLRB Regional Directors issued 869 decisions in fiscal 2000, compared to 736 in 1999. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

Administrative law judges issued 398 decisions and conducted 400 hearings. (Chart 8 and Table 3A.)

Chart 12
Representation Elections Conducted
(Based on Cases Closed During Year)



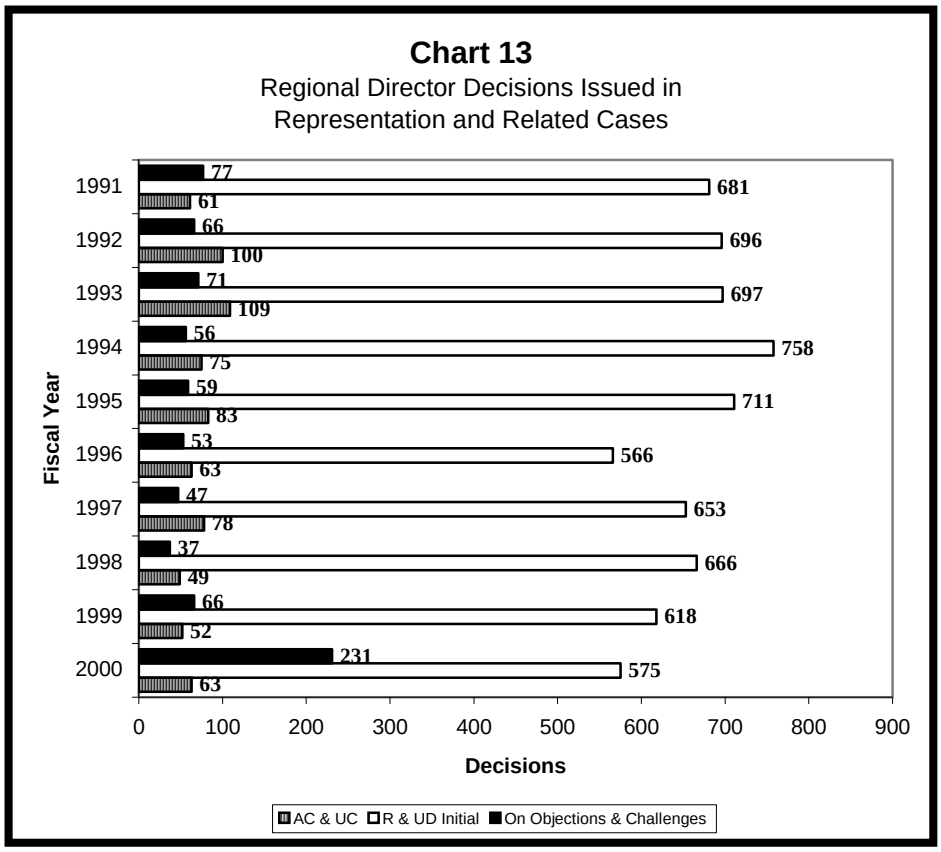
[1] All Elections Include Those Resulting In Certification, Those Resulting In A Rerun Or Runoff Election, And Those In Which A Petition Was Withdrawn Or Dismissed Before Certification

5. Court Litigation

a. Appellate Courts

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

In fiscal year 2000, 99 cases involving the NLRB were decided by the United States courts of appeals compared to 132 in fiscal year 1999. Of these, 85.9 percent were won by NLRB in whole or in part compared to 84.1 percent in fiscal year 1999; 6.1 percent were remanded entirely compared to 3.0 percent in fiscal year 1999; and 8.1 percent were entire losses compared to 12.9 percent in fiscal year 1999.

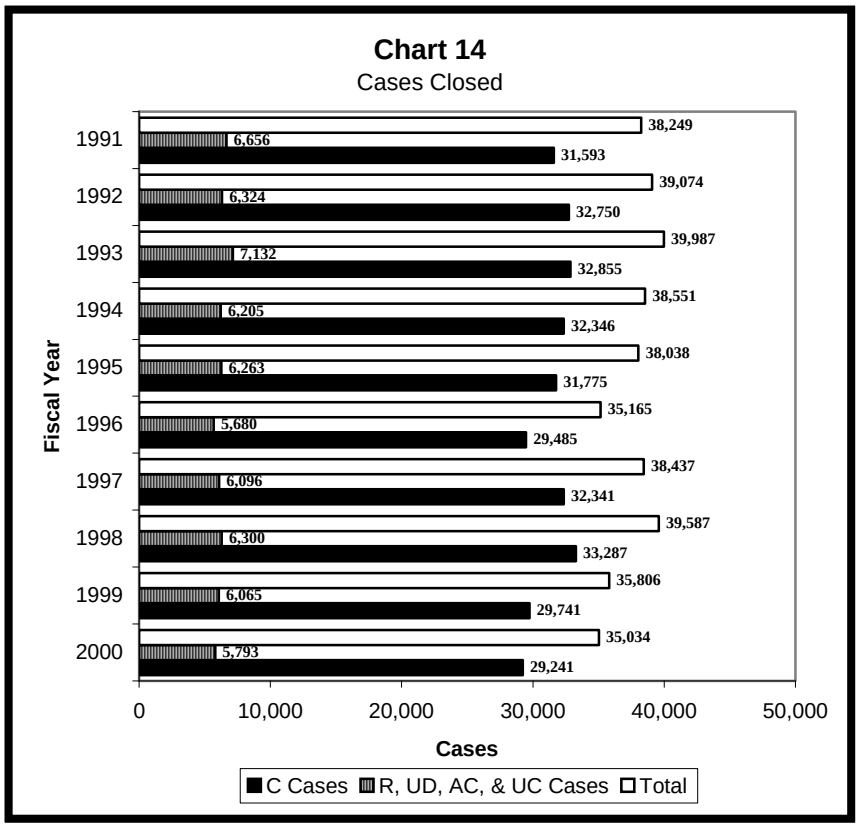


b. The Supreme Court

In fiscal 2000, there were no Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 2000.

c. Contempt Actions

In fiscal 2000, 84 cases were referred to the contempt section for consideration of contempt action. There were 19 contempt proceedings instituted. There were 7 contempt adjudications awarded in favor of the Board; 11 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 12 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 8 cases. (Table 21.)

e. Injunction Activity

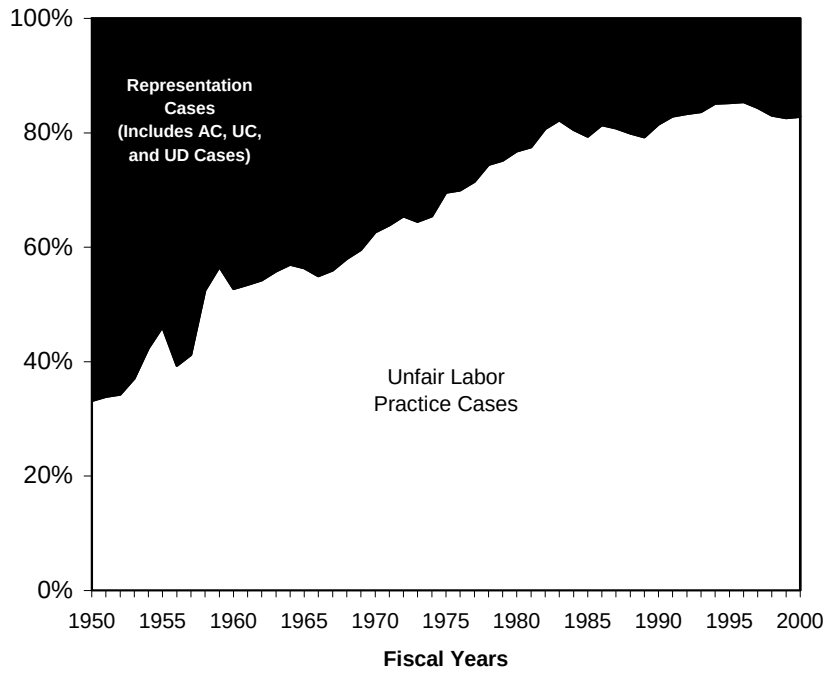
The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 57 petitions filed with the U.S. district courts, compared to 38 in fiscal year 1999. (Table 20.) Injunctions were granted in 25, or about 74 percent, of the 34 cases litigated to final order.

NLRB injunction activity in district courts in 2000:

Granted	25
Denied	12
Withdrawn	7
Dismissed	0
Settled or placed on court's inactive lists	9
Awaiting action at end of fiscal year	13

Chart 15

Comparison of Filings of Unfair Labor Practice Cases and Representation Cases



This Graph Shows the Percentage Division of NLRB Case Load Between Unfair Labor Practice Cases and Representation Cases During Fiscal Years 1950 - 2000

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

1. Teaching Hospital House Staff

In *Boston Medical Center Corp.*,[1] the Board majority overruled its landmark decisions in *Cedars-Sinai Medical Center*,[2] and *St. Clare's Hospital & Health Center*,[3] and their progeny, and found, essentially on the same facts as were presented in those previous cases, that interns, residents, and fellows (house staff) employed at Boston Medical Center, a teaching hospital, while they may be students learning their chosen medical craft, are also "employees" within the meaning of Section 2(3) of the Act. Accordingly, the Board directed that an election be conducted in a collective-bargaining unit consisting of "[a]ll physicians, including interns, residents and fellows employed by the Employer at its hospital located in Boston, Massachusetts; excluding all other employees, and supervisors as defined in the Act."[4]

In reaching its decision, the Board majority stated that they were "convinced by normal statutory and legal analysis, including resort to legislative history, experience, and the overwhelming weight of judicial and scholarly opinion, that the Board reached an erroneous result in *Cedars-Sinai*. Accordingly, we overrule that decision and its offspring, conclude that house staff are employees as defined by the Act, and find that such individuals are therefore entitled to all the statutory rights and obligations that flow from our conclusion."[5] The majority noted that the *Cedars-Sinai* majority had reasoned that interns, residents, and fellows

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[1] 330 NLRB 152 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).
[2] 223 NLRB 251 (1976).
[3] 229 NLRB 1000 (1977).
[4] 330 NLRB 152 at 168 .
[5] Id. at 159.

"are serving primarily as students and not primarily as employees, that their relationship with their institutions is therefore predominantly academic rather than economic in nature, and thus that such interests are not 'readily adaptable to the collective-bargaining process.' 229 NLRB at 1002."[6] In *Boston Medical*, the Board majority stated that "whatever other description may be fairly applied to house staff, it does not preclude a finding that individuals in such positions are, among other things, *employees* as defined by the Act."[7] The Board further noted that the fact "[t]hat house staff may also be students does not thereby change the evidence of their 'employee' status."[8]

The Board majority also stated that:

> [W]e reach our decision here to overrule *Cedars-Sinai* and its progeny on the basis of our experience and understanding of developments in labor relations in the intervening years since the Board rendered those decisions. Almost without exception, every other court, agency, and legal analyst to have grappled with this issue has concluded that interns, residents, and fellows are, in large measure, employees."[9]

Member Hurtgen dissented on the basis that the Board had, for more than 20 years, held that interns, residents, and fellows are not employees entitled to bargain collectively under the Act and that the courts have endorsed this position, as well as the United States Congress. Member Hurtgen stated that he saw no reason now to proceed 180 degrees in the opposite direction and agreed with the result and rationale in *Cedars-Sinai* and *St. Clare's*.

Member Brame dissented because the Board majority "overrules 23 years of well-established precedent and places in jeopardy the finest system of medical education in the world [and] ignores evidence clearly establishing that these individuals are not employees but rather students, and thus are not entitled to engage in collective bargaining."[10]

2. Statutory Supervisor as Union's Election Observer

In *Family Service Agency*,[11] the Board announced a new rule that either party's use of a statutory supervisor as an election observer constitutes objectionable conduct. The Board majority found that the union's use of a supervisor as its election observer, over the strenuous

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[6] Id.
[7] Id. at 160.
[8] Id. at 163.
[9] Id.
[10] Id. at 170.
[11] 331 NLRB No. 103 (Members Fox, Liebman, Hurtgen, and Brame; Chairman Truesdale dissenting).

objection of the employer, warranted setting aside the directed election. The decision overrules *Plant City Welding & Tank Co.*,[12] and other cases that allowed unions to designate supervisors as observers, to the extent the cases are inconsistent with the new rule.

The Board majority stated that while it had no quarrel with the rationale underlying the distinction between a union's and an employer's use of a supervisor as an observer, as expressed in *Plant City Welding*,[13] it believed that the better practice was to prohibit supervisors from serving as observers. The Board majority based their decision on the Board's duty to maintain and protect the integrity and neutrality of procedures in elections it conducts;[14] the Board's long-established goal of conducting elections in "laboratory" conditions, as far as practicable, in order to facilitate the expression of the uninhibited desire of the employees;[15] attendant Board law that bars agents of either party from the polling area and prohibits electioneering at or near the polling place during voting hours;[16] and the language of the Board's stipulated election agreement, form NLRB-652, which states that each party may station an equal number of "authorized, *non-supervisory*-employee observers" at the polls to assist in the election.

Chairman Truesdale, dissenting, indicated that he adheres to the rationale in *Plant City Welding*, and would not overrule that case or set aside the election. In his view, employees today "are typically aware of their employer's views regarding union representation" just as their counterparts were 43 years ago when *Plant City Welding* was decided.

3. *Weingarten* Rights for Nonunion Employees

In *Epilepsy Foundation of Northeast Ohio*,[17] a majority of the Board held that the rule set forth in the Supreme Court's decision in *NLRB v. J. Weingarten*,[18] affording unionized employees the right to have a union representative present at an investigatory interview which the employee reasonably believes might result in disciplinary action, also applies to employees in nonunion workplaces who seek the presence of a coworker

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[12] 119 NLRB 131, 132 (1957).

[13] Member Brame agreed with the result in *Family Service Agency*, but indicated that he previously rejected the Board's distinction between a union's use of a supervisor as an observer and an employer's use of a supervisor as an observer. *Randell Warehouse of Arizona*, 328 NLRB 1034 (1999), concurring opinion at 1038.

[14] *Glacier Packing Co.*, 210 NLRB 571 (1974), and other cases cited.

[15] *General Shoe Corp.*, 77 NLRB 124, 127 (1948).

[16] *Milchem, Inc.*, 170 NLRB 362 (1968), and the NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11326.

[17] 331 NLRB No. 92 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting in part; and Member Brame dissenting in part).

[18] 420 U.S. 251 (1975).

at such investigatory interviews. In so doing, the Board overruled its decision in *E.I. DuPont & Co.*[19]

The case arose with the discharge of employee Arnis Borgs for his refusal to meet with two supervisors without coworker Ashraful Hasan present. Borgs had been reprimanded by the supervisors at a prior meeting and felt intimidated by the prospect of going alone to another such meeting. The following day Borgs was discharged for insubordination.

Applying the Board's decision in *DuPont*, which held that employees in nonunion workplaces do not have *Weingarten* rights entitling them to representation in investigatory interviews, the administrative law judge found that the respondent did not violate Section 8(a)(1) of the Act by discharging Borgs for refusing to attend the meeting without the presence of a coworker. The Board majority, however, reversed the judge, stating that "the right to the presence of a representative is grounded in the rationale that the Act generally affords employees the opportunity to act together to address the issue of an employer's practice of imposing unjust punishment on employees."[20]

Agreeing with the holding in *Materials Research Corp.*,[21] the Board majority noted that *Weingarten* emphasized that the right to the assistance of a representative is derived from the Section 7 protection afforded to concerted activity, rather than from a union's right pursuant to Section 9 to act as the employee's representative for the purpose of collective bargaining. Consequently, the majority found that a return to the *Materials Research* holding was warranted because the ability to avail oneself of this protection does not depend on whether the employees are represented by a union. The Board majority stated that the decisions in *Sears, Roebuck & Co.*,[22] which overruled *Materials Research* and *E. I. Dupont & Co.*, which modified the *Sears* rationale, misconstrued the language of *Weingarten* and "erroneously limit its applicability to the unionized workplace."[23] The Board majority found that the *Weingarten* rationale, grounded in the language of Section 7 giving employees the right to engage in "concerted activities for the purpose of mutual aid or protection," "is equally applicable in circumstances where employees are not represented by a union, for in these circumstances the right to have a coworker present at an investigatory interview also greatly enhances the employees'

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[19] 289 NLRB 627 (1988).
[20] 331 NLRB No. 92, slip op. at 2.
[21] 262 NLRB 1010 (1982).
[22] 274 NLRB 230 (1985).
[23] 331 NLRB No. 92, slip op. at 3.

opportunities to act in concert to address their concern 'that the employer does not initiate or continue a practice of imposing punishment unjustly.'"[24]

In his dissent, Member Hurtgen declared the majority opinion will "take away from a nonunion employer its heretofore unfettered right under the Act to deal individually with its employees."[25] He found that there are no compelling reasons for departing from the rule in *Dupont* that *Weingarten* rights do not apply to employees in nonunion facilities.

In a separate dissent, Member Brame agreed with Member Hurtgen that the respondent had not violated the Act by discharging Borgs for refusing to attend the interview without Hasan. In Member Brame's view, affording *Weingarten* rights to unrepresented employees is "contrary to the NLRA, which does not require nonunionized employers to 'deal with' unrecognized and uncertified employee representatives."[26]

4. Duty to Furnish Information

In *Roseberg Forest Products Co.*,[27] the Board held that the respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the union with the requested information relevant to the administration of the parties' collective-bargaining agreement and to the processing of a grievance alleging a violation of the contractual seniority provision. Specifically, the Board rejected the respondent's contention that it was precluded by the Americans with Disabilities Act from providing the union requested information concerning an employee's medical condition and the respondent's accommodation of his medical disability.

The respondent awarded a highly sought-after position to a less senior employee pursuant to the employee's doctor's recommendation and in an effort to accommodate the employee's disability under the ADA. The union, on filing a grievance and seeking to discuss alternative accommodations, requested information concerning the employee's medical condition and the respondent's accommodation decision. The respondent refused to provide the requested information, relying on the ADA's confidentiality requirements.

In finding the violation, the Board relied on the EEOC's opinion letter addressing the specific facts of this case and stated:

> Applying the framework set forth in the EEOC's opinion letter, we find that the ADA "permits" the Respondent to provide

[24] Id.
[25] Id. at 8.
[26] Id. at 24.
[27] 331 NLRB No. 124 (Chairman Truesdale and Members Liebman and Brame).

> the Union with [the employee's] medical information, but the "information [the Respondent] may share with [the Union] is strictly limited to that which is necessary for [the Union] to fulfill its role in the accommodation process. Necessary information often will not encompass the entire contents of an employee's medical file." In other words, only that medical information concerning [the employee] that the Union truly needs may be disclosed to it. All other medical information must be kept confidential by the Respondent.[28]

The Board did not order the respondent to furnish the requested information immediately. Rather, consistent with *GTE Southwest, Inc.*,[29] the Board held that the appropriate remedy would give the parties an opportunity to bargain in good faith regarding the conditions under which the union's need for relevant information could be satisfied with appropriate safeguards protective of the respondent's legitimate confidentiality concerns. The Board found "that first allowing the parties an opportunity to resolve their differences best effectuates the Act's policy of maintaining industrial peace through the resolution of workplace disputes by collective bargaining."[30]

5. Intraunion Discipline

In *Office Employees Local 251 (Sandia National Laboratories)*,[31] the Board majority held that it will no longer proscribe intraunion discipline against union members under Section 8(b)(1)(A) of the Act when the matter involves a purely intraunion dispute and the intraunion discipline imposed does not interfere with the employee-employer relationship or contravene a policy of the Act.

The majority found that the dispute at issue was essentially an intraunion factional quarrel over intraunion policies and politics between, among others, the union's two highest ranking elected officers, who each filed impeachment petitions against one another. The predominant issue underlying the dispute concerned the disposition of a $58,000 check in settlement of a lawsuit against the union. As a result of the dispute, internal union sanctions, including removal from union office and suspension or expulsion from union membership, were imposed on members of the losing faction, but no employment sanctions were implemented by an employer.

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[28] 331 NLRB No. 124, slip op. at 5.
[29] 329 NLRB 563 (1999).
[30] 331 NLRB No. 124, slip op. at 5.
[31] 331 NLRB No. 193 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen concurring; and Member Brame dissenting).

In dismissing the complaint, the majority overruled several cases in which the Board previously had found violations of the Act even in the absence of any meaningful correlation to the employment relationship or to the policies of the Act, including *Carpenters Local 22 (Graziano Construction Co.)*.[32] The majority held:

> [T]he position that we adopt here represents a return to the law as it was before *Graziano Construction* expanded the reach of Section 8(b)(1)(A) and made the Board a forum for vindicating policies that Congress intended to be enforced through the procedures of the Landrum Griffin Act.[33]

While reaffirming the principle that Section 7 of the Act encompasses the right of employees to concertedly oppose the policies of their union, the majority rejected the principle that Section 8(b)(1)(A) proscribes "virtually each and every form of intraunion dispute without regard to the employment context or the policies of the Act."

Member Hurtgen, concurring, agreed with the result reached by the majority, but on the basis that, as a matter of comity, efficiency, and economy, the Labor-Management Reporting and Disclosure Act (LMRDA) should be the primary means of the enforcement when the underlying dispute is wholly intraunion in character and the discipline imposed by the union is wholly internal and nonmonetary.

Member Brame, in dissent, concluded that the union violated Section 8(b)(1)(A) of the Act because its discipline of the dissident members falls within a long line of Supreme Court, Court of Appeals, and Board precedent finding violations of Section 8(b)(1)(A). In Member Brame's view, the union's discipline of the dissident members did not reflect a legitimate union interest and impaired national labor policy under both Section 7 of the National Labor Relations Act and the LMRDA.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2000, are as follows:

Personnel compensation	$129,965,037
Personnel benefits	25,794,854
Benefits for former personnel	20,000
Travel and transportation of persons	3,460,477
Transportation of things	242,849

[32] 195 NLRB 1 (1972).
[33] 331 NLRB No. 193, slip op. at 3.

Rent, communications, and utilities	23,655,142
Printing and reproduction	225,275
Other services	15,719,537
Supplies and materials	1,223,765
Equipment	5,167,189
Insurance claims and indemnities	126,189
Total obligations and expenditures[34]	$205,600,314

[34] Includes $207,563 for reimbursables from Department of Interior for casehandling in Saipan. Includes $24,073 for reimbursables from Forest Service, EPA, and Treasury (Fitness Facility).

II

NLRB Jurisdiction

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

Church-Operated Hospital

In *Ukiah Valley Medical Center*,[6] the Board found that asserting jurisdiction over the employer, a health care institution operated by the Seventh Day Adventist Church, did not violate either the First Amendment of the Constitution or the Religious Freedom Restoration

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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] 332 NLRB No. 59 (Members Fox, Liebman, and Hurtgen).

Act (RFRA).[7] The petitioner sought to represent a unit of the employer's registered nurses. The employer argued that the Board's assertion of jurisdiction over it, a hospital operated by the Seventh Day Adventist Church, would violate both the free exercise clause of the First Amendment and the RFRA.

The Supreme Court has held that to show a free exercise violation of the First Amendment, the religious adherent has the obligation to prove that a governmental regulatory mechanism substantially burdens the adherent's practice of his or her religion. This is not the end of the inquiry, however. Such burdens may be permissible if they are the least restrictive means to achieving a compelling governmental interest. See, e.g., *Sherbert v. Verner*.[8] The same standard is applied under RFRA.

According to the employer, the teachings of the Church prohibit Adventist institutions from recognizing or bargaining with unions. The employer also claimed that the Church prohibited its members from participating in labor unions, paying dues to labor unions, or operating with the presence of labor unions.

For purposes of this decision, the Board assumed that asserting jurisdiction over the employer created a substantial burden on the employer's free exercise of religion. The Board then turned to the determination of whether the assertion of jurisdiction was in furtherance of a compelling governmental interest and was the least restrictive means of furthering that interest. The Board first recognized the government's longstanding interest in preventing labor strife and in protecting the rights of employees to organize and bargain collectively with their employers over terms and conditions of employment. Both the Board and the courts have repeatedly deemed this interest to be "compelling." The Board next referenced the legislative history of the 1974 health care amendments which clearly expressed Congress' intent that the Board assert jurisdiction over health care institutions that are owned, operated, and/or managed by religious institutions. See *Mid American Health Services*;[9] *Bon Secours Hospital*;[10] *Tressler Lutheran Home for Children v. NLRB*;[11] *St. Elizabeth Hospital v. NLRB*;[12] and *St. Elizabeth Community Hospital v. NLRB*.[13] In *Mid American Health Services*, the Board noted that the Senate rejected any amendment that would have maintained a jurisdictional exemption for

[7] 42 U.S.C. § 200bb-1.
[8] 374 U.S. 398 (1963).
[9] 247 NLRB 752 (1980).
[10] 248 NLRB 115, 116–117 (1980).
[11] 677 F.2d 302, 305–306 (3d Cir. 1982).
[12] 715 F.2d 1193, 1196 (7th Cir. 1983).
[13] 708 F.2d 1436, 1440 (9th Cir. 1983).

hospitals owned, supported, controlled, or managed by a particular religion.

Finally, the Board concluded that applying the Act to the employer was the least restrictive means of furthering the government's compelling interest of preventing labor strife and protecting the employees' ability to exercise their rights under Section 7.

Accordingly, the Board affirmed the Regional Director's assertion of jurisdiction over the employer and remanded the case for further appropriate action.

III

Board Procedure

A. Limitation of Section 10(b)

Section 10(b) of the Act precludes the issuance of a complaint based on conduct occurring more than 6 months prior to the filing of the charge with the Board and the service of a copy thereof on the person against whom the charge is made.

In *Office Depot*,[1] the Board applied the "closely related" test set forth in *Ross Stores, Inc.*,[2] to find that complaint allegations of violations of Section 8(a)(1) concerning threats and a discharge for making common cause with the striking employees of a different employer were closely related to a charge alleging that the discharge of an employee in the midst of a union organizing campaign violated Section 8(a)(1). The Board stressed that the requisite factual relationship under the "closely related" test may be based on acts that arise out of the same antiunion campaign.

The initial charge alleged that Denise DeLaura was discharged in violation of Section 8(a)(3) and (1) because of her union activity and that her discharge occurred in the midst of an ongoing union organizing drive. The Regional Director subsequently approved the withdrawal of the 8(a)(3) allegation and stated that the balance of the charge remained in effect. The complaint then issued, alleging that the respondent violated Section 8(a)(1) by threatening that unionization would result in loss of money, loss of the ability to communicate in the same way with management, and payment of union dues. The complaint also alleged that the respondent violated Section 8(a)(1) by discharging DeLaura for making common cause with employees engaged in a protected work stoppage at the Detroit Newspaper Agency.

With respect to the complaint allegations concerning threats, the Board noted that the charge alleged that the DeLaura discharge occurred in the midst of an active union organizing campaign. The Board concluded that the investigation of this charge would entail an investigation of the respondent's conduct in response to the organizing campaign. Such an investigation would encompass the statements alleged to be unlawful threats. Thus, the Board found that the allegations of threats met the requirement of the "closely related" test that complaint allegations arise from the same factual circumstances or sequence of events at issue in the charge.

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[1] 330 NLRB 640 (Chairman Truesdale and Members Fox and Liebman).
[2] 329 NLRB 573 (1999).

The Board reached a similar conclusion on the DeLaura discharge. It reasoned that the charge alleged that her discharge took place during an organizing campaign at her place of employment. The Board found that the investigation of this charge would logically extend to an investigation of the respondent's conduct toward any form of DeLaura's protected activity, "whether in connection with protected activity at her place of employment or with the protected activity of employees of a different employer." For this reason, the Board concluded that the discharge allegation of the complaint was supported by the charge.

The Board went on to find that the respondent violated Section 8(a)(1) by threatening that selecting the union would result in less money. However, the Board dismissed the complaint allegations that the respondent violated Section 8(a)(1) by telling employees that they would not be able to communicate with management in the same way and would have to pay union dues. With respect to the communication allegation, the Board found that the respondent's statements were virtually identical to those found permissible in *Tri-Cast, Inc.*[3] There, the Board held that there is no threat in a statement that explains to employees that the relationship that existed between the employees and the employer will change when the employees select a representative. With respect to the statement about union dues, the Board held that it simply conveyed to employees the economic reality that a union may collect dues from the employees it represents.

Finally, the Board concluded that the respondent violated Section 8(a)(1) by discharging DeLaura because she made common cause with the striking Detroit Newspaper Agency (DNA) employees. The respondent conceded that it discharged DeLaura because she used the term "scab" to a DNA employee making a delivery to the respondent's facility. The Board found that DeLaura's use of the term "scab" was an expression of support for the striking DNA employees and was, therefore, protected concerted activity. The Board further found that there was no showing that her conduct was so egregious as to warrant loss of the Act's protection.

B. Sufficient Answer

In *Mid-Wilshire Health Care Center*,[4] a Board majority granted in part and denied in part the General Counsel's motion for summary judgment on the basis that the pro se respondent's informal answer to the complaint, coupled with its postcharge, precomplaint statement of position, which was incorporated by reference in its informal answer, constituted a

[3] 274 NLRB 377 (1985).

[4] 331 NLRB No. 129 (Members Fox and Liebman; Member Brame concurring in part and dissenting in part).

sufficient answer to the allegations contained in two paragraphs of the complaint.

On October 28, 1999, the General Counsel issued a complaint against the respondent, alleging that it had violated Section 8(a)(5) and (1) of the National Labor Relations Act. The respondent failed to file a timely answer to the complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations. On December 9, the Region notified the respondent by letter that unless an answer to the complaint was received by December 17, a motion for summary judgment would be filed. On December 13, 1999, the respondent, by its administrator, sent a letter to the Region stating, in relevant part: "I totally disagree with the Compl[a]int filed against us" and "[a]ny other responses to the Complaint [have] been fully accounted for in correspondence [to the Region] dated September 7, 1999." On January 24, 2000, the General Counsel filed a motion for summary judgment with the Board, and on January 28 the Board issued an order transferring the proceeding to the Board and a notice to show cause why the motion should not be granted. On February 14, the respondent filed with the Board a response to the notice to show cause.

After concluding that the respondent had not demonstrated sufficient cause for failure to file a complete, timely answer to the complaint, the majority analyzed the respondent's letter of December 13 purporting to answer the allegations of the complaint, and the respondent's September 7 statement of position which was incorporated by reference in the December 13 letter.

Citing *Sam Kiva Management*[5] and *A.P.S. Production*,[6] the Board majority stated that "[t]he Board typically has shown some leniency toward a pro se litigant's efforts to comply with our procedural rules." Also, citing *Carpentry Contractors*,[7] the majority stated that "[u]nder this approach, it is sufficient for a pro se respondent to respond effectively in the negative to the complaint allegations containing the operative facts of the alleged unfair labor practices."

The majority observed that the pro se respondent's September 7 letter was "merely its precomplaint statement of position in response to the August 16 initial unfair labor practice charge," and that, following *Central States Xpress*,[8] the September 7 letter "standing alone . . . would not constitute a sufficient answer to the October 28 complaint." But, again following *Central States Xpress*, the majority stated that "the Board carefully and strictly scrutinizes postcharge, precomplaint

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[5] 329 NLRB 387 (1999).
[6] 326 NLRB 1296 (1998).
[7] 314 NLRB 824, 825 (1994).
[8] 324 NLRB 442, 443–444 (1997).

statements of position submitted by pro se respondents in lieu of the formal answers to complaints required by Section 102.20 of the Board's Rules and Regulations."

The majority observed that, in *Central States Xpress*, which presented "very similar" circumstances to *Mid-Wilshire*, "the Board found a postcharge, precomplaint statement of position acceptable in lieu of an answer to the complaint." The majority stated:

> Specifically, (1) the respondent in *Central States Xpress* was acting pro se; (2) it resubmitted its postcharge statement of position with its subsequent informal answer to the complaint and expressly intended its postcharge statement of position to serve as an answer to the subsequent complaint; and (3) the postcharge statement of position constituted a sufficiently clear denial of the allegations of the complaint containing the operative facts of the alleged unfair labor practices.

The majority found that *Central States Xpress* was controlling. Thus, the majority determined, first, that the respondent was acting pro se; second, that the pro se respondent's letter of December 13 expressly incorporated its September 7 postcharge statement of position; and, third, that taken together, the pro se respondent's correspondence of December 13 and September 7 constituted a sufficiently detailed denial of two allegations in the complaint. Accordingly, the majority granted the General Counsel's motion for summary judgment in part, and remanded for the purpose of arranging a hearing before an administrative law judge limited to the allegations set forth in the paragraphs of the complaint that the respondent had effectively denied.

In a concurrence in part and dissent in part, Member Brame stated that the respondent's letter of December 13, in which the respondent's administrator stated that "I totally disagree with the Compl[a]int against us," constituted a sufficient denial of all the complaint allegations to put them at issue and require the General Counsel to prove them at a hearing, not just the two allegations remanded by the majority for a hearing.

C. Rule Against Relitigation

The Board, in *Premier Living Center*,[9] affirmed the Regional Director's dismissal of the employer's postcertification unit clarification petition seeking to exclude licensed practical nurses (LPNs) from the unit as supervisors, contrary to the employer's voluntary preelection stipulation including LPNs in the unit. The Board rejected the employer's contention that, in light of the Act's statutory exclusion of supervisors from the

[9] 331 NLRB No. 9 (Members Fox, Liebman, and Hurtgen).

definition of "employee," the Board is required to determine the supervisory status of job classifications in a bargaining unit any time the issue is raised and, thus, that the Regional Director erred in not directing a hearing into the issue here, notwithstanding the stipulation. The Board reaffirmed its longstanding rule, articulated in *I.O.O.F. Home of Ohio, Inc.*,[10] that in the absence of newly discovered and previously unavailable evidence or special circumstances, an employer may not challenge the validity of a union's certification based on a belief that unit members are statutory supervisors, if it failed to raise the issue during the representation proceeding. The Board also noted its corollary rule, approved by the Supreme Court in *NLRB v. A. J. Tower,*[11] that once a ballot has been cast without challenge, its validity cannot thereafter be challenged.

In the objections phase of the underlying representation case, the employer had argued, notwithstanding its preelection stipulation to the inclusion in the unit of LPNs, that it had implemented "new" job descriptions and had assigned "new" supervisory job duties to LPNs, thus, rendering them statutory supervisors. Record evidence revealed, however, that those "new" job descriptions and duties had been implemented before the date of the stipulated election agreement and, thus, did not constitute newly discovered evidence or changed circumstances relevant to the election objections. In the instant request for review of the dismissal of the unit clarification petition, the Board found that additional "new evidence" of LPNs' supervisory duties offered by the employer was, in fact, substantially similar to the "new" evidence offered by the employer and rejected by the Regional Director in the underlying representation case. Accordingly, the Board found that the purported "new" evidence was neither new or previously undiscovered, nor evidence of changed circumstances that would warrant review of the LPNs' unit status. The Board emphasized, however, that it "do[es] not hold that an employer is estopped in all cases from seeking clarification of a bargaining unit via a postelection unit clarification petition," but that an employer conceivably may do so "when a genuine claim is advanced that new and previously undiscovered evidence exists."

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[10] 322 NLRB 921 (1997).
[11] 329 U.S. 324 (1946).

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. Present Demand for Recognition

In *New Otani Hotel & Garden*,[1] the Board majority concluded that a union's activities—including picketing, boycotts, and requests for a neutrality/cardcheck agreement—did not constitute a demand for recognition under Section 9(c)(1)(B) and, therefore, did not warrant processing of the employer's RM petitions.

The employer in *New Otani* filed a petition seeking a Board-conducted election as a result of various union activities associated with the union's efforts (over a 4-year period) to organize the employer's

[1] 331 NLRB No. 159 (Members Fox and Liebman; Member Hurtgen dissenting).

employees, including, (1) union picketing with placards reading, "New Otani Hotel is non-union and does not have a contract with HERE Local 11. Please boycott."; (2) union handbills alleging that working conditions at the hotel were substandard in comparison to conditions at other hotels; and (3) requests from the union, third-party groups, and community leaders urging the employer to sign a neutrality/cardcheck agreement.[2]

At the outset, the Board majority indicated that Section 9(c)(1)(B) of the Act requires "evidence of a present demand for recognition . . . before the employer's petition will be processed." The majority, citing *Windee's Metal Industries*,[3] further emphasized that it would be inconsistent with Section 9(c)(1)(B) to find that common union organizational activities are sufficient to permit an employer to petition for an election simply because an objective of such activity may be to obtain eventual recognition. To do so would enable employers to "short-circuit the union's organizing campaign by precipitating a premature election."

Applying these principles to the facts of the case, the majority concluded that the union did not engage in any conduct demonstrating a present demand for recognition and, accordingly the petitions should be dismissed. Specifically, the majority found that the union's picketing was limited to informational picketing which is expressly sanctioned under Section 8(b)(7)(C) of the Act and that, under well-established Board precedent, such picketing does not establish that a union has made a "claim to be recognized" as required by Section 9(c)(1)(B). Additionally, the majority noted that the union had not presented any claim to the employer that it represented its employees or was seeking a contract; to the contrary, the union had specifically disclaimed a recognitional objective in a letter to the employer. Finally, the Board concluded that the union's requests for a neutrality/cardcheck agreement merely evinced an organizational objective (contemplating a *future* claim for recognition).

Dissenting, Member Hurtgen would have granted the employer's request for review of the Regional Director's dismissal of the RM petitions contrary to the majority. Member Hurtgen noted that Section 9(c)(1)(B) makes no distinction between a present demand for recognition and an ultimate demand for recognition. He further noted that, in any event, it was arguable that the union had been "presently seeking recognition." Member Hurtgen further asserted that although

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[2] Eight months after it filed the first petition, the employer filed a second petition, in which it alleged that several union documents demonstrating the union's efforts to organize the employer's employees—in conjunction with the evidence supporting the first petition—established a present demand for recognition by the union.

[3] 309 NLRB 1074 (1992).

any one of the union's activities alone may have been insufficient to support a finding that the union was seeking recognition "the totality of the circumstances raise[d] a genuine issue" as to whether the union was seeking recognition.

B. Unit Issues

1. Supervisory Status of Nurses

In *Harborside Healthcare, Inc.,*[4] the Board, by a 2-to-1 majority, found no showing that the nursing home facility's charge nurses (CNs) possess the necessary independent judgment or discretion in their authority either to evaluate employees or to call employees in to work to find that the CNs are supervisors as defined in Section 2(11) of the Act. In addition to finding the CNs are not statutory supervisors, the majority noted that if the nurses were found to be statutory supervisors "the resulting supervisor-to-employee ratio of 38 supervisors to 35 employees would be impracticable and unreasonable."

Finding the CNs' authority to evaluate employees does not establish statutory supervisory authority, the majority concluded that the CNs' evaluations do not affect employees' pay. Although the CNs are involved in the evaluation of state tested nursing assistants (STNAs), the majority found this case distinguishable from *Bayou Manor Health Center,*[5] because the CNs' evaluations are reviewed by unit managers and at times changed before they are viewed by the director of nursing. Further, there is no indication that any STNA has ever been denied a step increase or received a merit wage increase. Thus, the majority found that there is no direct connection between the CNs' input and a wage increase.

Additionally, the majority found the evidence is insufficient to establish that the CNs' recommendations for continued employment are effective. The majority found that unit managers prepare evaluations for the same employees as do the CNs, and there is no showing how conflicting recommendations would be weighed. Further, no employee has been terminated based on an evaluation and no nurse has recommended that the employment of an STNA not be continued.

The majority also found no showing that the CNs' authority to call employees in to work requires the exercise of independent judgment necessary to establish statutory supervisory authority. The CNs' authority in this area is limited to maintaining required staffing levels and the CNs have no authority to require any employee to come in to

[4] 330 NLRB 1334 (Members Fox and Liebman; Member Hurtgen dissenting).
[5] 311 NLRB 955 (1993).

work. Although there was testimony that CNs are not provided with any set order to follow in calling employees to offer overtime, there is no record evidence that establishes what procedures CNs use to call employees in or how they decide which employee to call.

In dissent, Member Hurtgen would find that the CNs are statutory supervisors. In his view, the CNs' call-in authority can and does substantially affect pay and "the absence of procedures [for calling in employees] is consistent with the discretion reposed in the CNs." Member Hurtgen also would find that the CNs' evaluations establish their statutory supervisory authority. According to Member Hurtgen, the director of nursing "particularly relies on the CNs' recommendations because they work directly with the STNAs" and that "they [unlike the unit managers] are in a position to directly access the STNA's performance." Finally, he would find the ratio of supervisors to employees is not disproportionate. To the extent that the CNs are supervisors based on their shift supervisor status, only one shift supervisor is assigned per shift, he noted. Further, "although the ratio is roughly one to one in the evaluation process, this is less relevant than the reasonable ratio concerning day-to-day operations."

2. Employees Jointly Employed by Supplier and User Employers

In *M.B. Sturgis, Inc.*,[6] the Board held that employees obtained from a labor supplier may be included in the same bargaining unit as the permanent employees of the employer to which they are assigned, when the supplied employees are jointly employed by both employers. The majority opinion was by Chairman Truesdale and Members Fox and Liebman, and came in a consolidated case also involving the Jeffboat Division of American Commercial Marine Service Company.

The majority overruled *Lee Hospital*,[7] which held that bargaining units including jointly employed employees together with the employees of the user employer are multiemployer bargaining units and require the consent of the employers. Rejecting *Lee Hospital*,[8] the majority concluded:

> In a unit combining the user employer's solely employed employees with those jointly employed by it and a supplier employer, all of the work is being performed for the user employer. Further, all of the employees in the unit are employed,

[6] 331 NLRB No. 173 (Chairman Truesdale and Members Fox and Liebman; Member Brame dissenting).
[7] 300 NLRB 947 (1990).
[8] 331 NLRB No. 173, slip op. at 8.

> either solely or jointly, by the user employer. Thus, it follows that a unit of employees performing work for one user employer is an "employer unit" for purposes of Section 9(b).

Because these combined units are employer units under the statute, the majority said it would apply the Board's traditional community-of-interest analysis to determine their appropriateness on a case-by-case basis.

The majority also clarified the decision in *Greenhoot, Inc.*,[9] in which a petitioned-for unit of employees of a supplier employer, who were assigned to work in 14 separate office buildings, was found an inappropriate multiemployer unit, and 14 separate units were instead found appropriate. As that decision is clarified in *Sturgis*,[10]

> [A] petition that names as the employers unrelated employers will be treated as seeking an inappropriate multiemployer unit absent the consent of all the employers; a petition that seeks a unit only of the employees supplied to a single user, or seeks a unit of all the employees of a supplier employer and names only the supplier employer, does not involve a multiemployer unit.

Member Brame, in dissent, concluded that units including both solely employed and jointly employed employees are multiemployer units under Section 9(b) because, although the employees have an employer in common, they do not share the same employer. Therefore, in Member Brame's view, the Board lacks authority to require employers to bargain in such a unit without their consent. Moreover, Member Brame found that the majority's broad holding concerning these units disregards the diversity of temporary employment arrangements and the conflicting interests of user and supplier employers.

Member Hurtgen was recused from participating in the decision and took no part in its consideration or disposition.

In *Professional Facilities Management*,[11] the Board held that a petitioner may seek to represent an appropriate unit of the employees of a single "user" employer without regard to whether the unit employees are jointly employed by another employer. The Board, therefore, will not require the naming of all potential joint employers in a petition and the litigation of their potential relationship with a single-user employer.

The petitioner sought to represent a unit of stagehands, naming only the employer in the petition. The employer contended that Easy Staff, Inc., Employee Services (ES), which supplied the stagehands to the

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[9] 205 NLRB 250 (1973).
[10] 331 NLRB No. 173, slip op. at 11.
[11] 332 NLRB No. 40 (Chairman Truesdale and Members Fox and Liebman).

employer, jointly employed the stagehands. The Regional Director rejected this contention and found that the stagehands were solely employed by the employer. The employer requested review of the joint employer finding and also contended that ES was denied notice and a reasonable opportunity to be heard at the hearing.

The Board found it unnecessary to reach both issues. Relying on the Board's recent decision in *M.B. Sturgis*,[12] and *Chelmsford Food Discounters*,[13] the Board determined that the fact that a single user employs employees who may also be jointly employed with another employer does not require the petitioner to name that joint employer in the petition, or to litigate the existence of a joint employer relationship. The absence of a potential joint employer does not foreclose certification of a union in an appropriate bargaining unit of the employees of an employer within the meaning of the Act.

3. Teaching Hospital House Staff

In *Boston Medical Center Corp.*,[14] the Board majority overruled its landmark decisions in *Cedars-Sinai Medical Center*,[15] and *St. Clare's Hospital & Health Center*,[16] and their progeny, and found, essentially on the same facts as were presented in those previous cases, that interns, residents, and fellows (house staff) employed at Boston Medical Center, a teaching hospital, while they may be students learning their chosen medical craft, are also "employees" within the meaning of Section 2(3) of the Act. Accordingly, the Board directed that an election be conducted in a collective-bargaining unit consisting of "[a]ll physicians, including interns, residents, and fellows employed by the Employer at its hospital located in Boston, Massachusetts; excluding all other employees, guards, and supervisors as defined in the Act."[17]

In reaching its decision, the Board majority stated:

> We are convinced by normal statutory and legal analysis, including resort to legislative history, experience, and the overwhelming weight of judicial and scholarly opinion, that the Board reached an erroneous result in *Cedars-Sinai*. Accordingly, we overrule that decision and its offspring, conclude that house staff are employees as defined by the Act,

[12] 331 NLRB No. 173, slip op. at 11 and 12.
[13] 143 NLRB 780, 781 (1963).
[14] 330 NLRB 152 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).
[15] 223 NLRB 25l (1976).
[16] 229 NLRB 1000 (1977).
[17] 330 NLRB at 168.

> and find that such individuals are therefore entitled to all the statutory rights and obligations that flow from our conclusion.[18]

The majority noted that the *Cedars-Sinai* majority had reasoned that interns, residents, and fellows "are serving primarily as students and not primarily as employees, that their relationship with their institutions is therefore predominantly academic rather than economic in nature, and thus, that such interests are not 'readily adaptable to the collective-bargaining process.'"[19] In *Boston Medical*, the Board majority stated that "whatever other description may be fairly applied to house staff, it does not preclude a finding that individuals in such positions are, among other things, employees as defined by the Act."[20] The majority further noted that the fact "that house staff may also be students does not thereby change the evidence of their 'employee' status."[21]

The Board majority also stated that:

> [W]e reach our decision here to overrule *Cedars-Sinai* and its progeny on the basis of our experience and understanding of developments in labor relations in the intervening years since the Board rendered those decisions. Almost without exception, every other court, agency, and legal analyst to have grappled with this issue has concluded that interns, residents, and fellows are, in large measure, employees.[22]

Member Hurtgen dissented on the basis that the Board had, for more than 20 years, held that interns, residents, and fellows are not employees entitled to bargain collectively under the Act and that the courts have endorsed this position, as well as the United States Congress. Member Hurtgen stated that he saw no reason now to proceed 180 degrees in the opposite direction and agreed with the result and rationale in *Cedars-Sinai* and *St. Clare's*. He noted that while the Board has the power to change longstanding precedent, such a change should be grounded in experience and, in this case, "there is no record evidence that the essentially educational nature of the house staff experience has changed to any appreciable degree in the past 20 years."[23] He further noted that there is only a change in Board member composition and that he "would not alter longstanding and workable precedent simply because of a change in Board membership. In my view, the interests of stability and predictability in the law require that established precedent be reversed

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[18] Id. at 159.
[19] 229 NLRB at 1002.
[20] Id. at 159.
[21] Id.
[22] Id. at 163.
[23] Id. at 169.

only upon a showing of manifest need. There is no such showing here."[24]

Member Brame dissented because the Board majority "overrules 23 years of well-established precedent and places in jeopardy the finest system of medical education in the world . . . [and] ignores evidence clearly establishing that these individuals are not employees but rather students, and thus are not entitled to engage in collective bargaining."[25] Member Brame also noted that "[h]aving designated residents as employees, we cannot then limit Petitioner's statutory rights to demand bargaining over all 'terms and conditions of employment' nor restrict its right to engage in 'economic warfare,' including strikes and work to rule."[26] He argued that the "majority thus forces medical education into the uncharted waters of organizing campaigns, collective bargaining, and strikes. If the majority is successful in this endeavor, American graduate medical education will be irreparably harmed."[27] Finally, Member Brame stated:

> I cannot accept the majority's speculation that the gains that may be derived from granting collective-bargaining rights to residents will outweigh these costs. More fundamentally, however, balancing interests and tailoring economic weapons is the province of the Congress, not this Agency. The legislative history of the Act, and its longstanding interpretation, show that it was not designed or intended to apply to academic relationships like that between residents and teaching hospitals. By overturning these longstanding principles, the majority ignores the Act's policies and usurps the authority of the Congress in the establishment of national labor policy.[28]

4. Maintenance Employees

In *Capri-Sun, Inc.*,[29] the Board majority, reversing the Acting Regional Director, found that the petitioned-for unit of maintenance employees at the employer's manufacturing plant constitutes a distinct and cohesive grouping of employees appropriate for collective-bargaining purposes.

The employer manufactures Capri Sun and Kool-Aid Burst ready-to-drink beverages and Mr. Freeze freezer pops. The production process is highly automated, and many of the production employees are machine

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[24] Id.
[25] Id. at 170
[26] Id. at 182.
[27] Id.
[28] Id.
[29] 330 NLRB 1124 (Members Fox and Liebman; Member Hurtgen dissenting).

operators. The vast majority of the maintenance employees are assigned to one of three production departments—Capri Sun, Kool-Aid Burst, or pouch manufacturing. Maintenance employees are sent to the remaining production department, Mr. Freeze, as problems arise. The employer also employs four building maintenance employees and three or four maintenance employees who work in the central maintenance shop area, which includes the maintenance shop, the rebuild room, and the parts room. There is some common supervision of production and maintenance employees under the engineering manager in the pouch manufacturing department and in building maintenance. However, the vast majority of maintenance employees function in a separate maintenance department under the supervision of the plant maintenance supervisor.

In finding that the maintenance employees constitute a separate appropriate unit, the Board majority noted that the maintenance employees have a significantly higher skill level than the production employees and higher wages. Further, the maintenance employees have some unique terms and conditions of employment, such as unscheduled lunch and breaks and "on-call" requirements. According to the revised handbook, the maintenance employees, unlike the production employees, are not subject to the layoff procedures. Moreover, the Board majority found that the level of interchange between the maintenance and production employees is not significant. Further, the maintenance duties performed by the production employees are minor and routine, and require lesser skills. Finally, the Board majority found it notable that the vast majority of maintenance employees function in a separate maintenance department under the supervision of the plant maintenance supervisor.

In his dissent, Member Hurtgen stated that the maintenance employees do not constitute a separate appropriate unit. He argued that while maintenance employees generally have a level of skills somewhat higher than the production employees, the difference is not uniform. In addition, Member Hurtgen disagreed with his colleagues that the interchange is insignificant, and found significant common supervision. Finally, he relied on significant mutuality of interest in terms and conditions of employment, regular interaction between production and maintenance employees, and functional integration.

C. Bars to an Election

1. Section 9(a) Collective-Bargaining Relationship

In *H.Y. Floors & Gameline Painting*,[30] a Board majority found that a decertification petition filed by an individual was not barred by an agreement between the employer and the union creating a 9(a) relationship.

The Board noted that the elements of a 9(a) relationship existed. Since the employer was a construction industry employer, it was necessary that the union unequivocally demand recognition as the employees' 9(a) representative, that the employer unequivocally accept the union as such, and that there be a contemporaneous showing of majority support for the union at the time 9(a) recognition was granted. The memorandum agreement between the union and the employer specifically fulfilled these elements, including the last element whereby the employer acknowledge the union's majority status in the agreement's language.

However, despite the 9(a) relationship established in the memorandum agreement between the employer and the union, the Board majority found no bar to the decertification petition filed by an individual. The Board noted that had the employer filed the decertification petition, the memorandum agreement would have barred it. Unlike the employer, however, the decertification petitioner was not a party to the memorandum agreement and was therefore not estopped from timely challenging the 9(a) recognition. The petition was filed 7 weeks after the memorandum agreement.

The Board's two dissenters disagreed with the majority on the grounds that the holding allowed the litigation in a representation proceeding of the union's majority status at the time the employer entered into the collective-bargaining agreement with the union. The dissenters cited *Texas Meat Packers, Inc.*[31] and noted that the statutory scheme vests the General Counsel with final authority as to the issuance and prosecution of unfair labor practice complaints. Thus, the majority status of the union might be challenged but only through the filing of a timely charge and the issuance of a complaint in an unfair labor practice proceeding.

The Board majority noted, in response to the dissent, that a union's majority status may be challenged not only by the filing of an unfair labor practice charge, but also by filing a timely representation petition.

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[30] 331 NLRB No. 44 (Chairman Truesdale and Members Hurtgen and Brame; Members Fox and Liebman dissenting).
[31] 130 NLRB 279 (1961).

The majority cited *Casale Industries*,[32] and noted that this was what was done here. The majority also noted that under *Texas Meat Packers*, if the gravamen of the contention is an unfair labor practice, then the appropriate forum is the unfair labor practice proceeding. However, in this case, no such unfair labor practice is at issue. Rather, the inquiry into whether the Union had majority status is to determine if an election can be conducted to ascertain employee support. Such an inquiry is akin to the procedural question of standing, in the majority's view.

2. Collective-Bargaining Agreement Intended to Resolve Unfair Labor Practice Charges

In *Supershuttle of Orange County*,[33] the Board majority, applying its decisions in *Douglas-Randall, Inc.*,[34] and *Liberty Fabrics, Inc.*,[35] concluded that the negotiation of a collective-bargaining agreement—which is intended by the parties to resolve outstanding unfair labor practice charges—will require the final dismissal of a rival union petition filed subsequent to the onset of the unfair labor practice conduct.

During the time in which the incumbent union and the employer were negotiating for an initial collective-bargaining agreement, another union filed a petition seeking to represent the unit employees. The petition was held in abeyance due to pending unfair labor practice charges previously filed by the incumbent union. The employer and the incumbent union continued negotiating while the unfair labor practice charges were pending, and eventually entered into a collective-bargaining agreement. The Acting Regional Director thereafter dismissed the unfair labor practice charges, as the parties had reached agreement on a contract and there were no longer any unresolved unfair labor practice issues between them. The Acting Regional Director further concluded that the parties' collective-bargaining agreement did not bar the processing of the petition and, consequently, he directed an election.

Following a remand by the Board, the Acting Regional Director specifically found that the collective-bargaining agreement negotiated by the parties was intended to settle the pending unfair labor practice charges, yet concluded that the contract did not bar the petition. The majority held that the principles and policies set forth in *Douglas-Randall* and *Liberty Fabrics*—in which the Board established the policy of dismissing a decertification or rival union petition filed subsequent to the alleged unfair labor practice conduct, where the charges are resolved by a Board or non-Board settlement agreement in which the employer

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[32] 311 NLRB 951, 953 (1993).
[33] 330 NLRB 1016 (Chairman Truesdale and Member Liebman; Member Hurtgen dissenting).
[34] 320 NLRB 431 (1995).
[35] 327 NLRB 38 (1998).

agrees to recognize and bargain with the union—applied to the case and required the dismissal of the petition. The majority indicated that the *Douglas-Randall* decision enumerated several limited situations in which the resolution of pending unfair labor practice charges would not result in the dismissal of a petition, and the dismissal of charges as a result of the parties' negotiation of a collective-bargaining agreement intended to resolve the outstanding charges was *not* one of those articulated situations. The majority additionally emphasized that the same considerations underlying the Board's decision in *Douglas-Randall* supported the dismissal of the petition in the case.

Member Hurtgen, dissenting, reiterated his disagreement with the Board's decisions in *Douglas-Randall* and *Liberty Fabrics* and additionally disputed the conclusion that the parties in the case had in fact negotiated a settlement of the unfair labor practice charges. Member Hurtgen also expressed concern that the majority's decision would facilitate collusive efforts by employers and incumbent unions to freeze out rival unions or decertification petitioners.

D. Election Objections

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

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

1. *Excelsior* List

In *Woodman's Food Markets, Inc.*,[36] the Board held that in determining whether an employer has substantially complied with its

[36] 332 NLRB No. 48 (Chairman Truesdale and Members Fox, Liebman, and Hurtgen).

obligation under *Excelsior Underwear*,[37] it will continue to consider the percentage of omissions from the voter eligibility list and it will also consider other factors as well, including whether the number of omissions is determinative, i.e., whether it equals or exceeds the number of additional votes needed by the union to prevail in the election, and the employer's explanation for the omissions.

The Board noted regarding whether the omissions involve a determinative number of votes, that its *Excelsior* policy was designed to enhance the availability of information and arguments both for and against union representation to employees so that they might render a more informed judgment at the ballot box. Thus, the Board found that the proper focus in determining whether an employer has complied with the requirements of the *Excelsior* rule should be on "the degree of prejudice to these channels of communication, and not the degree of employer fault."[38] The Board found that the potentially prejudicial effect on the election is most clear where the number of omissions may have compromised the union's ability to communicate with a determinative number of voters. Further, the Board stressed that to ignore this circumstance, therefore, is not only inconsistent with the rule's purpose but makes little sense. Accordingly, the Board overruled prior cases to the extent they have done so and held that whether the omissions involve a determinative number of names must be considered in determining whether to set aside the election.

With respect to the employer's explanation for the omissions, the Board noted that omissions may occur, notwithstanding an employer's reasonable good-faith efforts to comply, due to uncertainties about who is an eligible unit employee or other factors. In determining whether the employer substantially complied with its obligation under *Excelsior Underwear* to provide a list of employees eligible to vote in a representation election, the number of names omitted is not the only factor that should be considered. Thus, the Board will consider the employer's explanation for the omissions.

The Board held in *Woodman's Food Markets* that the relatively small percentage of omissions, standing alone, might not warrant setting aside the election. It found, however, that the union may have suffered substantial prejudice by its inability to communicate with 12 employees since their ballots *could have affected* the outcome of the election. The Board recognized that the union lost the election by 13 votes. However, in view of the additional challenged voters, David Keesey and Theresa Keesey (whose names were also omitted from the eligibility list because

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[37] 156 NLRB 1236 (1966).
[38] *Avon Products, Inc*., 262 NLRB 46, 48 (1982).

the employer believed they were supervisors), the 12 omitted names could be determinative in this case. Accordingly, the Board remanded the proceeding to the Regional Director for a determination as to the Keeseys' eligibility. If it is determined that they are ineligible, the omitted names are not determinative and the results of the election should be certified. If, however, the Keeseys are eligible voters, the omission of the 12 names from the *Excelsior* list could have affected the outcome of the election and the direction of a second election is warranted.

In *Merchants Transfer Co.*,[39] where the employer knowingly supplied a union with inaccurate addresses for over 22 percent of its 58 employees, Members Liebman and Hurtgen, in agreement with the hearing officer, sustained the union's objection to the election. The majority stated: "In short, the dissent's claim that this is a case in which the Employer provided 'its latest best list' lacks support in the record. Because the facts clearly show that the Employer itself recognized that the list was essentially worthless for its own purposes, a far more accurate characterization of this case is that the Employer provided its 'laid-to-rest list.'" The majority discussed and distinguished many Board decisions cited by dissenting Member Brame, including *Women in Crisis Counseling*,[40] *Singer Co.*,[41] *Bear Truss, Inc.*,[42] *Lobster House*,[43] and *Dr. David M. Brotman Memorial Hospital*.[44]

On May 27, 1999, an election was held pursuant to a stipulated election agreement. The tally showed 27 votes for and 29 against the union, with no challenged ballots. The union objected to the election, alleging that the election had to be set aside because the employer provided an *Excelsior*[45] list with inaccurate addresses. The hearing officer found that 13 of 58 addresses were incorrect, that is, 22.41 percent. Through its own efforts, the union found correct addresses for 7 of the employees, but still could not reach 6 employees, or 10.34 percent of the employees. The hearing officer found that, in assembling the list, the employer acted in a "grossly negligent manner."

The employer's president testified that he knew that the company had inaccurate addresses for many employees. In fact, he stated that the employer had ceased mailing W-2's to the employees—hand delivering them at work instead—because many were returned by the post office as undeliverable. He further testified, however, that the employer did have

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[39] 330 NLRB 1165 (Members Liebman and Hurtgen; Member Brame dissenting.)
[40] 312 NLRB 589 (1993).
[41] 175 NLRB 211 (1969).
[42] 325 NLRB 1162 (1998).
[43] 186 NLRB 148 (1970).
[44] 217 NLRB 558 (1975).
[45] 156 NLRB 1236 (1966).

accurate telephone numbers for the employees but took no steps to verify the employees' addresses by telephone before sending the inaccurate information to the union by way of the *Excelsior* list.

The majority held:

> In our view, such conduct demonstrates gross negligence or bad faith on the part of the Employer. Although a finding of gross negligence or bad faith is not a precondition for the conclusion that an employer has failed to comply substantially with the *Excelsior* rule, the Board has held that a finding of gross negligence or bad faith will preclude a finding that an employer was in substantial compliance with the rule. See *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). See also *Women in Crisis Counseling,* 312 NLRB 589 (1993) ("Board may set aside an election because of an insubstantial failure to comply with the *Excelsior* rule if the employer has been grossly negligent or acted in bad faith in providing inaccurate addresses").[46]

Member Brame wrote in dissent: "Contrary to the majority I would overrule this objection. It is undisputed that the list furnished to the Petitioner included the most recent and accurate information in the Employer's possession. In these circumstances, there is no precedent and no warrant for setting aside the election."

2. Statutory Supervisor as Union's Election Observer

In *Family Service Agency*,[47] the Board announced a new rule that either party's use of a statutory supervisor as an election observer constitutes objectionable conduct. The Board majority found that the union's use of a supervisor as its election observer, over the strenuous objection of the employer, warranted setting aside the directed election. The decision overrules *Plant City Welding & Tank Co.*, [48] and other cases that allowed *unions* to designate supervisors as observers, to the extent the cases are inconsistent with the new rule.

At the preelection conference in *Family Service Agency*, the union designated as its election observer an employee whose supervisory status was in question. The employer voiced its objection to the union's selection of the individual, and the Board agent conducting the election advised the union that her designation could jeopardize the outcome of the election. The union was adamant, however, and the employer

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[46] 330 NLRB at 1165.
[47] 331 NLRB No. 103 (Members Fox, Liebman, Hurtgen, and Brame; Chairman Truesdale dissenting).
[48] 119 NLRB 131, 132 (1957).

challenged her ballot and filed an objection after a majority of the employees voted in favor of representation.

It was determined in postelection hearings that the union's observer was a supervisor within the meaning of Section 2(11) of the Act. The hearing officer analyzed the supervisor's prounion, preelection conduct, and, finding that it was not coercive, reasoned that under *Plant City Welding*, the union's use of the supervisor did not raise the same specter of undue influence to vote for representation that an employer's use of a supervisor would raise to vote against representation.

The Board majority stated that while it had no quarrel with the rationale underlying the distinction between a union's and an employer's use of a supervisor as an observer, as expressed in *Plant City Welding*,[49] it believed that the better practice was to prohibit supervisors from serving as observers. The Board majority based its decision on the Board's duty to maintain and protect the integrity and neutrality of procedures in elections it conducts;[50] the Board's long-established goal of conducting elections in "laboratory" conditions, as far as practicable, in order to facilitate the expression of the uninhibited desire of the employees;[51] attendant Board law that bars agents of either party from the polling area and prohibits electioneering at or near the polling place during voting hours;[52] and the language of the Board's stipulated election agreement, Form NLRB-652, which states that each party may station an equal number of "authorized, *nonsupervisory*-employee observers" at the polls to assist in the election.

Chairman Truesdale, dissenting, indicated that he adheres to the rationale in *Plant City Welding*, and would not overrule that case or set aside the election. In his view, employees today "are typically aware of their employer's views regarding union representation" just as their counterparts were 43 years ago when *Plant City Welding* was decided. The Chairman also noted that in the preelection proceedings the Acting Regional Director found that the individual was not a supervisor, her supervisory status was unresolved at the time of the election, and she was permitted to vote by challenged ballot. The limited opportunity for parties to obtain a determination of an individual's status prior to an election, coupled with "the improbability that a supervisor's serving as

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[49] Member Brame agreed with the result in *Family Service Agency*, but indicated that he previously rejected the Board's distinction between a union's use of a supervisor as an observer and an employer's use of a supervisor as an employer. *Randell Warehouse of Arizona*, 328 NLRB 1034, concurring opinion at 1042 (1999).

[50] *Glacier Packing Co.*, 210 NLRB 571 (1974), and other cases cited.

[51] *General Shoe Corp.*, 77 NLRB 124, 127 (1948).

[52] *Milchem, Inc.*, 170 NLRB 362 (1968), and the NLRB Casehandling Manual, Part Two, Representation Proceedings, Sec. 11326.

an observer for the Union . . . could unduly influence employees' votes," favors continued adherence to *Plant City Welding*, the Chairman reasoned.

3. Preelection Announcement of Postelection Victory Dinner

In *Raleigh County Commission on Aging*,[53] Chairman Truesdale and Member Fox held that an employer did not engage in objectionable conduct by its preelection announcement of a postelection victory dinner for employees. Member Hurtgen filed a dissent, finding the employer's conduct objectionable.

The Regional Director recommended setting aside the election because the employer, at a mandatory meeting for employees 2 days before the election, told them that the employer was going to have a dinner for them to celebrate its victory in the upcoming election. The Board majority reversed, relying on prior Board cases holding that a promise to supply food and beverages at a postelection victory party "is not necessarily coercive or destructive of an atmosphere in which a free choice can be made."[54] The majority noted that the announcement was solely linked to the idea of celebrating the anticipated victory, and included no promise of anything of significant value. The majority stated that to the extent the announcement would have any appeal to employees, the appeal is not the refreshments but the opportunity to celebrate the victory. For this reason, the majority found the employer's announcement distinguishable from *Crestwood Manor*,[55] relied on by the dissent, where the union's objectionable announcement of a postelection raffle for employees could reasonably be appealing to an employee regardless of whether the employee would have otherwise supported the union.

In his dissent, Member Hurtgen would have set aside the election because he viewed the employer's promise of an employee dinner to be a benefit conditioned on the employer prevailing in the election. Member Hurtgen found that employees would reasonably view the dinner as a benefit, even though the announcement gave no details about the dinner. The precise amount of the benefit is not critical, what is important is that food and drink would be granted to the employees only if they voted against the union. Thus, he found the announcement was a conditional benefit, which in this context would reasonably interfere with employee free choice.

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[53] 331 NLRB No. 119 (Chairman Truesdale and Member Fox; Member Hurtgen dissenting).
[54] E.g., *Movsovitz & Son, Inc.*, 194 NLRB 444 (1971).
[55] 234 NLRB 1097 (1978).

4. Election Day Raffle

In *Atlantic Limousine,*[56] the Board majority adopted a new rule prohibiting election-day raffles. The majority overruled a line of cases beginning with *Hollywood Plastics, Inc.,*[57] which established a "multi-factor approach" the Board has followed on a case-by-case basis to determine whether an election raffle interferes with the holding of a fair and free election. Chairman Truesdale and Members Fox and Liebman signed the majority opinion; Members Hurtgen and Brame dissented.

The Board majority held that the costs of the case-by-case approach were unacceptably high: time-consuming litigation, divided Board decisions, confusing and seemingly inconsistent results, and unwarranted delays in the completion of the representation proceedings. Instead, the majority decided to apply a bright-line rule that would lead to definite, predictable, and speedy results. The Board majority explained the new rule as follows:

> Specifically, our rule prohibits employers and unions from conducting a raffle if (1) eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day or (2) the raffle is conducted at any time during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls. The term "conducting a raffle" includes the following: (1) announcing a raffle; (2) distributing raffle tickets; (3) identifying the raffle winners; and (4) awarding the raffle prizes.[58]

In dissent, Members Hurtgen and Brame stated:

> There is no reason to abandon 31 years of the "relevant circumstances" approach. The Board should apply that approach to raffles just as it does in other areas of Board law.[59]

Under that "relevant circumstances" approach, the dissent further argued that the raffle was not objectionable; indeed, its announced purpose was to induce employees to vote, irrespective of how they cast their ballots.

5. Severe Winter Weather Conditions

In *Baker Victory Services,*[60] the Board considered objections to an election alleging that severe winter weather conditions during the week preceding and on the day of the election denied the eligible voters an

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[56] 331 NLRB No. 134 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).
[57] 177 NLRB 678 (1969).
[58] 331 NLRB No. 134, slip op. at 5.
[59] Id. slip op. at 7.
[60] 331 NLRB No. 146 (Chairman Truesdale and Members Fox and Brame).

adequate opportunity to vote. The Board, reaffirming the standard set forth in its decision in *V.I.P. Limousine, Inc.*,[61] held that the election should be set aside, as the eligible voters were not afforded an adequate opportunity to vote and a determinative number did not vote.

The city of Buffalo, in which the election was conducted, received more than 4 feet of snow during the 2-week period preceding the election, including 3.2 inches of snow on the day of the election. The mayor of Buffalo and President Clinton declared a state of emergency in the city during the week of the election. As a result of the severe weather conditions, the school at which the employer conducted its operations (and at which the election was conducted) was closed on the day of the election, as well as the day preceding and the day following the election.[62]

Applying the "representative complement" test set forth by Members Stephens and Cohen in *Glass Depot, Inc.*[63]—pursuant to which an election would be set aside if an extraordinary circumstance resulted in a turnout of less than a representative complement of voters—the Regional Director concluded that a new election was not warranted, as the weather conditions, albeit poor, did not constitute an extraordinary circumstance, and the overall voter turnout rate of 70.8 percent demonstrated that a representative complement of employees had voted.

The Board, contrary to the Regional Director, rejected the "representative complement" test set forth in *Glass Depot*, noting initially that it had not been adopted by a majority of the Board members in that decision. The Board found that the "representative complement" test "is concerned only with the proportion of eligible employees who actually voted, without consideration of any potential interference with the nonvoting employees' right to participate in the election." By contrast, the Board concluded, the standard set forth by the Board in its earlier decision in *V.I.P. Limousine*,[64] "best effectuates the Board's goal of ensuring maximum voter participation and properly places the focus on the right of all eligible employees to cast ballots in the election." The Board therefore reaffirmed the standard articulated in *V.I.P. Limousine*: "An election should be set aside where severe weather conditions on the day of the election reasonably denied eligible voters an adequate opportunity to vote and a determinative number did not vote."

Applying this standard to the facts of the case, the Board concluded that based on the significant amount of snowfall, the declaration of a

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[61] 274 NLRB 641 (1985).
[62] The closure of the school, in turn, relieved a significant number of employees of their obligation to report to work.
[63] 318 NLRB 766 (1995).
[64] Supra.

state of emergency for the city, and the closure of the school at which the employer's operations were based, the eligible employees were not afforded an adequate opportunity to vote. Further, as the votes of the non-participating employees would have been determinative of the election results, the Board concluded that a new election was warranted.

6. Presumption of Dissemination of Threat

In *Springs Industries*,[65] the Board affirmed the administrative law judge's findings that the employer unlawfully threatened its employees with plant closure, loss of pay increases, and loss of jobs and unlawfully refused to provide the union with requested access to its plant and documentation. The Board majority further adopted the judge's recommendation that an election be set aside.

During the critical period before an October 18, 1995 election, lost by the union 305–219 with 8 challenged ballots, three statements by three different supervisors threatened job loss or plant closure. The two employees threatened with job loss told no one about the statements. The third employee, told by a supervisor that the supervisor feared the plant would close if the union won, testified that she told "everybody on break. Diane Thomas, probably Daisy." There was no evidence as to how many other employees may have been on break.

The judge found that each of the three statements violated Section 8(a)(1) of the Act and constituted objectionable conduct. Stating that an employer's preelection communication to its employees must not contain a threat of reprisal or force or promise of benefit, the judge found that the election should be set aside because of the employer's objectionable conduct.

The Board majority found that threats of plant closing are presumed to be disseminated among employees, and overruled *Kokomo Tube Co.*,[66] to the extent that it was inconsistent with that finding. The majority found that the employer had introduced no evidence to rebut the presumption of dissemination as to the threat of plant closure, and that the employer's conduct was sufficient to affect the results of the election. The majority affirmed the judge's recommendation that the election be set aside.

Dissenting as to the setting aside of the election, Member Hurtgen stated that he would not overrule *Kokomo Tube*, would not presume that threats of plant closure (or other threats) are disseminated, and would follow the well-settled principle that the burden of proof is on the

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[65] 332 NLRB No. 10 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting in part).
[66] 280 NLRB 357 (1986).

objecting party. Citing *Westek Fabricating,*[67] Member Hurtgen found that, in view of the margin of loss, this was clearly a case in which "the violations are such that it is virtually impossible to conclude that they could have affected the results of the election." He noted that, although he did not necessarily subscribe to the "virtually impossible" standard, he found that in this case even that stringent standard was satisfied.

E. Unit Clarification

In *U.S. Tsubaki, Inc.,*[68] the Board found that the Regional Director erred in failing to apply *Gitano Distribution Center,*[69] and that, under *Gitano,* the historical collective-bargaining unit of production and maintenance employees at the Employer's plant in Holyoke should be clarified into two separate units of employees located at its Holyoke and Chicopee, Massachusetts facilities, respectively. Since all of the unit employees at Chicopee are transferees from the original bargaining unit, the Board held that Steelworkers Local 7912 continues to represent the employees in both units.

The employer, a manufacturer of roller chains, engineering chains, sprockets, power transmission units, and automotive timing chains, had housed its two independent divisions (Roller Chain and Automotive) at the Holyoke facility. The employees of both divisions were included in the same bargaining unit covered by the same collective-bargaining agreement. In November 1996, the employer moved the Automotive Division to a new facility approximately 5 miles away in Chicopee.

The employer-petitioner seeks to clarify the historical bargaining unit[70] by limiting it to employees employed by its Roller Chain Division in Holyoke and by creating a second, separate unit consisting of employees employed by its Automotive Division at its Chicopee location. The union asserts that the collective-bargaining unit should remain a two-division unit, with the unit description covering both the Roller Chain and Automotive Divisions at both the Holyoke and Chicopee locations.

The employer argues that under *Gitano Distribution Center,*[71] the relocation created a presumption that the Chicopee facility would be a separate, single-location collective-bargaining unit, and that the union

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[67] 293 NLRB 879 (1989).
[68] 331 NLRB No. 47 (Chairman Truesdale and Members Hurtgen and Brame).
[69] 308 NLRB 1172 (1992).
[70] The historical collective-bargaining unit currently has the following unit description:

> All full-time and regular part-time production and maintenance employees, group leaders, and watchmen employed at the Employer's 821 Main Street, Holyoke, Massachusetts location, but excluding office clerical employees, technical and professional employees, guards and supervisors as defined in the Act.

[71] Id.

had not rebutted this presumption by demonstrating a community of interest between the employees at the two locations. The union, in response, argues that the *Gitano* analysis is limited to cases involving relocations causing the merger of represented and unrepresented employees at a new facility. Here, both sets of employees are represented by the union. The union also argues that there is sufficient evidence of a community of interest between the employees of the two facilities to rebut the presumption of a single-location collective-bargaining unit.

In her decision and order, the Regional Director declined to apply *Gitano*. Instead, she applied Board precedent holding that an historical unit will be clarified only if recent, substantial changes have so negated the employees' community of interest as to render the existing single unit inappropriate. *Lennox Industries*[72] and *Rock-Tenn Co.*[73] Although the Regional Director conceded that the community of interest between the Roller Chain and Automotive Division employees was "insubstantial," both before and after the move, she concluded that in view of the long history of collective bargaining in the present unit, geographical relocation (as well as the addition of a human resources manager for the Automotive Division) were not so substantial as to render the historical unit inappropriate. The Board disagreed, finding that the Regional Director erred in applying *Gitano*.

In *Gitano*, the Board formulated the following test to assess unit appropriateness:

> . . . [W]e will begin with the Board's long-held rebuttable presumption that the unit at the new facility is a separate appropriate unit. Assuming that that presumption is not rebutted, we will then apply a simple fact-based majority test to determine whether the [employer] is obligated to recognize and bargain with the union as the representative of the unit at the new facility. If a majority of the employees in the unit at the new facility are transferees from the original bargaining unit, we will presume that those employees continue to support the union and find that the employer is obligated to recognize and bargain with the union as the exclusive collective-bargaining representative of the employees in the new unit. Absent this majority showing, no such presumption arises and no bargaining obligation exists.[74]

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[72] 308 NLRB 1237 (1992).
[73] 274 NLRB 772 (1985).
[74] Id.

In *Armco Steel Co.*,[75] the Board extended the *Gitano* analysis beyond the limited issue of the unit status of the relocated employees vis-à-vis the existing unit and applied it to determine the actual appropriateness of a separate unit of the relocated employees. The Board found that:

> . . . *Gitano* also requires an analysis of whether the relocated employees, together with any new employees, would constitute an appropriate unit. Such unit scope issues are as readily resolvable in UC [unit clarification] proceedings as they are in any other type of representation proceeding. And, resolution of all the *Gitano* matters in a UC proceeding would frequently be preferable to their resolution in an unfair labor practice proceeding.[76]

Applying the *Gitano* analysis, the Board started with the rebuttable presumption that the new facility at Chicopee is a separate appropriate unit.

The Board found, based on the record evidence, that the presumption of a separate appropriate unit at the Chicopee facility has not been overcome. It found, as noted by the Regional Director, that the two divisions have continued to operate independently since the Automotive Division moved to Chicopee. The two divisions have separate managerial hierarchies including separate human resources managers with responsibilities for hiring, discipline, and adjusting grievances. As part of their independent operations, the divisions have separate supervision and distinctive manufacturing processes and products. Further, there is limited interchange between the two divisions, despite the common seniority bidding procedure mandated by the collective-bargaining agreement and the two facilities being only 5 miles apart. There is, however, an extensive history of common collective bargaining since the creation of the Automotive Division in 1989. The employer-petitioner's central labor relation's structure has a role in the collective-bargaining negotiations with the union, although the two divisions are also individually represented.

Taking all these factors into account, including the extensive history of common collective bargaining, the Board found that the presumption of a separate, appropriate unit at the Chicopee facility has not been rebutted and that the historical unit should be clarified to consist of two separate collective-bargaining units located at the employer-petitioner's facilities at Holyoke and Chicopee.

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[75] 312 NLRB 257, 259–260 (1993).
[76] Id. at 259.

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 2000 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 derivative or by-product of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a),[1] or may consist of any other employer conduct which independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities which constitute such independent violations of Section 8(a)(1).

1. Employee Status

In *Allstate Insurance Co.*,[2] a majority of the Board found that Carolyn Penzo, who worked for respondent as a "Neighborhood Office Agent" (NOA), selling the respondent's insurance policies from a storefront office in Alpharetta, Georgia, was an employee within the meaning of the Act, rather than a manager or supervisor, at the time of the alleged unfair labor practice. Thus, the respondent's issuance of a "job-in-

[1] Violations of these types are discussed in subsequent sections of this chapter.
[2] 332 NLRB No. 66 (Members Fox and Liebman; Member Hurtgen dissenting).

jeopardy" disciplinary warning to her on October 19, 1995, violated Section 8(a)(1) of the Act.

According to Penzo, she contributed $200,000 of her own money to the business between 1989 and 1995, with virtually nothing but debts to show for it. She was critical of the terms and conditions of her employment. Her criticisms became public knowledge after she and other of the respondent's employees were interviewed and an article reporting her views of the NOA program appeared in Fortune magazine on October 2, 1995. In reaction to her role in the article, the respondent issued the disciplinary warning to Penzo, stating that her job was at risk because of her unauthorized contact with the news media.

The judge found that, although Penzo possessed supervisory authority, especially concerning the hiring and firing of assistants, she had not exercised it for a considerable period of time prior to the disciplinary warning. He also found that the respondent had not invested her with the kind of authority that defines a managerial employee. Accordingly, he found that she was a statutory employee at the time of the alleged unfair labor practice, and that the disciplinary warning violated the Act.

Although the majority agreed with the judge that the respondent violated the Act, it relied on different analyses in finding that Penzo was neither a statutory supervisor nor a managerial employee. The majority explained that "the decisive question is: given the characteristics of both supervisory and managerial status inherent in her job, *in whose interest* did Penzo act in running her office?"

Concerning the question of supervisory status, the majority, following *Tiberti Fence Co.*,[3] concluded:

> In the present case . . . where the use of office or sale assistants was not a necessary incident of the Respondent's business but at the option and the financial risk of the NOA, we are unable . . . to conclude that the NOA's have been assigned Section 2(11) authority to hire or fire assistants "in the interest of the employer." Accordingly, we reject the Respondent's contention that Penzo is a supervisor and lacks a Section 7 right to engage in concerted activity.[4]

With respect to managerial status, the panel majority wrote:

> [T]he Respondent's NOA program is an essentially commission-based employment scheme that leaves to Penzo's self-interested

[3] 326 NLRB 1043 (1998).
[4] 332 NLRB No. 66, slip op. at 3.

> entrepreneurial decisionmaking—and financial risk—certain basic choices concerning how her office is to be run. Having chosen to minimize its own involvement and to be guided by the self-interested risk of Penzo—who bears the immediate financial consequences of her misjudgments in these matters—the Respondent cannot persuasively maintain that Penzo is acting on its behalf and expressing or making operative its decisions when she exercises her own discretion in renting, furnishing, staffing, and otherwise running her office.[5]

Member Hurtgen, dissenting, found that Penzo has supervisory authority to hire and fire assistants, and that she exercises this authority in the interest of the respondent. In his view, Penzo and the respondent have a significant shared interest: increasing insurance sales, thus increasing both Penzo's compensation and the respondent's revenue. Because she is a statutory supervisor and exempt from the Act's coverage, no unfair labor practice was committed, in his opinion.

2. Protected Activity

In *Senior Citizens Coordinating Council*,[6] the Board majority reversed the administrative law judge's finding that the respondent did not violate the Act by discharging three employees because they composed and sent a letter to certain officials that threatened a work stoppage unless the acting director of the respondent's Multi-Service Center were replaced. While agreeing with the judge that the conduct at issue was concerted, the majority found, contrary to the judge, that the composing and sending of the letter also constituted protected activity under the Act.

As the director of the Multi-Service Center (the Center), William Austin was both the top managerial official in charge of the Center and the first-line supervisor of the Center's employees, social workers Hubert Peck, Barbara Mathew, and Connie Kirkland, and part-time bookkeeper Michele Mercado. Employee Blance Polovetz, who was not a social worker, performed office clerical work and minor casehandling tasks, and was, in effect, the office manager at the Center. When Austin resigned his position, Polovetz, the most senior employee at the Center, was appointed the Center's acting director.

In a June 1, 1995 letter, Jorge Romero, an official of the New York City Department for the Aging (DFTA), which was the respondent's primary funding source, wrote to the respondent in response to the respondent's request to promote Polovetz to the position of acting director.

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[5] 332 NLRB No. 66, slip op. at 5.

[6] 330 NLRB 1100 (Members Fox and Liebman; Member Brame dissenting).

The letter stated that Polovetz did not meet the minimum requirements for the job and that if the respondent insisted on having Polovetz as acting director, DFTA would not assume any responsibility for any of her actions or decisions that adversely affected the Program or its clients.

Prior to learning of the June 1 letter and thereafter, social workers Peck, Mathew, and Kirkland, and bookkeeper Mercado, met once or twice a week to discuss their concerns about Polovetz' appointment as acting director. Mathew and Peck were concerned, inter alia, about Polovetz' lack of credentials because Polovetz could not sign off on cases, supervise their work, or provide assistance and guidance in the handling of more difficult cases. Mercado expressed her concern that the respondent insisted that she issue checks to Polovetz at the director's salary level without written authorization. Finally, in late July, Mathew called DFTA's program director to explain the employees' concerns. The DFTA official told the employees, in essence, to put their concerns in writing. The employees then composed the August 4 letter at issue here.

About August 10, Peck, Mathew, Kirkland, and Mercado sent the letter, dated August 4, to DFTA, with copies to the respondent's board of directors and certain local politicians. The letter begins by stating that the respondent "is in a state of crisis" and asks for DFTA's help. The letter goes on to state that since Austin's departure "[w]e are without appropriate supervision, and like any other agency, require professional social work supervision." The letter further states that

> Our dilemma has made it difficult for us to give our clients the highest quality care management. Instead, we are distracted by issues of office status, power and monetary gain, forcing us to ask ourselves questions like these:
>
> Who can we turn to when we have a question regarding a case? . . . .
>
> Who is supervising us on a regular basis and reviewing our cases?
>
> Who is updating us on new policies and procedures?

The letter concludes by threatening a work stoppage "if we do not see movement in the hiring of a new Director."

After Candice Harris, the respondent's executive director, and Florence Mack, the respondent's president, learned of the letter, they informed Mercado that the bookkeeping had been subcontracted and gave her 2 weeks' notice. After that, they met with Kirkland and Perry and informed them that if they did not rescind the letter they would be discharged. Kirkland agreed to rescind the letter and was not discharged. Perry and Mathew were discharged.

Noting that not all concerted activity was protected, the Board stated:

> In cases such as the present one, where employees seek to protest the selection or termination of a supervisor or other management official, an analysis of whether the employees' activities are protected under the Act is fact-based and depends on whether "such facts establish that the identity and capability of the supervisor involved has a direct impact on the employees' own job interests and on their performance of the work they are hired to do." *Dobbs Houses*, 135 NLRB 885, 888 (1962), enf. denied 325 F.2d 531 (5th Cir. 1963).[7]

Finding that the judge erred in finding "that the primary focus of the August 4 letter was" "the status, power and money being paid to Blanche Polovetz," the majority reversed the judge and found that the composing and sending of the August 4 letter was protected under the Act because the primary focus of the letter concerned the employees' terms and conditions of employment, i.e., lack of proper supervision. The majority also found the concerns that the employees had expressed to each other about the time they had to take from their own case work to advise each other on cases and to enter work into the computer, work formerly performed by Austin, although not mentioned in the August 4 letter, evidenced their concern about lack of proper supervision. It further found that since DFTA was the respondent's primary funding source, "the employees' demand for qualified supervision had a direct impact on their terms and conditions of employment because the employees could reasonably believe that their jobs might be in jeopardy if the Multi-Service Center's work did not meet with DFTA's approval and if, as DFTA required, the respondent did not hire a qualified director."[8]

As to Mercado, the majority found that her activities in composing and sending the August 4 letter were protected under the Act because Mercado shared the same concerns about DFTA as Peck and Mathew. Further, citing *Delta Health Center*,[9] the majority found that "although Mercado may not have been affected personally by some of the changes brought about by Polovetz' appointment as acting director," her involvement in assisting Peck and Mathew, who were immediately affected by the changes, fell within the "mutual aid or protection" clause of Section 7.[10]

In dissent, Member Brame found that whether the composing and sending of the August 4 letter constituted protected activity depended on whether the letter, "on its face, raised issues relating to Polovetz' supervision of Peck, Mathew, and Mercado that had a 'direct impact on

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[7] 330 NLRB 1100 at 1103 (footnote omitted).
[8] Id. at 1103 (footnote omitted).
[9] 310 NLRB 26, 43 (1993).
[10] 330 NLRB 1100 at 1105.

the employees' own job interests and work performance.'"[11] Finding that "management power and hierarchy" were the subjects of the letter, and not concerns about supervision, Member Brame found that the letter did not relate to the employees' terms and conditions of employment and therefore concluded that the composing and sending of the letter did not constitute protected activity.

3. *Weingarten* Rights for Nonunion Employees

In *Epilepsy Foundation of Northeast Ohio*,[12] a majority of the Board (Chairman Truesdale and Members Fox and Liebman) held that the rule set forth in the Supreme Court's decision in *NLRB v. J. Weingarten*,[13] affording unionized employees the right to have a union representative present at an investigatory interview which the employee reasonably believes might result in disciplinary action, also applies to employees in nonunion workplaces who seek the presence of a coworker at such investigatory interviews. In so doing, the Board overruled its decision in *E. I. DuPont & Co.*[14] Members Hurtgen and Brame issued separate dissenting opinions.

The case arose with the discharge of employee Arnis Borgs for his refusal to meet with two supervisors without coworker Ashraful Hasan present. Borgs had been reprimanded by the supervisors at a prior meeting and felt intimidated by the prospect of going alone to another such meeting. The following day Borgs was discharged for insubordination.

Applying the Board's decision in *DuPont*, which held that employees in nonunion workplaces do not have *Weingarten* rights entitling them to representation in investigatory interviews, the administrative law judge found that the respondent did not violate Section 8(a)(1) of the Act by discharging Borgs for his attempt to have a coworker present at the meeting. The Board majority, however, reversed the judge, stating that "the right to the presence of a representative is grounded in the rationale that the Act generally affords employees the opportunity to act together to address the issue of an employer's practice of imposing unjust punishment on employees."

Agreeing with the holding in *Materials Research Corp.*,[15] the majority noted that *Weingarten* emphasized that the right to the assistance of a representative is derived from the Section 7 protection

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[11] Id. at 1108, quoting *Bob Evans Farms v. NLRB*, 163 F.3d 1012, 1020–1021 (7th Cir. 1998).

[12] 331 NLRB No. 92 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting in part and Member Brame dissenting in part).

[13] 420 U.S. 251 (1975).

[14] 289 NLRB 627 (1988).

[15] 262 NLRB 1010 (1982).

afforded to concerted activity, rather than from a union's right pursuant to Section 9 to act as the employee's representative for the purpose of collective bargaining. Consequently, the majority found that a return to the *Materials Research* holding was warranted because the ability to avail oneself of this protection does not depend on whether the employees are represented by a union. The majority stated that the Board's decisions in *Sears, Roebuck & Co.*,[16] which overruled *Materials Research*, and *E. I. DuPont & Co.*,[17] which modified the *Sears* rationale, misconstrued the language of *Weingarten* and "erroneously limit its applicability to the unionized workplace." It found that the *Weingarten* rationale, grounded in the language of Section 7 giving employees the right to engage in "concerted activities for the purpose of mutual aid or protection," "is equally applicable in circumstances where employees are not represented by a union, for in these circumstances the right to have a coworker present at an investigatory interview also greatly enhances the employees' opportunities to act in concert to address their concern 'that the employer does not initiate or continue a practice of imposing punishment unjustly.'"

In his dissent, Member Hurtgen declared that the majority opinion will "take away from a nonunion employer its heretofore unfettered right under the Act to deal individually with its employees." He found that there are no compelling reasons for departing from the rule in *DuPont* that *Weingarten* rights do not apply to employees in nonunion facilities. He added that "[b]y grafting the representational rights of the unionized setting onto the nonunion workplace, employers who are legitimately pursuing investigations of employee conduct will face an unknown trip-wire placed there by the Board. Employers in a nonunion setting will generally be completely unaware of this right to representation that the Board is imposing on them."

In a separate dissent, Member Brame agreed with Member Hurtgen that the Respondent had not violated the Act by discharging Borgs for refusing to attend the interview without Hasan. In Member Brame's view, affording *Weingarten* rights to unrepresented employees is "contrary to the NLRA, which does not require nonunionized employers to 'deal with' unrecognized and uncertified employee representatives." Member Brame added that even if the majority's approach was cognizable under the Act, it is not a "reasonable balance of the competing interests of labor and management. Whereas a union representative in an investigatory interview can be of assistance to the individual employee, the employer, and the unit as a whole, a coworker-

[16] 274 NLRB 230 (1985).
[17] 289 NLRB 627 (1988).

representative is unlikely to be of much assistance to anyone, and thus burdening nonunionized employers with a requirement to allow such representation or forego investigatory interviews does not strike a fair balance."

4. Interrogation

In *Westwood Health Care Center*,[18] the Board held that the respondent did not violate Section 8(a)(3) and (1) of the Act by discharging Licensed Practical Nurse (LPN) Pamela Davis and Registered Nurse (RN) Nancy Duerr because of their union activities. The Board found, in agreement with the judge, that Davis and Duerr were statutory supervisors at the time of their discharges and that therefore their discharges were not unlawful. The Board majority reversed the judge to find that the respondent violated Section 8(a)(1) by unlawfully interrogating LPNs Joanne Plourde and Paula Brill.

The approximately 22 RNs and LPNs at the respondent's Westwood facility are unrepresented. LPN Davis is the weekend building supervisor at the Westwood facility and RN Duerr is the first floor nurse manager.

On February 4, 1991, the respondent's director of nursing, Andrea Levich, held a meeting with Davis, Duerr, and certain other employees at which Levich distributed new disciplinary warning notice forms to those present and advised the nurse managers and building supervisors that they were responsible, on their own authority, for the issuance of disciplinary warnings to employees. Several weeks after the February 4 meeting, Davis and Duerr invited a union representative to speak at a nurses' support group meeting. Upon learning of their participation in union activities on February 22, the respondent warned Davis and Duerr that, as statutory supervisors, they could not participate in union activities. When Davis and Duerr continued to participate in union activities, the respondent discharged them.

Explaining that "the issue here is whether Davis and Duerr were statutory supervisors prior to February 22, the date the respondent first learned of their union activities," the Board found that they were because "at least as of February 4, the Respondent [had] assigned to the building supervisors and nurse managers, including Davis and Duerr, the authority to effectively suspend employees and effectively to recommend their termination within the meaning of Section 2(11) of the Act."[19]

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[18] 330 NLRB 935 (Chairman Truesdale and Member Fox; Member Brame concurring in part and dissenting in part).

[19] Id. at 938.

Relying on the Board's holding in *Parker-Robb Chevrolet*,[20] the Board therefore found that the respondent did not violate Section 8(a)(3) when it discharged Davis and Duerr for engaging in union activity.

Chairman Truesdale and Member Fox reversed the judge to find that the respondent's questioning of LPNs Plourde and Brill on several occasions regarding their union activities constituted unlawful interrogation and therefore violated Section 8(a)(1) of the Act.

Relying on *Rossmore House*,[21] for the proposition that "management questioning of an employee is not violative of the Act unless it reasonably tends to restrain or coerce the questioned employee's exercise of his or her rights under Section 7 of the Act," the judge found that the respondent did not violate Section 8(a)(1) by questioning Plourde on various occasions about what transpired at a nurses' meeting which a union representative attended, what the nurses hoped to gain from union representation; and by questioning Brill about what she thought the union could do for the nurses.[22]

While finding that the appropriate test for determining whether the questioning of an employee constituted an unlawful interrogation was the test set out in *Rossmore House*,[23] Chairman Truesdale and Member Fox stated "that in analyzing alleged interrogations under the *Rossmore House* test, it is appropriate to consider what have come to be known as "the *Bourne* factors, so named because they were first set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964)."[24]

Applying the Bourne factors, they found that the respondent unlawfully interrogated Plourde. In reaching this conclusion, Chairman Truesdale and Member Fox explained that high-ranking management officials had questioned Plourde, that the questioning sometimes occurred at unusual times or places, and, "most significantly," that the conversations at issue took place against a "background of hostility" and unlawful conduct.[25] Relying, inter alia, on these same *Bourne* factors, they found that the respondent also violated Section 8(a)(1) by unlawfully interrogating Brill.[26]

Dissenting from the findings of unlawful interrogations, Member Brame observed that the Board had "vacillated" in its interrogation analysis, at times finding interrogations unlawful per se, while the courts

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[20] 262 NLRB 402 (1982), affd. sub nom. *Food & Commercial Workers Local 1095 v. NLRB*, 711 F.2d 383 (D.C. Cir. 1983).

[21] 269 NLRB 1176 (1984), affd. sub nom. Hotel & *Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

[22] 330 NLRB at 966.

[23] Supra.

[24] Id. at 939.

[25] Id. at 941.

[26] Id. at 943.

had "reaffirmed the right of employers, under Section 8(c), to ask their employees noncoercive questions during a union campaign."[27] Applying the *Bourne* factors to the interrogations at issue, Member Brame found, in agreement with the judge, that the interrogations were not unlawful because they were not coercive in nature. Member Brame stated that "[b]y finding violations where no coercion exists, the majority has failed to protect the Respondent's right to freedom of speech."[28] He concluded by observing that "[I]n approaching the issue of employee interrogations from a different point of view, i.e., in finding an employer's inquiries, noncoercive in nature, per se lawful, [he did] no more than what Section 8(c), the courts, and the Board itself, require."[29]

B. Employer Discrimination Against Employees

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

1. Employee's Use of Word "Scab"

In *Nor-Cal Beverage Co.*,[30] a Board majority (Members Fox and Liebman) held that an employee's use of the word "scab" during a discussion with another employee of whether to cross a picket line did not, by itself, remove that employee from Section 7 protection. The majority also reconfirmed that where disciplinary action is undisputedly correlated to protected conduct, a *Wright Line*[31] analysis to determine the employer's motive is not required.

Gould, the employee who was disciplined, was a driver at a beverage trucking facility. When a strike occurred at another of the employer's facilities whose drivers were represented by the Teamsters, Gould and the other drivers at his terminal were told by management that they would have to make deliveries across the Teamsters' picket line. Gould and another driver, Dugan, had two conversations in which Dugan indicated he looked forward to crossing the picket line and Gould unsuccessfully attempted to convince him not to do so. During these

[27] Id. at 947.
[28] Id. at 955
[29] Id.
[30] 330 NLRB 610 (Members Fox and Liebman; Member Hurtgen dissenting).
[31] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

conversations Gould indicated, in which the Board majority found to be a nonthreatening manner, that Dugan would be a "scab" if he crossed the picket line. The following day, on encountering Dugan and another employee arriving for work, Gould remarked "Oh, here's the company's favorite scabs." Dugan reported these exchanges to his supervisor, and Gould was issued a written warning.

Members Fox and Liebman found that when Gould used the term "scab" he was attempting to rally support for the Teamsters' strike and was therefore engaged in protected activity under Section 7. Noting that the Supreme Court has already observed, in *Letter Carriers v. Austin*,[32] that "the use of this particular epithet is common parlance in labor disputes," the majority held that Gould's use of the term in a nonthreatening manner did not deprive him of that protection. In addition, although the employer claimed to be enforcing a "no-harassment" policy in order to protect Dugan, the majority held that the undisputed correlation of the disciplinary action to Gould's protected conduct, in the course of which he used the word "scab," established that the employer's motive was unlawful. It was accordingly unnecessary to apply the test established in *Wright Line*,[33] for dual-motive cases.

In dissent, Member Hurtgen noted that "the fact that conduct occurs in the context of Section 7 activity does not immunize the conduct from discipline," and that "a rock thrown from a picket line does not immunize the rock-thrower from discipline." In his view, Dugan was harassed by Gould in the course of exercising his Section 7 rights, and the employer, which acted under its valid anti-harassment policy, "was not required to stand idly by" when Dugan complained.

2. Salting: Refusal-to-Consider and Hire Union Applicants

In *FES*,[34] the Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(3) of the Act by refusing to consider for employment nine members of Plumbers Local 520. However, "given the confusion in the law" concerning the treatment of allegations of discriminatory refusals to consider or to hire applicants for employment and the stage at which the employer may present its defense, "which we have attempted to clarify today," the Board remanded the proceeding to the judge to consider, in an unfair labor practice hearing, rather than at the compliance stage, whether any of the nine applicants would have been hired, absent the discriminatory refusal

[32] 418 U.S. 264 (1974).
[33] Supra.
[34] 331 NLRB No. 20 (Chairman Truesdale and Member Liebman; Member Fox concurring in part and dissenting in part; and Members Hurtgen and Brame concurring in separate opinions).

to consider. Oral arguments in this case were heard by the Board on August 10, 1999.

The Board outlined its framework for litigating refusal-to-consider and/or hire cases by making clear the elements of the violation, the burdens of the parties, and the stage at which issues are to be litigated. To establish a discriminatory refusal-to-hire violation, the General Counsel must, at the hearing on the merits, show: (1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, or in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants. If established, the respondent must show that it would not have hired the applicants even in the absence of their union activity or affiliation. The Board discussed the appropriate remedy for such violations and, in cases where the number of applicants exceeds the number of job openings, adopted the approach in *Starcon, Inc. v. NLRB*.[35]

To establish a discriminatory refusal-to-consider violation, the General Counsel must show at the hearing on the merits that (1) the respondent excluded applicants from a hiring process; and (2) antiunion animus contributed to the decision not to consider the applicants for employment. If established, the respondent must show that it would not have considered the applicants even in the absence of their union activity or affiliation. The Board discussed the appropriate remedy for this type of violation, including the requirement that the General Counsel must initiate a compliance proceeding if job openings arise after the beginning of the hearing on the merits. The Board stated that its approach "is appropriate notwithstanding the criticisms . . . that there can be no violation of Section 8(a)(3) when no hiring is taking place and that the Board is improperly litigating issues of liability in a compliance proceeding that is confined to remedial issues." Thus, it stated that (1) a discriminatory refusal to consider may violate Section 8(a)(3) even when no hiring is occurring; and (2) the compliance proceeding for a refusal-to-consider violation is an appropriate forum for determining whether there was an actual job loss as a result of that refusal.

Chairman Truesdale and Member Liebman signed the majority opinion. Member Hurtgen concurred with most of the majority opinion, but expressed his "somewhat different views" on two points: (1) that

[35] 176 F.3d 948 (7th Cir. 1999).

proof of a hiring process is essential to a refusal-to-consider violation; and (2) in agreement with Member Brame, that "wage compatibility" is not necessarily a code word for a discriminatory refusal to hire union members." Member Brame, concurring, stated that the clarified framework is "a substantial improvement over the ambiguous and, in many respects, conflicting mandates of the Board's prior case law in this area." Member Fox, concurring and dissenting in part, agreed with the majority's general framework, but did not agree that the General Counsel should have the burden to establish not only that antiunion animus contributed to the decision not to hire the alleged discriminates, but also that the applicants were qualified for the jobs or that the requirements were pretextual or not uniformly followed.

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 Section 8(a)(5) or Section 8(b)(3) of the Act if it does not fulfill its bargaining obligation.

1. Continuing Obligation to Check Off Dues

In *Hacienda Resort Hotel & Casino,*[36] a majority of the Board held that the employers did not violate Section 8(a)(5) and (1) when they dishonored the dues-checkoff provisions of expired collective-bargaining agreements. The Board majority based its decision on well-established precedent that an employer's obligation to continue a dues-checkoff arrangement expires with the collective-bargaining agreement that created the obligation.

The employers and the union had collective-bargaining relationships for over 30 years. Until May 31, 1994, the parties embodied their relationships in separate, but substantially identical, collective-bargaining agreements. On that date, each agreement expired. The parties negotiated unsuccessfully for successor agreements through that year.

Each of the expired agreements contained an identical dues-checkoff provision, referencing a voluntary payroll authorization form. The employers are located in a right-to-work state, and the agreements, therefore, did not, and legally could not, include union-security clauses requiring union membership as a condition of employment. The employers abided by the checkoff provisions during the terms of the

[36] 331 NLRB No. 89 (Chairman Truesdale and Members Hurtgen and Brame; Members Fox and Liebman dissenting).

agreements and for a period thereafter. After a hiatus in negotiations, in June 1995, the employers notified the union that they intended to cease checking off dues, and each subsequently did so, redirecting to the employees in the form of regular wages the money which was formerly deducted from employees' pay and remitted to the union.

The Board majority noted that most contractually established terms and conditions of employment are mandatory subjects of bargaining that cannot be changed unilaterally on contract expiration, but that there are some historical exceptions to that rule. Citing *Bethlehem Steel*[37] and numerous Board and court decisions citing and endorsing the holding of that case, the majority stated that the precedent has clearly come to stand for the general rule that an employer's dues-checkoff obligation terminates at contract expiration. Finding no compelling reasons to deviate from this well-settled and well-understood bright-line rule, the majority applied that precedent to dismiss the allegation that the employers' discontinuance of the checkoff procedure constituted an unlawful refusal to bargain because it represented a unilateral change in terms and conditions of employment.

Members Fox and Liebman, dissenting, concluded that there was no statutory or policy justification for excepting dues checkoff from the general rule that, following the expiration of a collective-bargaining agreement, an employer is obliged to maintain the status quo with regard to employees' terms and conditions of employment until the parties agree or bargain to impasse. They would overrule as contrary to the Act, those Board cases holding that an employer's obligation to check off dues terminates as a matter of law when the collective-bargaining agreement containing the checkoff provision expires. Members Fox and Liebman, therefore, would find the violation alleged against the employers, when, after their contracts with the union had expired but while negotiations for new agreements were still underway, they unilaterally ceased checking off dues for employees who, so far as the record showed, had valid authorizations on file.

2. Mandatory Bargaining Subject

In *Overnite Transportation Co.*,[38] the Board majority affirmed the administrative law judge's finding that the respondent violated Section 8(a)(5) of the Act by failing to notify the union and failing to offer to bargain about its decision to subcontract bargaining unit work.

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[37] 136 NLRB 1500, 1502 (1962), remanded on other grounds sub nom. *Marine & Shipbuilding Workers v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964).

[38] 330 NLRB 1275 (Members Fox and Liebman; Member Hurtgen dissenting in part).

The respondent had, at various times in the past, used nonemployee drivers during especially busy periods. This practice ceased in early 1996 but was resumed about the first week of July 1997, when the respondent decided to use two or three outside companies to furnish delivery drivers. From then on, the respondent regularly used anywhere from one to nine contract drivers to do work essentially the same as that done by its own drivers. The contract drivers almost always used the respondent's vehicles and worked under the same supervisors as the respondent's regular drivers. It was undisputed that the respondent never notified or offered to bargain with the union about its subcontracting decision.

Although the judge found that it was not clear whether the respondent's costs were reduced or increased by its use of the contract drivers, and that the subcontracting had no direct measurable adverse impact on the existing complement of unit employees, he nevertheless found the subcontracting unlawful under *Torrington Industries*.[39] The judge found, among other things, that there had been no change in the scope and direction of the respondent's business, and that the use of subcontractors to perform the same work as unit employees could over time have a continuing and increasing indirect impact on the unit and on the union's ability to bargain on the unit's behalf.

Members Fox and Liebman emphasized that there was no change in the scope and direction of the respondent's business, and found that a bargaining unit is adversely affected whenever unit work is given away, regardless of whether the work would otherwise have been done by employees already in the unit or by new employees who would have been hired into the unit. They held that *Torrington* subcontracting is not limited to situations where it has been affirmatively shown that the employer has taken work away from current unit employees. Members Fox and Liebman also found an additional 8(a)(5) unlawful refusal to provide information (not found by the judge), and modified the judge's remedy to allow the General Counsel to attempt to show at compliance that a backpay remedy was required.

Dissenting in part, Member Hurtgen stated that, in his view, *Torrington* was wrongly decided and that, under *First National Maintenance Corp. v. NLRB*,[40] because the potential benefits of collective bargaining did not outweigh the burdens that such bargaining would have placed on the conduct of the employer's business, the employer had lawfully refused to bargain about the subcontracting. Member Hurtgen also disagreed with the majority's requiring the

[39] 307 NLRB 809 (1992).
[40] 452 U.S. 666 (1981).

respondent to rescind its current subcontracts and with the majority's finding of the additional information request violation.

Turning to another case, the Board majority of Chairman Truesdale and Members Fox and Liebman in *Pall Biomedical Products Corp.*,[41] reversed the administrative law judge and found that the respondent violated Section 8(a)(5) and (1) of the Act by repudiating a letter of agreement it had with the union and by refusing to furnish the union with certain requested information. The majority also dismissed the allegation that the respondent unlawfully refused to provide the union with further access to its Port Washington facility.

The letter of agreement provided that the respondent would recognize the union at the Port Washington facility if one or more workers there performed unit work. The Board majority, relying on *Kroger Co.*,[42] and *Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.*,[43] held that the letter of agreement was a mandatory bargaining subject and that the respondent's repudiation of it therefore violated the Act. In so holding, the majority rejected the contention that the respondent's repudiation was privileged because the union insisted on applying the letter of agreement to obtain immediate recognition even though it had no showing of majority support at Port Washington. The majority stated that the respondent could have taken the "reasonable step" of rejecting the union's interpretation of the letter of assent without taking the "destructive step" of outright repudiation.

The majority further held that the respondent's refusal to provide requested information relating to the terms and conditions of employment at the Port Washington facility violated the Act even though the employees there were not unit members. The majority found that the request for information was not linked to the union's improper demand for recognition at Port Washington and that it was reasonably related to the union's enforcement of its rights under the letter of agreement. The majority further found that the respondent's refusal to grant the union access to the Port Washington facility did not violate the Act because the requests for access were tied to the union's demand for immediate recognition.

Member Hurtgen dissented. He would find that the letter of agreement was not a mandatory subject of bargaining because the clause would operate without regard to majority status which would result in a Section 8(a)(2) and 8(b)(1)(A) unfair labor practice. Member Hurtgen

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[41] 331 NLRB No. 192 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting).

[42] 219 NLRB 388 (1975).

[43] 404 U.S. 157 (1971).

stated that the respondent took the "reasonable step" of simply declining to apply the letter of agreement as requested by the union. He also would find that because the letter of agreement was a nonmandatory bargaining subject, the respondent was not required to furnish information sought with respect thereto.

3. Withdrawal of Recognition

In *Chelsea Industries*,[44] the Board majority reversed the administrative law judge's decision in this stipulated record case and found that the respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the union after the certification year expired, based on an antiunion petition obtained during the certification year.

Following litigation testing the union's certification that culminated in a Board bargaining order,[45] the parties began negotiating for an initial collective-bargaining agreement on February 3, 1994. Negotiations continued without reaching agreement, until the respondent withdrew recognition from the union on February 9, 1995, based on a petition it received November 21, 1994, indicating that a majority of employees no longer desired union representation.

The majority, in clarifying existing precedent, relied on *United Supermarkets*,[46] which held that an employer may not withdraw recognition outside the certification year on the basis of evidence of loss of majority acquired within the certification year. It rejected the administrative law judge's finding that *United Supermarkets* was undermined by *Rock-Tenn Co.*,[47] and other cases.

The majority, finding that *Rock-Tenn* rests on conflicting legal theories, overruled *Rock-Tenn* "to the extent that it suggests that, based on evidence received during the certification year, an employer may announce that it intends to withdraw recognition from the union at the end of the certification year." It found that the "anticipatory withdrawal of recognition" cases, on which *Rock-Tenn* erroneously relies, involved anticipatory withdrawal of recognition during the term of a collective-bargaining agreement and in the context of an established bargaining relationship, not during a certification year.

Dissenting Member Hurtgen would have applied *Rock-Tenn* and dismissed the unfair labor practice allegations, finding that although the employees signed the antiunion petition during the certification year,

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[44] 331 NLRB No. 184 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting).

[45] *Chelsea Industries*, 312 NLRB No. 191 (1993) (not reported in Board volumes).

[46] 287 NLRB 119 (1987), enfd. 862 F.2d 549 (5th Cir. 1989).

[47] 315 NLRB 670 (1994).

there was no evidence that this petition was tainted, or any subsequent evidence that they had changed their sentiment when the respondent withdrew recognition after the certification year expired.

In another case, *Bridgestone/Firestone, Inc.*,[48] the Board majority dismissed allegations that the respondent violated Section 8(a)(5) by withdrawing recognition from the union and refusing to bargain with it.[49]

The union and respondent had been bound to a series of collective-bargaining agreements, the most recent of which was effective from 1994 to 1997. Shortly before the agreement's expiration, the union served timely notice on the respondent that it wished to continue the existing agreement, but also negotiate changes or revisions to it in the areas of "**WAGE** [sic], **HOURS, WORKING CONDITIONS, AND FRINGE BENEFITS**." In requesting this bargaining, the union invoked the contract provision dealing with contract changes, rather than a separate provision covering notice of contract termination.

Following the union's notice, but before substantive bargaining had occurred, the respondent received petitions from a majority of unit employees stating that they no longer desired union representation. Based on these petitions, and other objective considerations, the respondent notified the union that it would not bargain for a successor agreement and that it would withdraw recognition at the contract's expiration.

The majority rejected the General Counsel's claim that the effect of the union's notice was to automatically renew the 1994–1997 agreement and to prevent the respondent—under contract bar principles—from raising a subsequent claim of good-faith doubt. Instead, the majority held that under contract-bar[50] and 8(a)(5)[51] precedent, the effect of the union's notice was to terminate at least those provisions on which it sought bargaining. The majority further held that "even assuming that the 1994–1997 agreement renewed as to its unopened contract provisions, the residual agreement would have been insufficient under *Appalachian Shale Products* principles to constitute a contract bar."[52]

In rejecting the General Counsel's contact bar claim, the majority distinguished *KCW Furniture Co.*,[53] and *Robert A. Barnes, Inc.*,[54] where contracts were held to automatically renew even as to issues on which

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[48] 331 NLRB No. 24 (Members Hurtgen and Brame; Member Fox dissenting).

[49] This case was presented directly to the Board based on a stipulated record.

[50] See, e.g., *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1002, 1003 (1958).

[51] See, e.g., *South Texas Chapter, AGC*, 190 NLRB 383 (1971); *Century Wine & Spirits*, 304 NLRB 338 (1991), subsequently vacated by a settlement 317 NLRB 1139 (1995).

[52] 121 NLRB 1160, 1196 (1958).

[53] 247 NLRB 541 (1980), enfd. 634 F.2d 436 (9th Cir. 1980).

[54] 268 NLRB 343 (1983).

bargaining was sought. The majority noted that, unlike here, *KCW* and *Robert Barnes* had language expressly providing that a notice to reopen was "nowise intended by the parties as a termination of nor shall it be anywise construed as a termination of" the agreement. The majority further noted that the holdings in *KCW* and *Robert Barnes* had not been extended beyond their narrow facts.[55]

Member Fox, in dissent, would find that the entire 1994–1997 contract automatically renewed because neither party filed a timely notice of contract expiration. In her view, the union's notice of its desire to negotiate contract changes or revisions was not the equivalent of a termination notice. Further, in her view, *KCW Furniture* and *Robert Barnes* are directly applicable and, accordingly, the employer violated Section 8(a)(5) by its withdrawal of recognition and refusal to bargain.

4. Midterm Contract Modification

In *AlliedSignal Aerospace*,[56] the Board majority reversed the administrative law judge and found that the respondent violated Section 8(a)(5) and 8(d) by its midterm cancellation of the contracting parties' "Competitiveness Agreement." In doing so, the majority rejected the judge's application of the "sound arguable basis" contract-interpretation standard set forth in *NCR Corp.*,[57] finding it not appropriate in the circumstances.

The dispute in the case arose from the respondent's termination, at midterm of the Competitiveness Agreement, of a job-protection accord, and its subsequent decision to relocate bargaining unit work from its Stratford, Connecticut plant to its plant in Phoenix, Arizona. The judge found it unnecessary to interpret definitively the agreement's language which the respondent had relied on for the termination. Instead, he found that under *NCR* the respondent's own interpretation provided a "sound arguable basis" for concluding that it was free to cancel the agreement, and accordingly, he found no violation in the termination. The judge dismissed the allegation that this conduct violated the Act and proceeded to other, related, unlawful-bargaining complaint allegations.

Contrary to the judge, the Board majority found that a "sound arguable basis" interpretation was improper in the context of the case:

> [T]he Board has applied the "sound arguable basis" standard in cases where solely "a contract dispute" was presented, see, e.g., *Thermo Electron Corp.*, 287 NLRB 820 (1987), and has refrained from its application where the circumstances involved more than a mere

[55] See, e.g., *Teamsters Local 507 (Klein News)*, 306 NLRB 118, 136 (1992).
[56] 330 NLRB 1201 (Members Fox and Liebman; Member Hurtgen dissenting).
[57] 271 NLRB 1212 (1984).

matter of contract interpretation, see, e.g., *Trojan Yacht*, 319 NLRB 741 fn. 5 (1995); *Flatbush Manor Care Center*, 315 NLRB 15 fn. 1 (1994); see also *Oak Cliff-Golman Baking Co*., 207 NLRB 1063, 1064 (1973), enfd. mem. 505 F.2d 1302 (5th Cir. 1974), cert. denied 423 U.S. 826 (1975) (employer's midterm unilateral change in the collective-bargaining agreement's wage provisions was "not just a mere breach of contract" but a "basic repudiation of the bargaining relationship").

> Application of the "sound arguable basis" standard is not appropriate in the instant case. The Respondent is alleged to have repudiated [the Competitiveness Agreement] in its entirety, not simply breached one of its provisions. The cancellation of [the agreement] opened the door to the Respondent's decision to shut down the engine operation at the Stratford plant and relocate it to Phoenix, over half a continent away, and is a basis for the Respondent's claim that it was free to make the relocation decision without bargaining with the Union. Thus, the issue of whether the Respondent could lawfully cancel [the agreement] is more than a mere contract dispute. It is situated at the threshold of matters going to the heart of the collective-bargaining relationship and to the Respondent's duty to bargain in accordance with the Act.[58]

The Board majority proceeded to interpret the relevant contractual language, and concluded that the respondent had cancelled the agreement without justification. The majority also determined that the Competitiveness Agreement constituted a mandatory bargaining subject because of its job-preservation purpose.[59] Given this status, the majority found that the respondent's termination of the agreement prior to its expiration violated Section 8(d) and 8(a)(5).

In his dissent, Member Hurtgen reasoned that a simple breach-of-contract allegation was at issue in the case, and that, given the circumstances, the respondent did not in fact breach the Competitiveness Agreement. He further opined that even if there had been a breach, the respondent had relied on a reasonable interpretation of the relevant contract provisions. Thus, in his view, *NCR* was applicable, and accordingly there was no violation of the Act.

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[58] 330 NLRB at 1204.

[59] The majority cited *Teamsters Union v. Oliver*, 358 U.S. 283, 294–295 (1959), in support of this finding.

5. Duty to Furnish Information

In *Roseburg Forest Products Co.*,[60] the Board held that the respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the union with requested information relevant to the administration of the parties' collective-bargaining agreement and to the processing of a grievance alleging a violation of the contractual seniority provision. Specifically, the Board rejected the respondent's contention that it was precluded by the Americans with Disabilities Act (ADA)[61] from providing the union requested information concerning an employee's medical condition and the respondent's accommodation of his medical disability.

The respondent awarded a highly sought-after position to a less senior employee pursuant to the employee's doctor's recommendation and in an effort to accommodate the employee's disability under the ADA. The union, upon filing a grievance and seeking to discuss alternative accommodations, requested information concerning the employee's medical condition and the respondent's accommodation decision. The respondent refused to provide the requested information, relying on the ADA's confidentiality requirements.

The Board relied on the EEOC's opinion letter addressing the specific facts of this case and stated:

> Applying the framework set forth in the EEOC's opinion letter, we find that the ADA "permits" the Respondent to provide the Union with [the employee's] medical information, but the "information [the Respondent] may share with [the Union] is strictly limited to that which is necessary for [the Union] to fulfill its role in the accommodation process. Necessary information often will not encompass the entire contents of an employee's medical file." In other words, only that medical information concerning [the employee] that the Union truly needs may be disclosed to it. All other medical information must be kept confidential by the Respondent.[62]

The Board did not order the respondent to furnish the requested information immediately. Rather, consistent with *GTE Southwest*,[63] the Board held that the appropriate remedy would give the parties an opportunity to bargain in good faith regarding the conditions under which the union's need for relevant information could be satisfied with appropriate safeguards protective of the respondent's legitimate

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[60] 331 NLRB No. 124 (Chairman Truesdale and Members Liebman and Brame).
[61] 42 U.S.C. §12101, et seq.
[62] Id., slip op. at 5.
[63] 329 NLRB 563 (1999).

confidentiality concerns. Recognizing that parties may return to the Board if they are unable to reach agreement on a method of protecting their respective interests, the Board nonetheless found "that first allowing the parties an opportunity to resolve their differences best effectuates the Act's policy of maintaining industrial peace through the resolution of workplace disputes by collective bargaining."

6. Remedial Bargaining Order

In *Raven Government Services*,[64] the Board affirmed the administrative law judge's decision finding that the respondent violated Section 8(a)(1) of the Act by interrogating an employee and violated Section 8(a)(5) by failing to provide requested bargaining information, refusing the union's request to resume contract negotiations, making unilateral changes to unit employees' terms and conditions of employment, bypassing the union and dealing directly with employees, and ultimately, withdrawing recognition from the union.

Citing *Control Services*,[65] the Board affirmed the judge's rejection of the respondent's defenses that a management-rights clause in the contract proposal that it unilaterally implemented after an asserted bargaining impasse justified its subsequent unilateral changes, direct dealings, and refusal to provide requested bargaining information. The Board agreed with the judge that the respondent's withdrawal of recognition was tainted by its serious unremedied unfair labor practices. The Board also agreed with the judge that the respondent's receipt of a hearsay report that a decertification petition had been circulating for several months prior to its withdrawal of recognition and the alleged "inactivity" of the union, did not provide the respondent with sufficient grounds to support a good-faith doubt that the union retained the support of a majority of the unit employees.

The Board reexamined its conclusions in view of the Supreme Court's decision in *Allentown Mack Sales & Service v. NLRB*,[66] which issued subsequent to the judge's decision, stating: "In that case, the Court held that 'doubt' meant 'uncertainty,' so that the test could be phrased in terms of whether the employer 'lacked a genuine, reasonably-based uncertainty about whether [the union] enjoyed the continuing support of a majority of unit employees."[67] The Board found it unnecessary to alter its conclusion that the union retained continuing majority support. An affirmative bargaining order was issued in this case as a remedy for the respondent's unlawful withdrawal of recognition from the union.

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[64] 331 NLRB No. 84 (Chairman Truesdale and Members Liebman and Hurtgen).
[65] 303 NLRB 481 (1991), enfd. mem. 975 F.2d 1551 (3d Cir. 1992).
[66] 522 U.S. 359 (1998).
[67] Id. at 367.

In cases where the Board issues an affirmative bargaining order, the U.S. Court of Appeals for the District of Columbia Circuit requires that the Board justify its determination based on the facts of each case.[68] "In the *Vincent* case, the court summarized its law as requiring that an affirmative bargaining order 'must be justified by a reasoned analysis that includes an explicit balancing of the three considerations: (1) the employees' Sec. 7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act.'"[69] Although, the Board disagreed with the court's requirement for the reasons set forth in *Caterair International*,[70] its decision in this case examined the facts and found that a "balancing of the three factors warrants an affirmative bargaining order" with its temporary decertification bar to fully remedy the allegations.

D. Union Interference with Employee Rights

Even as Section 8(a) of the Act imposes certain restrictions on employers, Section 8(b) limits the activities of labor organizations and their agents. Section 8(b)(1)(A), which is generally analogous to Section 8(a)(1), makes it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights, which generally guarantee them 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 acquisition and retention of membership.

1. Duty of Fair Representation

During the past fiscal year, the Board considered an important case involving the principle that a labor organization has a duty to represent fairly all employees in a bargaining unit for which it is statutory representative.

In *Carpenters Local 370 (Eastern Contractors Assn.)*,[71] the Board, reversing the administrative law judge, found that the respondent did not owe a duty of fair representation to the charging party regarding its operation of a nonexclusive hiring hall. Based on that finding, the Board dismissed the complaint.

The respondent has operated a nonexclusive hiring hall. Charging party Newell, a union member, regularly signed the respondent's out-of-work list. According to Newell, he heard from other members that

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[68] *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727.
[69] Id. at 738.
[70] 322 NLRB 64 (1996).
[71] 332 NLRB No. 25 (Members Fox, Liebman, and Hurtgen).

various individuals, whose names were lower on the list than his, were working when he was not. Accordingly, Newell wrote to the respondent requesting information about those persons who had been referred, or worked, at certain construction projects. The respondent did not respond to the charging party's request.

While finding that no duty of fair representation attached to the respondent's operation of a nonexclusive hiring hall, the judge concluded that the absence of that duty was not dispositive of the issue in this case. He acknowledged that the issue here was not discrimination in referrals, but he nonetheless found that the charging party was entitled to information to ascertain whether the union was properly referring members.

In reaching his conclusion that the respondent violated Section 8(b)(1)(A), the judge relied on the reasoning of another judge in *Hi-Way Paving Co.*[72] In *Hi-Way Paving*, the judge found that a union, in the context of a nonexclusive hiring hall, violated Section 8(b)(1)(A) by refusing to supply a member with information about referrals. The *Hi-Way Paving* judge found a violation even though he did not find that the union was retaliating for the member's Section 7 activity. However, the respondent union did not file exceptions to the judge's findings. The Board adopted the judge's 8(b)(1)(A) findings on a pro forma basis and had no occasion to address, or pass on, the merits of the judge's findings.[73] It applied the precedent of *Teamsters Local 460 (Superior Asphalt)*,[74] that set forth the established principle that no duty of fair representation attaches to a union's operation of a nonexclusive hiring hall.[75]

Absent either a finding that the union owed the charging party a duty of fair representation in these circumstances, or a finding that the union was retaliating against the charging party because he engaged in Section 7 activity, there is no basis to conclude that the union violated the Act by failing to provide Newell with the requested information. The Board noted that the case law, for this sort of violation of Section 8(b)(1)(A), requires that the General Counsel establish that the respondent union acted for a discriminatory motive, i.e., in retaliation for a member's

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[72] 297 NLRB 835 (1990).

[73] It is well settled that the Board's adoption of a portion of a judge's decision to which no exceptions are filed is not precedent for any other case. *ESI, Inc*., 296 NLRB 1319 fn. 3 (1989); *Anniston-Yard Mills*, 103 NLRB 1495 (1953).

[74] 300 NLRB 441 (1990).

[75] The Board did not address the *Hi-Way Paving* judge's reasoning. However, it, noted that the *Hi-Way Paving* judge concluded his analysis by citing *Operating Engineers Local 825 (Building Contractors)*, 284 NLRB 188 (1987), a case involving an exclusive hiring hall.

protected activity.[76] Thus, even assuming arguendo that the complaint alleged such a violation, the General Counsel failed to meet his burden. Finally, the Board noted that the General Counsel does not dispute that, under *Superior Asphalt*, no duty of fair representation attached to the Respondent's operation of its nonexclusive hiring hall.

In *Auto Workers Local 651 (General Motors Corp.)*,[77] the Board found that the respondent did not breach its duty of fair representation by failing to file a grievance on behalf of charging party Montague because the employer interviewed her with regard to her dissident union activity. Relying on the union's representation of Montague at the interviews and the subsequent dropping of the charges against her, the Board found that it was not unreasonable for the union to refuse to file a grievance over the holding of the interviews. The Board further found that there was insufficient evidence to establish that the union's conduct was discriminatory and in bad faith.

Montague signed a campaign leaflet expressing concerns about certain alleged conduct of the incumbent union president who was again running for the office of president. Shortly after the leaflet was distributed, Montague was called into an interview with management representatives under paragraph (76a) of the collective-bargaining agreement, which required that an employee be offered an interview for the opportunity of answering charges when discipline was contemplated. Two union representatives appeared on Montague's behalf.

During the interview, one of the union representatives told the management representatives that Montague was only giving information to employees in the leaflet and that under the union's constitution, individuals were free to criticize elected officers of the union. The meeting was adjourned until the next day. On the next day, management representatives told Montague during the interview that management did not condone activity such as the campaign leaflet. During the next week, management told Montague that the charges against her had been dropped.

After finding that the charges had been dropped, Montague requested that her union representative initiate an investigation by the Civil Rights Committee because she believed that the (76a) interviews harassed her and violated her civil rights. Montague was subsequently told that the union would not do anything because there was no grievance filed and the situation did not call for a civil rights investigation. Montague took no further action.

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[76] See, e.g., *Longshoremen ILA Local 20 (Ryon-Walsh Stevedoring Co.)*, 323 NLRB 1115, 1116–1117 (1997).

[77] 331 NLRB No. 59 (Members Fox, Liebman, and Hurtgen).

The Board stated that "it is well settled that a union's refusal to process a grievance does not violate the duty of fair representation where the union acted pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation regarding the merits of the complaint." The Board noted that paragraph (76a) of the agreement is a provision requiring that the employer conduct an interview when it is contemplating discipline, and that the employer was in fact contemplating disciplining Montague. The Board concluded that in such circumstances it was not unreasonable for the union to tell Montague that the holding of a paragraph (76a) interview was not the kind of matter over which it would file a grievance.

With respect to Montague's request for an investigation by the Civil Rights Committee, the Board found that under the plain language of the agreement, union activity is not listed among the forms of proscribed discrimination within the jurisdiction of the Civil Rights Committee. Therefore, a grievance alleging discrimination against Montague on the basis of her union activity would not be subject to referral to the Civil Rights Committee.

The Board further concluded that there was nothing in the record to indicate that the union could have obtained any further relief for Montague by filing a grievance. There was no evidence that the agreement authorized any remedy for employees unjustly threatened with discipline beyond the remedy the union obtained for Montague—the withdrawal of the charges against her.

Member Liebman noted that even if the contract arguably permitted an additional remedy, such as some form of cease-and-desist order, the union's failure to pursue such an avenue could not be considered unlawful. She stressed that the duty of fair representation does not require that every possible option be exercised. It requires, instead, that the union deal fairly in performing its duties.[78] The union met that standard by obtaining the withdrawal of the charges against Montague.

Finally, the Board found that the union's refusal to appoint Montague to a union position because she had "badmouthed" the incumbent president and the contract did not establish that the union's conduct toward her was discriminatory and in bad faith. The Board noted that a union has a legitimate interest in demanding loyalty from persons who serve in appointive positions.[79] The Board, therefore, found that the refusal to appoint Montague to a union position because of her opposition did not establish that the union was hostile to Montague in matters where it had no legitimate interest in her opposition.

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[78] *Teamsters Local 355*, 229 NLRB 1319 (1977), enfd. 597 F.2d 388 (4th Cir. 1979).
[79] *Shenango, Inc*., 237 NLRB 1355 (1978).

2. Internal Union Discipline

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 which "invades or frustrates an overriding policy of the labor laws."[80]

In *Office Employees Local 25 (Sandia National Laboratories)*,[81] the Board majority held that it will no longer proscribe intraunion discipline against union members under Section 8(b)(1)(A) of the Act when the matter involves a purely intraunion dispute and the intraunion discipline imposed does not interfere with the employee-employer relationship or contravene a policy of the Act. The majority opinion was by Chairman Truesdale and Members Fox and Liebman. Member Hurtgen concurred in the result. Member Brame dissented.

The majority found that the dispute at issue was essentially an intraunion factional quarrel over intraunion policies and politics between, among others, the union's two highest ranking elected officers, who each filed impeachment petitions against the other. The predominant issue underlying the dispute concerned the disposition of a $58,000 check in settlement of a lawsuit against the union. As a result of the dispute, internal union sanctions, including removal from union office and suspension or expulsion from union membership, were imposed on members of the losing faction, but no employment sanctions were implemented by any employer.

In dismissing the complaint, the majority overruled several cases in which the Board previously had found violations of the Act even in the absence of any meaningful correlation to the employment relationship or to the policies of the Act, including *Carpenters Local 22 (Graziano Construction Co.)*.[82]

The Board majority held:

> [T]he position that we adopt here represents a return to the law as it was before *Graziano Construction* expanded the reach of Section 8(b)(1)(A) and made the Board a forum for vindicating policies that

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

[81] 331 NLRB No. 193 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen concurring; and Member Brame dissenting).

[82] 195 NLRB 1 (1972).

> Congress intended to be enforced through the procedures of the Landrum Griffin Act.[83]

While reaffirming the principle that Section 7 of the Act encompasses the right of employees to concertedly oppose the policies of their union, the majority rejected the principle that Section 8(b)(1)(A) proscribes "virtually each and every form of intraunion dispute without regard to the employment context or the policies of the Act."

Member Hurtgen, concurring, agreed with the result reached by the majority, but on the basis that, as a matter of comity, efficiency, and economy, the Labor-Management Reporting and Disclosure Act (LMRDA) should be the primary means of enforcement when the underlying dispute is wholly intraunion in character and the discipline imposed by the union is wholly internal and nonmonetary.

Member Brame, in dissent, concluded that the union violated Section 8(b)(1)(A) of the Act because its discipline of the dissident members falls within a long line of Supreme Court, court of appeals, and Board precedent finding violations of Section 8(b)(1)(A). In Member Brame's view, the union's discipline of the dissident members did not reflect a legitimate union interest and impaired national labor policy under both Section 7 of the National Labor Relations Act and the LMRDA.

In *Operating Engineers Local 3 (Specialty Crushing)*,[84] the Board found that the union violated Section 8(b)(1)(A) of the Act by threatening to discipline and by disciplining the charging party members who continued to work for an employer that the union sought to organize.

The union repeatedly had sought to organize employees of the nonunion construction industry employer. Initially, the union sought recognition based on a proffered card check purporting to show that a majority of employees supported the union. The employer refused. The union then sought recognition in a Board-conducted election. The union lost the election by a 5 to 5 vote. Following the loss, the union continued its recognitional efforts. It visited the employer's jobsites and ordered its members working there to leave the sites or face fines, suspension, and expulsion from membership. When several members remained on the job, the union brought them up on internal charges and fined them.

Applying the three-prong test in *Scofield v. NLRB*,[85] the Board found that the threats and discipline violated Section 8(b)(1)(A) because they

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[83] 331 NLRB No. 193, slip op. at 3.

[84] 331 NLRB No. 60 (Chairman Truesdale and Members Hurtgen and Brame).

[85] 394 U.S. 423, 430 (1969). In *Scofield*, the Supreme Court held that a union may enforce properly adopted internal rules against its members only where the rules: (1) reflect a legitimate union interest; (2) impair no policy Congress has imbedded in labor laws; and (3) are reasonably enforced against union members who are free to leave and escape the rules.

were not imposed pursuant to a validly enforced rule.[86] Thus, prior to the Board election the charging party members had not been disciplined for working nonunion. Nor did the evidence establish that the union had a uniform policy of disciplining members who worked nonunion.

The Board also rejected the union's argument that the discipline was validly undertaken for the purpose of obtaining recognition from the employer. Because the union had recently lost the Board-conducted election, the Board found that it was foreclosed under Section 8(a)(2) from compelling the employer to recognize it as the 9(a) representative or to establish and 8(f) relationship. As to the latter, the Board stated: "Where, as here, the employees voted to reject a 9(a) status . . . the *Deklewa* principle likewise precludes the parties from establishing an 8(f) relationship during the year following the election."[87]

[86] *Electrical Workers IBEW Local 1579*, 316 NLRB 710 (1995).

[87] *John Deklewa & Sons*, 282 NLRB 1375, 1385 (1987); and *Luterbach Construction Co*., 315 NLRB 976, 978 (1994).

VI

Supreme Court Litigation

During fiscal year 2000, the Supreme Court decided, on the merits, no cases involving the Board. The Court did, however, grant the Board's petition for certiorari in *NLRB v. Kentucky River Community Care*.[1] The principal issue presented by the case is whether the Board's position,[2] that an employee's exercise of ordinary professional or technical judgment in directing less skilled employees to deliver services in accordance with employer-specified standards does not constitute the exercise of "independent judgment" that makes the employee a "supervisor" under Section 2(11) of the National Labor Relations Act, is a reasonable interpretation of the Act.[3] Two additional issues presented by the case are whether the Board permissibly requires the party who alleges that an employee is a "supervisor" to bear the burden of proving the individual's supervisory status;[4] and whether, applying its interpretation of "independent judgment" and its allocation of the burden of proof, the Board reasonably concluded that the registered nurses at issue were not supervisors.

In the *Kentucky River* case, the Board, applying its interpretation of "independent judgment" and its allocation of the burden of proving supervisory status, found that the residential care facility had not carried its burden of proving that its registered nurses were supervisors. The Sixth Circuit, consistent with its earlier precedents, rejected both the Board's interpretation of "independent judgment" and its burden of proof rule, and, contrary to the Board, found that the nurses at issue were supervisors.[5] In rejecting the Board's interpretation of "independent judgment," the decision of the Sixth Circuit conflicted with decisions of five other courts of appeals, which have upheld the Board's interpretation.[6] In rejecting the Board's allocation of the burden of

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[1] No. 99-1815, cert. granted.

[2] See *Providence Hospital*, 320 NLRB 717 (1996), enfd. 121 F.3d 548 (9th Cir. 1997); *Ten Broeck Commons*, 320 NLRB 806 (1996).

[3] A prior Board interpretation of Sec. 2(11), which rested on the statutory phrase "in the interest of the employer," had been rejected by the Supreme Court in *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571 (1994). See 59 NLRB Ann. Rep. 51–53 (1995).

[4] See, e.g., *St. Alphonsus Hospital*, 261 NLRB 620 (1982), enfd. mem. 703 F.2d 577 (9th Cir. 1983).

[5] *Kentucky River Community Care v. NLRB*, 193 F.3d 444 (6th Cir. 1999).

[6] See *Beverly Enterprises-Pennsylvania v. NLRB*, 129 F.3d 1269 (D.C. Cir. 1997) (per curiam); *NLRB v. Hilliard Development Corp*., 187 F.3d 133 (1st Cir. 1999); *NLRB v. Grancare, Inc*., 170 F.3d 662 (7th Cir. 1999) (en banc); *Beverly Enterprises, Minnesota, Inc. v. NLRB*, 148 F.3d 1042 (8th Cir. 1998); *Providence Alaska Medical Center v. NLRB*, 121 F.3d 548 (9th Cir. 1997).

proof, the decision of the Sixth Circuit conflicted with decisions of other courts of appeals, which have accepted the Board's method.[7] The Supreme Court granted certiorari to resolve the conflict of decisions on these issues, and heard oral argument on February 21, 2001.

However, the Sixth Circuit's decision in *Kentucky River* was consistent with the decisions of two courts of appeals, which have rejected the Board's interpretation. See *Beverly Enterprises, Virginia v. NLRB*, 165 F.3d 290 (4th Cir. 1999) (en banc); *NLRB v. Attleboro Associates, Ltd*., 176 F.3d 154 (3d Cir. 1999).

[7] See, e.g., *Beverly Enterprises, Massachusetts v. NLRB*, 165 F.3d 960 (D.C. Cir. 1999); *Schnuck Markets, Inc. v. NLRB*, 961 F.2d 700 (8th Cir. 1992).

VII

Enforcement Litigation

A. Corporatewide Remedies

The "statutory command [of Section 10(c) of the Act] . . . vest[s] in the Board the primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review."[1] In *Beverly California Corp. v. NLRB*,[2] the Seventh Circuit enforced a corporate-wide cease-and-desist and notice posting order the Board had issued against Beverly California, which operates nursing homes nationwide.[3] In explaining the need for such a remedy, the Board relied on the employer's "demonstrated proclivity to violate the Act"—a total of 240 unfair labor practice violations committed at about 61 different facilities—and the continued involvement of the employer's divisional and regional personnel in those unfair labor practices, which demonstrated to the Board that "the violations could not reasonably be viewed as isolated occurrences with no connection to central management."[4]

The court enforced the Board's corporate-wide remedy, holding that the Board could conclude that nothing less than such relief "would do the job of correcting the proclivity [Beverly] has shown for committing or tolerating unfair labor practices at a significant number of its facilities."[5] Noting that the employer's unfair labor practices had continued despite prior Board orders,[6] the court held that "especially after specific remedies in [the 1993 case] did not appear to stop the efforts of the company's central management to stop unions in any way possible," the Board was entitled to conclude "that the time was past for piecemeal relief."[7]

B. Unions' Duties to Represent Fairly Nonmembers

In *Communications Workers v. Beck*,[8] 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

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[1] *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 898 (1984).
[2] 227 F.3d 817, 846–847.
[3] *Beverly California Corp.*, 326 NLRB 232, 235–238 (1998).
[4] 326 NLRB at 236–238.
[5] 227 F.3d at 847.
[6] *See Beverly California Corp.*, 310 NLRB 222 (1993), enf. denied in part sub nom. *Torrington Extend-A-Care Employee Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994).
[7] 227 F.3d at 847.
[8] 487 U.S. 735 (1988).

that are not germane to collective bargaining, contract administration, and grievance adjustment. In *Marquez v. Screen Actors Guild*,[9] the Supreme Court upheld the facial validity of a union-security clause which required an employee to be "a member of the Union in good standing," because it tracked the language of Section 8(a)(3) of the Act.

Applying *Beck* and *Marquez*, as well as the teachings of *NLRB v. General Motors Corp.*,[10] two courts agreed with the Board that similar union-security clauses could not, standing alone, support a finding that the respective unions violated their duty of fair representation. In *Cecil v. NLRB*,[11] the Sixth Circuit affirmed the Board's determination that a union-security clause requiring employees to remain "members in good standing" was facially valid. In *Bloom v. NLRB*,[12] the Eighth Circuit, upon remand from the Supreme Court in light of *Marquez*, revisited its analysis of a union-security clause that required employees to "become and remain members of the Union." On two previous occasions, the court concluded that the clause was unlawful and misled employees regarding their *Beck* right to pay only an agency fee.[13] On remand, however, the court held that the clause was valid because it tracked the statutory language and informed employees of options other than full membership in the union.[14]

In *Penrod v. NLRB*[15] and *Thomas v. NLRB*,[16] the District of Columbia Circuit addressed several issues surrounding the sufficiency of financial information a union was required to disclose to employees. Relying on *Chicago Teachers Local 1 v. Hudson*,[17] and *Abrams v. Communication Workers*,[18] and in disagreement with the Board, the court in *Penrod* held that the union's initial notice of *Beck* rights that is provided to new employees and nonmembers must include the percentage reduction in dues that would result should the employee object to the use of his or her dues for purposes other than representational activities.[19] The court also rejected the Board's finding that the union's financial disclosure statement given to *Beck* objectors adequately explained the various categories of expenditures, including payments to the union's affiliates,

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[9] 525 U.S. 33 (1998).
[10] 373 U.S. 734 (1963).
[11] 194 F.3d 1311.
[12] 209 F.3d 1060.
[13] 209 F.3d at 1061–1063.
[14] Id. at 1064.
[15] 203 F.3d 41.
[16] 213 F.3d 651.
[17] 475 U.S. 292 (1986).
[18] 59 F.3d 1373 (1995).
[19] 203 F.3d at 47–48. In *Thomas*, 213 F.3d at 655–656, the court relied on *Penrod* to reach the same result, but remanded the case to the Board to devise an appropriate remedy.

and therefore concluded that the union had failed to provide objectors a basis for challenging the union's calculation of reduced fees.[20]

In *Thomas*, the court agreed with the Board that in calculating reduced dues, the union was entitled to rely on a presumption that its local union spent the same proportion of its dues and fees on chargeable representational activities as the international union spent on those same activities.[21] The court concluded that the union's use of this so-called "local presumption" was neither *per se* unlawful nor unreasonable under the circumstances, given evidence that the local union actually spent more on chargeable activities than the international.[22]

C. *Gissel* Bargaining Orders

In *NLRB v. General Fabrications Corp.*,[23] the Sixth Circuit enforced both *Gissel*[24] and certification bargaining orders, thus affirming the Board's long-held view that the two are not mutually exclusive remedies. In the initial unfair labor practice proceeding, the Board found that the employer had unlawfully discharged four employees, who subsequently cast challenged ballots in the election, and had otherwise engaged in misconduct that undermined the union's majority status, all of which warranted a remedial bargaining order.[25] At the same time, the Board ordered those ballots opened and counted, which resulted in a certification that the union had won the election and was the employees' bargaining representative. In a subsequent proceeding, the Board found that the employer's refusal to honor the union's certification and bargain violated Section 8(a)(5) of the Act, and ordered the employer to bargain with the union.[26] The Board explained, and the court agreed, that the union's certification did not affect the Board's prior finding that the employer also violated the Act by rejecting the union's card-majority-based bargaining demand and committing egregious unfair labor practices designed to undermine the union's majority.[27]

In *Traction Wholesale Center v. NLRB*,[28] the District of Columbia Circuit enforced a *Gissel* bargaining order, noting, in agreement with the Board, that the employer's unfair labor practices were calculated. The employer threatened significant economic interests of the employees as

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[20] Id. at 46–47.
[21] 213 F.3d at 660–661.
[22] Id.
[23] 222 F.3d 218.
[24] *See NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).
[25] *General Fabrications Corp.*, 328 NLRB 1114 (1999).
[26] *General Fabrications Corp.*, 330 NLRB 410.
[27] Id. at fn. 3.
[28] 216 F.3d 92.

part of a series of unlawful actions.[29] The court also concluded that the Board had adequately explained why traditional remedies would not erase the impact of the employer's unlawful conduct, and that the Board was not required to consider employee turnover because the employer had failed to timely raise that objection to the issuance of a bargaining order.[30]

D. Duty to Bargain in Good Faith

In *Detroit Typographical Union No. 18 v. NLRB,*[31] the District of Columbia Circuit rejected the Board's finding[32] that the Detroit News had committed several unfair labor practices when it implemented proposals it had offered during negotiations for a new collective-bargaining agreement, and therefore, the court concluded, the strikers were not unfair labor practice strikers.[33] The Board had found that, even if there had been a good-faith impasse in negotiations, under *McClatchy Newspapers,*[34] the employer was not privileged to implement its merit pay proposal, because, without objective procedures and criteria, the proposed merit pay plan was inherently destructive of the statutory collective-bargaining process. The court, however, distinguished *McClatchy* factually and concluded that the merit pay plan was sufficiently defined to be implemented upon impasse.[35] In addition, the court rejected the Board's finding that the employer had failed to bargain in good faith because it did not provide the union with details of the proposed merit pay plan. The court concluded that the union was "unalterably" opposed to merit pay and therefore the absence of those details was not a stumbling block to bargaining.[36]

E. Section 9(a) Bargaining Relationships in the Construction Industry

Under *John Deklewa & Sons,*[37] the Board presumes that a contract formed between a union and an employer that is primarily engaged in the construction industry is governed by Section 8(f) of the Act. Section 8(f) permits such an agreement without proof that the union represents a majority of the employer's employees. If certain conditions are met,

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[29] Id. at 105–107.
[30] Id. at 107.
[31] 216 F.3d 109.
[32] 326 NLRB 700 (1998).
[33] 216 F.3d at 122.
[34] 321 NLRB 1386 (1998), enfd. 131 F.3d 1026 (D.C. Cir. 1997), cert. denied 524 U.S. 937 (1998).
[35] 216 F.3d at 118.
[36] Id. at 118–119.
[37] 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB,* 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

however, those parties can establish a bargaining relationship under Section 9(a) of the Act.

In *NLRB v. Triple C Maintenance, Inc.*,[38] the Tenth Circuit concluded that the parties' contract language, alone, could satisfy those conditions, if it conclusively shows that they intended a 9(a) relationship. The court also concluded that any attack on the 9(a) relationship based on the claim that the union, in fact, lacked majority status at the time it was recognized by the employer, should be barred by the passage of a reasonable period—akin to Section 10(b)'s 6-month limitations period—after recognition.[39] In *NLRB v. Oklahoma Installation Co.*,[40] however, the same court found that the parties' contract language did not show "either by reference to Section 9(a) or by other language," that the employer had granted 9(a) recognition to the union.[41]

[38] 219 F.3d 1147.
[39] Id. at 1156–1159.
[40] 219 F.3d 1160.
[41] Id. at 1165.

VIII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding.[1] Section 10(j) proceedings can be initiated after issuance of an unfair labor practice complaint under Section 10(b) of the Act against any employer or labor organization. In fiscal year 2000, the Board filed a total of 47 petitions for temporary injunctive relief under Section 10(j). All of these petitions were filed against employers. Seven cases authorized in the prior year were also pending in courts at the beginning of the year. Of these 54 cases, 8 were settled or adjusted prior to court action, and 6 cases were withdrawn prior to a court decision. Courts granted injunctions in 20 cases and denied them in 11 cases. Nine cases remained pending in district courts at the end of the fiscal year.

District courts granted injunctions against employers in 20 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 employer withdrawals of recognition from incumbent unions, violations aimed at undermining the status of incumbent unions, and patterns of employer "bad faith" bargaining.

One significant case during the period involved the reinstatement of over 500 unfair labor practice strikers who struck to protest the employer's bad faith bargaining during the union's initial year of certification. In *Calatrello v. NSA*,[3] the Board alleged that the employer engaged in an overall pattern of bargaining in bad faith to avoid reaching agreement with the newly certified union and refused to reinstate the former strikers after their unconditional offer to return to work. The 10(j) petition also alleged that the strike was an unfair labor practice strike because it was triggered by the employer's failure to bargain in good faith and the employer's unlawful solicitations of employees to resign from the union.

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[1] See, e.g., *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559 (7th Cir. 1996), cert. denied 519 U.S. 1055 (1997); *Kobell v. United Refining Co.*, 159 LRRM 2762 (W.D. Pa. 1998); *Dunbar v. Carrier Corp.*, 66 F. Supp.2d 346 (N.D.N.Y. 1999). The decisions in *United Refining* and *Carrier Corp.* were discussed in the 1999 Annual Report.

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

[3] 164 LRRM 2500 (W.D. Ky.).

The district court agreed with the Board and ordered the employer to offer interim reinstatement to the former strikers and bargain in good faith with the union. In doing so, the court relied on the union's recent certification and attempt to negotiate a first contract, which made it particularly vulnerable to the employer's unlawful conduct. The court found that, without the reinstatement of the former striking employees, the union had very little support remaining in the workplace and would be forced to make concessions in bargaining to get the former strikers reinstated.[4] The court also found that, although the violations had occurred 1-1/2 years earlier, the status quo could be restored because there was no evidence that employees had scattered and the union would continue to lose support as the Board's proceedings continued.[5] Finally, the court refused to consider the alleged hardship of the replacement workers.[6]

In five cases, the Board obtained injunctions requiring successor employers to recognize and bargain with incumbent unions. In *Donner v. NRNH, Inc.*,[7] and *Tellem v. The New Silver Palace Restaurant*,[8] courts ordered successor employers to offer interim employment to former employees of their predecessors; rescind unilateral changes in terms and conditions of employment; and recognize and bargain in good faith with the unions that had represented their respective unit employees prior to the change in ownership of the businesses. In *Scott v. Catholic Healthcare West Bay Area Region*,[9] the court ordered the employer to recognize and bargain with the union regarding a unit of registered nurses at one hospital following that hospital's consolidation with another hospital. Also, in *Dunbar v. Concord Associates, LP*,[10] the court ordered the successor to recognize and bargain with the union that had represented employees of a large resort even though the successor was operating on a much smaller scale during a long and uncertain period of renovation and construction.

Finally, one of the injunctions obtained against successor employers involved the Board's recently announced "successor bar" rule under *St. Elizabeth Manor, Inc.*,[11] and *Norelli v. Outrigger Wailea Resort*,[12] involved a union that had been certified to represent the resort's employees just 5 months before the facility was sold. Approximately 10

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[4] 164 LRRM at 2503.
[5] 164 LRRM at 2502, citing *Gottfried v. Frankel*, 818 F.2d 485, 495 (6th Cir. 1987), and 2503.
[6] 164 LRRM at 2503.
[7] 163 LRRM 2033 (W.D.N.Y.).
[8] 99 Civ. 12431 (S.D.N.Y.).
[9] C 00-20386 JW (N.D. Cal.).
[10] 99-CV-9576 (CM) (S.D.N.Y.).
[11] 329 NLRB 341 (1999).
[12] Misc. No. 00-00126 HG-LEK (D. Hi.).

months after the transfer of ownership, and after about 13 bargaining sessions, the successor employer withdrew recognition from the union following the filing of a decertification petition. The Board sought a 10(j) injunction, arguing that the successor employer was obligated to bargain for a reasonable period of time, during which the union was entitled to bargain without challenge to its majority status. The district court granted 10(j) relief, including an affirmative order that the employer recognize and bargain collectively with the union as the exclusive collective-bargaining representative of its employees.

One case during the period required the institution of civil contempt proceedings to obtain compliance with an injunction obtained during the previous fiscal year.[13] In the initial case, the court ordered the employer to offer interim reinstatement to former striking employees, bargain with the recently certified union, and honor the terms of an agreement negotiated by the parties. The Board's postdecree investigation showed that the employer refused to reinstate the employees, meet with the union to bargain, provide relevant requested information, and comply with various provisions of the parties' negotiated collective-bargaining agreement. Based on the Board's evidence, the court issued a civil contempt order against the employer, as well as its two owners, individually.[14] In addition to ordering immediate compliance with the original injunction, the court also awarded backpay to the employees as compensatory damages and $50,000 in attorneys' fees to the Board.

During this fiscal year, appellate courts affirmed two cases involving employer interference in union organizing campaigns. In *Sharp v. Webco Industries, Inc.*,[15] a case discussed in last year's annual report, the Tenth Circuit affirmed the interim reinstatement of an employee who was discharged and five employees who were selectively laid off for participating in a union organizing campaign that the employer had previously unlawfully disrupted. In only its second 10(j) decision, the Tenth Circuit held that, in light of the employer's coercion, both in the instant and previous cases, interim reinstatement was reasonably necessary to preserve the Board's ultimate remedial power.[16] In *Scott v. Elko General Hospital*,[17] the Ninth Circuit affirmed the district court's interim reinstatement of a discriminatee who was discharged in violation of Section 8(a)(1) because of her advocacy of employee concerns at a

[13] See *Aguayo v. South Coast Refuse Corp.*, 161 LRRM 2867 (C.D. Cal. 1999), discussed in the 1999 Annual Report.

[14] *Aguayo v. South Coast Refuse Corp.*, 2000 WL 1280915 and 1280926, (C.D. Cal.); Case No. CV 99-3053 (AHM (AIJx)).

[15] 225 F.3d 1130 (10th Cir. 2000).

[16] 225 F.3d at 1135.

[17] Nos. 99-16755, 00–15141 (9th Cir. 2000).

meeting with management. Rejecting the company's contention that a discharge for protected concerted, rather than union, activity cannot warrant interim reinstatement, the court held that a violation of any provision of Section 8 which threatens to undermine the collective-bargaining process may support 10(j) relief. The court further held that the district court abused its discretion by limiting interim reinstatement to a six-month period in circumstances where continuing injunctive relief remained just and proper.

The appropriate weight of an administrative law judge's decision was an issue in 10(j) appellate litigation during this fiscal year. In *Silverman v. Key Food*,[18] the Second Circuit reversed the district court's refusal to grant 10(j) relief. The district court found there was no reasonable cause to believe that the company unlawfully discharged an employee because of its union animus, even though an administrative law judge had already found an 8(a)(3) discharge violation. The Court concluded that the district court improperly resolved conflicting evidence in the record before the administrative law judge and improperly concluded that the Board will likely overturn the administrative law judge's findings of fact. The Second Circuit held that in assessing reasonable cause, the district court should have given appropriate deference both to the administrative law judge's credibility assessments and to his finding of a violation.[19]

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),[20] or Section 8(b)(7),[21] and against an employer or union charged with a violation of Section 8(e),[22] 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

[18] 196 F.3d 334 (2d Cir. 1999).

[19] 196 F.3d at 337–338.

[20] 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 the 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).

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

[22] 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.

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.[23] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 10 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with three cases pending at the beginning of the period, one case was settled, one was withdrawn, and four were pending court action at the close of the report year. During this period, six petitions went to final order, the courts granting injunctions in five cases and denying them in one case. Injunctions were issued in one case involving secondary boycott action proscribed by Section 8(b)(4)(B), and in one case involving jurisdictional disputes in violation of Section 8(b)(4)(D). There were two injunctions issued in cases to proscribe alleged recognitional or organizational picketing in violation of Section 8(b)(7).

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

IX

Contempt Litigation

During fiscal year 2000, 213 cases were referred to the Contempt Litigation and Compliance Branch (CLCB) for advice, or for consideration for contempt or other appropriate action to achieve compliance with court decrees. In addition, CLCB conducted 150 asset/entity database investigations to assist Regions in their compliance efforts. Voluntary compliance was achieved in 27 cases during the fiscal year, without the necessity of filing a contempt petition, while in 40 others, it was determined that contempt was not warranted.

During the same period, 22 civil contempt or equivalent proceedings were instituted, including 2 in which body attachment was sought. A number of other proceedings were also instituted by CLCB during fiscal year 2000, including two requests for writs of pre- or post-judgment garnishment under the Federal Debt Collection Procedures Act (FDCPA); and four proceedings to enforce administrative subpoenas.

Sixteen civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year. CLCB also obtained one writ of post-judgment garnishment; one injunctive order requiring a respondent to rescind unilateral changes and to bargain with a labor organization during the pendency of contempt proceedings; and three orders requiring the disbursement of garnished funds.

During the fiscal year, CLCB collected $25,736 in fines and $864,369 in backpay, while recouping $26,116 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases arose during the fiscal year. In *Beverly Farm Foundation*,[1] the Board initiated contempt proceedings in the Seventh Circuit against the employer for engaging in bargaining violations in violation of a judgment issued by the court in 1998. In conjunction with the initiation of the civil contempt action, the Board also filed an emergency motion with the court seeking pendente lite injunctive relief. On November 2, 1999, the court, pursuant to Section 10(e) of the National Labor Relations Act (29 U.S.C. § 160(e)), entered an order[2] requiring the employer, inter alia, to immediately rescind various actions allegedly violative of the court's judgment and to immediately recognize and bargain with the union representing the company's employees. The order further specifically provides that

[1] 323 NLRB 787 (1997).
[2] 162 LRRM 2729 (7th Cir. 1999).

sanctions for any violation of the order "may include the assessment of deterrent and/or compensatory fines in an amount to be determined by the court and the issuance of writs of body attachment in order to compel compliance." The parties ultimately reached a collective bargaining agreement and the contempt case was settled by a consent order approved by the Seventh Circuit, which included a prospective compliance fine schedule for future violations.

In *Circle City Asphalt, LLC,*[3] the U.S. Bankruptcy Court for the Southern District of Indiana addressed a critical matter of jurisdictional conflict between the Bankruptcy Code and the NLRA. The Board is a backpay creditor of *Circle City Asphalt.* As part of the bankruptcy proceeding, the Debtor and Chapter 11 Trustee sought authority to sell substantially all of the Debtor's assets "free and clear" of the claims and liens of all creditors, including those of the Board. In response, the Board filed limited objections to the free and clear sale seeking to preserve the Board's exclusive jurisdiction to require any entity found to be a "successor" under Federal labor law to comply with the Board's order.

On June 19, 2000, the court entered an order approving the "free and clear sale," but preserving the jurisdiction of the Board with respect to any labor law successorship issues that may arise. In this regard the order specifically provides that "nothing in the Order shall be deemed to address the issue of whether the Buyer, or any other purchaser, may be held liable under the National Labor Relations Act as a successor employer."

CLCB also obtained a final settlement in a 14 year-old-dispute under which 60 former employees will receive a total of $750,000 in back wages (*Horizons Hotel/Hotel Associates*). The case arose in 1986 from the takeover by *Horizons* of the Carib Inn in San Juan, Puerto Rico. The Board held in 1993 that *Horizons* had violated Sections 8(a)(1), (3) and (5) of the Act by refusing to recognize and bargain with Local 610 of the Hotel Employees Union, and by unlawfully refusing to consider for hire employees formerly employed by the hotel's predecessor because of the employees' union affiliation. The First Circuit enforced this order as well as a supplemental Board order finding that Hotel Associates was a disguised continuance of Horizons and liquidating backpay owed under the prior order. CLCB subsequently instituted civil contempt proceedings against Horizons/Hotel Associates and its principals based on their alleged failure to comply with certain administrative subpoenas issued by the Board; to comply with portions of the Board's enforced

[3] 330 NLRB 282 (1999).

orders; and to comply with a protective restraining order issued by the First Circuit. After exhaustive litigation efforts, the parties settled the matter, which included the substantial amount of backpay noted above.

Finally, in *Harris Teeter*,[4] the D.C. Circuit addressed what standards need to be met before it will consider vacating a judgment obtained by the Board. The company petitioned the court to vacate a nationwide consent order that the court had issued in 1986. That decree broadly prohibited Section 8(a)(3) and (1) conduct at all of the company's stores, wherever situated, and imposed a prospective noncompliance of $10,000 for each future violation. The court rejected the company's efforts. It stated that vacation of a decree is an "extraordinary remedy" and that a moving party needs to establish: (1) there has been a significant change in facts or law; (2) there is harm resulting from the decree's continuing effect distinct from the harm inherent in any injunctive restraint; and (3) there has appeared unforeseen obstacles which make compliance with the decree onerous. Personnel changes, internal reorganization, internal compliance mechanisms instituted to effectuate the decree, increase in facility size or company growth and the alleged "stigma" attached to being subject to a consent order do not constitute the sort of changes which would warrant revision or vacation of a decree. Finally, the court held that while good faith compliance with a decree is relevant, it is not in and of itself sufficient to warrant relief without meeting the other criteria set forth above. In this regard, it noted that "the reduction in violation frequency might be a reflection of the effectiveness of the prospective fine schedule contained in the consent order rather than the result of good intentions on the company's part."

[4] 215 F.3d 32 (D.C. Cir. 2000).

X

Special Litigation

A. Preemption Litigation

In *NLRB et al. v. Pueblo of San Juan*,[1] a divided panel of the Tenth Circuit (District Judge Cook and Judge Holloway, Judge Murphy dissenting), affirmed a district court decision finding that the Act does not preempt a tribal ordinance which prohibits private employers and unions from entering into union-security agreements. The Board sued the Tribe in district court to invalidate the tribal ordinance, as well as a lease provision between the Tribe and a private employer which similarly prohibits the employer from agreeing to a union-security clause which would require tribal members to be members of a union or pay dues to a union. A union which represented the employees of that private employer filed charges with the Board, and intervened in the lawsuit. In upholding the ordinance and lease provision, the panel recognized that Section 8(a)(3) of the Act permits employers and unions to agree to union security. However, because Section 14(b) of the Act contains an exception allowing "State or Territorial law" to prohibit union-security agreements, the panel concluded that "by implication" Section 14(b) extends to allow tribes to prohibit such agreements as well. The panel relied on Tenth Circuit cases in which the Court determined that Federal employment discrimination statutes would not apply to tribes because such application would have abrogated treaty rights. The panel further reasoned that the lease provisions at issue are "internal economic matters which directly affect a sovereign's right of self-government."[2] In a dissenting opinion, Judge Murphy noted that Section 8(a)(3) of the Act articulates a national policy that union-security agreements are valid as a matter of Federal law. He further concluded that Section 14(b) has been interpreted as "an extremely limited exception" to Section 8(a)(3), and that Congress' relinquishment of Federal control over union security agreements "is confined to those situations and entities specifically delineated in § 14(b)."[3]

The Tenth Circuit granted the Board's and the union's petitions for rehearing en banc. Oral argument before the en banc Court took place May 15, 2001, and a decision is pending.

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[1] Nos. 99-2011, 99-2030,WL1410839 (opinion withdrawn, en banc decision pending).
[2] WL 1410839, at *7.
[3] WL 1410839, at *10.

B. Litigation Concerning the Board's Jurisdiction

In *Blair Manor v. 1115 Nursing Home & Service Employees Union,*[4] the District Court for the Eastern District of New York granted the Board's motions to intervene and to dismiss complaint as well as 1115's motion to dismiss complaint. At the time suit was filed, 1115 had served for over 10 years as the collective-bargaining representative of employees at Blair Manor and its predecessor. After Blair Manor and 1115 had entered into their most recent collective-bargaining agreement, 1115 attempted to assign the agreement to an affiliated SEIU union, District 1199. Blair Manor refused to recognize the assignment on the alleged basis that 1115 lacked a contractual right to assign its duties to 1199. Blair Manor filed suit against 1115 for breach of contract and fraudulent inducement under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Six days later, 1199 filed an unfair labor practice charge against Blair Manor for refusing to recognize and bargain with it in violation of Section 8(a)(5) and (1) of the Act, 29 U.S.C. §§ 158(a)(5), (1). The Region issued complaint on the charge. The administrative law judge found that 1199 was the proper representative of the employees, and that Blair Manor's refusal to recognize and bargain violated the Act. The district court granted the Board's motion to intervene in the Section 301 lawsuit, and further granted the Board's and 1115's motions to dismiss the complaint under Rule 12(b)(1) of the Federal Rules of Civil Procedure. The district court concluded that (1) Blair Manor's contract claim implicated representational matters, which are within the Board's exclusive jurisdiction to resolve, and (2) its fraudulent inducement claim was not supported by any allegation that either party had violated the agreement, a necessary precondition for subject matter jurisdiction under Section 301.

In *Detroit Newspaper Agency and The Detroit News, Inc. v. Schaub,*[5] a district court enjoined the Board from prosecuting a complaint based on unfair labor practices which occurred more than 6 months before the filing of the captioned charges, pursuant to Section 10(b) of the Act, 29 U.S.C. § 160(b). The case arose from a strike against the Detroit Newspaper Agency and The Detroit News by six unions between July 1995 and February 1997. The unions filed unfair labor practice charges based on employee disciplines and discharges during the strike, and the General Counsel issued complaint. During the course of the administrative trial, the unions filed additional charges involving incidents that occurred more than 6 months before the new charges were

[4] CV 98-4821 (E.D.N.Y.) (unreported).
[5] 108 F.Supp.2d 729 (E.D. Mich. 2000), appeal pending (No. 00-2109).

filed, but within 6 months of filing the initial charges with the Board. Counsel for the General Counsel moved to amend the original complaint to include claims of discrimination alleged in the new charges. The administrative law judge denied the General Counsel's motion, and the Board affirmed the administrative law judge's ruling, finding that the administrative law judge had not abused his discretion.

Thereafter, the Board's Regional Director issued a new consolidated complaint based on the later charges. In response, the Employers filed a motion to dismiss with the Board, and a complaint and motion for injunctive relief and declaratory judgment in the United States District Court for the Eastern District of Michigan. The Board denied the Employers' motion to dismiss the administrative complaint, without prejudice to the Employers' ability to raise their 10(b) arguments before the administrative law judge.

The district court determined that it had subject matter jurisdiction to enjoin the Board proceedings pursuant to the narrow *Leedom v. Kyne*[6] exception to the settled rule precluding district court review of Board proceedings. The district court reasoned that while Section 10(b) may permit the General Counsel to amend an existing complaint to include allegations closely related to, but not specifically alleged in timely filed charges, Section 10(b) prohibits the issuance of a *new* complaint incorporating the same closely related allegations. Thus, the court determined that the General Counsel violated a clear statutory mandate by issuing the new administrative complaint. The court rejected the Board's argument that *Leedom* jurisdiction was precluded by the availability of judicial review pursuant to Section 10(f) of the Act. It failed to address the Supreme Court's decision in *Board of Governors of the Federal Reserve System v. MCorp Financial, Inc.*,[7] which the Board cited as confirming that there can be no *Leedom* jurisdiction when alternative judicial review is available. Accordingly, the district court issued an injunction enjoining the Board proceedings based on any unfair labor practice occurring more than 6 months prior to the filing of the charge. The case is currently pending before the Sixth Circuit Court of Appeals.

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[6] 358 U.S. 184 (1958).
[7] 502 U.S. 32 (1991).

INDEX OF CASES DISCUSSED

APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

An election held by the Regional Director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the

establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of Section 8(b)(4)(D).

They are initially processed under Section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

Editor's Note : During FY 2000, the NLRB improved the way it tracks and collects case activity data. A new nationwide data system was developed and deployed during the period 1998-1999. This is the first Annual Report with statistical tables derived solely from the new system. Publication of this report was delayed by the conversion to the new system. Significant efforts were made to verify the accuracy of the FY 2000 data; however, it is not always consistent when comparing equivalent data from previous years. In 2001, the Agency's Inspector General conducted a review of data used in the FY 1999 Annual Report and concluded that it contained a number of inaccuracies. Notes have been inserted in tables to explain some of the data anomalies. The Agency continues to refine the new database and in due course will be able to verify its accuracy within a minimal margin of error. Questions or comments about the report should be sent to the NLRB Division of Information, Washington, D.C. 20570.

Table 1.–Total Cases Received, Closed, and Pending, Fiscal Year 2000[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other national unions	Other local unions	Individuals	Employers
	All Cases					
Pending October 1, 1999	*27,412	17,546	673	812	7,483	898
Received fiscal 2000	35,249	20,033	956	890	11,513	1,857
On docket fiscal 2000	62,661	37,579	1,629	1,702	18,996	2,755
Closed fiscal 2000	35,034	20,250	839	810	11,412	1,723
Pending September 30, 2000	27,627	17,329	790	892	7,584	1,032
	Unfair labor practice cases [2]					
Pending October 1, 1999	25,543	16,169	622	743	7,195	814
Received fiscal 2000	29,188	15,670	741	644	10,493	1,640
On docket fiscal 2000	54,731	31,839	1,363	1,387	17,688	2,454
Closed fiscal 2000	29,241	15,919	646	598	10,528	1,550
Pending September 30, 2000	25,490	15,920	717	789	7,160	904
	Representation cases [3]					
Pending October 1, 1999	1,701	1,282	45	59	254	61
Received fiscal 2000	5,671	4,182	176	226	910	177
On docket fiscal 2000	7,372	5,464	221	285	1,164	238
Closed fiscal 2000	5,442	4,154	175	193	781	139
Pending September 30, 2000	1,930	1,310	46	92	383	99
	Union-shop deauthorization cases					
Pending October 1, 1999	34	--	--	--	34	--
Received fiscal 2000	103	--	--	--	103	--
On docket fiscal 2000	137	--	--	--	137	--
Closed fiscal 2000	98	--	--	--	98	--
Pending September 30, 2000	39	--	--	--	39	--
	Amendment of certification cases					
Pending October 1, 1999	7	7	0	0	0	0
Received fiscal 2000	37	12	22	2	0	1
On docket fiscal 2000	44	19	22	2	0	1
Closed fiscal 2000	15	12	0	2	0	1
Pending September 30, 2000	29	7	22	0	0	0
	Unit clarification cases					
Pending October 1, 1999	127	88	6	10	0	23
Received fiscal 2000	250	169	17	18	7	39
On docket fiscal 2000	377	257	23	28	7	62
Closed fiscal 2000	238	165	18	17	5	33
Pending September 30, 2000	139	92	5	11	2	29

[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.
[*] Totals for cases pending Oct. 1, 1999 differ from 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 2000[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other national unions	Other local unions	Individuals	Employers
	CA cases					
Pending October 1, 1999	*22,033	16,114	613	730	4,473	103
Received fiscal 2000	22,094	15,581	723	616	5,114	60
On docket fiscal 2000	44,127	31,695	1,336	1,346	9,587	163
Closed fiscal 2000	22,289	15,838	626	564	5,198	63
Pending September 30, 2000	21,838	15,857	710	782	4,389	100
	CB Cases					
Pending October 1, 1999	3,160	50	6	11	2,716	377
Received fiscal 2000	6,166	63	11	25	5,312	755
On docket fiscal 2000	9,326	113	17	36	8,028	1,132
Closed fiscal 2000	6,049	54	11	30	5,271	683
Pending September 30, 2000	3,277	59	6	6	2,757	449
	CC Cases					
Pending October 1, 1999	211	1	3	2	5	200
Received fiscal 2000	567	9	5	1	43	509
On docket fiscal 2000	778	10	8	3	48	709
Closed fiscal 2000	554	9	8	2	40	495
Pending September 30, 2000	224	1	0	1	8	214
	CD Cases					
Pending October 1, 1999	55	2	0	0	0	53
Received fiscal 2000	194	14	0	0	8	172
On docket fiscal 2000	249	16	0	0	8	225
Closed fiscal 2000	174	15	0	0	6	153
Pending September 30, 2000	75	1	0	0	2	72
	CE Cases					
Pending October 1, 1999	29	1	0	0	0	28
Received fiscal 2000	22	0	0	2	5	15
On docket fiscal 2000	51	1	0	2	5	43
Closed fiscal 2000	27	0	0	2	5	20
Pending September 30, 2000	24	1	0	0	0	23
	CG Cases					
Pending October 1, 1999	10	0	0	0	0	10
Received fiscal 2000	12	0	0	0	0	12
On docket fiscal 2000	22	0	0	0	0	22
Closed fiscal 2000	18	0	0	0	0	18
Pending September 30, 2000	4	0	0	0	0	4
	CP Cases					
Pending October 1, 1999	45	1	0	0	1	43
Received fiscal 2000	133	3	2	0	11	117
On docket fiscal 2000	178	4	2	0	12	160
Closed fiscal 2000	130	3	1	0	8	118
Pending September 30, 2000	48	1	1	0	4	42

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 1999 differ from 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 2000[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other national unions	Other local unions	Individuals	Employers
	RC Cases					
Pending October 1, 1999	*1,384	1,279	45	59	1	--
Received fiscal 2000	4,579	4,176	174	225	4	--
On docket fiscal 2000	5,963	5,455	219	284	5	--
Closed fiscal 2000	4,520	4,152	174	192	2	--
Pending September 30, 2000	1,443	1,303	45	92	3	--
	RM Cases					
Pending October 1, 1999	61	--	--	--	--	61
Received fiscal 2000	177	--	--	--	--	177
On docket fiscal 2000	238	--	--	--	--	238
Closed fiscal 2000	139	--	--	--	--	139
Pending September 30, 2000	99	--	--	--	--	99
	RD Cases					
Pending October 1, 1999	256	3	0	0	253	--
Received fiscal 2000	915	6	2	1	906	--
On docket fiscal 2000	1,171	9	2	1	1,159	--
Closed fiscal 2000	783	2	1	1	779	--
Pending September 30, 2000	388	7	1	0	380	--

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 1999 differ from 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 2000

	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	22,095	100.0
8(a)(1)	3,769	17.1
8(a)(1)(2)	172	0.8
8(a)(1)(3)	7,778	35.2
8(a)(1)(4)	138	0.6
8(a)(1)(5)	7,420	33.6
8(a)(1)(2)(3)	119	0.5
8(a)(1)(2)(4)	7	0
8(a)(1)(2)(5)	93	0.4
8(a)(1)(3)(4)	432	2.0
8(a)(1)(3)(5)	1,904	8.6
8(a)(1)(4)(5)	39	0.2
8(a)(1)(2)(3)(4)	15	0.1
8(a)(1)(2)(3)(5)	68	0.3
8(a)(1)(2)(4)(5)	1	0
8(a)(1)(3)(4)(5)	113	0.5
8(a)(1)(2)(3)(4)(5)	27	0.1
Recapitulation [1]		
8(a)(1)	22,095	100.0
8(a)(2)	502	2.3
8(a)(3)	10,456	47.3
8(a)(4)	772	3.5
8(a)(5)	9,665	43.7
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	7,040	100.0
8(b)(1)	5,052	71.8
8(b)(2)	69	1.0
8(b)(3)	340	4.8
8(b)(4)	761	10.8
8(b)(5)	3	0
8(b)(6)	2	0
8(b)(7)	133	1.9
8(b)(1)(2)	563	8.0
8(b)(1)(3)	71	1.0
8(b)(1)(5)	5	0.1
8(b)(2)(3)	3	0
8(b)(2)(5)	4	0.1
8(b)(3)(5)	1	0
8(b)(3)(6)	2	0
8(b)(1)(2)(3)	26	0.4
8(b)(1)(2)(5)	2	0
8(b)(2)(3)(5)	1	0
8(b)(1)(2)(3)(5)	2	0

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2000-Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	5,721	81.3
8(b)(2)	670	9.5
8(b)(3)	446	6.3
8(b)(4)	789	11.2
8(b)(5)	18	0.3
8(b)(6)	4	0.1
8(b)(7)	140	2.0
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	761	100.0
8(b)(4)(A)	33	4.3
8(b)(4)(B)	503	66.1
8(b)(4)(C)	5	0.7
8(b)(4)(D)	194	25.5
8(b)(4)(A)(B)	15	2.0
8(b)(4)(A)(C)	1	0.1
8(b)(4)(B)(C)	8	1.1
8(b)(4)(A)(B)(C)	2	0.3
Recapitulation[1]		
8(b)(4)(A)	51	6.7
8(b)(4)(B)	528	69.4
8(b)(4)(C)	16	2.1
8(b)(4)(D)	194	25.5
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	132	100.0
8(b)(7)(A)	32	24.2
8(b)(7)(B)	14	10.6
8(b)(7)(C)	79	59.8
8(b)(7)(A)(C)	4	3.0
8(b)(7)(B)(C)	2	1.5
8(b)(7)(A)(B)(C)	1	0.8
Recapitulation[1]		
8(b)(7)(A)	37	28.0
8(b)(7)(B)	17	12.9
8(b)(7)(C)	86	65.2
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	22	100.0
Against unions alone	13	59.1
Against employers alone	8	36.4
Against both	1	4.5
D. Charges filed Sec. 8(g)		
Total cases 8(g)	12	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 2000[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	35	33	--	--	--	33	--	--	--	--	--	--	--
Complaints issued	3,761	2,556	2,288	175	32	--	3	1	0	10	14	26	7
Compliance specification issued	188	79	76	2	0	--	0	0	0	0	1	0	0
Hearings completed, total	793	400	351	23	2	0	0	1	0	1	3	15	4
Initial ULP hearings	700	369	320	23	2	0	0	1	0	1	3	15	4
Backpay hearings	8	7	7	0	0	0	0	0	0	0	0	0	0
Other hearings	85	24	24	0	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total	981	398	345	23	4	0	0	3	0	1	7	12	3
Initial ULP decisions	775	342	294	20	4	0	0	2	0	1	6	12	3
Backpay decisions	11	5	5	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	195	51	46	3	0	0	0	1	0	0	1	0	0
Decisions and orders by the Board, total	1228	607	518	33	3	11	0	0	0	2	7	31	2
Upon consent of parties:													
Initial decisions	24	14	11	0	1	0	0	0	0	1	0	0	1
Supplemental decisions	22	9	8	0	0	0	0	0	0	0	0	1	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	189	106	91	8	1	0	0	0	0	0	2	4	0
Backpay decisions	1	1	1	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	9	5	2	3	0	0	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	912	428	367	20	0	11	0	0	0	1	2	26	1
Decisions based on stipulated record	7	7	6	1	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	31	16	11	1	1	0	0	0	0	0	3	0	0
Backpay decisions	33	21	21	0	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 2000[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	835	773	697	13	63	0
Initial hearing	661	612	552	11	49	0
Hearing on objections and/or challenges	174	161	145	2	14	0
Decisions issued, total	670	623	547	30	46	9
By Regional Director	609	566	496	27	43	9
Elections directed	496	468	437	6	25	9
Dismissals on record	113	98	59	21	18	0
By Board	61	57	51	3	3	0
Transferred by Regional Directors for initial decision.	0	0	0	0	0	0
Elections directed	0	0	0	0	0	0
Dismissals on record	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	319	304	251	16	37	1
Withdrawn before request ruled upon	20	19	18	1	0	0
Board action on request ruled upon, total	287	271	230	11	30	1
Granted	43	40	33	3	4	0
Denied	239	227	196	7	24	1
Remanded	5	4	1	1	2	0
Withdrawn after request granted, before Board review	4	3	3	0	0	0
Board decision after review, total	61	57	51	3	3	0
Regional Directors' decisions:						
Affirmed	26	26	23	2	1	0
Modified	5	5	5	0	0	0
Reversed	30	26	23	1	2	0
Outcome:						
Election directed	50	47	44	1	2	0

Table 3B.–Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2000[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
Dismissals on record	11	10	7	2	1	0
Decisions on Objections and/or Challenges, total	596	573	512	5	46	5
By Regional Directors	250	229	212	2	15	2
By Board	346	344	310	3	31	3
In stipulated elections	304	303	272	2	29	1
No Exceptions to Regional Directors' reports	165	165	152	0	13	0
Exceptions to Regional Directors' reports	139	138	120	2	16	1
In directed elections (after transfer by Regional Director)	34	34	31	1	2	0
Review of Regional Directors' supplemental decisions:						
Request for review received	29	29	28	0	1	0
Withdrawn before request ruled upon	2	2	2	0	0	0
Board action on request ruled upon, total	30	27	26	0	1	0
Granted	5	4	4	0	0	0
Denied	22	20	19	0	1	0
Remanded	3	3	3	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	8	7	7	0	0	0
Regional Directors' decisions:						
Affirmed	2	1	1	0	0	1
Modified	1	1	1	0	0	0
Reversed	5	5	5	0	0	1

[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 2000[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	59	4	53
Decisions issued after hearing	79	4	74
By Regional Directors	64	3	60
By Board	15	1	14
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	35	1	34
Withdrawn before request ruled upon	1	0	1
Board action on requests ruled upon, total	55	1	52
Granted	15	1	14
Denied	38	0	36
Remanded	2	0	2
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	15	1	14
Regional Directors' decisions:			
Affirmed	2	0	2
Modified	2	1	1
Reversed	11	0	11

[1] See Glossary of terms for definitions.

Table 4.–Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2000[1]

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommendation of administrative law judge	Order of–			Agreement of parties		Recommendation of administrative law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved...	[2]10,980	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted ……..	1,950	1,555	1,451	7	31	38	28	395	380	1	1	7	6
Recognition or other assistance withdrawn …....	17	17	14	0	1	2	0	--	--	--	--	--	--
Employer–dominated union disestablished ……..	13	13	10	0	2	1	0	--	--	--	--	--	--
Employees offered reinstatement ……..….	1,224	1,224	1,182	1	6	22	13	--	--	--	--	--	--
Employees placed on preferential hiring list …..…...	58	58	58	0	0	0	0	--	--	--	--	--	--
Hiring hall rights restored.....	10	--	--	--	--	--	--	10	9	0	0	1	0
Objections to employment withdrawn.....	6	--	--	--	--	--	--	6	6	0	0	0	0
Picketing ended.....	127	--	--	--	--	--	--	127	127	0	0	0	0
Work stoppage ended.....	29	--	--	--	--	--	--	29	29	0	0	0	0
Collective bargaining begun....	2,533	2,386	2,332	1	17	19	17	147	142	0	2	2	1
Backpay distributed.....	1,811	1,763	1,703	1	7	34	18	48	45	0	0	1	2
Reimbursement of fees, dues, and fines.....	182	64	61	0	0	2	1	118	116	0	0	2	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.....	4,549	4,549	4,474	0	9	37	29	--	--	--	--	--	--
Accepted.....	3,857	3,857	3,831	0	4	9	13	--	--	--	--	--	--

Table 4.–Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2000[1]–Continued

Action taken	Total all	Remedial action taken by–												
		Employer						Union						
		Total	Pursuant to–					Total	Pursuant to–					
			Agreement of parties		Recommendation of administrative law judge	Order of–			Agreement of parties		Recommendation of administrative law judge	Order of–		
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court	
Declined	692	692	643	0	5	28	16	--	--	--	--	--	--	--
Employees placed on preferential hiring list	342	342	342	0	0	0	0	--	--	--	--	--	--	--
Hiring hall rights restored	15	--	--	--	--	--	--	15	14	0	0	1	0	
Objections to employment withdrawn	9	--	--	--	--	--	--	9	9	0	0	0	0	
Employees receiving backpay:														
From either employer or union	[3]30,905	30,590	29,953	2	43	370	222	315	313	0	0	1	1	
From both employer and union	7	6	5	0	0	0	1	1	1	0	0	0	0	
Employees reimbursed for fees, dues, and fines:														
From either employer or union	2,646	2,040	2,013	0	0	26	1	606	269	0	0	337	0	
From both employer and union	282	125	107	0	0	18	0	157	156	0	0	1	0	
C. By amounts of monetary recovery, total	[3]109,545,919	109,079,433	103,051,329	41,354	195,228	1,749,278	4,042,244	466,486	255,580	0	0	180,483	30,423	
Backpay (includes all monetary payments except fees, dues, and fines)	107,963,251	107,653,354	101,647,927	41,354	195,228	1,738,601	4,030,244	309,897	171,320	0	0	108,154	30,423	
Reimbursement of fees, dues,and fines	1,582,668	1,426,079	1,403,402	0	0	10,677	12,000	156,589	84,260	0	0	72,329	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 2000 after the company or/or union had satisfied all remedial action requirements.
[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.
[3] This total includes $63,000,000 awarded to 20,000 employees in a U.S. Postal Service Case (5-CA-2518) that was resolved after the situation was deferred pursuant to the Board's *Collyer* policy.

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 2000[1]

Industrial Group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Crop Production	56	51	48	3	0	0	0	0	0	5	3	1	1	0	0	0
Animal Production	37	32	29	3	0	0	0	0	0	5	4	0	1	0	0	0
Forestry and Logging	22	20	10	10	0	0	0	0	0	2	2	0	0	0	0	0
Fishing, Hunting and Trapping	7	4	3	1	0	0	0	0	0	3	0	0	3	0	0	0
Support Activities for Agriculture and Forestry	47	40	34	5	1	0	0	0	0	7	7	0	0	0	0	0
Agriculture, Forestry, Fishing, and Hunting	169	147	124	22	1	0	0	0	0	22	16	1	5	0	0	0
Oil and Gas Extraction	54	43	36	7	0	0	0	0	0	11	8	0	3	0	0	0
Mining (except Oil and Gas)	214	186	152	29	5	0	0	0	0	26	21	0	5	0	0	2
Support Activities for Mining	24	19	16	3	0	0	0	0	0	5	4	0	1	0	0	0
Mining	292	248	204	39	5	0	0	0	0	42	33	0	9	0	0	2
Utilities	823	660	510	135	9	6	0	0	0	149	121	5	23	1	0	13
Building, Developing and General Contracting	828	709	399	124	130	35	2	0	19	118	107	2	9	0	1	0
Heavy Construction	412	364	219	84	32	14	1	0	14	48	42	1	5	0	0	0
Special Trade Contractors	2,740	2288	1,631	400	131	86	3	0	37	443	373	26	44	3	0	6
Construction	3,980	3361	2,249	608	293	135	6	0	70	609	522	29	58	3	1	6
Food Manufacturing	1,011	863	642	208	13	0	0	0	0	137	105	6	26	7	1	3
Beverage and Tobacco Product Manufacturing	250	207	163	41	1	2	0	0	0	41	35	1	5	0	0	2
Textile Mills	81	60	47	13	0	0	0	0	0	18	16	0	2	2	0	1
Textile Product Mills	68	59	43	15	1	0	0	0	0	9	9	0	0	0	0	0
Apparel Manufacturing	126	107	87	19	1	0	0	0	0	18	17	0	1	1	0	0
Leather and Allied Product Manufacturing	30	26	20	6	0	0	0	0	0	3	1	0	2	1	0	0
31-Manufacturing	1,566	1322	1,002	302	16	2	0	0	0	226	183	7	36	11	1	6
Wood Product Manufacturing	193	158	132	16	4	3	0	0	3	32	26	2	4	1	0	2
Paper Manufacturing	588	522	401	121	0	0	0	0	0	63	54	0	9	1	0	2
Printing and Related Support Activities	187	161	123	34	3	1	0	0	0	24	16	2	6	1	0	1
Petroleum and Coal Products Manufacturing	144	121	99	17	1	0	0	0	4	23	16	1	6	0	0	0
Chemical Manufacturing	459	378	321	56	1	0	0	0	0	71	63	1	7	3	1	6
Plastics and Rubber Products Manufacturing	361	310	254	54	0	0	0	0	2	45	31	1	13	5	0	1
Nonmetallic Mineral Product Manufacturing	343	278	230	43	2	2	1	0	0	62	50	2	10	1	0	2

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 2000[1]–Continued

Industrial Group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
32-Manufacturing	2,275	1928	1,560	341	11	6	1	0	9	320	256	9	55	12	1	14
Primary Metal Manufacturing	826	726	553	165	6	0	0	0	2	97	73	3	21	2	1	0
Fabricated Metal Product Manufacturing	710	586	489	92	4	0	0	0	1	117	97	3	17	5	0	2
Machinery Manufacturing	600	501	393	103	5	0	0	0	0	92	67	3	22	5	0	2
Computer and Electronic Product Manufacturing	127	110	94	14	1	0	0	0	1	14	10	0	4	0	0	3
Electrical Equipment, Appliance and Component Manufacturing	409	367	254	101	6	4	0	0	2	40	35	0	5	0	0	2
Transportation Equipment Manufacturing	1,469	1313	874	435	1	1	2	0	0	153	126	11	16	1	0	2
Furniture and Related Product Manufacturing	187	155	115	39	1	0	0	0	0	29	24	0	5	1	0	2
Miscellaneous Manufacturing	638	509	426	80	3	0	0	0	0	121	93	4	24	4	0	4
33-Manufacturing	4,966	4267	3,198	1,029	27	5	2	0	6	663	525	24	114	18	1	17
Wholesale Trade, Durable Goods	380	281	242	37	1	0	0	0	1	96	69	1	26	3	0	0
Wholesale Trade, Nondurable Goods	654	517	353	160	3	0	0	0	1	132	106	8	18	0	0	5
Wholesale Trade	1,034	798	595	197	4	0	0	0	2	228	175	9	44	3	0	5
Motor Vehicle and Parts Dealers	375	252	212	32	3	0	0	0	5	122	97	5	20	0	0	1
Furniture and Home Furnishings Stores	52	37	32	3	2	0	0	0	0	15	14	0	1	0	0	0
Electronics and Appliance Stores	21	17	16	1	0	0	0	0	0	4	2	0	2	0	0	0
Building Material and Garden Equipment and Supplies Dealers	63	41	37	4	0	0	0	0	0	22	14	0	8	0	0	0
Food and Beverage Stores	819	675	495	162	9	1	0	0	8	130	86	25	19	4	0	10
Health and Personal Care Stores	83	68	53	15	0	0	0	0	0	15	12	0	3	0	0	0
Gasoline Stations	16	13	12	1	0	0	0	0	0	2	1	0	1	0	0	1
Clothing and Clothing Accessories Stores	99	86	59	26	1	0	0	0	0	13	10	0	3	0	0	0
44-Retail Trade	1,528	1189	916	244	15	1	0	0	13	323	236	30	57	4	0	12
Sporting Goods, Hobby, Book and Music Stores	30	25	23	2	0	0	0	0	0	5	2	0	3	0	0	0
General Merchandise Stores	193	163	139	20	2	1	0	0	1	29	24	0	5	1	0	0
Miscellaneous Store Retailers	78	62	52	10	0	0	0	0	0	15	10	2	3	0	0	1
Nonstore Retailers	72	55	49	6	0	0	0	0	0	17	15	0	2	0	0	0
45-Retail Trade	373	305	263	38	2	1	0	0	1	66	51	2	13	1	0	1
Air Transportation	74	49	30	18	1	0	0	0	0	25	23	0	2	0	0	0

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 2000[1]–Continued

Industrial Group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Rail Transportation	41	29	18	5	6	0	0	0	0	12	11	0	1	0	0	0
Water Transportation	173	156	73	70	9	1	0	0	3	17	15	0	2	0	0	0
Truck Transportation	1,339	1096	783	267	36	0	7	0	3	237	192	4	41	2	0	4
Transit and Ground Passenger Transportation	754	577	416	149	12	0	0	0	0	169	141	1	27	4	0	4
Pipeline Transportation	25	20	15	4	1	0	0	0	0	5	4	0	1	0	0	0
Scenic and Sightseeing Transportation	23	20	18	2	0	0	0	0	0	3	3	0	0	0	0	0
Support Activities for Transportation	275	223	150	69	3	0	0	0	1	52	48	0	4	0	0	0
48-Transportation	2,704	2170	1,503	584	68	1	7	0	7	520	437	5	78	6	0	8
Postal Service	2,387	2377	1,711	666	0	0	0	0	0	10	10	0	0	0	0	0
Couriers and Messengers	245	218	154	58	4	1	0	0	1	27	24	1	2	0	0	0
Warehousing and Storage Facilities	427	314	249	55	7	2	0	0	1	108	97	3	8	2	0	3
48-Transportation	3,059	2909	2,114	779	11	3	0	0	2	145	131	4	10	2	0	3
Publishing Industries	392	323	272	51	0	0	0	0	0	56	41	0	15	0	0	13
Motion Picture and Sound Recording Industries	59	54	37	16	0	0	0	0	1	4	4	0	0	1	0	0
Broadcasting and Telecommunications	1,120	1000	780	192	20	5	1	0	2	101	74	3	24	4	0	15
Information Services and Data Processing Services	114	98	82	16	0	0	0	0	0	15	13	0	2	1	0	0
Information	1,685	1475	1,171	275	20	5	1	0	3	176	132	3	41	6	0	28
Monetary Authorities - Central Bank	21	18	16	1	1	0	0	0	0	3	3	0	0	0	0	0
Credit Intermediation and Related Activities	53	46	43	2	1	0	0	0	0	6	6	0	0	0	0	1
Securities, Commodity Contracts and Other Intermediation and Related Activities	6	6	6	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance Carriers and Related Activities	46	37	25	12	0	0	0	0	0	8	6	0	2	0	0	1
Funds, Trusts and Other Financial Vehicles (U.S. Only)	27	22	15	7	0	0	0	0	0	2	1	0	1	0	0	3
Finance and Insurance	153	129	105	22	2	0	0	0	0	19	16	0	3	0	0	5
Real Estate	257	210	160	45	4	1	0	0	0	44	37	4	3	0	0	3
Rental and Leasing Services	215	154	118	21	8	3	0	0	4	61	45	2	14	0	0	0
Owners and Lessors of Other Non-Financial Assets	7	6	4	1	1	0	0	0	0	1	1	0	0	0	0	0

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 2000[1]–Continued

Industrial Group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Real Estate and Rental and Leasing	479	370	282	67	13	4	0	0	4	106	83	6	17	0	0	3
Professional, Scientific and Technical Services	352	285	242	39	2	2	0	0	0	62	51	0	11	1	0	4
Management of Companies and Enterprises	56	50	32	13	5	0	0	0	0	4	4	0	0	1	0	1
Administrative and Support Services	1,459	1216	948	256	7	3	0	0	2	228	192	5	31	6	1	8
Waste Management and Remediation Services	475	322	259	52	7	2	0	0	2	150	135	6	9	1	0	2
Administrative and Support, Waste Management and Remediation Services	1,934	1538	1,207	308	14	5	0	0	4	378	327	11	40	7	1	10
Educational Services	343	235	192	40	1	1	1	0	0	103	88	1	14	0	0	5
Ambulatory Health Care Services	440	319	277	40	0	0	0	2	0	118	101	3	14	1	0	2
Hospitals	1,646	1264	1,051	198	6	0	2	6	1	325	288	2	35	2	17	38
Nursing and Residential Care Facilities	1,580	1233	1,055	169	4	0	0	3	2	304	248	4	52	6	11	26
Social Assistance	338	258	219	36	2	0	0	1	0	73	60	0	13	4	0	3
Health Care and Social Assistance	4,004	3074	2,602	443	12	0	2	12	3	820	697	9	114	13	28	69
Performing Arts, Spectator Sports and Related Industries	381	227	145	74	3	3	0	0	2	143	36	3	104	4	0	7
Museums, Historical Sites and Similar Institutions	18	11	8	3	0	0	0	0	0	7	6	0	1	0	0	0
Amusement, Gambling and Recreation Industries	246	183	139	39	0	3	1	0	1	61	51	1	9	0	0	2
Arts, Entertainment and Recreation	645	421	292	116	3	6	1	0	3	211	93	4	114	4	0	9
Accommodation	687	593	461	123	7	2	0	0	0	88	74	5	9	3	2	1
Foodservices and Drinking Places	499	403	321	67	12	0	1	0	2	87	70	7	10	1	0	8
Accommodation and Foodservices	1,186	996	782	190	19	2	1	0	2	175	144	12	19	4	2	9
Repair and Maintenance	348	269	207	53	4	4	0	0	1	75	65	1	9	0	0	4
Personal and Laundry Services	350	241	202	35	2	1	0	0	1	108	91	3	14	1	0	0
Religious, Grantmaking, Civic, and Professional and Similar Organizations	311	273	161	111	1	0	0	0	0	26	23	0	3	2	1	9
Private Households	12	11	7	4	0	0	0	0	0	1	1	0	0	0	0	0
Other Services (except Public Administration)	1,021	794	577	203	7	5	0	0	2	210	180	4	26	3	1	13
Executive, Legislative, Public Finance and General Government	56	53	39	14	0	0	0	0	0	3	3	0	0	0	0	0
Justice, Public Order, and Safety	80	62	46	16	0	0	0	0	0	14	13	0	1	1	0	3

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 2000[1]–Continued

Industrial Group [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Administration of Human Resource Programs	9	6	6	0	0	0	0	0	0	3	3	0	0	0	0	0
Administration of Environmental Quality Programs	5	4	3	0	0	0	0	0	1	1	1	0	0	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development	6	4	4	0	0	0	0	0	0	1	0	1	0	0	0	1
Administration of Economic Programs	6	5	5	0	0	0	0	0	0	1	1	0	0	0	0	0
Space Research and Technology	5	3	3	0	0	0	0	0	0	1	1	0	0	0	0	1
National Security and International Affairs	14	9	9	0	0	0	0	0	0	3	3	0	0	1	1	0
Public Administration	181	146	115	30	0	0	0	0	1	27	25	1	1	2	1	5
Unclassified Establishments	167	141	100	37	4	0	0	0	0	24	19	1	4	1	0	1
Total, all industrial groups	34,975	28,958	21,937	6,101	564	190	22	12	132	5628	4,545	177	906	103	37	249

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

Table 6A.–Geographic Distribution of Cases Received, Fiscal Year 2000[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
Illinois	2,014	1592	1,104	345	90	27	0	1	25	398	320	11	67	10	0	14
Indiana	978	837	666	159	6	2	0	0	4	133	108	3	22	4	0	4
Michigan	1,858	1556	1,141	381	20	2	7	0	5	281	221	6	54	10	0	11
Ohio	2,091	1782	1,347	381	40	6	2	0	6	289	226	6	57	11	0	9
Wisconsin	638	511	389	116	4	2	0	0	0	120	96	2	22	4	0	3
East North Central	7,579	6278	4,647	1,382	160	39	9	1	40	1221	971	28	222	39	0	41
Alabama	492	428	351	77	0	0	0	0	0	59	45	3	11	0	1	4
Kentucky	542	448	362	83	1	0	0	0	2	91	65	2	24	0	0	3
Mississippi	213	167	146	20	1	0	0	0	0	46	43	1	2	0	0	0
Tennessee	525	454	371	81	2	0	0	0	0	71	62	2	7	0	0	0
East South Central	1,772	1497	1,230	261	4	0	0	0	2	267	215	8	44	0	1	7
New Jersey	1,639	1310	1,019	239	29	19	1	0	3	302	253	6	43	8	1	18
New York	4,073	3425	2,244	979	134	35	2	3	28	602	527	18	57	5	0	41
Pennsylvania	2,327	1930	1,449	404	42	28	0	1	6	348	300	4	44	10	21	18
Middle Atlantic	8,039	6665	4,712	1,622	205	82	3	4	37	1252	1,080	28	144	23	22	77
Arizona	337	292	237	52	3	0	0	0	0	41	34	2	5	0	0	4
Colorado	617	506	412	90	2	0	0	2	0	101	61	29	11	1	0	9
Idaho	70	61	50	11	0	0	0	0	0	9	7	2	0	0	0	0
Montana	131	85	73	12	0	0	0	0	0	39	26	1	12	1	1	5
New Mexico	195	172	149	22	0	0	0	0	1	21	18	0	3	1	0	1
Nevada	583	508	350	123	17	16	0	0	2	74	59	0	15	0	0	1
Utah	107	86	66	16	2	0	0	0	2	19	16	0	3	1	0	1
Wyoming	48	37	33	3	1	0	0	0	0	11	10	0	1	0	0	0
Mountain	2,088	1747	1,370	329	25	16	0	2	5	315	231	34	50	4	1	21
Connecticut	501	422	340	76	1	2	0	2	1	73	64	1	8	1	1	4
Massachusetts	934	801	633	135	24	4	1	1	3	119	103	0	16	1	0	13
Maine	81	64	50	11	2	0	0	0	1	16	13	0	3	0	1	0
New Hampshire	54	43	31	11	0	1	0	0	0	10	8	0	2	1	0	0
Rhode Island	158	122	92	22	8	0	0	0	0	29	27	0	2	3	0	4

Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2000[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
Vermont	48	38	34	4	0	0	0	0	0	10	8	0	2	0	0	0
New England	1,776	1490	1,180	259	35	7	1	3	5	257	223	1	33	6	2	21
Puerto Rico	323	255	208	42	4	0	1	0	0	61	51	2	8	1	1	5
Virgin Islands	33	15	13	2	0	0	0	0	0	17	16	1	0	0	0	1
Outlying Areas	356	270	221	44	4	0	1	0	0	78	67	3	8	1	1	6
Alaska	111	69	54	15	0	0	0	0	0	41	33	1	7	0	0	1
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	3,862	3303	2,575	647	44	14	5	1	17	532	435	40	57	11	1	15
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	7	5	5	0	0	0	0	0	0	2	2	0	0	0	0	0
Hawaii	382	315	242	65	6	2	0	0	0	63	54	4	5	1	0	3
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	427	323	248	64	6	5	0	0	0	99	69	4	26	2	0	3
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	756	585	442	139	2	1	0	0	1	159	124	6	29	5	1	6
Pacific	5,545	4600	3,566	930	58	22	5	1	18	896	717	55	124	19	2	28
District Of Columbia	237	205	153	47	2	2	1	0	0	28	21	1	6	0	0	4
Delaware	195	156	134	21	0	1	0	0	0	39	35	0	4	0	0	0
Florida	1,208	918	775	125	11	1	0	0	6	278	156	4	118	0	7	5
Georgia	627	568	445	121	2	0	0	0	0	59	50	0	9	0	0	0
Maryland	397	278	213	62	2	0	1	0	0	116	104	2	10	1	0	2
North Carolina	279	245	184	61	0	0	0	0	0	34	31	0	3	0	0	0
South Carolina	127	98	82	16	0	0	0	0	0	29	24	0	5	0	0	0
Virginia	375	312	257	54	1	0	0	0	0	61	52	0	9	0	0	2
West Virginia	423	367	308	48	5	1	0	0	5	54	50	0	4	0	0	2
South Atlantic	3,868	3147	2,551	555	23	5	2	0	11	698	523	7	168	1	7	15
Iowa	295	228	186	42	0	0	0	0	0	66	51	1	14	0	0	1
Kansas	265	226	160	56	8	1	0	0	1	38	27	1	10	0	0	1

Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2000[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
Minnesota	435	280	214	55	7	1	1	0	2	141	113	1	27	5	0	9
Missouri	969	797	576	171	25	15	0	1	9	153	122	3	28	5	0	14
North Dakota	39	25	19	5	0	0	0	0	1	14	14	0	0	0	0	0
Nebraska	83	66	47	18	1	0	0	0	0	17	13	0	4	0	0	0
South Dakota	21	11	11	0	0	0	0	0	0	10	9	0	1	0	0	0
West North Central	2,107	1633	1,213	347	41	17	1	1	13	439	349	6	84	10	0	25
Arkansas	217	195	162	33	0	0	0	0	0	21	19	0	2	0	0	1
Louisiana	356	318	238	80	0	0	0	0	0	38	29	1	8	0	0	0
Oklahoma	235	191	145	39	7	0	0	0	0	44	38	0	6	0	0	0
Texas	1,083	943	703	235	2	2	0	0	1	133	108	6	19	0	1	6
West South Central	1,891	1647	1,248	387	9	2	0	0	1	236	194	7	35	0	1	7
Total, all States and areas	35,021	28974	21,938	6,116	564	190	22	12	132	5659	4,570	177	912	103	37	248

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

Table 6B.–Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2000[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	501	422	340	76	1	2	0	2	1	73	64	1	8	1	1	4
Massachusetts	934	801	633	135	24	4	1	1	3	119	103	0	16	1	0	13
Maine	81	64	50	11	2	0	0	0	1	16	13	0	3	0	1	0
New Hampshire	54	43	31	11	0	1	0	0	0	10	8	0	2	1	0	0
Rhode Island	158	122	92	22	8	0	0	0	0	29	27	0	2	3	0	4
Vermont	48	38	34	4	0	0	0	0	0	10	8	0	2	0	0	0
Region I	1,776	1490	1,180	259	35	7	1	3	5	257	223	1	33	6	2	21
Delaware	195	156	134	21	0	1	0	0	0	39	35	0	4	0	0	0
New Jersey	1,639	1310	1,019	239	29	19	1	0	3	302	253	6	43	8	1	18
New York	4,073	3425	2,244	979	134	35	2	3	28	602	527	18	57	5	0	41
Puerto Rico	323	255	208	42	4	0	1	0	0	61	51	2	8	1	1	5
Virgin Islands	33	15	13	2	0	0	0	0	0	17	16	1	0	0	0	1
Region II	6,263	5161	3,618	1,283	167	55	4	3	31	1021	882	27	112	14	2	65
District Of Columbia	237	205	153	47	2	2	1	0	0	28	21	1	6	0	0	4
Maryland	397	278	213	62	2	0	1	0	0	116	104	2	10	1	0	2
Pennsylvania	2,327	1930	1,449	404	42	28	0	1	6	348	300	4	44	10	21	18
Virginia	375	312	257	54	1	0	0	0	0	61	52	0	9	0	0	2
West Virginia	423	367	308	48	5	1	0	0	5	54	50	0	4	0	0	2
Region III	3,759	3092	2,380	615	52	31	2	1	11	607	527	7	73	11	21	28
Alabama	492	428	351	77	0	0	0	0	0	59	45	3	11	0	1	4
Florida	1,208	918	775	125	11	1	0	0	6	278	156	4	118	0	7	5
Georgia	627	568	445	121	2	0	0	0	0	59	50	0	9	0	0	0
Kentucky	542	448	362	83	1	0	0	0	2	91	65	2	24	0	0	3
Mississippi	213	167	146	20	1	0	0	0	0	46	43	1	2	0	0	0
North Carolina	279	245	184	61	0	0	0	0	0	34	31	0	3	0	0	0
South Carolina	127	98	82	16	0	0	0	0	0	29	24	0	5	0	0	0
Tennessee	525	454	371	81	2	0	0	0	0	71	62	2	7	0	0	0
Region IV	4,013	3326	2,716	584	17	1	0	0	8	667	476	12	179	0	8	12
Illinois	2,014	1592	1,104	345	90	27	0	1	25	398	320	11	67	10	0	14
Indiana	978	837	666	159	6	2	0	0	4	133	108	3	22	4	0	4
Michigan	1,858	1556	1,141	381	20	2	7	0	5	281	221	6	54	10	0	11
Minnesota	435	280	214	55	7	1	1	0	2	141	113	1	27	5	0	9
Ohio	2,091	1782	1,347	381	40	6	2	0	6	289	226	6	57	11	0	9
Wisconsin	638	511	389	116	4	2	0	0	0	120	96	2	22	4	0	3
Region V	8,014	6558	4,861	1,437	167	40	10	1	42	1362	1,084	29	249	44	0	50
Arkansas	217	195	162	33	0	0	0	0	0	21	19	0	2	0	0	1
Louisiana	356	318	238	80	0	0	0	0	0	38	29	1	8	0	0	0
New Mexico	195	172	149	22	0	0	0	0	1	21	18	0	3	1	0	1
Oklahoma	235	191	145	39	7	0	0	0	0	44	38	0	6	0	0	0
Texas	1,083	943	703	235	2	2	0	0	1	133	108	6	19	0	1	6
Region VI	2,086	1819	1,397	409	9	2	0	0	2	257	212	7	38	1	1	8

Table 6B.–Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2000[1]–Continued

Standard Federal Regions [2]	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Iowa	295	228	186	42	0	0	0	0	0	66	51	1	14	0	0	1
Kansas	265	226	160	56	8	1	0	0	1	38	27	1	10	0	0	1
Missouri	969	797	576	171	25	15	0	1	9	153	122	3	28	5	0	14
Nebraska	83	66	47	18	1	0	0	0	0	17	13	0	4	0	0	0
Region VII	1,612	1317	969	287	34	16	0	1	10	274	213	5	56	5	0	16
Colorado	617	506	412	90	2	0	0	2	0	101	61	29	11	1	0	9
Montana	131	85	73	12	0	0	0	0	0	39	26	1	12	1	1	5
North Dakota	39	25	19	5	0	0	0	0	1	14	14	0	0	0	0	0
South Dakota	21	11	11	0	0	0	0	0	0	10	9	0	1	0	0	0
Utah	107	86	66	16	2	0	0	0	2	19	16	0	3	1	0	1
Wyoming	48	37	33	3	1	0	0	0	0	11	10	0	1	0	0	0
Region VIII	963	750	614	126	5	0	0	2	3	194	136	30	28	3	1	15
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	337	292	237	52	3	0	0	0	0	41	34	2	5	0	0	4
California	3,862	3303	2,575	647	44	14	5	1	17	532	435	40	57	11	1	15
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	7	5	5	0	0	0	0	0	0	2	2	0	0	0	0	0
Hawaii	382	315	242	65	6	2	0	0	0	63	54	4	5	1	0	3
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	583	508	350	123	17	16	0	0	2	74	59	0	15	0	0	1
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX	5,171	4423	3,409	887	70	32	5	1	19	712	584	46	82	12	1	23
Alaska	111	69	54	15	0	0	0	0	0	41	33	1	7	0	0	1
Idaho	70	61	50	11	0	0	0	0	0	9	7	2	0	0	0	0
Oregon	427	323	248	64	6	5	0	0	0	99	69	4	26	2	0	3
Washington	756	585	442	139	2	1	0	0	1	159	124	6	29	5	1	6
Region X	1,364	1038	794	229	8	6	0	0	1	308	233	13	62	7	1	10
Total, all States and areas	35,021	28974	21,938	6,116	564	190	22	12	132	5659	4,570	177	912	103	37	248

[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 2000[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		**CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	*28,909	100.0	--	22,032	100.0	5,996	100.0	539	100.0	171	100.0	27	100.0	16	100.0	128	100.0
Agreement of the parties	10,187	35.2	100.0	8,875	40.3	1,016	16.9	220	40.8	14	8.2	2	7.4	11	68.8	49	38.3
Informal settlement	10,151	35.1	99.6	8,841	40.1	1,014	16.9	220	40.8	14	8.2	2	7.4	11	68.8	49	38.3
Before issuance of complaint	7,805	27.0	76.6	6,736	30.6	827	13.8	182	33.8	14	8.2	1	3.7	8	50.0	37	28.9
After issuance of complaint, before opening of hearing	2,145	7.4	21.1	1,911	8.7	181	3.0	37	6.9	0	0.0	1	3.7	3	18.8	12	9.4
After hearing opened, before issuance of administrative law judge's decision	201	0.7	2.0	194	0.9	6	0.1	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement	36	0.1	0.4	34	0.2	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	16	0.1	0.2	14	0.1	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	4	0.0	0.0	3	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	12	0.0	0.1	11	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened	20	0.1	0.2	20	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	14	0.0	0.1	14	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	6	0.0	0.1	6	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	613	2.1	100.0	549	2.5	55	0.9	5	0.9	2	1.2	0	0.0	0	0.0	2	1.6
Administrative law judge's decision	8	0.0	1.3	8	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	340	1.2	55.5	287	1.3	47	0.8	3	0.6	2	1.2	0	0.0	0	0.0	1	0.8
Adopting administrative law judge's decision (no exceptions filed)	156	0.5	25.4	138	0.6	17	0.3	0	0.0	0	0.0	0	0.0	0	0.0	1	0.8
Contested	184	0.6	30.0	149	0.7	30	0.5	3	0.6	2	1.2	0	0.0	0	0.0	0	0.0
Circuit court of appeals decree	260	0.9	42.4	249	1.1	8	0.1	2	0.4	0	0.0	0	0.0	0	0.0	1	0.8
Supreme Court action	5	0.0	0.8	5	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Withdrawal	8,701	30.1	100.0	6,663	30.2	1,741	29.0	218	40.4	16	9.4	13	48.1	3	18.8	47	36.7
Before issuance of complaint	8,472	29.3	97.4	6,453	29.3	1,724	28.8	217	40.3	16	9.4	13	48.1	3	18.8	46	35.9

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2000[1]–Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		**CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
After issuance of complaint, before opening of hearing	144	0.5	1.7	132	0.6	11	0.2	0	0.0	0	0.0	0	0.0	0	0.0	1	0.8
After hearing opened, before administrative law judge's decision	21	0.1	0.2	20	0.1	0	0.0	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision	56	0.2	0.6	51	0.2	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	8	0.0	0.1	7	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	9,098	31.5	100.0	5,768	26.2	3,181	53.1	96	17.8	9	5.3	12	44.4	2	12.5	30	23.4
Before issuance of complaint	8,882	30.7	97.6	5,590	25.4	3,144	52.4	96	17.8	9	5.3	12	44.4	2	12.5	29	22.7
After issuance of complaint, before opening of hearing	67	0.2	0.7	58	0.3	8	0.1	0	0.0	0	0.0	0	0.0	0	0.0	1	0.8
After hearing opened, before administrative law judge's decision	3	0.0	0.0	3	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	42	0.1	0.5	20	0.1	22	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	102	0.4	1.1	95	0.4	7	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	63	0.2	0.7	61	0.3	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	39	0.1	0.4	34	0.2	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree	2	0.0	0.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	130	0.4	--	0	0.0	0	0.0	0	0.0	130	76.0	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	180	0.6	--	177	0.8	3	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Table 8 for summary of disposition 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.
* Due to technical difficulties, data discrepancies on this table exceed 3% for CC, CD, CG, and CP cases. Information is not available from Region 24 relating to 174 closed cases.
** Due to data inconsistencies, 2 CG cases filed in Region 24 and closed in FY 2000 are not reflected in this table.

Table 7A.–Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 2000[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	130	100.0
Agreement of the parties-informal settlement	45	34.6
Before 10(k) notice	40	30.8
After 10(k) notice, before opening of 10(k) hearing	3	2.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	1.5
Compliance with Board decision and determination of dispute	3	2.3
Withdrawal	61	46.9
Before 10(k) notice	53	40.8
After 10(k) notice, before opening of 10(k) hearing	4	3.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	4	3.1
After Board decision and determination of dispute	0	0.0
Dismissal	21	16.2
Before 10(k) notice	19	14.6
After 10(k) notice, before opening of 10(k) hearing	0	0.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.8
By Board decision and determination of dispute	1	0.8

[1] See Glossary of terms for definitions.

Table 8.–Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2000[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	*29,087	100.0	22,168	100.0	6,018	100.0	554	100.0	174	100.0	27	100.0	17	100.0	129	100.0
Before issuance of complaint	25,377	87.2	18,850	85.0	5,714	94.9	509	91.9	152	87.4	26	96.3	14	82.4	112	86.8
After issuance of complaint, before opening of hearing	2,412	8.3	2,146	9.7	203	3.4	37	6.7	8	4.6	1	3.7	3	17.6	14	10.9
After hearing opened, before issuance of administrative law judge's decision	255	0.9	237	1.1	7	0.1	2	0.4	9	5.2	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	116	0.4	89	0.4	27	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions	287	1.0	265	1.2	21	0.3	0	0.0	1	0.6	0	0.0	0	0.0	0	0.0
After Board decision, before circuit court decree	293	1.0	247	1.1	36	0.6	4	0.7	4	2.3	0	0.0	0	0.0	2	1.6
After circuit court decree, before Supreme Court action	342	1.2	329	1.5	10	0.2	2	0.4	0	0.0	0	0.0	0	0.0	1	0.8
After Supreme Court action	5	0.0	5	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

* Due to technical difficulties, information is not available from Region 24 relating to 174 closed cases.

** Due to data inconsistencies, 2 CG cases filed in Region 24 and closed in FY 2000 are not reflected in this table.

Table 9.–Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2000[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	5,429	100.0	4,508	100.0	139	100.0	782	100.0	98	100.0
Before issuance of notice of hearing	1,018	18.8	673	14.9	52	37.4	293	37.5	58	59.2
After issuance of notice, before close of hearing	3,548	65.4	3,075	68.2	71	51.1	402	51.4	21	21.4
After hearing closed, before issuance of decision	161	3.0	138	3.1	4	2.9	19	2.4	2	2.0
After issuance of Regional Director's decision	604	11.1	534	11.8	10	7.2	60	7.7	14	14.3
After issuance of Board decision	98	1.8	88	2.0	2	1.4	8	1.0	3	3.1

[1] See Glossary of terms for definitions.

Table 10.–Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2000[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	5,306	100.0	4,399	100.0	137	100.0	770	100.0	94	100.0
Certification issued, total	3,208	60.5	2,815	64.0	30	21.9	363	47.1	49	52.1
After:										
Consent election	14	0.3	13	0.3	0	0.0	1	0.1	0	0.0
Before notice of hearing	2	0.0	1	0.0	0	0.0	1	0.1	0	0.0
After notice of hearing, before hearing closed	12	0.2	12	0.3	0	0.0	0	0.0	0	0.0
After hearing closed, before decision	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	2,757	52.0	2,394	54.4	24	17.5	339	44.0	34	36.2
Before notice of hearing	538	10.1	414	9.4	6	4.4	118	15.3	18	19.1
After notice of hearing, before hearing closed	2,136	40.3	1,906	43.3	17	12.4	213	27.7	14	14.9
After hearing closed, before decision	83	1.6	74	1.7	1	0.7	8	1.0	2	2.1
Expedited election	3	0.1	0	0.0	3	2.2	0	0.0	0	0.0
Regional Director-directed election	356	6.7	335	7.6	2	1.5	19	2.5	12	12.8
Board-directed election	78	1.5	73	1.7	1	0.7	4	0.5	3	3.2
By withdrawal, total	1,820	34.3	1,468	33.4	81	59.1	271	35.2	40	42.6
Before notice of hearing	378	7.1	236	5.4	37	27.0	105	13.6	32	34.0
After notice of hearing, before hearing closed	1,246	23.5	1,054	24.0	39	28.5	153	19.9	6	6.4
After hearing closed, before decision	63	1.2	53	1.2	2	1.5	8	1.0	0	0.0
After Regional Director's decision and direction of election	122	2.3	116	2.6	3	2.2	3	0.4	2	2.1
After Board decision and direction of election	11	0.2	9	0.2	0	0.0	2	0.3	0	0.0
By dismissal, total	278	5.2	116	2.6	26	19.0	136	17.7	5	5.3
Before notice of hearing	96	1.8	18	0.4	9	6.6	69	9.0	5	5.3
After notice of hearing, before hearing closed	78	1.5	32	0.7	12	8.8	34	4.4	0	0.0
After hearing closed, before decision	7	0.1	4	0.1	0	0.0	3	0.4	0	0.0
By Regional Director's decision	88	1.7	56	1.3	4	2.9	28	3.6	0	0.0
By Board decision	9	0.2	6	0.1	1	0.7	2	0.3	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 2000[1]

	AC	UC
Total, all	15	237
Certification amended or unit clarified	8	18
Before hearing	6	7
By Regional Director's decision	6	5
By Board decision	0	2
After hearing	2	11
By Regional Director's decision	1	10
By Board decision	1	1
Dismissed	4	59
Before hearing	2	23
By Regional Director's decision	2	19
By Board decision	0	4
After hearing	2	36
By Regional Director's decision	2	30
By Board decision	0	6
Withdrawn	1	160
Before hearing	1	158
After hearing	0	2

[1] See Glossary of terms for definitions.

Table 11.–Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2000[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed [2]	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	3,354	14	2,885	0	452	3
Eligible voters	262,673	350	214,211	0	48,071	41
Valid votes	223,199	291	183,206	0	39,667	35
RC cases:						
Elections	2,894	13	2,471	0	410	0
Eligible voters	233,831	343	190,411	0	43,077	0
Valid votes	199,712	284	163,139	0	36,289	0
RM cases:						
Elections	31	0	25	0	3	3
Eligible voters	1,767	0	1,292	0	434	41
Valid votes	1,604	0	1,193	0	376	35
RD cases:						
Elections	380	1	355	0	24	0
Eligible voters	23,592	7	20,831	0	2,754	0
Valid votes	19,658	7	17,532	0	2,119	0
UD cases:						
Elections	49	0	34	0	15	--
Eligible voters	3,483	0	1,677	0	1,806	--
Valid votes	2,225	0	1,342	0	883	--

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

Table 11A.–Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2000

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 representation elections	3,467	98	71	3,298	3,044	93	64	2,887	34	1	2	31	389	4	5	380
Rerun required	--	--	68	--	--	--	61	--	--	--	2	--	--	--	5	--
Runoff required	--	--	3	--	--	--	3	--	--	--	0	--	--	--	0	--
Consent elections	15	1	0	14	14	1	0	13	0	0	0	0	1	0	0	1
Rerun required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	0	--
Runoff required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	0	--
Stipulated elections	2,963	71	45	2,847	2,576	68	41	2,467	26	0	1	25	361	3	3	355
Rerun required	--	--	43	--	--	--	39	--	--	--	1	--	--	--	3	--
Runoff required	--	--	2	--	--	--	2	--	--	--	0	--	--	--	0	--
Regional Director–directed	486	26	26	434	454	24	23	407	5	1	1	3	27	1	2	24
Rerun required	--	--	25	--	--	--	22	--	--	--	1	--	--	--	2	--
Runoff required	--	--	1	--	--	--	1	--	--	--	0	--	--	--	0	--
Board–directed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Expedited–Sec. 8(b)(7)(C)	3	0	0	3	0	0	0	0	3	0	0	3	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--
Runoff required	--	--	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 2000

Type of election/case	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	3,474	153	4.4	75	2.2	17	0.5	170	4.9	92	2.6
By type of cases:											
In RC cases	3,050	136	4.5	68	2.2	16	0.5	152	5.0	84	2.8
In RM cases	34	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
In RD cases	390	17	4.4	7	1.8	1	0.3	18	4.6	8	2.1
By type of election:											
Consent elections	15	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	2,967	100	3.4	51	1.7	9	0.3	109	3.7	60	2.0
Expedited elections	3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	489	53	10.8	24	4.9	8	1.6	61	12.5	32	6.5
Board-directed elections	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11C.–Objections Filed in Representation Cases Closed, by Party Filing
Fiscal Year 2000[1]

Type of election/case	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	282	100.0	115	40.8	164	58.2	3	1.1
By type of case:								
RC cases	252	100.0	107	42.5	143	56.7	2	0.8
RM cases	1	100.0	0	0.0	1	100.0	0	0.0
RD cases	29	100.0	8	27.6	20	69.0	1	3.4
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	204	100.0	73	35.8	130	63.7	1	0.5
Expedited elections	1	100.0	0	0.0	1	100.0	0	0.0
Regional Director-directed elections	77	100.0	42	54.5	33	42.9	2	2.6
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 2000[1]

Type of election/case	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	282	112	170	153	90.0	17	10.0
By type of case:							
RC cases	252	100	152	139	91.4	13	8.6
RM cases	1	1	0	0	0.0	0	0.0
RD cases	29	11	18	14	77.8	4	22.2
By type of election:							
Consent elections	0	0	0	0	0.0	0	0.0
Stipulated elections	204	95	109	96	88.1	13	11.9
Expedited elections	1	1	0	0	0.0	0	0.0
Regional Director-directed elections	77	16	61	57	93.4	4	6.6
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.
[2] See Table11E 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 2000[1]

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	28	100.0	12	42.9	16	57.1	9	32.1
By type of case:								
RC cases	27	100.0	12	44.4	15	55.6	9	33.3
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	1	100.0	0	0.0	1	100.0	0	0.0
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	20	100.0	7	35.0	13	65.0	5	25.0
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	8	100.0	5	62.5	3	37.5	4	50.0
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 12.–Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 2000[1]

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	46	8	17.4	38	82.6	3,098	583	18.8	2,515	81.2	2,092	67.5	371	12.0
AFL-CIO unions	39	5	12.8	34	87.2	2,758	413	15.0	2,345	85.0	1,825	66.2	223	8.1
Other national unions	2	1	50.0	1	50.0	52	9	17.3	43	82.7	41	78.8	7	13.5
Other local unions	5	2	40.0	3	60.0	288	161	55.9	127	44.1	226	78.5	141	49.0

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

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2000[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	2,989	47.8	1,428	1,424	4	--	1,561	215,707	98,680	98,650	30	--	117,027
Other local unions	102	65.7	67	--	--	67	35	11,498	5,547	--	--	5,547	5,951
Other national unions	114	56.1	64	--	64	--	50	8,801	4,892	--	4,892	--	3,909
1-union elections	3,205	48.6	1,559	1,424	68	67	1,646	236,006	109,119	98,650	4,922	5,547	126,887
National v. Local	8	87.5	7	--	4	3	1	951	533	--	307	226	418
AFL-CIO v. Local	39	79.5	31	23	--	8	8	10,553	3,771	2,828	--	943	6,782
Local v. Local	4	100.0	4	--	--	4	0	197	197	--	--	197	0
AFL-CIO v. National	22	86.4	19	10	9	--	3	2,502	2,173	860	1,313	--	329
National v. National	2	100.0	2	--	2	--	0	107	107	--	107	--	0
AFL-CIO v. AFL-CIO	82	73.2	60	60	--	--	22	7,932	4,393	4,393	--	--	3,539
2-union elections	157	78.3	123	93	15	15	34	22,242	11,174	8,081	1,727	1,366	11,068
AFL-CIO v. Local v. Local	1	100.0	1	0	--	1	0	46	46	0	--	46	0
Local v. Local v. Local	1	100.0	1	--	--	1	0	94	94	--	--	94	0
AFL-CIO v. AFL-CIO v. AFL-CIO	4	25.0	1	1	--	--	3	1,146	92	92	--	--	1,054
3 (or more)-union elections	6	50.0	3	1	0	2	3	1,286	232	92	0	140	1,054
Total representation elections	3,368	50.0	1,685	1,518	83	84	1,683	259,534	120,525	106,823	6,649	7,053	139,009
B. Elections in RC cases													
AFL-CIO	2,621	49.4	1,295	1,291	4	--	1,326	195,042	86,018	85,988	30	--	109,024
Other local unions	88	72.7	64	--	--	64	24	9,971	5,413	--	--	5,413	4,558
Other national unions	97	62.9	61	--	61	--	36	7,409	4,217	--	4,217	--	3,192
1-union elections	2,806	50.6	1,420	1,291	65	64	1,386	212,422	95,648	85,988	4,247	5,413	116,774
National v. Local	8	87.5	7	--	4	3	1	951	533	--	307	226	418
AFL-CIO v. Local	39	79.5	31	23	--	8	8	10,553	3,771	2,828	--	943	6,782
Local v. Local	4	100.0	4	--	--	4	0	197	197	--	--	197	0
AFL-CIO v. National	22	86.4	19	10	9	--	3	2,502	2,173	860	1,313	--	329

Table 13.–Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2000[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	
National v. National	1	100.0	1	--	1	--	0	14	14	--	14	--	0
AFL-CIO v. AFL-CIO	73	72.6	53	53	--	--	20	7,201	3,891	3,891	--	--	3,310
2-union elections	147	78.2	115	86	14	15	32	21,418	10,579	7,579	1,634	1,366	10,839
AFL-CIO v. Local v. Local	1	100.0	1	0	--	1	0	46	46	0	--	46	0
Local v. Local v. Local	1	100.0	1	--	--	1	0	94	94	--	--	94	0
AFL-CIO v. AFL-CIO v. AFL-CIO	2	50.0	1	1	--	--	1	131	92	92	--	--	39
3 (or more)-union elections	4	75.0	3	1	0	2	1	271	232	92	0	140	39
Total RC elections	2,957	52.0	1,538	1,378	79	81	1,419	234,111	106,459	93,659	5,881	6,919	127,652
C. Elections in RM cases													
AFL-CIO	23	26.1	6	6	--	--	17	824	100	100	--	--	724
Other local unions	2	0.0	0	--	--	0	2	8	0	--	--	0	8
Other national unions	2	50.0	1	--	1	--	1	507	393	--	393	--	114
1-union elections	27	25.9	7	6	1	0	20	1,339	493	100	393	0	846
AFL-CIO v. AFL-CIO	4	100.0	4	4	--	--	0	407	407	407	--	--	0
2-union elections	4	100.0	4	4	0	0	0	407	407	407	0	0	0
Total RM elections	31	35.5	11	10	1	0	20	1,746	900	507	393	0	846
D. Elections in RD cases													
AFL-CIO	345	36.8	127	127	--	--	218	19,841	12,562	12,562	--	--	7,279
Other local unions	12	25.0	3	--	--	3	9	1,519	134	--	--	134	1,385
Other national unions	15	13.3	2	--	2	--	13	885	282	--	282	--	603
1-union elections	372	35.5	132	127	2	3	240	22,245	12,978	12,562	282	134	9,267
National v. National	1	100.0	1	--	1	--	0	93	93	--	93	--	0
AFL-CIO v. AFL-CIO	5	60.0	3	3	--	--	2	324	95	95	--	--	229
2-union elections	6	66.7	4	3	1	0	2	417	188	95	93	0	229
AFL-CIO v. AFL-CIO v. AFL-CIO	2	0.0	0	0	--	--	2	1,015	0	0	--	--	1,015

Table 13.–Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2000[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	
3 (or more)-union elections.....	2	0.0	0	0	0	0	2	1,015	0	0	0	0	1,015
Total RD elections.....	380	35.8	136	130	3	3	244	23,677	13,166	12,657	375	134	10,511

[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.

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2000[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	188,846	54,749	54,749	--	--	28,586	35,052	35,052	--	--	70,459
Other local unions	9,775	3,187	--	--	3,187	1,539	2,213	--	--	2,213	2,836
Other national unions	7,265	2,774	--	2,774	--	1,240	1,160	--	1160	--	2,091
1-union elections	205,886	60,710	54,749	2,774	3,187	31,365	38,425	35,052	1160	2,213	75,386
National v. Local	859	435	--	182	253	9	222	--	111	111	193
AFL-CIO v. Local	8,009	2,670	1,711	--	959	81	1,683	1,023	--	660	3,575
Local v. Local	173	167	--	--	167	6	0	--	--	0	0
AFL-CIO v. National	1,959	1,537	740	797	--	135	73	14	59	--	214
National v. National	103	103	--	103	--	0	0	--	0	--	0
AFL-CIO v. AFL-CIO	6,653	3,178	3,178	--	--	482	1,111	1,111	--	--	1,882
2-union elections	17,756	8,090	5,629	1,082	1,379	713	3,089	2,148	170	771	5,864
AFL-CIO v. Local v. Local	4	4	1	--	3	0	0	0	--	0	0
Local v. Local v. Local	87	85	--	--	85	2	0	--	--	0	0
AFL-CIO v. AFL-CIO v. AFL-CIO	998	73	73	--	--	10	435	435	--	--	480
3 (or more)-union elections	1,089	162	74	0	88	12	435	435	0	0	480
Total representation elections	224,731	68,962	60,452	3,856	4,654	32,090	41,949	37,635	1330	2,984	81,730
B. Elections in RC cases											
AFL-CIO	171,485	48,211	48,211	--	--	24,808	32,720	32,720	--	--	65,746
Other local unions	8,565	3,115	--	--	3,115	1,484	1,732	--	--	1,732	2,234
Other national unions	6,110	2,400	--	2,400	--	961	1,004	--	1004	--	1,745
1-union elections	186,160	53,726	48,211	2,400	3,115	27,253	35,456	32,720	1004	1,732	69,725
Local v. Local	173	167	0	0	167	6	0	--	--	--	--
National v. National	11	11	0	11	0	0	0	--	--	--	--
National v. Local	859	435	--	182	253	9	222	--	111	111	193
AFL-CIO v. Local	8,009	2,670	1,711	--	959	81	1,683	1,023	--	660	3,575
AFL-CIO v. National	1,959	1,537	740	797	--	135	73	14	59	--	214
AFL-CIO v. AFL-CIO	6,034	2,758	2,758	--	--	468	1,060	1,060	--	--	1,748
2-union elections	17,045	7,578	5,209	990	1,379	699	3,038	2,097	170	771	5,730
AFL-CIO v. Local v. Local	4	4	1	0	3	0	0	--	--	--	--
Local v. Local v. Local	87	85	0	0	85	2	0	--	--	--	--

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2000[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 v. AFL-CIO.....	149	73	73	--	--	10	45	45	--	--	21
3 (or more)-union elections.....	240	162	74	0	88	12	45	45	0	0	21
Total RC elections.....	203,445	61,466	53,494	3,390	4,582	27,964	38,539	34,862	1174	2,503	75,476
C. Elections in RM cases											
AFL-CIO.....	756	67	67	--	--	17	170	170	--	--	502
Other local unions.....	8	0	--	--	--	--	3	0	0	3	5
Other national unions.....	448	205	--	205	--	181	3	--	3	--	59
1-union elections.....	1,212	272	67	205	0	198	176	170	3	3	566
AFL-CIO v. AFL-CIO.....	367	362	362	0	0	5	0	--	--	--	--
2-union elections.....	367	362	362	0	0	5	0	0	0	0	0
Total RM elections.....	1,579	634	429	205	0	203	176	170	3	3	566
D. Elections in RD cases											
AFL-CIO.....	16,605	6,471	6,471	--	--	3,761	2,162	2,162	--	--	4,211
Other local unions.....	1,202	72	--	--	72	55	478	--	--	478	597
Other national unions.....	707	169	--	169	--	98	153	--	153	--	287
1-union elections.....	18,514	6,712	6,471	169	72	3,914	2,793	2,162	153	478	5,095
National v. National.....	92	92	0	92	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO.....	252	58	58	--	--	9	51	51	--	--	134
2-union elections.....	344	150	58	92	0	9	51	51	0	0	134
AFL-CIO v. AFL-CIO v. AFL-CIO.....	849	0	--	--	--	--	390	390	0	0	459
3 (or more)-union elections.....	849	0	0	0	0	0	390	390	0	0	459
Total RD elections.....	19,707	6,862	6,529	261	72	3,923	3,234	2,603	153	478	5,688

[1] See Glossary of terms for definitions.

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	199	94	89	3	2	105	12985	11,042	5,182	4,663	410	109	5,860	4277
Indiana	80	31	30	1	0	49	6487	5,814	2,205	2,165	39	1	3,609	1076
Michigan	196	91	83	4	4	105	18317	14,575	7,477	6,918	147	412	7,098	9502
Ohio	186	88	87	1	0	98	17182	14,747	6,947	6,876	28	43	7,800	7807
Wisconsin	82	36	35	1	0	46	4437	4,058	1,931	1,872	59	0	2,127	1753
East North Central	743	340	324	10	6	403	59408	50,236	23,742	22,494	683	565	26,494	24415
Alabama	38	15	12	3	0	23	3747	3,508	1,614	1,204	410	0	1,894	1961
Kentucky	47	14	14	0	0	33	3667	3,247	1,424	1,356	68	0	1,823	1498
Mississippi	34	18	18	0	0	16	3364	2,982	1,478	1,478	0	0	1,504	1757
Tennessee	48	26	22	4	0	22	4413	3,959	1,972	1,921	51	0	1,987	2229
East South Central	167	73	66	7	0	94	15191	13,696	6,488	5,959	529	0	7,208	7445
New Jersey	163	87	80	4	3	76	11931	9,823	5,354	4,500	147	707	4,469	5415
New York	335	209	169	10	30	126	26582	24,079	12,996	10,822	560	1,614	11,083	16605
Pennsylvania	227	99	88	8	3	128	18235	16,274	7,893	6,725	841	327	8,381	6406
Middle Atlantic	725	395	337	22	36	330	56748	50,176	26,243	22,047	1,548	2,648	23,933	28426
Arizona	33	15	13	2	0	18	2161	1,708	912	845	67	0	796	1128
Colorado	51	26	24	2	0	25	1653	1,428	805	692	113	0	623	980
Idaho	5	2	0	1	1	3	170	143	118	28	7	83	25	156
Montana	25	13	12	1	0	12	629	542	291	290	1	0	251	315
Nevada	48	25	22	3	0	23	3672	3,116	1,779	1,682	97	0	1,337	2192
New Mexico	16	8	6	2	0	8	1146	1,055	586	417	169	0	469	774
Utah	15	9	9	0	0	6	1005	1,014	657	657	0	0	357	819
Wyoming	7	2	2	0	0	5	409	396	164	164	0	0	232	77
Mountain	200	100	88	11	1	100	10845	9,402	5,312	4,775	454	83	4,090	6441
Connecticut	55	24	24	0	0	31	3679	3,215	1,550	1,550	0	0	1,665	2010
Maine	10	2	2	0	0	8	566	514	232	232	0	0	282	27
Massachusetts	82	44	41	2	1	38	4632	3,822	2,026	1,833	180	13	1,796	2578
New Hampshire	9	6	5	0	1	3	385	332	124	116	0	8	208	62
Rhode Island	15	7	6	1	0	8	901	796	432	417	15	0	364	561
Vermont	7	3	2	1	0	4	801	759	336	282	54	0	423	125
New England	178	86	80	4	2	92	10964	9,438	4,700	4,430	249	21	4,738	5363

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–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		
Puerto Rico	33	21	11	0	10	12	1700	1,159	692	351	0	341	467	888
Virgin Islands	10	5	4	1	0	5	478	422	264	250	4	10	158	104
Outlying Areas	43	26	15	1	10	17	2178	1,581	956	601	4	351	625	992
Alaska	20	9	9	0	0	11	834	643	315	315	0	0	328	133
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	333	176	154	13	9	157	26236	21,378	11,403	8,443	1,026	1,934	9,975	13065
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	35	26	26	26	0	0	0	35
Hawaii	35	18	16	2	0	17	1318	1,066	538	534	4	0	528	594
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	64	34	31	0	3	30	2560	1,831	809	757	0	52	1,022	1001
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	94	51	48	3	0	43	3764	3,162	1,660	1,631	29	0	1,502	1471
Pacific	547	289	259	18	12	258	34747	28,106	14,751	11,706	1,059	1,986	13,355	16299
Delaware	19	6	5	1	0	13	798	733	296	280	16	0	437	290
District Of Columbia	18	13	6	0	7	5	2074	1,382	560	382	0	178	822	635
Florida	94	45	43	1	1	49	8796	7,356	3,509	3,480	9	20	3,847	3747
Georgia	35	17	15	2	0	18	3050	2,731	1,063	1,053	10	0	1,668	1025
Maryland	52	24	22	0	2	28	4565	3,875	1,792	1,506	47	239	2,083	1538
North Carolina	15	11	10	1	0	4	6032	5,254	2,830	2,829	1	0	2,424	5524
South Carolina	17	10	9	1	0	7	1919	1,724	622	567	55	0	1,102	561
Virginia	35	24	22	0	2	11	1729	1,518	880	818	3	59	638	1288
West Virginia	39	16	15	1	0	23	1813	1,540	704	704	0	0	836	647
South Atlantic	324	166	147	7	12	158	30776	26,113	12,256	11,619	141	496	13,857	15255
Iowa	43	16	15	1	0	27	2880	2,744	1,051	1,045	6	0	1,693	676
Kansas	27	13	11	2	0	14	8924	7,966	3,042	2,590	22	430	4,924	4578
Minnesota	98	51	47	3	1	47	5493	4,898	2,380	2,092	248	40	2,518	2164
Missouri	104	47	46	1	0	57	6748	5,901	2,468	1,467	55	946	3,433	1263
Nebraska	10	2	2	0	0	8	669	610	242	195	47	0	368	63

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–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		
North Dakota	8	5	5	0	0	3	911	854	424	424	0	0	430	479
South Dakota	6	4	4	0	0	2	359	295	102	102	0	0	193	101
West North Central	296	138	130	7	1	158	25984	23,268	9,709	7,915	378	1,416	13,559	9324
Arkansas	17	10	10	0	0	7	2260	1,955	1,072	1,072	0	0	883	1704
Louisiana	28	12	11	1	0	16	2523	2,410	1,155	1,145	10	0	1,255	1270
Oklahoma	22	9	8	0	1	13	2467	2,158	928	900	0	28	1,230	832
Texas	87	38	33	2	3	49	8029	7,045	3,289	3,096	127	66	3,756	2617
West South Central	154	69	62	3	4	85	15279	13,568	6,444	6,213	137	94	7,124	6423
Total, all States and areas	3,377	1,682	1,508	90	84	1,695	262120	225,584	110,601	97,759	5,182	7,660	114,983	120383

[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[1] Held in Cases Closed, Fiscal Year 2000

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	171	82	77	3	2	89	11,589	9,944	4,514	4,021	384	109	5,430	3,473
Indiana	68	27	26	1	0	41	5,927	5,325	1,981	1,958	22	1	3,344	866
Michigan	170	84	77	4	3	86	17,016	13,551	6,996	6,492	138	366	6,555	8,952
Ohio	167	84	84	0	0	83	16,653	14,274	6,751	6,680	28	43	7,523	7,639
Wisconsin	66	27	26	1	0	39	3,515	3,219	1,396	1,337	59	0	1,823	928
East North Central	642	304	290	9	5	338	54,700	46,313	21,638	20,488	631	519	24,675	21,858
Alabama	29	14	11	3	0	15	3,366	3,136	1,459	1,049	410	0	1,677	1,842
Kentucky	38	12	12	0	0	26	2,905	2,540	1,087	1,019	68	0	1,453	1,064
Mississippi	33	17	17	0	0	16	2,384	2,225	1,021	1,021	0	0	1,204	777
Tennessee	44	25	21	4	0	19	4,044	3,621	1,805	1,754	51	0	1,816	1,940
East South Central	144	68	61	7	0	76	12,699	11,522	5,372	4,843	529	0	6,150	5,623
New Jersey	149	81	74	4	3	68	11,103	9,057	5,002	4,148	147	707	4,055	5,061
New York	312	198	160	9	29	114	25,280	23,042	12,396	10,323	468	1,605	10,646	15,653
Pennsylvania	205	87	77	8	2	118	16,807	15,100	7,179	6,071	838	270	7,921	5,332
Middle Atlantic	666	366	311	21	34	300	53,190	47,199	24,577	20,542	1,453	2,582	22,622	26,046
Arizona	30	15	13	2	0	15	2,110	1,660	896	829	67	0	764	1,128
Colorado	44	24	22	2	0	20	1,500	1,289	751	640	111	0	538	959
Idaho	5	2	0	1	1	3	170	143	118	28	7	83	25	156
Montana	19	13	12	1	0	6	526	450	269	269	0	0	181	315
Nevada	42	23	20	3	0	19	3,494	2,992	1,739	1,642	97	0	1,253	2,155
New Mexico	12	5	5	0	0	7	740	670	350	350	0	0	320	431
Utah	12	8	8	0	0	4	839	889	568	568	0	0	321	676
Wyoming	7	2	2	0	0	5	409	396	164	164	0	0	232	77
Mountain	171	92	82	9	1	79	9,788	8,489	4,855	4,490	282	83	3,634	5,897
Connecticut	51	23	23	0	0	28	3,612	3,157	1,519	1,519	0	0	1,638	1,977
Maine	7	2	2	0	0	5	473	441	209	209	0	0	232	27
Massachusetts	76	42	39	2	1	34	4,509	3,704	1,988	1,795	180	13	1,716	2,550
New Hampshire	8	5	4	0	1	3	357	307	108	100	0	8	199	34
Rhode Island	14	6	5	1	0	8	757	674	349	334	15	0	325	417
Vermont	7	3	2	1	0	4	801	759	336	282	54	0	423	125
New England	163	81	75	4	2	82	10,509	9,042	4,509	4,239	249	21	4,533	5,130

Table 15B.--Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2000–Continued

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Puerto Rico	31	21	11	0	10	10	1,654	1,118	679	351	0	328	439	888
Virgin Islands	10	5	4	1	0	5	478	422	264	250	4	10	158	104
Outlying Areas	41	26	15	1	10	15	2,132	1,540	943	601	4	338	597	992
Alaska	17	7	7	0	0	10	524	435	178	178	0	0	257	49
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	307	169	147	13	9	138	21,731	17,916	9,602	7,055	1,026	1,521	8,314	10,932
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	35	26	26	26	0	0	0	35
Hawaii	33	16	14	2	0	17	1,273	1,021	514	510	4	0	507	549
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	48	29	26	0	3	19	2,065	1,408	593	541	0	52	815	734
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	86	48	45	3	0	38	3,222	2,708	1,416	1,387	29	0	1,292	1,411
Pacific	492	270	240	18	12	222	28,850	23,514	12,329	9,697	1,059	1,573	11,185	13,710
Delaware	17	6	5	1	0	11	758	698	290	274	16	0	408	290
District Of Columbia	16	11	4	0	7	5	1,981	1,297	499	321	0	178	798	542
Florida	86	43	41	1	1	43	8,516	7,096	3,422	3,393	9	20	3,674	3,634
Georgia	32	16	14	2	0	16	2,699	2,406	918	908	10	0	1,488	795
Maryland	47	22	20	0	2	25	4,101	3,524	1,641	1,402	0	239	1,883	1,361
North Carolina	15	11	10	1	0	4	6,032	5,254	2,830	2,829	1	0	2,424	5,524
South Carolina	14	8	7	1	0	6	1,659	1,519	532	525	7	0	987	301
Virginia	31	22	20	0	2	9	1,546	1,375	769	707	3	59	606	1,132
West Virginia	36	16	15	1	0	20	1,697	1,449	688	688	0	0	761	647
South Atlantic	294	155	136	7	12	139	28,989	24,618	11,589	11,047	46	496	13,029	14,226
Iowa	40	15	14	1	0	25	2,835	2,700	1,038	1,032	6	0	1,662	669
Kansas	20	10	8	2	0	10	8,512	7,619	2,876	2,424	22	430	4,743	4,339
Minnesota	85	45	41	3	1	40	5,028	4,477	2,159	1,871	248	40	2,318	1,831
Missouri	88	44	43	1	0	44	6,169	5,402	2,241	1,252	55	934	3,161	879
Nebraska	8	1	1	0	0	7	606	549	201	154	47	0	348	16
North Dakota	8	5	5	0	0	3	911	854	424	424	0	0	430	479

Table 15B.--Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2000–Continued

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
South Dakota	5	4	4	0	0	1	294	236	84	84	0	0	152	101
West North Central	254	124	116	7	1	130	24,355	21,837	9,023	7,241	378	1,404	12,814	8,314
Arkansas	14	8	8	0	0	6	1,981	1,690	929	929	0	0	761	1,522
Louisiana	23	10	9	1	0	13	2,389	2,293	1,106	1,096	10	0	1,187	1,209
Oklahoma	19	8	7	0	1	11	2,396	2,091	897	869	0	28	1,194	789
Texas	72	33	28	2	3	39	6,420	5,679	2,708	2,515	127	66	2,971	1,974
West South Central	128	59	52	3	4	69	13,186	11,753	5,640	5,409	137	94	6,113	5,494
Total, all States and areas	2,995	1,545	1,378	86	81	1,450	238,398	205,827	100,475	88,597	4,768	7,110	105,352	107,290

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

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2000

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	28	12	12	0	0	16	1396	1,098	668	642	26	0	430	804
Indiana	12	4	4	0	0	8	560	489	224	207	17	0	265	210
Michigan	26	7	6	0	1	19	1301	1,024	481	426	9	46	543	550
Ohio	19	4	3	1	0	15	529	473	196	196	0	0	277	168
Wisconsin	16	9	9	0	0	7	922	839	535	535	0	0	304	825
East North Central	101	36	34	1	1	65	4708	3,923	2,104	2,006	52	46	1,819	2557
Alabama	9	1	1	0	0	8	381	372	155	155	0	0	217	119
Kentucky	9	2	2	0	0	7	762	707	337	337	0	0	370	434
Mississippi	1	1	1	0	0	0	980	757	457	457	0	0	300	980
Tennessee	4	1	1	0	0	3	369	338	167	167	0	0	171	289
East South Central	23	5	5	0	0	18	2492	2,174	1,116	1,116	0	0	1,058	1822
New Jersey	14	6	6	0	0	8	828	766	352	352	0	0	414	354
New York	23	11	9	1	1	12	1302	1,037	600	499	92	9	437	952
Pennsylvania	22	12	11	0	1	10	1428	1,174	714	654	3	57	460	1074
Middle Atlantic	59	29	26	1	2	30	3558	2,977	1,666	1,505	95	66	1,311	2380
Arizona	3	0	0	0	0	3	51	48	16	16	0	0	32	0
Colorado	7	2	2	0	0	5	153	139	54	52	2	0	85	21
Idaho	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Montana	6	0	0	0	0	6	103	92	22	21	1	0	70	0
Nevada	6	2	2	0	0	4	178	124	40	40	0	0	84	37
New Mexico	4	3	1	2	0	1	406	385	236	67	169	0	149	343
Utah	3	1	1	0	0	2	166	125	89	89	0	0	36	143
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mountain	29	8	6	2	0	21	1057	913	457	285	172	0	456	544
Connecticut	4	1	1	0	0	3	67	58	31	31	0	0	27	33
Maine	3	0	0	0	0	3	93	73	23	23	0	0	50	0
Massachusetts	6	2	2	0	0	4	123	118	38	38	0	0	80	28
New Hampshire	1	1	1	0	0	0	28	25	16	16	0	0	9	28
Rhode Island	1	1	1	0	0	0	144	122	83	83	0	0	39	144
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2000

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 England	15	5	5	0	0	10	455	396	191	191	0	0	205	233
Puerto Rico	2	0	0	0	0	2	46	41	13	0	0	13	28	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	2	0	0	0	0	2	46	41	13	0	0	13	28	0
Alaska	3	2	2	0	0	1	310	208	137	137	0	0	71	84
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	26	7	7	0	0	19	4505	3,462	1,801	1,388	0	413	1,661	2133
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	2	2	2	0	0	0	45	45	24	24	0	0	21	45
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	16	5	5	0	0	11	495	423	216	216	0	0	207	267
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	8	3	3	0	0	5	542	454	244	244	0	0	210	60
Pacific	55	19	19	0	0	36	5897	4,592	2,422	2,009	0	413	2,170	2589
Delaware	2	0	0	0	0	2	40	35	6	6	0	0	29	0
District Of Columbia	2	2	2	0	0	0	93	85	61	61	0	0	24	93
Florida	8	2	2	0	0	6	280	260	87	87	0	0	173	113
Georgia	3	1	1	0	0	2	351	325	145	145	0	0	180	230
Maryland	5	2	2	0	0	3	464	351	151	104	47	0	200	177
North Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina	3	2	2	0	0	1	260	205	90	42	48	0	115	260
Virginia	4	2	2	0	0	2	183	143	111	111	0	0	32	156
West Virginia	3	0	0	0	0	3	116	91	16	16	0	0	75	0
South Atlantic	30	11	11	0	0	19	1787	1,495	667	572	95	0	828	1029
Iowa	3	1	1	0	0	2	45	44	13	13	0	0	31	7
Kansas	7	3	3	0	0	4	412	347	166	166	0	0	181	239
Minnesota	13	6	6	0	0	7	465	421	221	221	0	0	200	333
Missouri	16	3	3	0	0	13	579	499	227	215	0	12	272	384

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2000

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		
Nebraska	2	1	1	0	0	1	63	61	41	41	0	0	20	47
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota	1	0	0	0	0	1	65	59	18	18	0	0	41	0
West North Central	42	14	14	0	0	28	1629	1,431	686	674	0	12	745	1010
Arkansas	3	2	2	0	0	1	279	265	143	143	0	0	122	182
Louisiana	5	2	2	0	0	3	134	117	49	49	0	0	68	61
Oklahoma	3	1	1	0	0	2	71	67	31	31	0	0	36	43
Texas	15	5	5	0	0	10	1609	1,366	581	581	0	0	785	643
West South Central	26	10	10	0	0	16	2093	1,815	804	804	0	0	1,011	929
Total, all States and areas	382	137	130	4	3	245	23722	19,757	10,126	9,162	414	550	9,631	13093

[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 2000

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Crop Production	4	2	1	1	0	2	632	611	298	93	205	0	313	429
Animal Production	5	4	4	0	0	1	606	548	287	287	0	0	261	540
Forestry and Logging	2	2	2	0	0	0	71	69	44	44	0	0	25	71
Fishing, Hunting and Trapping	1	1	1	0	0	0	136	98	94	94	0	0	4	136
Support Activities for Agriculture and Forestry	5	3	3	0	0	2	151	109	58	58	0	0	51	4
Agriculture, Forestry, Fishing, and Hunting	17	12	11	1	0	5	1596	1,435	781	576	205	0	654	1180
Oil and Gas Extraction	6	3	2	1	0	3	405	480	278	219	59	0	202	130
Mining (except Oil and Gas)	12	5	5	0	0	7	452	375	169	169	0	0	206	150
Support Activities for Mining	4	1	1	0	0	3	241	235	86	68	0	18	149	4
Mining	22	9	8	1	0	13	1098	1,090	533	456	59	18	557	284
Utilities	100	51	50	1	0	49	5629	5,275	2,616	2,609	7	0	2,659	2482
Building, Developing and General Contracting	74	27	24	2	1	47	1953	1,512	751	693	27	31	761	731
Heavy Construction	30	12	11	0	1	18	1001	688	291	282	0	9	397	145
Special Trade Contractors	192	78	74	2	2	114	5129	3,805	1,652	1,607	9	36	2,153	1638
Construction	296	117	109	4	4	179	8083	6,005	2,694	2,582	36	76	3,311	2514
Food Manufacturing	90	37	34	1	2	53	11690	9,436	3,613	2,967	112	534	5,823	2947
Beverage and Tobacco Product Manufacturing	25	8	7	0	1	17	1083	1,004	396	391	3	2	608	209
Textile Mills	11	5	3	0	2	6	1446	1,310	714	454	0	260	596	973
Textile Product Mills	5	2	2	0	0	3	5460	4,801	2,441	2,441	0	0	2,360	5016
Apparel Manufacturing	8	3	3	0	0	5	957	839	572	555	0	17	267	556
Leather and Allied Product Manufacturing	4	2	2	0	0	2	84	77	38	38	0	0	39	49
31-Manufacturing	143	57	51	1	5	86	20720	17,467	7,774	6,846	115	813	9,693	9750
Wood Product Manufacturing	23	11	10	0	1	12	1841	1,659	816	777	0	39	843	984
Paper Manufacturing	48	19	17	1	1	29	4535	3,757	1,568	1,368	35	165	2,189	1212
Printing and Related Support Activities	22	5	4	0	1	17	1411	1,250	488	475	3	10	762	374

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Petroleum and Coal Products Manufacturing	11	4	4	0	0	7	704	654	311	311	0	0	343	450
Chemical Manufacturing	48	21	20	0	1	27	3033	2,794	1,474	1,284	0	190	1,320	1113
Plastics and Rubber Products Manufacturing	35	12	11	1	0	23	4104	3,736	1,590	1,479	72	39	2,146	733
Nonmetallic Mineral Product Manufacturing	48	16	16	0	0	32	2008	1,852	843	833	10	0	1,009	582
32-Manufacturing	235	88	82	2	4	147	17636	15,702	7,090	6,527	120	443	8,612	5448
Primary Metal Manufacturing	67	21	20	1	0	46	6184	5,712	2,606	2,431	157	18	3,106	2327
Fabricated Metal Product Manufacturing	75	28	26	1	1	47	7810	7,040	3,515	3,230	45	240	3,525	3348
Machinery Manufacturing	59	23	22	0	1	36	7724	7,206	3,283	3,016	0	267	3,923	1697
Computer and Electronic Product Manufacturing	5	2	2	0	0	3	210	203	71	71	0	0	132	23
Electrical Equipment, Appliance and Component Manufacturing	25	10	10	0	0	15	2480	2,285	977	977	0	0	1,308	638
Transportation Equipment Manufacturing	92	39	39	0	0	53	19872	18,043	8,213	8,177	23	13	9,830	10395
Furniture and Related Product Manufacturing	11	2	2	0	0	9	1138	1,073	428	428	0	0	645	48
Miscellaneous Manufacturing	75	27	26	1	0	48	7509	6,964	2,554	2,521	23	10	4,410	1395
33-Manufacturing	409	152	147	3	2	257	52927	48,526	21,647	20,851	248	548	26,879	19871
Wholesale Trade, Durable Goods	63	22	21	0	1	41	3093	2,743	1,116	1,092	0	24	1,627	519
Wholesale Trade, Nondurable Goods	87	42	42	0	0	45	4107	3,631	1,807	1,796	0	11	1,824	2011
Wholesale Trade	150	64	63	0	1	86	7200	6,374	2,923	2,888	0	35	3,451	2530
Motor Vehicle and Parts Dealers	71	30	28	1	1	41	2033	1,914	949	932	4	13	965	898
Furniture and Home Furnishings Stores	11	4	4	0	0	7	553	494	225	225	0	0	269	142
Electronics and Appliance Stores	5	1	1	0	0	4	330	301	77	77	0	0	224	11
Building Material and Garden Equipment and Supplies Dealers	14	7	6	1	0	7	305	267	114	95	0	19	153	125
Food and Beverage Stores	59	33	30	1	2	26	2171	1,925	939	842	0	97	986	1038
Health and Personal Care Stores	13	9	8	1	0	4	1572	1,403	639	434	205	0	764	492
Gasoline Stations	1	0	0	0	0	1	3	3	1	1	0	0	2	0
Clothing and Clothing Accessories Stores	9	3	3	0	0	6	1723	1,507	371	371	0	0	1,136	165

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
44-Retail Trade	183	87	80	4	3	96	8690	7,814	3,315	2,977	209	129	4,499	2871
Sporting Goods, Hobby, Book and Music Stores	3	0	0	0	0	3	76	72	31	31	0	0	41	0
General Merchandise Stores	17	10	10	0	0	7	875	685	343	343	0	0	342	413
Miscellaneous Store Retailers	8	3	3	0	0	5	1155	1,063	288	288	0	0	775	69
Nonstore Retailers	10	3	3	0	0	7	550	445	212	204	8	0	233	216
45-Retail Trade	38	16	16	0	0	22	2656	2,265	874	866	8	0	1,391	698
Air Transportation	14	12	9	3	0	2	406	278	195	182	13	0	83	163
Rail Transportation	8	5	5	0	0	3	329	302	199	199	0	0	103	175
Water Transportation	11	5	4	0	1	6	207	192	95	75	0	20	97	76
Truck Transportation	158	74	73	1	0	84	5810	4,881	2,667	2,653	14	0	2,214	3050
Transit and Ground Passenger Transportation	121	73	70	1	2	48	10012	7,783	4,151	3,908	157	86	3,632	4839
Pipeline Transportation	2	0	0	0	0	2	153	142	84	84	0	0	58	0
Scenic and Sightseeing Transportation	2	1	1	0	0	1	14	12	8	8	0	0	4	6
Support Activities for Transportation	22	14	13	1	0	8	774	640	400	396	4	0	240	499
48-Transportation	338	184	175	6	3	154	17705	14,230	7,799	7,505	188	106	6,431	8808
Postal Service	5	4	4	0	0	1	562	515	329	329	0	0	186	557
Couriers and Messengers	16	4	3	0	1	12	800	675	307	275	21	11	368	301
Warehousing and Storage Facilities	63	26	25	0	1	37	4825	4,038	1,751	1,623	41	87	2,287	1388
48-Transportation	84	34	32	0	2	50	6187	5,228	2,387	2,227	62	98	2,841	2246
Publishing Industries	33	16	16	0	0	17	2162	1,920	823	823	0	0	1,097	948
Motion Picture and Sound Recording Industries	4	2	2	0	0	2	503	358	193	172	19	2	165	466
Broadcasting and Telecommunications	71	38	36	2	0	33	2717	2,373	1,259	1,239	20	0	1,114	1335
Information Services and Data Processing Services	8	4	2	1	1	4	429	384	150	112	7	31	234	155
Information	116	60	56	3	1	56	5811	5,035	2,425	2,346	46	33	2,610	2904
Monetary Authorities - Central Bank	4	3	3	0	0	1	228	199	130	95	0	35	69	106
Credit Intermediation and Related Activities	3	2	2	0	0	1	688	606	170	170	0	0	436	52

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Insurance Carriers and Related Activities	5	1	0	1	0	4	146	124	78	48	30	0	46	52
Funds, Trusts and Other Financial Vehicles (U.S. Only)	1	1	0	1	0	0	6	5	4	0	4	0	1	6
Finance and Insurance	13	7	5	2	0	6	1068	934	382	313	34	35	552	216
Real Estate	19	13	11	0	2	6	168	143	104	78	0	26	39	124
Rental and Leasing Services	45	14	13	1	0	31	1426	3,590	438	438	0	0	3,152	345
Owners and Lessors of Other Non-Financial Assets	1	1	1	0	0	0	3	3	3	3	0	0	0	3
Real Estate and Rental and Leasing	65	28	25	1	2	37	1597	3,736	545	519	0	26	3,191	472
Professional, Scientific and Technical Services	47	34	27	5	2	13	3179	2,562	1,272	746	76	450	1,290	681
Management of Companies and Enterprises	3	2	2	0	0	1	34	32	20	20	0	0	12	23
Administrative and Support Services	137	92	50	20	22	45	5155	4,068	2,510	1,309	570	631	1,558	3236
Waste Management and Remediation Services	82	35	34	0	1	47	3959	3,484	1,542	1,534	0	8	1,942	1427
Administrative and Support, Waste Management and Remediation Services	219	127	84	20	23	92	9114	7,552	4,052	2,843	570	639	3,500	4663
Educational Services	69	51	41	5	5	18	4612	3,858	2,546	2,203	197	146	1,312	3611
Ambulatory Health Care Services	79	40	34	0	6	39	5509	4,053	1,959	1,783	70	106	2,094	1806
Hospitals	223	130	105	16	9	93	49397	39,908	21,536	16,270	2,141	3,125	18,372	26848
Nursing and Residential Care Facilities	204	132	126	4	2	72	14584	11,998	6,776	6,518	124	134	5,222	10356
Social Assistance	36	23	22	0	1	13	1982	1,572	873	850	5	18	699	1255
Health Care and Social Assistance	542	325	287	20	18	217	71472	57,531	31,144	25,421	2,340	3,383	26,387	40265
Performing Arts, Spectator Sports and Related Industries	25	18	16	2	0	7	1449	1,044	741	555	149	37	303	1174
Museums, Historical Sites and Similar Institutions	3	2	2	0	0	1	55	53	30	30	0	0	23	48
Amusement, Gambling and Recreation Industries	30	16	14	1	1	14	2859	2,804	1,668	1,436	44	188	1,136	1553
Arts, Entertainment and Recreation	58	36	32	3	1	22	4363	3,901	2,439	2,021	193	225	1,462	2775

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2000–Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Accommodation	52	33	31	2	0	19	2614	2,108	1,313	1,259	42	12	795	1337
Foodservices and Drinking Places	51	24	22	1	1	27	2510	2,167	1,060	1,034	13	13	1,107	1218
Accommodation and Foodservices	103	57	53	3	1	46	5124	4,275	2,373	2,293	55	25	1,902	2555
Repair and Maintenance	52	35	34	0	1	17	2196	1,959	1,008	1,001	0	7	951	1088
Personal and Laundry Services	41	24	24	0	0	17	1872	1,607	924	921	2	1	683	1022
Religious, Grantmaking, Civic, and Professional and Similar Organizations	10	5	4	1	0	5	156	148	70	55	15	0	78	71
Private Households	1	1	1	0	0	0	56	46	44	44	0	0	2	56
Other Services (except Public Administration)	104	65	63	1	1	39	4280	3,760	2,046	2,021	17	8	1,714	2237
Executive, Legislative, Public Finance and General Government	1	1	1	0	0	0	87	79	51	51	0	0	28	87
Justice, Public Order, and Safety	10	5	1	2	2	5	568	466	372	68	79	225	94	466
Administration of Human Resource Programs	2	2	2	0	0	0	68	58	48	48	0	0	10	68
Administration of Environmental Quality Programs	1	0	0	0	0	1	50	48	5	5	0	0	43	0
Administration of Economic Programs	1	1	1	0	0	0	11	11	7	7	0	0	4	11
National Security and International Affairs	2	2	0	1	1	0	88	88	64	0	25	39	24	88
Public Administration	17	11	5	3	3	6	872	750	547	179	104	264	203	720
Unclassified Establishments	9	6	4	0	2	3	788	683	420	157	111	152	263	291
Total, all industrial groups	3,380	1,680	1,508	89	83	1,700	262441	226,020	110,644	97,992	5,000	7,652	115,376	120095

[1] Source: Standard Classificaiton, 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 2000[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	237,413	2,968	100.0	--	1,163	100.0	277	100.0	94	100.0	1,434	100.0
Under 10	4,471	594	20.0	20.0	317	27.3	59	21.3	11	11.7	207	14.4
10 to 19	9,127	599	20.2	40.2	236	20.3	66	23.8	18	19.1	279	19.5
20 to 29	8,477	325	11.0	51.1	128	11.0	26	9.4	11	11.7	160	11.2
30 to 39	9,393	252	8.5	59.6	88	7.6	20	7.2	7	7.4	137	9.6
40 to 49	7,709	170	5.7	65.4	55	4.7	18	6.5	4	4.3	93	6.5
50 to 59	7,990	145	4.9	70.2	59	5.1	13	4.7	7	7.4	66	4.6
60 to 69	7,951	123	4.1	74.4	52	4.5	8	2.9	8	8.5	55	3.8
70 to 79	7,153	83	2.8	77.2	22	1.9	6	2.2	7	7.4	48	3.3
80 to 89	5,552	64	2.2	79.3	19	1.6	6	2.2	3	3.2	36	2.5
90 to 99	5,838	60	2.0	81.4	23	2.0	5	1.8	2	2.1	30	2.1
100 to 109	9,236	67	2.3	83.6	20	1.7	7	2.5	2	2.1	38	2.6
110 to 119	4,845	41	1.4	85.0	17	1.5	4	1.4	0	0.0	20	1.4
120 to 129	6,839	55	1.9	86.9	18	1.5	2	0.7	2	2.1	33	2.3
130 to 139	3,735	30	1.0	87.9	3	0.3	3	1.1	1	1.1	23	1.6
140 to 149	2,895	21	0.7	88.6	5	0.4	2	0.7	2	2.1	12	0.8
150 to 159	3,685	23	0.8	89.4	9	0.8	0	0.0	0	0.0	14	1.0
160 to 169	3,819	23	0.8	90.1	9	0.8	0	0.0	1	1.1	13	0.9
170 to 179	3,566	20	0.7	90.8	4	0.3	1	0.4	0	0.0	15	1.0
180 to 189	4,224	22	0.7	91.5	5	0.4	3	1.1	1	1.1	13	0.9
190 to 199	1,697	9	0.3	91.8	1	0.1	2	0.7	0	0.0	6	0.4
200 to 299	20,599	87	2.9	94.8	26	2.2	9	3.2	2	2.1	50	3.5
300 to 399	18,345	54	1.8	96.6	17	1.5	6	2.2	1	1.1	30	2.1
400 to 499	14,244	32	1.1	97.7	8	0.7	6	2.2	0	0.0	18	1.3
500 to 599	11,625	21	0.7	98.4	8	0.7	2	0.7	1	1.1	10	0.7
600 to 799	11,053	15	0.5	98.9	3	0.3	1	0.4	2	2.1	9	0.6
800 to 999	14,295	16	0.5	99.4	6	0.5	1	0.4	1	1.1	8	0.6
1,000 to 1,999	17,238	13	0.4	99.9	2	0.2	1	0.4	0	0.0	10	0.7
2,000 to 2,999	2,744	1	0.0	99.9	0	0.0	0	0.0	0	0.0	1	0.1
3,000 to 9,999	9,068	3	0.1	100.0	3	0.3	0	0.0	0	0.0	0	0.0
Over 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0

Table 17.–Size of Units in Representation Elections in Cases Closed, Fiscal Year 2000[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	23,698	381	100.0	--	114	100.0	18	100.0	4	100.0	245	100.0
Under 10	501	80	21.0	21.0	9	7.9	1	5.6	1	25.0	69	28.2
10 to 19	1,042	75	19.7	40.7	12	10.5	2	11.1	0	0.0	61	24.9
20 to 29	1,394	57	15.0	55.6	13	11.4	4	22.2	1	25.0	39	15.9
30 to 39	951	28	7.3	63.0	10	8.8	2	11.1	0	0.0	16	6.5
40 to 49	697	16	4.2	67.2	6	5.3	1	5.6	0	0.0	9	3.7
50 to 59	672	12	3.1	70.3	9	7.9	0	0.0	0	0.0	3	1.2
60 to 69	1,124	18	4.7	75.1	6	5.3	1	5.6	0	0.0	11	4.5
70 to 79	702	11	2.9	78.0	4	3.5	0	0.0	0	0.0	7	2.9
80 to 89	495	7	1.8	79.8	3	2.6	0	0.0	0	0.0	4	1.6
90 to 99	1,097	11	2.9	82.7	6	5.3	1	5.6	1	25.0	3	1.2
100 to 109	750	7	1.8	84.5	3	2.6	1	5.6	0	0.0	3	1.2
110 to 119	389	4	1.0	85.6	1	0.9	0	0.0	1	25.0	2	0.8
120 to 129	496	4	1.0	86.6	3	2.6	0	0.0	0	0.0	1	0.4
130 to 139	1,014	8	2.1	88.7	7	6.1	0	0.0	0	0.0	1	0.4
140 to 149	767	5	1.3	90.0	2	1.8	2	11.1	0	0.0	1	0.4
150 to 159	909	6	1.6	91.6	3	2.6	0	0.0	0	0.0	3	1.2
160 to 169	301	2	0.5	92.1	1	0.9	0	0.0	0	0.0	1	0.4
170 to 199	1,139	6	1.6	93.7	2	1.8	2	11.1	0	0.0	2	0.8
200 to 299	3,064	13	3.4	97.1	7	6.1	1	5.6	0	0.0	5	2.0
300 to 499	3,083	7	1.8	99.0	6	5.3	0	0.0	0	0.0	1	0.4
500 to 799	0	0	0.0	99.0	0	0.0	0	0.0	0	0.0	0	0.0
800 and Over	3,111	4	1.0	100.0	1	0.9	0	0.0	0	0.0	3	1.2

[1] See Glossary of terms for definitions.

Table 18.–Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2000[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	28,161	100.0	--	21,337	100.0	5,823	100.0	515	100.0	160	100.0	21	100.0	11	100.0	122	100.0	138	100.0	34	100.0
Under 10	2,344	8.3	8.3	1,771	8.3	391	6.7	95	18.4	32	20.0	9	42.9	1	9.1	20	16.4	15	10.9	10	29.4
10-19	2,400	8.5	16.8	1,883	8.8	391	6.7	68	13.2	26	16.3	1	4.8	0	0.0	16	13.1	11	8.0	4	11.8
20-29	2,231	7.9	24.8	1,705	8.0	350	6.0	106	20.6	29	18.1	4	19.0	0	0.0	27	22.1	7	5.1	3	8.8
30-39	1,174	4.2	28.9	953	4.5	178	3.1	16	3.1	10	6.3	0	0.0	1	9.1	6	4.9	6	4.3	4	11.8
40-49	977	3.5	32.4	814	3.8	139	2.4	12	2.3	5	3.1	0	0.0	0	0.0	4	3.3	2	1.4	1	2.9
50-59	1,763	6.3	38.7	1,352	6.3	342	5.9	33	6.4	17	10.6	0	0.0	0	0.0	10	8.2	8	5.8	1	2.9
60-69	813	2.9	41.6	656	3.1	129	2.2	12	2.3	2	1.3	0	0.0	0	0.0	9	7.4	4	2.9	1	2.9
70-79	747	2.7	44.2	610	2.9	113	1.9	12	2.3	4	2.5	0	0.0	0	0.0	4	3.3	3	2.2	1	2.9
80-89	532	1.9	46.1	444	2.1	79	1.4	7	1.4	1	0.6	0	0.0	0	0.0	0	0.0	1	0.7	0	0.0
90-99	290	1.0	47.1	220	1.0	56	1.0	6	1.2	1	0.6	1	4.8	0	0.0	5	4.1	1	0.7	0	0.0
100-109	2,191	7.8	54.9	1,560	7.3	551	9.5	41	8.0	15	9.4	0	0.0	3	27.3	9	7.4	9	6.5	3	8.8
110-119	208	0.7	55.6	171	0.8	34	0.6	0	0.0	1	0.6	0	0.0	0	0.0	0	0.0	1	0.7	1	2.9
120-129	467	1.7	57.3	369	1.7	92	1.6	3	0.6	0	0.0	0	0.0	0	0.0	1	0.8	1	0.7	1	2.9
130-139	281	1.0	58.3	237	1.1	42	0.7	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0	1	0.7	0	0.0
140-149	182	0.6	58.9	159	0.7	19	0.3	2	0.4	2	1.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
150-159	686	2.4	61.4	500	2.3	169	2.9	9	1.7	1	0.6	0	0.0	0	0.0	2	1.6	5	3.6	0	0.0
160-169	167	0.6	62.0	140	0.7	26	0.4	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
170-179	162	0.6	62.6	118	0.6	41	0.7	2	0.4	0	0.0	0	0.0	0	0.0	1	0.8	0	0.0	0	0.0
180-189	175	0.6	63.2	156	0.7	18	0.3	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
190-199	75	0.3	63.4	57	0.3	18	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299	2,152	7.6	71.1	1,617	7.6	480	8.2	28	5.4	4	2.5	1	4.8	1	9.1	4	3.3	15	10.9	2	5.9
300-399	1,325	4.7	75.8	985	4.6	317	5.4	13	2.5	2	1.3	0	0.0	0	0.0	0	0.0	8	5.8	0	0.0
400-499	816	2.9	78.7	610	2.9	194	3.3	4	0.8	4	2.5	0	0.0	0	0.0	1	0.8	3	2.2	0	0.0
500-599	938	3.3	82.0	666	3.1	247	4.2	10	1.9	1	0.6	1	4.8	2	18.2	0	0.0	10	7.2	1	2.9
600-699	445	1.6	83.6	331	1.6	104	1.8	6	1.2	0	0.0	1	4.8	0	0.0	0	0.0	2	1.4	1	2.9
700-799	278	1.0	84.6	219	1.0	56	1.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	2.2	0	0.0
800-899	321	1.1	85.7	223	1.0	91	1.6	5	1.0	0	0.0	0	0.0	0	0.0	0	0.0	2	1.4	0	0.0
900-999	173	0.6	86.3	134	0.6	38	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.7	0	0.0
1,000-1,999	1,613	5.7	92.1	1,133	5.3	460	7.9	8	1.6	3	1.9	0	0.0	0	0.0	1	0.8	8	5.8	0	0.0
2,000-2,999	728	2.6	94.6	508	2.4	201	3.5	8	1.6	0	0.0	1	4.8	2	18.2	2	1.6	6	4.3	0	0.0
3,000-3,999	355	1.3	95.9	203	1.0	148	2.5	0	0.0	0	0.0	2	9.5	1	9.1	0	0.0	1	0.7	0	0.0
4,000-4,999	182	0.6	96.6	108	0.5	74	1.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
5,000-9,999	441	1.6	98.1	323	1.5	115	2.0	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0	2	1.4	0	0.0
Over 9,999	529	1.9	100.0	402	1.9	120	2.1	5	1.0	0	0.0	0	0.0	0	0.0	0	0.0	2	1.4	0	0.0

[1] See Glossary of terms for definitions.

Table 19.–Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2000; and Cumulative Totals, Fiscal Years 1937 through 2000

	Fiscal Year 2000									July 5, 1937 Sept. 30, 2000	
	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	157	147	10	0	2	--	--	--	--	--	--
On petitions for review and/or enforcement	99	98	1	0	2	100.0	100.0	--	100.0	11467	100.0
Board orders affirmed in full	73	72	1	0	1	73.5	100.0	--	50.0	7568	66.0
Board orders affirmed with modification	6	6	0	0	0	6.1	0.0	--	0.0	1528	13.3
Remanded to Board	7	6	0	0	0	6.1	0.0	--	0.0	569	5.0
Board orders partially affirmed and partially remanded	5	6	0	0	0	6.1	0.0	--	0.0	253	2.2
Board orders set aside	8	8	0	0	1	8.2	0.0	--	50.0	1549	13.5
On petitions for contempt	19	18	1	0	0	--	--	--	--	--	--
Total Court Orders	39	31	8	0	0	100.0	100.0	--	--	--	--
Compliance after filing of petition, before court order	19	18	1	0	0	--	--	--	--	--	--
Court orders holding respondent in contempt	7	5	2	0	0	16.1	25.0	--	--	--	--
Court orders denying petition	2	2	0	0	6.5	0.0	--	--	--	--	--
Court orders directing compliance without contempt adjudication	11	7	4	0	0	22.6	50.0	--	--	--	--
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	--	--	--	--	--	257	100.0
Board orders affirmed in full	0	0	0	0	--	--	--	--	--	155	60.3
Board orders affirmed with modification	0	0	0	0	--	--	--	--	--	18	7.0
Board orders set aside	0	0	0	0	--	--	--	--	--	45	17.5
Remanded to Board	0	0	0	0	--	--	--	--	--	20	7.8
Remanded to court of appeals	0	0	0	0	--	--	--	--	--	16	6.2
Board's request for remand or modification of enforcement order denied	0	0	0	0	--	--	--	--	--	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	--	--	--	--	--	1	0.4
Contempt cases enforced	0	0	0	0	--	--	--	--	--	1	0.4

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

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

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

Table 19A.–Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2000, Compared With 5-Year Cumulative Totals, 1995 Through 1999[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2000	Total fiscal years 1995-1999	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2000		Cumulative fiscal years 1995-1999		Fiscal Year 2000		Cumulative fiscal years 1995-1999		Fiscal Year 2000		Cumulative fiscal years 1995-1999		Fiscal Year 2000		Cumulative fiscal years 1995-1999		Fiscal Year 2000		Cumulative fiscal years 1995-1999	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	99	572	73	73.7	384	67.1	6	6.1	59	10.3	6	6.1	25	4.4	6	6.1	31	5.4	8	8.1	73	12.8
1. Boston, MA	1	23	1	100.0	20	87.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	4.3	0	0.0	2	8.7
2. New York, NY	6	40	4	66.7	28	70.0	1	16.7	2	5.0	1	0.0	3	7.5	0	0.0	2	5.0	0	16.7	5	12.5
3. Philadelphia, PA	8	42	6	75.0	35	83.3	0	0.0	2	4.8	0	0.0	0	0.0	0	0.0	2	4.8	2	25.0	3	7.1
4. Richmond, VA	6	45	6	100.0	20	44.4	0	0.0	7	15.6	0	0.0	0	0.0	0	0.0	5	11.1	0	0.0	13	28.9
5. New Orleans, LA	3	16	3	100.0	11	68.8	0	0.0	1	6.3	0	0.0	0	0.0	0	0.0	1	6.3	0	0.0	3	18.8
6. Cincinnati, OH	21	114	16	76.2	73	64.0	4	19.0	16	14.0	1	4.8	3	2.6	0	0.0	4	3.5	0	0.0	18	15.8
7. Chicago, IL	10	35	6	63.6	22	62.9	0	0.0	4	11.4	1	9.1	2	5.7	2	18.2	1	2.9	1	9.1	6	17.1
8. St. Louis, MO	3	22	3	100.0	16	72.7	0	0.0	3	13.6	0	0.0	2	9.1	0	0.0	1	4.5	0	0.0	0	0.0
9. San Francisco, CA	3	68	2	66.7	56	82.4	0	0.0	5	7.4	0	0.0	1	1.5	1	33.3	2	2.9	0	0.0	4	5.9
10. Denver, CO.	4	16	3	75.0	11	68.8	0	0.0	1	6.3	0	0.0	0	0.0	0	0.0	4	25.0	1	25.0	0	0.0
11. Atlanta, GA	3	24	3	100.0	20	83.3	0	0.0	1	4.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	12.5
Washington, DC	31	127	19	63.3	72	56.7	1	3.3	17	13.4	4	13.3	14	11.0	3	10.0	8	6.3	3	10.0	16	12.6

[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 2000

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				
		Pending in district court Oct. 1, 1999	Filed in district court fiscal year 2000		Granted	Denied	Settled	Withdrawn	Pending
Under Sec. 10(e) total ……..	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total ……...	54	7	47	45	20	11	8	6	9
8(a)(1) ……	1	0	1	1	0	0	1	0	0
8(a)(1)(2)(3)(5) ……..	1	0	1	1	1	0	0	0	0
8(a)(1)(3)……	12	1	11	10	4	2	1	3	2
8(a)(1)(3)(4) ……	1	1	0	1	0	1	0	0	0
8(a)(1)(3)(4)(5)……	2	1	1	2	2	0	0	0	0
8(a)(1)(3)(5) ……	20	2	18	15	5	4	3	3	5
8(a)(1)(4) ……..……	1	0	1	1	1	0	0	0	0
8(a)(1)(5)……..……	16	2	14	14	7	4	3	0	2
Under Sec. 10(l) total ……...	13	3	10	8	5	1	1	1	4
8(b)(4)(B) ……..…..……..	3	1	2	2	1	0	1	0	0
8(b)(4)(D) ……...	1	0	1	1	1	0	0	0	0
8(b)(4)(B) 8(b)(7)(C) ……	1	1	0	0	0	0	0	0	1
8(b)(4)(B)(D)8(b)(7)(A) ……	1	0	1	1	1	0	0	0	0
8(b)(7)(A) ……...	2	1	1	1	0	0	0	1	1
8(b)(7)(A)(C)……..	1	0	1	1	1	0	0	0	0
8(b)(7)(B)(C)……...	1	0	1	1	0	1	0	0	0
8(b)(7)(C)	3	0	3	1	1	0	0	0	2

Table 21. Special Litigation Involving NLRB; Outcome of Proceedings in which Court Decisions issued in Fiscal Year 2000

Type of Litigation	Number of Proceedings														
	Total – all courts			In courts of appeals			In district courts			In bankruptcy courts			In state courts		
		Court Determination			Court Determination			Court Determination			Court Determination			Court Determination	
	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	Number decided	Upholding Board position	Contrary to Board position
Totals -- all types	12	8	4	5	4	1	6	4	2	1	0	1	0	0	0
NLRB-initiated actions or interventions	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0
To quash district court subpoena	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To enforce subpoena or contempt of subpoena	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To enjoin local ordinance as preempted	1	0	1	1	0	1	0	0	0	0	0	0	0	0	0
To sanction failure to respond to discovery	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	11	8	3	4	4	0	6	4	2	1	0	1	0	0	0
To review:	3	2	1	2	2	0	1	0	1	0	0	0	0	0	0
Prosecutorial discretion	3	2	1	2	2	0	1	0	1	0	0	0	0	0	0
Nonfinal/representation order	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from:	4	2	2	1	1	0	2	1	1	1	0	1	0	0	0
Enforcing Board subpoenas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Proceeding in R case	2	2	0	1	1	0	1	1	0	0	0	0	0	0	0
Proceeding in unfair labor practice case	2	0	2	0	0	0	1	0	1	1	0	1	0	0	0
To compel NLRB to:	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
Issue complaint	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Take action in R case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To issue decision or take specific action	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0

Table 21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 2000–Continued

Type of Litigation	Number of Proceedings														
	Total – all courts			In courts of appeals			In district courts			In bankruptcy courts			In state courts		
		Court Determination			Court Determination			Court Determination			Court Determination			Court Determination	
	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	Number decided	Upholding Board position	Contrary to Board position
Other	3	3	0	0	0	0	3	3	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	0	0	0
Intervention in § 301 suit	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
EAJA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Denying attorney's fees in FOIA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Denying stay in FOIA case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Suit for violation of constitutional rights	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Federal Tort Claims Act	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0

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

Table 22.-Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2000[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 1999	0	0	0	0	0
Received fiscal 2000	0	0	0	0	0
On docket fiscal 2000	0	0	0	0	0
Closed fiscal 2000	0	0	0	0	0
Pending September 30, 2000	0	0	0	0	0

[1]. See Glossary for definitions of terms.

Table 22A.-Disposition of Advisory Opinion Cases, Fiscal Year 2000[1]

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

[1]. See Glossary for definitions of terms.

Table 23.–Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2000; and Age of Cases Pending Decision, September 30, 2000

	Stage	Median days
I.	Unfair labor practice cases:	
	A. Major stages completed -	
	1. Filing of charge to issuance of complaint	108
	2. Complaint to close of hearing	132
	3. Close of hearing to administrative law judge's decision	104
	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	637
	6. Originating document to Board decision	299
	7. Assignment to Board decision	239
	8. Filing of charge to issuance of Board decision	878
	B. Age of cases pending administrative law judge's decision, September 30, 2000	
	1. From filing of charge	474
	2. From close of hearing	95
	C. Age of cases pending Board decision, September 30, 2000	
	1. From filing of charge	977
	2. From originating document	416
	3. From assignment	341
II.	Representation cases:	
	A. Major stages completed -	
	1. Filing of petition to notice of hearing issued	1
	2. Notice of hearing to close of hearing	13
	3. Close of hearing to Regional Director's decision issued	21
	4. Close of pre-election hearing to Board's decision issued	434
	5. Close of post-election hearing to Board's decision issued	163
	6. Filing of petition to-	
	a. Board decision issued	289
	b. Regional Director's decision issued	38
	7. Originating document to Board decision	90
	8. Assignment to Board's decision	72
	B. Age of cases pending Board decision, September 30, 2000	
	1. From filing of petition	302
	2. From originating document	79
	3. From assignment	89
	C. Age of cases pending Regional Director's decision, September 30, 2000	142

Table 24.–NLRB Activity Under the Equal Access to Justice Act, FY 2000

	Action taken	Cases/ Amount
I.	Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
	A. Number of applications filed	2
	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	$58,785.33
	Recovered	$0.00
II.	Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
	A. Awards granting fees (includes settlements)	0
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	$0.00
III.	Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
	A. Awards granting fees (includes settlements)	2
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	$20,516.30
IV.	Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements)	2
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	$35,000.00