SIXTY-SIXTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2001

NATIONAL LABOR RELATIONS BOARD

Members of the Board

PETER J. HURTGEN,[1] *Chairman*
JOHN C. TRUESDALE[2] DENNIS P. WALSH[3]
WILMA B. LIEBMAN

Chief Counsels of Board Members

HAROLD J. DATZ
JEFFREY D. WEDEKIND GARY W. SHINNERS[4]
JOHN F. COLWELL

JOHN J. TONER, *Executive Secretary*
HENRY BREITENEICHER, *Acting Solicitor*
LAFE E. SOLOMON, *Director, Office of Representation Appeals*
ROBERT A. GIANNASI, *Chief Administrative Law Judge*
DAVID B. PARKER, *Director of Information*

Office of the General Counsel

ARTHUR F. ROSENFELD,[5] *General Counsel*
JOHN E. HIGGINS, *Deputy General Counsel*

RICHARD A. SIEGEL
Associate General Counsel
Division of Operations Management

JOHN H. FERGUSON
Associate General Counsel
Division of Enforcement Litigation

BARRY J. KEARNEY
Associate General Counsel
Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Designated Chairman on May 15, 2001.
[2] Served as Chairman until May 14, 2001, and as Member until October 1, 2001, when he retired.
[3] Appointment December 29, 2000, to succeed Member Fox whose recess appointment expired on December 15, 2000.
[4] Acting Chief Counsel
[5] Confirmed May 26, 2001.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. March 18, 2003.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Sixth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2001.

Respectfully submitted,
ROBERT J. BATTISTA, *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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I

Operations In Fiscal Year 2001

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 2001, 33,534 cases were received by the Board.

The public filed 28,124 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected employees. The NLRB during the year also received 5166 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 244 amendment to certification and unit clarification cases.

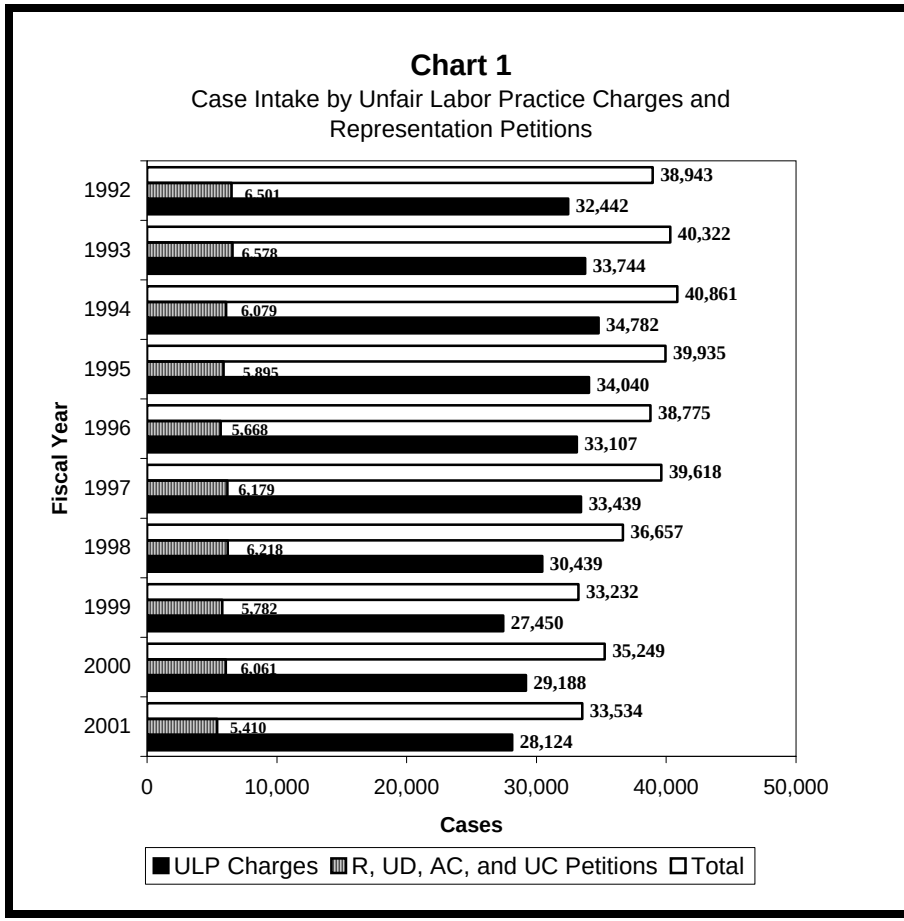
After the initial influx of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved in NLRB's national network of 51 field offices by dismissals, withdrawals, agreements, and settlements.

During fiscal year 2001, John C. Truesdale served as Chairman until May 14, 2001. Member Truesdale retired on October 1, 2001. President Bush designated Member Peter J. Hurtgen to succeed him as Chairman as of May 15, 2001. Members Wilma B. Liebman and Dennis P. Walsh also served during the period covered by this Annual Report.

Statistical highlights of NLRB's casehandling activities in fiscal 2001 include:

- The NLRB conducted 3076 conclusive representation elections among some 195,845 employee voters, with workers choosing labor unions as their bargaining agents in 51.7 percent of the elections.
- Although the Agency closed 35,324 cases, 25,149 cases were pending in all stages of processing at the end of the fiscal year. The closings included 29,820 cases involving unfair labor practice charges and 5,157 cases affecting employee representation and 347 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,942.

- The amount of $211,251,380 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 4138 offers of job reinstatements, with 2236 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 2247 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 422 decisions.



NLRB Administration

The National Labor Relations Board is an independent Federal agency created in 1935 by Congress to administer the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. This statute, the National Labor Relations Act, came into being at a time when labor disputes could and did threaten the Nation's economy.

Declared constitutional by the Supreme Court in 1937, the Act was substantially amended in 1947, 1959, and 1974, each amendment increasing the scope of the NLRB's regulatory powers.

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both.

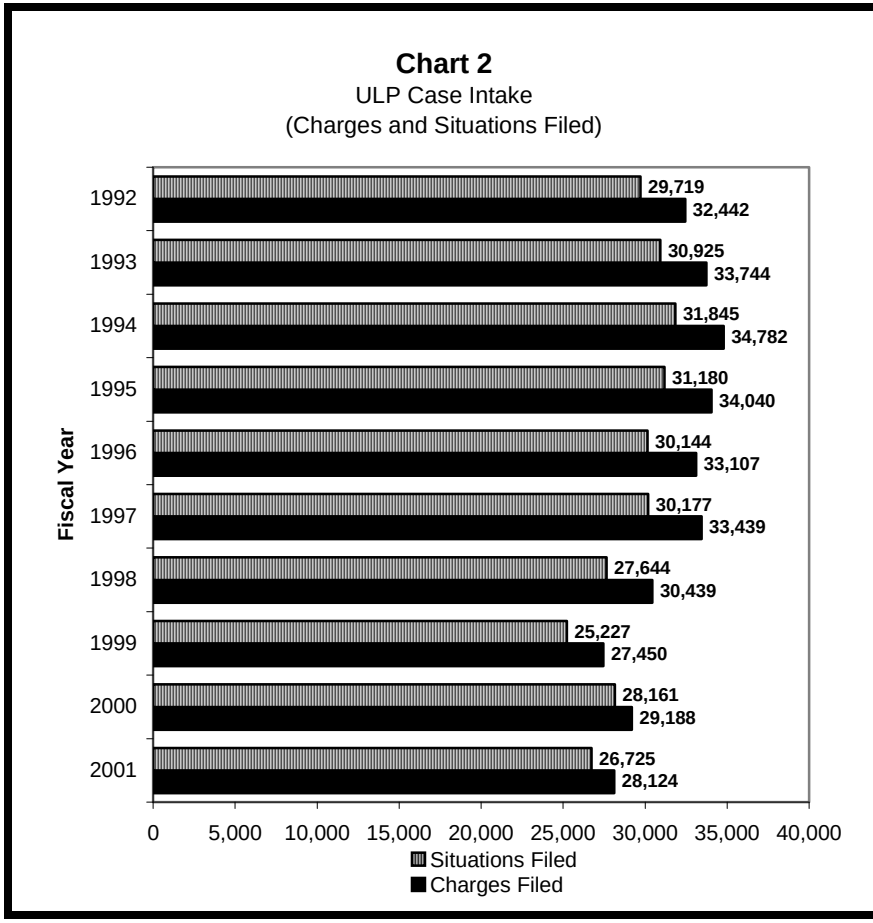
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 2001.

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.

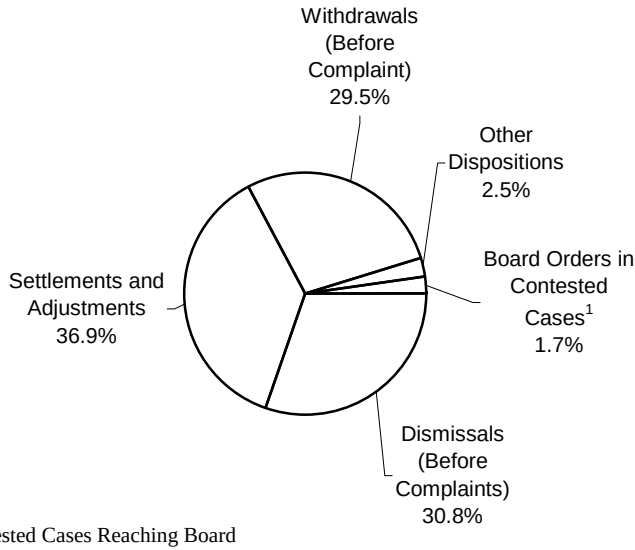
NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints 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 2001



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

In fiscal year 2001, 28,124 unfair labor practice charges were filed with the NLRB, a decrease of about 4 percent from the 29,188 filed in fiscal year 2000. In situations in which related charges are counted as a single unit, there was a decrease of 5 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 21,512 cases, a decrease of 3 percent from the 22,095 of 2000. Charges against unions decreased 7 percent to 6587 from 7052 in 2000.

There were 27 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 10,059 such charges in 51 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 9685 charges, in about 49 percent of the total charges. (Table 2.)

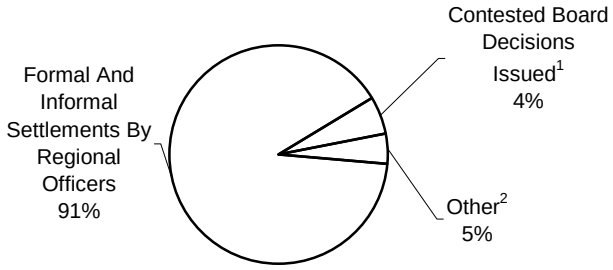
Of charges against unions, the majority (5437) alleged illegal restraint and coercion of employees, about 81 percent. There were 654 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 27 percent from the 789 of 2000.

There were 488 charges (about 7 percent) of illegal union discrimination against employees, a decrease of 27 percent from the 670 of 2000. There were 100 charges that unions picketed illegally for recognition or for organizational purposes, compared with 140 charges in 2000. (Table 2.)

In charges filed against employers, unions led with about 76 percent of the total. Unions filed 16,253 charges and individuals filed 5158.

Chart 3A

Disposition Pattern for Meritorious Unfair Labor Practices Cases
(Based on Cases Closed)
Fiscal Year 2001

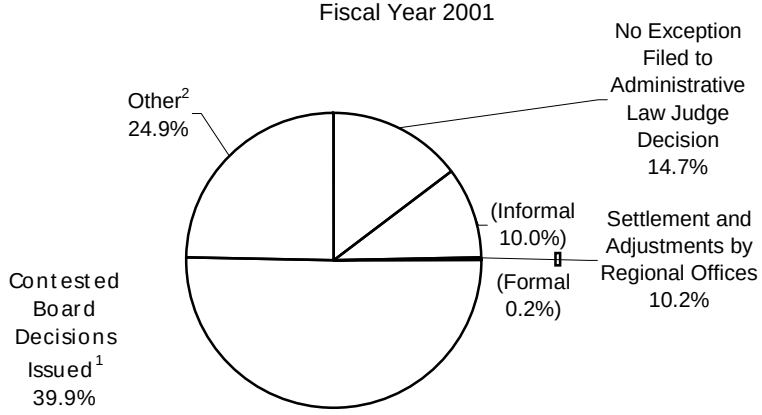


[1] Following Administrative Law Judge Decision, Stipulated Record or Summary Judgment Ruling

[2] Compliance with Administrative Law Judge Decision Stipulated Record or Summary Judgment Ruling

Chart 3B

Disposition Pattern for Unfair Labor Practice Cases After Trial
(Based On Cases Closed)
Fiscal Year 2001



[1] Following Administrative Law Judge Decision, Stipulated Record or Summary Judgement Ruling

2 Dismissals, Withdrawals and Other Dispositions

Concerning charges against unions, 5196 were filed by individuals, or about 79 percent of the total of 6587. Employers filed 1272 and other unions filed the 119 remaining charges.

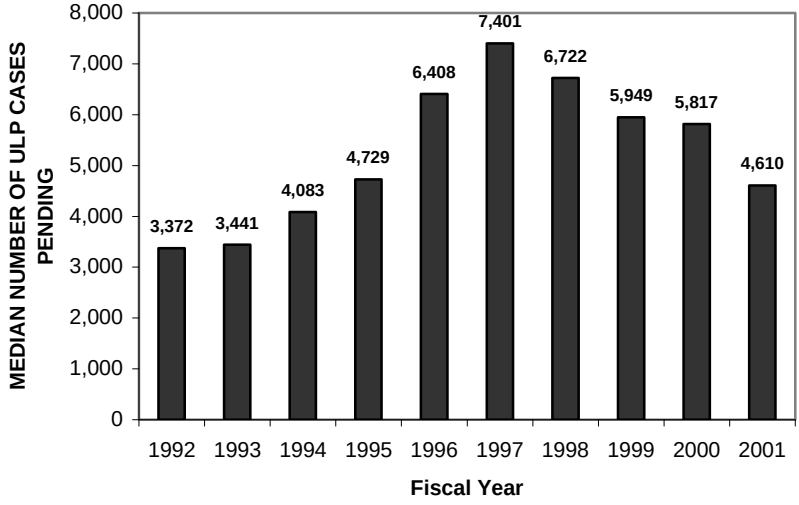
In fiscal year 2001, 29,820 unfair labor practice cases were closed. Some 95 percent were closed by NLRB Regional Offices, the same as the previous year. During the fiscal year, 36.9 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 28.0 percent were withdrawn before complaint, and 30.3 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 2001, 40.4 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 2001, precomplaint settlements and adjustments were achieved in 8174 cases, or 28.2 percent of the charges. In 2000, the percentage was 27.0. (Chart 5.)

Chart 4

Number of Unfair Labor Practice Cases
Pending Under Preliminary Investigation

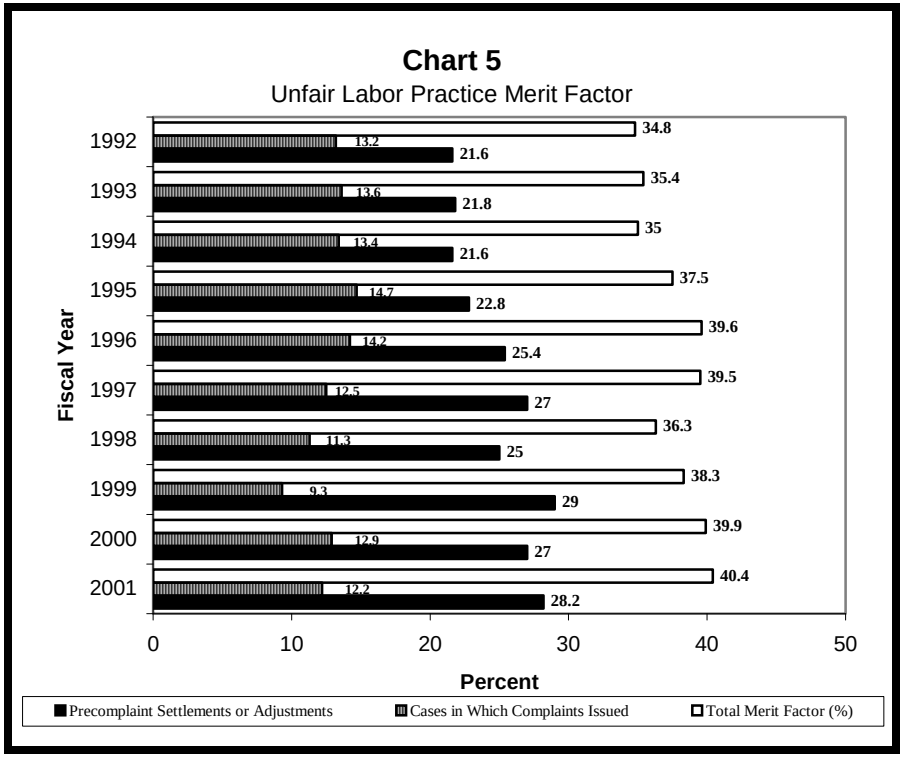


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2001, 2247 complaints were issued, compared with 2556 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 90.2 percent were against employers and 8.4 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 101 days. The 101 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 422 decisions in 921 cases during 2001. They conducted 334 initial hearings, and 19 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

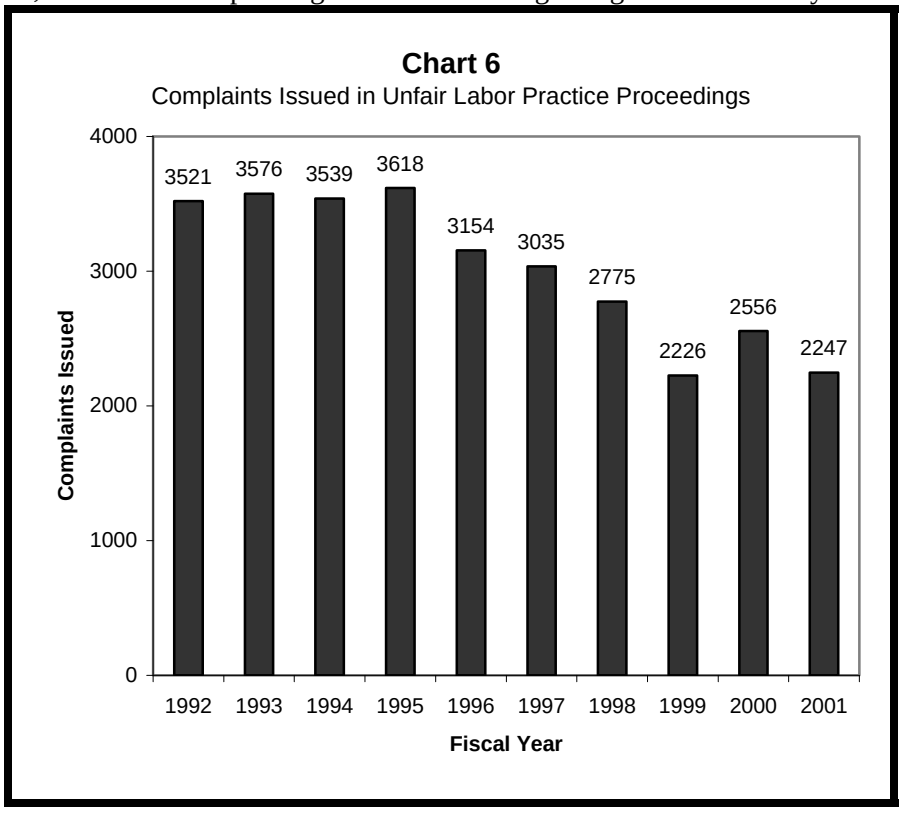


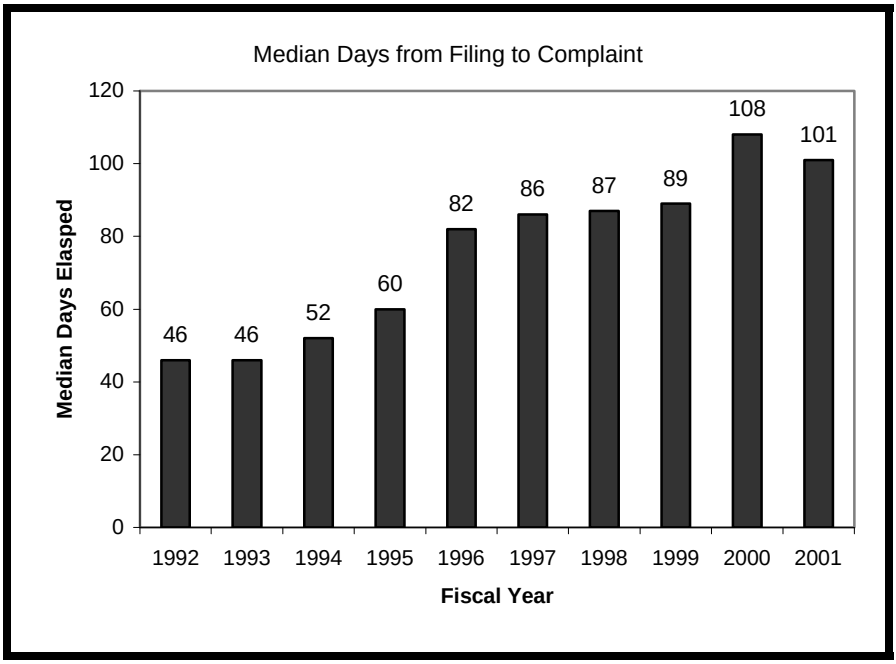
By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2001, the Board issued 538 decisions in unfair labor practice cases contested as to the law or the facts—481 initial decisions, 13 backpay decisions, 13 determinations in jurisdictional work dispute cases, and 31 decisions on supplemental matters. Of the 481 initial decision cases, 429 involved charges filed against employers and 52 had union respondents.

For the year, the NLRB awarded backpay of $208.9 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another $2.4 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 4138 employees were offered reinstatement, and about 54 percent accepted.

At the end of fiscal 2001, there were 23,272 unfair labor practice cases being processed at all stages by the NLRB, compared to 24,968 cases pending at the beginning of the year.

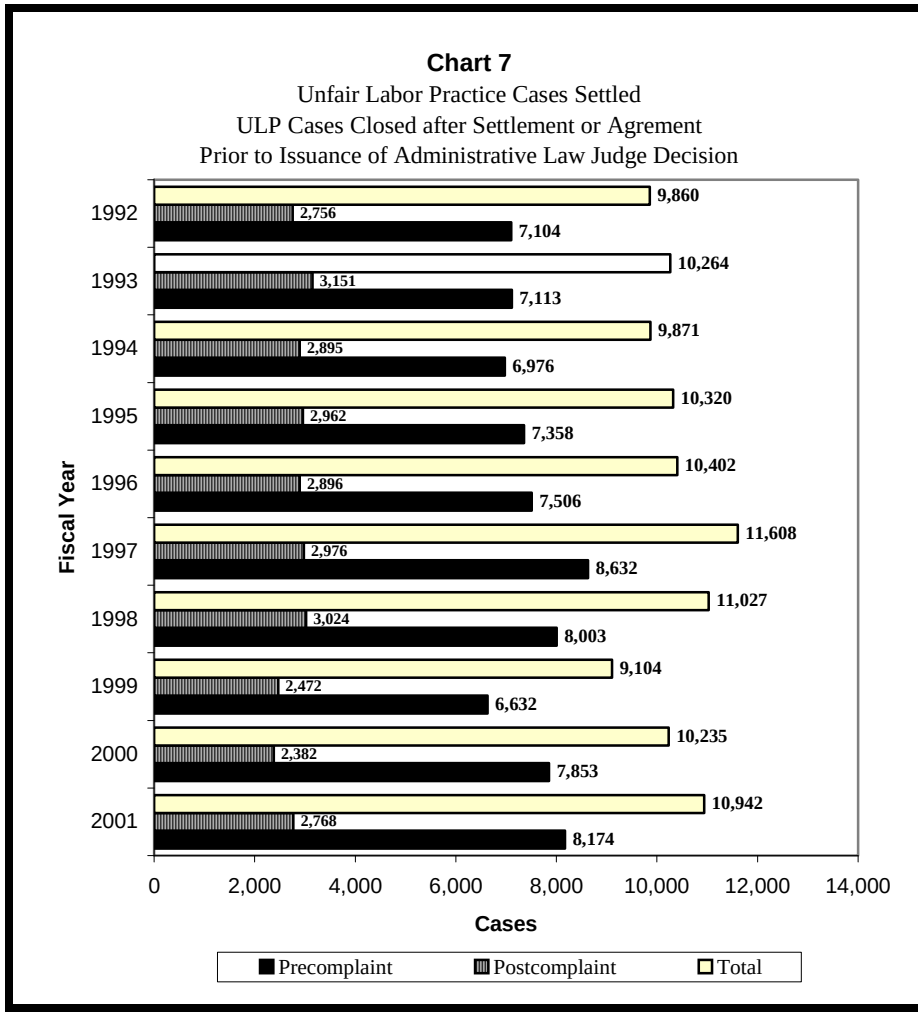




2. Representation Cases

The NLRB received 5410 representation and related case petitions in fiscal 2001, compared to 6061 such petitions a year earlier.

The 2001 total consisted of 4238 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 819 petitions to decertify existing bargaining agents; 109 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 227 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 17 amendment of certification petitions were filed.



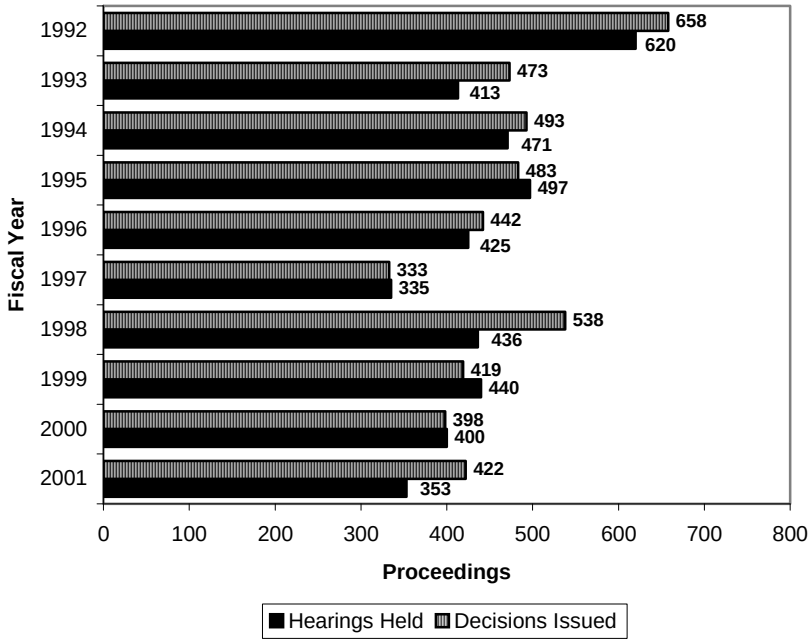
During the year, 5504 representation and related cases were closed, compared to 5793 in fiscal 2000. Cases closed included 4352 collective-bargaining election petitions; 805 decertification election petitions; 93 requests for deauthorization polls; and 254 petitions for unit clarification and amendment 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 10.4 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 195 cases where the Board directed an election after transfer of a case from the Regional

Office. (Table 10.) There were two cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

Chart 8

Administrative Law Judge Hearings and Decisions
(Initial, Backpay, and Other Supplementals)



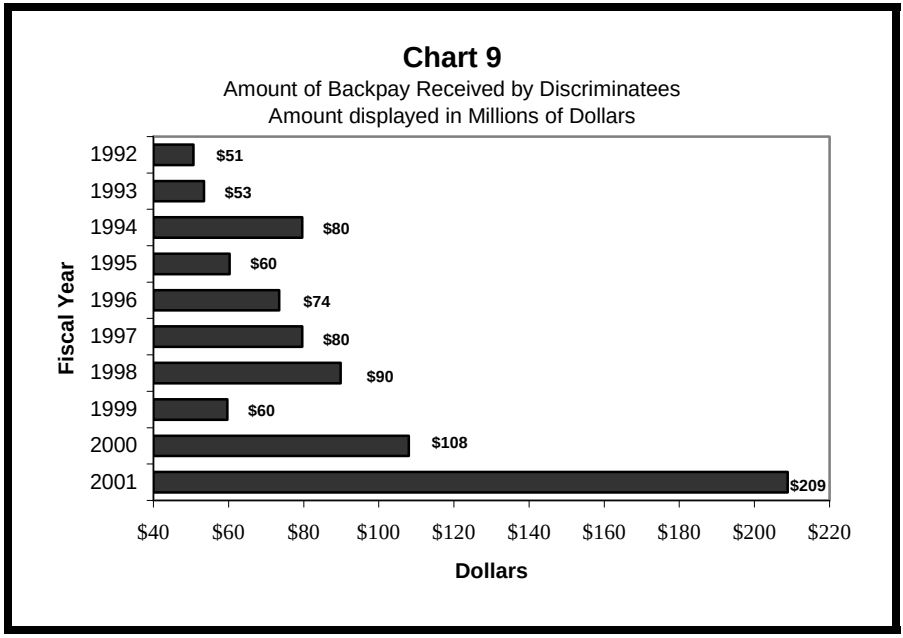
3. Elections

The NLRB conducted 3076 conclusive representation elections in cases closed in fiscal 2001, compared to the 3368 such elections a year earlier. Of 234,225 employees eligible to vote, 195,845 cast ballots, virtually 8 of every 10 eligible.

Unions won 1591 representation elections, or 51.7 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 95,408 workers. The employee vote over the course of the year was 94,059 for union representation and 101,786 against.

The representation elections were in two categories—the 2714 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 362

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

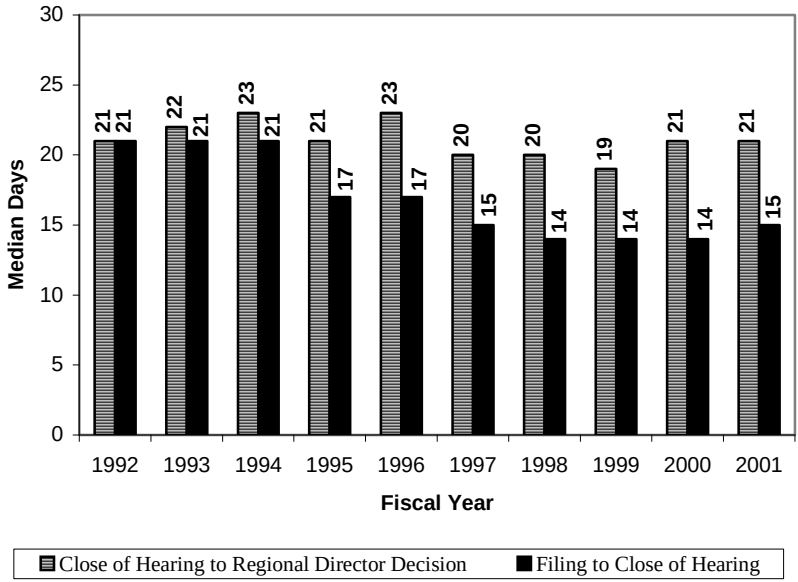


There were 2904 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1460, or 50.3 percent. In these elections, 85,340 workers voted to have unions as their agents, while 99,490 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 84,603 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 172 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 131 elections, or 76.2 percent.

CHART 10

Time Required to Process Representation Cases From Filing of Petition to Issuance of Decision

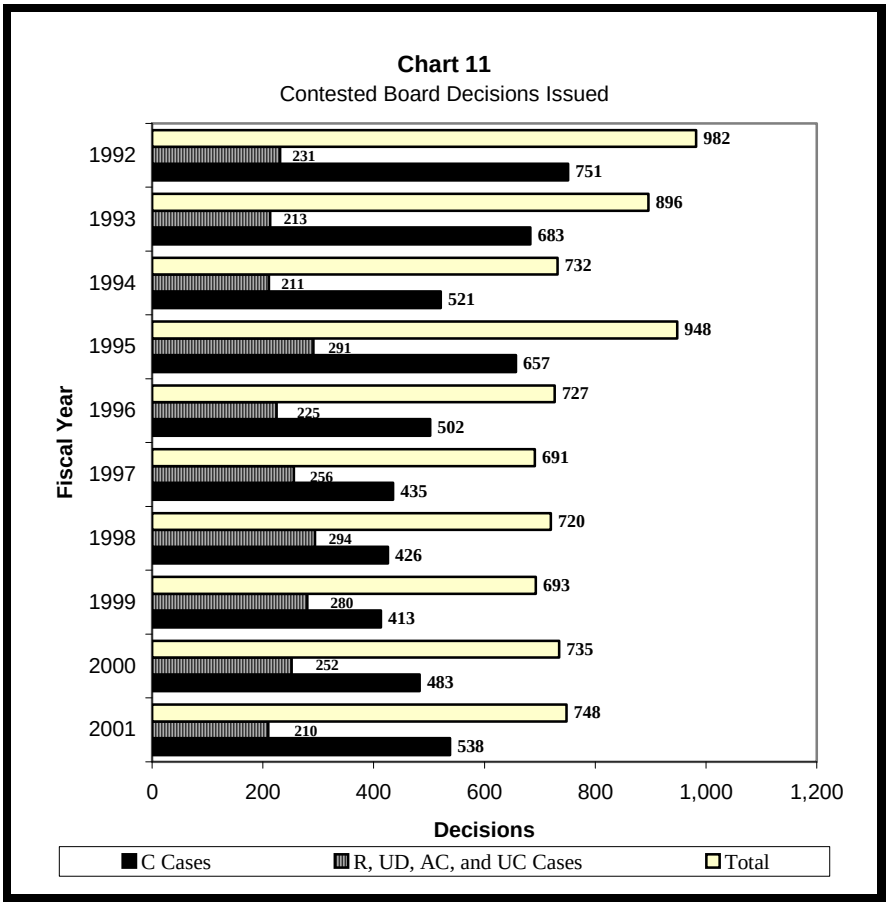


As in previous years, labor organization results brought continued representation by unions in 121 elections, or 33.4 percent, covering 14,855 employees. Unions lost representation rights for 10,955 employees in 241 elections, or 66.6 percent. Unions won in bargaining units averaging 123 employees, and lost in units averaging 45 employees. (Table 13.)

Besides the conclusive elections, there were 159 inconclusive representation elections during fiscal year 2001 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 12 referendums, or 25.0 percent, while they maintained the right in the other 36 polls which covered 3010 employees. (Table 12.)

For all types of elections in 2001, the average number of employees voting, per establishment, was 64, compared to 67 in 2000. About 71 percent of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1051 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 957 decisions rendered during fiscal year 2000.

A breakdown of Board decisions follows:

Total Board decisions.....	**1051**
Contested decisions	**748**
Unfair labor practice decisions	538

Initial (includes those based on

stipulated record) 481
Supplemental 31
Backpay 13
Determinations in jurisdictional disputes 13

Representation decisions 201
After transfer by Regional Directors for initial decision 1
After review of Regional Director decisions.....45
On objections and/or challenges ...155
Other decisions 9
Clarification of bargaining unit.....7
Amendment to certification 0
Union-deauthorization 2
Noncontested decisions **303**
Unfair labor practice 158
Representation 142
Other 3

The majority (71 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 2001, about 5.6 percent of all meritorious charges and about 50 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.

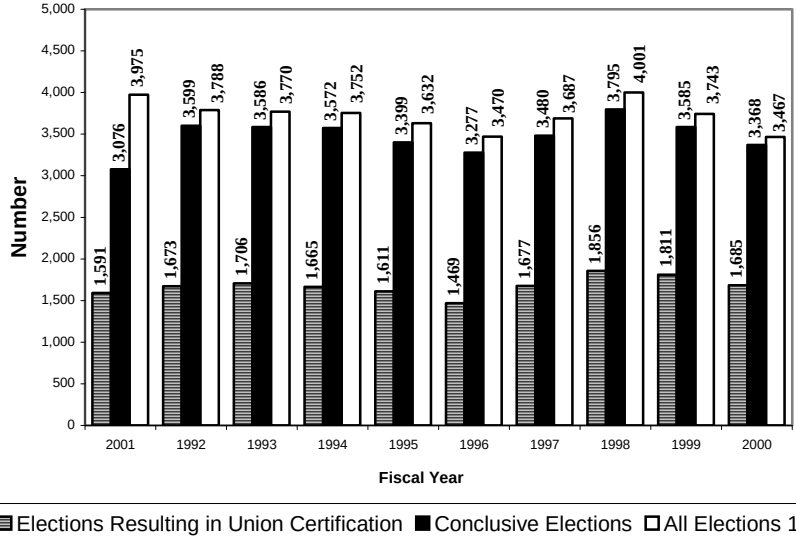
b. Regional Directors

NLRB Regional Directors issued 839 decisions in fiscal 2001, compared to 869 in 2000. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

Administrative law judges issued 422 decisions and conducted 353 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

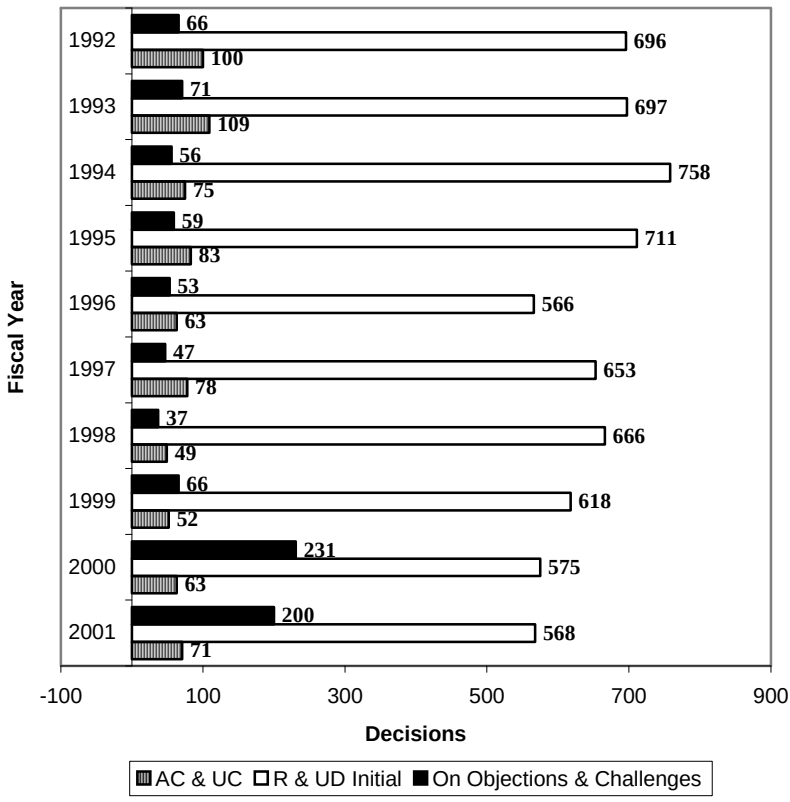
a. Appellate Courts

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 2001, 118 cases involving the NLRB were decided by the United States courts of appeals compared to 99 in fiscal year 2000. Of these, 77.1 percent were won by NLRB in whole or in part compared to 85.9 percent in fiscal year 2000; 12.7 percent were remanded entirely compared to 6.1 percent in fiscal year 2000; and 10.2 percent were entire losses compared to 8.1 percent in fiscal year 2000.

CHART 13

Regional Director Decisions Issued in Representation and Related Cases

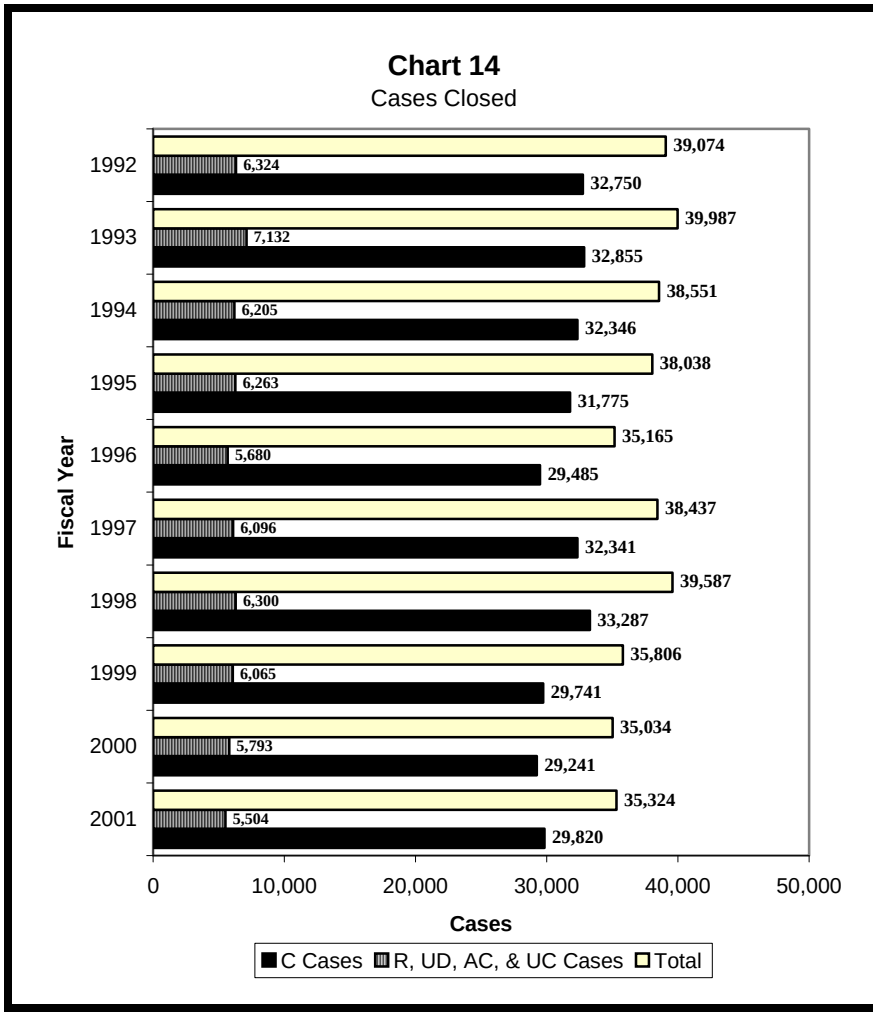


b. The Supreme Court

In fiscal 2001, there was one Board case decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 2001.

c. Contempt Actions

In fiscal 2001, 176 cases were referred to the contempt section for consideration of contempt action. There were 28 contempt proceedings instituted. There were 7 contempt adjudications awarded in favor of the Board; 6 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 17 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 17 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 35 petitions filed with the U.S. district courts, compared to 57 in fiscal

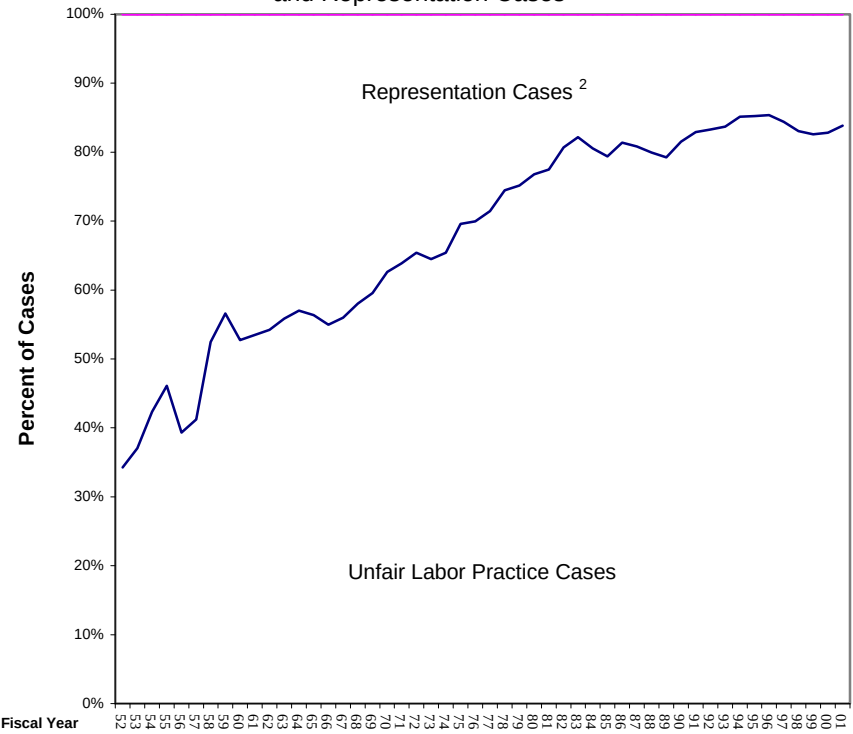
year 2000. (Table 20.) Injunctions were granted in 17, or about 74 percent, of the 23 cases litigated to final order.[1]

NLRB injunction activity in district courts in 2001:

Granted	17
Denied	6
Withdrawn	5
Settled or placed on court's inactive lists	14
Awaiting action at end of fiscal year	6

Chart 15

Comparison of Filings of Unfair Labor Practice Cases and Representation Cases[1]



1)This Graph Shows the Percentage Division of NLRB Case Load Between Unfair Labor Practice Cases and Representation Cases During Fiscal Years 1952 - 2001

2)Includes AC, UC, and UD Cases

[1] The reference to injunction activity on p. 20 of the FY 2000 Annual Report should state that 37 cases, not 34, were litigated to final order.

C. Decisional Highlights

In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual situation, required the Board's accommodation of established principles to those developments. Chapter II on "Board Procedure," Chapter III on "Representation Proceedings," and Chapter IV 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. Campaign Videotaping of Employees

In *Allegheny Ludlum Corp.*,[1] the Board held that the employer unlawfully polled its employees by soliciting their participation in the employer's antiunion campaign videotape. Acting on a remand from the D.C. Circuit,[2] the Board clarified its standards governing employee participation in an employer's campaign videotape.

The employer hired an outside film crew to film employees at their workstations. Some employees were individually approached by the employer and asked if they would consent to be filmed. Others were filmed without a prior explanation of the purpose of the filming. Upon hearing of the filming, the union protested that the employer was unlawfully polling employees. The employer continued filming, but distributed a notice informing the employees that those who did not want to appear in the video should notify either the personnel office or the film crew. The employer maintained written lists of employees who asked to be excluded from the video.

The Board concluded that the respondent's solicitation of employees to appear in the video was an unlawful poll, finding that individual solicitations of employees are coercive because they place employees in the position of having to "make an observable choice that demonstrates their support for or rejection of the union."[3] A majority of the Board further concluded that this principle applies regardless of whether an employee has previously identified himself as opposed to union representation, on the basis that Section 7 protects an employee's right to choose the *degree* to which he or she wishes to express support for, or

[1] 333 NLRB No. 109 (Chairman Truesdale and Members Liebman and Walsh; Member Hurtgen dissenting in part).
[2] *Allegheny Ludlum Corp. v. NLRB*, 104 F.3d 1354 (D.C. Cir. 1997), denying enf. in pert. part to 320 NLRB 484 (1995).
[3] 333 NLRB No. 109, slip op. at 6.

opposition to, union representation. Member Hurtgen dissented with respect to this issue, stating that direct solicitation of employees who are open opponents of the union is not coercive because the employees have demonstrated, by their own conduct, their opposition to the union.

However, the Board also held that an employer may lawfully solicit employees to appear in a campaign video if each of the following requirements is satisfied: (1) the solicitation is in the form of a general announcement which discloses the purpose of the filming, and includes assurances that participation is voluntary, that nonparticipation will not result in reprisals, and that participation will not result in rewards or benefits; (2) employees are not pressured into making the decision in the presence of a supervisor; (3) there is no other coercive conduct connected with the employer's announcement; (4) the employer has not created a coercive atmosphere by engaging in serious or pervasive unfair labor practices or other comparable coercive conduct; and (5) the employer does not exceed the legitimate purpose of soliciting consent by seeking information concerning union matters or otherwise interfering with the statutory rights of employees.

The Board further held that an employer may include an employee in a campaign video without his permission if the video does not indicate the employee's position on unionization, provided the following requirements are met: (1) the employer cannot affirmatively mislead employees about the use of their image; (2) the video must contain a disclaimer that it is not intended to reflect the views of the employees in it; and (3) nothing in the video contradicts the disclaimer.

2. Continuing Bargaining Obligation

In *Lee Lumber & Building Material Corp.*,[4] the Board reaffirmed its previous holding that when an employer has unlawfully refused to recognize or bargain with an incumbent union, any employee disaffection arising during the course of the unlawful conduct will be presumed to be caused by that conduct.[5] Absent unusual circumstances, the presumption can be rebutted only if the employer can show that the disaffection arose after it resumed recognizing the union and bargained for a reasonable period of time without committing other unfair labor practices that would adversely affect the bargaining. On remand from the D.C. Circuit,[6] however, the Board clarified the "reasonable period of time" bargaining standard. It held that, in such circumstances, a "reasonable period of time" before an employer can challenge a union's status as the

[4] 334 NLRB No. 62 (Chairman Hurtgen and Members Liebman and Truesdale; Member Walsh dissenting in part).
[5] 322 NLRB 175 (1996), affd. in relevant part and remanded 117 F.3d 1454 (D.C. Cir. 1997).
[6] 117 F.3d 1454 (1997).

employees' bargaining representative will be no less than 6 months and no more than 1 year.

Whether a "reasonable period of time" is only 6 months, or some longer period up to 1 year, will depend on a multifactor analysis. Under that analysis, the Board will consider whether the parties are bargaining for an initial contract, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time elapsed since the bargaining commenced and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties are to agreement, and whether the parties have bargained to impasse.

3. Withdrawal of Recognition

In *Levitz*,[7] the Board majority held that an employer may unilaterally withdraw recognition from an incumbent union only on a showing that the union has actually lost the support of a majority of the bargaining unit employees. The majority thus overruled *Celanese Corp.*,[8] and other decisions that allowed employers to withdraw recognition merely by establishing an objectively based, good-faith reasonable doubt as to a union's majority support.

The Board majority held that the good-faith reasonable doubt standard was fundamentally flawed in that it allowed employers to withdraw recognition from unions that had not, in fact, lost majority support. The majority found the standard inconsistent with the Act's fundamental policies of effectuating employees' free choice of a bargaining representative and promoting stability in bargaining relationships. The majority therefore held that an employer that unilaterally withdraws recognition violates Section 8(a)(5) unless it can show that, at the time it withdrew recognition, the union had actually lost majority support.

Recognizing that Board elections are the preferred means for testing employees' support for unions, the Board also eased the standard that employers must meet to obtain RM elections. Thus, under the new standard, an employer will be able to obtain an RM election by demonstrating an objectively based, good-faith reasonable uncertainty, rather than "disbelief," as to the union's majority status.

Member Hurtgen, concurring, would have adhered to the good-faith uncertainty standard for withdrawing recognition. In his view, RM elections are an ineffective substitute for unilateral withdrawals because unions can prevent or delay elections by filing "blocking charges," objections, and/or challenges. Member Hurtgen agreed with the

[7] 333 NLRB No. 105 (Chairman Truesdale and Members Liebman and Walsh; Member Hurtgen concurring).
[8] 95 NLRB 664 (1951).

majority, however, that the good-faith uncertainty standard is appropriate for RM elections.

4. Employer and Union Interference with Employee Rights

In *BellSouth Telecommunications*,[9] the Board found that an employer and a union lawfully agreed, through the collective-bargaining process, to a policy requiring employees to wear a company uniform that displayed both the employer and the union logos.

The employer and the union had a longstanding bargaining relationship. During negotiations for a successor collective-bargaining agreement, the employer indicated that it wanted to create a mandatory uniform program. In the course of bargaining, the parties agreed to the establishment of a mandatory uniform program, with the condition that the union logo was to be placed on the uniform, along with the company logo, for union-represented employees. The parties stipulated that the employer felt that the display of the union logo had value to the company by conveying to the public its relationship with the union.

The Board found that the collectively bargained uniform policy was a "special circumstance" which outweighed any intrusion on the employees' Section 7 right to refrain from union activity. The Board noted that inclusion of the union logo was integral to the employer's uniform policy because it was a prerequisite for establishing the policy through agreement with the union, and furthered the employer's interest in developing a partnership with the union and in symbolically displaying that relationship to the public. The Board noted in this regard that federal labor policy encourages joint labor-management initiatives and that the joint uniform policy was consistent with that federal policy. Further, the Board noted that the presence of a bargaining representative inevitably touches on the Section 7 rights of some employees who would prefer otherwise. Thus, a union's name, initials, and logo may be displayed in a variety of everyday contexts in a union-organized work setting, thereby reflecting the inevitable intertwining of the union logo with the union's representation functions and responsibilities.

5. Illegal Secondary Activity

In *Food & Commercial Workers, Local 1996 (Visiting Nurse Health System)*,[10] a case of first impression, a Board majority held that unions may lawfully engage in secondary picketing when an object of the activity is to induce a primary employer to recognize and bargain with the union as the certified representative of its employees.

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[9] 335 NLRB No. 18 (Members Liebman, Truesdale, and Walsh).

[10] 336 NLRB No. 35 (Members Liebman and Walsh; Chairman Hurtgen dissenting).

The Board certified the union as the representative of a unit of staff nurses employed by the employer, VNHS, in 1994. When VNHS refused to recognize or bargain with the union, the Board issued a bargaining order, and subsequently sought enforcement in the Eleventh Circuit. While enforcement proceedings were pending, the union began picketing and handbilling at the public entrance of the United Way in Atlanta. The picket signs said that United Way's money supported a "convicted labor law violator," and the handbills additionally asked the public to stop making contributions to United Way until it discontinued its support of VNHS.

In determining whether the Act prohibited the union from picketing the United Way to pressure VNHS to recognize and bargain with the union, the Board majority examined Section 8(b)(4)(B) of the Act, which addresses two distinct forms of secondary activity: a "cease doing business" boycott and a "recognition" boycott. In the case of recognition boycotts, there is an exemption allowing such boycotts by a union that has been certified. Thus, the majority concluded that Section 8(b)(4)(B) was not intended to condemn secondary activity by a certified union for the purpose of inducing the primary employer to recognize or bargain with that union. The majority rejected the contention that the first part of Section 8(b)(4)(B), which governs "cease doing business" boycotts, applies regardless of whether a union is certified or an object of its activity is recognitional. The majority reasoned that such a construction of Section 8(b)(4)(B) would render the second clause of Section 8(b)(4)(B), dealing with recognition boycotts, entirely superfluous, as well as making the exemption in the second clause for certified unions meaningless, because the means by which secondary boycotts exert pressure on primary employers is by disrupting their business dealings with the targeted secondary employer. The majority also rejected the assertion that employers who exercise their right to seek judicial review of a certification will be unfairly subject to economic harm from a secondary boycott.

In dissent, Chairman Hurtgen agreed that Section 8(b)(4)(B) contains a proviso authorizing secondary picketing for the object of recognition if the union is certified. He noted, however, that Section 8(b)(4)(B) also prohibits secondary picketing if an object of the picketing is to force a neutral to stop doing business with the primary employer. In this case, the union had two objectives: to force the United Way to stop doing business with VNHS, and to force VNHS to recognize the union. Thus, in Chairman Hurtgen's view, the second object was saved by the proviso, but the first object was not saved, because there is no proviso with respect to it. Chairman Hurtgen also asserted that by allowing unions to engage in secondary boycotts and picketing while a "test-of-certification" proceeding

is pending, as in this case, employers will be pressured into foregoing their right to judicial review of a certification of representative, and those who persist in seeking judicial review will be subject to the economic harm inflicted by a secondary boycott with no recourse for redress.

6. Failure to Provide 8(g) Notices

In *New York State Nurses Assn. (Mt. Sinai Hospital),*[11] a Board majority held that nurses who refused to volunteer for overtime or to work voluntary overtime, pursuant to the union's request, were engaged in a concerted refusal to work within the meaning of Section 8(g).

The parties' collective-bargaining agreement provided that overtime would be voluntary except in a disaster/emergency, and that an employee could refuse overtime assignments three times per year. In response to concerns that by continuing to volunteer for overtime, employees were enabling the hospital to avoid hiring enough staff, the union recommended that employees refuse to volunteer to work overtime. Accordingly, a number of nurses stopped volunteering for overtime, and others exercised their contractual right to refuse overtime assignments made by the hospital. The employees' actions made it more difficult for management to staff surgical procedures, and some procedures were delayed briefly.

The Board majority found that the nurses' action constituted a strike or concerted refusal to work within the meaning of Section 8(g), which requires a union to provide 10 days written notice before engaging in such actions at a health care institution. The majority relied both on the broad language of Section 8(g) and of Section 501(2) of the Act, which defines "strike" to include "any strike or other concerted stoppage of work by employees . . . and any concerted slowdown or other concerted interruption of operations by employees." The majority also reasoned that its interpretation was consistent with Congress' purpose in enacting Section 8(g), which was to allow for appropriate arrangements to be made for continued patient care. The majority found that the nurses' actions caused, and were meant to cause, an interruption in the hospital's procedures, in order to put pressure on the hospital to change its staffing practices.

Member Liebman, in dissent, would have found that the nurses' action did not constitute a strike. In her view, it would impermissibly stretch the terms of Sections 8(g) and 501(2) to encompass a concerted refusal to perform voluntary work, especially when the voluntary nature of the work is established in a collective-bargaining agreement. Member Liebman would not find a contractual refusal to perform voluntary work to constitute an "interruption of operations," but rather an insistence on working under the established terms of the contract.

[11] 334 NLRB No. 103 (Chairman Hurtgen and Member Truesdale; Member Liebman dissenting).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2001, are as follows:

Personnel compensation	$ 140,149,925
Personnel benefits	28,812,871
Benefits for former personnel	30,000
Travel and transportation of persons	3,665,182
Transportation of things	216,948
Rent, communications, and utilities	25,121,711
Printing and reproduction	248,739
Other services	13,352,832
Supplies and materials	1,149,785
Equipment	3,639,236
Insurance claims and indemnities	88,871
Total obligations	$ 216,476,100

II

Board Procedure

The filing of a charge activates the Board's processes. The charge enables the General Counsel, after due investigation, to issue a complaint. Section 10(b) of the Act provides, however, "[t]hat no complaint shall issue based on any unfair labor practice occurring more than 6 months prior to the filing of the charge."

A. Authority to Amend Complaint

In *GPS Terminal Services*,[1] the Board found that the respondent violated Section 8(a)(3) and (1) of the Act by discharging and refusing to reinstate employees Hess and Mallin for refusing to cross a picket line established to protest the respondent's refusal to recognize the union after taking over freight handling operations at Conrail's Harrisburg, Pennsylvania rail yard from Pacific Rail Corporation (PAC Rail). The Board also found that the respondent lawfully failed to hire former PAC Rail employees Stemler, Mutzabaugh, and Evans, and lawfully discharged employee Wertz.

In 1996, the respondent took over from PAC Rail as the entity responsible for loading and unloading work at Conrail's intermodal rail yard in Harrisburg. Although PAC Rail's employees were represented by the union, the respondent did not recognize the union and failed to hire alleged discriminatees Stemler, Evans, and Mutzabaugh, who were former PAC Rail employees and union stewards. In agreement with the administrative law judge, the Board found that the General Counsel had not established that the respondent's hiring decisions were motivated by union animus, in light of the respondent's hiring of a "goodly number of the former PAC Rail workers" despite knowing of their union membership, among other things. The Board also adopted the judge's finding that the Respondent would not have hired these individuals in any event, because of their apparent unwillingness to embrace the respondent's "team" concept and cross-training requirement.

The Board agreed with the judge that the respondent violated Section 8(a)(3) and (1) when it discharged employees Hess and Mallin because they refused to cross a picket line established by the union to protest the respondent's refusal to recognize the union and its failure to hire the three union stewards. Although the union's picketing extended beyond the PAC Rail reserve gate to include the main rail yard gate used by

[1] 333 NLRB No. 121 (Chairman Truesdale and Members Hurtgen and Walsh).

Conrail employees and others, Hess and Mallin did not participate in that picketing. Accordingly, the Board found that Hess and Mallin's refusal to work was protected concerted activity regardless of whether other individuals were engaged in unlawful secondary picketing at that time.

The Board held meritorious the General Counsel's exception to the judge's decision to "sua sponte" amend a complaint allegation describing the union's picketing. The Board stated:

> Section 3(d) of the Act provides that the General Counsel "shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board." The General Counsel's authority under Section 3(d) includes the unreviewable discretion to determine whether to dismiss an unfair labor practice charge, to issue a complaint, or to enter into a prehearing informal settlement agreement. . . . Once the hearing has commenced, and until the case has been transferred to the Board, the complaint may only be amended "upon motion, by the administrative law judge designated to conduct the hearing." However, "the authority of the Administrative Law Judge to amend the complaint . . . is clearly limited to those instances where the amendment is sought or consented to by the General Counsel, or where evidence has been received into the record without objection."[2]

The Board concluded, in agreement with the judge, that the respondent did not unlawfully discharge employee Wertz, a former PAC Rail employee, because of his complaints to coworkers about the respondent's failure to recognize the union and hire other former PAC rail workers. The judge's credited testimony that the respondent discharged Wertz because of insubordinate and uncivil behavior which had nothing to do with his union activity. Chairman Truesdale and Member Hurtgen found no evidence of any union animus against Wertz, and no evidence that the respondent knew he was attempting to organize its employees. Member Walsh, disagreed with this finding, as in his view, animus and knowledge were established by, in part, a supervisor's angry comment to Wertz the night before his discharge that the respondent was not going to go union and the subsequent discharge of Hess and Mallin. Member Walsh agreed with his colleagues, however, that in light of the judge's decision to credit the respondent's reasons for

[2] Quoting *Winn-Dixie Stores*, 224 NLRB 1418, 1420 (1976), enfd. in pert. part 567 F.2d 1343, 1350 (5th Cir. 1978), cert. denied 439 U.S. 985 (1978).

discharging Wertz, the respondent established that it would have discharged Wertz even in the absence of union activity.

B. Limitation of Section 10(b)

In *Morgan's Holiday Market*,[3] the Board adopted a new standard of materiality in fraudulent concealment cases whereby a previously-dismissed charge may be reinstated outside the Section 10(b) period if the addition of evidence that was previously fraudulently concealed would, as an objective matter, make the critical difference in determining whether or not there was reasonable cause to believe that the Act had been violated.

The case involved the procedural issue of whether the General Counsel's reinstatement of a dismissed charge was proper under the fraudulent concealment exception to Section 10(b) of the Act. The administrative law judge, relying on the Board's decision in *Brown & Sharpe II*,[4] concluded that the charge could not be reinstated, despite the fraudulent concealment of certain facts, because the facts that had been concealed were not "material." Although the Board agreed with the judge's conclusion, it used this case to articulate a new standard of "materiality" to be used in analyzing the materiality of concealed facts in fraudulent concealment cases.

In *Brown & Sharpe II*, the Board stated that it would adopt the fraudulent concealment test enunciated in the D.C. Circuit case *Fitzgerald v. Seamans*,[5] which the Board articulated as follows: "[Fraudulent concealment] has three critical requirements: (1) deliberate concealment has occurred; (2) material facts were the object of the concealment; and (3) the injured party was ignorant of those facts, without any fault or want of due diligence on its part."[6] However, when the D.C. Circuit reviewed the Board's decision in *Brown & Sharpe II*, it reversed and remanded the case to the Board, stating that while the Board had "purported to adopt this circuit's standard for materiality," it had articulated it in a way that "makes no sense" and is "internally inconsistent,"[7] and applied its own standard. On remand, the Board accepted the court's analysis as the law of the case, and found that the material evidence at issue in that case had not been fraudulently concealed.[8]

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[3] 333 NLRB No. 92 (Chairman Truesdale and Members Liebman and Hurtgen).
[4] 312 NLRB 444 (1993).
[5] 553 F. 2d 220 (D.C. Cir. 1977).
[6] 312 NLRB 444.
[7] *Machinists District Lodge 64 v. NLRB*, 50 F.3d 1088, 1093 (1995), remanding 312 NLRB 444 (1993) *(Brown & Sharpe II)*.
[8] *Brown & Sharpe III*, 321 NLRB 924 (1996). The court affirmed on review, 130 F.3d 1083 (D.C. Cir. 1997), cert. denied 524 U.S. 926 (1998).

In *Morgan's*, the Board decided to modify the materiality standard that it had adopted from the D.C. Circuit, in order to better reflect the Board's administrative procedures. The Board noted that "since neither Section 10(b) nor any other provision of the Act addresses the issue of time limits on revival of a dismissed charge, the Board is exercising its policy making authority to fill this 'gap' in the statutory scheme."[9] The new standard of materiality provides that "a charge may be reinstated [outside of the 10(b) period] if the addition of evidence previously fraudulently concealed would, as an objective matter, make the critical difference in determining whether or not there was reasonable cause to believe the Act was violated. The new evidence would make a 'critical difference' if it so significantly alters the total mix of information available that, for the first time, there is reasonable cause to believe that the Act has been violated."[10] The Board explained that under this approach, its "inquiry is twofold: (1) whether, based on the evidence before the General Counsel at the time of dismissal, there was no reasonable cause to believe that the Act had been violated, and (2) whether, based on the evidence before the General Counsel at the time of the reinstatement of the charge and the issuance of complaint (including the fraudulently concealed evidence), there is reasonable cause to believe that the Act was violated."[11]

The Board then applied this standard to the facts of the case, and determined that the evidence that had been fraudulently concealed did not make a critical difference in this case, "because the evidence known [to the Union and the General Counsel] at the time of the dismissal of the original charge provided the basis for a reasonable cause to believe that the Act had been violated as alleged in the charge, [and] the later discovered evidence, while arguably strengthening the case, was simply incremental and did not significantly alter the total mix of information available to the General Counsel initially."[12] Accordingly, the Board dismissed the complaint.

C. Subpoenas Seeking Documents Prepared by Another Party

In *Marian Manor for the Aged & Infirm*,[13] the Board majority adopted the Regional Director's finding that the hearing officer did not err by refusing to require the production of subpoenaed responses to a

[9] 333 NLRB No. 92, slip op. at 2, citing *Machinists District Lodge 64 v. NLRB*, 949 F.2d 441, 445 (D.C. Cir. 1991), remanding 229 NLRB 586 (*Brown & Sharpe I*).

[10] 333 NLRB No. 92, slip op. at 4.

[11] Id.

[12] Id. at 6.

[13] 333 NLRB No. 133 (Chairman Truesdale and Member Liebman; Member Hurtgen dissenting in part).

union's survey of the employer's nursing staff regarding supervisory authority and functions.[14]

The majority held that "in questions regarding the enforcement or revocation of subpoenas the Federal Rules of Civil Procedure, although not binding on the Agency, provide useful guidance and should be consulted by Regional Directors and hearing officers when ruling on motions." See *Brink's, Inc.*[15] Under Section 26(b)(3) of the Federal Rules of Civil Procedure, a party seeking to obtain documents prepared by another party in anticipation of litigation must show both that the party seeking the documents has a substantial need for the materials in preparation of his case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Applying this standard, the majority found that while the evidence with respect to the authority and functions of the employer's staff nurses was necessary for the employer to prepare and proceed with its case, "the employer failed to show that it was unable to obtain by other means the substantial equivalent of the materials contained in the survey responses." Thus, the employer had access to its own employees for information, had ample opportunity to, and did, examine and cross-examine witnesses at the hearing with respect to this issue, and could have examined nurses with respect to the survey which was made part of the record. The majority emphasized that given the need for expeditious handling of representation cases and the limited probative value of the survey responses, which were not sworn statements, on balance the "search for truth" was not jeopardized by the hearing officer's ruling. The majority also found that, even assuming arguendo that the employer was entitled to these documents, the employer had not established that it was prejudiced by the refusal to enforce the subpoena.

Member Hurtgen, dissenting in part, would have granted the subpoena and remanded for a further hearing. He contended that without the survey responses the employer was limited in its ability to examine and cross-examine witnesses and therefore denied the opportunity effectively to pursue its case.

D. The Relationship Between the "Postmark Rule" and the "Excusable Neglect Rule"

In *Carpenters (R. M. Shoemaker Co.)*,[16] the Board majority refused to accept as timely filed a brief which was neither received by the due date

[14] The Board also amended the Regional Director's Decision and Direction of Election to permit employees in two classifications to vote under challenge.

[15] 281 NLRB 468 (1986).

[16] 332 NLRB No. 140 (Chairman Truesdale and Member Liebman; Member Hurtgen dissenting).

nor deposited with a delivery service at least 1 day before it was due. The brief had been delivered on the day due to an express delivery service that was to deliver it on that same day; erroneously, it was not delivered until 1 day after it was due.

The majority noted that Section 102.111(b) (the postmark rule) of the Board's Rules and Regulations, expressly permits the filing of documents by delivery service even if they do not arrive on the due date PROVIDED the documents are deposited with the delivery service no later than the day before the due date. The majority rejected the contention that the "excusable neglect" provision of Section 102.111(c) of the Rules and Regulations should be interpreted to permit acceptance of the late brief. It found such an interpretation would undermine the "postmark rule" and that the party did neglect to deliver the brief to the delivery service at least 1 day before it was due and thereby acted at its peril and assumed the risk that the brief would not arrive on its due date.

In dissent, Member Hurtgen would grant the request for a 1-day extension of the due date, applying the "excusable neglect" rule, and noting that no party opposed the request for an extension. He assumed, arguendo, that the failure to give the brief to the delivery service before the date it was due was "neglectful," but concluded that the neglect was "excusable" because the brief would have been timely received, but for the failure of the delivery service.

E. Effect of Vacating a Board Decision Pursuant to a Settlement Agreement

In *Caterpillar, Inc.*,[17] the Board held that an Order vacating a prior published decision pursuant to a settlement agreement vacates that decision "only insofar as there is no longer a court-enforceable order in the case and the decision has no preclusive effect on the parties." The decision remains published and "may be cited as controlling precedent with respect to the legal analysis therein."

The Board distinguished a vacatur pursuant to a settlement from a vacatur on the merits where the Board finds its prior decision was erroneous. In such a case "the vacated decision is eliminated for all purposes, including precedential effect[,]" it held.

[17] 332 NLRB No. 101 (Chairman Truesdale and Members Fox and Hurtgen).

III

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization.

Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, 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. Unit Issues

1. University Graduate Assistants

In *New York University*,[1] the Board found that graduate assistants (teaching assistants, graduate assistants, and research assistants) are employees within the meaning of Section 2(3) of the Act. The Board affirmed the Regional Director's finding that relied on the Board's recent decision in *Boston Medical Center*,[2] which found that medical interns and residents are statutory employees.

[1] 332 NLRB No. 111 (Chairman Truesdale and Member Liebman; Member Hurtgen concurring).

[2] 330 NLRB 152 (1999) (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).

To decide this issue, the Board applied principles from Supreme Court and Board precedent defining the term "employee" within the meaning of Section 2(3). The Board explained that those cases broadly define "employee" to include "any employee." Unless a category of workers is among the few groups exempted from the Act's coverage, the group plainly comes within the statutory definition of employee. In addition, the definition of the term employee reflects the common law agency doctrine of the conventional master-servant relationship. That relationship exists when a servant performs services for another, under the other's control or right of control, and in return for payment.

These principles were applied in *Boston Medical Center* to "house staff" (interns, residents, and fellows). The Board found that house staff is not one of the categories excluded from the Act. In addition, the Board stated that "nothing in the statute suggests that persons who are students but also employees should be exempted from the coverage and protection of the Act."[3]

Applying the same principles, the Board decided that graduate assistants "plainly and literally" fall within the meaning of "employee" as defined in Section 2(3). The historically broad reading of the term "employee" in Section 2(3), coupled with the lack of any specific exemption of graduate assistants from the Act's coverage, support this conclusion. The graduate assistants perform duties under the control and direction of the employer, and are compensated for those services. They are thus indistinguishable from a traditional master-servant relationship.

The Board rejected arguments that this case is distinguishable from *Boston Medical Center*. The major arguments were that graduate assistants spend less time than the house staff performing duties for the employer, receive financial aid and not compensation, and perform work that is primarily educational. The Board responded that graduate assistants are no less employees because of the amount of time they work than are part-time employees. Unlike students actually receiving financial aid, graduate assistants must work in exchange for pay and under conditions controlled by the employer. Working as a graduate assistant may yield an educational benefit, but such work is not a requirement for obtaining a degree in most departments.

Finally, the Board rejected claims that this finding would infringe on the employer's academic freedom. The Board cited its long experience with faculty bargaining units, the speculative nature of such claims, and the ability of collective bargaining to adjust to new and changing work

[3] Id. at 160.

contexts. The Board also emphasized that the Act does not compel agreements between employers and employees.

Member Hurtgen concurred. He contrasted this case with *Boston Medical Center*, in which he dissented. Unlike the residents and interns, working as a graduate assistant is not a requirement for completing graduate education. Nor is such work a part of the curriculum. Hence, unlike the services of the residents and interns, the graduate assistants' services are not a necessary and fundamental part of their studies.

2. Acute Care Facility Residual Unit

In *St. Mary's Duluth Clinic Health System*,[4] the Board majority overruled *Levine Hospital of Hayward, Inc.*,[5] and concluded that consistent with the Board's Health Care Rule,[6] a nonincumbent union may represent a separate residual unit of employees in the healthcare industry.

An incumbent union represented a unit of licensed practical nurses (LPNs) at the employer's acute-care hospital. As that unit excluded a number of the employer's other technical employees, it was a "non-conforming" unit (i.e., a bargaining unit that did not conform to one of the specifically enumerated units) under the Board's Health Care Rule, which sets forth the appropriate bargaining units for acute-care health facilities. A nonincumbent union petitioned for a residual unit composed of the remaining unrepresented technical employees.

Based on the language of the Health Care Rule, in conjunction with Board precedent and policy, the majority concluded that a petition by a nonincumbent union for a residual unit of employees in the healthcare industry may be appropriate; the majority consequently also overruled its pre-Rule decision in *Levine Hospital*,[7] which had held to the contrary. Examining the language of the Health Care Rule itself, the majority determined that to interpret Section 103.30(c) of the Rule—which provides that where there are existing, nonconforming units, additional units will be found appropriate only "insofar as practicable"—as permitting only those units specifically enumerated in the Rule would render that provision superfluous. The majority further determined that allowing nonincumbent unions to petition for residual units would give appropriate consideration to the Board's "long-established policy of according deference to collective-bargaining relationships," as the incumbent union's existing unit would not be disturbed and, additionally,

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[4] 332 NLRB No. 154 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting).

[5] 219 NLRB 327 (1975).

[6] 29 CFR § 103.30; 284 NLRB 1580–1597 (1987).

[7] Supra.

would preserve the Section 7 rights of the unrepresented residual employees to pursue bargaining representation.[8]

In recognition of the congressional admonition against the undue proliferation of bargaining units in the healthcare industry, however, the majority also decided to adopt a limited exception to the Board's intervention rules, such that an incumbent union representing an existing nonconforming unit will be entitled to a place on the ballot in an election for a residual unit, without having to formally request intervention or demonstrate a showing of interest. The majority reasoned that this exception would

> [strike] a proper balance between the policies of stability of existing collective-bargaining relationships and [the] avoidance of undue proliferation of bargaining units . . . by encouraging, but not requiring, the incumbent union to seek to add the residual employees to its existing unit.

In dissent, Member Hurtgen asserted that the petitioned-for residual unit was inappropriate. He contended that there was no showing that it was "impracticable" (pursuant to Section 103.30(c) of the Health Care Rule) to place all of the technical employees in a single unit. Additionally, he asserted that the majority improperly failed to heed the congressional admonition against the undue proliferation of bargaining units; emphasizing Board precedent prohibiting an incumbent union from representing both a nonconforming unit and its residual unit, Member Hurtgen contended that "it is even worse, from the standpoint of undue proliferation, to have two unions representing separate units."

B. Bars to an Election

1. Card Check and Voluntary Recognition Procedure

In *Verizon Information Systems*,[9] the Board majority found that a voluntary agreement (Agreement) between the petitioner and the employer establishing a procedure for voluntary recognition outside of the Board processes, containing an express promise to submit appropriate unit disputes to arbitration, and having been invoked by the petitioner, bars the petition filed by the petitioner. The majority noted that it was not disturbing the Board's long-held view that it only infrequently defers to arbitration in representation proceedings. The majority applied

[8] Having concluded that a residual unit may be appropriate in the healthcare industry, the Board thereafter found that the petitioned-for residual unit was appropriate, as it included *all* of the unrepresented technical employees residual to the existing nonconforming unit.

[9] 335 NLRB No. 44 (Chairman Hurtgen; Member Liebman concurring; Member Walsh dissenting).

principles from *Briggs Indiana*,[10] that the Board in *Lexington House*,[11] explained "rests on the notion that a party should be held to its express promise" and emphasized: "If there is . . . a[n express] promise, we will enforce it, for a party ought to be bound by its promise."[12]

The majority found that under the Agreement, the petitioner received significant rights to information about employees it is seeking to organize, including names and addresses, access to employees on the employer's premises, a pledge of neutrality by the employer during the union's organizing campaign, prompt recognition of the petitioner by the employer upon a demonstration of majority support, and prompt commencement of good-faith bargaining.

In finding the Agreement bars the petition, the majority expressly premised its finding on the fact that the petitioner invoked the Agreement and received information, including the number and classifications of employees at the employer's various locations. Had it chosen to file a representation petition with the Board initially and never invoked the Agreement, the majority would not have found the Agreement bars the petition. Having invoked the Agreement, the majority found that fundamental policies of the Act can best be effectuated by holding the petitioner to its bargain.

Member Liebman concurred, noting that the decision is consistent with her finding in *Central Parking System*.[13] In addition, she emphasized that whether and to what extent the Board should defer to arbitration for determination of an appropriate bargaining unit for purposes of determining majority support in these circumstances is an issue not before the Board.

Member Walsh dissented, contending that the petitioner, in the Agreement, had not "clearly and unmistakably" waived its statutory right to petition the Board to represent the petitioned-for employees, and that it is inappropriate to defer this representation case to arbitration.

The majority, however, responded that Member Walsh had misconstrued the posture and narrow holding of this case. The issue is not waiver but one of estoppel, which the Board has applied, in analogous circumstances. See, e.g., *Red Coats, Inc.*[14]

Member Walsh rejected the estoppel theory, arguing that the employer had suffered no detriment.

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[10] 63 NLRB 1270 (1945).
[11] 328 NLRB 894 (1999).
[12] Id. at 896.
[13] 335 NLRB No. 34 (Members Liebman and Truesdale; Chairman Hurtgen dissenting).
[14] 328 NLRB 205, 206–207 (1999).

The majority emphasized that by agreeing to this procedure, the petitioner induced the employer into believing that the petitioner would not file a petition, and the employer relied to its detriment on the petitioner's actions by providing information to it and proceeding to arbitration. It is for these reasons—not the pending arbitration on the scope of the appropriate unit—that the Agreement bars the filing of the petition.

2. Contract Bar

In *VFL Technology Corp.*,[15] the Board majority found that absent a showing of collusion, the incumbent union's disclaimer of interest was effective although arising out of proceedings pursuant to article XX (no-raid procedures) of the AFL–CIO's constitution. Therefore, the contract between the employer and the incumbent union did not bar the instant representation petitions filed by rival unions.

In this case, the petitioners instituted a jurisdictional complaint against the incumbent union pursuant to article XX. Although an impartial umpire found that the incumbent union was in violation of article XX, the union continued to assert itself as the employees' bargaining representative. As a result of a subsequent noncompliance complaint filed by the petitioners, the AFL–CIO instructed the incumbent union to comply with the umpire's decision. Accordingly, the union advised the employer that it would cease from acting in any way as the employees' bargaining representative. The Regional Director found the union's disclaimer to be effective. The employer argued, however, that the disclaimer was ineffective.

The majority found that the incumbent union's disclaimer was clear and unequivocal, and that the few arguably inconsistent post-disclaimer actions did not negate the effectiveness of the union's disclaimer of interest. Importantly, the majority also distinguished the decision in *Mack Trucks, Inc.*,[16] relied on by the dissent. It noted that the essential fact in *Mack Trucks* was that the disclaimer resulted from a collusive agreement between the contracting union and the union that was seeking the election, citing *American Sunroof*,[17] and *NLRB v. Circle A & W Products Co.*[18] In *VFL Technology*, however, the evidence did not establish that the disclaimer arose from a collusive agreement between the incumbent union and the petitioners or that the incumbent union disclaimed interest in an attempt to avoid the obligations of the

[15] 332 NLRB No. 159 (Chairman Truesdale and Members Fox and Liebman; Member Hurtgen dissenting).
[16] 209 NLRB 1003 (1974).
[17] 243 NLRB 1128 (1979).
[18] 647 F.2d 924 (9th Cir. 1981).

collective-bargaining process, and there was no claim that the disclaimer was a tactical maneuver, a sham, or made in bad faith. Finally, the article XX "no-raid" procedure, a process accorded deference by the Board, is adversarial and cannot be considered to be collusive. Consequently, the Board concluded that the union's disclaimer was effective and that the contract between it and the employer was not a bar to the petitions.

Member Hurtgen, in dissent, would decline to give effect to the disclaimer and would find the incumbent union's contract with the employer barred the petitions. He wrote:

> The Board's contract-bar rule is designed to preserve stability in collective-bargaining relationships. Indeed, the Board refuses to "permit an incumbent and vital labor organization to disavow its lawful contractual obligations."[19] In the instant case, the incumbent union has done precisely that, apparently out of deference to a rival union which wants to represent these employees. The rival union prevailed in the "no-raid" procedures under article XX of the AFL–CIO constitution. The Board has indicated that it will not allow a union's "no raiding" agreement "to be used to supercede a binding collective-bargaining agreement interposed as a bar to an immediate election."[20]
>
> The incumbent Union's disclaimer effectively takes away the Employer's contract rights as well as the stability afforded by the contract-bar doctrine. Moreover, there is no evidence that the incumbent Union is either defunct or unable to administer the extant contract.

C. Election Objections

Nonemployee Agents as Incumbent Union's Election Observers

In *Butera Finer Foods,*[21] the Board concluded that the neutrality of the election process in a decertification context is best fostered by a bright-line rule prohibiting incumbent labor organizations from using their nonemployee agents as election observers. A key factor in the Board's holding is that in a decertification election, employees have accumulated experience with their union's operations and can be

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[19] *East Mfg. Corp*., 242 NLRB 5, 6 (1979).

[20] *Mack Trucks, Inc.*, 209 NLRB 1003, 1004 (1974). In *Mack*, the Board refused to honor a disclaimer by an incumbent union. The Board stated that, although it had a policy of seeking in a representation proceeding to accommodate efforts to resolve dispute[s] between unions under "no-raiding" agreements, it would not permit such agreements to be used to supercede a binding contract interposed as a bar to an election.

[21] 334 NLRB No. 11 (Chairman Hurtgen and Member Truesdale; Member Walsh dissenting).

expected to view both it and the employer as established collective-bargaining forces. As a result, employees may be unduly influenced by the actual physical presence of nonemployee agents of the incumbent union at the polling site. Thus, the Board found that a nonemployee business agent serving as the Union's election observer in the decertification election constituted objectionable conduct and directed that the election be set aside and a new election be held.

Member Walsh dissented, contending that a per se rule prohibiting nonemployee agents of incumbent unions from serving as observers at decertification elections under any circumstances was unwarranted.

IV

Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in 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 2001 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

Section 8(a)(1) of the Act forbids an employer "to interfere with, restrain, or coerce" employees in the exercise of their rights as guaranteed by Section 7 to engage in or refrain from engaging in collective-bargaining and self-organizational activities. Violations of this general prohibition may be a derivation or byproduct of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a), or may consist of any other employer conduct that independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities that constitute such independent violations of Section 8(a)(1).

1. Access to Employer Property

In *Hillhaven Highland House*,[1] the respondent enforced a rule, which prohibited employees at one of its unionized ~~facility~~ facilities from engaging in organizational activities at two of its nonunionized facilities. The Board~~'s~~ majority, ~~consisting~~ of Members Liebman, Truesdale, and Walsh, held that the Section 7 rights of the unionized off-site employees (employees employed at another facility of the same employer) entitle them to access to the outside, non-working areas of their employer's

[1] 336 NLRB No. 62 (Members Liebman, Truesdale, and Walsh; Chairman Hurtgen dissenting).

nonunion facilities, except where justified by business reasons.[2] In weighing the employer's business reasons, the Board ~~will~~ considers the employer's "predictably heightened property concerns" when off-site employees are involved. However, an employer has the burden of demonstrating that its restrictions are warranted.

The majority noted that in *ITT Industries ~~Inc.~~ v. NLRB*,[3] a case presenting the same issue, the court ~~had recently~~ vacated and remanded the Board's decision. In *ITT*, the Board had followed its decisions in *Southern California Gas Co.*[4] and *Postal Service*[5] (which applied the rule of *Tri-County Medical Center*[6]~~)~~ to allow access to off-site employees.

Although the *ITT Industries* court had stated that off-site employees may be regarded as trespassers, and that must be weighed in considering their access rights, the Board~~'s~~ majority in *Hillhaven* observed that the Board must balance Section 7 rights and private property rights.[7] The majority concluded that the off-site employees possess non-derivative Section 7 rights against their employer, noting that employees of the same employer often have common employment-related interests. Therefore organizing similarly-situated employees may serve to improve their own working conditions.

In dissent, Chairman Hurtgen found that in balancing property rights and Section 7 rights, property rights prevail unless outweighed by Section 7 rights. Thus, an employer can ordinarily post its property against those who do not work at the facility, including offsite employees. He notes that there are exceptions "grounded in the direct and immediate interest of the [offsite] employees who [seek] access. ~~…"~~ . . ." (In *Hudgens*,[8] factory employees were pursuing their own right to strike and to put economic pressure on their employer by picketing its retail store. In both ~~*U.S.*~~ *Postal Service*[9] and *Southern California Gas*,[10] all employees were in the same bargaining unit and the offsite employees were communicating with the onsite employees regarding a matter of common interest).

Chairman Hurtgen found that although organization of other employees may benefit already-organized employees, that interest is not

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[2] See ~~Food &~~ *Commercial Workers Locals ~~957~~951, 7~~,~~ & 1036 (Meijer, Inc.)*, 329 NLRB 730, 734 (1999).

[3] 251 F.3d 995 (D.C. Cir. 2001).

[4] 321 NLRB 551 (1996).

[5] 318 NLRB 466 (1995).

[6] 222 NLRB 1089 (1976).

[7] Citing, *Hudgens v. NLRB*, 424 U.S. 507, 521 (1976).

[8] Supra.

[9] Id.

[10] Id.

a direct one. He observed that in *ITT Industries* the court noted that employees at different facilities might have different interests, although the employees were in the same bargaining unit. Thus, Chairman Hurtgen ~~states~~ stated that it follows that employees in *different* bargaining units do not have common interests and that "it has not been shown that they share a 'community of interest.'"

2. Investigation of Harassment Charges for Distribution of Union Literature

In the matter of *Consolidated Diesel*,[11] the Board considered two issues: (1) whether substantial evidence supports the finding that the respondent violated Section 8(a)(1) of the Act by subjecting employees to its disciplinary procedure for which permanent records are maintained and may be used for future discipline for engaging in union protected activities; and (2) whether the evidence supports the finding that the respondent violated Section 8(a)(1) by removing union materials from nonwork areas after they had been lawfully left there for distribution and by prohibiting employees from distributing union materials on nonworktime in nonwork areas.

The respondent maintains a harassment policy that defines harassment as any unwelcome action, intended or not, that is considered offensive to a receiver or third party. Under the respondent's harassment policy charges were filed against two employees, Fernando Losada and Jim Wrenn, in connection with separate incidents involving the distribution of the union newsletter. Thereafter, performance management processing (PMP) meetings were held to investigate the harassment charges. The performance management process committees were comprised of both employees and management representatives.

Losada and another union supporter were distributing union flyers in an employee "team room" where several other employees were eating lunch. When Losada offered employee David Duke a flyer, Duke expressed annoyance at the interruption and said that he did not want a flyer. Losada headed for the doorway saying that Duke's view seemed one sided and Duke angrily responded that it could be made two sided and followed Losada out of the door. Immediately after lunch Duke filed a harassment claim against Losada. Thereafter the harassment claim was referred to a PMP meeting. During the meeting Duke admitted that he overreacted and dropped the charge, but the meeting was documented. Losada was given a copy of the respondent's chart of disciplinary

[11] 332 NLRB No. 94 (Chairman Truesdale and Member Fox; Member Hurtgen dissenting in part).

process confirming that documentation could be a factor in subsequent disciplinary action.

Jim Wrenn was passing out flyers in the employees' paint room where employees Tim Engleking and Kathy Mills were discussing the union. Wrenn asked the employees in the paint room if anyone needed flyers when several employees including Mills indicated that they did not want to hear about the union. Wrenn then said "[w]hat's wrong with y'all." Mills responded that the employees "don't need" the union and Wrenn responded that the teams need to be fully empowered. After receiving some more negative comments, Wrenn left the room. Like Duke, Engleking and Mills also filed a harassment claim that was also referred to a PMP meeting. After three PMP meetings, the group reached a decision to end the proceeding with a documentation of each of the meetings. Wrenn was given a copy of the respondent's chart of disciplinary process confirming that documentation could be a factor in subsequent disciplinary action.

Chairman Truesdale and Members Fox and Hurtgen found that the respondent violated Section 8(a)(1) by prohibiting employees from distributing materials on nonworktime in nonwork areas, but only Chairman Truesdale and Member Fox found that the respondent violated the Act by subjecting employees to a disciplinary procedure and documenting the PMP meetings. Member Hurtgen, dissenting in part, argued that the respondent's harassment policy is lawful on its face, and that there was no contention that the respondent deviated from its policy. Moreover, Member Hurtgen found that since it is legal for the respondent to investigate the alleged misconduct in this case, it is also legal to document the investigation.

3. Campaign Videotaping of Employees

In *Allegheny Ludlum Corp.*,[12] the Board held that the respondent unlawfully polled its employees by soliciting their participation in a campaign videotape which the respondent presented to employees prior to an election. Acting on a remand from the Court of Appeals for the D.C. Circuit,[13] the Board revised its standards governing employee participation in an employer's campaign videotape.

The respondent began filming for a videotape entitled "The 25th Hour" a few weeks before the election. The videotape presented the respondent's position that employees should vote against union

[12] 333 NLRB No. 109 (Chairman Truesdale and Members Liebman and Walsh; Member Hurtgen dissenting in part).

[13] *Allegheny Ludlum Corp. v. NLRB*, 104 F.3d 1354 (D.C. Cir. 1997), denying enf. in pert. part to 320 NLRB 484 (1995).

representation and includes segments in which unit employees discuss their satisfaction with the status quo at Allegheny Ludlum and their dissatisfaction with union representation at prior employers and state that they intend to vote "no" in the upcoming election. The videotape closes with images of unit employees at their workplaces, many of whom are shown waving at the camera, accompanied by an upbeat sound track with such lyrics as "Allegheny Ludlum is you and me" and statements by the narrator and employees as to why employees should vote against representation.

The respondent hired an outside film crew to film employees at their workstations. Some employees were individually approached by the respondent's manager of communication services and asked if they would consent to be filmed. Others were filmed without a prior explanation of the purpose of the filming. Upon hearing of the filming, the union protested to the employer that it was unlawfully polling employees. The employer continued filming but distributed a notice to employees telling them that the respondent was preparing a video for the election and that employees who did not want to appear in it should notify either the personnel office or the film crew. The respondent accepted and maintained written lists of employees who asked to be excluded from the video.

The Board concluded that the respondent's solicitation of employees to appear in the video was an unlawful poll. Reviewing past decisions in which employers distributed campaign paraphernalia to employees, the Board concluded that individual solicitations of employees coerce employees by placing them in the position of having to "make an observable choice that demonstrates their support for or rejection of the union."[14] However, the Board also held that an employer may lawfully solicit employees to appear in a campaign video if each of the following requirements is satisfied:

> 1. The solicitation is in the form of a general announcement which discloses that the purpose of the filming is to use the employee's picture in a campaign video, and includes assurances that participation is voluntary, that nonparticipation will not result in reprisals, and that participation will not result in rewards or benefits.
>
> 2. Employees are not pressured into making the decision in the presence of a supervisor.

[14] *Barton Nelson, Inc.*, 318 NLRB 712 (1995).

3. There is no other coercive conduct connected with the employer's announcement such as threats of reprisal or grants or promises of benefits to employees who participate in the video.

4. The employer has not created a coercive atmosphere by engaging in serious or pervasive unfair labor practices or other comparable coercive conduct.

5. The employer does not exceed the legitimate purpose of soliciting consent by seeking information concerning union matters or otherwise interfering with the statutory rights of employees.

Chairman Truesdale and Members Liebman and Walsh further concluded that these principles apply regardless of whether an employee has previously identified himself as opposed to union representation. The majority reasoned that Section 7 necessarily protects an employee's right to choose the degree to which he or she wishes to express support for, or opposition to, union representation.[15] Accordingly, the majority held that "an employee, having once expressed opposition to union representation in some fashion, does not thereby forfeit the right to make for himself or herself, free of employer coercion, the entirely separate choice of whether to participate, or not to participate, in the employer's campaign by appearing in a campaign videotape."

Member Hurtgen, dissenting with respect to this issue, stated that in his view, direct solicitation of employees who are open opponents of the union is permissible. Because the employees, by their own conduct, openly demonstrated their opposition to the union, an employer solicitation does not place them in a position where they are pressured to "make an observable choice that demonstrates their support for or rejection of the union."

The Board also held that an employer may include an employee in a campaign video without his permission if the video does not indicate the employee's position on unionization. The Board stated that it was overruling its 1993 decision in *Sony Corp. of America*[16] to the extent it was inconsistent with these principles. However, the Board further stated that the employer cannot affirmatively mislead employees about the use of their image, the video must contain a disclaimer that it is not intended to reflect the views of the employees in it, and nothing in the video can contradict the disclaimer.

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[15] See *Gonzales Packing Co.*, 304 NLRB 805, 816 (1991) (supervisor violated Sec. 8(a)(1) by approaching employees, some of whom had previously voiced antiunion sentiments, and asking them to wear "Vote No" buttons).

[16] 313 NLRB 420 (1993).

B. Employer Assistance to Labor Organization

Employee Participation Committees

In *Crown Cork & Seal Co.*,[17] the Board held that the respondent's seven employee participation committees did not exist for the purpose of "dealing with" the respondent and therefore did not constitute "labor organizations" within the meaning of Section 2(5) of the Act. Because labor organization status is a necessary element of a violation of Section 8(a)(2), the Board dismissed the complaint in its entirety.

Since the respondent's plant opened in 1984, it has used an employee management system called the "Socio-Tech System" designed to delegate to employees substantial authority to operate the plant through their participation on numerous standing and temporary teams, committees, and boards (collectively committees). The General Counsel alleged that seven of these committees were employer-dominated labor organizations.

Every employee was a member of one of the four production teams. The teams made and implemented decisions regarding production, product quality, training, attendance, safety, maintenance, and certain types of discipline.

The other three employee committees in issue were: (1) the Organizational Review Board, which monitored the administration of plant policies, recommended modifications of terms and conditions of employment, and reviewed production team recommendations to suspend or discharge an employee; (2) the Advancement Certification Board, which certified that employees had reached higher skill levels and recommended pay increases; and (3) the Safety Committee, which reviewed accident reports and considered ways to ensure a safe work place. Although decisions by these entities were reviewed by management, in practice they were rarely overturned.

Section 8(a)(2) makes it an unfair labor practice for an employer to dominate or support "any labor organization." One of the required elements for "labor organization" status under Section 2(5) is that the entity "exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." In previous decisions, the Board explained that "dealing with" involves a bilateral mechanism of employee committees making proposals about terms and conditions of employment and management responding by accepting or rejecting the proposals.

[17] 334 NLRB No. 92 (Chairman Hurtgen and Members Liebman, Truesdale, and Walsh).

Applying these principles to the facts before it, the Board found that "the seven committees are not labor organizations because their purpose is to perform essentially managerial functions, and thus they do not 'deal with' the Respondent within the meaning of Section 2(5) of the Act." The Board rejected the argument that "dealing" is occurring because none of the seven committees has final decisionmaking authority. "Few, if any, supervisors in a conventional plant possess authority that is final and absolute," the Board stated. "[W]hat is occurring in the Respondent's facility is the familiar process of a managerial recommendation making its way up the chain of command." Rather than "dealing with" management, the Board concluded that, "the evidence shows that, within their delegated spheres of authority, the seven committees *are* management."

C. Employer Discrimination Against Employees

Salting: Refusal-to-Consider and Hire Union Applicants

Aztech Electric Co.,[18] is a salting case[19] involving the activities of members and agents of three Electrical Workers ~~(~~IBEW~~)~~ Locals directed toward three respondent employers: Contractors Labor Pool (CLP), a nonunion construction employee leasing company, and two of its nonunion construction contractor clients, Aztech Electric Co. (Aztech) and Fuji Electric Corp. (Fuji).[20] The ~~Board~~ majority affirmed the ~~administrative law~~ judge's finding that CLP's "30-percent rule," a policy of not hiring or considering any applicant whose recent wage history differs by 30 percent from CLP's starting wage rate, was inherently destructive of employees' rights under a ~~a~~ *Great Dane Trailers*[21] analysis, and is therefore unlawful. The ~~Board~~ majority reasoned that the 30-percent rule effectively excluded from eligibility for hire virtually all applicants who had recently worked for unionized employers. Chairman Hurtgen dissented. He disagreed that the 30-percent rule was unlawful because the rule was not implemented in order to discriminate against union members.

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[18] 335 NLRB No. 25 ~~(August 27, 2001)~~ (Members Liebman, Truesdale, and Walsh, with separate concurring opinions by Members Liebman and Walsh, and Member Truesdale~~.~~; Chairman Hurtgen dissenting).

[19] "'Salting a job' is the act of a trade union sending a union member or members to an unorganized jobsite to obtain employment and then organize the employees. A 'salted' member or "salt" is a union member who obtains employment with an unorganized employer at the behest of his or her union so as to advance the union's interest there." *Tualatin Electric*, 312 NLRB 129, 130 fn. 3 (1993) (judge's decision).

[20] The majority affirmed the administrative law judge's dismissal of all complaint allegations against Aztech and Fuji.

[21] *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967).

~~——~~The majority ~~Board disagreed, however, with~~reversed the judge's further finding of merit in CLP's "disabling conflict" defense with respect to IBEW Local 441's salting campaign. The judge found ~~this~~ the union's campaign had an objective of eliminating nonunion employers' operations, rather than organizing their employees within its jurisdiction. ~~the~~ He ~~judge~~ therefore concluded that paid union organizers of a union pursuing such an objective were not statutory employees.[22] The judge further suggested that ~~Respondent~~ CLP might be entitled to presume that any applicant from Local 441 was a paid union organizer, so that the General Counsel would bear the burden in compliance proceedings of proving which victims of the unlawful 30-percent rule were not paid union organizers. Reversing the judge, the ~~Board~~ majority reasoned that CLP failed to establish the "disabling conflict" defense because CLP did not prove that it knew the applicants were paid union organizers and that it purposefully failed to hire them because ~~Union~~ Local 441 intended to drive CLP out of business.

~~–~~In dissent, Chairman Hurtgen ~~argues~~ argued that CLP's 30-percent rule was not illegal and that the employer established a disabling conflict of interest defense.~~"~~

In a concurring opinion, Members Liebman and Walsh expressed their view that CLP had not proven that the applicants had a "disabling conflict of interest" that would justify CLP's refusal to hire them. Member Truesdale, however, in a concurring opinion, contended that CLP did establish that the applicants had such a "disabling conflict" because of certain of the Union's expressed policies. He agreed with the majority, however, that CLP had not relied on the "disabling conflict" in refusing to hire the applicants.

~~This summary should be included in the Chapter on "Unfair Labor Practices", under the subchapter of "Employer Discrimination Against Employees."~~

In *Mainline Contracting Corp.*,[23] the Board ~~panel~~ majority ~~unanimously~~ held that the respondent violated Section 8(a)(3) and (1) of the Act by adopting and maintaining new application procedures to exclude from consideration for hire union affiliated applicants and to avoid more union affiliated applicants. The ~~panel~~ majority further held that the respondent's newly adopted policy of excluding from

[22] The judge's finding is arguably contrary to the Board's longstanding view that paid union organizers have statutory employee status when working for, or applying to work for an employer subject to the Board's jurisdiction. See *Sunland Construction Co.*, 309 NLRB 1224, 1230–1231 (1992); *Town & Country Electric*, 309 NLRB 1250 (1992); and *NLRB v. Town & Country Electric*, 516 U.S. 85 (1995).

[23] 334 NLRB No. 120 (Members Liebman and Truesdale; Chairman Hurtgen dissenting in part).

consideration for hire applicants who reveal their union affiliation on their application forms would violate Section 8(a)(1), even if there was no specific evidence of antiunion animus, because it is inherently destructive of employee rights within the meaning of well-established precedent.

On December 2, 1997, approximately 20 union members completed and submitted copies of the respondent's job application at the company's headquarters. Each applicant wrote "voluntary union organizer" across the top of the application's front page, and included additional union forms (a resume, cover letter, and union job application). The respondent had no formal application and hiring procedures at the time. After receiving the union member applications, however, it instituted new hiring procedures, including this prohibition:

> Applicants are forbidden from marking their application blanks to show race, color, religion, creed, sex, national origin, age, legal out-of-work activity, bankruptcy, or protected concerted activity under the National Labor Relations Act.

The respondent posted on its door and in its lobby area a notice describing the new application procedures, and ~~it~~ distributed copies of the notice to managers who had hiring authority. It also began using a new application form that reiterated the prohibition and stated that applications would be valid for only 30 days. In a March 6, 1998 letter, the respondent informed each of the December 2 union member applicants of the new application procedures. The letter also stated that the respondent was not presently hiring and that their applications would be placed in an inactive file because they were more than 30 days old.

Adhering to *H. B. Zachry Co.*,[24] the majority held that the respondent's policy of excluding from consideration for hire applicants who reveal their union affiliation on their application forms is inherently destructive of employees' Section 7 rights. Thus, the majority found that "declaring one's union affiliation to an employer, even as an applicant for work, is the first step toward seeking union recognition and engaging in collective bargaining."[25] As such, it is "~~'~~an integral aspect"~~'~~ of the "collective process"~~'~~ that Section 7 was designed to protect, quoting *NLRB v. City Disposal Systems*~~, 465 U.S. 822, 835 (1984)~~.[26] ~~They~~ It further found ~~further~~ that the respondent's newly adopted policy unambiguously penalizes and deters such activity.

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[24] 319 NLRB 967 (1995), enf. denied, sub nom. *Boilermakers v. NLRB*, 127 F.3d 1300 (11th Cir. 1997).

[25] Accord: *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 185 (1941) ("[d]iscrimination against union labor in the hiring of men is a dam to self-organization at the source of supply").

[26] 465 U.S. 822, 835 (1984).

Chairman Hurtgen, dissenting in part, agreed with the 11th Circuit that there is no Section 7 right to disclose union activity on an employment application. *Boilermakers v. NLRB*.[27] He noted, moreover, that the policy at issue in this case is facially neutral because it did not single out union activity, but rather, forbade disclosure of many factors irrelevant to the hiring process. He would therefore find that the policy is not inherently destructive of statutorily protected employee rights~~.~~ , citing *Boilermakers* and *TIC-The Industrial Co. ~~Southeast~~ Southeast v. NLRB*,[28] ~~126 F.3d 334 (D.C. Cir. 1997)~~ (no violation where employer refused to consider applicants not complying with its neutral application procedures).

Although adhering to *H. B. Zachry*, the majority found that *Boilermakers* and *TIC* are distinguishable from this case because the inherent discriminatory effect of the new policy at issue here is more overt and specific than those policies at issue in either *Boilermakers* or *TIC*. ~~They~~ It wrote:

> Those cases involved a general "no extraneous information" policy that disqualified, among others, persons who identified their voluntary union organizer status on their application forms. In contrast, the Respondent's policy does not on its face generally prohibit all extraneous information on its application form. The policy disqualifies from hiring consideration *only* those applicants who provide information on their application about status or activity protected by the Act or by other Federal statutes. Consequently, a policy purportedly implemented to avoid discrimination against protected classes or activity has the exact opposite effect.

~~*In* Tradesmen International, Inc., *the Board majority reversed the administrative law judge's dismissal of the Section 8(a)(3) and (1) complaint, and found that the employer unlawfully refused to hire a union organizer who had engaged in concerted,*~~

[27] Supra, see fn. 24.

[28] 126 F.3d 334 (D.C. Cir. 1997).

~~*protected activity through his appearance at a city inspection board meeting where he protested the employer's failure to pay a surety bond required of all eligible subcontractors in the city.*~~

In *Tradesmen International*,[29] the Board majority reversed the administrative law judge's dismissal of the Section 8(a)(3) and (1) complaint, and found that the employer unlawfully refused to hire a union organizer who had engaged in concerted, protected activity through his appearance at a city inspection board meeting where he protested the employer's failure to pay a surety bond required of all eligible subcontractors in the city.

The discriminatee, a union organizer, became eligible for hire by the nonunion employer after completion of an application and an interview. The employer, a city subcontractor, was arguably required to post a surety bond relating to a building inspection ordinance, but did not, in fact, post the bond. At the local bond hearing, the organizer appeared, with the union's counsel, to protest the employer's failure to post the bond. The organizer stated, "part of my job, as a representative of the union and as an organizer, is to level the playing field as much as possible." After the hearing, the employer refused to hire the organizer because he "intentionally tried to hurt [the] company."

The judge found that the employer's refusal to hire the organizer was motivated solely by his testimony at the city bond hearing. However, the judge concluded that the activity was neither concerted nor protected. The judge found lack of concert because there was no evidence that the local union knew of or authorized the organizer's activities and because the mere title of "organizer" did not render all activities undertaken by

[29] 332 NLRB No. 107 (Chairman Truesdale and Members Fox, and Liebman; and Member Hurtgen dissenting).

the employee concerted. The judge also found lack of Section 7 protection because the organizer's activity was too attenuated from a labor relations dispute and was not related to general employee interests. Moreover, the judge found that because the conduct was designed to injure the business, it lacked Section 7 protection.

Contrary to the judge, the ~~Board~~ majority found that the organizer's activity was concerted because it furthered the union's legitimate interest to ensure fair competition between union and nonunion subcontractors, by challenging the employer's failure to comply with the city law. Moreover, the organizer appeared in his capacity as a representative of the union. The ~~Board~~ majority also found that the organizer's activity was protected under *Eastex, Inc. v. NLRB*[30] because there was a nexus between his appearance at the board meeting and "'employees' legitimate concern over their continued employment." ~~The Board~~ It reasoned that like area standards picketing, the activity was designed to protect local unionized employees. Moreover, the ~~Board~~ majority noted, "[w]e do not think that activity can be fairly characterized as causing an employer 'harm' in the sense contemplated by *Electrical Workers*."[31]

Dissenting, Member Hurtgen stated that, in his view, even assuming arguendo that the organizer's activity was concerted, it was not protected under *Eastex*, because the "ordinance was wholly unrelated to employees' terms and conditions of employment." Member Hurtgen found that the activity was an effort by the organizer to harm the employer under *Electrical Workers*, and was therefore unprotected.

D. Employer Bargaining Obligation

1. Continuing Bargaining Obligation

In *Lee Lumber & Building Material Corp.*,[32] the Board reaffirmed its previous holding that when an employer has unlawfully refused to recognize or bargain with an incumbent union, any employee disaffection arising during the course of the unlawful conduct will be presumed to be caused by that conduct.[33] Absent unusual circumstances, the presumption can be rebutted only if the employer can show that the

[30] ~~-~~437 U.S. 556 (1978).

[31] *NLRB v. Electrical Workers IBEW Local 1229*, ~~-~~346 U.S. 464 (1953).

[32] 334 NLRB No. 62 (Chairman Hurtgen and Members Liebman and Truesdale; Member Walsh dissenting in part).

[33] 322 NLRB 175 (1996), affd. in part and remanded 117 F.3d 1454 (D.C. Cir. 1997).

disaffection arose after it resumed recognizing the union and bargained for a reasonable period of time without committing other unfair labor practices that would adversely affect the bargaining. On remand from the D.C. Circuit, however, the Board modified the "reasonable period of time" standard. It held that, in such circumstances, a "reasonable period of time" before the union's status as the employees' bargaining representative can be challenged will be no less than 6 months and no more than 1 year.

Whether a "reasonable period of time" is only 6 months, or some longer period up to 1 year, will depend on a multifactor analysis.[34] Under that analysis, the Board will consider whether the parties are bargaining for an initial contract, the complexity of the issues being negotiated and the parties' bargaining procedures, the total amount of time that has elapsed since the bargaining commenced and the number of bargaining sessions, the amount of progress made in negotiations and how near the parties are to agreement, and whether the parties have bargained to impasse. The factors tending to establish that a reasonable period of time has elapsed are: bargaining for a renewal, as opposed to an initial agreement; the absence of unusually complex issues or bargaining processes; the passage of a relatively long time after the 6-month insulated period; a relatively large number of bargaining sessions; the parties' failure to come close to reaching agreement; and the existence of a bargaining impasse. The factors tending to establish that a reasonable period of time has not elapsed are: bargaining for an initial agreement; the existence of unusually complex issues or bargaining processes; relatively little passage of time after the 6-month period; a relatively small number of bargaining sessions; a strong likelihood of reaching agreement in the near future; and the absence of impasse.[35]

The Board applied the analysis to the employer's conduct in *Lee Lumber*. The employer had refused for several weeks to meet with the union on the basis of a tainted decertification petition. Later, the employer agreed to bargain, and the parties met in five negotiation sessions over a period of a little more than 4 weeks. They had almost reached a new contract, were not at impasse, and had agreed to meet

[34] Most of the factors were those that were considered under the Board's earlier formulation of the "reasonable period of time" standard. The court of appeals upheld the standard but found that the Board had not applied it correctly. The court also suggested that the Board explain the factors, because it was not clear to the court how each of the factors counted in the Board's analysis.

[35] The Board majority held that after the end of the 6-month insulated period, if the General Counsel contends that a reasonable period of time has not elapsed under the multifactor analysis, the General Counsel has the burden of proving that claim. In partial dissent, Member Walsh would have placed the burden on the employer to show that it has bargained for a reasonable period of time.

again, when the employer withdrew recognition on the basis of a second petition, signed by a majority of the unit employees.

The Board found that the employer had not bargained for a reasonable period of time when it withdrew recognition from the union the second time. First, the parties had not bargained for 6 months when the second petition was presented. But even if 6 months had elapsed, the Board found, the relatively short period of bargaining and few bargaining sessions, the parties' apparent nearness to concluding an agreement, and the absence of impasse weighed strongly in favor of finding that a reasonable time had not expired, and outweighed the fact that the parties were not bargaining for an initial contract and the absence of unusually complex issues or bargaining processes. The Board therefore found that the employer violated Section 8(a)(5) by withdrawing recognition.

2. Withdrawal of Recognition

In *Levitz Furniture Co. of the Pacific,*[36] the Board held that an employer may unilaterally withdraw recognition from an incumbent union only on a showing that the union has actually lost the support of a majority of the bargaining unit employees. The Board overruled *Celanese Corp.*[37] and other decisions that allowed Respondents to withdraw recognition merely by establishing an objectively based, good-faith reasonable doubt as to unions' majority support.

The union and Levitz were parties to a collective-bargaining agreement that expired on January 31, 1995. About December 1, 1994, the respondent received a petition bearing what it concluded to be the signatures of a majority of the unit employees, stating that they no longer wished to be represented by the union. On December 2, the respondent informed the union that it had objective evidence that the union had lost majority support. The respondent stated that it would continue to honor the contract until it expired but would withdraw recognition then. On December 14, the union advised the respondent that it had objective evidence, which it was prepared to demonstrate, that it had retained majority support. The respondent, however, reiterated that it would no longer recognize the union except as required by the contract. When the contract expired, the respondent withdrew recognition, arguing that it had a good-faith reasonable doubt as to the union's majority status.

The Board held that the good-faith reasonable doubt standard was fundamentally flawed in that it allowed employers to withdraw recognition from unions that had not, in fact, lost majority support. The

[36] 333 NLRB No. 105 (Chairman Truesdale and Members Liebman and Walsh; Member Hurtgen concurring).

[37] 95 NLRB 664 (1951).

Board found the standard inconsistent with the Act's fundamental policies of effectuating employees' free choice of bargaining representative and promoting stability in bargaining relationships. The Board therefore held that an employer that unilaterally withdraws recognition violates Section 8(a)(5) unless it can show that, at the time it withdrew recognition, the union had actually lost majority support.

Recognizing that Board elections are the preferred means for testing employees' support for unions, the Board eased the standard that employers must meet to obtain RM elections. Henceforth, an employer will be able to obtain an RM election by demonstrating an objectively based, good-faith reasonable uncertainty as to the union's majority status.[38]

Because employers had relied on the more lenient good-faith doubt standard, which had been in effect for some 50 years, the Board found it appropriate to apply the new standard for withdrawal of recognition only prospectively, i.e., not in pending cases. Applying the existing good-faith doubt (uncertainty) standard,[39] the Board found that Levitz' withdrawal of recognition was lawful. Thus, the respondent had been presented with a petition indicating that the union had lost majority support. Although the respondent did not review the union's claimed evidence to the contrary, the Board reasoned that, even if it had done so, the conflicting evidence could still have caused a good-faith uncertainty as to the union's majority status.

Member Hurtgen, concurring, would have adhered to the good-faith uncertainty standard for withdrawing recognition. In his view, RM elections are an ineffective substitute for unilateral withdrawals because unions can prevent or delay elections by filing "blocking charges" and by filing objections and challenging ballots when elections are held. Member Hurtgen agreed with the majority, however, that the good-faith uncertainty standard is appropriate for RM elections. He also agreed with the majority's conclusion that Levitz met the existing good-faith doubt (uncertainty) standard for withdrawing recognition.

In *Staunton Fuel & Material*,[40] the Board again addressed the issue of how a union with Section 8(f) bargaining status in the construction industry can acquire, by written agreement with the employer, the status of majority bargaining representative under Section 9(a).

[38] Cf. *U.S. Gypsum Co.*, 157 NLRB 652 (1966), in which the Board set forth the standard as requiring good-faith doubt or disbelief. In *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998), the Supreme Court held that "doubt" can only mean "uncertainty," not disbelief, which is a more stringent standard.

[39] See fn. 3.

[40] 335 NLRB No. 59 (Chairman Hurtgen and Members Liebman, Truesdale, and Walsh).

In order to resolve this recurrent issue with finality, the Board adopted the minimum requirements for such an agreement set out by the Tenth Circuit in *NLRB v. Triple C Maintenance*[41] and *NLRB v. Oklahoma Installation Co.*[42] The Board held that an agreement will independently establish a Section 9(a) relationship if its language clearly indicates that (1) the union requested recognition as majority representative; (2) the employer recognized the union as majority representative; and (3) the employer's recognition was based on the union's having shown, or having offered to show, an evidentiary basis of its majority support.

In adopting this approach, the Board followed *John Deklewa & Sons*[43] which set out the Board's current interpretation of Section 8(f) and reconfirmed that a construction union with 8(f) status could (like a nonconstruction union) achieve 9(a) status through a certification proceeding or through voluntary recognition by the employer "based on a clear showing of majority support among the union employees."[44] In a number of fact settings subsequent to *Deklewa*, the question of how a contract, by its terms, could establish that majority recognition had been given based on a "clear showing of majority support" was raised but never clearly resolved.

The Board found that the Tenth Circuit's approach "properly balances Section 9(a)'s emphasis on employee choice with Section 8(f)'s recognition of the practical realities of the construction industry." This approach, in the Board's view, "also has the advantage of establishing bright-line requirements," and it will enable construction unions and employers to establish 9(a) bargaining relationships "easily and unmistakably where they seek to do so." The Board noted that under the adopted language requirements, a contract stating that the employer "will" recognize the union as majority representative "if" the union shows majority support, or that the union "represents" a majority, or that a majority "are members" would not be independently sufficient to confirm 9(a) status.

Applying the new requirements to the contract language at issue in the case, the Board found the language insufficient to establish a 9(a) bargaining relationship. The language appeared under the heading, "Majority Representative," but stated only that the employers "recognize [the Union] as the Majority Representative of all employees in Operating Engineers classifications employed by them and the sole and exclusive

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[41] 219 F.3d 1147 (10th Cir. 2000).
[42] 219 F.3d 1160 (10th Cir. 2000).
[43] 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).
[44] 282 NLRB at 1387 fn. 53.

bargaining agent of such employees." Because the language did not state that recognition had been based on the union's showing or offer to show majority support, it did not meet the new requirements. Accordingly, under the framework of *Deklewa*, the parties' bargaining relationship still fell under Section 8(f) and the employer did not violate Section 8(a)(5) by withdrawing recognition of the union after the contract expired.

In *Wyndham Palmas del Mar Resort & Villas*,[45] the Board majority found that the respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the union based on an antiunion petition that employees signed during the notice-posting period prescribed by a settlement agreement resolving serious unfair labor practice charges.

On September 5, 1997, the respondent received a petition stating that the signatory employees did not wish to be represented by the union; the petition was signed by 183 of the 255 unit employees during the period between July 10 and August 3. The signatures were all obtained within the 60-day notice-posting period of the settlement agreement in Case 24–CA–7642, which resolved allegations of unlawful solicitation of employees to promote and circulate a decertification petition, promising improved wages and benefits in exchange for employees' support of the decertification petition, and informing employees that the respondent could not be found liable for sponsoring the decertification petition.

The ~~Board~~ majority held that, absent a specific agreement to the contrary, settled unfair labor practice conduct which leads to remedial action shall be subject to the same causation analysis as adjudicated conduct. Specifically, the majority analyzed the four *Master Slack Corp.*[46] factors and concluded, "the Respondent's conduct covered by the settlement agreement would reasonably have led to employee disaffection from the Union and would have undermined the Union's support among employees. Under these circumstances . . . the Respondent could not lawfully challenge the Union's majority status on the basis of the antiunion petition that was signed during the 60-day posting period."

Dissenting, Chairman Hurtgen would have dismissed the unlawful withdrawal of recognition allegation, finding that the *Master Slack* analysis is appropriate only in cases involving proven unfair labor practice conduct, not merely settled conduct. "One cannot show that unlawful conduct has caused a disaffection if no unlawful conduct is shown."

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[45] 334 NLRB No. 70 ~~(2001)~~ (Members Liebman and Walsh; Chairman Hurtgen dissenting).
[46] 271 NLRB 78 (1984).

3. Direct Dealing

By a 2–1 majority, the Board held in *Permanente Medical Group*,[47] that the Kaiser Foundation Hospitals did not violate the Act by including bargaining-unit members in a series of job-redesign meetings. The majority determined that the "design team meetings" constituted initial planning, rather than illegal "direct dealing" aimed at sidestepping the roles of the California Nurses Association or the Engineers and Scientists of California. The majority cited the 50-year relationship between the unions and the California health care system, and observed that the employer "made it clear that the design phase would ultimately yield only a proposal to be presented to the unions for bargaining."

Kaiser Foundation Hospitals provides hospitals, in-patient and out-patient facilities. The *Permanente Medical Group* is a corporation comprised of the physicians who provide medical services to members of the plan. Working with Andersen Consulting, Kaiser developed a project aimed at improving health care service to patients. It developed a concept called "member focused care" aimed at reorganizing care management, as well as increasing patient and family involvement. Kaiser contacted representatives of its largest union, informing them of the program. It set up focus groups whose participants, including union members, analyzed tasks for various jobs, suggesting which duties could be done by nonlicensed caregivers. Union representatives expressed concern that the real purpose of the project was to transfer work out of their units, and sought bargaining. Kaiser insisted that it had not developed a final proposal and urged unit employees to participate in the next phase, "design team meetings," which would develop final recommendations for management. The meetings ultimately resulted in recommendations for job redesign, which were passed through several levels of management review. Some of the recommendations were accepted, others were not. The final proposals were presented to the unions. One union, not a party to the litigation, reached an agreement on issues involving its members. The California Nurses Association and the Engineers and Scientists of California alleged that Kaiser had violated the Act by dealing directly with union-represented employees over mandatory subjects of bargaining.

The majority adopted the administrative law judge's decision and found no violation of the Act. It determined that the respondent had not engaged in direct dealing under Section 8(a)(5) under the three pronged test of *Southern California Gas Co.*[48] Those criteria are: (1) that the

[47] 332 NLRB No. 106 (Chairman Truesdale and Member Hurtgen; Member Fox dissenting).
[48] 316 NLRB 979 (1995).

respondent was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union. The majority stated: "Although the Respondent communicated with its employees, that discussion was not for the purpose of establishing or changing terms and conditions of employment or undercutting any Union efforts to negotiate. The record emphatically demonstrates that throughout the process of developing and refining its MFC model, the Respondent never excluded the unions." Further, the majority distinguished cases in which it previously found direct dealing, explaining that in none of those cases did the employer act to "assure employees that it was simply formulating a proposal to be bargained collectively with the union."

In dissent, Member Fox would have found a violation of "direct dealing" in the design phase of MFC. She stated:

> As the employer in *DuPont*[49] did with the ongoing fitness and safety committees, Respondents effectively, though perhaps more subtly, used the design teams as an alternative employee representative to pitch MFC to employees, monitor and influence those employees' feelings about MFC, and, ultimately, to work out the basic structure of an MFC program with those employees prior to any bargaining with the Unions.

4. Duty to Furnish Information

In *Lakeland Bus Lines*,[50] the Board majority held that an employer's conduct amounted to a claim of inability to pay more than that contained in its final offer, which under *NLRB v. Truitt Mfg. Co.*[51] and its progeny, triggered the duty to furnish the union with the requested financial information necessary to support such a claim. Chairman Hurtgen dissented, finding that no claim of inability to pay had been made.

The case involved an employer's conduct during negotiations for a successor contract. The employer had lost a significant amount of revenue due to a newly created, subsidized rail line service. The main focus of the contract negotiations concerned the employer's desire for an extended wage freeze and for a modification of the "spread time rules" that would decrease the amount of overtime that employees could earn. After 11 bargaining sessions, the employer submitted its final offer to the union, which included the extended wage freeze, the spread time

[49] *E. I. Dupont & Co.*, 311 NLRB 893 (1993).
[50] 335 NLRB No. 29 (Members Liebman, Truesdale, and Walsh; Chairman Hurtgen dissenting).
[51] 351 U.S. 149 (1956).

proposal, and a one-time payment of $500 per employee. On the same day that it submitted its final offer, the employer sent a letter to employees explaining its position. The letter referenced the employer's lost ridership, stated that the employer was "trying to bring the bottom line back into the black," and after listing certain cost cutting measures that it had taken, asked employees to accept the final offer "so we may retain your jobs and get back in the black in the short term and continue to share our good fortune as we have in the past." Thereafter, the union requested the employer to provide financial information, and the employer refused the request.

Reversing the administrative law judge's finding that the employer was not obligated to furnish the financial information to the union, the majority held that the statements made in the employer's letter "effectively communicated a claim of a present inability to pay anything more than that contained in its final offer, and that this claim triggered an obligation to furnish the union with the requested financial information" under *Truitt*. The employer's reference to the need to "get back into the black in the short term," when considered together with prior assertions that it had lost money because of the lost ridership, was reasonably construed as a statement that the employer was presently unprofitable and unable to pay more than the final offer. The majority found that the statements in the employer's letter were essentially equivalent to those at issue in *Shell Co.*,[52] where the Board found that the duty to disclose financial information was triggered by an employer's claims that things were "bad" and a "matter of survival." The majority also found that the instant case was distinguishable from *Nielsen Lithographing Co.*,[53] where the Board declined to extend the requirement to furnish financial information to circumstances involving an employer's claim of competitive disadvantage coupled with an acknowledgement that it was still making a profit. Unlike *Nielsen*, the employer's claims here were not qualified by statements that it continued to be profitable. The majority consequently found it unnecessary to pass on the contentions of the General Counsel and the union that *Nielsen* should be overruled.

In his dissent, Chairman Hurtgen rejected the majority's finding that *Nielsen* is distinguishable. He found the employer's claims of revenue losses to be similar to the claims made in *Nielsen* and he found significant the fact that the employer never claimed that it had insufficient assets to meet the union's demands for the term of the contract. Contrary to the majority, Chairman Hurtgen found that the

[52] 313 NLRB 133 (1993).

[53] 305 NLRB 697 (1991), affd. sub nom. *Graphic Communications Local 50B v. NLRB*, 977 F.2d 1169 (7th Cir. 1992).

employer's letter reassured employees that it was taking concrete steps to make up for the lost revenue, and thus found the claim distinguishable from that in *Shell Co.*, that conditions were "critical" and a "matter of survival."

In *Fleming Cos.*,[54] the Board reversed the judge and found that, under Board precedent, the respondent has no duty to comply with the union's request for copies of witness statements related to grievances, although two of the four members, Members Fox and Liebman, would overturn that precedent. Chairman Truesdale and Member Hurtgen reversed the judge based on the exception to the duty to provide information for witness statements, as set forth in *Anheuser-Busch, Inc.*[55]

Members Fox and Liebman found that *Anheuser-Busch* provides an overly broad exception to the general duty to provide requested information that relates to the duty to bargain collectively. They concluded that, to the extent a request for witness or informant statements presents confidentiality concerns, those concerns can and should be resolved not by a blanket rule exempting such statements but by applying the balancing-of-interest test set forth by the Supreme Court in *Detroit Edison Co. v. NLRB.*[56] Members Fox and Liebman found the per se exception inconsistent with relevant precedent because the Board does not make a categorical presumption in situations where employers have based refusals of union requests for other kinds of relevant bargaining information on concerns about retaliatory threats and coercion, citing e.g., *United Aircraft Corp.*[57] They noted that requiring evidence to show confidentiality concerns "is consistent with the diminished potential for coercive conduct by unions or employers in an established and mature bargaining relationship, even one that is temporarily engulfed in economic strife." Members Fox and Liebman concurred in the result, however, because of an absence of a majority to overrule *Anheuser-Busch*.

The Board unanimously found that the respondent is obligated to provide the union with rules on attire and alleged DOT violations for 1985–1988 in effect around the time of Richard Mack's suspension and discharge. In rejecting the respondent's argument that this information is not relevant to the grievances, which did not address attire or DOT violations, the Board found the information presumptively relevant because it pertains to the bargaining unit and, thus, no specific showing

[54] 332 NLRB No. 99 (Chairman Truesdale and Member Hurtgen; Members Fox and Liebman concurring).
[55] 237 NLRB 982 (1978).
[56] 440 U.S. 301 (1976).
[57] 181 NLRB 892, 903 (1970), enfd. 434 F.2d 1198 (2d Cir. 1970).

of relevance is required. The Board found that the respondent submitted no evidence to rebut the presumption and that the respondent may not rely on Mack's declarations in his grievance to rebut the presumption, because Mack may have lacked knowledge of all the reasons for the suspension and discharge and the respondent asserted no reasons for its actions.

The Board also unanimously found that the respondent violated Section 8(a)(5) and (1) by failing and refusing to provide a copy of Mack's personnel file, copies of work rules applicable at the time of his discharge, and a list of names, addresses, and telephone numbers of all bargaining unit members employed by the respondent's predecessor in 1988. The Board concluded that this information is "intrinsic to the core of the employer-employee relationship" and that its relevance to the employee's grievances is apparent.

5. Construction Industry Agreement

The main issue in *Goodless Electric Co.*,[58] on remand from the First Circuit Court of Appeals,[59] was whether the respondent violated Section 8(a)(5) of the Act by withdrawing recognition from the union upon expiration of an 8(f) contract and implementing unilateral changes in employees' terms of employment. As the Board explained in both its original and supplemental decisions, the answer to this question turned on whether the union had attained the status of a 9(a) bargaining representative during the term of the 8(f) contract.

The union and the respondent had an 8(f) bargaining relationship. In 1990 they signed an 8(f) contract which expired on December 31, 1993. In July 1992, mid-term during the 8(f) contract, the respondent signed a "letter of assent" agreeing that "if a majority of its employees authorize the Local Union to represent them . . . the Employer will recognize the Local Union as the NLRA Section 9(a) collective bargaining agent." Based on this language, the Board found in its original decision that when the union presented the respondent with authorization cards signed by all of its employees in June 1993, the respondent was obligated to recognize the union as the 9(a) bargaining representative. By refusing to do so, by withdrawing recognition from the union, and by implementing new terms of employment upon expiration of the 8(f) contract, the Board found that the respondent violated Section 8(a)(5).

The First Circuit reversed and held that the Board departed from its precedent which held that to obtain voluntary 9(a) recognition in the construction industry, a union's showing of majority status must be

[58] 332 NLRB No. 96 (Chairman Truesdale and Members Fox and Liebman).
[59] *NLRB v. Goodless Electric Co.*, 124 F.3d 322 (1997).

contemporaneous with its demand for 9(a) recognition and the employer's acceptance of the union as such. Because the union's showing of majority support as evidenced by the authorization cards did not occur until almost a year after the execution of the 1992 letter of assent, the court held that the showing was not contemporaneous with the request for 9(a) recognition and that the respondent did not violate the Act by refusing to grant it.

On remand, the Board acknowledged that its construction industry precedent at the time of the events in the instant case did not contemplate agreements like the 1992 letter of assent. The Board explained that what is distinctive about the 8(f) relationship in *Goodless* is that the 1992 letter of assent provided for prospective 9(a) recognition if the union could prove that status at some point before expiration of the 8(f) contract. Noting that prospective recognition agreements are enforceable outside the construction industry, and noting further the maxim in *Deklewa*[60] that unions should not have less favored status with respect to construction industry employers, the Board clarified its precedent by holding that "where parties by express language have agreed that 9(a) recognition will be granted if the union submits proof of majority status during the contract term, the happening of the specified event, without more, triggers the legal consequences agreed on by the parties."

Applying this clarification of Board precedent, the Board adhered to its original decision that the presentation of authorization cards to the respondent in June 1993 was, without more, sufficient to require the respondent, under the terms of the 1992 letter of assent, to recognize the union as the 9(a) bargaining representative.

E. Union Interference with Employee Rights

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

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the

[60] *John Deklewa & Sons*, 282 NLRB 1375 (1987).

labor laws. However, a union may not, through fine or expulsion, enforce a rule that "invades or frustrates an overriding policy of the labor law."[61] During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union action and the types of those actions protected by the proviso to that section.

1. Duty of Fair Representation

In *Plumbers Local 342 (Contra Costa Electric)*,[62] the Board unanimously reaffirmed its earlier holding that a union does not violate its duty of fair representation or Section 8(b)(1)(A) and (2) of the Act by negligently failing to refer an applicant in the proper order from its exclusive hiring hall.

The union operated an exclusive hiring hall. Charging Party Joe Jacoby registered properly for referrals; however, other applicants who had signed the referral register later were sent to jobs before Jacoby was. There was no contention or evidence that the failure to dispatch Jacoby in the correct order was anything but inadvertent.

In an earlier decision, the Board held that the Union's negligent failure to refer Jacoby in the proper order was not unlawful.[63] The Board relied on *Steelworkers v. Rawson*[64] and *Air Line Pilots Assn. v. O'Neill*,[65] which it read together as holding that the duty of fair representation, which is breached only by conduct that is "arbitrary, discriminatory, or in bad faith," is not violated by mere negligence, even in the operation of exclusive hiring halls. The D.C. Circuit disagreed with the Board's reading of those decisions, and remanded the case to the Board for reconsideration in light of what the court found to be the union's "heightened duty of fair dealing" in hiring hall operations.[66]

On remand, the Board accepted the court's opinion as the law of the case. The Board reached the same conclusion as before, but without relying on *Rawson* and *O'Neill*. Instead, it cited earlier decisions in which the Board held that inadvertent errors in hiring hall operations did not violate the duty of fair representation.[67] The Board found that those decisions "set forth the better view, as both a matter of law and policy."[68]

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

[62] 336 NLRB No. 44 (Chairman Hurtgen and Members Liebman, Truesdale, and Walsh).

[63] 329 NLRB 688 (1999).

[64] 495 U.S. 362 (1990).

[65] 499 U.S. 65 (1991).

[66] *Jacoby v. NLRB*, 233 F.3d 611, 617 (D.C. Cir. 2000).

[67] *Operating Engineers Local 18 (Ohio Pipe Line)*, 144 NLRB 1365 (1963); and *Plumbers & Steamfitters Local 40*, 242 NLRB 1157, 1163 (1979), enfd. mem. 642 F.2d 456 (9th Cir. 1981).

[68] The Board found that hiring halls serve a useful service for both employers and employees, and was concerned that if unions had to perform that service free of all errors, they might be discouraged from undertaking that role.

The Board also noted numerous decisions in which both the Board and the courts described conduct that violated the duty of fair representation in terms such as "arbitrary," "invidious," "hostile," "capricious," and "unreasonable," all of which imply that the union is deliberately trying to harm or disadvantage hiring hall users. The Board reasoned that an inadvertent failure to dispatch an applicant in the correct order does not answer those descriptions: "It may signal an error in judgment, but not favoritism or hostility."

The Board also reiterated its earlier rejection of the argument that the union's conduct violated Section 8(b)(1)(A) and (2) even if it did not breach the duty of fair representation. The Board acknowledged and reaffirmed its decisions holding that any departure from established hiring hall procedures that leads to denial of employment inherently encourages union membership and violates Section 8(b)(1)(A) and (2) unless it is based on a valid union-security clause or is necessary to the effective performance of the union's representative function.[69] However, the Board held that the rationale behind that rule is that any unjustified departure from hiring hall procedures encourages union membership by demonstrating the union's power over the livelihoods of hiring hall users. By contrast, inadvertent failures to follow the procedures do not signal to applicants that they must remain in the union's good graces in order to receive referrals, and thus are not unlawful.

2. Dues Collection for Job Targeting Programs

In *Electrical Workers IBEW Local 48 (Kingston Constructors)*,[70] the Board held that a union violates Section 8(b)(1)(A) of the Act by threatening employees with discharge under a union-security provision if they do not pay dues to support a job targeting program that are owed from their employment on a job covered by the Davis-Bacon Act.[71] However, the Board held, it is not unlawful for a union to enforce the payment of such dues under a union-security provision if the dues are owed for employment on non-Davis-Bacon projects.

The union and the local employers' association had a collective-bargaining agreement that contained a union-security provision. The union had inaugurated a "Market Recovery Program" (MRP), in which the union subsidized the wage rates paid by union contractors in order to enable them to bid successfully for contracts against lower wage

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[69] See, e.g., *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681 (1973), remanded on other grounds 496 F.2d 1308 (6th Cir. 1974), on remand 220 NLRB 147 (1975), enf. denied 555 F.2d 552 (6th Cir. 1977).

[70] 332 NLRB No. 161 (Chairman Truesdale and Members Fox and Hurtgen).

[71] 40 U.S.C. Sec. 276a et seq. The Davis-Bacon Act requires contractors on federally funded construction projects to pay prevailing area wage rates without deductions or rebates.

nonunion employers. The MRP was financed entirely out of union dues, a portion of which was earmarked for that purpose. The charging party, Patrick Mulcahy, twice became delinquent in paying his MRP dues. On the first occasion, the union threatened to have him discharged if he did not pay his back MRP dues. Mulcahy did not respond, and the union had him discharged. On the second occasion, as a result of the union's threat, Mulcahy paid the arrearage in MRP dues and was not discharged.

The Board found that the test for determining whether MRP dues are "periodic dues," the payment of which can lawfully be enforced under a union-security clause, was set forth in *Detroit Mailers Local 40.*[72] There, the Board had held that "such dues may be required . . . 'so long as they are periodic and uniformly required and are not devoted to a purpose which would make their mandatory extraction otherwise inimical to public policy.'"[73]

The Board found that the MRP dues were periodic and uniformly enforced. It also reaffirmed that job-targeting programs like the MRP are not inconsistent with public policy and are protected by Section 7.[74] The Board concluded that it was lawful for the union to enforce the payment of MRP dues under the union-security agreement for jobs that were not covered by the Davis-Bacon Act.

The Board reached the opposite result, however, concerning the collection of MRP dues for employment on Davis-Bacon jobs, noting that the Department of Labor and two Federal courts of appeals had found that the collection of dues for job targeting programs on Davis-Bacon projects violates the Davis-Bacon Act.[75] The Board observed that the Labor Department and the courts, and not the Board, are charged with enforcing the Davis-Bacon Act, and that as a matter of comity it would defer to their rulings. In light of those decisions, the Board held that requiring the payment of MRP dues on Davis-Bacon projects as a condition of employment is inimical to public policy under *Detroit Mailers*. Accordingly, the Board found that the union violated 8(b)(1)(A) by threatening to have Mulcahy and other employees

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[72] 192 NLRB 951 (1971).

[73] Id. at 952. The Board in *Kingston Constructors* found that *Detroit Mailers* had implicitly overruled *Teamsters Local 959 (RCA Service Co.)*, 167 NLRB 1042 (1967). In that case, the Board held that "periodic dues" includes only dues collected to support the union in its role as collective-bargaining agent. Id. at 1045.

[74] See *Manno Electric*, 321 NLRB 278, 298 (1996).

[75] U.S. Department of Labor, Wage Appeals Board, *In the Matter of Building and Construction Trades Unions Job Targeting Programs*, WAB Case No. 90–02 (June 13, 1991), 1991 WL 494718 (WAB); *Building & Construction Trades Department v. Reich*, 40 F.3d 1275 (D.C. Cir. 1994); *Electrical Workers Local 357 v. Brock*, 68 F.3d 1194 (9th Cir. 1995).

discharged for failing to pay MRP dues, but only the MRP dues that were owed for their employment on Davis-Bacon projects.[76]

3. Restriction on Resignation

In *Auto Workers International and its Local 1853* (*Saturn Corp.),*[77] which came before the Board on cross motions for summary judgment, the Board held that the union did not violate Section 8(b)(1)(A) of the Act by promulgating a policy that required employees who had "withdrawn dishonorably" from the union, i.e., resigned from the union while remaining in bargaining unit positions, to pay a fee equivalent to the dues for the period of nonmembership if they sought to rejoin the union, while allowing employees who had "honorably withdrawn," i.e., resigned from the union when they took positions outside the bargaining unit, to rejoin without having to pay such a fee.

Since 1985 the respondent (UAW International and its Local 1853) have represented a bargaining unit of operating and skilled technician employees employed by Saturn Corp. at its facility in Spring Hill, Tennessee. Since Tennessee is a "right-to-work" state, unit employees are not required to join the union or to pay any financial core fees to it. In October 1996, respondent Local 1853 published in *The Wheel*, its newsletter for Saturn employees, an article which announced, inter alia, that:

> There are two ways to leave the union: one being an honorable withdrawal, the other being a dishonorable withdrawal. When a team member becomes a non-rep at Saturn, they cease to perform work which belongs to the UAW. They are no longer entitled to representation by the UAW. They receive a card from the union which states that they have honorably withdrawn and have left in good standing with all dues paid up to the point of their leaving the bargaining unit.
>
> On the other hand, when a team member quits the union while still performing work that the UAW has negotiated, they withdraw dishonorably and are no longer in good standing. *If a team member who has honorably withdrawn subsequently returns to the bargaining unit, they begin paying dues only upon their re-entry, those who have withdrawn dishonorably must pay*

[76] The Board found no violation of Sec. 8(b)(2), however, because there was no showing that the union had attempted to have any employee discharged for failure to pay MRP dues arising from employment on a Davis-Bacon job. Although it did secure Mulcahy's discharge from one project, the MRP dues that he had not paid were for employment on a non-Davis-Bacon job.

[77] 333 NLRB No. 43 (Chairman Truesdale and Members Liebman and Walsh).

all back dues in order to return to a status of good standing.[78] (Empasis added.)

In its motion for summary judgment, the General Counsel contended that the policy violated Section 8(b)(1)(A) because it coercively restrained employee-members from exercising their right to resign from the union and because it was impermissibly discriminatory in that it applied only to employees who continued to work in the bargaining unit after resigning from the Union.

As to the former issue, the Board rejected the General Counsel's contention that the present case was effectively controlled by "those cases which have found that it is a violation of Section 8(b)(1)(A) for a union to require employees who have resigned from the union to pay a 'reinitiation fee' when a financial core obligation arises when a union-security clause springs into effect."[79] In finding this argument without merit, the Board found "that the absence of a compulsory union-security clause here [was] determinative in analyzing the legality of the union's policy, because employees face no employment sanctions for any decision related to union membership."[80] Thus, since employees who resigned from the union and continued to work in the bargaining unit were under no compulsion to continue any form of union membership, an employee's decision to rejoin the union was wholly voluntary. In these circumstances, where the financial obligation under the union's policy could only be incurred at the option of the employee, the Board reasoned that there was no basis for finding that the union's policy would deter members from resigning. The Board therefore concluded that "in the absence of a nonvoluntary sanction of any kind, the union's rule [was] neither coercive in character, nor a restraint on resignation."[81]

As to the latter issue, the Board found without merit the General Counsel's contention that the union's policy was discriminatory because it imposed a fee only on those who voluntarily rejoined the union from a bargaining unit position, and not on those who rejoined the union from a nonunit position. In rejecting this argument, the Board reasoned that the union policy at issue reflected "a legitimate distinction between bargaining unit employees and nonbargaining unit employees" because

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[78] Id., slip op. at 1–2.

[79] In support of this contention, the General Counsel relied principally on *California Saw & Knife Works*, 320 NLRB 224, 247–248 (1995), enfd. sub nom. *International Assn. of Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Stang v. NLRB*, 525 U.S. 813 (1998); *Office Employees Local 2 (Washington Gas)*, 292 NLRB 117 (1988), enfd. sub nom. *NLRB v. Office Employees Local 2*, 902 F.2d 1164 (4th Cir. 1990); and *Professional Engineers Local 151 (General Dynamics)*, 272 NLRB 1051 (1984).

[80] Id.

[81] Id., slip op. at 2–3.

those who resigned from the union while remaining in the bargaining unit continued to receive the benefits of union representation while those who resigned from the union and left the bargaining unit did not.[82]

Finally, in addition to finding that the union's policy was neither coercive nor discriminatory, the Board also found that the policy constituted "a legitimate exercise of the union's right under the proviso to Section 8(b)(1)(A) 'to prescribe its own rules with respect to the acquisition or retention of membership therein[.]'"[83] (Footnote omitted.)

4. Internal Union Discipline

In *SEIU Local 254 (Brandeis University)*,[84] the Board majority held that the respondent union acted lawfully when it removed employee Jorge Luis Santana from his shop steward position and his union representative position on the contractually created labor-management committee. Shortly before the removals, Santana had voiced his dissatisfaction with his union's handling of certain employee grievances, and he also sought the position of chief steward. Consistent with the principles set out in the Board's recent decision in *Office Employees Local 251 (Sandia National Laboratories)*,[85] the majority found that the union did not violate Section 8(b)(1)(A) in either situation.

Under *Sandia*, whether a union violates the Act must be determined by reference to the impact on the members' relationship with their employer, the impairing of access to the Board's processes, the use of unacceptable methods of union coercion such as violence, or the impairing of policies imbedded in the Act. In applying these principles to the instant case, the majority found that the removal of Santana from his shop steward and committee representative position did not impede access to the Board processes. Nor did the removals involve threats or acts of violence to force a dissident employee to take certain actions desired by the union. The removals also did not clash with a statutory policy imbedded in the Act. Thus, the majority found that Santana's removals did not fall within three of the areas *Sandia* identified as being within the scope of Section 8(b)(1)(A).

Regarding the fourth area identified in *Sandia*—the impact on the employees' relationship with their employer—the Board majority found it unnecessary to decide this issue, "because even assuming that the removals impacted Santana's employment relationship and were therefore within the scope of Section 8(b)(1)(A), . . . no violation of

[82] Id., slip op. at 3.
[83] Id., slip op. at 3.
[84] 332 NLRB No. 103 (Chairman Truesdale and Member Fox; Member Hurtgen dissenting in part).
[85] 331 NLRB 1417 (2000).

Section 8(b)(1)(A) [existed] under Board precedent, which has not been affected by *Sandia*."[86] In this connection, the majority focused on the general principle that a proper application of Section 8(b)(1)(A) requires the balancing of the employee's Section 7 right to engage in or refrain from concerted activity against the legitimacy of the union interest at stake.[87] According to the majority's analysis, to the extent that Santana's exercise of his Section 7 right to petition to become chief steward and to bring about a change in the union's grievance handling caused his removals from his union positions, "it [was] arguable that his Section 7 rights, and those of the employees who supported him, were restrained within the meaning of Section 8(b)(1)(A)."[88] However, the majority found that such removals were not unlawful because the union's legitimate interest in ensuring the undivided loyalty of union representatives, such as Santana, who deal with the employer about working conditions outweighed Santana's Section 7 rights, and thus, the removals did not constitute an unlawful restraint on those rights.

Dissenting in part, Member Hurtgen concluded that the union violated Section 8(b)(1)(A) by removing Santana from his elected position of union representative on the labor-management committee. He applied the three-part test for determining the legality of a union's action as set forth in *Scofield v. NLRB*,[89] and found that the union's action failed two aspects of that test. First, contrary to the panel majority, he viewed the removals as impairing a policy that Congress had imbedded in the labor laws because Santana's quest for the union chief steward position was protected by the Labor-Management Reporting and Disclosure Act.[90] Second, relying on a distinction between appointed and elected union positions made in *Finnegan v. Leu*[91] and *Sheet Metal Workers v. Lynn*,[92] he found that the union had no legitimate interest in removing Santana from his *elected* representative position.

F. Employer and Union Interference with Employee Rights

In *BellSouth Telecommunications*,[93] the Board found that an employer and a union lawfully agreed, through the collective-bargaining process, to a policy requiring employees to wear a company uniform that displayed both the employer and the union logos.

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[86] 332 NLRB No. 103, slip op. at 4.
[87] See *Shenango, Inc.*, 237 NLRB 1355 (1978).
[88] 332 NLRB No. 103, slip op. at 5.
[89] 394 U.S. 423 (1969).
[90] 29 U.S.C. §411 et seq.
[91] 456 U.S. 431 (1982).
[92] 488 U.S. 347 (1989).
[93] 335 NLRB No. 18 (Members Liebman, Truesdale, and Walsh).

The employer and the union had a longstanding bargaining relationship going back to the 1940s. During negotiations for a successor collective-bargaining agreement, the employer chose to make the creation of a mandatory uniform program one of its primary bargaining goals. In the course of bargaining, the employer and the union agreed to the establishment of a mandatory uniform program for employees, with the condition that the union logo was to be placed on the uniform, along with the company logo, for union-represented employees. The parties stipulated that the employer felt the display of the union logo had value to the company as conveying to the public that "the wearer is represented by a well-known union, receives a fair wage for a fair day's work, state-of-the-art training, and is a member of a bargaining unit whose parties have engaged in an agreement that lessens or eliminates for the term of the agreement the likelihood of telecommunications service disruptions due to labor disputes."

The General Counsel contended that the mandatory uniform logo requirement interfered with the Section 7 right of employees, including the charging parties, to refrain from engaging in union activity, in violation of Sections 8(a)(1), (2), and (3) and Sections 8(b)(1)(A) and (2) of the Act.

The Board found, however, that the collectively bargained uniform policy was a "special circumstance" which outweighed any intrusion on Section 7 rights. The Board noted that inclusion of the union logo was integral to the employer's uniform policy because it was prerequisite for establishing a policy through agreement with the union and furthered the employer's interest in developing a partnership with the union and in symbolically displaying that relationship to the public. The Board noted in this regard that federal labor policy encourages joint labor-management initiatives and that the joint uniform policy was consistent with, and was supported by, that federal policy.

Further, the Board noted that, in striking a balance between the Section 7 right to refrain from union activities and the special circumstances justifying the uniform policy, the presence of a bargaining representative inevitably touches on the Section 7 rights of some employees who would prefer otherwise. Thus, the union's name, initials, logos, and symbols were subject to display in a variety of everyday contexts, such as on medical and prescription drug identification cards, grievance forms, and various company announcements, thereby revealing—in these contexts—the intertwining of the union logo with the union's representation functions and responsibilities. Weighing all the relevant factors, the Board unanimously determined that the collectively bargained uniform policy did not violate the Act.

G. Union Coercion of Employer

Section 8(b)(1)(B) of the Act makes it an unfair labor practice for a union to coerce or restrain an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

In *Electrical Workers IBEW Local 494 (Gerald Nell, Inc.),*[94] a panel majority of the Board held that the union did not violate Section 8(b)(1)(B) of the Act when it fined a member for violating the union's constitution, which prohibited working for a nonunion company.

The union member in question was employed with the nonunion company as a division manager, a position that involved the adjustment of grievances. Section 8(b)(1)(B) makes it an unfair labor practice for a union "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." In *NLRB v. Electrical Workers (Royal Electric),*[95] the Supreme Court reaffirmed the principle that to violate Section 8(b)(1)(B) a union must, at a minimum, either have a collective-bargaining relationship with an employer, or at least be seeking to have such a relationship.

In the present case, the Board majority held that the evidence was insufficient to establish that the union was actively seeking a bargaining relationship with the union member's employer, within the meaning of *Royal Electric*. The majority noted that the union engaged in no overt organizational or recognitional activity of any kind—no solicitation of authorization cards, no picketing or handbilling, and made no demand for recognition. The Board found that the union's inquiry to the union member about the possible "opportunity" of organizing fell short of the kind of concrete evidence necessary to show that the union was seeking to establish a bargaining relationship and that no inference was warranted that the discipline imposed would affect, or was intended to affect, the manner in which the member performed collective-bargaining or grievance-adjustment duties.

Accordingly, the majority dismissed the complaint.

In dissent, Member Hurtgen found that the facts established that the union was seeking to organize the employer's employees and, thereby, seeking to establish a bargaining relationship. He found that the union-imposed fine was for the purpose of coercing the union member to help organize the employer and to adversely affect him in the performance of his Section 8(b)(1)(B) duties.

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[94] 332 NLRB No. 112 (Members Fox and Liebman; Member Hurtgen dissenting in part).
[95] 481 U.S. 573 (1987).

In *Teamsters Local 282 (E.G. Clemente Contracting Corp.),*[96] the Board held that the respondent union did not violate Section 8(b)(1)(B) or (3) of the Act by striking the employer in support of the respondent's demand that the employer accept a contract containing the same provisions as the respondent's contract with a multiemployer bargaining association.

The union, every 3 years, negotiated a collective-bargaining agreement with a multiemployer bargaining association. The employer was never a member of that multiemployer bargaining association. The employer followed the practice, however, of signing the agreement between the union and the multiemployer association after those negotiations had been completed. After reaching the most recent collective-bargaining agreement between the union and the multiemployer bargaining association, the union requested that the employer sign the agreement as an independent employer, not as a member of the multiemployer bargaining association. The employer declined to do so, and the union consequently commenced a strike against the employer. The strike ceased when the employer signed the contract.

The Board held that the union's conduct did not violate Section 8(b)(3) of the Act. The Board explained that it is well-established that "'a union may adopt a uniform wage policy and seek vigorously to implement' it among several employers in an area, and otherwise legitimately can strive 'to obtain uniformity of labor standards[,]'" quoting the Supreme Court's decision in *Mine Workers v. Pennington.*[97] The Board accordingly concluded that the union's resort to economic action for the purpose of obtaining uniformity in industry-wide employment terms did not amount to a refusal to bargain in good faith.

The Board further held that the union did not coerce the employer to select the multiemployer bargaining association as its collective-bargaining representative in violation of Section 8(b)(1)(B). The Board observed that there was no evidence that the union insisted that the employer make the multiemployer bargaining association its representative for purposes of *future* collective bargaining, but rather that the record showed only that the union insisted that the employer accept a contract containing the same provisions as the contract the union previously negotiated with the multiemployer bargaining association. The Board applied the rule established in *Teamsters Local 705*

[96] 335 NLRB No. 98 (Chairman Hurtgen and Members Liebman, Truesdale, and Walsh).
[97] 381 U.S. 657, 665–666 fn. 2 (1965).

(Kankakee-Iroquois),[98] that it is not a violation of Section 8(b)(1)(B) for a union to seek from an independent employer a contract containing the same provisions as those in an agreement the union has already negotiated with a multiemployer association. The Board accordingly dismissed the complaint against the union in its entirety.

H. Illegal Secondary Activity

In *Food & Commercial Workers Local 1996 (Visiting Nurse Health System),*[99] a case of first impression, the Board majority held that unions may lawfully engage in secondary picketing when an object of the activity is to induce a primary employer to recognize and bargain with the union as the certified representative of its employees. The majority determined that its holding was consistent with the text and legislative history of the Act.

The Board certified the union as the representative of a unit of staff nurses employed by the Visiting Nurse Health System (VNHS), in 1994. When VNHS refused to recognize or bargain with the union, the Board, in December 1995, issued a bargaining order, which was enforced by the Eleventh Circuit in 1997.[100] In February 1997, while enforcement proceedings were pending, the union sent a letter to the United Way in Atlanta threatening it with picketing unless it stopped providing financial support to VNHS until VNHS complied with its obligation to recognize and bargain with the union. From March 4–11 the union picketed and handed out leaflets for several hours each day at the public entrance of United Way's Atlanta office. The picket signs stated that United Way's money supports a "convicted labor law violator." The handbills additionally asked the public to stop making contributions to United Way until it discontinued its support of VNHS.

In determining whether the Act prohibited the union from picketing the United Way to pressure VNHS to recognize and bargain with the union, Members Liebman and Walsh looked at Section 8(b)(4)(B) of the Act, which addresses two distinct forms of secondary activity—a "cease doing business" boycott and a "recognition" boycott. In the case of recognition boycotts, there is an exemption in the text of the Act allowing such boycotts by a union that has been certified. Thus, the majority said, "we find the plain meaning of the text of Section 8(b)(4)(B) is that it was not intended to condemn secondary activity, by a certified union, for the purpose of inducing the primary employer to

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[98] 274 NLRB 1176 (1985), petition for review denied sub nom. *Kankakee-Iroquois County Employers' Assn. v. NLRB,* 825 F.2d 1091 (7th Cir. 1987).

[99] 336 NLRB No. 35 (Members Liebman and Walsh; Chairman Hurtgen dissenting).

[100] *Visiting Nurse Health System v. NLRB,* 108 F. 3d 1358 (11th Cir. 1997).

recognize or bargain with that union." The majority rejected the contention that the first part of the section that governs "cease doing business" boycotts applies regardless of whether a union is certified or an object of its activity is recognitional. According to the majority, this construction of Section 8(b)(4)(B) would render the second clause of Section 8(b)(4)(B), dealing with recognition boycotts, entirely superfluous, as well as making the exemption from the second clause, for certified unions, meaningless, because the means by which secondary boycotts exert pressure on primary employers is by disrupting their business dealings with the targeted secondary employer.

The majority also rejected the assertion that employers who exercise their right to seek judicial review of a certification will be unfairly subject to economic harm from a secondary boycott. The majority said that "employees also have rights: most importantly, the right to bargain collectively through representatives of their own choosing. In cases where the certification of representative is proper, an employer's refusal to bargain, even when its purpose is to obtain judicial review, denies employees the opportunity to exercise this right." To the extent that secondary recognitional picketing affords unions an additional means of applying pressure to enforce their right to bargain collectively, the majority stated that such picketing is a weapon Congress has deliberately elected to allow unions to use.

Dissenting, Chairman Hurtgen agreed that Section 8(b)(4)(B) contains a proviso authorizing secondary picketing for the object of recognition if the union is certified by the Board. However, Section 8(b)(4)(B) also prohibits secondary picketing if an object of the picketing is to force a neutral to stop doing business with the primary employer. In this case, the union had two objectives—to force the United Way to stop doing business with VNHS, and to force VNHS to recognize the union. According to the Chairman, the second object was saved by the proviso, but the first object was not saved, because there is no proviso with respect to it.

Chairman Hurtgen also disagreed with the analogy drawn by the majority between an employer's refusal to bargain and a union's engaging in secondary activities when the employer refuses to bargain. Noting that a refusal to bargain is the only means by which an employer may vindicate its right to judicial review, he asserted that "unions, by contrast, have other means by which to protest a refusal to bargain. As the majority notes, these include striking or engaging in primary picketing. Unlike the secondary picketing that my colleagues have found lawful in this case, these means do not expand the dispute to include innocent neutrals." The Chairman further asserted that by allowing

unions to engage in secondary boycotts and picketing while a "test-of-certification" proceeding is pending, as in this case, employers will be pressured into foregoing their right to judicial review of a certification of representative, and "employers who persist in seeking judicial review will be subject to the economic harm inflicted by a secondary boycott and will, so far as the majority is concerned, have no recourse for redress even if the certification of representative is ultimately found to be defective by a reviewing court."

I. Failure to Provide 8(g) Notices

In *New York State Nurses' Assn.*,[101] the Board majority held that nurses who refused to volunteer for overtime or to work voluntary overtime at the union's request were engaged in a concerted refusal to work within the meaning of Section 8(g) of the Act.

The parties' collective-bargaining agreement provided that overtime would be voluntary except in a disaster/emergency, which included unplanned staffing shortages. An employee could postpone overtime assignments three times a year. For several years, the hospital had not had to impose involuntary overtime in its surgical departments because it was able to cover its overtime needs with volunteers. Some of the nurses complained, however, that by continuing to volunteer, they were enabling the hospital to avoid hiring enough staff, thus contributing to the problem of excessive overtime work.

In response to those complaints, the union recommended that employees not sign up for overtime or work through their lunch periods. A number of nurses either stopped signing up for overtime or asked that their names be removed from overtime lists. As a result, the hospital had to assign overtime on several occasions. When it did, some of the nurses exercised their contractual right to turn down overtime assignments. The employees' actions made it more difficult for management to staff surgical procedures, and some procedures were delayed briefly.[102]

The Board majority held that the nurses' actions constituted a strike or concerted refusal to work within the meaning of Section 8(g) of the Act, which requires a union to provide 10 days' written notice before engaging in such actions at a health care institution.[103] It relied both on the broad language of Section 8(g) and that of Section 501(2), which

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[101] 334 NLRB No. 103 (Chairman Hurtgen and Member Truesdale; Member Liebman dissenting).

[102] The contract provided for overtime to be assigned in reverse order of seniority. However, because so many nurses had been volunteering, management had developed no seniority roster; consequently, it was difficult and time consuming to assign overtime according to the contract.

[103] The majority also cited earlier decisions holding that the concerted refusal to perform voluntary overtime work constitutes a strike. See, e.g., *Meat Cutters Local P-575 (Iowa Beef Packers)*, 188 NLRB 5, 6 (1971).

defines "strike" to include "any strike or other concerted stoppage of work by employees . . . and any concerted slowdown or other concerted interruption of operations by employees." The majority also reasoned that its interpretation was consistent with Congress' purpose in requiring unions to provide advance notice of such slowdowns in health care institutions, which was to allow for appropriate arrangements to be made for continued patient care. It found that the nurses' actions caused, and were meant to cause, an interruption in the hospital's procedures, in order to put pressure on the hospital to change its staffing practices.[104] Accordingly, the majority concluded that the union violated Section 8(g) by failing to provide the requisite 10-day notices.

The Board majority emphasized that its decision did not mean that the nurses had lost their contractual right to refuse to work voluntary overtime. It simply meant that such a refusal must be preceded by a 10-day notice if the union was responsible for the action.

In dissent, Member Liebman would have found that the nurses' actions did not constitute a strike. In her view, it would impermissibly stretch the terms of Sections 8(g) and 501(2) to encompass a concerted refusal to perform voluntary work, especially when the voluntary nature of the work is established in a collective-bargaining agreement. She noted that the majority has consistently recognized a significant difference between voluntary and mandatory work, and that the refusal to perform other kinds of voluntary work has been held not to be a strike.[105] Member Liebman would not find a contractual refusal to perform voluntary work to constitute an "interruption of operations," but rather an insistence on working under the established terms, which set the voluntary character of the work.

J. Remedial Order Provisions

1. Liability of Successor Employer

In *American Signature, Inc.*,[106] the Board held that the respondent, Quebecor Printing Atlanta, Inc. (Quebecor), was a successor employer to American Signature, Inc. (Amersig), under *Golden State Bottling Co. v. NLRB*,[107] and that as a *Golden State* successor, Quebecor was obligated to remedy Amersig's outstanding unfair labor practices.

This labor dispute commenced with an unfair labor practice strike by the union against Amersig. When the union made an unconditional offer

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[104] To be considered a strike, a work stoppage or interruption must be intended to bring pressure on the employer to "change its ways." See, e.g., *Empire Steel Mfg. Co.*, 234 NLRB 530, 532 (1978).

[105] *Paperworkers Local 5 (International Paper)*, 294 NLRB 1168 (1989).

[106] 334 NLRB No. 109 (Members Liebman, Truesdale, and Walsh).

[107] 414 U.S. 168 (1973).

to return to work on behalf of the strikers, Amersig responded that it considered the strikers to be economic strikers who had been permanently replaced. Thereafter, an administrative law judge found that the strikers were in fact engaged in an unfair labor practice strike, and that they had been entitled to reinstatement upon their unconditional offer to return to work. Amersig subsequently offered reinstatement to the former strikers, but also advised them that 1 week hence the sale of Amersig to Quebecor was to take effect, and that the former strikers would no longer have a job with Amersig upon completion of the sale. Amersig conducted a 1-week orientation for the former strikers at a hotel located 10 miles away from Amersig's Atlanta printing plant; and at the conclusion of the orientation advised the attendees *not* to report to the Atlanta printing plant because it was being sold to Quebecor. The union filed unfair labor practice charges alleging Amersig's failure to properly reinstate the former unfair labor practice strikers.

The Board held that Amersig violated Section 8(a)(3) and (1) of the Act by failing immediately to reinstate the unfair labor practice strikers following their unconditional offer to return to work. The Board further held that Amersig's reinstatement offer was not valid, but rather that the offer of reinstatement was a sham designed to keep the former strikers out of Amersig's Atlanta printing plant, and to hold them at bay in their request for reinstatement. In so holding, the Board emphasized that Amersig had failed to establish any justification for conducting the orientation at a location away from its Atlanta facility; extended the orientation schedule to avoid returning the strikers to work; and failed to actually return the employees to their former jobs at the Atlanta plant.

The Board further held that Quebecor was a *Golden State* successor to Amersig because it had purchased Amersig's operations with knowledge of the unfair labor practice charges alleging Amersig's failure to reinstate the former strikers. The Board rejected Quebecor's contention that the notice requirement of *Golden State* was not satisfied because it believed, based on a mere oral representation by Amersig, that Amersig had remedied its unfair labor practices by making its belated offer of reinstatement. The Board explained that Quebecor, in relying on its predecessor's representation, assumed the risk that the charge would later be found meritorious, as it indeed was in this proceeding.

Finally, the Board held that Quebecor, as a *Golden State* successor, was obligated to remedy Amersig's outstanding unfair labor practices and to offer reinstatement to the former strikers. In so holding, the Board carefully adhered to the Supreme Court's instruction in *Golden State* to balance the conflicting legitimate interests of the bona fide successor, the public, and affected victimized employees in order to prevent mere

changes in the title of the business from frustrating the fundamental national labor policy of remedying unfair labor practices.

2. Production of Records in Backpay Cases

In *Ferguson Electric Co.,*[108] the Board amended its standard remedial provision in backpay cases requiring respondents to provide records necessary to analyze the amount of backpay due. Whereas in the past the Board has required respondents to "make records available," ordinarily at the respondents' places of business, the Board now orders respondents to:

> Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable time and place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

This change is intended to ensure prompt, accurate, and full compliance with the Board's backpay orders, as well as to place on respondents who have been adjudicated as wrongdoers the costs of violating the Act.

In conferring on the Regional Directors the authority to designate the place for production of records, the Board declined to establish a rule invariably requiring records to be delivered to the Board's offices. Rather, the Board required that the place designated for the production of records be a reasonable place. In making that designation, the Board instructed the Regional Directors to be guided by the need for prompt and successful compliance with backpay orders, rather than mere administrative expediency. In the event of a disagreement regarding a reasonable place for production, respondents bear the burden of showing that the place designated by the Regional Director is unduly burdensome, and thus not reasonable. Further, Regional Directors have the authority, upon a showing of good cause by respondents, to extend the time limit for the production of records. This remedial policy applies to all respondents, employers, and unions alike.

[108] 335 NLRB No. 15 (Chairman Hurtgen and Members Liebman, Truesdale, and Walsh).

3. Reimbursement of Negotiation and Litigation Expenses

In *Teamsters Local 122 (August A. Busch & Co.),*[109] the Board adopted the judge's findings that the respondent union violated Section 8(b)(3) of the Act by, inter alia, failing and refusing to bargain in good faith with Busch, the charging party. The Board agreed with the judge that, as part of the remedy for the 8(b)(3) violations, the respondent was obligated to reimburse the General Counsel and Busch their litigation costs for that portion of the hearing in which the surface bargaining allegations were litigated. Reversing the judge, the Board further found that the respondent was also obligated to reimburse Busch its negotiation expenses.

Busch operates a beer storage and distribution facility. The respondent represents two units of Busch's employees, a driver unit and a plant clerical unit. Both contracts expired November 13, 1994. The parties bargained for new contracts in both units from October 13, 1994, until September 11, 1996, without reaching an agreement in either unit. Shortly after Busch and the union began negotiations for new contracts, the respondent commenced a consumer boycott campaign against Busch.[110]

In adopting the judge's finding that both the General Counsel and Busch should be awarded their litigation expenses for that portion of the hearing in which the 8(b)(3) allegations were litigated, the Board "rel[ied] on both Section 10(c) of the Act which grants the Board broad remedial authority to 'effectuate the policies of [the] Act,' and [its] inherent authority to control [its] own proceedings through an application of the bad-faith exception to the American Rule against awarding litigation expenses."[111] The Board then explained that

> In *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980), the [Supreme] Court acknowledged that the bad faith required by the [bad-faith] exception [to the American Rule] "may be found, not only in the actions that led to the lawsuit, but also in the conduct of the litigation" [447 U.S. at 766 (quoting *Hale v. Cole*, 412 U.S. 1, 15 (1973))].[112]

The Board found that both aspects of bad faith were present in Busch.

As to the respondent's bad faith in negotiations, the Board agreed with the judge that the respondent pursued a two-prong strategy in its

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[109] 334 NLRB No. 137 (Chairman Hurtgen and Members Truesdale and Walsh).

[110] The Board agreed with the judge, with one exception, that the respondent violated Sec. 8(b)(1)(A) and Sec. 8(b)(4)(i)(ii)(B) during the consumer boycott campaign.

[111] Id., slip op. at 4.

[112] Id., quoting *Frontier Hotel & Casino*, 318 NLRB 857, 864 (1995), enf. denied in part sub nom. *Unbelievable, Inc. v. NLRB*, 118 F.3d 795 (D.C. Cir. 1997).

negotiations with Busch with the object of forcing Busch to sell the distributorship to an employer who would more readily reach an agreement favorable to the respondent. Thus, the respondent delayed negotiations with Busch so that its consumer boycott would have time to work. To delay negotiations, the respondent forced Busch to bargain separately for a contract in each unit, met only 32 times in the driver unit and only 17 times in the plant unit over a 2-year period, engaged in "detailed" bargaining and storytelling, and made burdensome information requests.

As to the respondent's bad faith during litigation, as explained by the judge, the Board will award litigation costs "where the defenses raised are 'frivolous' rather than 'debatable.'"[113] The Board agreed with the judge that the respondent's defenses were frivolous because the respondent chose not to put on any defenses to the 8(b)(3) allegations. Rather, the respondent used this portion of the hearing to further delay bargaining by, inter alia, engaging in a 10-day cross-examination of Busch's general manager, a cross-examination which the judge described as "abusive" and which only ended when the judge intervened.

Although the judge found, in effect, that Busch should be awarded its negotiation expenses, he declined to make that award for fear that it would place the respondent at a disadvantage at the bargaining table. Reversing the judge, the Board found that the judge erred by focusing on the result of the award, the respondent's possible financial disadvantage, rather than on the justification for the award, "i.e., that the award of negotiation expenses 'reflects the *direct causal relationship* between the respondent's actions in bargaining and the charging party's losses.'"[114] Finally, while noting that neither the General Counsel nor the charging party had excepted to the judge's failure to award negotiation expenses, the Board found that it was not foreclosed from making that award because "the absence of exceptions does not foreclose the Board from fashioning a remedy designed so far as possible to restore the status quo ante."[115]

[113] Id., slip op. at 5. Chairman Hurtgen agreed with the award of litigation costs, "but only on the basis that the respondent's defenses in the litigation were 'frivolous' rather than 'debatable.'" Id., slip op. at 5 fn. 14.

[114] Id., slip op. at 6, quoting *Frontier Hotel & Casino*, 318 NLRB at 859 (emphasis added).

[115] Id., slip op. at 6.

V

Supreme Court Litigation

During fiscal year 2001, the Supreme Court decided, on the merits, one case involving the Board, and granted a private party's petition for a writ of certiorari in a second case.

1. The Board's Revised Interpretation of Section 2(11) of the Act

In *NLRB v. Kentucky River Community Care, Inc.*,[1] the Supreme Court rejected the Board's revised interpretation of the phrase "independent judgment" contained in Section 2(11)'s definition of "supervisor," namely, that "employees do not use 'independent judgment' when they exercise 'ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards.'"[2]

The Court concluded that "[t]wo aspects of the Board's interpretation are reasonable, and hence controlling on this Court."[3] "First," the Court explained, "it is certainly true that the statutory term 'independent judgment' is ambiguous with respect to the *degree* of discretion required for supervisory status."[4] Thus, the Court concluded, "[i]t falls clearly within the Board's discretion to determine, within reason, what scope of discretion qualifies" as "independent judgment."[5] Second, the Court acknowledged that, "as reflected in the Board's phrase 'in accordance with employer-specified standards,' it is also undoubtedly true that the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer."[6]

But the Court rejected the Board's further contention that "the judgment even of employees who are permitted by their employer to exercise a sufficient *degree* of discretion is not 'independent judgment' if it is a particular *kind* of judgment, namely, 'ordinary professional or

[1] 532 U.S. 706 (2001), affg. 193 F.3d 444 (6th Cir. 1999).

[2] 532 U.S. 706, 713. The Court was divided five to four on this issue. Justice Scalia wrote the majority opinion, and was joined by Chief Justice Rehnquist and Justices O'Connor, Kennedy, and Thomas. Justice Stevens, joined by Justices Souter, Ginsburg, and Breyer, dissented. However, the Court unanimously upheld the Board's rule that the party claiming that an employee is a Sec. 2(11) "supervisor" bears the burden of proving the claim. 532 U.S. at 710–712. See also 65 NLRB Annual Report 95–96 (2000) (discussing the grant of certiorari in *Kentucky River*).

[3] 532 U.S. at 713.

[4] Ibid.

[5] Ibid.

[6] Id. at 713–714.

technical judgment in directing less-skilled employees to deliver services.'"[7] Rather, the Court concluded:

> The first five words of this interpretation insert a startling categorical exclusion into statutory text that does not suggest its existence. The text, by focusing on the "clerical" or "routine" (as opposed to "independent") nature of the judgment, introduces the question of degree of judgment that we have agreed falls within the reasonable discretion of the Board to resolve. But the Board's categorical exclusion turns on factors that have nothing to do with the degree of discretion an employee exercises. . . . Let the judgment be significant and only loosely constrained by the employer; if it is "professional or technical" it will nonetheless not be independent.[8]

The Court acknowledged the Board's valid policy concern of preserving Congress' specific inclusion of "professional employees" within the coverage of the Act, given that "many professional employees (such as lawyers, doctors, and nurses) customarily give judgment-based direction to the less-skilled employees with whom they work."[9] However, the Court found that "[t]he problem with the argument is not the soundness of its labor policy (the Board is entitled to judge that without our constant second-guessing . . .). It is that the policy cannot be given effect through this statutory text."[10]

In a dissenting opinion, Justice Stevens concluded that "the Board's test is both fully rational and entirely consistent with the Act."[11] Justice Stevens argued that the statutory terms "independent judgment" and "responsibly to direct" are ambiguous, and that, because Congress expressly afforded the coverage of the Act to professional employees, "there is good reason to resolve the ambiguities consistently with the Board's interpretation."[12]

2. The Board's Authority to Award Backpay to Undocumented Workers

The Supreme Court granted the employer's petition for a writ of certiorari in *Hoffman Plastic Compounds, v. NLRB,*[13] a case presenting

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[7] 532 U.S. at 714.
[8] Ibid.
[9] 532 U.S. at 720.
[10] Ibid. The Court had earlier rejected a previous Board interpretation of Sec. 2(11), which rested on the phrase "in the interest of the employer," in *NLRB v. Health Care & Retirement Corp*., 511 U.S. 571 (1994). See 59 NLRB Annual Report 51–53 (1995).
[11] 532 U.S. at 725.
[12] Id. at 725–726.
[13] No. 00–1595, cert. granted Sept. 25, 2001.

the question of whether the Board may, consistent with federal immigration law, award back pay to undocumented workers. In the *Hoffman* case, the Board awarded back pay to an employee who had been discriminatorily laid off in violation of Section 8(a)(3) of the Act, but only up to the date on which the employer discovered (through the employee's testimony at a compliance hearing) that he had used fraudulent identification to secure work with the company and was an undocumented alien not authorized to be employed in the United States. A sharply divided D.C. Circuit, sitting en banc, enforced the Board's limited back pay award. See *Hoffman Plastic Compounds, v. NLRB.*[14] The Supreme Court granted certiorari to determine whether the Board's back pay award was consistent with *Sure-Tan, Inc. v. NLRB,*[15] and with the Immigration Reform and Control Act of 1986.[16] The Court heard oral argument on January 15, 2002.

[14] 237 F.3d 639 (D.C. Cir. 2001).
[15] 467 U.S. 883 (1984).
[16] Pub. L. No. 99–603.

VI
Enforcement Litigation

A. Unmeritorious and Retaliatory Lawsuits

In *Bill Johnson's Restaurants v. NLRB*,[1] the Supreme Court held that it is an unfair labor practice for an employer "to prosecute an unmeritorious lawsuit for a retaliatory purpose." In two cases decided during the past year, courts of appeals upheld Board findings that employers' unsuccessful lawsuits in response to protected union activities were "unmeritorious" and "retaliatory" under *Bill Johnson's*, and therefore violated Section 8(a)(1) of the Act.[2]

In *Petrochem Insulation, Inc. v. NLRB*,[3] the amended complaint in the district court lawsuit that the Board and the court found unlawful had alleged that environmental objections filed by certain unions were aimed at delaying construction projects in an effort to get developers and general contractors to boycott nonunion contractors. The amended complaint in the lawsuit had further asserted that such actions violated the Racketeering Influence and Corrupt Organization Act ("RICO")[4] and the Sherman Antitrust Act,[5] and sought treble damages from the unions. The district court had dismissed both the original complaint and two amended complaints as failing to state a claim on which relief could be granted, the court of appeals had affirmed, and the Supreme Court had denied review. Applying *Bill Johnson's*, the Board found that the employer's prosecution of that lawsuit violated Section 8(a)(1), and the court of appeals agreed.

In *BE&K Construction Co. v. NLRB*,[6] the employers' district court complaint and amended complaint had sought damages against the unions under Section 303 of the Labor Management Relations Act of 1947[7] and the Sherman Act. The union actions allegedly giving rise to liability included bringing contractual grievances, supporting a toxic waste ordinance, and filing a state-court lawsuit alleging violations of the state health and safety code, all in relation to a construction project for which the employer, a nonunion firm, had been retained. As in *Petrochem*, the employer had sought treble damages, and, also as in

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[1] 461 U.S. 731, 749 (1983).
[2] 29 U.S.C. 158(a)(1).
[3] 240 F.3d 26 (D.C. Cir.), cert. denied, 122 S. Ct. 458 (2001).
[4] 18 U.S.C. § 1962, et. seq.
[5] 15 U.S.C. § 1 et seq.
[6] 246 F.3d 619 (6th Cir. 2001), cert. granted, 122 S. Ct. 803 (2002).
[7] 29 U.S.C. 187.

Petrochem, all complaint allegations were dismissed prior to trial, either voluntarily by the employer, or on the district court's grant of summary judgment, which was upheld by the court of appeals. The Board and the court of appeals found that the employer's prosecution of the lawsuit violated Section 8(a)(1) of the Act.

A central issue in each of the unfair labor practice cases was the standard that the Board should apply to determine whether an employer's lawsuit is actionable under the Act. The Supreme Court in *Bill Johnson's*, taking into account that the right of access to the courts is an aspect of the First Amendment right to petition the government, held that the Board may not *enjoin* a respondent for prosecuting a lawsuit unless the suit "lacks a reasonable basis in fact and law."[8] The Court added, however, that, where the suit proceeds, "[i]f judgment goes against the employer . . . or if his suit is withdrawn or is otherwise shown to be without merit, the employer has had its day in court, the interest of the state in providing a forum for its citizens has been vindicated, and the Board may then proceed to adjudicate the . . . unfair labor practice case."[9] Based largely on that language, the Board has consistently held that a suit in which judgment goes against the employer is meritless, and will therefore be found to violate the NLRA upon a further finding that the suit was brought for a retaliatory purpose.[10]

The employers in *Petrochem* and *BE&K*, however, argued for a different standard. Relying on the Supreme Court's decision in *Professional Real Estate Investors v. Columbia Pictures Industries*,[11] an antitrust case, they contended that even a retaliatory lawsuit can be found to violate the NLRA only if it is "objectively baseless." The courts of appeals in both *Petrochem* and *BE&K* rejected that contention, emphasizing that *Professional Real Estate* involved only a claim of immunity from antitrust liability, and that, although the Court in that case had noted with approval the rigorous standard for enjoining litigation under *Bill Johnson's*, its decision did not discuss, much less cast doubt upon, the test announced in *Bill Johnson's* for determining whether a lawsuit violates the Act in circumstances where a final court ruling has already been rendered. In concluding its discussion of this issue, the *Petrochem* court explained, "[p]erhaps the Supreme Court will one day create a uniform standard for sham litigation covering both NLRA and non-NLRA cases (or explain why the First Amendment protects erring

[8] *Bill Johnson's*, 461 U.S. at 748.
[9] Id. at 747.
[10] See, for example, *Diamond Walnut Growers*, 312 NLRB 61, 69 fn. 10 (1993), enfd. 53 F.3d 1085 (9th Cir. 1995).
[11] 508 U.S. 49 (1993).

litigants less in the NLRA context than others), but until that day the language in *Bill Johnson's* must control."[12]

The courts of appeals' decisions in *Petrochem* and *BE&K* also considered and rejected the employers' arguments that the Act only protects individual employees, and not their unions, from retaliatory lawsuits, and that the Board lacked statutory authority to award fees for nonfrivolous litigation. The court in each case also rejected employer arguments that the union activity that was the target of the lawsuit was not protected by Section 7 of the Act, and that substantial evidence did not support the Board's finding that the lawsuit was retaliatory.

B. Employer's Right to Control its Property

It has long been established that employees have a right to engage in union solicitation at their workplace, subject to an employer's nondiscriminatory restrictions on solicitation during work time. *Republic Aviation Corp. v. NLRB.*[13] In *Lechmere, Inc. v. NLRB,*[14] the Supreme Court reaffirmed the general rule, first enunciated in *NLRB v. Babcock & Wilcox Co.,*[15] that, unlike rules pertaining to employee organizers, employer rules barring nonemployee union organizers from its property generally are valid. In cases decided this year, courts addressed recurring unresolved issues involving access to an employer's private property.

In *ITT Industries, Inc. v. NLRB,*[16] the District of Columbia Circuit was confronted with an employer's claim that some of its own employees should be treated as nonemployee organizers for purposes of determining their access rights. *ITT* involved a union organizing campaign in a unit of employees at three of the employer's plants. The employer prohibited off-duty employees who worked at one of those plants from distributing organizing literature in the parking lot of another plant.[17] The Board found that the employer's action was unlawful, rejecting the employer's claim that the off-duty employees should be treated as nonemployee organizers. Rather, the Board applied its

[12] *Petrochem*, 240 F.3d at 32. After the end of the fiscal year, but before publication of this report, the Supreme Court granted the employer's petition for certiorari in *BE&K* to address the question of whether "the Court of Appeals err[ed] in holding that under *Bill Johnson's* . . . the NLRB may impose liability on an employer for filing a losing retaliatory lawsuit, even if the employer could show the suit was not objectively baseless under *Professional Real Estate Investors* . . ." 122 S. Ct. 803 (2002 No. 01–518). The Supreme Court subsequently, issued a decision reversing the Sixth Circuit's decision.

[13] 324 U.S. 793, 802–803 and fn. 10 (1945).

[14] 502 U.S. 527 (1992).

[15] 351 U.S. 105 (1956).

[16] 251 F.3d 995 (D.C. Cir. 2001).

[17] Id. at 996–997.

decision in *Tri-County Medical Center, Inc.*,[18] which held that a rule denying off-duty employees access to the parking lot of the plant where they work to be invalid unless justified by business reasons.

The D.C. Circuit remanded the case. Although concluding that *Lechmere* and the Supreme Court's cases leading up to it did not answer the issue presented in the case, the court found that those cases did make clear that the reasonableness of an extension of right to off duty, off-site employees, depends in large part on the Board's justification. In remanding the case, the court faulted the Board for failing to adequately explain why the case was governed by *Tri-County Medical Center*, and held that the Board was required to explain in more detail why employees seeking access to the parking lot of a plant where they did not work enjoyed the same access rights as employees who worked at that plant.[19] More specifically, the court criticized the Board for failing to account for the employer's "predictably heightened property concerns" when employees from another plant demand access.[20] The court concluded that if on remand the Board determines that off-site employees have such rights, "it must then adopt a balancing test that takes proper account of an employer's predictably heightened property concerns."[21]

In *Sandusky Mall Co. v. NLRB*,[22] the Sixth Circuit rejected the Board's finding that the owner of a shopping mall unlawfully discriminated against union representatives by prohibiting them from distributing handbills urging consumers not to patronize a store in the mall because it had hired a non-union contractor for renovation work, thereby allegedly undermining local wage standards. The employer had permitted solicitation in the mall by charitable, civic, and commercial organizations when, in its judgment, their activities enhanced the public image of the mall and provided service to the community. It also considered whether the mall was likely to receive an economic benefit, such as rent, good will, or increased customer traffic; whether the activity was consistent with the commercial retail purpose of the mall; whether it conflicted with the business of a mall tenant; and whether it concerned or would generate controversy.

The court noted that it was bound by the Sixth Circuit's prior decision in *Cleveland Real Estate Partners v. NLRB*,[23] in which the court had narrowly interpreted "discrimination" to mean only favoring one union over another or allowing distribution of employer-related information

[18] 222 NLRB 1089, 1089–1090 (1976).
[19] Id. at 1004–1005.
[20] Id. at 1005.
[21] Id.
[22] 242 F.3d 682 (6th Cir. 2001).
[23] 95 F.3d 457 (6th Cir. 1996).

while barring distribution of similar union-related information. The court rejected the Board's contention that *Cleveland Real Estate* had been undermined by subsequent decisions of the Supreme Court[24] and the Sixth Circuit[25] holding that the Board's construction of ambiguous statutory provisions is entitled to deference. This case, the court pointed out, involved, not the Board's interpretation of statutory language, but its interpretation of Supreme Court precedent, which was not entitled to judicial deference.[26]

Moreover, the court concluded that discrimination could occur only if the prohibited groups or activities were comparable to those permitted.[27] It found that the union handbillers' conduct here was not similar to that of the civic and charitable organizations whose handbilling had been permitted.[28] In addition, the court pointed out, nonemployee area standards handbilling is entitled to even less protection than nonemployee organizational activity, because it involves a more peripheral right, and the handbilling in this case was especially remote because it was directed, not at the mall's owner or even a tenant, but only at a contractor doing business with a tenant.[29] Accordingly, the court concluded, the Board's interpretation of the law under the facts of this case was neither persuasive nor reasonable.[30]

C. Remedial Issues Involving Union Salts

In *NLRB v. Town & Country Electric, Inc.*,[31] the Supreme Court held that paid union organizers are employees entitled to the Act's protection. That decision, however, did not address whether the Board's traditional reinstatement and backpay orders were appropriate remedies in cases involving discrimination either against paid or unpaid union organizers, known as union "salts," who seek employment to organize an employer's workforce. During the year, two circuits agreed with the Board that salts are entitled to be made whole for the losses that they suffered as a result of unlawful discrimination against them, as well as addressed several issues relating to the calculation of backpay owed in those circumstances.

In *NLRB v. Ferguson Electric Co.*,[32] the Second Circuit enforced the Board's order requiring the employer to pay a liquidated amount of

[24] *Holly Farms Corp. v. NLR*B, 517 U.S. 392 (1996).
[25] *NLRB v. Webcor Packaging, Inc*., 118 F.3d 115 (6th Cir. 1997).
[26] 242 F.3d at 689, 690–691; id. at 692–693 (concurring opinion.).
[27] Id. at 690.
[28] Id. at 692.
[29] Id. at 691.
[30] Id. at 692.
[31] 516 U.S. 85, 87, 90–91, 95–96 (1995).
[32] 242 F.3d 426 (2d Cir. 2001).

backpay to a paid union organizer who the employer had unlawfully refused to hire. In so holding, the Second Circuit rejected three arguments raised by the employer to eliminate or reduce the amount owed. First, the court rejected the employer's contention that the award of backpay was improper because the salt's damages were inherently speculative because he would have quit his job when the union determined that his employment no longer served the union's organizing interests. The Second Circuit reasoned that there would never be complete certainty in the calculation of backpay, whether or not the discriminatee is a union salt, for "'[i]f a paid union organizer might quit, leaving a company employer in the lurch, so too might an unpaid organizer, or a worker who has found a better job, or one whose family wants to move elsewhere.'"[33] Absent evidence as to how long the salt might have remained employed, the court held that the Board appropriately resolved doubts on that issue against the employer, the party that violated the Act.[34]

The court also rejected the employer's contention that the salt's earnings from the union should be offset against his backpay award, because those earnings "are analogous to any other moonlighting earnings."[35] Finally, the court held that the existence of some union-imposed restrictions on a salt's search for employment—such limiting employment with nonunion employers to those targeted by the union—"did not compel the conclusion that the salt failed to mitigate damages, absent further evidence on the actual scope of the salt's job search."[36]

In *Tualatin Electric, Inc. v. NLRB*,[37] the union sent unpaid union organizers to nonunion shops, paying the amount necessary to bring those employees' wages to union scale; the employees, in turn, agreed to terminate their employment at the union's behest. The employer discharged one employee and refused to hire four others because of their union connection. In upholding the Board's order setting forth the amount of backpay due each discriminatee, the District of Columbia Circuit affirmed the Board's reasoning that, just as salts do not forfeit their "employee" status or their statutory protection from unlawful discrimination, neither do they forfeit their eligibility for backpay to remedy the discrimination.[38] The court also agreed with the Board that the salts did not willfully incur loss of earnings even though they limited their search for interim employment to union contractors. The court

[33] Id. at 432 (citation omitted).
[34] Id.
[35] Id. at 432–433.
[36] Id. at 436.
[37] 253 F.3d 714 (D.C. Cir. 2001).
[38] Id. at 717.

reasoned that the discriminatees were following their regular method for obtaining employment when they sought work through the union hiring hall, and would have subjected themselves to internal union discipline had they sought work with nonunion employers.[39]

The court further concluded that it was not unreasonable for the Board to apply the principles of *Dean General Contractors*[40] in cases involving salts. Under those principles, the Board presumes that an employee unlawfully discharged from a project would have been reassigned to a new project upon completion of the original project, subject to the employer's showing that under its "established policies" the employee would not have been reassigned. The court held that Board reasonably imposed the evidentiary burden on the employer to show that a salt would not have been transferred at the conclusion of a project, whether because of the union's policies or the employer's own policies.[41]

D. Award of Backpay to Unlawfully Discharged Undocumented Workers

In *Sure-Tan v. NLRB*, [42] the Supreme Court held that an employer violates the National Labor Relations Act by discharging illegal aliens because of their union activity. Thereafter, in *A.P.R.A. Fuel Oil Buyers Group, Inc.*,[43] the Board fashioned a limited backpay remedy for cases in which an employer unlawfully discharged an undocumented employee who it hired with knowledge that the employee was not authorized to work in the United States. Under that remedy, the employer was required to pay backpay commencing on the date of the discharge until the date on which the employee is reinstated, subject to compliance with the employer's obligations under the Immigration Reform and Control Act (IRCA),[44] which prohibits employment of undocumented workers, or until the discriminatee, after a reasonable period of time, fails to produce documents enabling the employer to meets its obligations under IRCA.[45]

In *Hoffman Plastic Compounds, Inc. v. NLRB,*[46] the District of Columbia Circuit, sitting en banc, held, in a 5 to 4 decision, that the Board's limited award of backpay to an undocumented worker was a reasonable exercise of the Board's remedial authority. *Hoffman*, unlike

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[39] Id. at 718–719.
[40] 285 NLRB 573 (1987).
[41] *Tualatin*, 253 F.3d at 718.
[42] 467 U.S. 883 (1984).
[43] 320 NLRB 408 (1995), enfd. 134 F.3d 50 (2d Cir. 1997).
[44] 8 U.S.C. 1324a.
[45] *A.P.R.A.*, 320 NLRB at 416.
[46] 237 F.3d 639 (D.C. Cir. 2001) (en banc).

A.P.R.A., involved an employer who did not learn of the employee's undocumented status until the backpay hearing. Adapting the *A.P.R.A.* remedy, the Board required the employer to pay backpay for the period from the unlawful discharge until it learned, during the backpay hearing, that the employee was not authorized to work in the United States.

The majority rejected the argument that the case was controlled by the Supreme Court's statement in *Sure-Tan*, that "employees must be deemed 'unavailable' for work (and the accrual of backpay therefore tolled) during any period when they were not lawfully entitled to be present and employed in the United States."[47] The majority concluded that the sentence must be read in the context of the facts of *Sure-Tan*—which involved discriminatees who left the United States immediately upon their discharge. The majority further explained that to construe that sentence as baring backpay conflicted with the Supreme Court's holding in *Sure-Tan* that an undocumented discriminatee is entitled to backpay so long as it is appropriately tailored to the discriminatee's actual loss.[48] The majority also found that nothing in the nation's immigration laws, including IRCA, barred the award of limited backpay to remedy unfair labor practices against undocumented workers. The majority concluded that to exempt employers from paying backpay to undocumented workers would undermine both the immigration laws and the NLRA by providing a financial incentive for employers to hire undocumented workers over documented ones.[49] In the view of the dissenting judges, the sentence in *Sure-Tan* providing that backpay should be tolled for any period when a discriminatee was "not lawfully entitled to be present and employed in the United States" precluded the Board's backpay award.[50]

[47] *Sure-Tan*, 467 U.S. at 903.
[48] Id. at 642–645.
[49] Id. at 646–647.
[50] Id. at 651–656. After the end of the fiscal year, but before the publication of this report, the Supreme Court granted certiorari and subsequently issued a decision reversing the D.C. Circuit.

VII

Injunction Litigation

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. 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.[1] Any injunction issued under Section 10(j) lasts until final disposition of the unfair labor practice case by the Board.

In fiscal year 2001, the Board filed in district courts a total of 29 petitions for temporary injunctive relief under Section 10(j). Of these petitions, 28 were filed against employers and one petition was filed against an employer and a labor organization. Nine cases authorized in the prior fiscal year were also pending in district courts at the beginning of this fiscal year. Of these 38 cases, 11 were settled or adjusted prior to court action and 5 cases were withdrawn prior to a court decision due to changed circumstances. Courts granted injunctions in 13 cases and denied them in 6 cases. Three cases remained pending in district court at the end of the fiscal year.

District courts granted injunctions against employers in 13 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; employer violations intended to undermine an incumbent union; and a successor employer's refusal to recognize and bargain with an incumbent union.[3]

Three significant decisions involving union organizing campaigns were issued during this fiscal year. *Blyer v. P & W Electric, Inc., d/b/a Pollari Electric*[4] involved the allegedly unlawful discharge or layoffs of three employees during a union organizational campaign in small units of 15 employees. In granting Section 10(j) relief, the court concluded that,

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[1] See, e.g., *Sharp v. Webco Industries*, 225 F.3d 1130 (10th Cir. 2000); *Silverman v. J.R.L. Food Corp., d/b/a Key Food*, 196 F.3d 334 (2d Cir. 1999); and *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559 (7th Cir. 1996), cert. denied 519 U.S. 1055 (1997). The decisions in *Webco Industries* and *J.R.L. Food Corp.*, were discussed in the 2000 Annual Report.

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

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

[4] 141 F. Supp.2d 326 (E.D.N.Y.).

absent interim relief, there was a serious risk that employee interest in unionization would be chilled or destroyed. Interim reinstatement was considered necessary to preserve the status quo that existed prior to the alleged unfair labor practices.[5] After balancing the potential harms to the parties, the court in *P & W Electric* rejected the employer's defense that reinstatement would improperly hurt "innocent" employees who would have to be displaced by the alleged discriminatees.[6] Finally, the court rejected the respondent's defense that the passage of time since the violations took place precluded interim relief. The court concluded that since the discriminatees all indicated their desire for reinstatement, respondent "cannot demonstrate that the NLRB's delay has impaired my ability to restore the status quo."[7]

During this fiscal year, appellate courts affirmed Section 10(j) injunctions in two cases involving employer interferences in the very early stages of union organizing campaigns. In *Schaub v. West Michigan Plumbing & Heating*,[8] the Sixth Circuit affirmed the interim reinstatement of an employee/union advocate who was allegedly isolated from other employees and subsequently was discharged allegedly for initiating a union organizing campaign in a small bargaining unit. The court held that the district court properly ordered the employee's interim reinstatement in order to preserve the Board's ultimate remedial power. Significantly, the court specifically adopted the district court's inference that the employee's transfer, isolation, and discharge after discussing the benefits of unionization with fellow employees is likely to discourage other employees from engaging in union activities.[9]

Similarly, in *Pye v. Excel Case Ready*,[10] the First Circuit affirmed a district court's interim reinstatement of five discriminatees, two of whom were allegedly discharged in an attempt to cover up the pretextual termination of three union activists. The First Circuit held that, where the evidence shows that the discharge of union supporters has halted the union campaign, the district court did not abuse its discretion in granting the injunction based on the disappearance of the "spark to unionize."[11] The court also concluded that the evidence that some employees did not feel dissuaded from exercising their Section 7 rights because of the

[5] 141 F. Supp.2d at 330.
[6] 141 F. Supp.2d at 331.
[7] 141 F. Supp.2d at 333.
[8] 250 F.3d 962 (6th Cir. 2001).
[9] Id. at 970–971.
[10] 238 F.3d 69 (1st Cir. 2001).
[11] Id. at 75.

employer's alleged unfair labor practices did not negate the evidence that union activity stopped after the discharges.[12]

Several cases during the year raised the propriety of interim bargaining orders under the principles of *Gissel Packing Co.* In *Scott v. Stephen Dunn & Associates,*[13] the Ninth Circuit for the first time ordered an interim *Gissel* bargaining order in a Section 10(j) case, reversing the district court's denial of that relief. Factually, after a majority of the 97 unit employees signed union authorization cards, the employer immediately granted employees a significant wage increase, packed the bargaining unit with new employees, and, on the day of the election, gave employees valuable benefits and improvements in their working conditions. The company's antiunion campaign caused the union to lose the election. The court concluded that this evidence satisfied the Director's "minimal" burden of establishing that the Board is likely to issue a bargaining order in due course. The appellate court then concluded that the balance of harms tipped in favor of the Director because employees were being deprived of union representation during the pendency of the administrative case, and because employee interest in the union will likely wane without an interim bargaining order.[14] In balancing the hardships, the court concluded that the employer's cost of time and money to bargain with the union cannot defeat an interim bargaining order because this burden falls on the union as well.[15] The court also reasoned that the risk of unsuccessful bargaining is no greater under an interim bargaining order than in one ultimately ordered by the Board.[16]

In another *Gissel* case, *Moore-Duncan v. Aldworth Co.,*[17] the court granted interim relief under Section 10(j), including a remedial bargaining order under *Gissel*, against two employers alleged to be "joint employers" of certain drivers and warehouse employees. The court found reasonable cause to believe that the two named respondents shared or codetermined the essential terms or conditions of employment of the affected employees.[18] The court concluded that any 10(j) injunction would be applied to both respondents.[19] The court further determined that there was reasonable cause to believe that the respondents had

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[12] Id.
[13] 241 F.3d 652 (9th Cir. 2001).
[14] Id. at 667.
[15] Id. at 669.
[16] Id.
[17] 124 F. Supp.2d 268 (D.N.J.).
[18] The court cited (124 F. Supp.2d at 278) *NLRB v. Browning-Ferris Industries of Pennsylvania*, 691 F.2d 1117, 1124 (3d Cir. 1982).
[19] 124 F. Supp.2d at 278.

committed serious unfair labor practices to warrant the Board's setting aside the results of an election which the union had lost and imposing a remedial *Gissel* bargaining order remedy.[20] The court then concluded that interim relief, including an interim *Gissel* bargaining order, was just and proper to safeguard the parties' collective-bargaining process.[21] It rejected the respondents' "passage of time" defense, concluding that "the massive record in this case militates against barring 10(j) relief on the basis of passage of time."[22] Finally, the court ordered interim reinstatement of discharged employees to "send the message that anti-union discrimination will not be tolerated."[23]

One case during the year involved an employer's unusual attempt to undermine a newly certified incumbent union. In *Aguayo v. Quadrtech Corp.*,[24] the Board sought both a temporary restraining order and a preliminary injunction against an employer that had announced a partial relocation of unit work and substantial layoffs of workers 1 day after the union was certified to represent the unit employees. In granting the TRO and injunction, the court concluded that the Board had demonstrated a likelihood of success on the merits that the employer's decisions to relocate unit work and layoff employees was motivated by antiunion animus and that the employer had failed to prove that its decisions were based solely on legitimate economic considerations.[25] It also determined that the employer's offer to bargain with the union over the effects of the relocation and layoffs was "patently pro forma" and fell short of its obligation to bargain in a "meaningful manner" and at a "meaningful time."[26] The court then agreed with the Board that, absent interim relief to enjoin the work relocation and layoffs, irreparable harm was likely to occur. It found the requested injunction to be just and proper because the employer adduced "no meaningful evidence as to the dimensions of its suffering" regarding the impact on its business if interim relief was granted.[27]

Several cases during the fiscal year involved employers that allegedly had withdrawn recognition from incumbent unions without proper justification. In *Moore-Duncan v. Horizon House Developmental Services*,[28] the Board sought, inter alia, an interim bargaining order

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[20] 124 F. Supp.2d at 291–292.
[21] 124 F. Supp.2d at 293.
[22] Id.
[23] Id.
[24] 129 F. Supp.2d 1273 (C.D. Ca. 2000).
[25] 129 F. Supp.2d at 1276–1279.
[26] 129 F. Supp.2d at 1279.
[27] Id.
[28] 155 F. Supp.2d 390 (E.D. Pa. 2000).

where an employer had withdrawn recognition from an incumbent union, based upon a claim that it had a "good-faith doubt" that the union enjoyed the continued support of a majority of the unit employees.[29] The district court found reasonable cause to believe that the employer's doubts of the union's continuing majority were not founded on firm evidence and were not made in good faith.[30] The court in *Horizon House* then concluded that injunctive relief, including an interim bargaining order, was in the public interest. The court noted that the bargaining process is harmed when an employer's actions weaken an incumbent union and that union's ability to provide effective representation is diminished.[31] The court further concluded that the union's impotence and the loss of employee interest can create "a mutually reinforcing cycle" which can create irreparable damage to the parties' bargaining relationship.[32] The court then concluded that an interim injunction requiring the employer to bargain in good faith is thus necessary to prevent irreparable damage to the union's position and to the bargaining process.[33] Finally, the court found that the unit employees at issue were scattered among several locations and the parties' bargaining relationship was not well established. Therefore, the unit was not "small and intimate" and therefore unlikely to be fully aware of their rights under the Act.[34] The court concluded that the interim relief sought by the Board was warranted and would restore the parties to their respective situations prior to the respondent's allegedly unlawful behavior.[35]

In two cases during the fiscal year, the Board obtained interim relief against *Burns* successor employers that had refused to recognize and bargain with the unions.[36] In *Dunbar v. Onyx Precision Services*,[37] the respondent had relocated the business after the purchase of the predecessor employer's unionized operations. The court concluded that, notwithstanding the relocation, there was a substantial continuity of operations between the predecessor and the alleged successor.[38] The court rejected the respondent's major defense that the predecessor employer had properly entered into a new collective-bargaining agreement with a rival union to cover the relocated operation. The court

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[29] See *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359, 364–365 (1998).
[30] 155 F. Supp.2d at 395.
[31] 155 F. Supp.2d at 396.
[32] Id.
[33] 155 F. Supp.2d at 396–397.
[34] The court cited (155 F. Supp.2d at 397) *Pascarell v. Vibra Screw Inc.*, 904 F.2d 874, 879 (3d Cir. 1990).
[35] Id.
[36] *NLRB v. Burns Intl. Security Services*, 406 U.S. 272 (1972).
[37] 129 F. Supp.2d 230 (W.D.N.Y. 2000).
[38] 129 F. Supp.2d at 236.

concluded that the rival union's labor agreement was a "sham," and had been negotiated without any employees having voted to be represented by the rival union.[39] The court thus found that there was reasonable cause to believe that the respondent was a *Burns* successor with an obligation to recognize and bargain with the predecessor's original union and that the recognition and labor agreements with the rival union were invalid.[40] The court also determined that interim relief was just and proper to preserve the status quo and prevent irreparable injury.[41] The court found the successorship situation, in the face of the respondent's unfair labor practices, to be unsettling on unit employees. The court concluded that "[l]eft unchecked, this will result in the employees becoming disenchanted with any type of union representation and with the collective bargaining system in general."[42] Finally, the court determined that the requested injunction would not be prejudicial to the respondent, as it merely required it to comply with its statutory bargaining obligation.[43]

Also, in a second successorship case, the Second Circuit reversed the denial of Section 10(j) relief in *Hoffman v. Inn Credible Caterers, Inc.*,[44] and ordered that *Burns* successor to recognize and bargain on an interim basis with a union representing its employees. Significantly, the appellate court rejected the district court's conclusion that an injunction is not "just and proper" unless the Director submits evidence that individual employees have been subjected to serious and pervasive harm. Noting that the underlying purpose of Section 10(j) is to protect employees' statutory collective-bargaining rights, the court defined the appropriate test as "whether the employees' collective bargaining rights may be undermined" by a successor employer's unlawful refusal to recognize and bargain. The court specifically noted the "pressing need" to restore the status quo where a successor employer, by refusing to bargain with the union, has threatened "to severely weaken, if not destroy," employee rights to collective bargaining.[45]

Finally, during the fiscal year, the Tenth Circuit affirmed a Section 10(j) injunction in *Sharp v. Webco Industries*,[46] which enjoined the employer from continuing to prosecute state court civil actions against employees whom it alleged had breached severance agreements after the

[39] 129 F. Supp.2d at 236–237.
[40] 129 F. Supp.2d at 238.
[41] Id.
[42] 129 F. Supp.2d at 239.
[43] Id.
[44] 247 F.3d 360 (2nd Cir. 2001).
[45] Id. at 368–369.
[46] 265 F.3d 1085, 1088, 1090 (10th Cir. 2001).

company laid them off. The Director contended that the validity of a waiver in the severance agreements was directly implicated in a pending Section 8(a)(3) Board proceeding, which alleged the layoffs to be discriminatory. Thus, the Director maintained that the employer's suits were, at least, temporarily preempted by the Board's administrative proceeding. The court agreed that the lawsuits were preempted under *Loehmann's Plaza*[47] because the Board has exclusive jurisdiction over the issues raised by the lawsuits. In addition, the court upheld the district court's finding that injunctive relief was "just and proper" to preserve the Board's exclusive jurisdiction to determine if the employer's waiver defense was valid and to prevent the possibility of inconsistent judgments between the Board and state courts.[48]

[47] 305 NLRB 663 (1991).
[48] Id.

VIII

Contempt Litigation and Compliance Branch

During fiscal year 2001, 370 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 271 asset/entity database investigations to assist the Regions in their compliance efforts. Voluntary compliance was achieved in 87 cases during the fiscal year, without the necessity of filing a contempt petition, while in 36 others, it was determined that contempt was not warranted.

During the same period, 15 civil contempt or equivalent proceedings were instituted, including two in which body attachment was sought. A number of other proceedings were also instituted by CLCB during 2001, including one request for a writ of postjudgment garnishment under the Federal Debt Collection Procedures Act (FDCPA); one complaint to enforce a promissory note; and one complaint to declare the Board's debt nondischargeable in bankruptcy.

Fifteen civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year. CLCB also obtained two writs of postjudgment garnishment; six disbursement orders for writs of garnishment previously obtained; one order granting the Board's motion to enforce its promissory note; and one order protecting the Board's right to proceed against successors notwithstanding a free and clear sale in a bankruptcy proceeding.

During the fiscal year, CLCB collected $6000 in fines and $509,887 in backpay, while recouping $59,308 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases arose during the fiscal year. In *Straight Creek Mining*,[1] the Board initiated civil contempt proceedings against a recidivist mine company that had managed to avoid bargaining for more than 10 years through a variety of devices. When the Sixth Circuit finally issued a bargaining order in October 1998, the mine bargained with the union on three occasions over a 3-month period and then withdrew recognition again, allegedly based on a decertification petition. The Special Master, affirmed by the Sixth Circuit, found that the mine had not bargained for a reasonable time following entry of the Court's

[1] 167 LRRM 2424 (Special Master's Report), affd. 167 LRRM 2480 (6th Cir. 2001).

judgment and had engaged in independent unfair labor practices that had tainted the decertification petition. The Employer's owner and CEO were held personally liable in contempt, in addition to the mine. Of particular interest are two of the remedial provisions, one requiring the posting of a $50,000 bond to be forfeited to the U.S. Treasury upon any further contumacious conduct, and a second establishing burden shifting provisions that require the Respondents to prove, to the Court's satisfaction, that they have fully satisfied their bargaining obligations if negotiations do not result in a collective-bargaining agreement.

An interesting evidentiary issue arose in another case during the fiscal year, *Cable Car Charters*.[2] In that case the Board initiated contempt proceedings against Respondents based on a variety of 8(a)(3) and 8(a)(5) violations, and a Special Master was appointed by the Ninth Circuit. During discovery, Respondents' attorney, in response to CLCB's request for production of documents, examined documents that had been in the possession of another law firm and directed that firm to produce certain of the documents to CLCB, while refusing to provide others on the grounds of attorney-client privilege. CLCB examined the documents made available for inspection and selected some of them for duplication, including six which were in the nature of attorney-client communications. Respondents' attorney was shown which documents CLCB wanted produced, including the six at issue, and raised no objection. He was also sent a bate-stamped copy of all documents that were ultimately produced by Respondents, again without objection. CLCB then listed the six documents on its pretrial exhibit list. Respondents waited until the first day of trial to raise objections to their introduction into evidence. After full briefing and an evidentiary hearing on the issue, the Special Master ruled that Respondents had expressly waived the attorney-client privilege by knowingly disclosing the six documents. He further ruled that even assuming, arguendo, that the disclosure was inadvertent, the Respondents had waived the privilege by failing to take reasonable steps to preserve the confidentiality of the documents or rectify any erroneous disclosure.

Finally, CLCB also continued its active role in drafting court documents and assisting the Regions in collection efforts under FDCPA and in bankruptcy proceedings. In *SAE Young Westmont-Chicago, LLC*,[3] for example, CLCB, in conjunction with the Region, obtained an order preserving the Board's right to pursue successorship claims within the Board's exclusive jurisdiction notwithstanding a free and clear sale

[2] 336 NLRB No. 85 (2001) (Chairman Hurtgen and Member Liebman; Member Walsh did not participate in the decision on the merits).

[3] 333 NLRB No. 59 (Members Liebman, Hurtgen, and Walsh).

approved by the bankruptcy court. CLCB also participated and/or assisted the Regions in several successful garnishment proceedings, followed by disbursement orders against the entities which held collectible funds which could be used to satisfy Board backpay judgments (e.g, *Diversified Bank Installations, Inc*[4] and *South Coast Refuse, Corp*[5]).

[4] 331 NLRB No. 29 (2000) (not reported in bound volume).
[5] 337 NLRB No. 136 (Chairman Hurtgen and Members Liebman and Cowen).

IX

Special Litigation

A. Preemption Litigation

In *Labor Ready Mid-Atlantic, Inc. v. Tri-State Building & Construction Trades Council*,[1] the District Court for the Southern District of West Virginia granted the Board's motions to intervene and dismiss pendant state tortious interference causes of action that relied on peaceful secondary activity. The employer plaintiffs asserted a claim in district court against several union locals and union associations under Section 303 of the Labor Management Relations Act, 29 U.S.C. § 187. They further asserted against several union member/employees and one local union pendant state causes of action based on the same secondary activity at issue in the Section 303 claim, including tortious interference with contractual and business relations and business expectancies. The General Counsel subsequently issued a complaint alleging that the lawsuit violated Section 8(a)(1) of the Act, 29 U.S.C. §158(a)(1), under *Bill Johnson's Restaurants, Inc. v. NLRB*.[2] The Board sought to intervene in the district court proceeding, and asserted in a motion to dismiss that the pendant state claims were preempted because they were based on alleged peaceful secondary activity, an area in which Congress has occupied the field.

The district court granted the Board's motion to intervene, finding that there existed a potential for conflict between the judicial and administrative findings regarding preemption, and that the Board was charged with protecting the public's interest in insuring that state tort law does not interfere with the uniform federal laws governing labor relations. Relying on *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*,[3] the Court further found that Congress chose to occupy the field of secondary activity when it enacted Section 8(b)(4) of the NLRA, 29 U.S.C. §158(b)(4), and Section 303 of the LMRA. It found no evidence of violence or imminent threats to public order that would avoid application of the preemption doctrine, and concluded that allegations of unlawful secondary activity are a direct concern of the LMRA. Accordingly, the Court found that state claims based on alleged peaceful secondary conduct are preempted by federal law, and dismissed the pendant state causes of action. The plaintiffs' remaining Section 303

[1] No. 2:99-0037 (S.D. W.Va.) (unreported).
[2] 461 U.S. 731 (1983).
[3] 377 U.S. 252, 259–260 (1964).

claim, which was not preempted, was settled by the original parties to the suit.

B. Litigation Concerning the Board's Jurisdiction

In *Contractor Services, Inc. v. NLRB*,[4] the District Court for the Southern District of Iowa granted the Board's motion to dismiss for lack of jurisdiction and denied CSI's cross-motion for summary judgment. CSI had filed suit to enjoin the Board from seeking enforcement of its unfair labor practice order against CSI. The complaint alleged that the Board had entered into a settlement agreement with CSI regarding the unfair labor practice case, and that by seeking enforcement in the court of appeals the Board was breaching the terms of that settlement. According to CSI, the settlement agreement in question was a document sent from Region 10's compliance officer, entitled "Compliance Requirements of Settlement Agreements, Administrative Law Judge Decisions, Board Orders and Court Decrees in CA Cases." In granting the Board's motion to dismiss, the district court found that it lacked subject matter jurisdiction over CSI's claims. Under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), district courts have jurisdiction over certain contract disputes involving the Federal government, provided that the primary relief sought is monetary. Since CSI's suit primarily sought injunctive relief against the Board, the court concluded that it lacked subject matter jurisdiction over CSI's suit. The court further found that even if jurisdiction properly existed, CSI had not shown that a binding settlement agreement was formed between the parties. The document sent by the compliance officer did not appear to be an offer to settle, and the compliance officer lacked authorization to make any such offer.

In *Titan International, Inc. v. Wells*,[5] the United States District Court for the Southern District of Mississippi denied a motion for a preliminary injunction to enjoin the Board from proceeding with an unfair labor practice hearing against alleged alter egos and/or single employers of other named respondents. The plaintiffs contended that the Board exceeded its statutory authority by amending the original timely-filed complaints to include them as alter egos/single employers based on charges filed some 3 years after the charging party had notice of the companies' interrelated status, in violation of Section 10(b) of the Act, 29 U.S.C. §160(b). The court rejected this contention, and found that it lacked subject matter jurisdiction to enjoin the hearing. Jurisdiction could not be based on the narrow exception of *Leedom v. Kyne*,[6] the

[4] No. 3-00-10034 (S.D. Iowa) (unreported).
[5] No. 5:01cv175BrS (S.D. Miss.) (unreported).
[6] 358 U.S. 184 (1958).

court explained, because the question whether the Section 10(b) limitations period covers knowledge of "who" was responsible for alleged unfair labor practices, as well as "what" those practices were, "is precisely the sort of inquiry that Congress reserved for the Board to hear, interpret and adjudicate—and even to get wrong." According to the court, the plaintiffs had not presented the sort of "egregious error" envisioned by the Supreme Court in *Kyne*, but had merely raised an issue of statutory interpretation in an area in which the Board has broad discretion. Finally, the court found that *Detroit Newspaper Agency v. Schaub*,[7] cited by the plaintiffs, actually undermined the plaintiffs' position. Although the district court in that case enjoined the Agency from prosecuting a new complaint because the underlying charges were time-barred, the court there reasoned that Section 10(b) affords more flexibility to amend a timely-filed complaint.

C. Freedom of Information Act Litigation

In *Associated Builders & Contractors, Inc. v. NLRB*,[8] the District Court for the Southern District of Ohio denied a motion filed by Associated Builders and Contractors (ABC) for an *in camera* review of closed case Board affidavits, which had been redacted by the Board for personal privacy information pursuant to the Freedom of Information Act Exemptions 6 and 7(C). The case initially arose when ABC filed a FOIA complaint against the Board to compel the disclosure of Board affidavits in 38 closed case files. After the Board disclosed more than 100 affidavits to ABC with portions redacted, ABC filed a motion with the court for an *in camera* review of the nature and extent of the Board's redactions. The Board submitted a *Vaughn* Index[9] to the court, categorically describing the redacted material as the identity and personal privacy information of the affiant or other third persons mentioned or referred to the affidavits which was not disclosed elsewhere. In its reply, ABC sought an *in camera* review of the documents in question to "verify the accuracy of the redactions" and "determine which exemption applied to which redaction." The district court found that an *in camera* review of the affidavits was not warranted. In denying ABC's request, the court concluded that an agency is not necessarily required to justify its nondisclosures under the FOIA on a document-by-document basis, let alone on a line-by-line or redaction-by-redaction basis. The court, citing *Vaughn*, held that a categorical approach may be used, as long as the court can determine what material has been withheld from which

[7] 108 F.Supp. 2d 729 (E.D. Mich. 2000), vacated, 286 F.3d 391 (6th Cir. 2002).
[8] No. C2-98-612 (S.D. Ohio) (unreported).
[9] *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

documents, and whether such material is exempt under the FOIA. The court also held that the Board's actions and affidavit are entitled to a presumption of good faith. Accordingly, the court found no sufficient reason to conduct an *in camera* review of the Board's redacted affidavits.

INDEX OF CASES DISCUSSED

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

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

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

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

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

Editor's Note: The NLRB is continuing to improve its techniques for tracking and collecting case activity data. Since the deployment of a new case-tracking database in 1999, the Agency has made considerable progress in its efforts to ensure the information is accurate. Notes have been inserted in some of the tables where there may be minor inconsistencies between the tables. 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 2001[1]

	Total	Identification of filing party				
		AFL–CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2000	*26,939	16,941	778	872	7,325	1,023
Received fiscal 2001	33,534	18,884	935	870	11,292	1,553
On docket fiscal 2001	60,473	35,825	1,713	1,742	18,617	2,576
Closed fiscal 2001	35,324	20,013	979	919	11,805	1,608
Pending September 30, 2001	25,149	15,812	734	823	6,812	968
	Unfair labor practice cases[2]					
Pending October 1, 2000	24,968	15,656	710	784	6,919	899
Received fiscal 2001	28,124	14,968	745	661	10,354	1,396
On docket fiscal 2001	53,092	30,624	1,455	1,445	17,273	2,295
Closed fiscal 2001	29,820	16,018	767	688	10,904	1,443
Pending September 30, 2001	23,272	14,606	688	757	6,369	852
	Representation cases[3]					
Pending October 1, 2000	1,782	1,200	41	78	365	98
Received fiscal 2001	5,057	3,742	176	195	820	124
On docket fiscal 2001	6,839	4,942	217	273	1,185	222
Closed fiscal 2001	5,157	3,827	174	212	804	140
Pending September 30, 2001	1,682	1,115	43	61	381	82
	Union-shop deauthorization cases					
Pending October 1, 2000	39	--	--	--	39	--
Received fiscal 2001	109	--	--	--	109	--
On docket fiscal 2001	148	--	--	--	148	--
Closed fiscal 2001	93	--	--	--	93	--
Pending September 30, 2001	55	--	--	--	55	--
	Amendment of certification cases					
Pending October 1, 2000	29	7	22	0	0	0
Received fiscal 2001	17	13	3	0	0	1
On docket fiscal 2001	46	20	25	0	0	1
Closed fiscal 2001	36	11	24	0	0	1
Pending September 30, 2001	10	9	1	0	0	0
	Unit clarification cases					
Pending October 1, 2000	121	78	5	10	2	26
Received fiscal 2001	227	161	11	14	9	32
On docket fiscal 2001	348	239	16	24	11	58
Closed fiscal 2001	218	157	14	19	4	24
Pending September 30, 2001	130	82	2	5	7	34

[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, 2000, 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 2001[1]

	Total	Identification of filing party				
		AFL–CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	CA cases					
Pending October 1, 2000	*21,465	15,595	705	776	4,293	96
Received fiscal 2001	21,510	14,873	730	650	5,158	99
On docket fiscal 2001	42,975	30,468	1,435	1,426	9,451	195
Closed fiscal 2001	22,833	15,928	751	682	5,367	105
Pending September 30, 2001	20,142	14,540	684	744	4,084	90
	CB Cases					
Pending October 1, 2000	3,137	57	4	7	2,612	457
Received fiscal 2001	5,843	60	7	10	5,162	604
On docket fiscal 2001	8,980	117	11	17	7,774	1,061
Closed fiscal 2001	6,212	57	7	4	5,496	648
Pending September 30, 2001	2,768	60	4	13	2,278	413
	CC Cases					
Pending October 1, 2000	223	1	0	1	8	213
Received fiscal 2001	447	6	6	1	21	413
On docket fiscal 2001	670	7	6	2	29	626
Closed fiscal 2001	432	5	6	2	24	395
Pending September 30, 2001	238	2	0	0	5	231
	CD Cases					
Pending October 1, 2000	68	1	0	0	2	65
Received fiscal 2001	167	27	0	0	9	131
On docket fiscal 2001	235	28	0	0	11	196
Closed fiscal 2001	174	24	0	0	10	140
Pending September 30, 2001	61	4	0	0	1	56
	CE Cases					
Pending October 1, 2000	24	1	0	0	0	23
Received fiscal 2001	27	2	0	0	0	25
On docket fiscal 2001	51	3	0	0	0	48
Closed fiscal 2001	29	3	0	0	0	26
Pending September 30, 2001	22	0	0	0	0	22
	CG Cases					
Pending October 1, 2000	4	0	0	0	0	4
Received fiscal 2001	35	0	0	0	0	35
On docket fiscal 2001	39	0	0	0	0	39
Closed fiscal 2001	23	0	0	0	0	23
Pending September 30, 2001	16	0	0	0	0	16
	CP Cases					
Pending October 1, 2000	47	1	1	0	4	41
Received fiscal 2001	95	0	2	0	4	89
On docket fiscal 2001	142	1	3	0	8	130
Closed fiscal 2001	117	1	3	0	7	106
Pending September 30, 2001	25	0	0	0	1	24

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2000, 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 2001[1]

	Total	Identification of filing party				
		AFL–CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	RC Cases					
Pending October 1, 2000.....	*1,316	1,196	40	78	2	--
Received fiscal 2001.....	4,114	3,740	176	195	3	--
On docket fiscal 2001.....	5,430	4,936	216	273	5	--
Closed fiscal 2001.....	4,212	3,824	173	212	3	--
Pending September 30, 2001.....	1,218	1,112	43	61	2	--
	RM Cases					
Pending October 1, 2000.....	98	--	--	--	--	98
Received fiscal 2001.....	124	--	--	--	--	124
On docket fiscal 2001.....	222	--	--	--	--	222
Closed fiscal 2001.....	140	--	--	--	--	140
Pending September 30, 2001.....	82	--	--	--	--	82
	RD Cases					
Pending October 1, 2000.....	368	4	1	0	363	--
Received fiscal 2001.....	819	2	0	0	817	--
On docket fiscal 2001.....	1,187	6	1	0	1,180	--
Closed fiscal 2001.....	805	3	1	0	801	--
Pending September 30, 2001.....	382	3	0	0	379	--

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2000, 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 2001

	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	21,512	100.0
8(a)(1)	3,465	16.1
8(a)(1)(2)	160	0.7
8(a)(1)(3)	7,489	34.8
8(a)(1)(4)	141	0.7
8(a)(1)(5)	7,583	35.3
8(a)(1)(2)(3)	112	0.5
8(a)(1)(2)(4)	1	0
8(a)(1)(2)(5)	84	0.4
8(a)(1)(3)(4)	455	2.1
8(a)(1)(3)(5)	1,825	8.5
8(a)(1)(4)(5)	17	0.1
8(a)(1)(2)(3)(4)	4	0
8(a)(1)(2)(3)(5)	56	0.3
8(a)(1)(2)(4)(5)	2	0
8(a)(1)(3)(4)(5)	106	0.5
8(a)(1)(2)(3)(4)(5)	12	0.1
Recapitulation[1]		
8(a)(1)	21,512	100.0
8(a)(2)	431	2.0
8(a)(3)	10,059	46.8
8(a)(4)	738	3.4
8(a)(5)	9,685	45.0
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	6,552	100.0
8(b)(1)	4,941	75.4
8(b)(2)	69	1.1
8(b)(3)	327	5.0
8(b)(4)	614	9.4
8(b)(5)	1	0
8(b)(6)	5	0.1
8(b)(7)	95	1.4
8(b)(1)(2)	399	6.1
8(b)(1)(3)	76	1.2
8(b)(1)(5)	2	0
8(b)(2)(3)	3	0
8(b)(3)(6)	1	0
8(b)(1)(2)(3)	14	0.2
8(b)(1)(2)(6)	2	0
8(b)(1)(3)(5)	2	0
8(b)(1)(2)(3)(5)	1	0

Table 2.—Types of Unfair Labor Practices Alleged,Fiscal Year 2001—Continued

Recapitulation[1]		
8(b)(1)	5,437	83.0
8(b)(2)	488	7.4
8(b)(3)	424	6.5
8(b)(4)	654	10.0
8(b)(5)	6	0.1
8(b)(6)	8	0.1
8(b)(7)	100	1.5
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	614	100.0
8(b)(4)(A)	26	4.2
8(b)(4)(B)	365	59.4
8(b)(4)(C)	16	2.6
8(b)(4)(D)	167	27.2
8(b)(4)(A)(B)	31	5.0
8(b)(4)(A)(C)	1	0.2
8(b)(4)(B)(C)	8	1.3
Recapitulation[1]		
8(b)(4)(A)	58	9.4
8(b)(4)(B)	404	65.8
8(b)(4)(C)	25	4.1
8(b)(4)(D)	167	27.2
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	95	100.0
8(b)(7)(A)	18	18.9
8(b)(7)(B)	9	9.5
8(b)(7)(C)	63	66.3
8(b)(7)(A)(C)	3	3.2
8(b)(7)(B)(C)	2	2.1
Recapitulation[1]		
8(b)(7)(A)	21	22.1
8(b)(7)(B)	11	11.6
8(b)(7)(C)	68	71.6
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	27	100.0
Against unions alone	22	81.5
Against employers alone	3	11.1
Against both	2	7.4
D. Charges filed Sec. 8(g)		
Total cases 8(g)	35	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 2001[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	32	30	--	--	--	30	--	--	--	--	--	--	--
Complaints issued	3,559	2,247	1,988	143	35	--	2	1	2	3	32	38	3
Backpay specifications issued	149	76	71	3	1	--	0	0	0	0	0	1	0
Hearings completed, total	648	353	312	21	0	0	0	0	0	0	3	17	0
Initial ULP hearings	609	334	293	21	0	0	0	0	0	0	3	17	0
Backpay hearings	6	3	3	0	0	0	0	0	0	0	0	0	0
Other hearings	33	16	16	0	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total	921	422	360	31	0	0	0	1	0	0	5	23	2
Initial ULP decisions	743	357	300	29	0	0	0	1	0	0	5	20	2
Backpay decisions	10	6	6	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	168	59	54	2	0	0	0	0	0	0	0	3	0
Decisions and orders by the Board, total	1,375	696	586	45	8	13	0	3	1	3	14	22	1
Upon consent of parties:													
Initial decisions	52	20	16	1	2	0	0	0	0	1	0	0	0
Supplemental decisions	8	2	2	0	0	0	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	190	123	107	11	0	0	0	0	0	0	1	4	0
Backpay decisions	19	6	6	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	14	7	5	1	0	0	0	0	0	0	0	0	1
Contested:													
Initial ULP decisions	973	481	405	28	4	13	0	3	1	2	10	15	0
Decisions based on stipulated record	19	13	9	1	1	0	0	0	0	0	2	0	0
Supplemental ULP decisions	75	31	24	3	1	0	0	0	0	0	0	3	0
Backpay decisions	25	13	12	0	0	0	0	0	0	0	1	0	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2001[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	795	735	664	4	67	4
Initial hearing	621	575	522	3	50	0
Hearing on objections and/or challenges	174	160	142	1	17	4
Decisions issued, total	635	605	531	8	66	9
By Regional Director	586	559	497	5	57	9
Elections directed	472	453	412	1	40	9
Dismissals on record	114	106	85	4	17	0
By Board	49	46	34	3	9	0
Transferred by Regional Directors for initial decision.	1	1	1	0	0	0
Elections directed	0	0	0	0	0	0
Dismissals on record	1	1	1	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	291	283	233	18	32	1
Withdrawn before request ruled upon	5	5	4	0	1	0
Board action on request ruled upon, total	258	249	205	16	28	1
Granted	58	53	41	3	9	0
Denied	195	191	159	13	19	1
Remanded	5	5	5	0	0	0
Withdrawn after request granted, before Board review	1	1	1	0	0	0
Board decision after review, total	48	45	33	3	9	0
Regional Directors' decisions:						
Affirmed	32	29	21	3	5	0
Modified	3	3	3	0	0	0
Reversed	13	13	9	0	4	0
Outcome:						
Election directed	36	35	31	0	4	0
Dismissals on record	12	10	2	3	5	0
Decisions on Objections and/or Challenges, total	511	488	439	2	47	14
By Regional Directors	214	191	172	0	19	9
By Board	297	297	267	2	28	5
In stipulated elections	261	261	234	2	25	5
No Exceptions to Regional Directors' reports	142	142	125	1	16	3
Exceptions to Regional Directors' reports	119	119	109	1	9	2
In directed elections (after transfer by Regional Director)	33	33	30	0	3	0
Review of Regional Directors' supplemental decisions:						
Request for review received	33	33	25	1	7	0
Withdrawn before request ruled upon	2	2	1	0	1	0
Board action on request ruled upon, total	37	31	25	0	6	0
Granted	7	5	4	0	1	0
Denied	29	25	20	0	5	0
Remanded	1	1	1	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0

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

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2001[1]—Continued

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken	Total formal actions taken[2]	RC	RM	RD	UD
Board decision after review, total	3	3	3	0	0	0
Regional Directors' decisions:						
Affirmed	3	3	3	0	0	0
Modified	0	0	0	0	0	0
Reversed	0	0	0	0	0	0

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 2001[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case[2]	
		AC	UC
Hearings completed	66	3	55
Decisions issued after hearing	93	4	74
By Regional Directors	86	4	67
By Board	7	0	7
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	24	1	22
Withdrawn before request ruled upon	1	0	1
Board action on requests ruled upon, total	17	0	17
Granted	5	0	5
Denied	11	0	11
Remanded	1	0	1
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	7	0	7
Regional Directors' decisions:			
Affirmed	5	0	5
Modified	1	0	1
Reversed	1	0	1

[1] See Glossary of terms for definitions.

[2] While column at left counts "cases," these two columns reflect "situations," i.e. one or more unfair labor practice cases involving the same factual situation.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2001[1]

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved...	[2]11,366	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted ……..	2,060	1,791	1,517	29	57	108	80	269	243	4	6	12	4
Recognition or other assistance withdrawn …..…..….....	16	16	11	0	0	3	2	--	--	--	--	--	--
Employer–dominated union disestablished ……..	0	0	0	0	0	0	0	--	--	--	--	--	--
Employees offered reinstate-ment ……..….	1,256	1,256	1,142	7	19	48	40	--	--	--	--	--	--
Employees placed on prefe-rential hiring list …..…...	57	57	52	0	0	2	3	--	--	--	--	--	--
Hiring hall rights restored.....	13	--	--	--	--	--	--	13	12	0	0	0	1
Objections to employment withdrawn.....	7	--	--	--	--	--	--	7	7	0	0	0	0
Picketing ended.....	89	--	--	--	--	--	--	89	89	0	0	0	0
Work stoppage ended.....	26	--	--	--	--	--	--	26	26	0	0	0	0
Collective bargaining begun....	2,537	2,409	2,274	15	26	36	58	128	127	0	0	1	0
Backpay distributed.....	1,944	1,892	1,738	11	32	62	49	52	47	1	1	2	1
Reimbursement of fees, dues,and fines.....	113	56	48	0	2	2	4	57	52	0	0	3	2
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 reinstate-ment, total.....	4,138	4,138	2,384	10	661	174	909	--	--	--	--	--	--
Accepted.....	2,236	2,236	1,411	3	654	102	66	--	--	--	--	--	--

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2001—Continued

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Declined	1,902	1,902	973	7	7	72	843	--	--	--	--	--	--
Employees placed on preferential hiring list	674	674	599	0	0	35	40	--	--	--	--	--	--
Hiring hall rights restored	22	--	--	--	--	--	--	22	14	0	0	0	8
Objections to employment withdrawn	8	--	--	--	--	--	--	8	8	0	0	0	0
Employees receiving backpay:													
From either employer or union	28,562	27,582	24,245	184	827	1,380	946	980	963	0	1	8	8
From both employer and union	23	22	6	0	0	0	16	1	1	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	2,922	699	647	0	12	0	40	2,223	2,195	0	0	28	0
From both employer and union	318	222	213	0	0	8	1	96	94	0	0	0	2
C. By amounts of monetary recovery, total[3]	211,251,380	210,510,640	195,455,386	467,029	3,842,132	4,970,370	5,775,723	740,740	466,766	109,841	1,300	41,026	121,807
Backpay (includes all monetary payments except fees, dues, and fines)	208,873,052	208,394,916	194,991,961	467,029	3,808,897	4,061,306	5,065,723	478,136	208,831	109,841	1,300	36,623	121,541
Reimbursement of fees, dues,and fines	2,378,328	2,115,724	463,425	0	33,235	909,064	710,000	262,604	257,935	0	0	4,403	266

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2001 after the company and/or union had satisfied all remedial action requirements.
[2] A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.
[3] This total includes $130,000,000 awarded to approximately 8,000 employees in a case involving Lucent Technologies (6-CA-30583 et al.) that was resolved by voluntary agreement of the parties.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2001[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	64	63	59	4	0	0	0	0	0	1	0	0	1	0	0	0
Animal Production	48	35	29	6	0	0	0	0	0	12	11	0	1	0	0	1
Forestry and Logging	16	11	8	3	0	0	0	0	0	5	5	0	0	0	0	0
Fishing, Hunting and Trapping	4	4	3	1	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry	32	23	14	9	0	0	0	0	0	9	5	0	4	0	0	0
Agriculture, Forestry, Fishing, and Hunting	164	136	113	23	0	0	0	0	0	27	21	0	6	0	0	1
Oil and Gas Extraction	33	27	26	1	0	0	0	0	0	6	4	0	2	0	0	0
Mining (except Oil and Gas)	293	257	183	60	10	2	1	0	1	36	31	0	5	0	0	0
Support Activities for Mining	51	43	35	5	2	1	0	0	0	8	7	0	1	0	0	0
Mining	377	327	244	66	12	3	1	0	1	50	42	0	8	0	0	0
Utilities	736	583	464	113	4	2	0	0	0	132	111	0	21	3	1	17
Building, Developing and General Contracting	656	564	324	90	105	26	5	0	14	89	84	2	3	2	0	1
Heavy Construction	449	379	264	65	30	10	0	0	10	67	62	1	4	0	1	2
Special Trade Contractors	2,853	2339	1,667	459	105	71	5	0	32	507	461	16	30	1	0	6
Construction	3,958	3282	2,255	614	240	107	10	0	56	663	607	19	37	3	1	9
Food Manufacturing	1,078	931	734	185	9	2	0	0	1	132	107	4	21	5	0	10
Beverage and Tobacco Product Manufacturing	267	217	170	47	0	0	0	0	0	46	34	1	11	1	0	3
Textile Mills	40	36	29	7	0	0	0	0	0	4	0	0	4	0	0	0
Textile Product Mills	44	38	24	14	0	0	0	0	0	5	5	0	0	0	0	1
Apparel Manufacturing	147	124	88	31	3	0	0	0	2	20	14	1	5	2	1	0
Leather and Allied Product Manufacturing	34	29	22	7	0	0	0	0	0	4	4	0	0	1	0	0
31-Manufacturing	1,610	1375	1,067	291	12	2	0	0	3	211	164	6	41	9	1	14
Wood Product Manufacturing	171	141	114	24	0	1	1	0	1	29	24	0	5	1	0	0
Paper Manufacturing	536	479	389	89	1	0	0	0	0	52	37	1	14	3	0	2
Printing and Related Support Activities	186	146	122	24	0	0	0	0	0	34	27	1	6	0	0	6
Petroleum and Coal Products Manufacturing	124	106	80	23	3	0	0	0	0	17	15	0	2	0	0	1
Chemical Manufacturing	407	351	294	56	1	0	0	0	0	49	34	1	14	2	0	5

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2001[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
Plastics and Rubber Products Manufacturing	299	252	203	48	1	0	0	0	0	45	31	1	13	1	0	1
Nonmetallic Mineral Product Manufacturing	315	252	201	50	0	0	1	0	0	61	47	1	13	0	0	2
32-Manufacturing	2,038	1727	1,403	314	6	1	2	0	1	287	215	5	67	7	0	17
Primary Metal Manufacturing	766	680	526	149	2	0	3	0	0	84	68	1	15	2	0	0
Fabricated Metal Product Manufacturing	698	593	482	109	2	0	0	0	0	102	66	3	33	2	0	1
Machinery Manufacturing	495	426	351	72	2	0	1	0	0	66	47	3	16	2	0	1
Computer and Electronic Product Manufacturing	117	102	85	17	0	0	0	0	0	14	14	0	0	0	0	1
Electrical Equipment, Appliance, and Component Manufacturing	388	341	278	62	0	0	0	0	1	46	32	1	13	1	0	0
Transportation Equipment Manufacturing	1,505	1396	903	493	0	0	0	0	0	103	86	0	17	1	0	5
Furniture and Related Product Manufacturing	183	164	136	26	2	0	0	0	0	18	13	1	4	1	0	0
Miscellaneous Manufacturing	622	521	445	75	0	0	0	0	1	93	64	3	26	6	0	2
33-Manufacturing	4,774	4223	3,206	1,003	8	0	4	0	2	526	390	12	124	15	0	10
Wholesale Trade, Durable Goods	326	258	217	32	4	1	1	0	3	68	50	3	15	0	0	0
Wholesale Trade, Nondurable Goods	583	462	370	83	5	0	0	0	4	118	101	2	15	0	0	3
Wholesale Trade	909	720	587	115	9	1	1	0	7	186	151	5	30	0	0	3
Motor Vehicle and Parts Dealers	303	199	174	24	1	0	0	0	0	99	76	4	19	1	1	3
Furniture and Home Furnishings Stores	64	47	37	5	5	0	0	0	0	17	13	0	4	0	0	0
Electronics and Appliance Stores	22	18	16	2	0	0	0	0	0	4	4	0	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers	46	28	21	6	0	0	0	0	1	18	14	1	3	0	0	0
Food and Beverage Stores	714	584	442	135	4	0	1	0	2	117	101	2	14	1	1	11
Health and Personal Care Stores	108	79	64	14	1	0	0	0	0	29	23	0	6	0	0	0
Gasoline Stations	22	21	21	0	0	0	0	0	0	1	1	0	0	0	0	0
Clothing and Clothing Accessories Stores	73	60	45	14	1	0	0	0	0	13	12	0	1	0	0	0
44-Retail Trade	1,352	1036	820	200	12	0	1	0	3	298	244	7	47	2	2	14
Sporting Goods, Hobby, Book and Music Stores	16	14	13	1	0	0	0	0	0	2	2	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2001[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
General Merchandise Stores	238	193	178	13	2	0	0	0	0	44	34	3	7	0	0	1
Miscellaneous Store Retailers	90	62	58	1	3	0	0	0	0	27	26	1	0	0	0	1
Nonstore Retailers	44	36	27	7	1	0	0	0	1	7	6	1	0	1	0	0
45-Retail Trade	388	305	276	22	6	0	0	0	1	80	68	5	7	1	0	2
Air Transportation	67	35	29	6	0	0	0	0	0	30	24	1	5	1	1	0
Rail Transportation	33	29	18	9	2	0	0	0	0	4	4	0	0	0	0	0
Water Transportation	159	143	74	67	2	0	0	0	0	16	13	1	2	0	0	0
Truck Transportation	946	791	603	146	36	4	1	0	1	149	123	2	24	4	0	2
Transit and Ground Passenger Transportation	664	505	397	106	2	0	0	0	0	146	114	2	30	6	1	6
Pipeline Transportation	53	48	45	3	0	0	0	0	0	5	5	0	0	0	0	0
Scenic and Sightseeing Transportation	24	22	22	0	0	0	0	0	0	2	2	0	0	0	0	0
Support Activities for Transportation	252	189	130	56	1	2	0	0	0	58	51	0	7	1	0	4
48-Transportation	2,198	1,762	1,318	393	43	6	1	0	1	410	336	6	68	12	2	12
Postal Service	2,671	2,667	1,977	690	0	0	0	0	0	3	2	0	1	0	0	1
Couriers and Messengers	267	244	166	68	9	0	1	0	0	22	20	0	2	1	0	0
Warehousing and Storage Facilities	479	376	319	51	2	4	0	0	0	102	90	2	10	1	0	0
49-Transportation	3,417	3,287	2,462	809	11	4	1	0	0	127	112	2	13	2	0	1
Publishing Industries	356	310	241	67	2	0	0	0	0	40	30	0	10	1	0	5
Motion Picture and Sound Recording Industries	48	41	23	16	0	2	0	0	0	5	4	0	1	0	0	2
Broadcasting and Telecommunications	1,098	959	771	177	3	7	1	0	0	125	82	4	39	1	0	13
Information Services and Data Processing Services	106	88	71	17	0	0	0	0	0	17	16	0	1	0	0	1
Information	1,608	1,398	1,106	277	5	9	1	0	0	187	132	4	51	2	0	21
Monetary Authorities - Central Bank	17	15	13	2	0	0	0	0	0	1	1	0	0	0	0	1
Credit Intermediation and Related Activities	47	39	34	4	1	0	0	0	0	7	2	1	4	1	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2001[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
Securities, Commodity Contracts and Other Intermediation and Related Activities	5	4	3	1	0	0	0	0	0	1	1	0	0	0	0	0
Insurance Carriers and Related Activities	49	47	40	7	0	0	0	0	0	0	0	0	0	0	0	2
Funds, Trusts and Other Financial Vehicles (U.S. Only)	13	13	10	3	0	0	0	0	0	0	0	0	0	0	0	0
Finance and Insurance	131	118	100	17	1	0	0	0	0	9	4	1	4	1	0	3
Real Estate	202	184	120	51	8	1	1	0	3	17	14	1	2	0	0	1
Rental and Leasing Services	178	121	107	11	2	1	0	0	0	56	45	0	11	0	0	1
Owners and Lessors of Other Non-Financial Assets	12	5	3	2	0	0	0	0	0	7	5	0	2	0	0	0
Real Estate and Rental and Leasing	392	310	230	64	10	2	1	0	3	80	64	1	15	0	0	2
Professional, Scientific and Technical Services	336	259	212	43	4	0	0	0	0	71	58	1	12	3	0	3
Management of Companies and Enterprises	76	64	45	16	2	1	0	0	0	12	9	1	2	0	0	0
Administrative and Support Services	1,329	1,121	814	295	7	3	0	0	2	202	181	2	19	2	2	2
Waste Management and Remediation Services	511	352	288	51	6	4	1	0	2	153	142	0	11	3	0	3
Administrative and Support, Waste Management and Remediation Services	1,840	1,473	1,102	346	13	7	1	0	4	355	323	2	30	5	2	5
Educational Services	335	238	183	44	11	0	0	0	0	91	75	5	11	0	0	6
Ambulatory Health Care Services	376	289	249	33	0	0	0	7	0	86	70	2	14	0	0	1
Hospitals	1,570	1284	1,038	221	6	1	0	17	1	248	203	4	41	4	5	29
Nursing and Residential Care Facilities	1,482	1124	966	147	1	0	0	10	0	317	239	11	67	12	2	27
Social Assistance	316	236	203	33	0	0	0	0	0	70	61	3	6	4	0	6
Health Care and Social Assistance	3,744	2,933	2,456	434	7	1	0	34	1	721	573	20	128	20	7	63
Performing Arts, Spectator Sports and Related Industries	304	253	130	99	5	12	0	0	7	45	39	2	4	1	1	4
Museums, Historical Sites and Similar Institutions	20	17	9	6	2	0	0	0	0	3	3	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2001[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
Amusement, Gambling and Recreation Industries..	257	214	172	38	1	2	0	0	1	42	32	2	8	1	0	0
Arts, Entertainment and Recreation.....	581	484	311	143	8	14	0	0	8	90	74	4	12	2	1	4
Accommodation.....	679	561	441	109	9	1	1	0	0	112	91	6	15	6	0	0
Foodservices and Drinking Places.....	390	325	251	68	3	0	1	1	1	57	39	2	16	4	0	4
Accommodation and Foodservices.....	1,069	886	692	177	12	1	2	1	1	169	130	8	31	10	0	4
Repair and Maintenance.....	228	172	117	51	2	2	0	0	0	47	37	0	10	5	0	4
Personal and Laundry Services.....	313	232	190	39	2	0	0	0	1	76	50	5	21	4	0	1
Religious, Grantmaking, Civic, and Professional and Similar Organizations.....	283	261	138	114	5	2	1	0	1	19	16	2	1	0	0	3
Private Households.....	9	7	5	2	0	0	0	0	0	2	1	0	1	0	0	0
Other Services (except Public Administration)	833	672	450	206	9	4	1	0	2	144	104	7	33	9	0	8
Executive, Legislative, Public Finance and General Government.....	28	26	19	7	0	0	0	0	0	2	2	0	0	0	0	0
Justice, Public Order, and Safety.....	101	73	60	12	1	0	0	0	0	27	25	0	2	1	0	0
Administration of Human Resource Programs.....	3	2	2	0	0	0	0	0	0	1	1	0	0	0	0	0
Administration of Environmental Quality Programs.....	6	4	3	1	0	0	0	0	0	1	1	0	0	0	0	1
Administration of Housing Programs, Urban Planning, and Community Development.....	7	6	6	0	0	0	0	0	0	0	0	0	0	0	0	1
Space Research and Technology.....	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0
National Security and International Affairs.....	18	13	13	0	0	0	0	0	0	5	4	0	1	0	0	0
Public Administration.....	165	126	105	20	1	0	0	0	0	36	33	0	3	1	0	2
Unclassified Establishments.....	426	329	257	71	0	1	0	0	0	90	70	4	16	2	0	5
Total, all industrial groups.....	33,457	28,053	21,464	5,821	446	166	27	35	94	5,052	4,110	125	817	109	17	226

[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 2001[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	2,004	1616	1,066	378	98	46	1	3	24	374	297	11	66	5	0	9
Indiana	950	819	688	123	5	3	0	0	0	127	97	4	26	2	0	2
Michigan	1,825	1544	1,082	425	20	9	2	2	4	265	207	7	51	9	0	7
Ohio	2,132	1855	1,418	394	31	6	1	2	3	257	206	2	49	5	1	14
Wisconsin	654	534	391	132	4	4	1	2	0	112	84	1	27	2	0	6
East North Central	7,565	6368	4,645	1,452	158	68	5	9	31	1,135	891	25	219	23	1	38
Alabama	449	400	323	77	0	0	0	0	0	48	32	3	13	1	0	0
Kentucky	493	407	345	55	2	0	1	3	1	80	63	1	16	1	0	5
Mississippi	179	165	128	37	0	0	0	0	0	13	12	0	1	0	1	0
Tennessee	547	481	374	105	2	0	0	0	0	63	46	2	15	0	0	3
East South Central	1,668	1453	1,170	274	4	0	1	3	1	204	153	6	45	2	1	8
New Jersey	1,476	1196	909	246	25	11	0	1	4	262	229	7	26	9	0	9
New York	3,743	3143	2,054	955	76	24	3	5	26	561	483	16	62	14	1	24
Pennsylvania	2,096	1735	1,374	307	30	20	1	1	2	338	284	7	47	5	3	15
Middle Atlantic	7,315	6074	4,337	1,508	131	55	4	7	32	1161	996	30	135	28	4	48
Arizona	347	311	264	44	3	0	0	0	0	34	29	0	5	1	0	1
Colorado	511	468	386	77	4	0	1	0	0	35	25	0	10	5	0	3
Idaho	79	64	57	7	0	0	0	0	0	9	8	0	1	0	1	5
Montana	97	76	66	10	0	0	0	0	0	19	10	1	8	1	0	1
New Mexico	179	156	136	20	0	0	0	0	0	22	15	0	7	0	0	1
Nevada	503	414	323	81	1	7	0	1	1	85	79	0	6	0	1	3
Utah	105	92	77	13	2	0	0	0	0	12	9	0	3	0	0	1
Wyoming	30	22	18	4	0	0	0	0	0	8	6	0	2	0	0	0
Mountain	1,851	1603	1,327	256	10	7	1	1	1	224	181	1	42	7	2	15
Connecticut	587	502	417	76	5	1	0	2	1	77	58	2	17	2	0	6
Massachusetts	913	768	641	107	12	7	0	1	0	132	112	2	18	4	1	8
Maine	111	96	79	16	0	1	0	0	0	15	12	0	3	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2001[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
New Hampshire	70	59	49	10	0	0	0	0	0	10	9	0	1	0	0	1
Rhode Island	166	139	122	14	1	0	2	0	0	25	22	0	3	1	0	1
Vermont	69	52	43	7	1	0	0	1	0	12	11	0	1	0	1	4
New England	1,916	1616	1,351	230	19	9	2	4	1	271	224	4	43	7	2	20
Puerto Rico	467	376	297	75	2	0	0	2	0	76	63	0	13	0	0	15
Virgin Islands	26	21	13	8	0	0	0	0	0	5	5	0	0	0	0	0
Outlying Areas	493	397	310	83	2	0	0	2	0	81	68	0	13	0	0	15
Alaska	130	83	64	18	1	0	0	0	0	44	39	2	3	2	0	1
American Samoa	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
California	3,688	3106	2,385	645	46	6	9	4	11	540	443	23	74	18	3	21
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	293	246	196	50	0	0	0	0	0	43	35	2	6	2	0	2
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	5	4	4	0	0	0	0	0	0	1	0	1	0	0	0	0
Oregon	319	235	169	53	6	2	1	0	4	73	64	2	7	7	1	3
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	785	641	504	124	10	1	1	1	0	127	91	2	34	6	1	10
Pacific	5,226	4321	3,328	890	63	9	11	5	15	828	672	32	124	35	5	37
District of Columbia	186	140	97	39	2	0	0	2	0	41	36	1	4	0	0	5
Delaware	128	100	83	16	0	1	0	0	0	28	24	0	4	0	0	0
Florida	1,221	1046	908	136	2	0	0	0	0	173	158	2	13	0	0	2
Georgia	519	468	364	100	4	0	0	0	0	48	41	0	7	0	0	3
Maryland	349	275	226	45	3	0	0	1	0	74	64	0	10	0	0	0
North Carolina	325	297	242	53	2	0	0	0	0	27	15	2	10	0	0	1
South Carolina	137	120	103	17	0	0	0	0	0	17	13	0	4	0	0	0
Virginia	433	367	325	40	0	1	0	1	0	64	55	0	9	0	1	1
West Virginia	369	310	250	54	2	2	0	0	2	59	52	0	7	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2001[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
South Atlantic	3,667	3123	2,598	500	15	4	0	4	2	531	458	5	68	0	1	12
Iowa	211	153	131	19	2	1	0	0	0	52	36	1	15	0	0	6
Kansas	192	161	123	33	2	0	0	0	3	30	21	1	8	0	0	1
Minnesota	428	291	234	49	5	0	1	0	2	125	94	0	31	3	0	9
Missouri	921	759	530	184	27	11	2	0	5	149	102	11	36	3	1	9
North Dakota	49	39	26	7	5	0	0	0	1	10	10	0	0	0	0	0
Nebraska	74	53	49	4	0	0	0	0	0	19	16	1	2	0	0	2
South Dakota	24	16	15	1	0	0	0	0	0	8	6	0	2	0	0	0
West North Central	1,899	1472	1,108	297	41	12	3	0	11	393	285	14	94	6	1	27
Arkansas	200	178	137	40	0	0	0	0	1	21	17	1	3	0	0	1
Louisiana	299	261	193	65	2	1	0	0	0	36	30	2	4	0	0	2
Oklahoma	240	196	161	35	0	0	0	0	0	43	33	2	8	1	0	0
Texas	1,166	1037	829	206	1	1	0	0	0	126	105	2	19	0	0	3
West South Central	1,905	1672	1,320	346	3	2	0	0	1	226	185	7	34	1	0	6
Total, all States and areas	33,505	28099	21,494	5,836	446	166	27	35	95	5,054	4,113	124	817	109	17	226

[1] See Glossary of terms for definitions.

[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 2001[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	587	502	417	76	5	1	0	2	1	77	58	2	17	2	0	6
Massachusetts	913	768	641	107	12	7	0	1	0	132	112	2	18	4	1	8
Maine	111	96	79	16	0	1	0	0	0	15	12	0	3	0	0	0
New Hampshire	70	59	49	10	0	0	0	0	0	10	9	0	1	0	0	1
Rhode Island	166	139	122	14	1	0	2	0	0	25	22	0	3	1	0	1
Vermont	69	52	43	7	1	0	0	1	0	12	11	0	1	0	1	4
Region I	1,916	1616	1,351	230	19	9	2	4	1	271	224	4	43	7	2	20
Delaware	128	100	83	16	0	1	0	0	0	28	24	0	4	0	0	0
New Jersey	1,476	1196	909	246	25	11	0	1	4	262	229	7	26	9	0	9
New York	3,743	3143	2,054	955	76	24	3	5	26	561	483	16	62	14	1	24
Puerto Rico	467	376	297	75	2	0	0	2	0	76	63	0	13	0	0	15
Virgin Islands	26	21	13	8	0	0	0	0	0	5	5	0	0	0	0	0
Region II	5,840	4836	3,356	1,300	103	36	3	8	30	932	804	23	105	23	1	48
District Of Columbia	186	140	97	39	2	0	0	2	0	41	36	1	4	0	0	5
Maryland	349	275	226	45	3	0	0	1	0	74	64	0	10	0	0	0
Pennsylvania	2,096	1735	1,374	307	30	20	1	1	2	338	284	7	47	5	3	15
Virginia	433	367	325	40	0	1	0	1	0	64	55	0	9	0	1	1
West Virginia	369	310	250	54	2	2	0	0	2	59	52	0	7	0	0	0
Region III	3,433	2827	2,272	485	37	23	1	5	4	576	491	8	77	5	4	21
Alabama	449	400	323	77	0	0	0	0	0	48	32	3	13	1	0	0
Florida	1,221	1046	908	136	2	0	0	0	0	173	158	2	13	0	0	2
Georgia	519	468	364	100	4	0	0	0	0	48	41	0	7	0	0	3
Kentucky	493	407	345	55	2	0	1	3	1	80	63	1	16	1	0	5
Mississippi	179	165	128	37	0	0	0	0	0	13	12	0	1	0	1	0
North Carolina	325	297	242	53	2	0	0	0	0	27	15	2	10	0	0	1
South Carolina	137	120	103	17	0	0	0	0	0	17	13	0	4	0	0	0
Tennessee	547	481	374	105	2	0	0	0	0	63	46	2	15	0	0	3
Region IV	3,870	3384	2,787	580	12	0	1	3	1	469	380	10	79	2	1	14
Illinois	2,004	1616	1,066	378	98	46	1	3	24	374	297	11	66	5	0	9
Indiana	950	819	688	123	5	3	0	0	0	127	97	4	26	2	0	2
Michigan	1,825	1544	1,082	425	20	9	2	2	4	265	207	7	51	9	0	7
Minnesota	428	291	234	49	5	0	1	0	2	125	94	0	31	3	0	9
Ohio	2,132	1855	1,418	394	31	6	1	2	3	257	206	2	49	5	1	14
Wisconsin	654	534	391	132	4	4	1	2	0	112	84	1	27	2	0	6
Region V	7,993	6659	4,879	1,501	163	68	6	9	33	1260	985	25	250	26	1	47
Arkansas	200	178	137	40	0	0	0	0	1	21	17	1	3	0	0	1
Louisiana	299	261	193	65	2	1	0	0	0	36	30	2	4	0	0	2

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2001[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
New Mexico	179	156	136	20	0	0	0	0	0	22	15	0	7	0	0	1
Oklahoma	240	196	161	35	0	0	0	0	0	43	33	2	8	1	0	0
Texas	1,166	1,037	829	206	1	1	0	0	0	126	105	2	19	0	0	3
Region VI	2,084	1,828	1,456	366	3	2	0	0	1	248	200	7	41	1	0	7
Iowa	211	153	131	19	2	1	0	0	0	52	36	1	15	0	0	6
Kansas	192	161	123	33	2	0	0	0	3	30	21	1	8	0	0	1
Missouri	921	759	530	184	27	11	2	0	5	149	102	11	36	3	1	9
Nebraska	74	53	49	4	0	0	0	0	0	19	16	1	2	0	0	2
Region VII	1,398	1,126	833	240	31	12	2	0	8	250	175	14	61	3	1	18
Colorado	511	468	386	77	4	0	1	0	0	35	25	0	10	5	0	3
Montana	97	76	66	10	0	0	0	0	0	19	10	1	8	1	0	1
North Dakota	49	39	26	7	5	0	0	0	1	10	10	0	0	0	0	0
South Dakota	24	16	15	1	0	0	0	0	0	8	6	0	2	0	0	0
Utah	105	92	77	13	2	0	0	0	0	12	9	0	3	0	0	1
Wyoming	30	22	18	4	0	0	0	0	0	8	6	0	2	0	0	0
Region VIII	816	713	588	112	11	0	1	0	1	92	66	1	25	6	0	5
American Samoa	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	347	311	264	44	3	0	0	0	0	34	29	0	5	1	0	1
California	3,688	3,106	2,385	645	46	6	9	4	11	540	443	23	74	18	3	21
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	293	246	196	50	0	0	0	0	0	43	35	2	6	2	0	2
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	5	4	4	0	0	0	0	0	0	1	0	1	0	0	0	0
Nevada	503	414	323	81	1	7	0	1	1	85	79	0	6	0	1	3
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX	4,842	4,087	3,178	820	50	13	9	5	12	703	586	26	91	21	4	27
Alaska	130	83	64	18	1	0	0	0	0	44	39	2	3	2	0	1
Idaho	79	64	57	7	0	0	0	0	0	9	8	0	1	0	1	5
Oregon	319	235	169	53	6	2	1	0	4	73	64	2	7	7	1	3
Washington	785	641	504	124	10	1	1	1	0	127	91	2	34	6	1	10
Region X	1,313	1,023	794	202	17	3	2	1	4	253	202	6	45	15	3	19
Total, all States and areas	33,505	28,099	21,494	5,836	446	166	27	35	95	5,054	4,113	124	817	109	17	226

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

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2001[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	29,670	100.0	--	22,745	100.0	6,158	100.0	428	100.0	171	100.0	29	100.0	23	100.0	116	100.0
Agreement of the parties	10,876	36.7	100.0	9,624	42.3	1,001	16.3	183	42.8	3	1.8	14	48.3	7	30.4	44	37.9
Informal settlement	10,820	36.5	99.5	9,572	42.1	997	16.2	183	42.8	3	1.8	14	48.3	7	30.4	44	37.9
Before issuance of complaint	8,108	27.3	74.5	7,036	30.9	859	13.9	158	36.9	2	1.2	11	37.9	6	26.1	36	31.0
After issuance of complaint, before opening of hearing	2,577	8.7	23.7	2,407	10.6	133	2.2	25	5.8	0	0.0	3	10.3	1	4.3	8	6.9
After hearing opened, before issuance of administrative law judge's decision	135	0.5	1.2	129	0.6	5	0.1	0	0.0	1	0.6	0	0.0	0	0.0	0	0.0
Formal settlement	56	0.2	0.5	52	0.2	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	54	0.2	0.5	50	0.2	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	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
Consent decree	52	0.2	0.5	48	0.2	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened	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
Stipulated decision	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	738	2.5	100.0	672	3.0	53	0.9	10	2.3	1	0.6	1	3.4	0	0.0	1	0.9
Administrative law judge's decision	4	0.0	0.5	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	430	1.4	58.3	388	1.7	37	0.6	2	0.5	1	0.6	1	3.4	0	0.0	1	0.9
Adopting administrative law judge's decision (no exceptions filed)	145	0.5	19.6	124	0.5	19	0.3	2	0.5	0	0.0	0	0.0	0	0.0	0	0.0
Contested	285	1.0	38.6	264	1.2	18	0.3	0	0.0	1	0.6	1	3.4	0	0.0	1	0.9
Circuit court of appeals decree	304	1.0	41.2	280	1.2	16	0.3	8	1.9	0	0.0	0	0.0	0	0.0	0	0.0
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
Withdrawal	8,496	28.6	100.0	6,590	29.0	1,691	27.5	163	38.1	0	0.0	7	24.1	9	39.1	36	31.0

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2001[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
Before issuance of complaint	8,250	27.8	97.1	6,365	28.0	1,674	27.2	159	37.1	0	0.0	7	24.1	9	39.1	36	31.0
After issuance of complaint, before opening of hearing	136	0.5	1.6	121	0.5	11	0.2	4	0.9	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	22	0.1	0.3	21	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision	63	0.2	0.7	59	0.3	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	25	0.1	0.3	24	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	9,185	31.0	100.0	5,661	24.9	3,410	55.4	60	14.0	5	2.9	7	24.1	7	30.4	35	30.2
Before issuance of complaint	8,958	30.2	97.5	5,466	24.0	3,382	54.9	58	13.6	4	2.3	6	20.7	7	30.4	35	30.2
After issuance of complaint, before opening of hearing	79	0.3	0.9	69	0.3	9	0.1	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	23	0.1	0.3	22	0.1	0	0.0	0	0.0	1	0.6	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	7	0.0	0.1	7	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	109	0.4	1.2	88	0.4	19	0.3	1	0.2	0	0.0	1	3.4	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	53	0.2	0.6	43	0.2	10	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	56	0.2	0.6	45	0.2	9	0.1	1	0.2	0	0.0	1	3.4	0	0.0	0	0.0
By circuit court of appeals decree	8	0.0	0.1	8	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	162	0.5	--	0	0.0	0	0.0	0	0.0	162	94.7	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)	213	0.7	--	198	0.9	3	0.0	12	2.8	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 2001[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	162	100.0
Agreement of the parties-informal settlement	64	39.5
Before 10(k) notice	54	33.3
After 10(k) notice, before opening of 10(k) hearing	9	5.6
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
After Board decision and determination of dispute	1	0.6
Compliance with Board decision and determination of dispute	2	1.2
Withdrawal	61	37.7
Before 10(k) notice	55	34.0
After 10(k) notice, before opening of 10(k) hearing	5	3.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.6
After Board decision and determination of dispute	0	0.0
Dismissal	35	21.6
Before 10(k) notice	31	19.1
After 10(k) notice, before opening of 10(k) hearing	2	1.2
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	1.2
By Board decision and determination of dispute	0	0.0

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2001[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	29,825	100.0	22,834	100.0	6,216	100.0	432	100.0	174	100.0	29	100.0	23	100.0	117	100.0
Before issuance of complaint	25,541	85.6	18,922	82.9	5,944	95.6	375	86.8	146	83.9	24	82.8	22	95.7	108	92.3
After issuance of complaint, before opening of hearing	2,875	9.6	2,634	11.5	177	2.8	34	7.9	18	10.3	3	10.3	1	4.3	8	6.8
After hearing opened, before issuance of administrative law judge's decision	196	0.7	184	0.8	7	0.1	0	0.0	5	2.9	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	82	0.3	78	0.3	4	0.1	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	248	0.8	217	1.0	25	0.4	2	0.5	4	2.3	0	0.0	0	0.0	0	0.0
After Board decision, before circuit court decree	427	1.4	371	1.6	39	0.6	13	3.0	1	0.6	2	6.9	0	0.0	1	0.9
After circuit court decree, before Supreme Court action	453	1.5	425	1.9	20	0.3	8	1.9	0	0.0	0	0.0	0	0.0	0	0.0
After Supreme Court action	3	0.0	3	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.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2001[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	5,151	100.0	4,207	100.0	141	100.0	803	100.0	91	100.0
Before issuance of notice of hearing	878	17.0	576	13.7	41	29.1	261	32.5	59	64.8
After issuance of notice, before close of hearing	3,433	66.6	2,919	69.4	60	42.6	454	56.5	17	18.7
After hearing closed, before issuance of decision	129	2.5	112	2.7	2	1.4	15	1.9	2	2.2
After issuance of Regional Director's decision	450	8.7	395	9.4	13	9.2	42	5.2	8	8.8
After issuance of Board decision[2]	261	5.1	205	4.9	25	17.7	31	3.9	5	5.5

[1] See Glossary of terms for definitions.
[2] Cases closed after Board decision includes all cases where the Board has granted review in a preelection case, or exceptions have been filed in a post election proceeding.

Table 10—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2001[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	5,108	100.0	4,172	100.0	141	100.0	795	100.0	90	100.0
Certification issued, total	3,005	58.8	2,607	62.5	43	30.5	355	44.7	50	55.6
After:										
Consent election	3	0.1	3	0.1	0	0.0	0	0.0	0	0.0
Before notice of hearing	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
After notice of hearing, before hearing closed	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
After hearing closed, before decision	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	2,499	48.9	2,153	51.6	35	24.8	311	39.1	34	37.8
Before notice of hearing	458	9.0	350	8.4	10	7.1	98	12.3	24	26.7
After notice of hearing, before hearing closed	1,980	38.8	1,750	41.9	24	17.0	206	25.9	10	11.1
After hearing closed, before decision	61	1.2	53	1.3	1	0.7	7	0.9	0	0.0
Expedited election	2	0.0	0	0.0	2	1.4	0	0.0	0	0.0
Regional Director-directed election	306	6.0	280	6.7	3	2.1	23	2.9	11	12.2
Board-directed election	195	3.8	171	4.1	3	2.1	21	2.6	5	5.6
By withdrawal, total	1,789	35.0	1,438	34.5	46	32.6	305	38.4	36	40.0
Before notice of hearing	329	6.4	206	4.9	19	13.5	104	13.1	29	32.2
After notice of hearing, before hearing closed	1,263	24.7	1,048	25.1	26	18.4	189	23.8	5	5.6
After hearing closed, before decision	59	1.2	52	1.2	1	0.7	6	0.8	2	2.2
After Regional Director's decision and direction of election	118	2.3	112	2.7	0	0.0	6	0.8	0	0.0
After Board decision and direction of election	20	0.4	20	0.5	0	0.0	0	0.0	0	0.0
By dismissal, total	314	6.1	127	3.0	52	36.9	135	17.0	4	4.4
Before notice of hearing	81	1.6	12	0.3	11	7.8	58	7.3	4	4.4
After notice of hearing, before hearing closed	112	2.2	52	1.2	10	7.1	50	6.3	0	0.0
After hearing closed, before decision	4	0.1	2	0.0	0	0.0	2	0.3	0	0.0
By Regional Director's decision	71	1.4	47	1.1	9	6.4	15	1.9	0	0.0
By Board decision	46	0.9	14	0.3	22	15.6	10	1.3	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 2001[1]

	AC	UC
Total, all	36	217
Certification amended or unit clarified	6	24
Before hearing	6	2
By Regional Director's decision	5	1
By Board decision	1	1
After hearing	0	22
By Regional Director's decision	0	16
By Board decision	0	6
Dismissed	19	52
Before hearing	18	15
By Regional Director's decision	18	14
By Board decision	0	1
After hearing	1	37
By Regional Director's decision	1	33
By Board decision	0	4
Withdrawn	10	141
Before hearing	9	135
After hearing	1	6

[1] See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2001[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed[3]	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	[2]3,081	3	2,555	0	521	2
Eligible voters	237,238	358	184,751	0	51,988	141
Valid votes	200,444	327	157,721	0	42,286	110
RC cases:						
Elections	2,631	3	2,172	0	456	0
Eligible voters	202,937	358	158,774	0	43,805	0
Valid votes	173,236	327	137,108	0	35,801	0
RM cases:						
Elections	43	0	35	0	6	2
Eligible voters	2,754	0	2,231	0	382	141
Valid votes	2,297	0	1,874	0	313	110
RD cases:						
Elections	358	0	314	0	44	0
Eligible voters	25,283	0	19,394	0	5,889	0
Valid votes	21,202	0	16,454	0	4,748	0
UD cases:						
Elections	49	0	34	0	15	--
Eligible voters	6,264	0	4,352	0	1,912	--
Valid votes	3,709	0	2,285	0	1,424	--

[1] See Glossary of terms for definitions.
[2] Due to technical difficulties, data discrepancies exceed 2 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.
[3] 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 2001

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	3,190	94	65	3,031	2,781	91	60	2,630	46	1	2	43	363	2	3	358
Rerun required	--	--	57	--	--	--	53	--	--	--	1	--	--	--	3	--
Runoff required	--	--	8	--	--	--	7	--	--	--	1	--	--	--	0	--
Consent elections	4	1	0	3	4	1	0	3	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--
Stipulated elections	2,613	56	37	2,520	2,258	53	34	2,171	37	1	1	35	318	2	2	314
Rerun required	--	--	33	--	--	--	31	--	--	--	0	--	--	--	2	--
Runoff required	--	--	4	--	--	--	3	--	--	--	1	--	--	--	0	--
Regional Director–directed	571	37	28	506	519	37	26	456	7	0	1	6	45	0	1	44
Rerun required	--	--	24	--	--	--	22	--	--	--	1	--	--	--	1	--
Runoff required	--	--	4	--	--	--	4	--	--	--	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)	2	0	0	2	0	0	0	0	2	0	0	2	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--
Runoff required	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--

[1] The total of representation elections resulting in certification excludes election 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 2001

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	3,192	137	4.3	57	1.8	12	0.4	149	4.7	69	2.2
By type of cases:											
In RC cases	2,783	123	4.4	52	1.9	10	0.4	133	4.8	62	2.2
In RM cases	46	1	2.2	0	0.0	0	0.0	1	2.2	0	0.0
In RD cases	363	13	3.6	5	1.4	2	0.6	15	4.1	7	1.9
By type of election:											
Consent elections	4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	2,614	34	1.3	38	1.5	4	0.2	38	1.5	42	1.6
Expedited elections	2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	572	103	18.0	19	3.3	8	1.4	111	19.4	27	4.7
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 2001[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	251	100.0	114	45.4	127	50.6	9	3.6
By type of case:								
RC cases	229	100.0	108	47.2	111	48.5	9	3.9
RM cases	1	100.0	1	100.0	0	0.0	0	0.0
RD cases	21	100.0	5	23.8	16	76.2	0	0.0
By type of election:								
Consent elections	1	100.0	1	100.0	0	0.0	0	0.0
Stipulated elections	122	100.0	46	37.7	73	59.8	3	2.5
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	128	100.0	67	52.3	54	42.2	6	4.7
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 2001[1]

Type of election/case	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	251	102	149	143	96.0	6	4.0
By type of case:							
RC cases	229	96	133	127	95.5	6	4.5
RM cases	1	0	1	1	100.0	0	0.0
RD cases	21	6	15	15	100.0	0	0.0
By type of election:							
Consent elections	1	1	0	0	0.0	0	0.0
Stipulated elections	122	84	38	36	94.7	2	5.3
Expedited elections	0	0	0	0	0.0	0	0.0
Regional Director-directed elections	128	17	111	107	96.4	4	3.6
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 2001[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	36	100.0	11	30.6	25	69.4	10	27.8
By type of case:								
RC cases	35	100.0	11	31.4	24	68.6	9	25.7
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	1	100.0
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	25	100.0	6	24.0	19	76.0	5	20.0
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	11	100.0	5	45.5	6	54.5	5	45.5
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 2001[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	48	12	25.0	36	75.0	6,163	3,153	51.2	3,010	48.8	3,615	58.7	1,284	20.8
AFL-CIO unions	44	9	20.5	35	79.5	5,691	2,715	47.7	2,976	52.3	3,344	58.8	1,021	17.9
Other national unions	1	0.0	0.0	1	100.0	34	0	0.0	34	100.0	8	23.5	0	0.0
Other local unions	3	3	100.0	0	0.0	438	438	100.0	0	0.0	263	60.0	263	60.0

[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 2001[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	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO	2,665	49.3	1,314	1,306	8	--	1,351	201,520	76,082	73,479	2,603	--	125,438
Other local unions	121	61.2	74	--	--	74	47	8,836	4,191	--	--	4,191	4,645
Other national unions	118	61.0	72	--	72	--	46	9,714	4,330	--	4,330	--	5,384
1-union elections	2,904	50.3	1,460	1,306	80	74	1,444	220,070	84,603	73,479	6,933	4,191	135,467
National v. Local	5	80.0	4	--	2	2	1	492	329	--	141	188	163
AFL-CIO v. Local	32	78.1	25	19	--	6	7	3,489	3,080	1,987	--	1,093	409
Local v. Local	8	87.5	7	--	--	7	1	552	546	--	--	546	6
AFL-CIO v. National	20	75.0	15	11	4	--	5	1,986	1,713	793	920	--	273
National v. National	3	66.7	2	--	2	--	1	106	72	--	72	--	34
AFL-CIO v. AFL-CIO	97	73.2	71	71	--	--	26	6,009	3,544	3,544	--	--	2,465
2-union elections	165	75.2	124	101	8	15	41	12,634	9,284	6,324	1,133	1,827	3,350
AFL-CIO v. AFL-CIO v. Local	4	100.0	4	4	--	0	0	1,286	1,286	1,286	--	0	0
AFL-CIO v. Local v. Local	1	100.0	1	1	--	0	0	140	140	140	--	0	0
AFL-CIO v. AFL-CIO v. AFL-CIO	2	100.0	2	2	--	--	0	95	95	95	--	--	0
3 (or more)-union elections	7	100.0	7	7	0	0	0	1,521	1,521	1,521	0	0	0
Total representation elections	3,076	51.7	1,591	1,414	88	89	1,485	234,225	95,408	81,324	8,066	6,018	138,817
B. Elections in RC cases													
AFL-CIO	2,296	52.1	1,197	1,190	7	--	1,099	175,848	61,980	61,813	167	--	113,868
Other local unions	104	63.5	66	--	--	66	38	7,343	3,436	--	--	3,436	3,907
Other national unions	108	63.9	69	--	69	--	39	9,017	3,906	--	3,906	--	5,111
1-union elections	2,508	53.1	1,332	1,190	76	66	1,176	192,208	69,322	61,813	4,073	3,436	122,886

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2001[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
National v. Local	5	80.0	4	--	2	2	1	492	329	--	141	188	163
AFL-CIO v. Local	31	77.4	24	18	--	6	7	3,452	3,043	1,950	--	1,093	409
Local v. Local	8	87.5	7	--	--	7	1	552	546	--	--	546	6
AFL-CIO v. National	18	83.3	15	11	4	--	3	1,929	1,713	793	920	--	216
National v. National	3	66.7	2	--	2	--	1	106	72	--	72	--	34
AFL-CIO v. AFL-CIO	92	73.9	68	68	--	--	24	5,462	3,065	3,065	--	--	2,397
2-union elections	157	76.4	120	97	8	15	37	11,993	8,768	5,808	1,133	1,827	3,225
AFL-CIO v. AFL-CIO v. Local	4	100.0	4	4	--	0	0	1,286	1,286	1,286	--	0	0
AFL-CIO v. Local v. Local.	1	100.0	1	1	--	0	0	140	140	140	--	0	0
AFL-CIO v. AFL-CIO v. AFL-CIO.	2	100.0	2	2	--	--	0	95	95	95	--	--	0
3 (or more)-union elections	7	100.0	7	7	0	0	0	1,521	1,521	1,521	0	0	0
Total RC elections	2,672	54.6	1,459	1,294	84	81	1,213	205,722	79,611	69,142	5,206	5,263	126,111
C. Elections in RM cases													
AFL-CIO	34	23.5	8	8	--	--	26	2,350	695	695	--	--	1,655
Other local unions	3	33.3	1	--	--	1	2	22	6	--	--	6	16
Other national unions	1	0.0	0	--	0	--	1	30	0	--	0	--	30
1-union elections	38	23.7	9	8	0	1	29	2,402	701	695	0	6	1,701
AFL-CIO v. National	1	0.0	0	0	0	--	1	6	0	0	0	--	6
AFL-CIO v. AFL-CIO	3	66.7	2	2	--	--	1	285	241	241	--	--	44
2-union elections	4	50.0	2	2	0	0	2	291	241	241	0	0	50
Total RM elections	42	26.2	11	10	0	1	31	2,693	942	936	0	6	1,751

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2001[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
D. Elections in RD cases													
AFL-CIO	335	32.5	109	108	1	--	226	23,322	13,407	10,971	2,436	--	9,915
Other local unions	14	50.0	7	--	--	7	7	1,471	749	--	--	749	722
Other national unions	9	33.3	3	--	3	--	6	667	424	--	424	--	243
1-union elections	358	33.2	119	108	4	7	239	25,460	14,580	10,971	2,860	749	10,880
AFL-CIO v. Local	1	100.0	1	1	--	0	0	37	37	37	--	0	0
AFL-CIO v. National	1	0.0	0	0	0	--	1	51	0	0	0	--	51
AFL-CIO v. AFL-CIO	2	50.0	1	1	--	--	1	262	238	238	--	--	24
2-union elections	4	50.0	2	2	0	0	2	350	275	275	0	0	75
Total RD elections	362	33.4	121	110	4	7	241	25,810	14,855	11,246	2,860	749	10,955

[1] See Glossary of terms for definitions.

[2] Includes each unit in which a choice regarding collective-bargaining agent was made; for example, there may have been more than one election in a single case, or several cases may have been involved.

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2001[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	169,389	42,960	42,960	--	--	20,004	34,632	34,632	--	--	71,793
Other local unions	7,208	2,443	--	--	2,443	899	1,321	--	--	1,321	2,545
Other national unions	8,233	2,503	--	2,503	--	874	1,481	--	1,481	--	3,375
1-union elections	184,830	47,906	42,960	2,503	2,443	21,777	37,434	34,632	1,481	1,321	77,713
National v. Local	402	294	--	145	149	4	101	--	5	96	3
AFL-CIO v. Local	2,594	1,979	1,143	--	836	267	215	146	--	69	133
Local v. Local	414	370	--	--	370	38	2	--	--	2	4
AFL-CIO v. National	1,303	1,005	669	336	--	60	109	32	77	--	129
National v. National	103	55	--	55	--	2	26	--	26	--	20
AFL-CIO v. AFL-CIO	5,013	2,292	2,292	--	--	441	1,119	1,119	--	--	1,161
2-union elections	9,829	5,995	4,104	536	1,355	812	1,572	1,297	108	167	1,450
AFL-CIO v. AFL-CIO v. Local	942	908	830	--	78	34	0	0	--	0	0
AFL-CIO v. Local v. Local	188	188	76	--	112	0	0	0	--	0	0
AFL-CIO v. AFL-CIO v. AFL-CIO	56	56	56	--	--	0	0	0	--	--	0
3 (or more)-union elections	1,186	1,152	962	0	190	34	0	0	0	0	0
Total representation elections	195,845	55,053	48,026	3,039	3,988	22,623	39,006	35,929	1,589	1,488	79,163
B. Elections in RC cases											
AFL-CIO	147,685	34,884	34,884	--	--	16,162	31,238	31,238	--	--	65,401
Other local unions	6,049	1,996	--	--	1,996	689	1,170	--	--	1,170	2,194
Other national unions	7,670	2,294	--	2,294	--	763	1,423	--	1,423	--	3,190
1-union elections	161,404	39,174	34,884	2,294	1,996	17,614	33,831	31,238	1,423	1,170	70,785

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2001[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	
National v. Local	402	294	--	145	149	4	101	--	5	96	3
AFL-CIO v. Local	2,572	1,958	1,122	--	836	266	215	146	--	69	133
Local v. Local	414	370	--	--	370	38	2	--	--	2	4
AFL-CIO v. National	1,250	1,005	669	336	--	60	91	14	77	--	94
National v. National	103	55	--	55	--	2	26	--	26	--	20
AFL-CIO v. AFL-CIO	4,573	2,090	2,090	--	--	263	1,077	1,077	--	--	1,143
2-union elections	9,314	5,772	3,881	536	1,355	633	1,512	1,237	108	167	1,397
AFL-CIO v. AFL-CIO v. AFL-CIO	56	56	56	0	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO v. Local	942	908	830	0	78	34	0	--	--	--	--
AFL-CIO v. Local v. Local	188	188	76	0	112	0	0	--	--	--	--
3 (or more)-union elections	1,186	1,152	962	0	190	34	0	0	0	0	0
Total RC elections	171,904	46,098	39,727	2,830	3,541	18,281	35,343	32,475	1,531	1,337	72,182
C. Elections in RM cases											
AFL-CIO	1,872	396	396	--	--	175	410	410	--	--	891
Other local unions	21	6	--	--	6	0	2	--	--	2	13
Other national unions	26	0	--	--	--	--	6	0	6	0	20
1-union elections	1,919	402	396	0	6	175	418	410	6	2	924
AFL-CIO v. National	6	0	--	--	--	--	0	0	0	0	6
AFL-CIO v. AFL-CIO	232	102	102	--	--	89	40	40	--	--	1
2-union elections	238	102	102	0	0	89	40	40	0	0	7
Total RM elections	2,157	504	498	0	6	264	458	450	6	2	931
D. Elections in RD cases											
AFL-CIO	19,832	7,680	7,680	--	--	3,667	2,984	2,984	--	--	5,501
Other local unions	1,138	441	--	--	441	210	149	--	--	149	338

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2001[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	
Other national unions	537	209	--	209	--	111	52	--	52	--	165
1-union elections	21,507	8,330	7,680	209	441	3,988	3,185	2,984	52	149	6,004
AFL-CIO v. Local	22	21	21	0	0	1	0	--	--	--	--
AFL-CIO v. National.	47	0	--	--	--	--	18	18	0	0	29
AFL-CIO v. AFL-CIO	208	100	100	--	--	89	2	2	--	--	17
2-union elections	277	121	121	0	0	90	20	20	0	0	46
Total RD elections	21,784	8,451	7,801	209	441	4,078	3,205	3,004	52	149	6,050

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001

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	253	130	120	9	1	123	10,725	8,774	4,267	4,083	142	42	4,507	4,668
Indiana	67	31	29	1	1	36	2,742	2,444	1,002	984	10	8	1,442	908
Michigan	157	63	62	1	0	94	11,020	9,474	4,425	4,257	15	153	5,049	3,331
Ohio	160	69	64	4	1	91	13,500	12,484	5,457	5,155	151	151	7,027	3,433
Wisconsin	65	26	24	2	0	39	3,595	2,934	1,177	1,153	24	0	1,757	1,315
East North Central	702	319	299	17	3	383	41,582	36,110	16,328	15,632	342	354	19,782	13,655
Alabama	32	16	15	0	1	16	3,196	2,928	1,397	1,271	0	126	1,531	1,172
Kentucky	50	13	13	0	0	37	5,224	4,638	1,784	1,774	0	10	2,854	869
Mississippi	15	12	12	0	0	3	1,291	1,142	848	848	0	0	294	1,186
Tennessee	38	14	12	2	0	24	4,039	3,545	1,526	1,501	11	14	2,019	914
East South Central	135	55	52	2	1	80	13,750	12,253	5,555	5,394	11	150	6,698	4,141
New Jersey	169	97	90	3	4	72	9,866	8,155	4,509	3,818	373	318	3,646	5,398
New York	275	154	124	12	18	121	26,174	20,160	12,467	10,649	397	1,421	7,693	16,172
Pennsylvania	237	130	118	9	3	107	14,988	12,719	6,368	5,807	461	100	6,351	7,441
Middle Atlantic	681	381	332	24	25	300	51,028	41,034	23,344	20,274	1,231	1,839	17,690	29,011
Arizona	15	8	4	3	1	7	1,044	937	496	411	80	5	441	511
Colorado	31	19	19	0	0	12	1,757	2,017	1,357	1,357	0	0	660	581
Idaho	7	2	2	0	0	5	192	183	54	28	26	0	129	10
Montana	17	8	7	1	0	9	724	656	270	158	24	88	386	146
Nevada	46	26	25	1	0	20	4,948	4,482	1,773	1,545	228	0	2,709	1,630
New Mexico	12	9	8	1	0	3	848	770	429	424	5	0	341	462
Utah	4	1	0	1	0	3	198	222	113	62	51	0	109	91
Wyoming	7	2	2	0	0	5	443	402	220	219	1	0	182	119
Mountain	139	75	67	7	1	64	10,154	9,669	4,712	4,204	415	93	4,957	3,550

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—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		
Connecticut	48	31	25	5	1	17	2,645	2,251	1,254	1,177	70	7	997	1,701
Maine	13	5	4	0	1	8	760	688	321	155	1	165	367	243
Massachusetts	63	37	31	1	5	26	5,025	4,241	2,336	1,210	855	271	1,905	2,460
New Hampshire	6	5	4	1	0	1	168	161	107	84	23	0	54	150
Rhode Island	18	9	9	0	0	9	1,806	1,696	694	668	26	0	1,002	311
Vermont	6	3	2	0	1	3	66	62	38	18	0	20	24	46
New England	154	90	75	7	8	64	10,470	9,099	4,750	3,312	975	463	4,349	4,911
Puerto Rico	71	48	22	0	26	23	4,734	4,361	2,646	1,307	6	1,333	1,715	2,863
Virgin Islands	4	3	3	0	0	1	95	95	52	52	0	0	43	59
Outlying Areas	75	51	25	0	26	24	4,829	4,456	2,698	1,359	6	1,333	1,758	2,922
Alaska	32	22	14	7	1	10	1,912	1,656	751	666	47	38	905	910
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	298	169	162	2	5	129	18,650	15,780	8,237	7,205	455	577	7,543	9,652
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	32	16	14	2	0	16	1,939	1,605	751	718	33	0	854	870
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	47	28	24	2	2	19	2,054	1,878	1,086	843	78	165	792	1,115
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	80	44	42	2	0	36	21,195	15,674	4,160	4,005	153	2	11,514	2,830
Pacific	489	279	256	15	8	210	45,750	36,593	14,985	13,437	766	782	21,608	15,377

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	15	6	6	0	0	9	1,246	1,071	688	688	0	0	383	976
District Of Columbia	19	13	6	1	6	6	556	406	290	133	16	141	116	389
Florida	112	51	44	7	0	61	7,720	5,681	2,615	2,569	46	0	3,066	4,000
Georgia	28	16	16	0	0	12	1,863	1,626	732	732	0	0	894	851
Maryland	58	27	22	3	2	31	5,509	4,945	1,912	1,645	125	142	3,033	1,103
North Carolina	19	11	11	0	0	8	5,269	4,199	1,803	1,803	0	0	2,396	759
South Carolina	11	7	5	1	1	4	603	585	319	267	33	19	266	405
Virginia	42	21	20	0	1	21	2,914	2,575	1,239	1,156	0	83	1,336	1,007
West Virginia	25	13	13	0	0	12	1,090	1,013	409	409	0	0	604	270
South Atlantic	329	165	143	12	10	164	26,770	22,101	10,007	9,402	220	385	12,094	9,760
Iowa	32	15	15	0	0	17	1,423	1,241	581	575	0	6	660	479
Kansas	19	9	7	2	0	10	4,698	3,911	2,417	2,272	145	0	1,494	3,783
Minnesota	100	47	41	5	1	53	6,585	5,238	2,487	2,385	90	12	2,751	2,928
Missouri	99	45	42	3	0	54	6,646	5,814	2,764	2,654	97	13	3,050	2,061
Nebraska	11	5	5	0	0	6	1,100	1,015	437	437	0	0	578	191
North Dakota	3	1	1	0	0	2	161	156	54	54	0	0	102	8
South Dakota	3	1	1	0	0	2	49	39	13	13	0	0	26	7
West North Central	267	123	112	10	1	144	20,662	17,414	8,753	8,390	332	31	8,661	9,457
Arkansas	15	8	6	2	0	7	1,485	1,355	596	548	48	0	759	454
Louisiana	17	11	10	1	0	6	1,002	738	416	298	86	32	322	466
Oklahoma	26	11	7	4	0	15	2,534	2,291	724	660	64	0	1,567	191
Texas	80	37	28	3	6	43	6,372	5,478	2,775	2,517	132	126	2,703	2,459
West South Central	138	67	51	10	6	71	11,393	9,862	4,511	4,023	330	158	5,351	3,570
Total, all States and areas	3,109	1,605	1,412	104	89	1,504	236,388	198,591	95,643	85,427	4,628	5,588	102,948	96,354

[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 2001

Division and State[2]	Total elections[3]	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	220	121	111	9	1	99	8,737	7,167	3,526	3,345	139	42	3,641	3,762
Indiana	60	30	28	1	1	30	2,595	2,308	952	934	10	8	1,356	863
Michigan	134	59	58	1	0	75	9,764	8,392	3,824	3,713	15	96	4,568	2,628
Ohio	140	61	56	4	1	79	12,901	11,938	5,185	4,883	151	151	6,753	3,096
Wisconsin	56	23	21	2	0	33	3,260	2,629	1,049	1,025	24	0	1,580	1,240
East North Central	610	294	274	17	3	316	37,257	32,434	14,536	13,900	339	297	17,898	11,589
Alabama	26	14	13	0	1	12	2,931	2,676	1,285	1,172	0	113	1,391	1,154
Kentucky	42	11	11	0	0	31	4,304	3,889	1,457	1,447	0	10	2,432	817
Mississippi	15	12	12	0	0	3	1,291	1,142	848	848	0	0	294	1,186
Tennessee	33	14	12	2	0	19	3,827	3,350	1,446	1,421	11	14	1,904	914
East South Central	116	51	48	2	1	65	12,353	11,057	5,036	4,888	11	137	6,021	4,071
New Jersey	160	92	85	3	4	68	9,211	7,682	4,279	3,588	373	318	3,403	4,852
New York	253	147	118	12	17	106	24,636	18,945	11,839	10,094	397	1,348	7,106	15,327
Pennsylvania	215	123	111	9	3	92	13,684	11,579	5,700	5,178	422	100	5,879	6,655
Middle Atlantic	628	362	314	24	24	266	47,531	38,206	21,818	18,860	1,192	1,766	16,388	26,834
Arizona	14	8	4	3	1	6	1,032	925	490	405	80	5	435	511
Colorado	24	18	18	0	0	6	1,322	1,624	1,215	1,215	0	0	409	561
Idaho	5	2	2	0	0	3	96	101	46	20	26	0	55	10
Montana	14	8	7	1	0	6	562	529	235	123	24	88	294	146
Nevada	39	22	21	1	0	17	4,709	4,264	1,657	1,429	228	0	2,607	1,469
New Mexico	11	8	7	1	0	3	674	601	323	318	5	0	278	288
Utah	3	0	0	0	0	3	107	135	62	62	0	0	73	0

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2001—Continued

Division and State[2]	Total elections[3]	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		
Wyoming	5	1	1	0	0	4	182	171	97	96	1	0	74	10
Mountain	115	67	60	6	1	48	8,684	8,350	4,125	3,668	364	93	4,225	2,995
Connecticut	44	29	24	5	0	15	2,549	2,163	1,213	1,153	60	0	950	1,666
Maine	10	4	4	0	0	6	659	608	272	135	1	136	336	195
Massachusetts	56	35	30	1	4	21	4,634	3,899	2,107	1,068	855	184	1,792	2,138
New Hampshire	5	4	3	1	0	1	162	155	103	80	23	0	52	144
Rhode Island	15	8	8	0	0	7	1,706	1,609	660	634	26	0	949	301
Vermont	5	3	2	0	1	2	57	53	34	14	0	20	19	46
New England	135	83	71	7	5	52	9,767	8,487	4,389	3,084	965	340	4,098	4,490
Puerto Rico	67	47	22	0	25	20	4,663	4,298	2,627	1,304	6	1,317	1,671	2,848
Virgin Islands	4	3	3	0	0	1	95	95	52	52	0	0	43	59
Outlying Areas	71	50	25	0	25	21	4,758	4,393	2,679	1,356	6	1,317	1,714	2,907
Alaska	30	21	13	7	1	9	1,536	1,325	551	466	47	38	774	668
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	274	158	152	2	4	116	1,6263	13,771	7,092	6,347	455	290	6,679	7,978
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	30	15	13	2	0	15	1,857	1,551	727	694	33	0	824	845
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	43	26	22	2	2	17	1,875	1,718	1,007	764	78	165	711	1,041
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	65	38	37	1	0	27	20,211	14,921	3,736	3,730	4	2	11,185	2,109
Pacific	442	258	237	14	7	184	41,742	33,286	13,113	12,001	617	495	20,173	12,641

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2001—Continued

Division and State[2]	Total elections[3]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	12	5	5	0	0	7	237	212	83	83	0	0	129	36
District Of Columbia	18	13	6	1	6	5	496	351	267	110	16	141	84	389
Florida	104	51	44	7	0	53	6,973	5,042	2,380	2,334	46	0	2,662	4,000
Georgia	23	12	12	0	0	11	1,350	1,129	481	481	0	0	648	489
Maryland	51	26	21	3	2	25	5,351	4,794	1,849	1,582	125	142	2,945	1,074
North Carolina	14	10	10	0	0	4	4,797	3,770	1,660	1,660	0	0	2,110	733
South Carolina	11	7	5	1	1	4	603	585	319	267	33	19	266	405
Virginia	36	19	18	0	1	17	2,577	2,284	1,121	1,038	0	83	1,163	915
West Virginia	23	12	12	0	0	11	1,008	943	370	370	0	0	573	209
South Atlantic	292	155	133	12	10	137	23,392	19,110	8,530	7,925	220	385	10,580	8,250
Iowa	28	15	15	0	0	13	1,265	1,144	554	548	0	6	590	479
Kansas	10	3	2	1	0	7	1,070	925	383	238	145	0	542	380
Minnesota	76	37	34	3	0	39	5,528	4,402	2,047	1,966	81	0	2,355	2,169
Missouri	86	41	38	3	0	45	6,247	5,460	2,587	2,477	97	13	2,873	1,892
Nebraska	11	5	5	0	0	6	1,100	1,015	437	437	0	0	578	191
North Dakota	3	1	1	0	0	2	161	156	54	54	0	0	102	8
South Dakota	2	1	1	0	0	1	38	28	11	11	0	0	17	7
West North Central	216	103	96	7	0	113	15,409	13,130	6,073	5,731	323	19	7,057	5,126
Arkansas	13	7	5	2	0	6	1,251	1,137	496	448	48	0	641	331
Louisiana	15	10	9	1	0	5	862	600	347	229	86	32	253	326
Oklahoma	22	10	6	4	0	12	2,475	2,238	707	643	64	0	1,531	171
Texas	69	33	24	3	6	36	5,007	4,375	2,138	1,889	132	117	2,237	1,641
West South Central	119	60	44	10	6	59	9,595	8,350	3,688	3,209	330	149	4,662	2,469
Total, all States and areas	2,744	1,483	1,302	99	82	1,261	210,488	176,803	83,987	74,622	4,367	4,998	92,816	81,372

[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.
[3] Due to technical difficulties, data discrepancies exceed 2 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2001

Division and State[1]	Total elections[2]	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	33	9	9	0	0	24	1,988	1,607	741	738	3	0	866	906
Indiana	7	1	1	0	0	6	147	136	50	50	0	0	86	45
Michigan	23	4	4	0	0	19	1,256	1,082	601	544	0	57	481	703
Ohio	20	8	8	0	0	12	599	546	272	272	0	0	274	337
Wisconsin	9	3	3	0	0	6	335	305	128	128	0	0	177	75
East North Central	92	25	25	0	0	67	4,325	3,676	1,792	1,732	3	57	1,884	2,066
Alabama	6	2	2	0	0	4	265	252	112	99	0	13	140	18
Kentucky	8	2	2	0	0	6	920	749	327	327	0	0	422	52
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tennessee	5	0	0	0	0	5	212	195	80	80	0	0	115	0
East South Central	19	4	4	0	0	15	1,397	1,196	519	506	0	13	677	70
New Jersey	9	5	5	0	0	4	655	473	230	230	0	0	243	546
New York	22	7	6	0	1	15	1,538	1,215	628	555	0	73	587	845
Pennsylvania	22	7	7	0	0	15	1,304	1,140	668	629	39	0	472	786
Middle Atlantic	53	19	18	0	1	34	3,497	2,828	1,526	1,414	39	73	1,302	2,177
Arizona	1	0	0	0	0	1	12	12	6	6	0	0	6	0
Colorado	7	1	1	0	0	6	435	393	142	142	0	0	251	20
Idaho	2	0	0	0	0	2	96	82	8	8	0	0	74	0
Montana	3	0	0	0	0	3	162	127	35	35	0	0	92	0
Nevada	7	4	4	0	0	3	239	218	116	116	0	0	102	161
New Mexico	1	1	1	0	0	0	174	169	106	106	0	0	63	174
Utah	1	1	0	1	0	0	91	87	51	0	51	0	36	91
Wyoming	2	1	1	0	0	1	261	231	123	123	0	0	108	109
Mountain	24	8	7	1	0	16	1,470	1,319	587	536	51	0	732	555

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2001—Continued

Division and State[1]	Total elections[2]	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		
Connecticut	4	2	1	0	1	2	96	88	41	24	10	7	47	35
Maine	3	1	0	0	1	2	101	80	49	20	0	29	31	48
Massachusetts	7	2	1	0	1	5	391	342	229	142	0	87	113	322
New Hampshire	1	1	1	0	0	0	6	6	4	4	0	0	2	6
Rhode Island	3	1	1	0	0	2	100	87	34	34	0	0	53	10
Vermont	1	0	0	0	0	1	9	9	4	4	0	0	5	0
New England	19	7	4	0	3	12	703	612	361	228	10	123	251	421
Puerto Rico	4	1	0	0	1	3	71	63	19	3	0	16	44	15
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	4	1	0	0	1	3	71	63	19	3	0	16	44	15
Alaska	2	1	1	0	0	1	376	331	200	200	0	0	131	242
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	24	11	10	0	1	13	2,387	2,009	1,145	858	0	287	864	1,674
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	1	1	0	0	1	82	54	24	24	0	0	30	25
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	4	2	2	0	0	2	179	160	79	79	0	0	81	74
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	15	6	5	1	0	9	984	753	424	275	149	0	329	721
Pacific	47	21	19	1	1	26	4,008	3,307	1,872	1,436	149	287	1,435	2,736
Delaware	3	1	1	0	0	2	1,009	859	605	605	0	0	254	940
District Of Columbia	1	0	0	0	0	1	60	55	23	23	0	0	32	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2001—Continued

Division and State[1]	Total elections[2]	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		
Florida	8	0	0	0	0	8	747	639	235	235	0	0	404	0
Georgia	5	4	4	0	0	1	513	497	251	251	0	0	246	362
Maryland	7	1	1	0	0	6	158	151	63	63	0	0	88	29
North Carolina	5	1	1	0	0	4	472	429	143	143	0	0	286	26
South Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	6	2	2	0	0	4	337	291	118	118	0	0	173	92
West Virginia	2	1	1	0	0	1	82	70	39	39	0	0	31	61
South Atlantic	37	10	10	0	0	27	3,378	2,991	1,477	1,477	0	0	1,514	1,510
Iowa	4	0	0	0	0	4	158	97	27	27	0	0	70	0
Kansas	9	6	5	1	0	3	3,628	2,986	2,034	2,034	0	0	952	3,403
Minnesota	24	10	7	2	1	14	1,057	836	440	419	9	12	396	759
Missouri	13	4	4	0	0	9	399	354	177	177	0	0	177	169
Nebraska	0	0	0	0	0	0	0	0	0	0	0	0	0	0
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota	1	0	0	0	0	1	11	11	2	2	0	0	9	0
West North Central	51	20	16	3	1	31	5,253	4,284	2,680	2,659	9	12	1,604	4,331
Arkansas	2	1	1	0	0	1	234	218	100	100	0	0	118	123
Louisiana	2	1	1	0	0	1	140	138	69	69	0	0	69	140
Oklahoma	4	1	1	0	0	3	59	53	17	17	0	0	36	20
Texas	11	4	4	0	0	7	1,365	1,103	637	628	0	9	466	818
West South Central	19	7	7	0	0	12	1798	1,512	823	814	0	9	689	1,101
Total, all States and areas	365	122	110	5	7	243	25,900	21,788	11,656	10,805	261	590	10,132	14,982

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.
[2] Due to technical difficulties, data discrepancies exceed 2 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001

Industrial Group[1]	Total elections[2]	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	1	0	0	0	0	1	35	35	12	12	0	0	23	0
Animal Production	8	4	4	0	0	4	420	361	147	134	0	13	214	107
Forestry and Logging	4	2	2	0	0	2	60	55	19	19	0	0	36	16
Support Activities for Agriculture and Forestry	5	2	2	0	0	3	191	171	58	57	1	0	113	108
Agriculture, Forestry, Fishing, and Hunting	18	8	8	0	0	10	706	622	236	222	1	13	386	231
Oil and Gas Extraction	4	4	4	0	0	0	116	110	101	82	19	0	9	116
Mining (except Oil and Gas)	24	14	14	0	0	10	1,068	1,014	487	487	0	0	527	341
Support Activities for Mining	3	1	1	0	0	2	205	201	103	103	0	0	98	13
Mining	31	19	19	0	0	12	1,389	1,325	691	672	19	0	634	470
Utilities	94	49	46	0	3	45	6,590	6,191	2,637	2,346	0	291	3,554	1,462
Building, Developing and General Contracting	42	17	15	0	2	25	1,281	1,007	453	400	0	53	554	564
Heavy Construction	27	15	12	2	1	12	1,054	732	472	373	88	11	260	781
Special Trade Contractors	255	140	137	2	1	115	7,931	5,754	3,103	3,041	0	62	2,651	4,403
Construction	324	172	164	4	4	152	10,266	7,493	4,028	3,814	88	126	3,465	5,748
Food Manufacturing	79	41	40	1	0	38	9,054	8,151	4,820	4,760	23	37	3,331	5,085
Beverage and Tobacco Product Manufacturing	32	17	17	0	0	15	1,670	1,614	789	671	0	118	825	644
Textile Mills	4	0	0	0	0	4	722	607	183	93	90	0	424	0
Textile Product Mills	3	2	1	0	1	1	329	312	201	184	0	17	111	308
Apparel Manufacturing	12	10	8	0	2	2	1,136	1,501	1,445	1,260	0	185	56	1,108
Leather and Allied Product Manufacturing	5	4	2	0	2	1	224	196	161	70	0	91	35	220
31-Manufacturing	135	74	68	1	5	61	13,135	12,381	7,599	7,038	113	448	4,782	7,365

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Industrial Group[1]	Total elections[2]	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		
Wood Product Manufacturing	24	8	7	1	0	16	1,762	1,601	802	606	196	0	799	825
Paper Manufacturing	32	8	6	1	1	24	2,319	2,146	891	803	53	35	1,255	812
Printing and Related Support Activities	16	7	6	0	1	9	817	773	264	234	24	6	509	119
Petroleum and Coal Products Manufacturing	10	2	2	0	0	8	707	555	204	204	0	0	351	107
Chemical Manufacturing	41	16	14	0	2	25	2,944	2,734	1,200	908	0	292	1,534	1,092
Plastics and Rubber Products Manufacturing	28	6	6	0	0	22	4,654	4,269	1,606	1,600	6	0	2,663	577
Nonmetallic Mineral Product Manufacturing	42	19	16	2	1	23	1,836	1,606	651	632	7	12	955	379
32-Manufacturing	193	66	57	4	5	127	15,039	13,684	5,618	4,987	286	345	8,066	3,911
Primary Metal Manufacturing	58	22	22	0	0	36	3,988	3,662	1,671	1,632	8	31	1,991	1,216
Fabricated Metal Product Manufacturin	71	21	20	1	0	50	6,459	6,178	2,520	2,496	24	0	3,658	1,239
Machinery Manufacturing	49	14	13	0	1	35	5,168	4,675	2,178	2,171	0	7	2,497	2,175
Computer and Electronic Product Manufacturing	6	3	3	0	0	3	258	226	97	97	0	0	129	138
Electrical Equipment, Appliance and Component Manufacturing	21	6	5	1	0	15	4,345	3,953	1,833	1,727	24	82	2,120	1,222
Transportation Equipment Manufacturing	73	40	40	0	0	33	25,155	19,751	6,156	6,066	8	82	13,595	3,458
Furniture and Related Product Manufacturing	16	4	4	0	0	12	3,966	3,659	1,534	1,512	0	22	2,125	208
Miscellaneous Manufacturing	62	27	26	1	0	35	6,120	5,436	2,336	2,289	3	44	3,100	1,595
33-Manufacturing	356	137	133	3	1	219	55459	47,540	18,325	17,990	67	268	29,215	11,251

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Industrial Group[1]	Total elections[2]	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		
Wholesale Trade, Durable Goods	39	11	9	1	1	28	1,911	1,648	617	606	0	11	1,031	310
Wholesale Trade, Nondurable Goods	82	41	36	3	2	41	4,932	4,246	1,898	1,805	0	93	2,348	1,849
Wholesale Trade	121	52	45	4	3	69	6,843	5,894	2,515	2,411	0	104	3,379	2,159
Motor Vehicle and Parts Dealers	51	26	24	0	2	25	1,125	1,040	489	442	0	47	551	469
Furniture and Home Furnishings Stores	11	3	2	1	0	8	293	237	84	52	32	0	153	67
Electronics and Appliance Stores	3	0	0	0	0	3	362	311	83	83	0	0	228	0
Building Material and Garden Equipment and Supplies Dealers	11	6	6	0	0	5	385	343	112	112	0	0	231	58
Food and Beverage Stores	67	34	30	3	1	33	3,226	2,785	1,200	1,104	0	96	1,585	935
Health and Personal Care Stores	8	5	5	0	0	3	148	127	77	77	0	0	50	86
Gasoline Stations	1	1	1	0	0	0	6	6	5	5	0	0	1	6
Clothing and Clothing Accessories Stores	3	2	2	0	0	1	103	94	52	52	0	0	42	103
44-Retail Trade	155	77	70	4	3	78	5,648	4,943	2,102	1,927	32	143	2,841	1,724
Sporting Goods, Hobby, Book and Music Stores	2	0	0	0	0	2	85	67	16	16	0	0	51	0
General Merchandise Stores	20	12	11	0	1	8	2,842	2,345	825	770	2	53	1,520	322
Miscellaneous Store Retailers	4	2	2	0	0	2	196	185	111	102	9	0	74	169
Nonstore Retailers	4	1	1	0	0	3	96	72	12	12	0	0	60	13
45-Retail Trade	30	15	14	0	1	15	3,219	2,669	964	900	11	53	1,705	504
Air Transportation	16	8	7	1	0	8	918	675	280	209	8	63	395	162
Rail Transportation	3	2	2	0	0	1	147	121	78	74	0	4	43	110
Water Transportation	5	4	4	0	0	1	139	105	66	66	0	0	39	72

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Industrial Group[1]	Total elections[2]	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		
Truck Transportation	105	47	46	1	0	58	4,125	3,551	1,533	1,449	74	10	2,018	1271
Transit and Ground Passenger Transportation	102	58	57	0	1	44	8,978	7,183	4,193	4,123	2	68	2,990	4,817
Pipeline Transportation	7	2	2	0	0	5	280	254	143	143	0	0	111	38
Scenic and Sightseeing Transportation	3	3	3	0	0	0	393	336	256	256	0	0	80	393
Support Activities for Transportation	42	23	17	5	1	19	881	757	454	363	58	33	303	474
48-Transportation	283	147	138	7	2	136	15,861	12,982	7,003	6,683	142	178	5,979	7,337
Postal Service	4	1	1	0	0	3	458	375	216	216	0	0	159	370
Couriers and Messengers	11	5	4	1	0	6	663	540	353	295	58	0	187	523
Warehousing and Storage Facilities	77	30	30	0	0	47	4,447	3,807	1,923	1,732	37	154	1,884	2,230
49-Transportation	92	36	35	1	0	56	5,568	4,722	2,492	2,243	95	154	2,230	3,123
Publishing Industries	41	19	18	0	1	22	2,174	1,954	933	920	0	13	1,021	1,136
Motion Picture and Sound Recording Industries	4	3	2	1	0	1	532	463	346	346	0	0	117	478
Broadcasting and Telecommunications	56	24	20	2	2	32	2,555	2,285	821	766	22	33	1,464	586
Information Services and Data Processing Services	5	4	4	0	0	1	58	52	38	38	0	0	14	41
Information	106	50	44	3	3	56	5,319	4,754	2,138	2,070	22	46	2,616	2,241
Credit Intermediation and Related Activities	6	4	3	0	1	2	469	420	149	140	0	9	271	103
Insurance Carriers and Related Activities	1	0	0	0	0	1	35	34	16	16	0	0	18	0
Finance and Insurance	7	4	3	0	1	3	504	454	165	156	0	9	289	103
Real Estate	12	5	5	0	0	7	420	351	158	158	0	0	193	143
Rental and Leasing Services	34	18	18	0	0	16	659	598	271	271	0	0	327	171
Owners and Lessors of Other Non-Financial Assets	3	1	1	0	0	2	73	63	31	31	0	0	32	36

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Industrial Group[1]	Total elections[2]	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		
Real Estate and Rental and Leasing	49	24	24	0	0	25	1,152	1,012	460	460	0	0	552	350
Professional, Scientific and Technical Services	36	25	22	2	1	11	1,946	1,822	832	808	5	19	990	672
Management of Companies and Enterprises	5	4	4	0	0	1	247	190	147	147	0	0	43	242
Administrative and Support Services	107	82	45	20	17	25	3,431	2,816	1,837	862	542	433	979	2,129
Waste Management and Remediation Services	98	44	40	1	3	54	4,558	4,077	1,990	1,774	0	216	2,087	1,806
Administrative and Support, Waste Management and Remediation Services	205	126	85	21	20	79	7,989	6,893	3,827	2,636	542	649	3,066	3,935
Educational Services	51	39	30	6	3	12	4,399	3,527	2,188	1,908	77	203	1,339	3,764
Ambulatory Health Care Services	65	34	28	2	4	31	7,875	5,005	2,953	2,625	292	36	2,052	4,685
Hospitals	178	102	77	10	15	76	30,000	25,147	12,865	9,536	1,661	1,668	12,282	14,152
Nursing and Residential Care Facilities	203	132	120	8	4	71	14,781	11,863	6,725	6,277	162	286	5,138	9,061
Social Assistance	50	38	35	2	1	12	4,200	3,081	1,925	1,876	31	18	1,156	3,007
Health Care and Social Assistance	496	306	260	22	24	190	56,856	45,096	24,468	20,314	2,146	2,008	20,628	30,905
Performing Arts, Spectator Sports and Related Industries	23	16	14	1	1	7	642	496	326	281	41	4	170	492
Museums, Historical Sites and Similar Institutions	4	4	4	0	0	0	35	34	34	34	0	0	0	35
Amusement, Gambling and Recreation Industries	25	9	7	1	1	16	1,850	1,608	661	467	43	151	947	611
Arts, Entertainment and Recreation	52	29	25	2	2	23	2,527	2,138	1,021	782	84	155	1,117	1,138
Accommodation	73	34	34	0	0	39	5,843	5,086	1,971	1,793	178	0	3,115	1,755
Foodservices and Drinking Places	40	26	22	3	1	14	3,354	2,445	1,598	1,242	328	28	847	2,679
Accommodation and Foodservices	113	60	56	3	1	53	9,197	7,531	3,569	3,035	506	28	3,962	4,434

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2001—Continued

Industrial Group[1]	Total elections[2]	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		
Repair and Maintenance	31	19	19	0	0	12	586	505	279	254	20	5	226	330
Personal and Laundry Services	56	28	25	2	1	28	1,930	1,700	1,021	785	106	130	679	1,179
Religious, Grantmaking, Civic, and Professional and Similar Organizations	3	1	0	1	0	2	183	173	99	68	31	0	74	56
Other Services (except Public Administration)	90	48	44	3	1	42	2,699	2,378	1,399	1,107	157	135	979	1,565
Justice, Public Order, and Safety	10	9	1	5	3	1	594	473	348	23	156	169	125	584
National Security and International Affairs	2	2	0	2	0	0	46	41	26	0	26	0	15	46
Public Administration	12	11	1	7	3	1	640	514	374	23	182	169	140	630
Unclassified Establishments	46	23	16	4	3	23	2,541	1,524	793	703	46	44	731	672
Total, all industrial groups	3,100	1,601	1,411	101	89	1,499	235,739	198,279	95,591	85,382	4,621	5,588	102,688	95,936

[1] Source: Standard Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C.

[2] Due to technical difficulties, data discrepancies exceed 2 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2001[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	207,687	2,699	100.0	--	1,259	100.0	110	100.0	79	100.0	1,251	100.0
Under 10	3,564	542	20.1	20.1	322	25.6	32	29.1	9	11.4	179	14.3
10 to 19	8,280	542	20.1	40.2	273	21.7	18	16.4	13	16.5	238	19.0
20 to 29	8,108	318	11.8	51.9	145	11.5	7	6.4	14	17.7	152	12.2
30 to 39	7,828	229	8.5	60.4	104	8.3	10	9.1	10	12.7	105	8.4
40 to 49	7,234	160	5.9	66.4	65	5.2	12	10.9	2	2.5	81	6.5
50 to 59	7,004	128	4.7	71.1	52	4.1	9	8.2	5	6.3	62	5.0
60 to 69	7,412	114	4.2	75.3	45	3.6	6	5.5	3	3.8	60	4.8
70 to 79	5,910	79	2.9	78.3	29	2.3	4	3.6	2	2.5	44	3.5
80 to 89	6,841	82	3.0	81.3	31	2.5	1	0.9	5	6.3	45	3.6
90 to 99	4,980	44	1.6	82.9	21	1.7	1	0.9	2	2.5	20	1.6
100 to 109	5,894	55	2.0	85.0	19	1.5	1	0.9	0	0.0	35	2.8
110 to 119	3,175	28	1.0	86.0	10	0.8	1	0.9	1	1.3	16	1.3
120 to 129	5,750	44	1.6	87.6	14	1.1	0	0.0	3	3.8	27	2.2
130 to 139	3,951	29	1.1	88.7	16	1.3	0	0.0	1	1.3	12	1.0
140 to 149	2,432	17	0.6	89.3	8	0.6	0	0.0	0	0.0	9	0.7
150 to 159	4,021	19	0.7	90.0	8	0.6	2	1.8	0	0.0	9	0.7
160 to 169	2,157	13	0.5	90.5	3	0.2	0	0.0	0	0.0	10	0.8
170 to 179	2,984	17	0.6	91.1	6	0.5	0	0.0	0	0.0	11	0.9
180 to 189	3,346	19	0.7	91.8	9	0.7	1	0.9	0	0.0	9	0.7
190 to 199	3,096	16	0.6	92.4	5	0.4	0	0.0	1	1.3	10	0.8
200 to 299	21,152	89	3.3	95.7	35	2.8	2	1.8	6	7.6	46	3.7
300 to 399	10,792	35	1.3	97.0	11	0.9	1	0.9	1	1.3	22	1.8
400 to 499	12,233	29	1.1	98.1	11	0.9	1	0.9	1	1.3	16	1.3
500 to 599	7,804	14	0.5	98.6	3	0.2	0	0.0	0	0.0	11	0.9

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2001[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
1,000 to 1,999	13,077	9	0.3	99.9	1	0.1	0	0.0	0	0.0	8	0.6
2,000 to 2,999	6,334	3	0.1	100.0	1	0.1	0	0.0	0	0.0	2	0.2
3,000 to 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Over 9,999	17,195	1	0.0	100.0	0	0.0	0	0.0	0	0.0	1	0.1
	B. Decertification elections (RD)											
Total RD elections	25,779	364	100.0	--	109	100.0	6	100.0	7	100.0	242	100.0
Under 10	540	71	19.5	19.5	9	8.3	0	0.0	1	14.3	61	25.2
10 to 19	1,074	73	20.1	39.6	15	13.8	1	16.7	2	28.6	55	22.7
20 to 29	1,031	41	11.3	50.8	8	7.3	1	16.7	1	14.3	31	12.8
30 to 39	1,023	31	8.5	59.3	12	11.0	0	0.0	1	14.3	18	7.4
40 to 49	1,064	25	6.9	66.2	8	7.3	0	0.0	0	0.0	17	7.0
50 to 59	1,177	20	5.5	71.7	12	11.0	0	0.0	0	0.0	8	3.3
60 to 69	971	16	4.4	76.1	5	4.6	0	0.0	0	0.0	11	4.5
70 to 79	572	8	2.2	78.3	3	2.8	0	0.0	0	0.0	5	2.1
80 to 89	738	9	2.5	80.8	4	3.7	0	0.0	0	0.0	5	2.1
90 to 99	738	8	2.2	83.0	3	2.8	1	16.7	0	0.0	4	1.7
100 to 109	895	8	2.2	85.2	4	3.7	0	0.0	0	0.0	4	1.7
110 to 119	531	5	1.4	86.5	4	3.7	0	0.0	0	0.0	1	0.4
120 to 129	366	3	0.8	87.4	2	1.8	0	0.0	1	14.3	0	0.0
130 to 139	812	6	1.6	89.0	1	0.9	0	0.0	0	0.0	5	2.1
140 to 149	265	2	0.5	89.6	0	0.0	0	0.0	0	0.0	2	0.8
150 to 159	553	4	1.1	90.7	1	0.9	0	0.0	0	0.0	3	1.2
160 to 169	497	3	0.8	91.5	1	0.9	0	0.0	0	0.0	2	0.8
170 to 199	806	4	1.1	92.6	2	1.8	0	0.0	0	0.0	2	0.8

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2001[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
200 to 299	2,708	12	3.3	95.9	8	7.3	0	0.0	0	0.0	4	1.7
300 to 499	3,437	9	2.5	98.4	4	3.7	2	33.3	1	14.3	2	0.8
500 to 799	2,090	3	0.8	99.2	2	1.8	0	0.0	0	0.0	1	0.4
800 and Over	3,891	3	0.8	100.0	1	0.9	1	16.7	0	0.0	1	0.4

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2001[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	26,725	100.0	--	20,219	100.0	5,536	100.0	374	100.0	141	100.0	20	100.0	28	100.0	77	100.0	277	100.0	53	100.0
Under 10	2,001	7.5	7.5	1,522	7.5	345	6.2	74	19.8	23	16.3	2	10.0	0	0.0	13	16.9	13	4.7	9	17.0
10-19	2,104	7.9	15.4	1,704	8.4	294	5.3	40	10.7	26	18.4	2	10.0	1	3.6	17	22.1	14	5.1	6	11.3
20-29	1,988	7.4	22.8	1,573	7.8	316	5.7	39	10.4	12	8.5	5	25.0	0	0.0	15	19.5	21	7.6	7	13.2
30-39	1,180	4.4	27.2	968	4.8	173	3.1	15	4.0	7	5.0	0	0.0	2	7.1	2	2.6	11	4.0	2	3.8
40-49	963	3.6	30.8	777	3.8	155	2.8	5	1.3	5	3.5	0	0.0	2	7.1	5	6.5	9	3.2	5	9.4
50-59	1,745	6.5	37.3	1,288	6.4	357	6.4	55	14.7	18	12.8	2	10.0	0	0.0	5	6.5	12	4.3	8	15.1
60-69	733	2.7	40.1	617	3.1	104	1.9	4	1.1	4	2.8	0	0.0	0	0.0	0	0.0	4	1.4	0	0.0
70-79	748	2.8	42.9	599	3.0	122	2.2	13	3.5	4	2.8	0	0.0	0	0.0	1	1.3	9	3.2	0	0.0
80-89	498	1.9	44.8	386	1.9	97	1.8	1	0.3	2	1.4	0	0.0	0	0.0	2	2.6	9	3.2	1	1.9
90-99	288	1.1	45.8	249	1.2	34	0.6	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	3	1.1	1	1.9
100-109	1,887	7.1	52.9	1,295	6.4	529	9.6	21	5.6	9	6.4	2	10.0	0	0.0	2	2.6	26	9.4	3	5.7
110-119	230	0.9	53.8	191	0.9	30	0.5	2	0.5	0	0.0	0	0.0	0	0.0	0	0.0	5	1.8	2	3.8
120-129	620	2.3	56.1	413	2.0	198	3.6	2	0.5	1	0.7	0	0.0	3	10.7	0	0.0	2	0.7	1	1.9
130-139	218	0.8	56.9	182	0.9	35	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.4	0	0.0
140-149	181	0.7	57.6	151	0.7	23	0.4	0	0.0	0	0.0	0	0.0	0	0.0	1	1.3	4	1.4	2	3.8
150-159	611	2.3	59.9	472	2.3	119	2.1	10	2.7	2	1.4	0	0.0	0	0.0	3	3.9	5	1.8	0	0.0
160-169	183	0.7	60.5	151	0.7	23	0.4	3	0.8	1	0.7	1	5.0	0	0.0	0	0.0	3	1.1	1	1.9
170-179	188	0.7	61.2	163	0.8	18	0.3	7	1.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
180-189	127	0.5	61.7	105	0.5	21	0.4	0	0.0	0	0.0	0	0.0	1	3.6	0	0.0	0	0.0	0	0.0
190-199	77	0.3	62.0	68	0.3	9	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299	2,145	8.0	70.0	1,585	7.8	492	8.9	17	4.5	10	7.1	1	5.0	3	10.7	6	7.8	27	9.7	4	7.5
300-399	1,374	5.1	75.2	1,004	5.0	337	6.1	13	3.5	1	0.7	3	15.0	2	7.1	1	1.3	13	4.7	0	0.0
400-499	800	3.0	78.2	618	3.1	160	2.9	8	2.1	5	3.5	0	0.0	2	7.1	1	1.3	6	2.2	0	0.0
500-599	888	3.3	81.5	604	3.0	257	4.6	10	2.7	0	0.0	0	0.0	0	0.0	0	0.0	16	5.8	1	1.9
600-699	390	1.5	82.9	306	1.5	81	1.5	1	0.3	1	0.7	0	0.0	0	0.0	0	0.0	1	0.4	0	0.0

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments,Fiscal Year 2001[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
700-799.....	310	1.2	84.1	250	1.2	54	1.0	0	0.0	0	0.0	0	0.0	0	0.0	3	3.9	3	1.1	0	0.0
800-899.....	272	1.0	85.1	205	1.0	59	1.1	3	0.8	0	0.0	0	0.0	1	3.6	0	0.0	4	1.4	0	0.0
900-999.....	191	0.7	85.8	154	0.8	37	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1,000-1,999.....	1,674	6.3	92.1	1,148	5.7	492	8.9	6	1.6	2	1.4	0	0.0	5	17.9	0	0.0	21	7.6	0	0.0
2,000-2,999.....	654	2.4	94.5	457	2.3	178	3.2	4	1.1	0	0.0	0	0.0	2	7.1	0	0.0	13	4.7	0	0.0
3,000-3,999.....	315	1.2	95.7	191	0.9	114	2.1	1	0.3	0	0.0	0	0.0	1	3.6	0	0.0	8	2.9	0	0.0
4,000-4,999.....	160	0.6	96.3	90	0.4	67	1.2	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	2	0.7	0	0.0
5,000-9,999.....	468	1.8	98.1	326	1.6	123	2.2	4	1.1	6	4.3	1	5.0	2	7.1	0	0.0	6	2.2	0	0.0
Over 9,999.....	514	1.9	100.0	407	2.0	83	1.5	14	3.7	2	1.4	1	5.0	1	3.6	0	0.0	6	2.2	0	0.0

[1] See Glossary of terms for definitions.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2001; and Cumulative Totals, Fiscal Years 1936 through 2001

	Fiscal Year 2001									July 5, 1936 Sept. 30, 2001	
	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[2]	Number	Percent
Proceedings decided by U.S. courts of appeals	159	153	6	0	2	--	--	--	--	--	--
On proceedings for review and/or enforcement	118	114	4	0	2	100.0	100.0	--	100.0	11,585	100.0
Board orders affirmed in full	74	72	2	0	0	63.2	50	--	0.0	7,642	66.0
Board orders affirmed with modification	10	10	0	0	0	8.8	0.0	--	0.0	1,538	13.3
Remanded to Board	15	13	2	0	0	11.4	50.0	--	0.0	584	5.0
Board orders partially affirmed and partially remanded	7	7	0	0	0	6.1	0.0	--	0.0	260	2.2
Board orders set aside	12	12	0	0	2	10.5	0.0	--	100.0	1,561	13.5
On petitions for contempt	12	12	0	0	0	--	--	--	--	--	--
Total Court Orders	28	26	2	0	0	100.0	100.0	--	--	--	--
Compliance after filing of petition, before court order	13	12	1	0	0	46.2	50.0	--	--	--	--
Court orders holding respondent in contempt	7	7	0	0	0	26.9	0.0	--	--	--	--
Court orders denying petition	2	2	0	0	0	7.7	0.0	--	--	--	--
Court orders directing compliance without contempt adjudication	6	5	1	0	0	19.2	50.0	--	--	--	--
Proceedings decided by U.S. Supreme Court	1	1	0	0	--	--	--	--	--	258	100.0
Board orders affirmed in full	0	0	0	0	--	--	--	--	--	155	60.1
Board orders affirmed with modification	0	0	0	0	--	--	--	--	--	18	7.0
Board orders set aside	1	1	0	0	--	--	--	--	--	46	17.8
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] See Glossary of terms for definitions.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2001, Compared With 5-Year Cumulative Totals, 1997 Through 2000[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2001	Total fiscal years 1996-2000	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2001		Cumulative fiscal years 1996–2000		Fiscal Year 2001		Cumulative fiscal years 1996–2000		Fiscal Year 2001		Cumulative fiscal years 1996–2000		Fiscal Year 2001		Cumulative fiscal years 1996–2000		Fiscal Year 2001		Cumulative fiscal years 1996–2000	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits……	118	552	74	62.7	384	69.6	10	8.5	55	10.0	15	12.7	22	4.0	7	5.9	33	6.0	12	10.2	58	10.5
Boston, MA…….....	6	20	4	66.7	17	85.0	1	16.7	0	0.0	0	0.0	0	0.0	1	16.7	1	5.0	0	0.0	2	10.0
New York, NY …….....	13	37	11	84.6	25	67.6	0	0.0	3	8.1	1	7.7	2	5.4	1	7.7	2	5.4	0	0.0	5	13.5
Philadelphia, PA ……..	7	38	6	85.7	32	84.2	1	14.3	2	5.3	0	0.0	0	0.0	0	0.0	1	2.6	0	0.0	3	7.9
Richmond, VA …….....	15	42	11	73.3	19	45.2	2	13.3	7	16.7	1	6.7	0	0.0	0	0.0	5	11.9	1	6.7	11	26.2
New Orleans, LA ……..	4	17	1	25.0	13	76.5	2	50.0	0	0.0	0	0.00	0	0.0	0	0.0	1	5.9	1	25.0	3	17.6
Cincinnati, OH……...	9	118	2	22.2	84	71.2	1	11.1	15	12.7	1.	11.1	3	2.5	2	22.2	4	3.4	3	33.3	12	10.2
Chicago, IL…….	9	39	6	66.7	25	64.1	1	11.1	3	7.7	1	11.1	2	5.1	0	0.0	3	7.7	1	11.1	6	15.4
St. Louis, MO…….	6	24	4	66.7	19	79.2	0	0.0	2	8.3	1	16.7	2	8.3	0	0.0	1	4.2	1	16.7	0	0.0
San Francisco, CA …….	6	45	4	66.7	38	84.4	0	0.0	4	8.9	1	16.7	0	0.0	1	16.7	2	4.4	0	0.0	1	2.2
Denver, CO ……..……	3	18	3	100.0	12	66.7	0	0.0	1	5.6	0	0.0	0	0.0	0	0.0	4	22.2	0	0.0	1	5.6
Atlanta, GA……	6	26	4	66.7	22	84.6	0	0.0	1	3.8	1	16.7	0	0.0	0	0.0	0	0.0	1	16.7	3	11.5
Washington, DC…….	34	128	18	52.9	78	60.9	2	5.9	17	13.3	8	23.5	13	10.2	2	5.9	9	7.0	4	11.8	11	8.6

[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 2001

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				
		Pending in district court Oct. 1, 2000	Filed in district court fiscal year 2001		Granted	Denied	Settled	Withdrawn	Pending
Under Sec. 10(e) total ……..	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total ……...	38	9	29	35	13	6	11	5	3
8(a)(1) …….	1	0	1	1	0	1	0	0	0
8(a)(1)(2)(5) 8(b)(1)(A) ……..	1	0	1	0	0	0	0	0	1
8(a)(1)(3)……	13	2	11	13	5	1	4	3	0
8(a)(1)(3)(5) ……	14	5	9	12	5	1	5	1	2
8(a)(1)(5)……	9	2	7	9	3	3	2	1	0
Under Sec. 10(l) total ……...	10	4	6	7	4	0	3	0	3
8(b)(4)(B) ……..……	4	0	4	3	1	0	2	0	1
8(b)(4)(B) 8(b)(4)(C) ……..	1	0	1	1	0	0	1	0	0
8(b)(4)(B) 8(b)(7)(C) ……..…	1	1	0	1	1	0	0	0	0
8(b)(7)(A) ……...	1	1	0	1	1	0	0	0	0
8(b)(7)(C) ……...	3	2	1	1	1	0	0	0	2

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2001

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	17	17	0	5	5	0	12	12	0	0	0	0	0	0	0
NLRB—initiated actions or interventions	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
For protective order or to quash district court subpoena	1	1	0	0	0	0	1	1	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	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	16	16	0	5	5	0	11	11	0	0	0	0	0	0	0
To review:	5	5	0	3	3	0	2	2	0	0	0	0	0	0	0
Prosecutorial discretion	5	5	0	3	3	0	2	2	0	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:	3	3	0	1	1	0	2	2	0	0	0	0	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	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
Proceeding in unfair labor practice case	2	2	0	0	0	0	2	2	0	0	0	0	0	0	0
To compel NLRB to:	4	4	0	1	1	0	3	3	0	0	0	0	0	0	0
Issue complaint	2	2	0	1	1	0	1	1	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] (in camera inspection)	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Joinder	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
To issue decision or take specific action	0	0	0	0	0	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	4	4	0	0	0	0	4	4	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	2	2	0	0	0	0	2	2	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
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	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
State claims preempted by Sec. 8(b)(4) and Sec. 303	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 2001[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2000	0	0	0	0	0
Received fiscal 2001	0	0	0	0	0
On docket fiscal 2001	0	0	0	0	0
Closed fiscal 2001	0	0	0	0	0
Pending September 30, 2001	0	0	0	0	0

[1]. See Glossary for definitions of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2001[1]

Action taken	Total cases closed
Total Cases	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 2001; and Age of Cases Pending Decision, September 30, 2001

	Stage	Median days
I.	Unfair labor practice cases:	
	A. Major stages completed—	
	1. Filing of charge to issuance of complaint	101
	2. Complaint to close of hearing	140
	3. Close of hearing to administrative law judge's decision	91
	4. Receipt of briefs or submissions to issuance of administrative law judge's decision	42
	5. Administrative law judge's decision to issuance of Board decision	746
	6. Originating document to Board decision	522
	7. Assignment to Board decision	460
	8. Filing of charge to issuance of Board decision	1,144
	B. Age of cases pending administrative law judge's decision, September 30, 2001	
	1. From filing of charge	443
	2. From close of hearing	93
	C. Age of cases pending Board decision, September 30, 2001	
	1. From filing of charge	914
	2. From originating document	290
	3. From assignment	235
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	14
	3. Close of hearing to Regional Director's decision issued	21
	4. Close of preelection hearing to Board's decision issued	301
	5. Close of postelection hearing to Board's decision issued	142
	6. Filing of petition to—	
	a. Board decision issued	232
	b. Regional Director's decision issued	39
	7. Originating document to Board decision	65
	8. Assignment to Board's decision	61
	B. Age of cases pending Board decision, September 30, 2001	
	1. From filing of petition	281
	2. From originating document	111
	3. From assignment	125
	C. Age of cases pending Regional Director's decision, September 30, 2001	73

Table 24.—NLRB Activity Under the Equal Access to Justice Act, FY 2001

	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	9
	B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
	Granting fees	0
	Denying fees	2
	C. Amount of fees and expenses in cases listed in B, above:	
	Claimed	$71,124.50
	Recovered	$ 8,900.00
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
III.	Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
	A. Awards granting fees (includes settlements)	0
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	0
IV.	Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements)	0
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	0