

SIXTY-SEVENTH
ANNUAL REPORT
OF THE
**NATIONAL LABOR
RELATIONS BOARD**

FOR THE FISCAL YEAR
ENDED SEPTEMBER 30

2002



NATIONAL LABOR RELATIONS BOARD

Members of the Board

PETER J. HURTGEN¹

WILMA B. LIEBMAN

DENNIS P. WALSH²

WILLIAM B. COWEN³

MICHAEL J. BARTLETT⁴

Chief Counsels of Board Members

HAROLD J. DATZ

JOHN F. COLWELL

GARY W. SHINNERS⁵

JEFFREY D. WEDEKIND⁶

JOHN J. TONER, *Executive Secretary*

HENRY S. 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, *General Counsel*

JOHN E. HIGGINS, *Deputy General Counsel*

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Division of Operations Management

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BARRY J. KEARNEY

Associate General Counsel

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Director

Division of Administration

¹ Chairman Hurtgen departed on August 1, 2002, to become Federal Mediation and Conciliation Service Director.

² Member Walsh's term expired December 20, 2001.

³ Received recess appointment on January 23, 2002.

⁴ Received recess appointment on January 23, 2002.

⁵ Acting Chief Counsel for Members Walsh and Cowen during their respective periods of service in FY 2002.

⁶ Acting Chief Counsel for Member Bartlett..

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. September 26, 2003.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Seventh Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2002.

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 2002

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 2002, 35,873 cases were received by the Board.

The public filed 30,177 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 5438 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 258 amendment to certification and unit clarification cases.

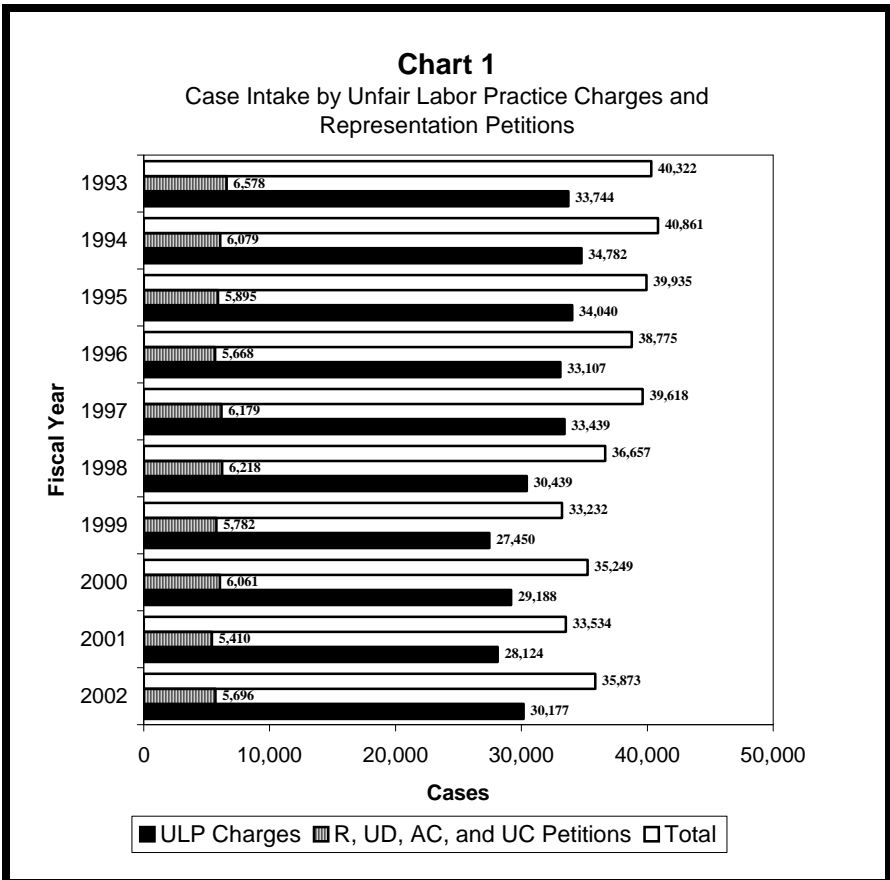
After the initial influx of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved in NLRB's national network field offices by dismissals, withdrawals, agreements, and settlements.

During fiscal year 2002, the five-member Board was composed of Chairman Peter J. Hurtgen and Members Wilma B. Liebman, William B. Cowen, Dennis P. Walsh, and Michael J. Bartlett. Arthur F. Rosenfeld served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2002 include:

- The NLRB conducted 3043 conclusive representation elections among some 166,297 employee voters, with workers choosing labor unions as their bargaining agents in 52.8 percent of the elections.
- Although the Agency closed 36,009 cases, 24,908 cases were pending in all stages of processing at the end of the fiscal year. The closings included 30,398 cases involving unfair labor practice charges and 5227 cases affecting employee representation and 384 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,717.

- The amount of \$57,582,046 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 1689 offers of job reinstatements, with 1119 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 2284 complaints, setting the cases for hearing.
- NLRB’s corps of administrative law judges issued 368 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.

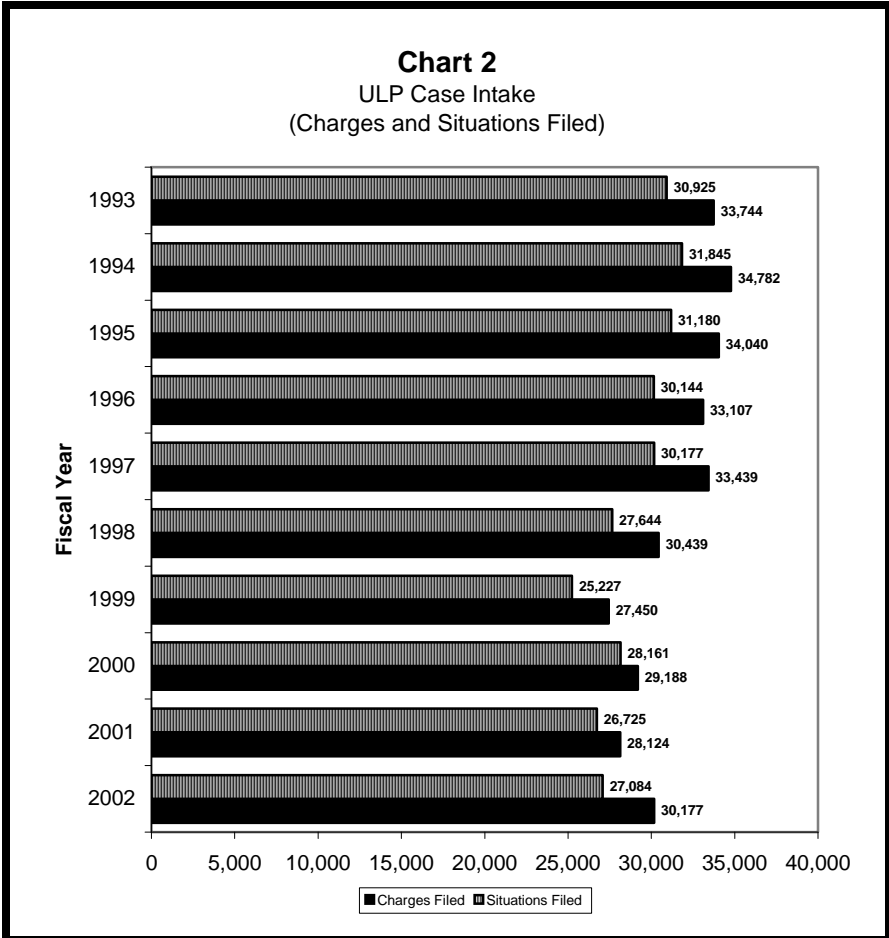
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 2002.

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

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

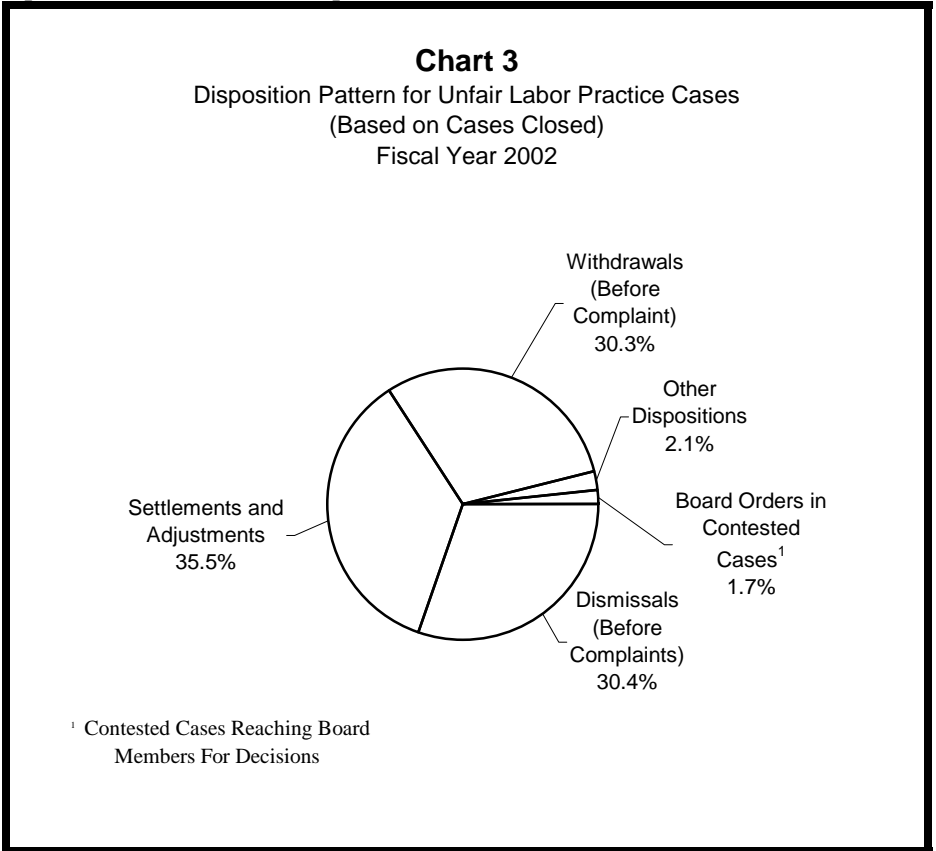
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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



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

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



B. Operational Highlights

1. Unfair Labor Practices

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

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

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

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 2002, 30,177 unfair labor practice charges were filed with the NLRB, an increase of 7 percent from the 28,124 filed in fiscal year 2001. In situations in which related charges are counted as a single unit, there was an increase of 1 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 23,036 cases, an increase of 7 percent from the 21,512 of 2001. Charges against unions increased about 8 percent to 7107 from 6587 in 2001.

There were 33 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

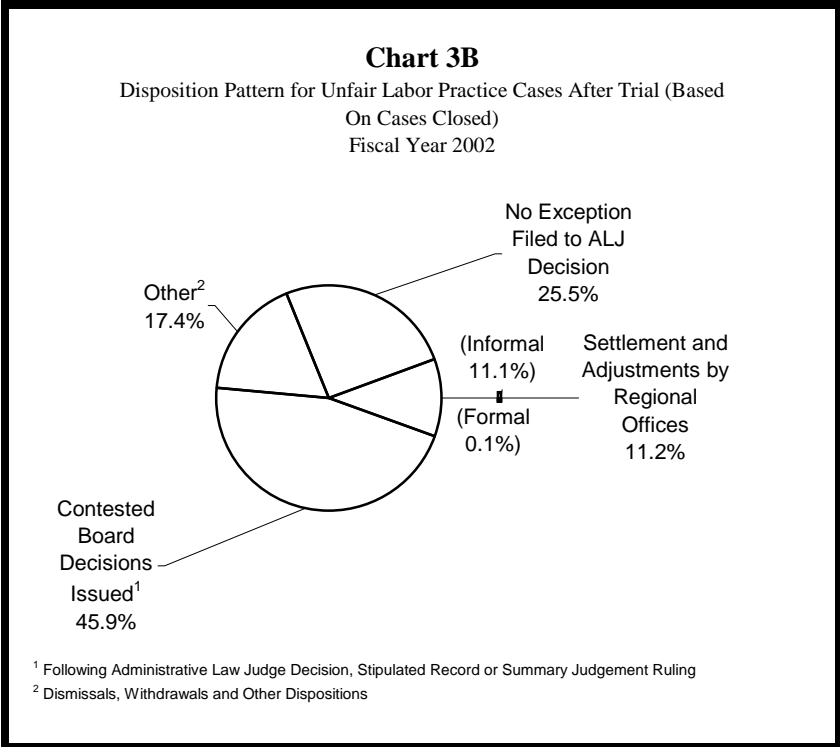
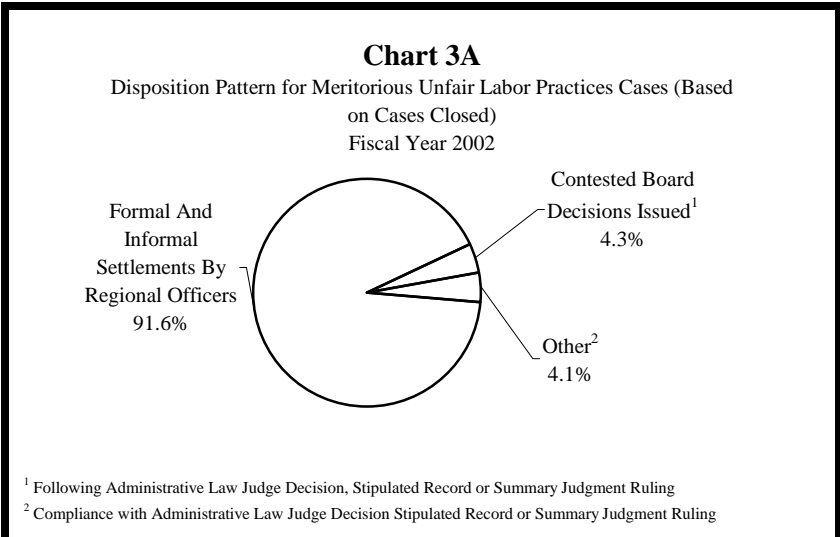
The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 10,969 such charges in 52 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,119 charges, in about 48 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5787) alleged illegal restraint and coercion of employees, about 81 percent. There were 712 charges against unions for illegal secondary boycotts and jurisdictional disputes, an increase of about 9 percent from the 654 of 2001.

There were 549 charges (about 8 percent) of illegal union discrimination against employees, an increase of about 13 percent from the 488 of 2001. There were 124 charges that unions picketed illegally for recognition or for organizational purposes, compared with 100 charges in 2001. (Table 2.)

In charges filed against employers, unions led with about 76 percent of the total. Unions filed 17,389 charges and individuals filed 5612.

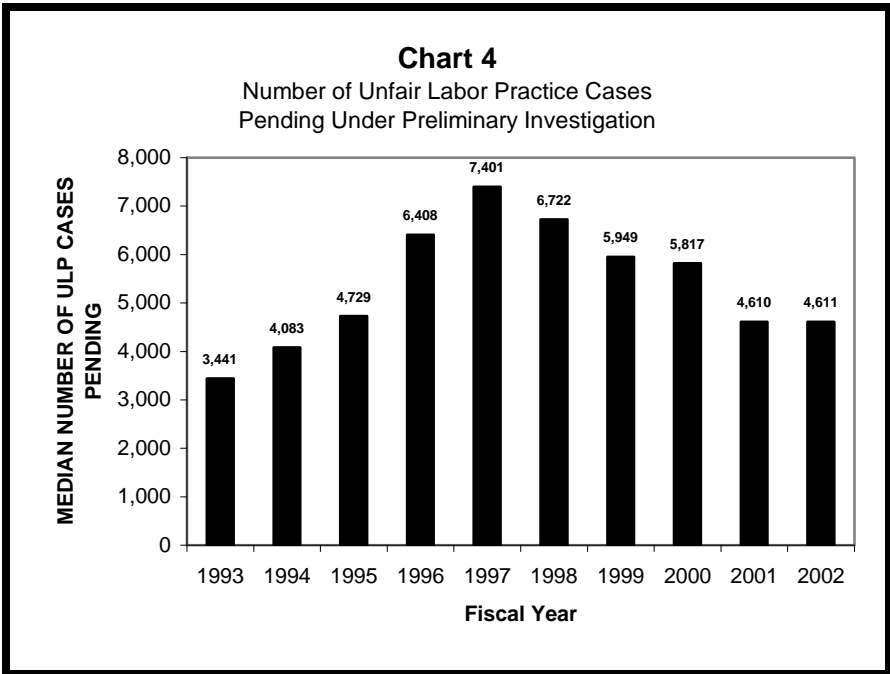


Concerning charges against unions, 5595 were filed by individuals, or about 79 percent of the total of 7109. Employers filed 1374 and other unions filed the 140 remaining charges.

In fiscal year 2002, 30,398 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, a little higher than the previous year. During the fiscal year, 35.5 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.3 percent were withdrawn before complaint, and 30.4 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 2002, 39.9 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 2002, precomplaint settlements and adjustments were achieved in 8437 cases, or 27.7 percent of the charges. In 2001, the percentage was 28.2. (Chart 5.)

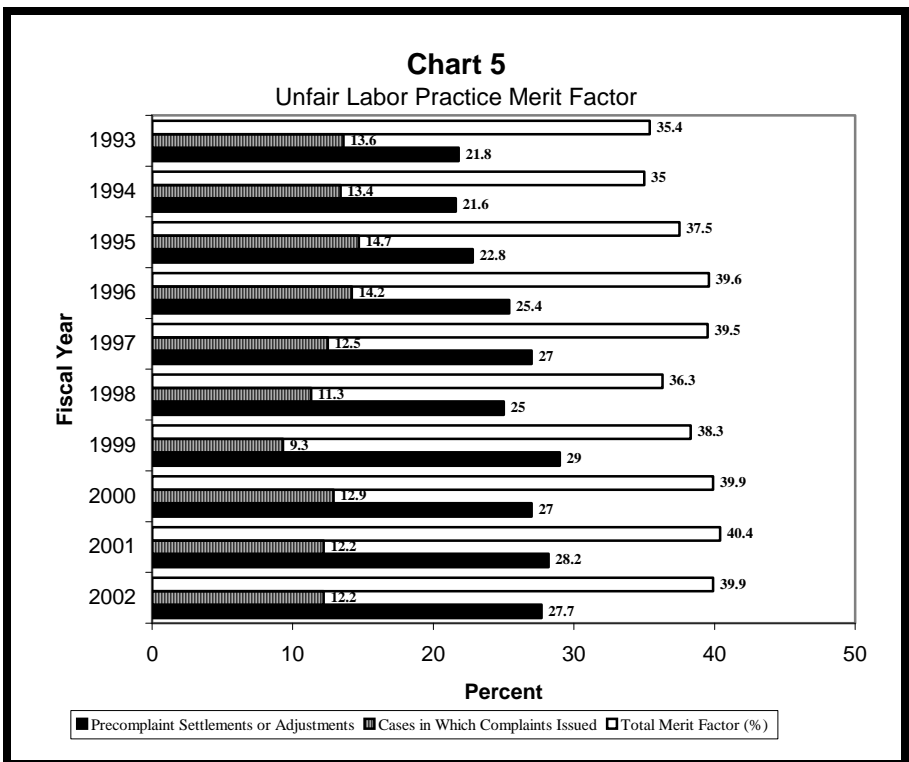


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2002, 2284 complaints were issued, compared with 2247 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 89.8 percent were against employers and 8.9 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 91 days. The 91 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 368 decisions in 776 cases during 2002. They conducted 363 initial hearings, and 25 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

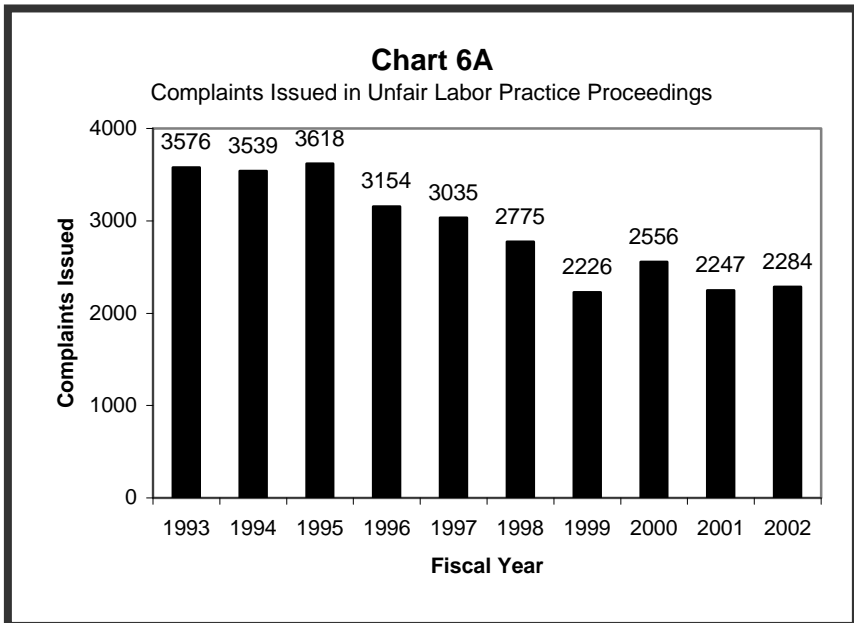


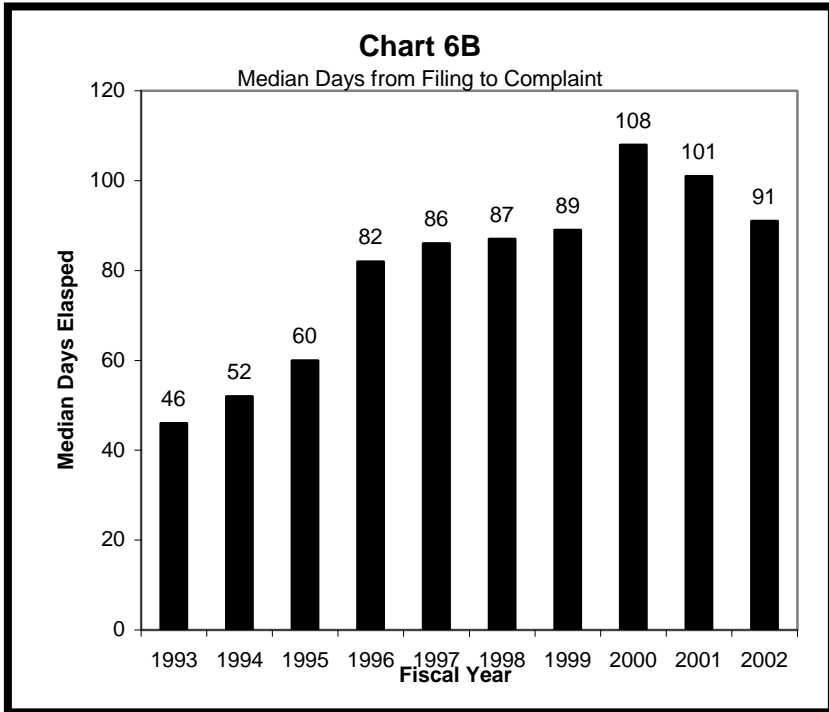
By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2002, the Board issued 286 decisions in unfair labor practice cases contested as to the law or the facts—227 initial decisions, 21 backpay decisions, 14 determinations in jurisdictional work dispute cases, and 24 decisions on supplemental matters. Of the 227 initial decision cases, 205 involved charges filed against employers and 22 had union respondents.

For the year, the NLRB awarded backpay of \$54.5 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another \$8.6 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 1689 employees were offered reinstatement, and about 66 percent accepted.

At the end of fiscal 2002, there were 22,959 unfair labor practice cases being processed at all stages by the NLRB, compared to 23,180 cases pending at the beginning of the year.

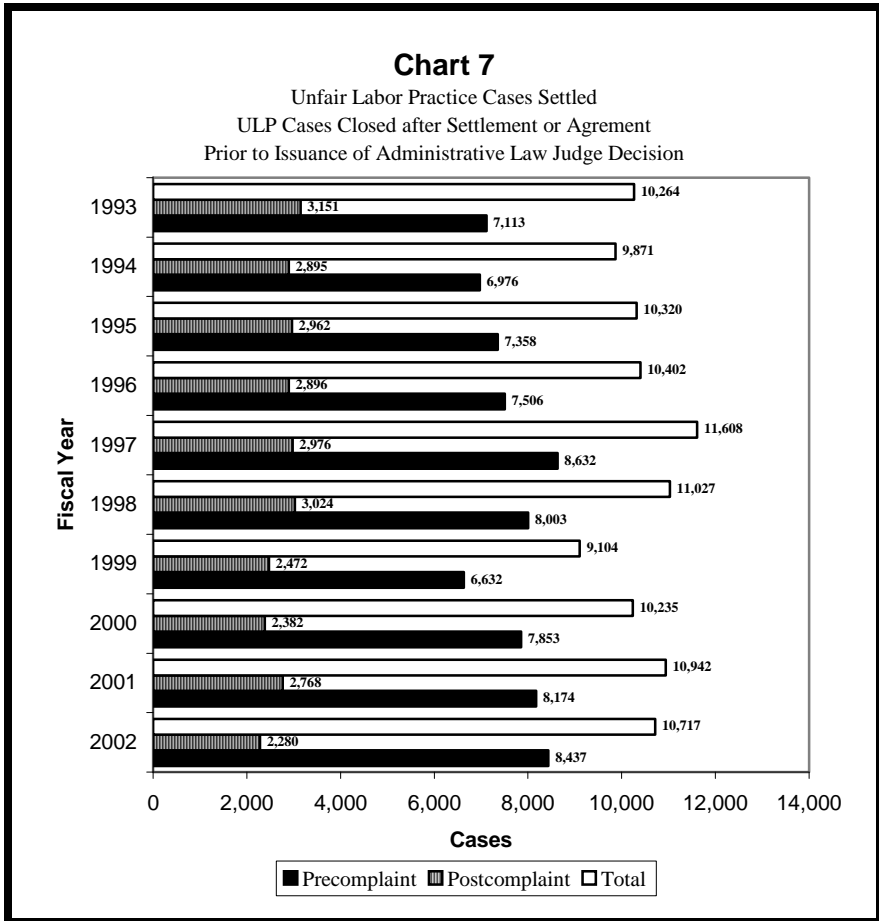




2. Representation Cases

The NLRB received 5696 representation and related case petitions in fiscal 2002, compared to 5410 such petitions a year earlier.

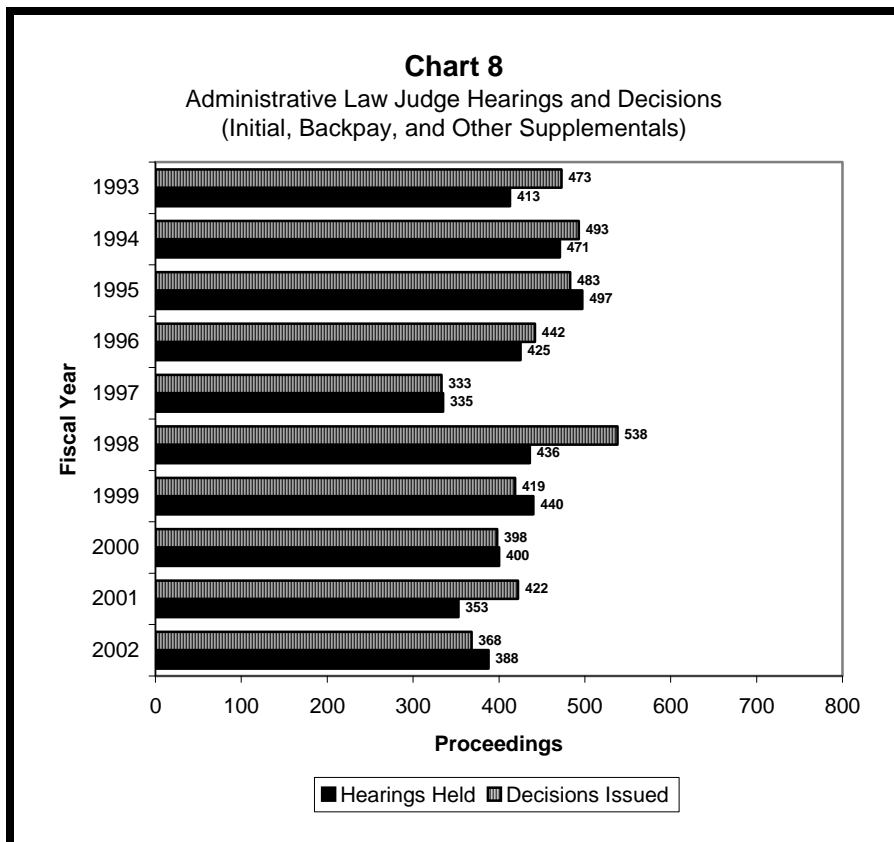
The 2002 total consisted of 4402 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 899 petitions to decertify existing bargaining agents; 137 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 244 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 14 amendment of certification petitions were filed.



During the year, 5611 representation and related cases were closed, compared to 5504 in fiscal 2001. Cases closed included 4283 collective-bargaining election petitions; 944 decertification election petitions; 128 requests for deauthorization polls; and 256 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 11.0 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 135 cases where the Board directed an election after transfer of a case from the Regional Office. (Table 10.) There were no cases that resulted in expedited

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



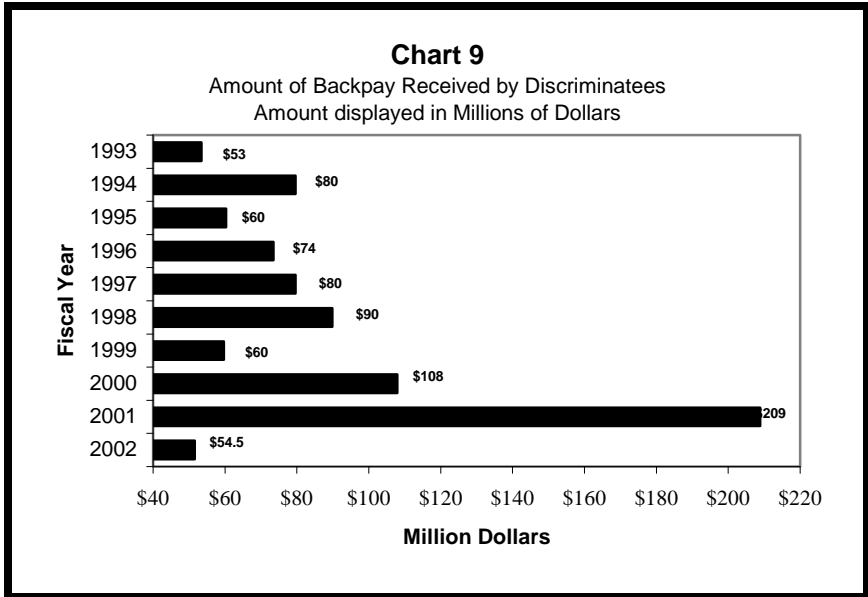
3. Elections

The NLRB conducted 3043 conclusive representation elections in cases closed in fiscal 2002, compared to the 3076 such elections a year earlier. Of 201,149 employees eligible to vote, 166,297 cast ballots, virtually 8 of every 10 eligible.

Unions won 1606 representation elections, or 52.8 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 88,481 workers. The employee vote over the course of the year was 83,621 for union representation and 82,676 against.

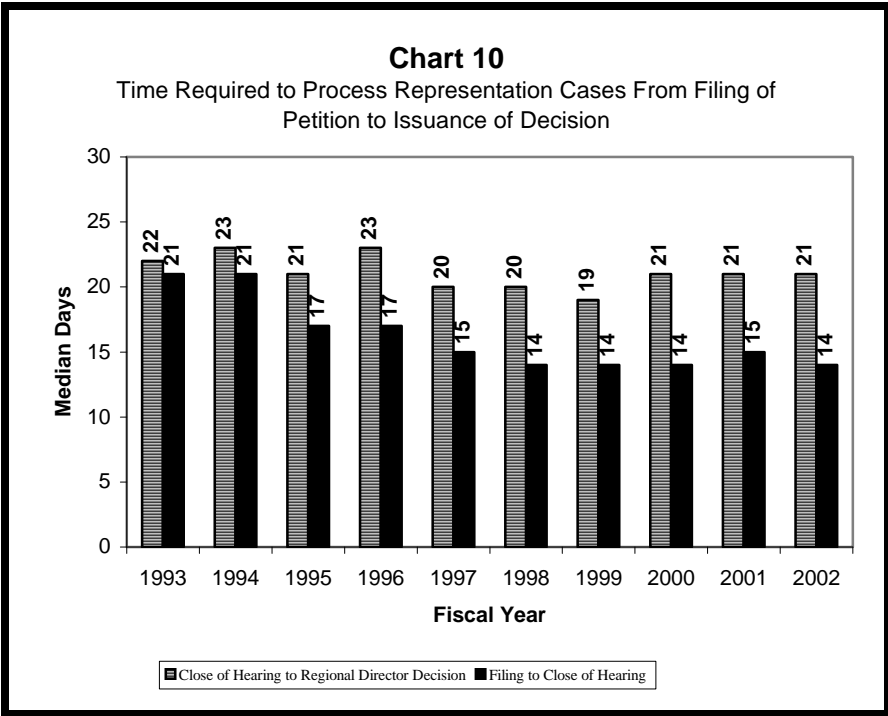
The representation elections were in two categories—the 2627 collective-bargaining elections in which workers chose or voted down

labor organizations as their bargaining agents, plus the 416 decertification elections determining whether incumbent unions would continue to represent employees.



There were 2858 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1448, or 50.7 percent. In these elections, 72,517 workers voted to have unions as their agents, while 80,555 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 74,266 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 185 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 158 elections, or 85.4 percent.

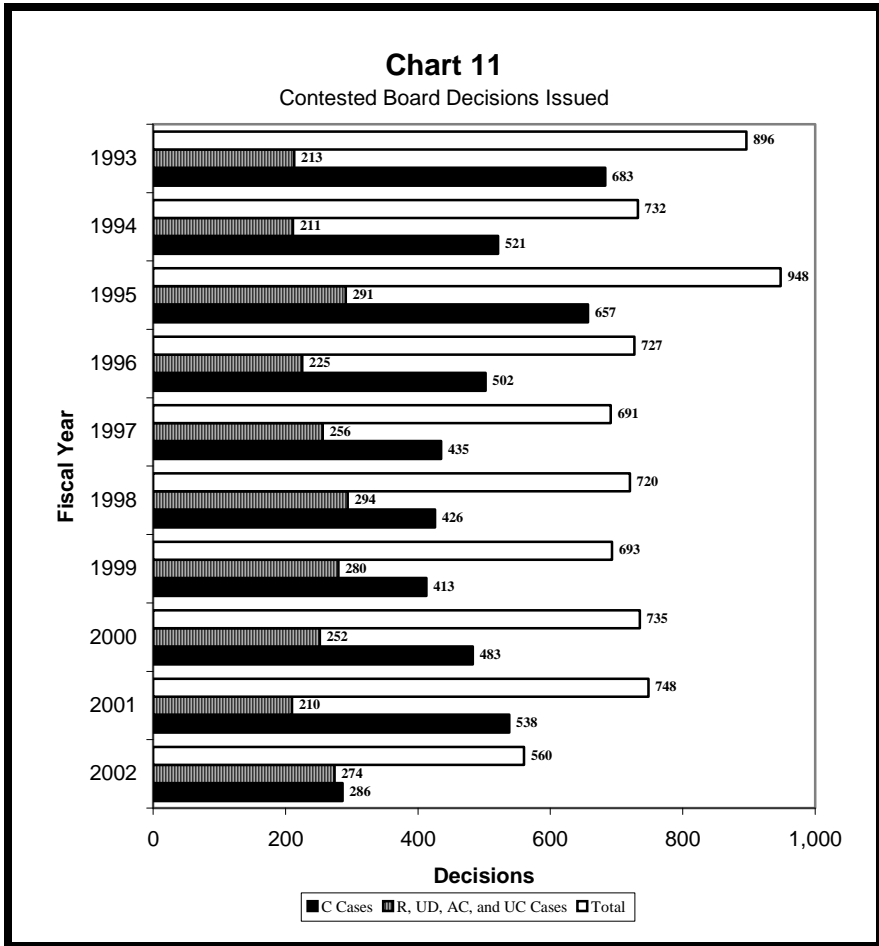


As in previous years, labor organization results brought continued representation by unions in 130 elections, or 31.3 percent, covering 8,438 employees. Unions lost representation rights for 16,937 employees in 286 elections, or 68.8 percent. Unions won in bargaining units averaging 65 employees, and lost in units averaging 59 employees. (Table 13.)

Besides the conclusive elections, there were 148 inconclusive representation elections during fiscal year 2002 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 18 referendums, or 31.1 percent, while they maintained the right in the other 40 polls which covered 3511 employees. (Table 12.)

For all types of elections in 2002, the average number of employees voting, per establishment, was 55, compared to 64 in 2001. About 74 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 926 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1051 decisions rendered during fiscal year 2001.

A breakdown of Board decisions follows:

Total Board decisions.....	<u>926</u>
Contested decisions	<u>560</u>

Unfair labor practice decisions	286
Initial (includes those based on	
stipulated record)	227
Supplemental	24
Backpay	21
Determinations in jurisdictional	
disputes	14
Representation decisions	266
After transfer by Regional Directors	
for initial decision	1
After review of Regional Director	
decisions.....	36
On objections and/or challenges ...	229
Other decisions	8
Clarification of bargaining unit.....	5
Amendment to certification	0
Union-deauthorization	3
Noncontested decisions	366
Unfair labor practice	135
Representation	228
Other	3

The majority (60 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.)

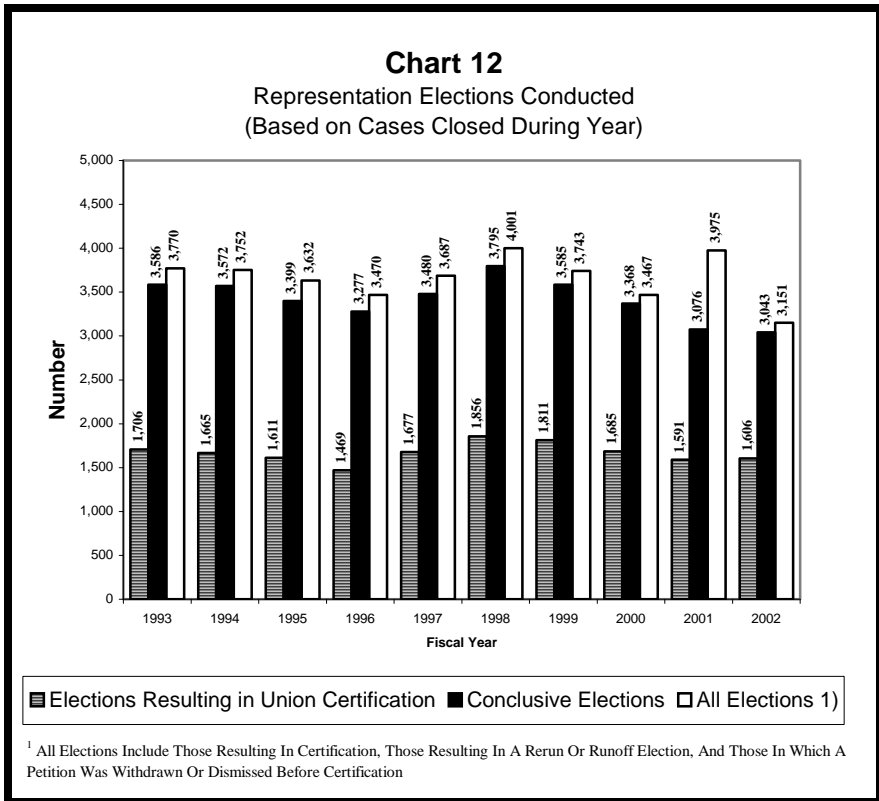
In fiscal 2002, about 4.3 percent of all meritorious charges and about 45.9 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 939 decisions in fiscal 2002, compared to 839 in 2001. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

Administrative law judges issued 368 decisions and conducted 388 hearings. (Chart 8 and Table 3A.)

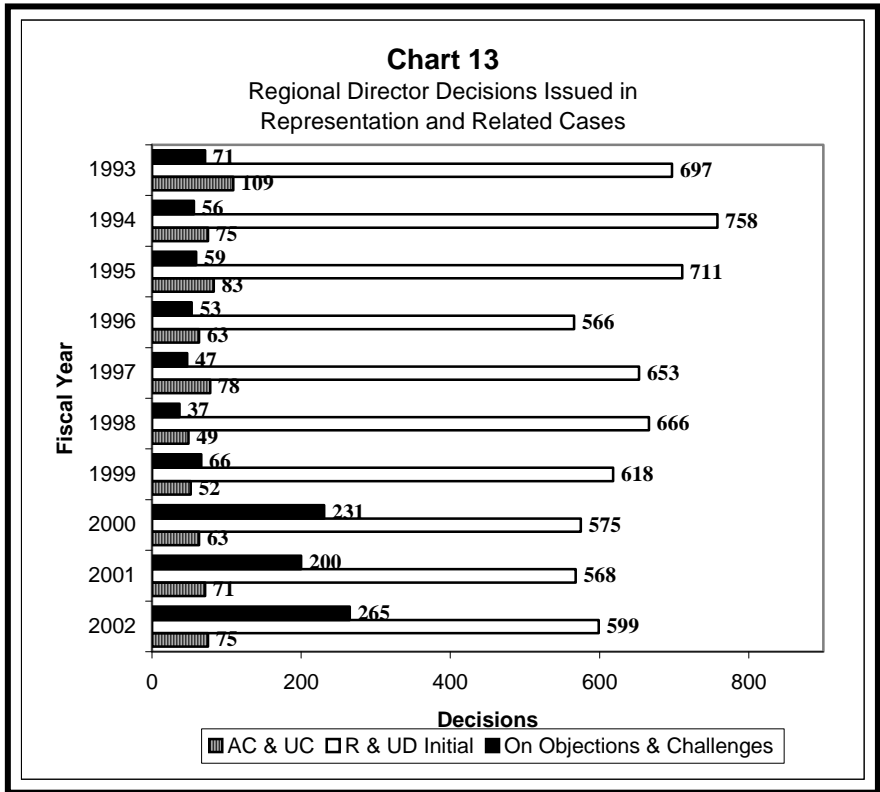


5. Court Litigation

a. Appellate Courts

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

In fiscal year 2002, 105 cases involving the NLRB were decided by the United States courts of appeals compared to 118 in fiscal year 2001. Of these, 71.4 percent were won by NLRB in whole or in part compared to 77.1 percent in fiscal year 2001; 6.7 percent were remanded entirely compared to 12.7 percent in fiscal year 2001; and 21.9 percent were entire losses compared to 10.2 percent in fiscal year 2001.

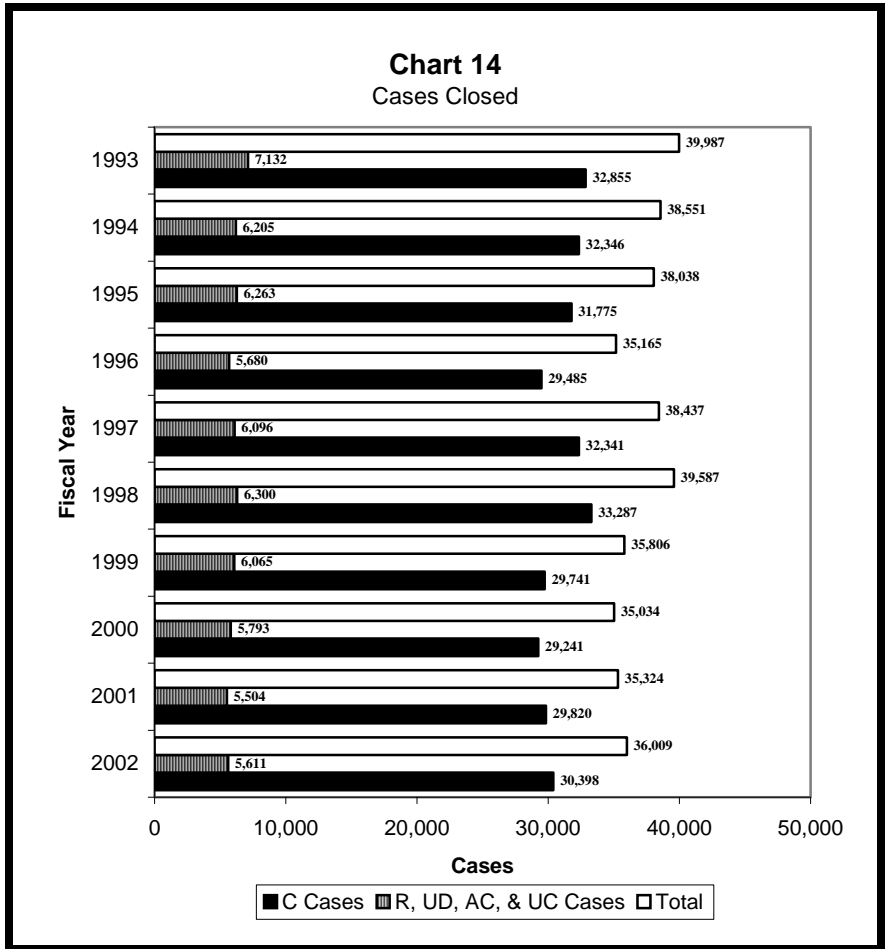


b. The Supreme Court

In fiscal 2002, there were two Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 2002.

c. Contempt Actions

In fiscal 2002, 87 cases were referred to the contempt section for consideration of contempt action. There were 19 contempt proceedings instituted. There were 6 contempt adjudications awarded in favor of the Board; 3 cases in which the court directed compliance without adjudication; and there were no cases in which the petition was withdrawn.



d. Miscellaneous Litigation

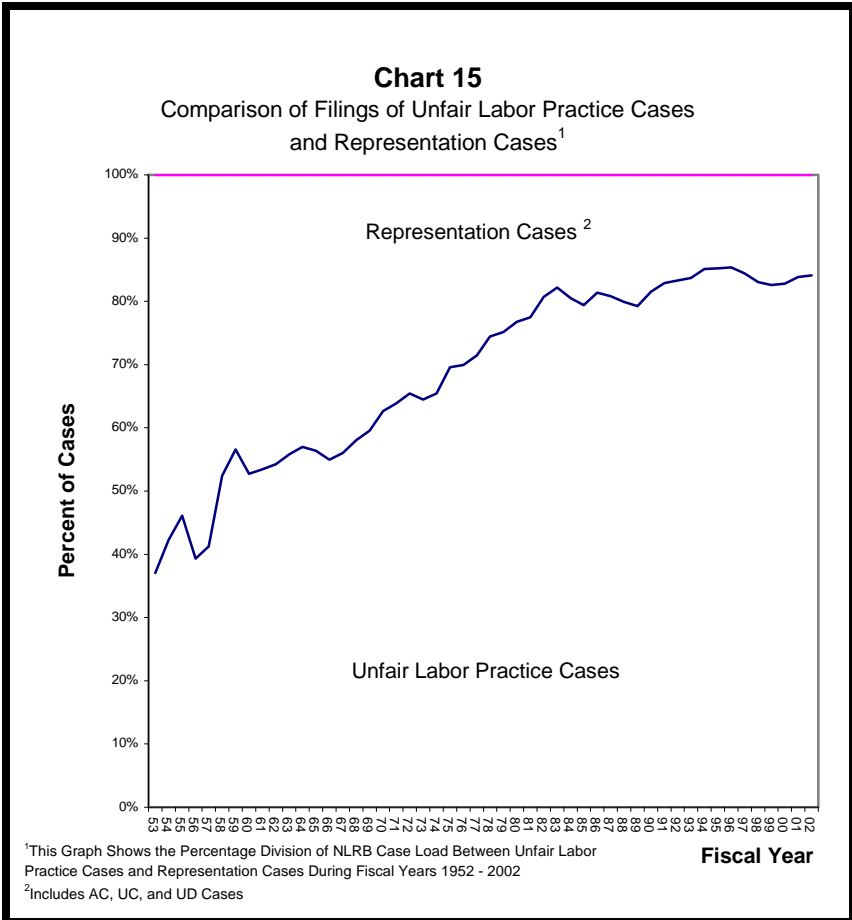
There were 11 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB’s position was upheld in 8 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 18 petitions filed with the U.S. district courts, compared to 35 in fiscal year 2001. (Table 20.) Injunctions were granted in 8, or all cases litigated to final order.

NLRB injunction activity in district courts in 2002:

Granted	8
Denied	0
Withdrawn	1
Settled or placed on court's inactive lists	5
Awaiting action at end of fiscal year	10



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. Excusable Neglect Provision

In *Unitec Elevator Services Co.*,¹ the Board held that a late-filed document would not be accepted based on excusable neglect pursuant to Section 102.111(c) of the Board’s Rules and Regulations when the reason for the tardiness is solely a miscalculation of the filing date. The Board expressly overruled *Postal Service*,² where the Board in similar circumstances excused a 1-day arithmetic error in calculation of a due date. Following *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*,³ the Board noted that “excusable neglect” is an elastic concept taking account of all relevant circumstances, but that “inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute ‘excusable’ neglect.”

The Board also announced that it would strictly enforce the requirement of Section 102.111(c) that the specific facts relied on to support a motion to accept a late filing be set forth in affidavit form and be sworn to by individuals with personal knowledge of the facts. The signature of an attorney on the motion would not substitute for the required affidavit.

2. Successor Bar Doctrine

In *MV Transportation*,⁴ the Board majority overruled *St. Elizabeth Manor, Inc.*,⁵ and repudiated the successor bar doctrine articulated therein, which provided that once a successor employer’s obligation to recognize an incumbent union attaches, the union is entitled to a reasonable period of time for bargaining without challenge to its majority status. In overruling *St. Elizabeth Manor*, the majority stated that it was merely returning to longstanding precedent—from which the Board imprudently deviated in *St. Elizabeth Manor*—and held that an incumbent union in a successorship situation is entitled to only a *rebuttable* presumption of continuing majority status, which will not

¹ 337 NLRB No. 55 (Chairman Hurtgen and Members Liebman, Cowen, and Bartlett).

² 309 NLRB 305 (1992).

³ 507 U.S. 380 (1993).

⁴ 337 NLRB No. 129 (Chairman Hurtgen and Members Cowen and Bartlett; Member Liebman dissenting).

⁵ 329 NLRB 341 (1999).

serve to bar an otherwise valid decertification, rival union, or employer petition, or other valid challenge to the union's majority status.

The majority concluded that the well-established principle to which it was returning (as initially articulated in *Southern Moldings*)⁶ represented the most appropriate balance of the Act's competing purposes of protecting employee freedom of choice and maintaining the stability of bargaining relationships, whereas the successor bar doctrine "promote[d] the stability of bargaining relationships to the exclusion of the employees' Section 7 rights to choose their bargaining representative." The majority noted that the successor employer situation is distinguishable from other contexts in which the Board has granted the union an insulated period during which its majority status is immune from challenge. The majority also noted that although a change in employers may cause instability, the impact of such instability is uncertain (i.e., it could cause employee disaffection with the union, or it could cause the employees to become stronger adherents of the union). Accordingly, the choice to retain or remove the bargaining representative should be left to the employees.

Member Liebman, dissenting, asserted that "the Board's newly-constituted majority reverse[d] course needlessly and without institutional experience under the previous rule" set forth in *St. Elizabeth Manor*. In her view, "*St. Elizabeth Manor* was sound policy, consistent with the Act, and fairly adapted to 'needs in a volatile, changing economy'" replete with corporate mergers and acquisitions.

3. Resolving Determinative Challenged Ballots in Stipulated Unit Cases

In *Caesars Tahoe*,⁷ the Board expressly adopted the three-prong approach used by the United States Court of Appeals in *Associated Milk Producers, Inc. v. NLRB*,⁸ as the approach it will apply prospectively in resolving determinative challenged ballots in cases involving stipulated bargaining units. Under this three-prong analysis, the Board first attempts to determine the parties' intent by examining the language of the stipulation itself. If the stipulation is unambiguous, the Board merely enforces the stipulation. If, however, the stipulation is ambiguous, the Board turns to extrinsic evidence to try to determine intent. If, after examining the extrinsic evidence, the Board still cannot determine the parties' intent, the Board resorts to its normal community-of-interest test.

⁶ 219 NLRB 119 (1975).

⁷ 337 NLRB No. 170 (Chairman Hurtgen and Member Liebman; Member Cowen concurring in the result).

⁸ 193 F.3d 539 (D.C. Cir. 1999).

In *Caesars Tahoe*, the challenged employee was classified as the engineering coordinator, a position neither specifically included nor excluded in the unit description. Applying the three-prong analysis, the Board found that: the stipulation was facially ambiguous; there was insufficient extrinsic evidence from which the Board could discern the parties' intent; and, applying the community-of-interest test, the engineering coordinator position should be included in the unit. The Board also reaffirmed *R.H. Peters Chevrolet*⁹ and *Lear Siegler*,¹⁰ for the principle that the failure to list a disputed classification as an inclusion does not establish a clear intent to exclude that classification.

4. Employees Jointly Employed by Supplier and User Employers

In *Gourmet Award Foods, Northeast*,¹¹ the Board majority held that the respondent violated Section 8(a)(5) and (1) by failing to apply the terms of the collective-bargaining agreement covering its drivers and warehousemen to temporary warehousemen who were jointly employed by the respondent and a supplier employer. Because the jointly employed employees held positions within the bargaining unit defined by the agreement, the majority found that an accretion analysis was not applicable. Relying on *M.B. Sturgis*,¹² the majority further found that the inclusion of the jointly employed employees would not render the unit inappropriate. Finally, because as a joint employer the respondent controlled some but not all of the employees' terms and conditions of employment, the majority ordered the respondent to apply to the jointly employed employees the contract provisions as to the working conditions under the respondent's control.

Member Liebman, concurring, would require the respondent to apply all of the terms of the collective-bargaining agreement to the jointly employed employees. In Member Liebman's view, the respondent here, unlike the employer in *M.B. Sturgis*, had already negotiated an agreement covering an existing unit and chose to hire the jointly employed employees into the unit.

Chairman Hurtgen, in dissent, said his colleagues turn *M.B. Sturgis* on its head by forcing the temporary employees into representation without their consent. Chairman Hurtgen did not pass on the issue of whether the regular and temporary employees share a community of interest, but observed that even if they do, it is not an "overwhelming" community of interest. While he agreed with the General Counsel that the accretion test is the appropriate one to be applied, he disagreed with the General

⁹ 303 NLRB 791 (1991).

¹⁰ 287 NLRB 372 (1987).

¹¹ 336 NLRB 872 (Members Truesdale and Liebman; Chairman Hurtgen dissenting).

¹² 331 NLRB 1298 (2000).

Counsel's further contention that, applying the accretion analysis, the temporary employees meet the overwhelming community-of-interest test.

5. Failure to Pay Benefit Fund Contributions

In *Made 4 Film, Inc.*,¹³ the Board majority ordered that an employer who unilaterally changed the terms and conditions of employment by ceasing to make benefit and annuity fund contributions as required under its contract with the union must pay the unpaid benefits beyond the expiration of the contract, until such time as it reaches a new agreement with the union or bargains to impasse.

The majority concluded that its remedial order requiring the respondent to continue making payments to the health and welfare fund and the annuity fund beyond the expiration date of the contract did not contravene Section 302(c)(5). That provision of the Act requires that employer payments into union trust funds be detailed in a "written agreement." Under *Hinson v. NLRB*,¹⁴ the terms of an expired contract together with the underlying trust agreements are sufficient to satisfy the "written agreement" requirement. Because an expired contract existed in this case and because "Addendum A" clearly referred to an underlying trust agreement, the majority concluded that the requirements of Section 302(c)(5) were satisfied.

In dissent, Member Cowen objected to the majority's extension of the remedial order beyond the terms of the expired contract. He found that, because the underlying trust agreement referenced in Addendum A was not included in the record, the requirements of Section 302(c)(5) had not been met. He therefore would have required the respondent to make the unpaid contributions to the benefit and annuity funds only until the expiration date of the parties' collective-bargaining agreement.

¹³ 337 NLRB No. 179 (Chairman Hurtgen and Member Liebman; Member Cowen concurring in part and dissenting in part).

¹⁴ 428 F.2d 133, 138-139 (8th Cir. 1970).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2002, are as follows:

Personnel compensation	\$ 146,039,200
Personnel benefits	30,927,034
Benefits for former personnel	47,642
Travel and transportation of persons	3,610,408
Transportation of things	198,686
Rent, communications, and utilities	26,649,845
Printing and reproduction	240,256
Other services	13,354,626
Supplies and materials	941,463
Equipment	4,045,411
Insurance claims and indemnities	103,765
Total obligations	\$ 226,158,336

II

Board Procedure

Deadline for Filing Documents

Excusable Neglect Provision

In *Unitec Elevator Services Co.*,¹ the Board held that a late-filed document would not be accepted based on excusable neglect pursuant to Section 102.111(c) of the Board's Rules and Regulations when the reason for the tardiness is solely a miscalculation of the filing date. The decision expressly overruled *Postal Service*,² where the Board in similar circumstances excused a 1-day arithmetic error in calculation of a due date. Following *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*,³ the Board noted that "excusable neglect" is an elastic concept taking account of all relevant circumstances, but that "inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect."

The Board also announced that it would enforce strict compliance with the requirement of Section 102.111(c) that the specific facts relied on to support a motion to accept a late filing be set forth in affidavit form and be sworn to by individuals with personal knowledge of the facts. Further, the signature of an attorney would not substitute for the required affidavit.

¹ 337 NLRB No. 55 (Chairman Hurtgen and Members Liebman, Cowen, and Bartlett).

² 309 NLRB 305 (1992).

³ 507 U.S. 380 (1993).

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. Preelection Hearing Notice Requirement

In *Croft Metals, Inc.*,¹ the Board held that parties in representation cases must receive no less than 5 days' notice before a hearing, excluding weekends and holidays, absent unusual circumstances or clear waiver. By setting for the first time an explicit minimum notice requirement in representation cases, the Board made "certain that parties to representation cases avoid the Hobson's choice of either proceeding unprepared on short notice or refusing to proceed at all."

On Wednesday, April 10, 2002, the Regional Office notified the employer that a hearing would be held on Monday, April 15, on the

¹ 337 NLRB No. 106 (Chairman Hurtgen and Members Cowen and Bartlett).

petitioner's petition seeking to represent a unit of the employer's production and maintenance employees. Upon the opening of the hearing, the employer objected to what it considered to be inadequate notice of the hearing, contended that it had an insufficient amount of time in which to prepare, requested that the record remain open at the close of the hearing so that it may introduce additional evidence as to the inappropriateness of the petitioned-for unit, and made an offer of proof outlining the evidence it would present. The hearing officer denied the employer's requests and closed the hearing. The Acting Regional Director affirmed the ruling, finding that the employer had been afforded adequate notice of the hearing.

The Board disagreed. In so doing, the Board adopted the suggestion of the NLRB Casehandling Manual and required that parties in a representation case be provided with 5 days' notice of a hearing absent unusual circumstances or clear waiver. Furthermore, because this period of time is less than 7 days, intermediate Saturdays, Sundays, and holidays are excluded in the computation pursuant to Section 102.111(a) of the Board's Rules and Regulations. Because the employer was effectively given only 3 business days of notice before the hearing, the Board reversed the Acting Regional Director and remanded the case to him to reopen the hearing.

B. Bars to an Election

Successor Bar Doctrine

In *MV Transportation*,² the Board majority overruled *St. Elizabeth Manor, Inc.*,³ and repudiated the successor bar doctrine articulated therein.

In connection with the assumption of its predecessor's operations, the employer hired the predecessor's employees and recognized the incumbent union as the bargaining representative of the employees. Thereafter, the employer and the union met for bargaining on two occasions, at which time an employee filed a decertification petition.

The Regional Director dismissed the petition in reliance on *St. Elizabeth Manor*, in which the Board held that, once a successor employer's obligation to recognize an incumbent union attaches, the union is entitled to a reasonable period of time for bargaining without challenge to its majority status.

The majority granted review of the Regional Director's dismissal and ultimately overruled *St. Elizabeth Manor*. Stating that its decision

² 337 NLRB No. 129 (Chairman Hurtgen and Members Cowen and Bartlett; Member Liebman dissenting).

³ 329 NLRB 341 (1999).

merely represented a return to longstanding precedent—from which the Board imprudently deviated in *St. Elizabeth Manor*—the majority held that an incumbent union in a successorship situation is entitled to only a *rebuttable* presumption of continuing majority status, which will not serve to bar an otherwise valid decertification, rival union, or employer petition, or other valid challenge to the union’s majority status.

The majority concluded that the well-established principle to which it was returning (as initially articulated in *Southern Moldings*)⁴ represented the most appropriate balance of the Act’s competing purposes of protecting employee freedom of choice and maintaining the stability of bargaining relationships, whereas the successor bar doctrine “promote[d] the stability of bargaining relationships to the exclusion of the employees’ Section 7 rights to choose their bargaining representative.” The majority noted that the successor employer situation is distinguishable from other contexts in which the Board has granted the union an insulated period during which its majority status is immune from challenge. For example, in a voluntary recognition situation, the union needs the opportunity to demonstrate its effectiveness to the employees without the threat of removal; in a successor employer situation, however, the employees have already had the opportunity to assess the union’s effectiveness, by virtue of their longstanding relationship with the union. The majority also noted that although a change in employers may cause instability and, consequently, engender stress or anxiety among the employees, the impact of such instability is uncertain (i.e., it could cause employee disaffection with the union, or it could cause the employees to become stronger adherents of the union). Accordingly, the choice to retain or remove the bargaining representative should be left to the employees, who “are presumably mature individuals who are capable of making rational decisions.”

Member Liebman, dissenting, asserted that “the Board’s newly-constituted majority reverse[d] course needlessly and without institutional experience under the previous rule” set forth in *St. Elizabeth Manor*. “*St. Elizabeth Manor* was sound policy, consistent with the Act, and fairly adapted to ‘needs in a volatile, changing economy’” replete with corporate mergers and acquisitions. “By providing a limited period of repose during which a question of representation may not be raised, *St. Elizabeth Manor* preserves stability and promotes collective bargaining without sacrificing employee free choice. I dissent from the Board’s abandonment of a framework that best accommodates the economic realities of the 21st Century.”

⁴ 219 NLRB 119 (1975).

C. Resolving Determinative Challenged Ballots in Stipulated Unit Cases

In *Caesars Tahoe*,⁵ the Board expressly adopted the three-prong approach used by the United States Court of Appeals in *Associated Milk Producers, Inc. v. NLRB*,⁶ as the approach it will apply prospectively in resolving determinative challenged ballots in cases involving stipulated bargaining units. Applying this three-prong approach, the Board reversed the hearing officer's recommendation to sustain the union's challenge to an employee's determinative ballot and to certify the union.

In *Caesars Tahoe*, the union petitioned to represent certain employees in the employer's engineering department. The parties stipulated to a bargaining unit which essentially included maintenance engineers, and excluded office clericals, guards, and supervisors. The challenged employee was classified as the engineering coordinator, a position neither specifically included nor excluded in the unit description.

Under the three-prong analytical approach recently outlined in *Associated Milk Producers*,⁷ the Board first attempts to determine the parties' intent by examining the language of the stipulation itself. If the stipulation is unambiguous, the Board merely enforces the stipulation. If, however, the stipulation is ambiguous, the Board turns to extrinsic evidence to try to determine intent. If, after examining the extrinsic evidence, the Board still cannot determine the parties' intent, the Board resorts to its normal community-of-interest test.

Applying that three-prong analysis, the Board found that: the stipulation was facially ambiguous; there was insufficient extrinsic evidence from which the Board could discern the parties' intent; and, applying the community-of-interest test (rather than the dual-function test applied by the hearing officer), the engineering coordinator position should be included in the unit.

The Board also: (1) reaffirmed *R.H. Peters Chevrolet*⁸ and *Lear Siegler*,⁹ for the principle that the failure to list a disputed classification as an inclusion does not establish a clear intent to exclude that classification; (2) overruled the hearing officer's exclusion of the engineering coordinator as an "office clerical," expressly disapproving the hearing officer's failure to make a crucial distinction between office and plant clericals.

⁵ 337 NLRB No. 170 (Chairman Hurtgen and Member Liebman; Member Cowen concurring in the result).

⁶ 193 F.3d 539 (D.C. Cir. 1999).

⁷ *Supra*.

⁸ 303 NLRB 791 (1991).

⁹ 287 NLRB 372 (1987).

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 2002 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Discrimination Against Employees

Supervisory Status of Tug Boat Pilots

In *American Commercial Barge Line Co.*,¹ the Board dismissed allegations that the respondent violated Section 8(a)(3) and (1) by terminating five barge pilots because they participated in a work stoppage. Affirming the findings of the administrative law judge in his supplemental decision, the Board found that the pilots were Section 2(11) supervisors and, therefore, not entitled to the Act's protections.

In the judge's initial decision, he found that the pilots were not statutory supervisors. Following the Board's remand of the case for further consideration in light of *NLRB v. Kentucky River Community Care*,² the judge found that the pilots were supervisors not entitled to the Act's protections.

In adopting the judge's supplemental decision, the Board held that the pilots were supervisors based on their: (1) authority to assign work and to responsibly direct the tugboat crew; (2) use of independent judgment in exercising that authority; and (3) exercise of that authority in the interest of the respondent. In finding supervisory status, the Board determined that the pilots were the highest-ranking officials on duty for 12-hours each day during which they, among other things, made navigation decisions based on their evaluation of nonroutine factors, including

¹ 337 NLRB No. 168 (Chairman Hurtgen and Members Cowen and Bartlett).

² 532 U.S. 706 (2001).

weather and river conditions, crew capabilities, and cargo type. The pilots also directed the work that was to be performed on the tugboat, including posting a lookout when they determined appropriate, adding watchmen when warranted, and changing the priority of crew work assignments. Indeed, the Board determined that “when the pilot is on watch, he is the sole wheelhouse official responsible for the safety of the vessel, crew and cargo. If a crew member does something wrong . . . he is responsible.”

In rejecting the General Counsel’s reliance on prior cases where the Board had held that pilots were not supervisors because their authority to direct work stemmed from their superior technical expertise and experience, the Board noted that the Supreme Court had expressly rejected that rationale in *Kentucky River*.

B. Employer Bargaining Obligation

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

Employees Jointly Employed by Supplier and User Employers

In *Gourmet Award Foods, Northeast*,³ the Board majority held that the respondent violated Section 8(a)(5) and (1) by failing to apply the terms of the collective-bargaining agreement covering its drivers and warehousemen to temporary warehousemen who were jointly employed by the respondent and a supplier employer. Because the jointly employed employees held positions within the unit defined by the agreement, the majority found that the accretion analysis was not applicable. The majority ordered the respondent to apply to the jointly employed employees the contract provisions as to working conditions under the respondent’s control.

When the respondent hired warehouse employees through a temporary agency and informed the union that some of them would work for 4–5 months, the union demanded that the respondent apply the contractual union-security provision to employees who remained in excess of 30 days and that the employees work and be paid under the terms of the parties’ agreement for drivers and warehousemen at the facility. The respondent did not apply the contract terms to these employees.

³ 336 NLRB 872 (Members Truesdale and Liebman; Chairman Hurtgen dissenting).

The majority found that the employees at issue were jointly employed by the respondent and their respective supplier employers because each employer determined some of the employees' terms and conditions of employment. Moreover, the majority held that the employees, who performed warehouse duties alongside their solely employed counterparts, were included in the bargaining unit in accordance with the broad contractual unit definition. Thus, the majority distinguished this case from those involving "newly created classifications not plainly included in or excluded from the established unit," in which unit placement is determined through unit clarification proceedings applying the Board's accretion analysis. Relying on *M.B. Sturgis*,⁴ the majority further found that the inclusion of the jointly employed employees would not render the unit inappropriate. Because as a joint employer the respondent controlled some but not all of the employees' terms and conditions of employment, the majority ordered the respondent to apply the contractual provisions to these employees that the respondent controlled.

Member Liebman, concurring, would require the respondent to apply all of the terms of the collective-bargaining agreement to the jointly employed employees. In Member Liebman's view, the respondent in this case, unlike the employer in *M.B. Sturgis*, had already negotiated an agreement covering an existing unit and chose to hire the jointly employed employees into the unit. Under these circumstances, the respondent's voluntary joint employer arrangements with the supplier employers should not defeat its contractual obligations to unit employees.

Chairman Hurtgen, in dissent, said his colleagues "leap five stages ahead" of the *M.B. Sturgis* proposition that the Act does not prohibit joining together, in one unit, the employees of a user and the employees jointly employed by a user and supplier. He wrote: "(1) They hold that the employees of the two groups are an appropriate unit, notwithstanding significant differences in terms and conditions of employment; (2) They hold that the temporary employees are to be placed into the user employer unit, without their consent; (3) They ignore contract language in the user's collective-bargaining agreement; (4) They subject the temporary employees to portions of the user's collective-bargaining agreement, and thus modify the contract without the consent of the user; and (5) They determine the unit placement of employees without notice to, or participation of, the suppliers."

⁴ 331 NLRB 1298 (2000).

Chairman Hurtgen did not pass on the issue of whether the regular and temporary employees share a community of interests. Even if they do, it is not an “overwhelming” community of interests, the Chairman observed. While he agreed with the General Counsel that the accretion test is the appropriate one to be applied, he disagreed with the General Counsel’s further contention that, applying the accretion analysis, the temporary employees meet the overwhelming community-of-interest test.

C. Remedial Order Provisions

1. Failure to Pay Benefit Fund Contributions

In *Made 4 Film, Inc.*,⁵ the Board majority ordered that an employer who unilaterally changed the terms and conditions of employment by ceasing to make benefit and annuity fund contributions as required under its contract with the union must pay the unpaid benefits beyond the expiration of the contract, until such time as it reaches a new agreement with the union or bargains to impasse.⁶

The respondent, owner of a film and video set design and construction company, signed a collective-bargaining agreement with the union on April 14, 2000. In the course of discussing the terms of the agreement, the parties determined that the respondent would be able to make contributions of \$10 into the health and welfare fund and \$10 into the annuity fund per employee per day. The agreement signed by the parties did not spell out these terms but referred to an addendum, Addendum A, that did so. Addendum A further stated that the respondent agrees “to be bound by the Trust Agreement establishing such Funds.” The respondent made an initial payment to the funds, in accordance with the terms of the addendum. However, due to a downturn in the respondent’s business, it made no subsequent contributions, as it was required to do under the agreement. The agreement expired on April 14, 2001.

The majority concluded that its remedial order requiring the respondent to continue making payments to the health and welfare fund and the annuity fund beyond the expiration date of the contract did not contravene Section 302(c)(5). That provision of the Act requires that employer payments into union trust funds be detailed in a “written agreement.” Under *Hinson v. NLRB*,⁷ the terms of an expired contract

⁵ 337 NLRB No. 179 (Chairman Hurtgen and Member Liebman; Member Cowen concurring in part and dissenting in part).

⁶ In so concluding, the Board relied on its finding in *R.E.C. Corp.*, 296 NLRB 1293 (1989), that “an employer has a statutory obligation to continue to follow the terms and conditions of employment governing the employer-employee relationship in an expired contract until a new agreement is concluded or good-faith bargaining leads to impasse.”

⁷ 428 F.2d 133, 138–139 (8th Cir. 1970).

together with the underlying trust agreements are sufficient to satisfy the “written agreement” requirement. Because an expired contract existed in this case and because Addendum A clearly referred to an underlying trust agreement, the majority concluded that the requirements of Section 302(c)(5) were satisfied.

In dissent, Member Cowen objected to the majority’s extension of the remedial order beyond the terms of the expired contract. He found that, because the underlying trust agreement referenced in Addendum A was not included in the record, the requirements of Section 302(c)(5) had not been met. He therefore would have required the respondent to make the unpaid contributions to the health and welfare fund and the annuity fund only until the expiration date of the parties’ collective-bargaining agreement.

2. Simplified Board Notice Language

In *Ishikawa Gasket America*,⁸ the Board modified standard Board notices to include, in simple, straightforward language: a statement of employee rights; a description of the location, function, and hours of operation of the relevant Board regional office; and the Board’s website address.

In *Ishikawa*, the General Counsel excepted to the judge’s proposed Order and remedy to the extent that it did not encompass several remedial measures requested by the General Counsel. Citing the need to provide simplicity and clarity to Board notices, the General Counsel requested that the Board substitute the following two paragraphs for the first two paragraphs currently used in Board notices:

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

The General Counsel also sought to have the following paragraph inserted at the conclusion of the text of the current notice to employees:

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and

⁸ 337 NLRB No. 29 (Chairman Hurtgen and Members Liebman and Walsh).

remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

Finding merit to the General Counsel's exceptions with regard to the foregoing language, the Board stated that it embraces the principle that to most effectively apprise employees of their rights and the unlawful acts of respondent employers or unions, notices should be written in clear, laypersons' language.⁹ Accordingly, for this case and for all future Board cases where notices are required, the Board held that it would replace the existing text of Board notices with the language set forth above.¹⁰

The Board rejected the General Counsel's request that the notice include plain, straightforward language describing the particular violations found in *Ishikawa*, since neither the General Counsel nor the Charging Party provided such language. However, the Board invited the General Counsel and other parties in future cases to propose simplified notice language describing the specific violations found.¹¹

⁹ See e.g., *Bilyeu Motor Corp.*, 161 NLRB 982 (1966); *Rondell Co.*, 222 NLRB 328, 329 fn. 3 (1976); *Yellow Cab Co.*, 148 NLRB 620, 628 fn. 15 (1964).

¹⁰ In some cases (e.g. Sec. 8(b)(4)), the language may be modified.

¹¹ The Board also rejected the General Counsel's request that the final paragraph of the Notice be drafted in Spanish, noting that no special need for this provision had been established. The Board stated, however, that upon the request of a party in a particular case, it would consider whether to provide such information in Spanish or other relevant foreign language.

V

Supreme Court Litigation

During fiscal year 2002, the Supreme Court decided, on the merits, two cases involving the Board.

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

In *Hoffman Plastic Compounds, Inc. v. NLRB*,¹ the Supreme Court held that “federal immigration policy, as expressed by Congress in the Immigration Reform and Control Act of 1986 (IRCA),”² foreclosed the Board from awarding backpay “to an undocumented alien who has never been legally authorized to work in the United States.”³

In the *Hoffman* case, the Board issued a limited backpay award to an employee who had been discriminatorily laid off in violation of Section 8(a)(3) of the NLRA. Backpay was cut off on the date when 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 work in the United States. Rejecting even a limited backpay award, the Court concluded that “awarding backpay to illegal aliens runs counter to policies underlying IRCA, policies the Board has no authority to enforce or administer.”⁴

Stressing that “Congress has expressly made it criminally punishable for an alien to obtain employment with false documents,” the Court could find “no reason to think that Congress nonetheless intended to permit backpay where but for an employer’s unfair labor practices, an alien-employee would have remained in the United States illegally, and continued to work illegally, all the while successfully evading apprehension by immigration authorities.”⁵ In the Court’s view, “allowing the Board to award backpay to illegal aliens would unduly trench on explicit statutory prohibitions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of

¹ 535 U.S. 137 (2002), revg. 237 F.3d 639 (D.C. Cir. 2001) (en banc).

² Pub. L. No. 99-603.

³ 535 U.S. 137, 140. Chief Justice Rehnquist wrote the majority opinion, and was joined by Justices O’Connor, Scalia, Kennedy, and Thomas. Justice Breyer, joined by Justices Stevens, Souter, and Ginsburg, dissented. See also 66 NLRB Annual Report 86–87 (2001) (discussing the grant of certiorari in *Hoffman Plastic Compounds*).

⁴ 535 U.S. at 149.

⁵ *Ibid.*

the immigration laws, and encourage future violations.”⁶ The Court concluded that the Board’s authority to issue orders requiring the employer to cease and desist from its NLRA violations and to post a notice is “sufficient to effectuate national labor policy regardless of whether . . . backpay accompanies them,” since the employer “will be subject to contempt proceedings should it fail to comply with these orders.”⁷

In a dissenting opinion, Justice Breyer concluded that, “[a]s *all* the relevant agencies (including the Department of Justice) have told us, the National Labor Relations Board’s limited backpay order will *not* interfere with the implementation of immigration policy.”⁸ Rather, Justice Breyer argued that such a Board order “reasonably helps to deter unlawful activity that *both* labor laws *and* immigration laws seek to prevent,” and that the federal immigration laws did not warrant the Court’s “taking from the Board this critically important remedial power.”⁹

2. The Board’s Authority to Impose NLRA Liability for Reasonably Based But Unsuccessful Lawsuits Filed with a Retaliatory Purpose

In *BE&K Construction Co. v. NLRB*,¹⁰ the Supreme Court granted certiorari to decide the following “rephrased question”: “Did the Court of Appeals err in holding that, under *Bill Johnsons Restaurants, Inc. v. NLRB*,¹¹ the NLRB may impose liability on an employer for filing a losing retaliatory lawsuit, even if the employer could show that the suit was not objectively baseless under *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*”¹² Focusing on the Board’s definition of a “retaliatory” lawsuit, the Court ultimately held that the Board lacks authority to impose liability under the NLRA with respect to reasonably based but unsuccessful suits filed with such a retaliatory purpose.¹³

⁶ Id. at 151.

⁷ Id. at 152.

⁸ Id. at 153.

⁹ Id. at 153–154.

¹⁰ 536 U.S. 516 (2002), revg. and remanding 246 F.3d 619 (6th Cir. 2001).

¹¹ 461 U.S. 731 (1983).

¹² 536 U.S. at 524. In *Professional Real Estate Investors*, 508 U.S. 49 (1993), the Court concluded that, to constitute “sham” litigation for purposes of antitrust liability under the Sherman Act, a lawsuit must be both “objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits” and filed in “ran attempt to interfere *directly* with the business relationships of a competitor.” Id. at 60–61 (quoting *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961)).

¹³ 536 U.S. at 536. Justice O’Connor wrote the opinion for the Court, and was joined by Chief Justice Rehnquist and Justices Scalia, Kennedy, and Thomas. Justice Scalia, joined by Justice

In the *BE&K* case, after the employer sued a group of unions in federal court, and lost on or withdrew each of its claims, the Board, applying *Bill Johnsons*, found that the lawsuit violated NLRA Section 8(a)(1) because it was unmeritorious and had been filed to retaliate against the unions for engaging in activities protected by the NLRA. Addressing the question on which it granted certiorari, the Court acknowledged that, under *Bill Johnsons*, the Board “could declare that a lost or withdrawn suit violated the NLRA if it was retaliatory.”¹⁴ However, the Court concluded that *Bill Johnsons* was “dicta” insofar as that opinion articulated such a liability test, and the Court exercised its “customary refusal to be bound by dicta.”¹⁵

Next, reading NLRA Section 8(a)(1) in light of the Petition Clause of the First Amendment, the Court concluded that the Board’s definition of a “retaliatory” lawsuit, i.e., a suit “brought with a motive to *interfere* with the exercise of” rights protected by the NLRA, “broadly covers a substantial amount of genuine petitioning.”¹⁶ The Court thus concluded that the Board’s “retaliatory motive limitation . . . fails to exclude a substantial amount of petitioning that is objectively and subjectively genuine.”¹⁷ Finding “nothing in the statutory text indicating that [NLRA Section 8(a)(1)] must be read to reach all reasonably based but unsuccessful suits filed with a retaliatory purpose,” the Court “decline[d] to do so.”¹⁸ The Court held that, “[b]ecause the Board’s standard for imposing liability under the NLRA allows it to penalize such suits,” that standard is “invalid.”¹⁹ In so holding, the Court did not decide whether the Board “may declare unlawful any unsuccessful but reasonably based suits that would not have been filed but for a motive to impose the costs of the litigation process, regardless of the outcome, in retaliation for NLRA protected activity.”²⁰ The Court remanded the case to the Sixth Circuit for further proceedings consistent with the Court’s opinion.

In a concurring opinion, Justice Scalia, citing *Professional Real Estate Investors*, supra, stated that “the implication of our decision today is that, in a future appropriate case, we will construe the National Labor Relations Act . . . in the same way we have already construed the Sherman Act: to prohibit only lawsuits that are *both* objectively baseless

Thomas, filed a concurring opinion. Justice Breyer, joined by Justices Stevens, Souter, and Ginsburg, filed an opinion concurring in part and concurring in the judgment.

¹⁴ Id. at 527.

¹⁵ Id. at 528 (quoting *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 24 (1994)).

¹⁶ 536 U.S. at 533.

¹⁷ Id. at 534–535.

¹⁸ Id. at 536.

¹⁹ Ibid.

²⁰ Id. at 536–537.

and subjectively intended to abuse process.”²¹ In an opinion concurring in part and concurring in the judgment, Justice Breyer agreed with the opinion of the Court only insofar as it holds that the Board is not permitted to declare unlawful “an employer’s filing suit *in the circumstances present here*, which is to say, in the kind of case in which the Board rests its finding of ‘retaliatory motive’ almost exclusively upon the simple fact that the employer filed a reasonably based but unsuccessful lawsuit and the employer did not like the union.”²²

²¹ *Id.* at 537. See also *supra*, note 12.

²² 536 U.S. at 539.

VI

Enforcement Litigation

A. Union Organizing Expenses Under *Beck*

In *Communications Workers of America v. Beck*,¹ the Supreme Court refined the “financial core” obligations of employees who work under union-security clauses but who refuse to become full union members. The Court held that the financial core membership that may be required under Section 8(a)(3) of the NLRA does not include the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.² That decision, however, did not identify the union activities that are germane to collective bargaining under the NLRA and those that are not.

In *Food & Commercial Workers, Local 1036 v. NLRB*,³ the Ninth Circuit, sitting en banc, upheld the Board’s conclusion that organizing in the competitive market *is* germane to collective bargaining under the NLRA, and that a union therefore may lawfully charge nonmembers working under a union-security clause for “the costs involved in organizing, at least when organizing employers within the same competitive market as the bargaining unit employer.”⁴ The court found that the Board’s conclusion that organizing in the competitive market is germane to collective bargaining was “completely in accord with the economic realities of collective bargaining, as well as with the language and purposes of the NLRA.”⁵

The Ninth Circuit rejected the nonmembers’ claim that the Supreme Court’s decisions in *Beck* and *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks*⁶ precluded the Board from finding that organizing in the competitive market is germane to collective bargaining under the NLRA.⁷ The court acknowledged that the Supreme Court had held in *Ellis* that organizing is not germane to collective bargaining under the Railway Labor Act, and therefore that organizing costs may not be charged to nonmembers under that statute.⁸ The court also acknowledged that the Supreme Court had stated in *Beck* that the union-security provisions of the Railway Labor Act and the NLRA are

¹ 487 U.S. 735 (1988).

² *Id.* at 745.

³ 307 F.3d 760 (9th Cir. 2002), cert. denied, 123 S.Ct. 551 (2002).

⁴ *Id.* at 766.

⁵ *Id.* at 769.

⁶ 466 U.S. 435 (1984).

⁷ *Id.* at 769–775.

⁸ *Id.* at 770.

“statutory equivalents,” are “in all material respects identical,” and that “Congress intended the same language to have the same meaning in both statutes.”⁹

However, the court concluded that the *Beck* court had not dealt with the question of *which* particular union activities are germane to collective bargaining under the NLRA, because the union in that case had argued that the NLRA did *not* restrict unions to charging nonmembers only for those activities that are germane to collective bargaining.¹⁰ And, the court found that the “statutory equivalen[ce]” statements were simply made in the context of the *Beck* court’s holding that under the NLRA, as under the Railway Labor Act, nonmembers working under union-security clauses cannot be charged for expenses beyond those germane to collective bargaining.¹¹

The court also concluded for two reasons that it was “implausible” that the *Beck* court “intended, without so stating, that only what is ‘germane’ . . . under the R[ailway] L[abor] A[ct] can be considered ‘germane’ . . . under the NLRA.”¹² First, the court pointed out that if judicial determinations about what is germane under the Railway Labor Act automatically applied in cases arising under the NLRA, then the Board would be deprived of its jurisdiction to interpret the NLRA.¹³ Yet, the *Beck* court itself had recognized that while exclusive jurisdiction for interpreting the Railway Labor Act lies with the courts, primary jurisdiction over the interpretation of the NLRA lies with the Board.¹⁴ The court found the case for judicial deference to the Board particularly appropriate because determining whether organizing is germane to collective bargaining under the NLRA is a complex task that is particularly suitable for the Board, as the administrative agency that specializes in labor relations.¹⁵

Second, the court noted that the *Ellis* court had explicitly based its decision about the nonchargeability of organizing expenses on “its close review of the legislative history” of the Railway Labor Act.¹⁶ But, the court found that the legislative history of the Railway Labor Act was substantially different from the legislative history of the NLRA.¹⁷ Because the “fundamental premises and principles of the Railway Labor Act are not the same as those which form the basis” of the NLRA, the

⁹ Id. (citations omitted).

¹⁰ Id. at 771.

¹¹ Id. at 770–771.

¹² Id. at 773.

¹³ Id. at 771–772.

¹⁴ Id.

¹⁵ Id. at 772.

¹⁶ Id.

¹⁷ Id. at 772–773.

court concluded that the Board “remains free to determine what union activities are germane to collective bargaining” under the NLRA.¹⁸

B. *Weingarten* Rights in Nonunion Workplaces

Section 7 of the Act grants employees the right to “engage in . . . concerted activities for . . . their mutual aid or protection.” In *NLRB v. J. Weingarten, Inc.*,¹⁹ the Supreme Court approved the Board’s determination that, where employees have a collective-bargaining representative, Section 7 creates a statutory right in an employee to refuse to submit without union representation to an interview which he reasonably fears may result in his discipline. In *Epilepsy Foundation of Northeast Ohio*,²⁰ the Board held that *Weingarten* extended to nonunion settings, interpreting Section 7 as encompassing the right of unrepresented employees to request the presence of a coworker in an investigatory interview that the employee reasonably believes could result in disciplinary action. The Board overruled *E.I. DuPont & Co.*,²¹ which held that limiting the *Weingarten* right to employees in unionized workplaces best effectuated the purpose of the Act, and returned to its pre-*DuPont* holding in *Materials Research Corp.*,²² which extended the right to the nonunion setting. The Board also applied the rule retroactively, holding that the Foundation unlawfully discharged an employee for refusing to meet with supervisors without a coworker present.

In *Epilepsy Foundation of Northeast Ohio v. NLRB*, the District of Columbia Circuit upheld the Board’s extension of *Weingarten* to nonunion settings, but reversed the Board’s retroactive application of its new policy to the Foundation. First, the court upheld as reasonable the Board’s determination that the presence of a coworker in an investigatory interview is “concerted activity for mutual aid and protection” within the meaning of Section 7. The court observed that the presence of a coworker “gives an employee a potential witness, advisor, and advocate in an adversarial situation, and, ideally, militates against the imposition of unjust discipline by the employer.”²³ Further, the court stated, “the Board’s position also recognizes that even nonunion employees may have a shared interest in preventing the imposition of unjust punishment, and an employee’s assertion of

¹⁸ Id. at 771, 773 (citation omitted).

¹⁹ 420 U.S. 251 (1975).

²⁰ 331 NLRB 676 (2000).

²¹ 298 NLRB 627 (1988).

²² 262 NLRB 1010 (1982).

²³ 268 F.3d at 1100.

Weingarten invokes this shared interest.”²⁴ The court also agreed with the Board that *Weingarten* supported the Board’s decision, because the Supreme Court grounded the *Weingarten* right in the language of Section 7.²⁵

The court further rejected the claim that extending *Weingarten* rights to nonunion workers conflicts with the principle in Section 9(a) of the Act that collective-bargaining representatives selected by a majority of employees are the employees’ exclusive representative. The court concluded that even assuming that the role of an employee in an investigatory interview constitutes “dealing with” the employer, “dealing” is not equivalent to “collective bargaining,” and accordingly the employer “is not required to ‘bargain collectively’ with the *Weingarten* representative.” Moreover, the court observed, because an employer may forego the investigatory interview and pursue other means of resolving the matter, “there is no obligation to deal with an employee representative of nonunionized employees.”²⁶

Although affirming the Board’s extension of *Weingarten* rights, the court held that the Board erred in giving retroactive effect to its new interpretation. The court observed that when the case arose, the Board’s policy was clear that employees not represented by a union did not have a *Weingarten* right to representation, and therefore the employer acted in conformity with the prevailing law in denying the employee’s request to have a coworker present during the meeting.²⁷ In those circumstances, the court held, it would be a “‘manifest injustice’” to require the employer to pay damages to an employee who defied lawful instructions.²⁸

C. Refusal to Bargain

1. Withdrawal of recognition based on evidence obtained during the certification year

The Board has long held that, following a valid election and Board certification, a union is entitled to an irrebuttable presumption of majority status for a reasonable period, generally 1 year. After the certification year has ended, this presumption becomes rebuttable, and an employer may withdraw recognition if the union has in fact lost its majority status.²⁹ The Supreme Court approved the Board’s

²⁴ Id.

²⁵ Id. at 1100.

²⁶ Id. at 1101.

²⁷ Id. at 1102.

²⁸ Id. at 1103.

²⁹ *Brooks v. NLRB*, 348 U.S. 96 (1954).

certification year policy in *NLRB v. Brooks*,³⁰ recognizing that the certification year rule fostered the stability of bargaining relationships and good-faith bargaining, by giving the union ample time to achieve a collective-bargaining agreement without risking decertification if it did not achieve immediate results, and discouraging employers from delaying in the hope that the union's support would erode.³¹

In *Chelsea Industries, Inc. v. NLRB*,³² the District of Columbia Circuit affirmed the Board's policy that an employer cannot rely on evidence obtained during the certification year to withdraw recognition from the union after the certification year ends. Applying that policy, the court upheld the Board's finding that the employer unlawfully withdrew recognition from the incumbent union after the certification year, and thereafter unilaterally increased wages, where the employer relied on an antiunion petition, signed by a majority of employees, that it obtained during the certification year.

In upholding the Board's policy, the court explained that the Board's reasons for its policy—that it “relieves a newly certified union of ‘exigent pressures to produce hothouse results or be turned out’ and decreases an employer's incentive to engage in surface bargaining”—were the same as those accepted by the Supreme Court in *Brooks*, as justifying the irrebutable presumption during the certification year. Finding those reasons equally applicable to the issue of post-certification year withdrawal based on evidence obtained while the union enjoyed an irrebutable presumption, the court observed that “an employer that acquires evidence its employees are dissatisfied with their union may well be reluctant to negotiate, and tempted instead merely to run out the certification year in the expectation that the employees will then oust the union; and a union facing the threat of derecognition based upon dissatisfaction among its members during the certification year will again be under pressure to generate ‘hothouse results.’”³³

Rejecting the employer's argument that the Board had failed to follow its own precedent, the court explained that the Board had instead identified and resolved a tension between two cases that “could not sensibly co-exist.”³⁴ The Board had recognized a conflict between *United Supermarkets*³⁵—where the Board held that an employer cannot withdraw recognition outside the certification year on the basis of evidence of loss of majority acquired within the certification year—and

³⁰ 348 U.S. 96 (1954).

³¹ *Id.* at 100. *Accord Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996).

³² 285 F.3d 1073 (D.C. Cir. 2002).

³³ *Id.* at 1076, quoting *Brooks*, 348 U.S. at 100.

³⁴ 285 F.3d at 1076.

³⁵ 287 NLRB 119 (1987), *enfd.* 862 F.2d 549 (5th Cir. 1989).

a subsequent decision, *Rock-Tenn Co.*³⁶—where the Board stated that, during the certification year, an employer could announce an intent to withdraw recognition after the end of the year, based on evidence obtained within that year. The court observed that the Board reconciled those two cases by disavowing *Rock-Tenn*, to the extent it suggested that during the certification year an employer could announce an intent to withdraw based on evidence received during the certification year.³⁷ The court concluded that because the policy adopted by the Board was reasonable, and the Board gave a reasoned explanation for changing or clarifying its announced policy, the Board had not impermissibly departed from precedent.³⁸

Finally, the court dismissed the employer’s suggestion that the Board’s decision conflicted with employees’ Section 7 rights by requiring its employees “to accept the [union] as their bargaining representative simply because they did not wait until [the end of the certification year] to sign the petition.”³⁹ The court acknowledged this tension as the “inevitable by-product of the Board’s striking a balance between stability and employee free choice in labor relations, as it frequently must do.”⁴⁰ Citing *Brooks*, the court concluded that the burden was no greater than that entailed in the Board’s certification year policy, which “has been recognized as valid under the Act for nearly fifty years.”⁴¹

2. Survival of management rights clause after contract expiration

In *Beverly Health Rehabilitation Services, Inc. v. NLRB*,⁴² the Sixth Circuit upheld the Board’s determination that a management-rights clause did not survive the termination of the collective-bargaining agreement as a “permissible and reasonably defensible” interpretation of the Act. Accordingly, the Court affirmed the Board’s finding that Beverly violated Section 8(a)(5) and (1) of the Act by unilaterally implementing revised disciplinary rules and work schedules, which the employer had claimed were authorized by the management rights clause.

The Sixth Circuit rejected the employer’s argument that the decision was inconsistent with the Board’s decision in *Shell Oil Co.*⁴³ In that

³⁶ 315 NLRB 670, 672 (1994), enfd. 69 F.3d 803 (7th Cir. 1995).

³⁷ 285 F.3d at 1076.

³⁸ Id. at 1076–1077.

³⁹ Id. at 1077.

⁴⁰ Id. at 1077.

⁴¹ Id.

⁴² 297 F.3d 468 (6th Cir. 2002).

⁴³ 149 NLRB 283 (1964).

case, the Board found that an employer did not violate the Act by continuing to subcontract work unilaterally after expiration of a contract with a clause giving the employer the right to subcontract. The court explained that *Shell Oil* held that a pattern of unilateral change becomes a “term and condition of employment,” which continued as the status quo after expiration of the contract, if the employer has made frequent unilateral changes under the management rights clause during the term of the agreement.⁴⁴ The court stated, “it is the actual past practice of unilateral activity under the management-rights clause of the [collective bargaining agreement], and not the existence of the management-rights clause itself, that allows the employer’s past practice of unilateral change to survive the termination of the contract.”⁴⁵ Noting no evidence of a pattern of unilateral change of work schedules and disciplinary rules during the term of the parties’ collective-bargaining agreement, the court rejected the employer’s argument as an attempt “to justify its post-termination changes based on the mere existence of the management-rights clause in the expired contract.”⁴⁶

D. Jurisdiction Over Church Affiliated College

In *NLRB v. Catholic Bishop of Chicago*,⁴⁷ the Supreme Court found that the Board’s assertion of jurisdiction over lay teachers in Roman Catholic parochial schools directly operated by the Church raised significant constitutional questions, which it was unwilling to resolve absent an “affirmative intention of Congress clearly expressed” to extend the coverage of the Act to teachers in church-operated schools.⁴⁸ Finding no such clearly expressed affirmative intention, the Court construed the Act as not granting the Board jurisdiction over parochial school teachers, thereby making it unnecessary to decide whether the Board’s assertion of jurisdiction in that case violated the religion clauses of the First Amendment.⁴⁹

Since *Catholic Bishop*, the Board has determined case by case whether a “religion affiliated school has a ‘substantial religious character’ and therefore whether the exercise of the Board’s jurisdiction would present a significant risk of infringing on that employer’s First Amendment rights.”⁵⁰ Under that test, the Board considered the degree to which the school has a religious mission and curriculum; the school’s

⁴⁴297 F.3d at 481.

⁴⁵Id. at 481.

⁴⁶Id.

⁴⁷440 U.S. 490 (1979).

⁴⁸Id. at 500 (attribution omitted).

⁴⁹Id. at 507.

⁵⁰*University of Great Falls*, 331 NLRB 1663, 1664 (2000).

organization and function, such as the control that a religious organization has over its day-to-day administration and finances; and whether religious criteria are used for the appointment and evaluation of faculty.⁵¹

In *University of Great Falls v. NLRB*,⁵² the Court of Appeals for the District of Columbia Circuit rejected the Board's "substantial religious character" test, as "creat[ing] the same constitutional concerns that led to the Supreme Court's decision in *Catholic Bishop*."⁵³ The court declined to give deference to the Board's application of the *Catholic Bishop* exemption from Board jurisdiction, because that exemption involved interpretation of Supreme Court precedent based on constitutional concerns, an area of judicial expertise, not interpretation of ambiguous statutory language.⁵⁴

In the court's view, the Board's examination of whether the University was sufficiently religious required the Board to "troll[] through" the University's religious beliefs, thereby involving the Board "in the sort of intrusive inquiry that *Catholic Bishop* sought to avoid."⁵⁵ Instead, the court set forth a three-part test for the Board to apply in determining whether an institution is subject to the Board's jurisdiction. The Board should consider whether the institution (1) holds itself out as providing a "religious educational environment;" (2) is organized as a nonprofit entity; and (3) is religiously affiliated.⁵⁶ The court explained that this "bright-line test" avoided the constitutional infirmities of the Board's test, because it does not "subject the institution to questioning about its motives or beliefs [nor] ask about the centrality of beliefs or how important the religious mission is to the institution."⁵⁷ Further, "this three-part approach avoids asking how effective the institution is at inculcating its beliefs, an irrelevant inquiry that permeates the NLRB proceeding below."⁵⁸

Applying its test, the court reversed the Board's finding that the University was subject to the Board's jurisdiction. The court found that the University satisfied the court's test because it "unquestionably holds itself out . . . as providing an education that, although primarily secular, is presented in an overtly religious" environment, it is a nonprofit

⁵¹ Id.

⁵² 278 F.3d 1335 (D.C. Cir. 2002).

⁵³ Id. at 1341.

⁵⁴ Id. at 1340–1341.

⁵⁵ Id. at 1342, 1341.

⁵⁶ Id. at 1343–1344.

⁵⁷ Id. at 1345, 1344.

⁵⁸ Id. at 1344.

educational institution, and it is ultimately controlled by a recognized religious organization.

E. Supervisory Status

To be held a supervisor under Section 2(11) of the Act, and therefore excluded from the Act's protections, an individual must exercise "independent judgment" in one of twelve enumerated statutory functions in the interest of the employer.⁵⁹ In determining whether an individual exercises supervisory independent judgment, the Board, in *Providence Hospital*⁶⁰ and other cases, interpreted that term as excluding "ordinary professional or technical judgment," but the Supreme Court rejected that interpretation in *NLRB v. Kentucky River Community Care*.⁶¹ *Kentucky River*, like *Providence Hospital*, involved the supervisory status of nurses at a healthcare facility.

In two cases decided during the past year, courts applied *Kentucky River* outside the health care area to reject Board findings that certain skilled employees were not supervisors under the Act. In both cases, the court denied enforcement of the Board's order outright, rather than remanding to the Board for reconsideration, even though in each instance the Board had issued its decision prior to the Supreme Court's ruling in *Kentucky River*.

In *Multimedia KSDK, Inc. v. NLRB*,⁶² the Eighth Circuit, in a 5–4 *en banc* decision, rejected the Board's finding that a television station's news producers were not supervisors under the Act. The court found that the Board's determination rested solely on the rationale rejected in *Kentucky River*, namely, that the producers' exercise of authority was not supervisory because it stemmed from their "own experience, skills, training, or position."⁶³ The court further ruled that it would not remand the case to the Board because, in its view, the Board had not requested a remand.⁶⁴

The dissent agreed with the majority that the Board's order could not be enforced in the case's then-current posture, but would have remanded the case to the Board for further review and consideration, rather than

⁵⁹ Section 2(11) of the Act (29 U.S.C. §152(11)) provides:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

⁶⁰ 320 NLRB 717 (1996), cert. upheld on indirect review, 121 F.3d 548 (9th Cir. 1997).

⁶¹ 532 U.S. 706 (2001).

⁶² 303 F.3d 896 (8th Cir. 2002) (*en banc*).

⁶³ *Id.* at 899.

⁶⁴ *Id.* at 900.

denying enforcement outright.⁶⁵ The dissent asserted that the Board “is entitled to take the initial stab at reconciling its [Section 2(11)] jurisprudence with *Kentucky River*,”⁶⁶ and identified two specific reasons for remanding. First, it noted that the Board’s order was arguably enforceable on the independent ground that the producers were not supervisors because they were part of an integrated production team, in which they engaged in a collaborative enterprise.⁶⁷ Second, the dissent contended, a remand would afford the Board an “opportunity to reassess the importance of defining and interpreting the enumerated tasks in each case,” citing language in *Kentucky River* suggesting that the Board could offer “a limiting interpretation of the supervisory function of responsible direction by distinguishing employees who direct the manner of others’ performance of discrete *tasks* from employees who direct other *employees*, as [Section 2(11)] requires.”⁶⁸

In *Public Service Co. of Colorado v. NLRB*,⁶⁹ the Tenth Circuit rejected the Board’s finding that a power company’s “transmission employees” were not supervisors under the Act because they did not exercise supervisory independent judgment in assigning or directing the work of field employees. In finding them to be nonsupervisory, the Board had applied its then-recent decision in *Mississippi Power & Light Co.*,⁷⁰ which, in turn, had relied in part on *Providence Hospital* to overrule prior precedent holding such employees to be statutory supervisors.⁷¹

After the Supreme Court’s decision in *Kentucky River*, the Board filed a motion with the Tenth Circuit to remand the case for reconsideration in light of *Kentucky River*, which the court rejected. In its subsequent ruling on the merits, the court found that the Board’s rationale in *Mississippi Power* was untenable in light of *Kentucky River*. The court explained that although the language of *Mississippi Power* was “less clear than we might hope,”⁷² it read that case as being “within the umbrella” of the rationale struck down by the Supreme Court in *Kentucky River*, given its context and its reference to charge nurse cases such as *Providence Hospital*.⁷³ Having rejected the Board’s interpretation of “independent judgment” as inconsistent with *Kentucky*

⁶⁵ Id. at 900, 901 (Bye, J., dissenting).

⁶⁶ Id. at 901 (Bye, J., dissenting).

⁶⁷ Id. at 900–901 (Bye, J., dissenting).

⁶⁸ Id. at 901–902 (Bye, J., dissenting) (quoting *Kentucky River*, 532 U.S. at 720) (emphasis in *Kentucky River*).

⁶⁹ 271 F.3d 1213 (10th Cir. 2001).

⁷⁰ 328 NLRB 965 (1999).

⁷¹ Id. at 965, 970–971 (overruling *Big Rivers Electric Corp.*, 266 NLRB 380 (1983)).

⁷² *Public Service Co. of Colorado*, 271 F.3d at 1220.

⁷³ Id. at 1221.

River, the court found it unnecessary to review the Regional Director's factual findings, explaining that it could not enforce the Board's order by applying a standard that the Board did not adopt.⁷⁴

⁷⁴ Id. (citing *Kentucky River*, 532 U.S. at 721–722).

VII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding. 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 2002, the Board filed in district courts a total of 14 petitions for temporary injunctive relief under Section 10(j). Of these petitions, 13 were filed against employers and 1 petition was filed against an employer and a labor organization. Three cases authorized in the prior fiscal year were also pending in district courts at the beginning of this fiscal year. Of these 17 cases, 5 were settled or adjusted prior to court action, and 1 case was withdrawn prior to a court decision due to changed circumstances. District courts granted injunctions in four cases and denied them in none. Seven cases remained pending in district court at the end of the fiscal year.

Three of the cases litigated in district and appellate courts involved employer interference with nascent union organizational campaigns, including two cases where the violations precluded a fair election and warranted a *Gissel* bargaining order.² Another two cases involved an improper employer withdrawal of recognition from an incumbent union and an employer refusal to negotiate over the terms of a successor collective-bargaining agreement.

In one district court decision, *Eggert v. Jack In the Box Distribution Center Systems*,³ the Board sought a Section 10(j) injunction, including interim reinstatement of two senior employees responsible for starting the union campaign. Previously, the union had begun organizing the employer's 20–25 employees. After an administrative law judge issued a decision finding the employer's conduct unlawful, the two discriminatees

¹ See, e.g., *Schaub v. West Michigan Plumbing & Heating, Inc.*, 250 F.3d 962 (6th Cir. 2001); *Pye v. Excel Case Ready*, 238 F.3d 69 (1st Cir. 2001); *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559 (7th Cir. 1996), cert. denied 519 U.S. 1055 (1997). The decisions in *West Michigan Plumbing and Excel Case Ready* were discussed in the 2001 Annual Report.

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

³ No. C02-1400R (W.D. Wash.).

and the union desired to resume the organizing campaign. The district court granted the Section 10(j) relief sought. In doing so, the court placed strong reliance on the findings of the administrative law judge and found that the Regional Director was likely to succeed on the merits of the administrative case.⁴ The court also found that injunctive relief, including the interim reinstatement of the two discharged employees, was also just and proper. Finding that the alleged discriminatees were “key union organizers,” the “court presume[d] their absence contributes to the erosion of support for the nascent union movement.”⁵ The court also concluded that the public interest was jeopardized “when the protracted nature of Board proceedings threatens to circumscribe the Board’s ability to fully remediate unfair labor practices.”⁶ The court rejected an employer defense that the Regional Director’s delay in filing the 10(j) petition militated against interim relief.⁷

In another union organizing case, *Sharp v. Ashland Construction Co., Inc.*,⁸ the district court granted interim reinstatement to an employee and an interim *Gissel* bargaining order. In that case, the union successfully obtained 15 authorization cards from the employer’s 17 employees during the organizing campaign. The employer then began engaging in alleged unfair labor practices, including threatening to reduce work hours or close the business if the employees selected the union as their bargaining representative, granting wage increases to certain unit employees, soliciting employees to revoke their union authorization cards, and refusing to recall from layoff a key union supporter. The court found that the Regional Director had established more than a negligible chance of success on the merits before the Board. The court also concluded that interim relief was just and proper. The court stated that “leaving those [unlawful] practices uncorrected and undeterred will undermine those [organizational] efforts irreparably.”⁹ In rejecting the employer’s argument that interim relief should be limited to a cease and desist order, the court stated a cease and desist order would not effectuate employees’ rights.¹⁰ Based upon the conclusion that the proper status quo was a card majority in favor of the union, which was to be preserved by injunctive relief, the court granted an interim reinstatement order and an affirmative bargaining order. The court noted that the Board’s ability

⁴ Id. slip op. at 11. The court noted that the Board usually defers to the credibility resolutions of the administrative law judge, citing *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951).

⁵ Id. slip op. at 13.

⁶ Id. slip op. at 14.

⁷ Id. slip op. at 13, fn. 8.

⁸ 190 F. Supp. 2d 1164 (W.D. Wis.).

⁹ 190 F. Supp. 2d at 1170–1171.

¹⁰ Id. 190 F. Supp. 2d at 1171.

to rectify the harm caused by alleged violations diminishes with time, while the employees continue to be deprived of the union representation that they wanted initially.¹¹

In another *Gissel* case, *Willms v. Guard Publishing Co.*,¹² the Ninth Circuit affirmed the district court's entry of interim relief, including a *Gissel* bargaining order. In that case, after a majority of the 60-person unit signed union authorization cards, the employer's senior management engaged in a campaign of "hallmark" unfair labor practices, including the discharge of a lead union adherent, the grant of significant wage increases just a day after it heard of its employees' union activity, and the discharge of a union supporter. The employer's unfair labor practices caused a severe loss of employee support for the union, which dissuaded the union from filing a petition for a Board election. In affirming the grant of interim relief, the appellate court held that the district court did not err, either in identifying the correct legal standard or applying it in a reasonable manner.

One case during the fiscal year involved an alleged withdrawal of recognition from an incumbent union. In *Kentov v. GFC Crane Consultants, Inc.*,¹³ the employer discharged all six unit employees, assigned their work to newly hired nonunion personnel, and withdrew recognition from the union that had represented them for many years. The district court found reasonable cause to believe that the employer had attempted to "deunionize" its workforce by engaging these unfair labor practices. The employer defended its actions on the basis that the unit employees were statutory supervisors. The court concluded that the employer had not carried its burden of proof on this issue and that the evidence indicated that the employer was engaging in an intentional scheme to eliminate the union and transfer the unit work to nonunion employees.¹⁴ The court also held that interim relief was just and proper. In so doing, the court concluded that, absent the requested injunctive relief, the final order of the Board would be meaningless because a large back pay award against the employer may be unenforceable due to its financial situation. Further, the discharged employees were dispersing around the world and would be unlikely to return to work for the employer under a Board order. The court also noted that the employer operated its business under a service agreement with a municipal government, which may not be in effect several years in the future. Finally, the court concluded that the potential harm to the employer by

¹¹ Id. citing *NLRB v. Electro-Voice, Inc.*, 83 F.3d at 1573.

¹² No. 01-35481 (9th Cir. 2002).

¹³ Case No. 01-7809-SEITZ/GARBER (S.D. Fla.)

¹⁴ Id. slip op. at 7.

granting the injunction was minimal and that the injunction was in the public interest.¹⁵

Finally, during this fiscal year, the Seventh Circuit favorably decided a refusal to bargain by a successor employer. In *Bloedorn v. Francisco Foods, Inc.*,¹⁶ the Court reversed the denial of a temporary bargaining order against a *Burns* successor.¹⁷ In order to evade its bargaining obligation, the employer engaged in discriminatory hiring practices in an effort to ensure that less than 50 percent of its 45-employee complement were predecessor employees. The Court held that the Regional Director's "strong" evidence that the respondent never intended to recognize the Union—bolstered by a favorable administrative law judge decision—satisfied his burden of establishing a "better than negligible" chance of prevailing before the Board.¹⁸ The Court further held that the Director's reasonable inference of irreparable harm in the absence of interim injunctive relief, even without direct supporting evidence of harm, was sufficient to establish that a Section 10(j) injunction was "just and proper."¹⁹

B. Injunction Litigation Under Section 10(I)

In this report period, the Board filed four petitions for injunctions under Section 10(I). Of the total caseload, comprised of this number together with three cases pending at the beginning of the period, no cases were settled, or withdrawn, and three were pending court action at the close of the report year. During the period, four petitions went to final order, the courts granting injunctions in four cases and denying them in no cases. Injunctions were issued on two cases involving secondary boycott action proscribed by Section 8(b)(4)(B), and in one case involving jurisdictional disputes in violation of Section 8(b)(4)(D). There were no injunctions issued in cases to proscribe alleged recognitional or organizational picketing in violation of Section 8(b)(7).

¹⁵ Id. slip op. at 8.

¹⁶ 276 F.3d 270 (7th Cir. 2001).

¹⁷ *NLRB v. Burns Int'l Security Services, Inc.*, 406 U.S. 272 (1972).

¹⁸ 276 F.3d at 288, 296.

¹⁹ Id. at 297–300.

VIII

Contempt Litigation and Compliance Branch

During fiscal year 2002, the Contempt Litigation and Compliance Branch (CLCB) continued its evolution into a full service office, with contempt litigation being an alternative, but not the only method, to achieve compliance, and with compliance advice becoming an increasingly important component of our work. A total of 307 cases were referred to the CLCB during the fiscal year for consideration of contempt proceedings, for advice and/or assistance, or for other appropriate action to achieve compliance with the Act. Of this total, 87 cases were formal submissions respecting contempt or other compliance actions; in 220 other cases advice and/or assistance was given to the Regions or other agency personnel and the cases returned for further administrative processing.

With respect to formal contempt submissions, voluntary compliance was achieved in 18 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. In cases deemed to have merit, 12 civil contempt or equivalent proceedings were instituted, including three in which body attachment was sought. A number of ancillary compliance proceedings were also instituted by the CLCB during 2002, including three requests for writs of pre- or post-judgment garnishment under the Federal Debt Collection Procedures Act (FDCPA); three requests for injunctive relief and/or protective restraining orders; and a variety of actions designed to protect the Board's remedial interests in pending bankruptcy cases.

The CLCB's active role in assisting and training regional and agency personnel and the labor bar was demonstrated in other ways during the fiscal year. The CLCB conducted 239 asset/entity database investigations to assist Regions in their compliance efforts, a task which is over and above the 307 referrals to the CLCB outlined above. Representatives of the CLCB also spoke at the plenary session and at the workshops at the Regional Director's conference in San Diego and the Agency's field manager's conference in Baltimore; played a pivotal role in developing various compliance programs, including the General Counsel's best practices initiative; served as members of the Agency's remedies committee; and organized 2-day compliance training programs for several Regional offices, including Regions 24, 21, 15, 13, and 10. Finally, representatives of the CLCB sponsored and conducted CLE programs on a variety of issues, including mediation, ethics, appellate

advocacy, FOIA, discovery, opening statements and logic for lawyers; and made presentations regarding the Agency's contempt and compliance programs to various organizations outside the Agency.

With respect to litigated cases, 14 civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year. Among the noncontempt orders were one writ of postjudgment garnishment; one writ of prejudgment garnishment; one disbursement order for a writ of garnishment previously obtained; and one order declaring backpay judgments obtained by the Board to be non-dischargeable in bankruptcy. The CLCB also obtained two protective restraining orders protecting assets against dissipation and one injunction ordering the reinstatement of a discriminatee during the pendency of contempt proceedings.

During the fiscal year, the CLCB collected \$6000 in fines and \$995,667 in backpay, while recouping \$37,672 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases during the fiscal year, among which were the following. In *NLRB v. Piper*,¹ a case which was processed jointly by the CLCB and Region 7, a bankruptcy court held for the first time that the Board's claims arising from an employer's 8(a)(5) refusal to pay wages and benefits required by a collective bargaining agreement are nondischargeable in bankruptcy. All previous nondischargeability actions initiated by the CLCB and the Regions have related solely to 8(a)(1) and/or (3) claims arising from the unlawful discharge of employees. Here, the Court specifically held that "the Debtor/Defendant's refusal to pay its employees their contractually required wages and benefits constituted the infliction of 'willful and malicious' injury as defined under Section 523(a)(6) of the Bankruptcy Code," and were therefore nondischargeable.² This precedent should be of significant benefit in the Regions' and the CLCB's efforts to achieve compliance with the remedial provisions of Board and Court judgments.

In a related proceeding, in *NLRB v. M & V Painting*,³ (processed jointly with Region 7), the derivative liability of an alter ego was established in a FDCPA proceeding. This case represents the first time that the Board sought and obtained an order from a U.S. District Court establishing the derivative liability of a previously unnamed party as part of a FDCPA garnishment action.

The CLCB continued its use of Section 11 depositions prior to filing contempt petitions as a means of fostering settlements. This resulted in a

¹ 170 LRRM 2282 (E.D. Mich. 2002).

² 170 LRRM at 2284.

³ 169 LRRM 2025 (E.D. Mich. 2001).

favorable settlement in *Operating Engineers Local 12 (Kiewit Industrial)*,⁴ without the expenditure of a substantial amount of resources. The CLCB also made effective use of Section 10(e) injunctions during FY 2002. For example, in *Daufuskie Island Club & Resort*,⁵ the CLCB instituted a civil contempt case because of the employer's failure to properly reinstate a large number of employees; failure to restore contractual terms and benefits; and failure to bargain in good faith, among other violations. After the contempt case was initiated, *Daufuskie* discharged the leading union adherent on pretextual grounds. On the CLCB's motion, the D.C. Circuit required *Daufuskie* to immediately offer reinstatement to the discriminatee. Then, shortly after completion of the contempt trial, the Respondent sought to sell its assets without making any provisions to protect the Board's backpay claims. The CLCB promptly obtained a *pendente lite* protective order from the D.C. Circuit and, ultimately, contempt sanctions against Respondent for violating that order. This resulted in an order requiring *Daufuskie* to deposit in the registry of the Court all proceeds of the sale, or an equivalent bond, in the amount of \$5.5 million to protect backpay. The Court also, *sua sponte*, ordered *Daufuskie's* attorneys to show cause why they should not be held in contempt and reported to their respective bars. As of the end of the fiscal year, those proceedings had not yet been decided.

In *Hospital San Pablo, Inc.*⁶ the CLCB reached a settlement of a contempt case which, for the first time, awarded a discriminatee compensatory damages for pain and suffering. The CLCB had initiated contempt proceedings against Respondent based on its discriminatory discharge of an employee barely 2 months after his court-ordered reinstatement, among other violations. In exchange for his agreement to waive reinstatement rights, the *Hospital* paid the discriminatee \$33,000, which represented backpay and interest lost due to the discharge, without any deductions for interim earnings, as well as an additional \$17,000 in damages for pain and suffering. The Respondent also agreed to a consent order that imposes a \$50,000 fine for each and every future violation of the Court's judgment or consent order.

Finally, during FY 2002 the CLCB successfully concluded settlement negotiations in *NLRB v. Quadrtech*,⁷ which resulted in payment of \$675,000 in backpay and severance pay to 37 employees. The settlement resolved numerous unfair labor practice charges, the most significant of

⁴ 337 NLRB No. 83 (2002).

⁵ 328 NLRB 415 (1999).

⁶ 327 NLRB 300 (1998).

⁷ 129 F. Supp. 2d 1273 (C.D. Ca. 2000).

which involved allegations that the employer violated the Ninth Circuit's judgment entered on March 6, 2001, by continuing to relocate or subcontract bargaining unit work to Mexico.

IX

Special Litigation

The Board participates in a number of cases that fall outside the normal process of statutory enforcement and review. The following represent the most significant cases decided this year.

A. Litigation Under the Equal Access to Justice Act

In *Hovey Electric, Inc. v. NLRB*,¹ the Sixth Circuit affirmed the Board's denial of an employer's application for attorney fees and expenses brought pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504. In the underlying case, the Board dismissed the General Counsel's complaint that alleged, in relevant part, that the employer and union entered into an unlawful collective-bargaining agreement under Section 9(a) of the Act when the union did not represent a majority of employees, that they agreed to a union-security clause denying employees the statutorily-required grace period, and that the employer rendered unlawful assistance and support to the union.² After prevailing before the Board on all of the unfair labor practice charges, the employer and union filed applications for attorney fees and expenses under the EAJA.³ The Board upheld the administrative law judge's (ALJ) decision denying fees to the employer and union based on the conclusion that the General Counsel was substantially justified in issuing and pursuing the complaint.⁴

On review, the Sixth Circuit determined that substantial evidence supported the Board's conclusion that the General Counsel was substantially justified in advancing its position that the agreement's recognition clause created an improper Section 9(a) collective-bargaining agreement in light of the agreement's "inartful drafting" and certain statements contained in a union representative's affidavit. The court also found that the agreement itself was substantial evidence that supported the conclusion that the General Counsel was substantially justified as to the union-security grace period issue because the agreement contained a 30-day grace period tied to the agreement's effective date, but its effective date was made retroactive. With respect to the General Counsel's unlawful assistance claim, the court determined that the Board's dismissal of the employer's EAJA application was reasonable

¹ No. 00-1128, 2001 WL 1450689 (6th Cir. 2001) (not recommended for full-text publication).

² 328 NLRB 273 (1999).

³ The union was party to the EAJA proceeding before the ALJ and Board, but did not join the employer in obtaining review in the Sixth Circuit.

⁴ 330 NLRB 511 (2000).

because EAJA determinations should be made by examining the case as a whole, even though certain individual matters may be more or less justified. Accordingly, the Sixth Circuit affirmed the Board's decision denying the employer's EAJA application for attorney fees and expenses.

In *Epilepsy Foundation of Northeast Ohio v. NLRB*,⁵ the D.C. Court of Appeals granted in part and denied in part the employer's motion for attorney fees and expenses under the EAJA, 28 U.S.C. § 2412. In the underlying case, the court upheld the Board's interpretation of Section 7 of the Act to extend to nonunion workplaces the *Weingarten*⁶ right to have a coworker present at an investigatory interview that the employee reasonably believes might result in disciplinary action.⁷ However, the employer prevailed in the underlying action in its arguments that this *Weingarten* extension could not be applied retroactively to protect one fired employee, and that substantial evidence did not support the Board's finding that another employee was fired for behavior protected by the Act. In its EAJA decision, the court granted the application in part, but substantially reduced the amount claimed by the employer under the EAJA because the employer sought fees incurred to litigate the entire case before the court, including the *Weingarten* issue on which the employer did not prevail, and because the employer similarly failed to itemize time spent working on issues before the ALJ to enable the court to determine the proportion of fees attributable to the employer's meritorious arguments. The court further reduced the amount claimed because it found the employer sought remuneration for "grossly excessive" time spent preparing its appeal, claimed amounts in excess of EAJA's \$125 per hour statutory cap on attorney fees, and claimed expenses that are not recoverable under the EAJA (including expenses for couriers, telephone calls and traveling). The court accordingly reduced the employer's EAJA award from approximately \$150,000 to \$30,000.

B. Litigation Concerning Board Jurisdiction

In *Detroit Newspaper Agency & Detroit News v. NLRB*,⁸ the Sixth Circuit vacated and remanded the district court's decision which had enjoined the Board from prosecuting a complaint based on unfair labor practices which occurred more than 6 months before the filing of the captioned charges. The case arose from a strike against the Detroit Newspaper Agency and The Detroit News by six unions between July

⁵ No. 00-1332, 2002 WL 1331873 (D.C. Cir. 2002) (per curiam).

⁶ *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

⁷ *Epilepsy Found. of Northeast Ohio*, 268 F.3d 1095 (D.C. Cir. 2001).

⁸ 286 F.3d 391 (6th Cir. 2002).

1995 and February 1997. The unions filed timely unfair labor practice charges based on employer disciplining and discharging employees during the strike, and the General Counsel issued complaint. During the course of the administrative trial, the unions filed additional charges involving incidents that occurred more than 6 months before the new charges were filed, but within 6 months of filing the initial charges with the Board. Counsel for the General Counsel moved to amend the original complaint to include claims of discrimination alleged in the new charges, but the ALJ denied the General Counsel's motion, and the Board affirmed the ALJ's ruling.⁹ Thereafter, the Board's Regional Director issued a new consolidated complaint based on the later charges. In response, the employers filed a complaint and motion for injunctive relief and declaratory judgment in the district court. The district court enjoined the Board, concluding that it had subject matter jurisdiction to enjoin the Board's unfair labor practice proceeding pursuant to the narrow *Leedom v. Kyne*¹⁰ exception to the settled rule precluding district court review of Board proceedings. The district court reasoned that the Board had acted contrary to Section 10(b) of the Act and beyond its delegated statutory authority.¹¹ Rejecting the district court's analysis and conclusions, the Sixth Circuit ruled that courts have subject matter jurisdiction pursuant to *Leedom v. Kyne* only where the Board acts beyond its delegated authority *and* the aggrieved party would be otherwise "wholly deprived" of an opportunity to vindicate its statutory rights. The district court's holding was improper, the circuit court concluded, because it did not appreciate that the aggrieved employers may vindicate their rights by obtaining review of the Board's final decision in a court of appeals. The circuit court accordingly vacated the district court's decision.

C. Preemption Litigation

In *NLRB v. Pueblo of San Juan*,¹² an en banc Tenth Circuit affirmed a district court decision finding that the Act does not preempt a tribal ordinance which prohibits private employers and unions from entering into union-security agreements (concurring opinions by Judges Briscoe and Lucero, Judge Murphy dissenting). The Board had sued the Pueblo in district court to invalidate the tribal ordinance, as well as a lease provision between the Pueblo and a private employer that similarly prohibits the employer from agreeing to a union-security clause that

⁹ 330 NLRB 524, 526 (2000).

¹⁰ 358 U.S. 184 (1958).

¹¹ *Detroit Newspaper Agency v. Schaub*, 108 F. Supp.2d 729 (E.D. Mich. 2000).

¹² 276 F.3d 1186 (10th Cir. 2002).

would require tribal members to be members of a union or pay dues to a union.

After a 2-1 panel decision affirming the district court,¹³ the circuit granted rehearing en banc and withdrew the panel decision. The en banc court concluded that as an Indian tribe, the Pueblo retained the sovereign power to enact its right-to-work ordinance and enter into the lease agreement. It reasoned that Indian tribes retain sovereign authority to regulate economic activity within their own territory, and there could be no implied preemption of tribal sovereign authority. While Congress may divest sovereignty by statute, divestiture of sovereign authority is disfavored as a matter of national policy, and ambiguous expressions are to be construed as leaving tribal sovereignty undisturbed. Thus, the court rejected the Board's argument that the provisions of the Act that permit union-security agreements amount to a divestiture of tribal sovereignty because silence is not sufficient to do so. The court further reasoned that Congress did not intend the provisions in the Act regarding union security to be preemptive, and that "[w]hat Congress has not taken away by § 8(a)(3) it need not give back (by § 14(b)) in order for the tribe to continue to have authority to pass a right-to-work law."¹⁴ The court rejected the Board's reliance on *Federal Power Commission v. Tuscarora Indian Nation*¹⁵ and its progeny, which apply federal laws to tribes even if they are silent as to tribes, concluding that such cases deal solely with Indian tribal governments acting in proprietary capacities, rather than exercising sovereign authority to govern. In a dissenting opinion, Judge Murphy concluded that the Board demonstrated Congress intended to divest the Pueblo of authority to enact the ordinance because the Act constitutes comprehensive federal regulation of labor relations. He found the majority's analysis of the *Tuscarora* cases to be without logical, precedential, or authoritative support, noting that Supreme Court law supports the proposition that Congress can divest an Indian tribe of authority by implication. He further found that Section 8(a)(3) of the Act amounts to pervasive regulation of union-security agreements, and that Section 14(b) restored to states and territories only a power otherwise preempted by 8(a)(3).

¹³ Nos. 99-2011, 99-2030 (10th Cir. 2000) (opinion withdrawn).

¹⁴ 276 F.3d at 1197.

¹⁵ 362 U.S. 99 (1960).

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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.

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.

Compliance 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.

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 Specification

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 initiated 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.

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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 2002¹

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
All Cases						
Pending October 1, 2001.....	*25,044	15,801	733	820	6779	911
Received fiscal 2002.....	35,873	20,150	918	924	12,257	1624
On docket fiscal 2002.....	60,917	35,951	1651	1744	19,036	2535
Closed fiscal 2002.....	36,009	20,164	910	943	12,455	1537
Pending September 30, 2002.....	24,908	15,787	741	801	6581	998
Unfair labor practice cases ²						
Pending October 1, 2001.....	23,180	14,592	687	756	6346	799
Received fiscal 2002.....	30,177	16,115	722	695	11,213	1432
On docket fiscal 2002.....	53,357	30,707	1409	1451	17,559	2231
Closed fiscal 2002.....	30,398	16,230	715	730	11,375	1348
Pending September 30, 2002.....	22,959	14,477	694	721	6184	883
Representation cases ³						
Pending October 1, 2001.....	1672	1118	43	56	374	81
Received fiscal 2002.....	5301	3861	182	214	896	148
On docket fiscal 2002.....	6973	4979	225	270	1270	229
Closed fiscal 2002.....	5227	3757	179	200	942	149
Pending September 30, 2002.....	1746	1222	46	70	328	80
Union-shop deauthorization cases						
Pending October 1, 2001.....	53	--	--	--	53	--
Received fiscal 2002.....	137	--	--	--	137	--
On docket fiscal 2002.....	190	--	--	--	190	--
Closed fiscal 2002.....	128	--	--	--	128	--
Pending September 30, 2002.....	62	--	--	--	62	--
Amendment of certification cases						
Pending October 1, 2001.....	9	8	1	0	0	0
Received fiscal 2002.....	14	11	0	1	0	2
On docket fiscal 2002.....	23	19	1	1	0	2
Closed fiscal 2002.....	16	12	1	1	0	2
Pending September 30, 2002.....	7	7	0	0	0	0
Unit clarification cases						
Pending October 1, 2001.....	130	83	2	8	6	31
Received fiscal 2002.....	244	163	14	14	11	42
On docket fiscal 2002.....	374	246	16	22	17	73
Closed fiscal 2002.....	240	165	15	12	10	38
Pending September 30, 2002.....	134	81	1	10	7	35

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.

⁴ Totals for cases pending Oct. 1, 2001, 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 2002¹

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
CA cases						
Pending October 1, 2001.....	*20,123	14,526	683	743	4081	90
Received fiscal 2002.....	23,035	16,006	705	678	5612	34
On docket fiscal 2002.....	43,158	30,532	1388	1421	9693	124
Closed fiscal 2002.....	23,230	16,112	700	720	5645	53
Pending September 30, 2002.....	19,928	14,420	688	701	4048	71
CB Cases						
Pending October 1, 2001.....	2708	60	4	13	2258	373
Received fiscal 2002.....	6269	62	8	13	5524	662
On docket fiscal 2002.....	8977	122	12	26	7782	1035
Closed fiscal 2002.....	6355	84	7	7	5664	593
Pending September 30, 2002.....	2622	38	5	19	2118	442
CC Cases						
Pending October 1, 2001.....	224	2	0	0	5	217
Received fiscal 2002.....	476	11	5	1	44	415
On docket fiscal 2002.....	700	13	5	1	49	632
Closed fiscal 2002.....	446	9	5	1	39	392
Pending September 30, 2002.....	254	4	0	0	10	240
CD Cases						
Pending October 1, 2001.....	61	4	0	0	1	56
Received fiscal 2002.....	212	27	1	3	14	167
On docket fiscal 2002.....	273	31	1	3	15	223
Closed fiscal 2002.....	190	20	1	2	13	154
Pending September 30, 2002.....	83	11	0	1	2	69
CE Cases						
Pending October 1, 2001.....	22	0	0	0	0	22
Received fiscal 2002.....	33	3	0	0	6	24
On docket fiscal 2002.....	55	3	0	0	6	46
Closed fiscal 2002.....	32	1	0	0	5	26
Pending September 30, 2002.....	23	2	0	0	1	20
CG Cases						
Pending October 1, 2001.....	16	0	0	0	0	16
Received fiscal 2002.....	34	0	0	0	5	29
On docket fiscal 2002.....	50	0	0	0	5	45
Closed fiscal 2002.....	37	0	0	0	2	35
Pending September 30, 2002.....	13	0	0	0	3	10
CP Cases						
Pending October 1, 2001.....	26	0	0	0	1	25
Received fiscal 2002.....	118	6	3	0	8	101
On docket fiscal 2002.....	144	6	3	0	9	126
Closed fiscal 2002.....	108	4	2	0	7	95
Pending September 30, 2002.....	36	2	1	0	2	31

¹ See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2001, 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 2002¹

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
RC Cases						
Pending October 1, 2001.....	*1216	1115	43	56	2	--
Received fiscal 2002.....	4254	3860	182	212	0	--
On docket fiscal 2002.....	5470	4975	225	268	2	--
Closed fiscal 2002.....	4134	3756	179	198	1	--
Pending September 30, 2002.....	1336	1219	46	70	1	--
RM Cases						
Pending October 1, 2001.....	81	--	--	--	--	81
Received fiscal 2002.....	148	--	--	--	--	148
On docket fiscal 2002.....	229	--	--	--	--	229
Closed fiscal 2002.....	149	--	--	--	--	149
Pending September 30, 2002.....	80	--	--	--	--	80
RD Cases						
Pending October 1, 2001.....	375	3	0	0	372	--
Received fiscal 2002.....	899	1	0	2	896	--
On docket fiscal 2002.....	1274	4	0	2	1268	--
Closed fiscal 2002.....	944	1	0	2	941	--
Pending September 30, 2002.....	330	3	0	0	327	--

¹ See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2001, 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 2002

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(a): Total cases.....	23,036	100.0
8(a)(1).....	3742	16.2
8(a)(1)(2).....	154	0.7
8(a)(1)(3).....	8279	35.9
8(a)(1)(4).....	168	0.7
8(a)(1)(5).....	7874	34.2
8(a)(1)(2)(3).....	103	0.4
8(a)(1)(2)(4).....	5	0
8(a)(1)(2)(5).....	96	0.4
8(a)(1)(3)(4).....	453	2.0
8(a)(1)(3)(5).....	1928	8.4
8(a)(1)(4)(5).....	23	0.1
8(a)(1)(2)(3)(4).....	13	0.1
8(a)(1)(2)(3)(5).....	62	0.3
8(a)(1)(2)(4)(5).....	5	0
8(a)(1)(3)(4)(5).....	113	0.5
8(a)(1)(2)(3)(4)(5).....	18	0.1
Recapitulation ¹		
8(a)(1).....	23,036	100.0
8(a)(2).....	456	2.0
8(a)(3).....	10,969	47.6
8(a)(4).....	798	3.5
8(a)(5).....	10,119	43.9
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases.....	7073	100.0
8(b)(1).....	5240	74.1
8(b)(2).....	84	1.2
8(b)(3).....	387	5.5
8(b)(4).....	688	9.7
8(b)(7).....	118	1.7
8(b)(1)(2).....	431	6.1
8(b)(1)(3).....	81	1.1
8(b)(1)(5).....	1	0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 2002—Continued

	Number of cases showing specific allegations	Percent of total cases
8(b)(1)(6)	6	0.1
8(b)(2)(3)	6	0.1
8(b)(2)(5)	1	0
8(b)(3)(5)	1	0
8(b)(3)(6)	1	0
8(b)(1)(2)(3)	20	0.3
8(b)(1)(2)(5)	5	0.1
8(b)(1)(3)(6)	1	0
8(b)(1)(2)(3)(6)	1	0
8(b)(1)(2)(5)(6)	1	0
Recapitulation ¹		
8(b)(1)	5787	81.8
8(b)(2)	549	7.8
8(b)(3)	498	7.0
8(b)(4)	712	10.1
8(b)(5)	9	0.1
8(b)(6)	10	0.1
8(b)(7)	124	1.8
B1. Analysis of 8(b)(4)		
Total cases	688	100.0
8(b)(4)(A)	37	5.4
8(b)(4)(B)	396	57.6
8(b)(4)(C)	22	3.2
8(b)(4)(D)	212	30.8
8(b)(4)(A)(B)	12	1.7
8(b)(4)(A)(C)	1	0.1
8(b)(4)(B)(C)	5	0.7
8(b)(4)(A)(B)(C)	3	0.4
Recapitulation ¹		
8(b)(4)(A)	53	7.7
8(b)(4)(B)	416	60.5
8(b)(4)(C)	31	4.5
8(b)(4)(D)	212	30.8

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 2002—Continued

	Number of cases showing specific allegations	Percent of total cases
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7).....	118	100.0
8(b)(7)(A).....	31	26.3
8(b)(7)(B).....	11	9.3
8(b)(7)(C).....	70	59.3
8(b)(7)(A)(B).....	3	2.5
8(b)(7)(A)(C).....	3	2.5
Recapitulation ¹		
8(b)(7)(A).....	37	31.4
8(b)(7)(B).....	14	11.9
8(b)(7)(C).....	73	61.9
C. Charges filed under Sec. 8(e)		
Total cases 8(e).....	33	100.0
Against unions alone.....	17	51.5
Against employers alone.....	2	6.1
Against both.....	14	42.4
D. Charges filed Sec. 8(g)		
Total cases 8(g).....	34	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 2002¹

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.....	39	38	--	--	--	38	--	--	--	--	--	--	--
Complaints issued.....	3703	2284	2008	161	23	--	4	1	4	2	28	44	9
Backpay specifications issued.....	166	64	59	2	0	--	0	0	0	0	1	2	0
Hearings completed, total.....	807	388	329	27	4	0	0	0	0	0	8	20	0
Initial ULP hearings.....	749	363	309	22	4	0	0	0	0	0	8	20	0
Backpay hearings.....	6	5	5	0	0	0	0	0	0	0	0	0	0
Other hearings.....	52	20	15	5	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total.....	776	368	315	23	2	0	0	1	0	0	6	21	0
Initial ULP decisions.....	687	329	281	18	2	0	0	1	0	0	6	21	0
Backpay decisions.....	5	3	2	1	0	0	0	0	0	0	0	0	0
Supplemental decisions.....	84	36	32	4	0	0	0	0	0	0	0	0	0
Decisions and orders by the Board, total.....	927	421	335	34	3	14	0	2	0	1	6	26	0
Upon consent of parties:.....													
Initial decisions.....	40	15	10	2	1	0	0	0	0	0	1	1	0
Supplemental decisions.....	6	3	1	0	0	0	0	0	0	1	0	1	0
Adopting administrative law judges' decisions (no exceptions filed):.....													
Initial ULP decisions.....	196	106	84	11	0	0	0	0	0	0	3	8	0
Backpay decisions.....	3	2	1	1	0	0	0	0	0	0	0	0	0
Supplemental decisions.....	13	9	8	1	0	0	0	0	0	0	0	0	0
Contested:.....													
Initial ULP decisions.....	529	238	191	16	2	14	0	2	0	0	1	12	0
Decisions based on stipulated record.....	3	3	2	1	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions.....	71	24	20	1	0	0	0	0	0	0	1	2	0
Backpay decisions.....	66	21	18	1	0	0	0	0	0	0	0	2	0

¹ See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2002¹

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken ²	Total formal actions taken ³	RC	RM	RD	UD
Hearings completed, total.....	851	787	681	24	82	6
Initial hearing.....	665	616	530	21	65	3
Hearing on objections and/or challenges.....	186	171	151	3	17	3
Decisions issued, total.....	644	615	524	20	71	22
By Regional Director.....	600	578	494	19	65	21
Elections directed.....	525	482	420	14	48	20
Dismissals on record.....	75	96	74	5	17	1
By Board.....	44	37	30	1	6	1
Transferred by Regional Directors for initial decision.....	1	1	1	0	0	0
Elections directed.....	1	1	1	0	0	0
Dismissals on record.....	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received.....	332	295	236	14	45	3
Withdrawn before request ruled upon.....	29	29	25	0	4	0
Board action on request ruled upon, total.....	247	214	183	8	23	2
Granted.....	59	51	45	2	4	0
Denied.....	157	146	128	4	14	1
Remanded.....	31	17	10	2	5	1
Withdrawn after request granted, before Board review.....	5	5	4	1	0	0
Board decision after review, total.....	43	36	29	1	6	1
Regional Directors' decisions:						
Affirmed.....	14	14	13	0	1	0
Modified.....	2	1	1	0	0	0
Reversed.....	27	21	15	1	5	1
Outcome:						
Election directed.....	36	29	22	1	6	1
Dismissals on record.....	7	7	7	0	0	0
Decisions on Objections and/or Challenges, total.....	304	275	244	5	28	6
By Regional Directors.....	284	259	230	5	24	6
By Board.....	20	18	14	0	4	0
In stipulated elections.....	268	260	225	4	31	5
No Exceptions to Regional Directors' reports.....	234	228	195	3	30	3
Exceptions to Regional Directors' reports.....	139	133	109	3	21	3
In directed elections (after transfer by Regional Director).....	95	95	86	0	9	0
Review of Regional Directors' supplemental decisions:						
Request for review received.....	26	26	22	0	4	1
Withdrawn before request ruled upon.....	1	1	1	0	0	0

**Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases,
Fiscal Year 2002¹—Continued**

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken ²	Total formal actions taken ³	RC	RM	RD	UD
Board action on request ruled upon, total.....	8	8	7	0	1	1
Granted.....	2	2	1	0	1	0
Denied.....	4	4	4	0	0	1
Remanded.....	2	2	2	0	0	0
Withdrawn after request granted, before Board review.....	0	0	0	0	0	0
Board decision after review, total.....	1	1	1	0	0	0
Regional Directors' decisions:	1	1	1	0	0	0
Affirmed.....	0	0	0	0	0	0
Modified.....	0	0	0	0	0	0
Reversed.....	0	0	0	0	0	0

¹ See Glossary of terms for definitions.

² Total includes petitions consolidated into one decision.

³ Case counts for UD not included.

**Table 3C.—Formal Actions Taken in Amendment of Certification and
Unit Clarification Cases, Fiscal Year 2002¹**

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case ²	
		AC	UC
Hearings completed.....	74	1	62
Decisions issued after hearing.....	90	6	69
By Regional Directors.....	85	6	69
By Board.....	5	0	5
Transferred by Regional Directors for initial decision.....	0	0	0
Review of Regional Directors' decisions:.....			
Requests for review received.....	44	0	42
Withdrawn before request ruled upon.....	3	0	2
Board action on requests ruled upon, total.....	28	0	26
Granted	5	0	5
Denied.....	20	0	18
Remanded.....	3	0	3
Withdrawn after request granted, before Board review.....	0	0	0
Board decision after review, total.....	5	0	5
Regional Directors' decisions:.....			
Affirmed.....	2	0	2
Modified.....	0	0	0
Reversed.....	3	0	3

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 2002¹—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
B. By number of employees affected:													
Employees offered reinstatement, total.....	1689	1689	1179	83	48	181	198	--	--	--	--	--	--
Accepted.....	1119	1119	859	49	30	69	112	--	--	--	--	--	--
Declined.....	570	570	320	34	18	112	86	--	--	--	--	--	--
Employees placed on preferential hiring list.....	289	289	209	0	10	49	21	--	--	--	--	--	--
Hiring hall rights restored.....	84	--	--	--	--	--	--	84	84	0	0	0	0
Objections to employment withdrawn.....	11	--	--	--	--	--	--	11	9	0	1	1	0
Employees receiving backpay:													
From either employer or union.....	15,925	15,722	10,361	174	1449	1179	2559	203	172	0	6	5	20
From both employer and union.....	10	9	9	0	0	0	0	1	1	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union.....	2011	907	492	0	0	355	60	1104	1021	0	63	0	20

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2002¹—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
From both employer and union.....	2208	2125	405	0	0	3	1717	83	64	0	19	0	0
C. By amounts of monetary recovery, total	60,132,046	59,429,069	29,829,450	2,429,548	2,491,453	3,894,092	20,784,526	702,977	285,622	0	277,439	25,019	114,897
Backpay (includes all monetary payments except fees, dues, and fines).....	51,560,322	51,092,574	23,396,602	2,408,858	2,491,453	3,670,296	19,125,365	467,748	221,068	0	134,498	25,019	87,163
Reimbursement of fees, dues, and fines.....	8,571,724	8,336,495	6,432,848	20,690	0	223,796	1,659,161	235,229	64,554	0	142,941	0	27,734

¹ See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2002 after the company and/or union had satisfied all remedial action requirements.

² A single case usually results in more than one remedial action, therefore, the total number of actions exceeds the number of cases involved.

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2002¹

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.....	12	11	9	2	0	0	0	0	0	1	1	0	0	0	0	0
Animal Production.....	36	27	22	5	0	0	0	0	0	9	9	0	0	0	0	0
Forestry and Logging.....	6	6	6	0	0	0	0	0	0	0	0	0	0	0	0	0
Fishing, Hunting and Trapping.....	2	2	2	0	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry.....	19	17	13	4	0	0	0	0	0	2	1	0	1	0	0	0
Agriculture, Forestry, Fishing, and Hunting.....	75	63	52	11	0	0	0	0	0	12	11	0	1	0	0	0
Oil and Gas Extraction.....	43	36	29	6	0	0	0	0	1	6	5	0	1	0	0	1
Mining (except Oil and Gas).....	246	208	153	50	3	1	1	0	0	35	25	2	8	1	0	2
Support Activities for Mining.....	32	28	25	3	0	0	0	0	0	4	3	0	1	0	0	0
Mining.....	321	272	207	59	3	1	1	0	1	45	33	2	10	1	0	3
Utilities.....	729	591	476	111	1	1	2	0	0	120	102	4	14	0	1	17
Building, Developing and General Contracting.....	679	594	358	90	86	39	9	0	12	84	80	3	1	1	0	0
Heavy Construction.....	523	442	280	85	40	24	0	0	13	81	77	3	1	0	0	0
Special Trade Contractors.....	3423	2765	2084	402	137	101	3	1	37	645	577	21	47	2	3	8
Construction.....	4625	3801	2722	577	263	164	12	1	62	810	734	27	49	3	3	8
Food Manufacturing.....	1268	1103	874	219	7	0	1	0	2	155	125	5	25	5	0	5
Beverage and Tobacco Product Manufacturing.....	285	215	173	40	1	0	1	0	0	65	47	1	17	1	1	3
Textile Mills.....	64	56	50	5	0	1	0	0	0	6	5	0	1	2	0	0
Textile Product Mills.....	32	27	23	4	0	0	0	0	0	5	3	0	2	0	0	0
Apparel Manufacturing.....	153	144	116	27	0	0	0	0	1	9	6	0	3	0	0	0
Leather and Allied Product Manufacturing.....	10	10	8	2	0	0	0	0	0	0	0	0	0	0	0	0
31-Manufacturing.....	1812	1555	1244	297	8	1	2	0	3	240	186	6	48	8	1	8
Wood Product Manufacturing.....	213	166	127	34	3	0	0	0	2	45	37	0	8	2	0	0
Paper Manufacturing.....	497	455	353	96	4	2	0	0	0	38	28	0	10	1	0	3
Printing and Related Support Activities.....	177	142	118	23	1	0	0	0	0	34	28	0	6	0	0	1
Petroleum and Coal Products Manufacturing.....	159	132	114	16	1	1	0	0	0	23	13	1	9	0	0	4
Chemical Manufacturing.....	421	349	297	51	1	0	0	0	0	66	48	5	13	1	0	5

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2002¹—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.....	309	260	220	40	0	0	0	0	0	46	35	3	8	2	0	1
Nonmetallic Mineral Product Manufacturing.....	399	315	251	60	2	0	1	0	1	78	56	3	19	1	0	5
32-Manufacturing.....	2175	1819	1480	320	12	3	1	0	3	330	245	12	73	7	0	19
Primary Metal Manufacturing.....	760	676	514	153	3	3	2	0	1	74	57	4	13	6	0	4
Fabricated Metal Product Manufacturing.....	724	597	481	115	1	0	0	0	0	122	79	2	41	3	0	2
Machinery Manufacturing.....	498	440	357	79	2	2	0	0	0	51	39	1	11	3	0	4
Computer and Electronic Product Manufacturing..	151	139	95	43	1	0	0	0	0	12	9	1	2	0	0	0
Electrical Equipment, Appliance and Component Manufacturing.....	352	310	237	70	2	1	0	0	0	37	28	1	8	1	0	4
Transportation Equipment Manufacturing.....	1515	1382	890	482	7	1	1	0	1	127	108	4	15	4	1	1
Furniture and Related Product Manufacturing.....	176	156	127	25	1	0	0	0	3	18	12	0	6	2	0	0
Miscellaneous Manufacturing.....	661	586	456	115	7	6	0	0	2	73	53	2	18	0	0	2
33-Manufacturing.....	4837	4286	3157	1082	24	13	3	0	7	514	385	15	114	19	1	17
Wholesale Trade, Durable Goods.....	342	244	203	36	2	1	0	0	2	98	73	3	22	0	0	0
Wholesale Trade, Nondurable Goods.....	628	519	415	88	12	0	2	0	2	99	72	4	23	5	0	5
Wholesale Trade.....	970	763	618	124	14	1	2	0	4	197	145	7	45	5	0	5
Motor Vehicle and Parts Dealers.....	310	228	201	22	4	0	0	0	1	80	55	6	19	1	0	1
Furniture and Home Furnishings Stores.....	64	51	44	7	0	0	0	0	0	12	11	0	1	1	0	0
Electronics and Appliance Stores.....	19	11	10	0	0	1	0	0	0	8	7	1	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers.....	66	54	44	8	0	0	2	0	0	9	6	1	2	3	0	0
Food and Beverage Stores.....	790	652	493	149	4	0	0	0	6	124	100	2	22	4	2	8
Health and Personal Care Stores.....	144	97	80	16	1	0	0	0	0	46	39	0	7	0	0	1
Gasoline Stations.....	17	10	8	2	0	0	0	0	0	7	4	1	2	0	0	0
Clothing and Clothing Accessories Stores.....	62	55	35	17	2	1	0	0	0	6	4	1	1	1	0	0
44-Retail Trade.....	1472	1158	915	221	11	2	2	0	7	292	226	12	54	10	2	10
Sporting Goods, Hobby, Book and Music Stores....	18	7	6	1	0	0	0	0	0	11	10	0	1	0	0	0
General Merchandise Stores.....	239	191	169	21	1	0	0	0	0	46	30	0	16	0	0	2

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2002¹—Continued

Industrial Group ²	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Miscellaneous Store Retailers.....	82	65	55	9	1	0	0	0	0	15	13	1	1	1	0	1
Nonstore Retailers.....	50	40	33	7	0	0	0	0	0	10	9	0	1	0	0	
45-Retail Trade.....	389	303	263	38	2	0	0	0	0	82	62	1	19	1	0	
Air Transportation.....	86	60	38	19	2	1	0	0	0	23	19	0	4	2	0	
Rail Transportation.....	31	26	20	4	0	0	0	0	2	5	4	0	1	0	0	
Water Transportation.....	131	114	57	47	5	1	0	0	4	15	13	1	1	1	1	
Truck Transportation.....	1111	932	718	191	20	0	1	0	2	174	136	3	35	2	0	
Transit and Ground Passenger Transportation.....	880	701	548	147	6	0	0	0	0	171	141	2	28	5	0	
Pipeline Transportation.....	16	14	13	1	0	0	0	0	0	2	1	0	1	0	0	
Scenic and Sightseeing Transportation.....	16	11	8	3	0	0	0	0	0	5	4	0	1	0	0	
Support Activities for Transportation.....	374	294	193	93	1	1	1	0	5	76	64	4	8	1	0	
48-Transportation.....	2645	2152	1595	505	34	3	2	0	13	471	382	10	79	11	0	
Postal Service.....	2490	2488	1811	677	0	0	0	0	0	2	1	0	1	0	0	
Couriers and Messengers.....	272	256	172	74	7	2	1	0	0	16	11	0	5	0	0	
Warehousing and Storage Facilities.....	495	379	313	59	6	0	0	0	1	113	95	5	13	2	1	
49-Transportation.....	3257	3123	2296	810	13	2	1	0	1	131	107	5	19	2	0	
Publishing Industries.....	391	340	274	66	0	0	0	0	0	48	38	1	9	1	0	
Motion Picture and Sound Recording Industries....	68	61	36	25	0	0	0	0	0	7	5	1	1	0	0	
Broadcasting and Telecommunications.....	1219	1081	869	203	5	4	0	0	0	117	92	2	23	5	15	
Information Services and Data Processing Services.....	115	100	86	12	0	2	0	0	0	15	9	4	2	0	0	
Information.....	1793	1582	1265	306	5	6	0	0	0	187	144	8	35	6	17	
Monetary Authorities - Central Bank.....	27	22	21	1	0	0	0	0	0	5	3	0	2	0	0	
Credit Intermediation and Related Activities.....	52	38	34	4	0	0	0	0	0	11	7	0	4	3	0	
Securities, Commodity Contracts and Other Intermediation and Related Activities.....	9	7	7	0	0	0	0	0	0	2	2	0	0	0	0	
Insurance Carriers and Related Activities.....	69	60	52	8	0	0	0	0	0	4	3	0	1	0	5	

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2002¹—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												
Funds, Trusts and Other Financial Vehicles (U.S. Only).....	10	6	4	2	0	0	0	0	0	4	3	0	1	0	0	0
Finance and Insurance.....	167	133	118	15	0	0	0	0	0	26	18	0	8	3	0	5
Real Estate.....	169	133	91	39	2	0	0	0	1	35	25	2	8	1	0	0
Rental and Leasing Services.....	213	148	127	15	5	0	0	0	1	64	46	5	13	0	0	1
Owners and Lessors of Other Non-Financial Assets.....	9	7	4	3	0	0	0	0	0	2	1	0	1	0	0	0
Real Estate and Rental and Leasing.....	391	288	222	57	7	0	0	0	2	101	72	7	22	1	0	1
Professional, Scientific and Technical Services	324	249	213	32	4	0	0	0	0	67	56	1	10	1	0	7
Management of Companies and Enterprises.....	83	77	46	21	10	0	0	0	0	6	4	0	2	0	0	0
Administrative and Support Services.....	1711	1411	980	417	7	3	0	0	4	271	237	1	33	12	2	15
Waste Management and Remediation Services.....	630	472	390	75	5	0	0	0	2	149	117	9	23	4	1	4
Administrative and Support, Waste Management and Remediation Services.....	2341	1883	1370	492	12	3	0	0	6	420	354	10	56	16	3	19
Educational Services.....	414	338	264	68	5	0	0	0	1	68	60	2	6	2	1	5
Ambulatory Health Care Services.....	355	255	227	25	0	0	0	1	2	94	75	2	17	1	1	4
Hospitals.....	1620	1324	1059	239	7	1	0	18	0	251	214	6	31	7	0	38
Nursing and Residential Care Facilities.....	1606	1303	1149	136	4	0	0	13	1	271	194	6	71	13	0	19
Social Assistance.....	326	252	225	23	3	0	0	1	0	69	51	0	18	1	0	4
Health Care and Social Assistance.....	3907	3134	2660	423	14	1	0	33	3	685	534	14	137	22	1	65
Performing Arts, Spectator Sports and Related Industries.....	292	245	124	108	3	5	4	0	1	40	35	1	4	1	0	6
Museums, Historical Sites and Similar Institutions	23	19	16	3	0	0	0	0	0	4	3	0	1	0	0	0
Amusement, Gambling and Recreation Industries..	291	240	194	41	4	1	0	0	0	48	38	1	9	1	0	2
Arts, Entertainment and Recreation.....	606	504	334	152	7	6	4	0	1	92	76	2	14	2	0	8
Accommodation.....	714	617	447	166	2	1	0	0	1	92	67	1	24	4	0	1
Foodservices and Drinking Places.....	434	370	284	78	6	0	0	0	2	55	42	0	13	5	0	4
Accommodation and Foodservices.....	1148	987	731	244	8	1	0	0	3	147	109	1	37	9	0	5

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2002¹—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												
Repair and Maintenance.....	233	179	138	38	3	0	0	0	0	52	43	1	8	2	0	0
Personal and Laundry Services.....	325	259	210	43	6	0	0	0	0	66	48	1	17	0	0	0
Religious, Grantmaking, Civic, and Professional and Similar Organizations.....	331	293	183	107	3	0	0	0	0	35	30	0	5	0	0	3
Private Households.....	4	4	3	1	0	0	0	0	0	0	0	0	0	0	0	0
Other Services (except Public Administration)..	893	735	534	189	12	0	0	0	0	153	121	2	30	2	0	3
Executive, Legislative, Public Finance and General Government.....	31	29	19	8	2	0	0	0	0	2	2	0	0	0	0	0
Justice, Public Order, and Safety.....	79	57	49	7	1	0	0	0	0	20	18	0	2	2	0	0
Administration of Human Resource Programs.....	5	4	4	0	0	0	0	0	0	1	1	0	0	0	0	0
Administration of Environmental Quality Programs.....	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development.....	8	6	6	0	0	0	0	0	0	2	2	0	0	0	0	0
Administration of Economic Programs.....	4	2	1	1	0	0	0	0	0	1	0	0	1	1	0	0
Space Research and Technology.....	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0
National Security and International Affairs.....	11	8	7	1	0	0	0	0	0	3	3	0	0	0	0	0
Public Administration.....	144	112	92	17	3	0	0	0	0	29	26	0	3	3	0	0
Unclassified Establishments.....	354	270	162	98	4	4	1	0	1	74	60	0	14	3	0	7
Total, all industrial groups.....	35,872	30,178	23,036	6,269	476	212	33	34	118	5,299	4,252	148	899	137	14	244

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 2002¹

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.....	2162	1760	1181	419	80	54	0	0	26	379	297	14	68	14	4	5
Indiana.....	1052	931	737	179	9	3	1	0	2	114	95	4	15	5	0	2
Michigan.....	2098	1774	1243	499	16	6	0	3	7	298	238	5	55	11	0	15
Ohio.....	2257	1904	1473	379	34	7	1	3	7	327	263	14	50	7	1	18
Wisconsin.....	897	674	506	145	15	2	1	4	1	217	181	7	29	4	0	2
East North Central.....	8466	7043	5140	1621	154	72	3	10	43	1335	1074	44	217	41	5	42
Alabama.....	513	459	401	57	0	0	1	0	0	49	40	1	8	1	0	4
Kentucky.....	478	416	347	62	2	5	0	0	0	55	45	0	10	4	0	3
Mississippi.....	232	209	176	28	0	1	0	0	4	23	9	0	14	0	0	0
Tennessee.....	586	529	418	110	0	0	1	0	0	57	44	4	9	0	0	0
East South Central.....	1809	1613	1342	257	2	6	2	0	4	184	138	5	41	5	0	7
New Jersey.....	1477	1202	905	250	21	21	0	1	4	246	213	7	26	13	0	16
New York.....	3802	3195	2063	970	85	36	0	10	31	567	462	19	86	17	2	21
Pennsylvania.....	2032	1695	1328	288	48	16	7	0	8	319	269	5	45	4	1	13
Middle Atlantic.....	7311	6092	4296	1508	154	73	7	11	43	1132	944	31	157	34	3	50
Arizona.....	414	358	317	36	5	0	0	0	0	55	45	1	9	0	0	1
Colorado.....	484	443	365	69	7	1	1	0	0	41	34	2	5	0	0	0
Idaho.....	86	72	62	10	0	0	0	0	0	14	14	0	0	0	0	0
Montana.....	84	61	53	8	0	0	0	0	0	19	6	1	12	1	0	3
New Mexico.....	199	165	131	33	0	0	0	1	0	32	24	1	7	0	0	2
Nevada.....	632	557	418	114	12	7	5	1	0	72	54	1	17	0	0	3
Utah.....	99	83	64	19	0	0	0	0	0	15	13	0	2	0	0	1
Wyoming.....	27	20	15	5	0	0	0	0	0	7	6	0	1	0	0	0
Mountain.....	2025	1759	1425	294	24	8	6	2	0	255	196	6	53	1	0	10
Connecticut.....	623	534	426	96	8	3	0	1	0	86	69	2	15	1	0	2
Massachusetts.....	956	842	689	138	8	4	2	0	1	95	83	3	9	1	1	17
Maine.....	98	88	81	7	0	0	0	0	0	10	9	0	1	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2002¹—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.....	88	72	63	8	1	0	0	0	0	14	12	0	2	0	0	2
Rhode Island.....	156	134	116	14	4	0	0	0	0	18	15	0	3	0	0	4
Vermont.....	48	37	35	2	0	0	0	0	0	10	7	1	2	0	0	1
New England.....	1969	1707	1410	265	21	7	2	1	1	233	195	6	32	2	1	26
Puerto Rico.....	480	383	330	51	0	1	0	0	1	80	70	0	10	2	0	15
Virgin Islands.....	21	11	8	3	0	0	0	0	0	10	10	0	0	0	0	0
Outlying Areas.....	501	394	338	54	0	1	0	0	1	90	80	0	10	2	0	15
Alaska.....	111	81	66	15	0	0	0	0	0	29	26	1	2	1	0	0
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	4028	3414	2607	728	53	11	3	2	10	571	457	12	102	22	2	19
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	3	1	0	1	0	0	0	0	0	2	2	0	0	0	0	0
Hawaii.....	417	369	301	67	0	0	0	1	0	47	26	4	17	1	0	0
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands.....	51	50	49	1	0	0	0	0	0	1	1	0	0	0	0	0
Oregon.....	370	268	209	48	4	4	2	0	1	89	69	0	20	6	0	7
Palau.....	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	813	625	461	151	7	2	0	0	4	159	118	2	39	7	0	22
Pacific.....	5794	4809	3694	1011	64	17	5	3	15	898	699	19	180	37	2	48
District Of Columbia.....	205	172	144	24	2	0	1	0	1	31	30	0	1	0	0	2
Delaware.....	121	99	84	14	1	0	0	0	0	21	14	0	7	0	0	1
Florida.....	1189	1019	862	153	1	2	0	0	1	167	144	4	19	1	1	1
Georgia.....	555	492	374	118	0	0	0	0	0	61	50	0	11	1	0	1
Maryland.....	473	380	281	89	8	0	0	2	0	92	77	3	12	0	0	1
North Carolina.....	362	330	279	51	0	0	0	0	0	29	20	2	7	0	0	3
South Carolina.....	133	119	81	38	0	0	0	0	0	12	8	0	4	0	0	2
Virginia.....	407	344	300	41	1	0	0	0	2	63	58	1	4	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2002¹—Continued

Division and State ²	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
West Virginia.....	434	367	278	82	4	3	0	0	0	60	49	2	9	2	0	5
South Atlantic.....	3879	3322	2683	610	17	5	1	2	4	536	450	12	74	4	1	16
Iowa.....	304	230	204	24	1	0	0	1	0	72	54	5	13	1	0	1
Kansas.....	227	190	144	41	5	0	0	0	0	35	26	0	9	0	0	2
Minnesota.....	458	315	251	46	7	3	7	0	1	131	100	3	28	3	0	9
Missouri.....	981	822	601	174	24	17	0	1	5	151	110	5	36	5	0	3
North Dakota.....	32	21	17	1	0	0	0	3	0	10	7	0	3	0	0	1
Nebraska.....	82	64	56	7	0	1	0	0	0	16	12	2	2	0	0	2
South Dakota.....	25	14	14	0	0	0	0	0	0	11	7	1	3	0	0	0
West North Central.....	2109	1656	1287	293	37	21	7	5	6	426	316	16	94	9	0	18
Arkansas.....	180	154	137	17	0	0	0	0	0	26	16	0	10	0	0	0
Louisiana.....	369	329	246	78	2	2	0	0	1	39	28	0	11	1	0	0
Oklahoma.....	240	199	144	54	1	0	0	0	0	37	29	2	6	1	0	3
Texas.....	1199	1098	891	207	0	0	0	0	0	94	81	5	8	0	0	7
West South Central.....	1988	1780	1418	356	3	2	0	0	1	196	154	7	35	2	0	10
Total, all States and areas.....	35,851	30,175	23,033	6,269	476	212	33	34	118	5,285	4,246	146	893	137	12	242

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 2002¹

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.....	623	534	426	96	8	3	0	1	0	86	69	2	15	1	0	2
Massachusetts.....	956	842	689	138	8	4	2	0	1	95	83	3	9	1	1	17
Maine.....	98	88	81	7	0	0	0	0	0	10	9	0	1	0	0	0
New Hampshire.....	88	72	63	8	1	0	0	0	0	14	12	0	2	0	0	2
Rhode Island.....	156	134	116	14	4	0	0	0	0	18	15	0	3	0	0	4
Vermont.....	48	37	35	2	0	0	0	0	0	10	7	1	2	0	0	1
Region I.....	1969	1707	1410	265	21	7	2	1	1	233	195	6	32	2	1	26
Delaware.....	121	99	84	14	1	0	0	0	0	21	14	0	7	0	0	1
New Jersey.....	1477	1202	905	250	21	21	0	1	4	246	213	7	26	13	0	16
New York.....	3802	3195	2063	970	85	36	0	10	31	567	462	19	86	17	2	21
Puerto Rico.....	480	383	330	51	0	1	0	0	1	80	70	0	10	2	0	15
Virgin Islands.....	21	11	8	3	0	0	0	0	0	10	10	0	0	0	0	0
Region II.....	5901	4890	3390	1288	107	58	0	11	36	924	769	26	129	32	2	53
District Of Columbia.....	205	172	144	24	2	0	1	0	1	31	30	0	1	0	0	2
Maryland.....	473	380	281	89	8	0	0	2	0	92	77	3	12	0	0	1
Pennsylvania.....	2032	1695	1328	288	48	16	7	0	8	319	269	5	45	4	1	13
Virginia.....	407	344	300	41	1	0	0	0	2	63	58	1	4	0	0	5
West Virginia.....	434	367	278	82	4	3	0	0	0	60	49	2	9	2	0	5
Region III.....	3551	2958	2331	524	63	19	8	2	11	565	483	11	71	6	1	21
Alabama.....	513	459	401	57	0	0	1	0	0	49	40	1	8	1	0	4
Florida.....	1189	1019	862	153	1	2	0	0	1	167	144	4	19	1	1	1
Georgia.....	555	492	374	118	0	0	0	0	0	61	50	0	11	1	0	1
Kentucky.....	478	416	347	62	2	5	0	0	0	55	45	0	10	4	0	3
Mississippi.....	232	209	176	28	0	1	0	0	4	23	9	0	14	0	0	0
North Carolina.....	362	330	279	51	0	0	0	0	0	29	20	2	7	0	0	3
South Carolina.....	133	119	81	38	0	0	0	0	0	12	8	0	4	0	0	2
Tennessee.....	586	529	418	110	0	0	1	0	0	57	44	4	9	0	0	0
Region IV.....	4048	3573	2938	617	3	8	2	0	5	453	360	11	82	7	1	14
Illinois.....	2162	1760	1181	419	80	54	0	0	26	379	297	14	68	14	4	5
Indiana.....	1052	931	737	179	9	3	1	0	2	114	95	4	15	5	0	2
Michigan.....	2098	1774	1243	499	16	6	0	3	7	298	238	5	55	11	0	15
Minnesota.....	458	315	251	46	7	3	7	0	1	131	100	3	28	3	0	9
Ohio.....	2257	1904	1473	379	34	7	1	3	7	327	263	14	50	7	1	18
Wisconsin.....	897	674	506	145	15	2	1	4	1	217	181	7	29	4	0	2
Region V.....	8924	7358	5391	1667	161	75	10	10	44	1466	1174	47	245	44	5	51
Arkansas.....	180	154	137	17	0	0	0	0	0	26	16	0	10	0	0	0
Louisiana.....	369	329	246	78	2	2	0	0	1	39	28	0	11	1	0	0
New Mexico.....	199	165	131	33	0	0	0	1	0	32	24	1	7	0	0	2

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2002¹—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	
Oklahoma.....	240	199	144	54	1	0	0	0	0	0	37	29	2	6	1	0	3
Texas.....	1199	1098	891	207	0	0	0	0	0	94	81	5	8	0	0	7	
Region VI.....	2187	1945	1549	389	3	2	0	1	1	228	178	8	42	2	0	12	
Iowa.....	304	230	204	24	1	0	0	1	0	72	54	5	13	1	0	1	
Kansas.....	227	190	144	41	5	0	0	0	0	35	26	0	9	0	0	2	
Missouri.....	981	822	601	174	24	17	0	1	5	151	110	5	36	5	0	3	
Nebraska.....	82	64	56	7	0	1	0	0	0	16	12	2	2	0	0	2	
Region VII.....	1594	1306	1005	246	30	18	0	2	5	274	202	12	60	6	0	8	
Colorado.....	484	443	365	69	7	1	1	0	0	41	34	2	5	0	0	0	
Montana.....	84	61	53	8	0	0	0	0	0	19	6	1	12	1	0	3	
North Dakota.....	32	21	17	1	0	0	0	3	0	10	7	0	3	0	0	1	
South Dakota.....	25	14	14	0	0	0	0	0	0	11	7	1	3	0	0	0	
Utah.....	99	83	64	19	0	0	0	0	0	15	13	0	2	0	0	1	
Wyoming.....	27	20	15	5	0	0	0	0	0	7	6	0	1	0	0	0	
Region VIII.....	751	642	528	102	7	1	1	3	0	103	73	4	26	1	0	5	
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Arizona.....	414	358	317	36	5	0	0	0	0	55	45	1	9	0	0	1	
California.....	4028	3414	2607	728	53	11	3	2	10	571	457	12	102	22	2	19	
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Guam.....	3	1	0	1	0	0	0	0	0	2	2	0	0	0	0	0	
Hawaii.....	417	369	301	67	0	0	0	1	0	47	26	4	17	1	0	0	
Marshall Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Northern Mariana Islands.....	51	50	49	1	0	0	0	0	0	1	1	0	0	0	0	0	
Nevada.....	632	557	418	114	12	7	5	1	0	72	54	1	17	0	0	3	
Palau.....	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
Region IX.....	5546	4750	3693	947	70	18	8	4	10	748	585	18	145	23	2	23	
Alaska.....	111	81	66	15	0	0	0	0	0	29	26	1	2	1	0	0	
Idaho.....	86	72	62	10	0	0	0	0	0	14	14	0	0	0	0	0	
Oregon.....	370	268	209	48	4	4	2	0	1	89	69	0	20	6	0	7	
Washington.....	813	625	461	151	7	2	0	0	4	159	118	2	39	7	0	22	
Region X.....	1380	1046	798	224	11	6	2	0	5	291	227	3	61	14	0	29	
Total, all States and areas.....	35,851	30,175	23,033	6269	476	212	33	34	118	5285	4246	146	893	137	12	242	

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 2002¹

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.....	30,195	100.0	--	23,051	100.0	6335	100.0	446	100.0	187	100.0	32	100.0	37	100.0	107	100.0
Agreement of the parties.....	10,684	35.4	100.0	9185	39.8	1176	18.6	198	44.4	58	31.0	4	12.5	23	62.2	40	37.4
Informal settlement.....	10,682	35.4	100.0	9184	39.8	1176	18.6	198	44.4	58	31.0	4	12.5	22	59.5	40	37.4
Before issuance of complaint.....	8404	27.8	78.7	7120	30.9	999	15.8	171	38.3	58	31.0	3	9.4	18	48.6	35	32.7
After issuance of complaint, before opening of hearing.....	2156	7.1	20.2	1948	8.5	172	2.7	26	5.8	0	0.0	1	3.1	4	10.8	5	4.7
After hearing opened, before issuance of administrative law judge's decision.....	122	0.4	1.1	116	0.5	5	0.1	1	0.2	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement.....	2	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0
Before opening of hearing.....	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
Stipulated decision.....	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
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
After hearing opened.....	1	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0
Stipulated decision.....	1	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	2.7	0	0.0
Consent decree.....	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
Compliance with.....	655	2.2	100.0	598	2.6	45	0.7	7	1.6	0	0.0	1	3.1	1	2.7	3	2.8
Administrative law judge's decision.....	3	0.0	0.5	3	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision.....	395	1.3	60.3	348	1.5	44	0.7	2	0.4	0	0.0	1	3.1	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed).....	213	0.7	32.5	187	0.8	25	0.4	0	0.0	0	0.0	1	3.1	0	0.0	0	0.0
Contested.....	182	0.6	27.8	161	0.7	19	0.3	2	0.4	0	0.0	0	0.0	0	0.0	0	0.0
Circuit court of appeals decree.....	257	0.9	39.2	247	1.1	1	0.0	5	1.1	0	0.0	0	0.0	1	2.7	3	2.8
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.....	9279	30.7	100.0	7187	31.2	1830	28.9	155	34.8	45	24.1	15	46.9	7	18.9	40	37.4
Before issuance of complaint.....	9142	30.3	98.5	7056	30.6	1826	28.8	154	34.5	45	24.1	15	46.9	7	18.9	39	36.4
After issuance of complaint, before opening of hearing.....	99	0.3	1.1	93	0.4	4	0.1	1	0.2	0	0.0	0	0.0	0	0.0	1	0.9

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2002¹—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	Per- cent of total closed	Per- cent of total method	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed	Number	Per- cent of total closed
After hearing opened, before administrative law judge's decision.....	3	0.0	0.0	3	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision.....	22	0.1	0.2	22	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision.....	13	0.0	0.1	13	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	9364	31.0	100.0	5925	25.7	3284	51.8	86	19.3	27	14.4	12	37.5	6	16.2	24	22.4
Before issuance of complaint.....	9169	30.4	97.9	5754	25.0	3261	51.5	86	19.3	27	14.4	12	37.5	6	16.2	23	21.5
After issuance of complaint, before opening of hearing.....	67	0.2	0.7	59	0.3	8	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision.....	2	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.9
By administrative law judge's decision.....	6	0.0	0.1	5	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision.....	107	0.4	1.1	93	0.4	14	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed).....	67	0.2	0.7	57	0.2	10	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested.....	40	0.1	0.4	36	0.2	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree.....	12	0.0	0.1	12	0.1	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).....	57	0.2	--	0	0.0	0	0.0	0	0.0	57	30.5	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).....	156	0.5	--	156	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

¹ See Table 8 for summary of disposition by stage. See Glossary 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 2002¹

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint.....	57	100.0
Agreement of the parties-informal settlement.....	29	50.9
Before 10(k) notice.....	20	35.1
After 10(k) notice, before opening of 10(k) hearing.....	8	14.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	1	1.8
After Board decision and determination of dispute.....	0	0.0
Compliance with Board decision and determination of dispute.....	4	7.0
Withdrawal.....	14	24.6
Before 10(k) notice.....	12	21.1
After 10(k) notice, before opening of 10(k) hearing.....	1	1.8
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	1.8
Dismissal.....	10	17.5
Before 10(k) notice.....	8	14.0
After 10(k) notice, before opening of 10(k) hearing.....	2	3.5
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	0.0
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 2002¹

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed
Total number of cases closed.....	30,399	100.0	23,231	100.0	6356	100.0	446	100.0	190	100.0	32	100.0	37	100.0	107	100.0
Before issuance of complaint.....	26,797	88.2	19,961	85.9	6097	95.9	411	92.2	170	89.5	30	93.8	31	83.8	97	90.7
After issuance of complaint, before opening of hearing.....	2393	7.9	2152	9.3	191	3.0	27	6.1	12	6.3	1	3.1	4	10.8	6	5.6
After hearing opened, before issuance of administrative law judge's decision.....	153	0.5	142	0.6	8	0.1	1	0.2	1	0.5	0	0.0	0	0.0	1	0.9
After administrative law judge's decision, before issuance of Board decision.....	32	0.1	31	0.1	1	0.0	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.....	305	1.0	264	1.1	34	0.5	0	0.0	5	2.6	1	3.1	1	2.7	0	0.0
After Board decision, before circuit court decree...	373	1.2	345	1.5	24	0.4	2	0.4	2	1.1	0	0.0	0	0.0	0	0.0
After circuit court decree, before Supreme Court action.....	344	1.1	334	1.4	1	0.0	5	1.1	0	0.0	0	0.0	1	2.7	3	2.8
After Supreme Court action.....	2	0.0	2	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 2002¹

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.....	5233	100.0	4138	100.0	150	100.0	945	100.0	128	100.0
Before issuance of notice of hearing.....	948	18.1	540	13.0	61	40.7	347	36.7	88	68.8
After issuance of notice, before close of hearing.....	3592	68.6	2980	72.0	74	49.3	538	56.9	17	13.3
After hearing closed, before issuance of decision.....	65	1.2	62	1.5	1	0.7	2	0.2	3	2.3
After issuance of Regional Director's decision.....	461	8.8	409	9.9	10	6.7	42	4.4	19	14.8
After issuance of Board decision ²	167	3.2	147	3.6	4	2.7	16	1.7	1	0.8

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 postelection proceeding.

Table 10—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2002¹

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.....	5198	100.0	4107	100.0	147	100.0	944	100.0	122	100.0
Certification issued, total.....	2990	57.5	2526	61.5	43	29.3	421	44.6	55	45.1
After:										
Consent election.....	6	0.1	5	0.1	0	0.0	1	0.1	0	0.0
Before notice of hearing.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After notice of hearing, before hearing closed..	6	0.1	5	0.1	0	0.0	1	0.1	0	0.0
After hearing closed, before decision.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated election.....	2529	48.7	2118	51.6	35	23.8	376	39.8	40	32.8
Before notice of hearing.....	431	8.3	325	7.9	9	6.1	97	10.3	29	23.8
After notice of hearing, before hearing closed..	2072	39.9	1768	43.0	26	17.7	278	29.4	10	8.2
After hearing closed, before decision.....	26	0.5	25	0.6	0	0.0	1	0.1	1	0.8
Expedited election.....	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed election.....	320	6.2	285	6.9	5	3.4	30	3.2	14	11.5
Board-directed election.....	135	2.6	118	2.9	3	2.0	14	1.5	1	0.8
By withdrawal, total.....	1953	37.6	1479	36.0	75	51.0	399	42.3	56	45.9
Before notice of hearing.....	425	8.2	205	5.0	37	25.2	183	19.4	46	37.7
After notice of hearing, before hearing closed.....	1373	26.4	1129	27.5	36	24.5	208	22.0	5	4.1
After hearing closed, before decision.....	34	0.7	32	0.8	1	0.7	1	0.1	2	1.6
After Regional Director's decision and direction of election.....	98	1.9	91	2.2	1	0.7	6	0.6	3	2.5
After Board decision and direction of election.....	23	0.4	22	0.5	0	0.0	1	0.1	0	0.0
By dismissal, total.....	255	4.9	102	2.5	29	19.7	124	13.1	11	9.0
Before notice of hearing.....	90	1.7	8	0.2	15	10.2	67	7.1	9	7.4
After notice of hearing, before hearing closed.....	93	1.8	37	0.9	10	6.8	46	4.9	1	0.8
After hearing closed, before decision.....	2	0.0	2	0.0	0	0.0	0	0.0	0	0.0
By Regional Director's decision.....	62	1.2	49	1.2	3	2.0	10	1.1	1	0.8
By Board decision.....	8	0.2	6	0.1	1	0.7	1	0.1	0	0.0

¹ See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 2002¹

	AC	UC
Total, all.....	16	240
Certification amended or unit clarified.....	5	17
Before hearing.....	4	3
By Regional Director's decision.....	4	3
By Board decision.....	0	0
After hearing.....	1	14
By Regional Director's decision.....	1	13
By Board decision.....	0	1
Dismissed.....	1	47
Before hearing.....	0	20
By Regional Director's decision.....	0	19
By Board decision.....	0	1
After hearing.....	1	27
By Regional Director's decision.....	1	26
By Board decision.....	0	1
Withdrawn.....	10	176
Before hearing.....	9	168
After hearing.....	1	8

¹ See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2002¹

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed ²	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections.....	³ 3062	8	2583	0	471	0
Eligible voters.....	203,414	429	154,511	0	48,474	0
Valid votes.....	167,160	379	130,796	0	35,985	0
RC cases:						
Elections.....	2538	6	2128	0	404	0
Eligible voters.....	170,964	411	131,745	0	38,808	0
Valid votes.....	144,475	363	111,439	0	32,673	0
RM cases:						
Elections.....	46	0	38	0	8	0
Eligible voters.....	1974	0	1780	0	194	0
Valid votes.....	1723	0	1550	0	173	0
RD cases:						
Elections.....	421	1	376	0	44	0
Eligible voters.....	25,742	6	17,415	0	8321	0
Valid votes.....	17,499	4	15,068	0	2427	0
UD cases:						
Elections.....	57	1	41	0	15	--
Eligible voters.....	4734	12	3571	0	1151	--
Valid votes.....	3463	12	2739	0	712	--

¹ See Glossary of terms for definitions.

² Cases where election is held pursuant to a decision and direction by the Board.

³ Due to technical difficulties, data discrepancies exceed 1 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2002

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.....	3151	89	59	3003	2682	89	56	2537	45	0	0	45	424	0	3	421
Rerun required.....	--	--	54	--	--	--	52	--	--	--	0	--	--	--	2	--
Runoff required.....	--	--	5	--	--	--	4	--	--	--	0	--	--	--	1	--
Consent elections.....	7	0	0	7	6	0	0	6	0	0	0	0	1	0	0	1
Rerun required.....	--	--	0	--	--	--	0	--	--	--	--	--	--	--	0	--
Runoff required.....	--	--	0	--	--	--	0	--	--	--	--	--	--	--	0	--
Stipulated elections.....	2639	61	37	2541	2225	61	36	2128	37	0	0	37	377	0	1	376
Rerun required.....	--	--	32	--	--	--	32	--	--	--	0	--	--	--	0	--
Runoff required.....	--	--	5	--	--	--	4	--	--	--	0	--	--	--	1	--
Regional Director–directed.....	505	28	22	455	451	28	20	403	8	0	0	8	46	0	2	44
Rerun required.....	--	--	22	--	--	--	20	--	--	--	0	--	--	--	2	--
Runoff required.....	--	--	0	--	--	--	0	--	--	--	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).....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required.....	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required.....	--	--	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 2002

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.....	3155	131	4.2	30	1.0	8	0.3	139	4.4	38	1.2
By type of cases:											
In RC cases.....	2684	109	4.1	29	1.1	8	0.3	117	4.4	37	1.4
In RM cases.....	46	5	10.9	0	0.0	0	0.0	5	10.9	0	0.0
In RD cases.....	425	17	4.0	1	0.2	0	0.0	17	4.0	1	0.2
By type of election:											
Consent elections.....	7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections.....	2642	48	1.8	15	0.6	1	0.0	49	1.9	16	0.6
Expedited elections.....	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections.....	506	83	16.4	15	3.0	7	1.4	90	17.8	22	4.3
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 2002¹

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.....	249	100.0	89	35.7	153	61.4	6	2.4
By type of case:								
RC cases.....	215	100.0	81	37.7	127	59.1	6	2.8
RM cases.....	8	100.0	2	25.0	6	75.0	0	0.0
RD cases.....	26	100.0	6	23.1	20	76.9	0	0.0
By type of election:								
Consent elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections.....	135	100.0	31	23.0	99	73.3	4	3.0
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	114	100.0	58	50.9	54	47.4	2	1.8
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 2002¹

Type of election/case	Objec- tions filed	Objec- tions with- drawn	Objec- tions ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections.....	249	110	139	132	95.0	7	5.0
By type of case:							
RC cases.....	215	98	117	111	94.9	6	5.1
RM cases.....	8	3	5	5	100.0	0	0.0
RD cases.....	26	9	17	16	94.1	1	5.9
By type of election:							
Consent elections.....	0	0	0	0	0.0	0	0.0
Stipulated elections.....	135	86	49	45	91.8	4	8.2
Expedited elections.....	0	0	0	0	0.0	0	0.0
Regional Director-directed elections.....	114	24	90	87	96.7	3	3.3
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 2002¹

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.....	27	100.0	7	25.9	20	74.1	6	22.2
By type of case:								
RC cases.....	23	100.0	7	30.4	16	69.6	6	26.1
RM cases.....	0	0.0	0	0.0	0	0.0	0	0.0
RD cases.....	4	100.0	0	0.0	4	100.0	0	0.0
By type of election:								
Consent elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections.....	16	100.0	4	25.0	12	75.0	4	25.0
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	11	100.0	3	27.3	8	72.7	2	18.2
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 2002¹

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			Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total				
Total.....	58	18	31.0	40	69.0	5326	1815	34.1	3511	65.9	3652	68.6	1050	19.7
AFL-CIO unions.....	55	17	30.9	38	69.1	5092	1781	35.0	3311	65.0	3475	68.2	1016	20.0
Other national unions.....	1	1	100.0	0	0.0	34	34	100.0	0	0.0	34	100.0	34	100.0
Other local unions.....	2	0.0	0.0	2	100.0	200	0	0.0	200	100.0	143	71.5	0	0.0

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 2002¹

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.....	2642	49.4	1304	1299	4	1	1338	168,709	66,227	65,922	282	23	102,482
Other local unions.....	98	65.3	64	--	--	64	34	8031	4151	--	--	4151	3880
Other national unions.....	118	67.8	80	--	80	--	38	6902	3888	--	3888	--	3014
1-union elections.....	2858	50.7	1448	1299	84	65	1410	183,642	74,266	65,922	4170	4174	109,376
National v. Local.....	6	66.7	4	--	1	3	2	530	500	--	52	448	30
AFL-CIO v. Local.....	14	78.6	11	6	--	5	3	1784	1033	421	--	612	751
Local v. Local.....	7	100.0	7	--	--	7	0	1993	1993	--	--	1993	0
AFL-CIO v. National.....	11	100.0	11	3	8	--	0	951	951	129	822	--	0
National v. National.....	8	87.5	7	--	7	--	1	1003	888	--	888	--	115
AFL-CIO v. AFL-CIO.....	106	81.1	86	86	--	--	20	9431	7137	7137	--	--	2294
2-union elections.....	152	82.9	126	95	16	15	26	15,692	12,502	7687	1762	3053	3190
AFL-CIO v. AFL-CIO v. Local.....	1	100.0	1	0	--	1	0	1086	1086	0	--	1086	0
AFL-CIO v. AFL-CIO v. National....	1	100.0	1	0	1	--	0	91	91	0	91	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO..	25	100.0	25	25	--	--	0	396	396	396	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	6	83.3	5	5	--	--	1	242	140	140	--	--	102
3 (or more)-union elections.....	33	97.0	32	30	1	1	1	1815	1713	536	91	1086	102
Total representation elections.....	3043	52.8	1606	1424	101	81	1437	201,149	88,481	74,145	6023	8313	112,668

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2002¹—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	
B. Elections in RC cases													
AFL-CIO	2210	52.9	1168	1164	4	--	1042	143,628	58,006	57,724	282	--	85,622
Other local unions.....	89	70.8	63	--	--	63	26	7792	4109	--	--	4109	3683
Other national unions.....	106	71.7	76	--	76	--	30	6250	3551	--	3551	--	2699
1-union elections.....	2405	54.3	1307	1164	80	63	1098	157,670	65,666	57,724	3833	4109	92,004
National v. Local.....	6	66.7	4	--	1	3	2	530	500	--	52	448	30
AFL-CIO v. Local.....	14	78.6	11	6	--	5	3	1784	1033	421	--	612	751
Local v. Local.....	6	100.0	6	--	--	6	0	1432	1432	--	--	1432	0
AFL-CIO v. National.....	11	100.0	11	3	8	--	0	951	951	129	822	--	0
National v. National.....	6	83.3	5	--	5	--	1	911	796	--	796	--	115
AFL-CIO v. AFL-CIO.....	100	82.0	82	82	--	--	18	8921	6640	6640	--	--	2281
2-union elections.....	143	83.2	119	91	14	14	24	14,529	11,352	7190	1670	2492	3177
AFL-CIO v. AFL-CIO v. Local.....	1	100.0	1	0	--	1	0	1086	1086	0	--	1086	0
AFL-CIO v. AFL-CIO v. National....	1	100.0	1	0	1	--	0	91	91	0	91	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO..	25	100.0	25	25	--	--	0	396	396	396	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	5	100.0	5	5	--	--	0	140	140	140	--	--	0
3 (or more)-union elections.....	32	100.0	32	30	1	1	0	1713	1713	536	91	1086	0
Total RC elections.....	2580	56.5	1458	1285	95	78	1122	173,912	78,731	65,450	5594	7687	95,181

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2002¹—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	
C. Elections in RM cases													
AFL-CIO	40	30.0	12	12	--	--	28	921	380	380	--	--	541
Other local unions.....	1	0.0	0	--	--	0	1	9	0	--	--	0	9
1-union elections.....	41	29.3	12	12	0	0	29	930	380	380	0	0	550
Local v. Local.....	1	100.0	1	--	--	1	0	561	561	--	--	561	0
National v. National.....	2	100.0	2	--	2	--	0	92	92	--	92	--	0
AFL-CIO v. AFL-CIO.....	3	100.0	3	3	--	--	0	279	279	279	--	--	0
2-union elections.....	6	100.0	6	3	2	1	0	932	932	279	92	561	0
Total RM elections.....	47	38.3	18	15	2	1	29	1862	1312	659	92	561	550
D. Elections in RD cases													
AFL-CIO	392	31.6	124	123	--	1	268	24,160	7841	7818	--	23	16,319
Other local unions.....	8	12.5	1	--	--	1	7	230	42	--	--	42	188
Other national unions.....	12	33.3	4	--	4	--	8	652	337	--	337	--	315
1-union elections.....	412	31.3	129	123	4	2	283	25,042	8220	7818	337	65	16,822
AFL-CIO v. AFL-CIO.....	3	33.3	1	1	--	--	2	231	218	218	--	--	13
2-union elections.....	3	33.3	1	1	0	0	2	231	218	218	0	0	13
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	1	0.0	0	0	--	--	1	102	0	0	--	--	102
3 (or more)-union elections.....	1	0.0	0	0	0	0	1	102	0	0	0	0	102
Total RD elections.....	416	31.3	130	124	4	2	286	25,375	8438	8036	337	65	16,937

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 2002¹

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.....	141,049	37,891	37,891	--	--	16,791	28,311	28,311	--	--	58,056
Other local unions.....	6262	2200	--	--	2200	871	1126	--	--	1126	2065
Other national unions.....	5761	2279	--	2279	--	857	710	--	710	--	1915
1-union elections.....	153,072	42,370	37,891	2279	2200	18,519	30,147	28,311	710	1126	62,036
National v. Local.....	415	382	--	43	339	11	22	--	11	11	0
AFL-CIO v. Local.....	1268	832	406	--	426	27	193	100	--	93	216
Local v. Local.....	1216	1168	--	--	1168	48	0	--	--	0	0
AFL-CIO v. National.....	707	694	211	483	--	13	0	0	0	--	0
National v. National.....	717	569	--	569	--	37	33	--	33	--	78
AFL-CIO v. AFL-CIO.....	6998	4531	4531	--	--	378	860	860	--	--	1229
2-union elections.....	11,321	8176	5148	1095	1933	514	1108	960	44	104	1523
AFL-CIO v. AFL-CIO v. Local.....	1267	1233	730	--	503	34	0	0	--	0	0
AFL-CIO v. AFL-CIO v. National.....	111	110	54	56	--	1	0	0	0	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO.....	310	310	310	--	--	0	0	0	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	216	107	107	--	--	1	60	60	--	--	48
3 (or more)-union elections.....	1904	1760	1201	56	503	36	60	60	0	0	48
Total representation elections.....	166,297	52,306	44,240	3430	4636	19,069	31,315	29,331	754	1230	63,607
B. Elections in RC cases											
AFL-CIO.....	124,002	33,259	33,259	--	--	14,288	24,948	24,948	--	--	51,507
Other local unions.....	6055	2173	--	--	2173	863	1087	--	--	1087	1932
Other national unions.....	5199	2104	--	2104	--	737	609	--	609	--	1749
1-union elections.....	135,256	37,536	33,259	2104	2173	15,888	26,644	24,948	609	1087	55,188
AFL-CIO v. National.....	707	694	211	483	0	13	0	--	--	--	--
Local v. Local.....	740	698	0	0	698	42	0	--	--	--	--
National v. Local.....	415	382	--	43	339	11	22	--	11	11	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2002¹—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
AFL-CIO v. Local.....	1268	832	406	--	426	27	193	100	--	93	216
National v. National.....	625	477	--	477	--	37	33	--	33	--	78
AFL-CIO v. AFL-CIO.....	6596	4194	4194	--	--	323	860	860	--	--	1219
2-union elections.....	10,351	7277	4811	1003	1463	453	1108	960	44	104	1513
AFL-CIO v. AFL-CIO v. AFL-CIO.....	310	310	310	0	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	108	107	107	0	0	1	0	--	--	--	--
AFL-CIO v. AFL-CIO v. Local.....	1267	1233	730	0	503	34	0	--	--	--	--
AFL-CIO v. AFL-CIO v. National.....	111	110	54	56	0	1	0	--	--	--	--
3 (or more)-union elections.....	1796	1760	1201	56	503	36	0	0	0	0	0
Total RC elections.....	147,403	46,573	39,271	3163	4139	16,377	27,752	25,908	653	1191	56,701
C. Elections in RM cases											
AFL-CIO.....	821	219	219	--	--	112	140	140	--	--	350
Other local unions.....	6	0	--	--	--	--	0	0	0	0	6
1-union elections.....	827	219	219	0	0	112	140	140	0	0	356
National v. National.....	92	92	0	92	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO.....	234	209	209	0	0	25	0	--	--	--	--
Local v. Local.....	476	470	0	0	470	6	0	--	--	--	--
2-union elections.....	802	771	209	92	470	31	0	0	0	0	0
Total RM elections.....	1629	990	428	92	470	143	140	140	0	0	356

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2002¹—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	
D. Elections in RD cases											
AFL-CIO.....	16,226	4413	4413	--	--	2391	3223	3223	--	--	6199
Other local unions.....	201	27	--	--	27	8	39	--	--	39	127
Other national unions.....	562	175	--	175	--	120	101	--	101	--	166
1-union elections.....	16,989	4615	4413	175	27	2519	3363	3223	101	39	6492
AFL-CIO v. AFL-CIO.....	168	128	128	--	--	30	0	0	--	--	10
2-union elections.....	168	128	128	0	0	30	0	0	0	0	10
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO.....	108	0	--	--	--	--	60	60	0	0	48
3 (or more)-union elections.....	108	0	0	0	0	0	60	60	0	0	48
Total RD elections.....	17,265	4743	4541	175	27	2549	3423	3283	101	39	6550

¹ See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002

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.....	233	129	119	10	0	104	11,566	9608	5122	4601	521	0	4486	6370
Indiana.....	73	28	25	1	2	45	5501	4830	1931	1892	27	12	2899	880
Michigan.....	187	93	89	2	2	94	10,732	9076	4410	4261	83	66	4666	5170
Ohio.....	158	80	75	3	2	78	7705	6970	3195	3036	147	12	3775	2415
Wisconsin.....	130	84	79	4	1	46	3806	3075	1563	1520	33	10	1512	1961
East North Central.....	781	414	387	20	7	367	39,310	33,559	16,221	15,310	811	100	17,338	16,796
Alabama.....	27	11	9	1	1	16	2081	2071	943	881	52	10	1128	870
Kentucky.....	37	15	13	2	0	22	3071	2742	1266	1242	4	20	1476	878
Mississippi.....	9	3	3	0	0	6	1324	1224	448	448	0	0	776	95
Tennessee.....	32	13	12	1	0	19	9261	8686	2876	2859	17	0	5810	790
East South Central.....	105	42	37	4	1	63	15,737	14,723	5533	5430	73	30	9190	2633
New Jersey.....	136	60	53	4	3	76	8627	7312	3401	3257	70	74	3911	2767
New York.....	301	173	143	14	16	128	31,918	18,674	12,344	10,732	359	1253	6330	18,540
Pennsylvania.....	216	111	102	6	3	105	9703	8324	3925	3588	246	91	4399	3496
Middle Atlantic.....	653	344	298	24	22	309	50,248	34,310	19,670	17,577	675	1418	14,640	24,803
Arizona.....	30	19	16	3	0	11	1367	1077	658	415	243	0	419	1176
Colorado.....	22	4	4	0	0	18	1144	1071	374	374	0	0	697	91
Idaho.....	8	4	4	0	0	4	405	366	222	222	0	0	144	229
Montana.....	7	4	4	0	0	3	263	211	102	102	0	0	109	143
Nevada.....	34	11	9	2	0	23	1889	1683	743	684	59	0	940	293
New Mexico.....	16	8	7	1	0	8	1154	948	389	353	4	32	559	333
Utah.....	11	8	8	0	0	3	267	323	196	196	0	0	127	140
Wyoming.....	5	2	2	0	0	3	233	214	77	77	0	0	137	9
Mountain.....	133	60	54	6	0	73	6722	5893	2761	2423	306	32	3132	2414

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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.....	43	25	23	2	0	18	2012	1777	1025	871	154	0	752	1311
Maine.....	6	1	1	0	0	5	297	262	84	84	0	0	178	20
Massachusetts.....	72	51	46	3	2	21	3837	3529	2008	1892	82	34	1521	2589
New Hampshire.....	8	4	4	0	0	4	302	265	127	127	0	0	138	130
Rhode Island.....	9	5	4	0	1	4	315	290	130	108	0	22	160	93
Vermont.....	5	4	3	1	0	1	294	243	147	133	14	0	96	260
New England.....	143	90	81	6	3	53	7057	6366	3521	3215	250	56	2845	4403
Puerto Rico.....	47	27	20	2	5	20	2295	1941	1051	764	88	199	890	1035
Virgin Islands.....	10	9	3	0	6	1	477	393	360	117	0	243	33	470
Outlying Areas.....	57	36	23	2	11	21	2772	2334	1411	881	88	442	923	1505
Alaska.....	17	11	11	0	0	6	320	268	132	132	0	0	136	97
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	306	167	150	7	10	139	22,335	19,819	11,175	8904	638	1633	8644	12,763
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	1	1	1	0	0	0	908	750	398	398	0	0	352	908
Hawaii.....	29	18	14	4	0	11	1088	936	563	451	112	0	373	713
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.....	60	36	33	3	0	24	3278	2959	1724	1609	89	26	1235	2003
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	94	54	48	5	1	40	6124	5054	2734	2635	86	13	2320	3652
Pacific.....	507	287	257	19	11	220	34,053	29,786	16,726	14,129	925	1672	13,060	20,136

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—Continued

Division and State ¹	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware.....	16	8	7	1	0	8	421	397	175	160	15	0	222	138
District Of Columbia.....	16	14	7	1	6	2	1280	738	699	80	269	350	39	1267
Florida.....	90	43	37	4	2	47	8128	7006	3628	3038	112	478	3378	3836
Georgia.....	35	16	15	1	0	19	3479	3015	1140	1061	47	32	1875	558
Maryland.....	54	31	17	0	14	23	2708	2193	1134	803	3	328	1059	1252
North Carolina.....	17	7	6	1	0	10	732	691	316	250	66	0	375	291
South Carolina.....	5	2	1	0	1	3	146	135	55	45	1	9	80	11
Virginia.....	35	22	16	6	0	13	1053	864	472	362	98	12	392	649
West Virginia.....	35	16	15	1	0	19	1600	1477	576	561	15	0	901	430
South Atlantic.....	303	159	121	15	23	144	19,547	16,516	8195	6360	626	1209	8321	8432
Iowa.....	41	15	14	1	0	26	2353	2104	886	886	0	0	1218	590
Kansas.....	25	16	15	0	1	9	1071	1015	449	438	0	11	566	367
Minnesota.....	79	39	33	6	0	40	3601	3168	1406	1343	63	0	1762	1229
Missouri.....	91	37	31	6	0	54	7195	6240	2399	1381	139	879	3841	1372
Nebraska.....	8	3	3	0	0	5	829	765	417	417	0	0	348	461
North Dakota.....	11	4	4	0	0	7	427	412	154	154	0	0	258	71
South Dakota.....	6	4	4	0	0	2	496	423	94	94	0	0	329	52
West North Central.....	261	118	104	13	1	143	15,972	14,127	5805	4713	202	890	8322	4142
Arkansas.....	17	10	10	0	0	7	1241	1089	551	551	0	0	538	799
Louisiana.....	27	14	13	1	0	13	1951	2106	1330	1307	20	3	776	1192
Oklahoma.....	15	8	8	0	0	7	2066	1880	634	387	247	0	1246	505
Texas.....	66	36	31	3	2	30	6233	5528	2358	2291	53	14	3170	2338
West South Central.....	125	68	62	4	2	57	11,491	10,603	4873	4536	320	17	5730	4834
Total, all States and areas.....	3068	1618	1424	113	81	1450	202,909	168,217	84,716	74,574	4276	5866	83,501	90,098

¹The 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 Elections¹ Held in Cases Closed, Fiscal Year 2002

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.....	205	121	111	10	0	84	10,534	8734	4756	4235	521	0	3978	5909
Indiana.....	64	25	22	1	2	39	5233	4591	1821	1782	27	12	2770	776
Michigan.....	153	84	81	1	2	69	8531	7295	3604	3528	10	66	3691	4224
Ohio.....	132	69	64	3	2	63	6580	5960	2652	2493	147	12	3308	1825
Wisconsin.....	110	78	74	3	1	32	3357	2736	1403	1360	33	10	1333	1742
East North Central.....	664	377	352	18	7	287	34,235	29,316	14,236	13,398	738	100	15,080	14,476
Alabama.....	23	11	9	1	1	12	1949	1948	899	837	52	10	1049	870
Kentucky.....	32	15	13	2	0	17	2933	2616	1222	1198	4	20	1394	878
Mississippi.....	7	2	2	0	0	5	1205	1116	398	398	0	0	718	47
Tennessee.....	25	10	9	1	0	15	8833	8299	2690	2673	17	0	5609	536
East South Central.....	87	38	33	4	1	49	14,920	13,979	5209	5106	73	30	8770	2331
New Jersey.....	121	58	51	4	3	63	7811	6633	3141	2997	70	74	3492	2674
New York.....	266	159	129	14	16	107	24,902	17,421	11,769	10,157	359	1253	5652	17,816
Pennsylvania.....	195	104	95	6	3	91	8781	7553	3503	3174	246	83	4050	2947
Middle Atlantic.....	582	321	275	24	22	261	41,494	31,607	18,413	16,328	675	1410	13,194	23,437
Arizona.....	26	17	15	2	0	9	1231	977	609	405	204	0	368	1101
Colorado.....	19	4	4	0	0	15	1103	1034	364	364	0	0	670	91
Idaho.....	8	4	4	0	0	4	405	366	222	222	0	0	144	229
Montana.....	4	2	2	0	0	2	127	97	48	48	0	0	49	56
Nevada.....	26	9	7	2	0	17	1187	1060	476	417	59	0	584	258
New Mexico.....	14	7	6	1	0	7	1094	898	356	320	4	32	542	283
Utah.....	10	8	8	0	0	2	238	300	186	186	0	0	114	140

Table 15B.—Geographic Distribution of Collective-Bargaining Elections¹ Held in Cases Closed, Fiscal Year 2002—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.....	4	2	2	0	0	2	141	130	50	50	0	0	80	9
Mountain.....	111	53	48	5	0	58	5526	4862	2311	2012	267	32	2551	2167
Connecticut.....	39	25	23	2	0	14	1943	1715	1006	852	154	0	709	1311
Maine.....	6	1	1	0	0	5	297	262	84	84	0	0	178	20
Massachusetts.....	68	48	43	3	2	20	3447	3165	1787	1671	82	34	1378	2265
New Hampshire.....	7	4	4	0	0	3	296	259	125	125	0	0	134	130
Rhode Island.....	8	5	4	0	1	3	253	232	108	86	0	22	124	93
Vermont.....	5	4	3	1	0	1	294	243	147	133	14	0	96	260
New England.....	133	87	78	6	3	46	6530	5876	3257	2951	250	56	2619	4079
Puerto Rico.....	39	26	19	2	5	13	1977	1679	957	689	88	180	722	940
Virgin Islands.....	10	9	3	0	6	1	477	393	360	117	0	243	33	470
Outlying Areas.....	49	35	22	2	11	14	2454	2072	1317	806	88	423	755	1410
Alaska.....	17	11	11	0	0	6	320	268	132	132	0	0	136	97
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	266	150	136	6	8	116	19,956	17,745	10,079	7933	552	1594	7666	11,189
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	1	1	1	0	0	0	908	750	398	398	0	0	352	908
Hawaii.....	23	17	13	4	0	6	910	789	496	384	112	0	293	689
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.....	51	33	30	3	0	18	2969	2687	1603	1488	89	26	1084	1916
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	73	44	38	5	1	29	4858	4001	2168	2069	86	13	1833	3122
Pacific.....	431	256	229	18	9	175	29,921	26,240	14,876	12,404	839	1633	11,364	17,921

Table 15B.—Geographic Distribution of Collective-Bargaining Elections¹ Held in Cases Closed, Fiscal Year 2002—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.....	15	7	7	0	0	8	386	368	160	160	0	0	208	103
District Of Columbia.....	15	14	7	1	6	1	1273	732	699	80	269	350	33	1267
Florida.....	79	41	35	4	2	38	7166	6177	3245	2655	112	478	2932	3395
Georgia.....	33	16	15	1	0	17	3259	2806	1039	967	40	32	1767	558
Maryland.....	48	30	16	0	14	18	2287	1834	995	664	3	328	839	1179
North Carolina.....	13	5	4	1	0	8	497	475	209	190	19	0	266	129
South Carolina.....	3	2	1	0	1	1	55	55	31	21	1	9	24	11
Virginia.....	34	22	16	6	0	12	1049	860	472	362	98	12	388	649
West Virginia.....	29	14	13	1	0	15	1331	1231	466	451	15	0	765	354
South Atlantic.....	269	151	114	14	23	118	17303	14,538	7316	5550	557	1209	7222	7645
Iowa.....	36	15	14	1	0	21	2147	1914	810	810	0	0	1104	590
Kansas.....	19	13	12	0	1	6	854	809	356	345	0	11	453	226
Minnesota.....	66	35	29	6	0	31	3014	2652	1167	1104	63	0	1485	896
Missouri.....	72	34	28	6	0	38	6669	5746	2242	1224	139	879	3504	1313
Nebraska.....	7	3	3	0	0	4	701	640	356	356	0	0	284	461
North Dakota.....	9	4	4	0	0	5	390	377	145	145	0	0	232	71
South Dakota.....	6	4	4	0	0	2	496	423	94	94	0	0	329	52
West North Central.....	215	108	94	13	1	107	14271	12,561	5170	4078	202	890	7391	3609
Arkansas.....	13	8	8	0	0	5	932	805	397	397	0	0	408	562
Louisiana.....	22	13	12	1	0	9	1690	1875	1235	1212	20	3	640	1064
Oklahoma.....	11	6	6	0	0	5	1892	1725	567	320	247	0	1158	399
Texas.....	60	34	29	3	2	26	5999	5310	2246	2188	44	14	3064	2240
West South Central.....	106	61	55	4	2	45	10513	9715	4445	4117	311	17	5270	4265
Total, all States and areas.....	2647	1487	1300	108	79	1160	177,167	150,766	76,550	66,750	4000	5800	74,216	81340

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 1 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 2002—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		
Massachusetts.....	4	3	3	0	0	1	390	364	221	221	0	0	143	324
New Hampshire.....	1	0	0	0	0	1	6	6	2	2	0	0	4	0
Rhode Island.....	1	0	0	0	0	1	62	58	22	22	0	0	36	0
Vermont.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New England.....	10	3	3	0	0	7	527	490	264	264	0	0	226	324
Puerto Rico.....	8	1	1	0	0	7	318	262	94	75	0	19	168	95
Virgin Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas.....	8	1	1	0	0	7	318	262	94	75	0	19	168	95
Alaska.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	40	17	14	1	2	23	2379	2074	1096	971	86	39	978	1574
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.....	6	1	1	0	0	5	178	147	67	67	0	0	80	24
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.....	9	3	3	0	0	6	309	272	121	121	0	0	151	87
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	21	10	10	0	0	11	1266	1053	566	566	0	0	487	530
Pacific.....	76	31	28	1	2	45	4132	3546	1850	1725	86	39	1696	2215
Delaware.....	1	1	0	1	0	0	35	29	15	0	15	0	14	35
District Of Columbia.....	1	0	0	0	0	1	7	6	0	0	0	0	6	0
Florida.....	11	2	2	0	0	9	962	829	383	383	0	0	446	441
Georgia.....	2	0	0	0	0	2	220	209	101	94	7	0	108	0
Maryland.....	6	1	1	0	0	5	421	359	139	139	0	0	220	73
North Carolina.....	4	2	2	0	0	2	235	216	107	60	47	0	109	162

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2002—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		
South Carolina.....	2	0	0	0	0	2	91	80	24	24	0	0	56	0
Virginia.....	1	0	0	0	0	1	4	4	0	0	0	0	4	0
West Virginia.....	6	2	2	0	0	4	269	246	110	110	0	0	136	76
South Atlantic.....	34	8	7	1	0	26	2244	1978	879	810	69	0	1099	787
Iowa.....	5	0	0	0	0	5	206	190	76	76	0	0	114	0
Kansas.....	6	3	3	0	0	3	217	206	93	93	0	0	113	141
Minnesota.....	13	4	4	0	0	9	587	516	239	239	0	0	277	333
Missouri.....	19	3	3	0	0	16	526	494	157	157	0	0	337	59
Nebraska.....	1	0	0	0	0	1	128	125	61	61	0	0	64	0
North Dakota.....	2	0	0	0	0	2	37	35	9	9	0	0	26	0
South Dakota.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central.....	46	10	10	0	0	36	1701	1566	635	635	0	0	931	533
Arkansas.....	4	2	2	0	0	2	309	284	154	154	0	0	130	237
Louisiana.....	5	1	1	0	0	4	261	231	95	95	0	0	136	128
Oklahoma.....	4	2	2	0	0	2	174	155	67	67	0	0	88	106
Texas.....	6	2	2	0	0	4	234	218	112	103	9	0	106	98
West South Central.....	19	7	7	0	0	12	978	888	428	419	9	0	460	569
Total, all States and areas.....	421	131	124	5	2	290	25,742	17,451	8166	7824	276	66	9285	8758

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 1 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 2002

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	1	1	0	0	0	19	19	10	10	0	0	9	19
Animal Production.....	6	3	3	0	0	3	990	840	418	418	0	0	422	305
Forestry and Logging.....	1	1	1	0	0	0	284	262	198	198	0	0	64	284
Support Activities for Agriculture and Forestry.....	1	0	0	0	0	1	29	27	10	10	0	0	17	0
Agriculture, Forestry, Fishing, and Hunting.....	9	5	5	0	0	4	1322	1148	636	636	0	0	512	608
Oil and Gas Extraction.....	3	3	3	0	0	0	106	98	71	71	0	0	27	106
Mining (except Oil and Gas).....	21	4	4	0	0	17	1465	1385	474	474	0	0	911	99
Support Activities for Mining.....	4	0	0	0	0	4	272	254	98	98	0	0	156	0
Mining.....	28	7	7	0	0	21	1843	1737	643	643	0	0	1094	205
Utilities.....	82	47	46	0	1	35	3659	3268	1551	1547	0	4	1717	1796
Building, Developing and General Contracting.....	33	18	17	0	1	15	1349	1049	660	449	0	211	389	835
Heavy Construction.....	27	20	19	0	1	7	630	522	274	268	0	6	248	391
Special Trade Contractors.....	333	223	218	3	2	110	6281	4982	3179	3134	23	22	1803	4179
Construction.....	393	261	254	3	4	132	8260	6553	4113	3851	23	239	2440	5405
Food Manufacturing.....	98	39	36	3	0	59	10366	9232	4300	4074	226	0	4932	3970
Beverage and Tobacco Product Manufacturing.....	33	12	12	0	0	21	1625	1467	667	667	0	0	800	436
Textile Mills.....	4	0	0	0	0	4	303	285	123	123	0	0	162	0
Textile Product Mills.....	2	1	1	0	0	1	105	94	46	46	0	0	48	65
Apparel Manufacturing.....	6	4	4	0	0	2	312	251	160	157	3	0	91	206
31-Manufacturing.....	143	56	53	3	0	87	12711	11,329	5296	5067	229	0	6033	4677

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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.....	26	8	8	0	0	18	1689	1662	680	680	0	0	982	367
Paper Manufacturing.....	30	13	11	2	0	17	3151	2816	1061	785	272	4	1755	543
Printing and Related Support Activities....	24	13	10	0	3	11	1644	1508	743	673	0	70	765	655
Petroleum and Coal Products Manufacturing.....	21	11	11	0	0	10	964	1199	839	837	2	0	360	734
Chemical Manufacturing.....	37	17	17	0	0	20	2006	1908	853	840	0	13	1055	615
Plastics and Rubber Products Manufacturing.....	28	10	8	2	0	18	2792	2661	1204	1126	78	0	1457	1363
Nonmetallic Mineral Product Manufacturing.....	41	12	11	0	1	29	1815	1681	511	498	0	13	1170	204
32-Manufacturing.....	207	84	76	4	4	123	14,061	13,435	5891	5439	352	100	7544	4481
Primary Metal Manufacturing.....	43	20	19	0	1	23	2533	2341	1113	1085	0	28	1228	1220
Fabricated Metal Product Manufacturing	64	28	28	0	0	36	3814	3536	1423	1423	0	0	2113	1143
Machinery Manufacturing.....	26	15	15	0	0	11	2149	2004	1104	1103	0	1	900	1386
Computer and Electronic Product Manufacturing.....	5	2	2	0	0	3	419	376	130	130	0	0	246	30
Electrical Equipment, Appliance and Component Manufacturing.....	29	11	11	0	0	18	2211	2049	516	516	0	0	1533	237
Transportation Equipment Manufacturing	67	32	27	1	4	35	13,400	12,650	5826	5049	4	773	6824	3328
Furniture and Related Product Manufacturing.....	19	10	10	0	0	9	1241	1112	454	454	0	0	658	423
Miscellaneous Manufacturing.....	46	16	16	0	0	30	4617	4324	1836	1748	53	35	2488	1699
33-Manufacturing.....	299	134	128	1	5	165	30,384	28,392	12,402	11,508	57	837	15,990	9466
Wholesale Trade, Durable Goods.....	57	23	22	1	0	34	2989	2709	1280	1176	86	18	1429	812
Wholesale Trade Nondurable Goods.....	75	28	26	2	0	47	4891	4267	1545	1517	28	0	2722	783
Wholesale Trade.....	132	51	48	3	0	81	7880	6976	2825	2693	114	18	4151	1595

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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		
Motor Vehicle and Parts Dealers.....	41	18	17	0	1	23	1210	1066	458	451	0	7	608	299
Furniture and Home Furnishings Stores..	16	5	4	1	0	11	857	667	269	229	40	0	398	162
Electronics and Appliance Stores.....	5	1	1	0	0	4	215	198	34	34	0	0	164	14
Building Material and Garden Equipment and Supplies Dealers.....	3	1	1	0	0	2	36	36	17	17	0	0	19	23
Food and Beverage Stores.....	61	30	25	4	1	31	4227	3491	1527	1060	464	3	1964	1227
Health and Personal Care Stores.....	17	8	8	0	0	9	1242	1095	400	400	0	0	695	138
Gasoline Stations.....	4	2	2	0	0	2	262	235	99	99	0	0	136	147
Clothing and Clothing Accessories Stores	4	2	2	0	0	2	314	308	248	248	0	0	60	267
44-Retail Trade.....	151	67	60	5	2	84	8363	7096	3052	2538	504	10	4044	2277
Sporting Goods, Hobby, Book and Music Stores.....	5	2	0	2	0	3	136	108	68	22	46	0	40	78
General Merchandise Stores.....	21	11	11	0	0	10	1315	1185	500	494	6	0	685	496
Miscellaneous Store Retailers.....	12	5	4	1	0	7	435	403	184	184	0	0	219	176
Nonstore Retailers.....	5	1	1	0	0	4	147	153	56	56	0	0	97	18
45-Retail Trade.....	43	19	16	3	0	24	2033	1849	808	756	52	0	1041	768
Air Transportation.....	11	9	6	2	1	2	661	535	448	124	8	316	87	588
Rail Transportation.....	2	1	1	0	0	1	197	108	51	51	0	0	57	85
Water Transportation.....	12	7	7	0	0	5	169	155	78	78	0	0	77	86
Truck Transportation.....	100	49	47	2	0	51	4408	3830	1614	1613	1	0	2216	1277
Transit and Ground Passenger Transportation.....	92	58	55	1	2	34	7229	5671	2989	2842	7	140	2682	4386
Pipeline Transportation.....	1	0	0	0	0	1	20	20	9	9	0	0	11	0
Scenic and Sightseeing Transportation....	1	0	0	0	0	1	91	72	33	33	0	0	39	0
Support Activities for Transportation.....	51	38	29	9	0	13	1376	1192	691	654	37	0	501	831
48-Transportation.....	270	162	145	14	3	108	14,151	11,583	5913	5404	53	456	5670	7253

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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		
Postal Service.....	1	1	1	0	0	0	2	2	2	2	0	0	0	2
Couriers and Messengers.....	12	6	4	1	1	6	353	294	135	77	27	31	159	123
Warehousing and Storage Facilities.....	66	23	22	1	0	43	3907	3426	1346	1329	5	12	2080	528
49-Transportation.....	79	30	27	2	1	49	4262	3722	1483	1408	32	43	2239	653
Publishing Industries.....	25	11	11	0	0	14	1116	999	441	432	9	0	558	308
Motion Picture and Sound Recording Industries.....	5	0	0	0	0	5	258	157	50	18	32	0	107	10
Broadcasting and Telecommunications.....	74	37	34	0	3	37	3581	3179	1464	1364	0	100	1715	1208
Information Services and Data Processing Services.....	6	4	4	0	0	2	168	154	96	96	0	0	58	140
Information.....	110	52	49	0	3	58	5123	4489	2051	1910	41	100	2438	1666
Monetary Authorities - Central Bank.....	4	3	2	0	1	1	73	61	51	48	0	3	10	59
Credit Intermediation and Related Activities.....	4	4	3	0	1	0	48	46	43	40	0	3	3	48
Funds, Trusts and Other Financial Vehicles (U.S. Only).....	2	0	0	0	0	2	183	212	77	77	0	0	135	0
Finance and Insurance.....	10	7	5	0	2	3	304	319	171	165	0	6	148	107
Real Estate.....	15	11	10	0	1	4	183	162	108	95	6	7	54	111
Rental and Leasing Services.....	28	15	14	1	0	13	458	399	219	210	9	0	180	229
Owners and Lessors of Other Non-Financial Assets.....	2	2	2	0	0	0	10	10	8	8	0	0	2	10
Real Estate and Rental and Leasing....	45	28	26	1	1	17	651	571	335	313	15	7	236	350
Professional, Scientific and Technical Services.....	42	24	21	3	0	18	2218	1920	978	904	55	19	942	1477
Management of Companies and Enterprises.....	3	3	3	0	0	0	182	151	109	109	0	0	42	182

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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		
Administrative and Support Services.....	161	114	57	30	27	47	7041	4821	3329	1383	980	966	1492	5206
Waste Management and Remediation Services.....	103	50	50	0	0	53	5649	5374	2553	2512	41	0	2821	2033
Administrative and Support, Waste Management and Remediation Services.....	264	164	107	30	27	100	12,690	10,195	5882	3895	1021	966	4313	7239
Educational Services.....	52	35	28	3	4	17	5283	3708	2943	2551	187	205	765	4394
Ambulatory Health Care Services.....	69	36	34	0	2	33	9241	6547	4307	4241	0	66	2240	6795
Hospitals.....	142	78	57	16	5	64	23,987	19,485	9963	7401	894	1668	9522	12,463
Nursing and Residential Care Facilities....	173	96	85	7	4	77	18,732	10,471	6159	5732	145	282	4312	8220
Social Assistance.....	45	26	25	0	1	19	3466	2880	1616	1580	0	36	1264	2192
Health Care and Social Assistance.....	429	236	201	23	12	193	55,426	39,383	22,045	18,954	1039	2052	17,338	29,670
Performing Arts, Spector Sports and Related Industries.....	27	17	14	2	1	10	1283	1041	834	334	30	470	207	1110
Museums, Historical Sites and Similar Institutions.....	2	1	1	0	0	1	81	61	38	38	0	0	23	49
Amusement, Gambling and Recreation Industries.....	25	10	8	1	1	15	949	812	381	335	0	46	431	380
Arts, Entertainment and Recreation....	54	28	23	3	2	26	2313	1914	1253	707	30	516	661	1539
Accommodation.....	53	25	23	1	1	28	2173	1935	925	878	42	5	1010	631
Foodservices and Drinking Places.....	33	16	14	1	1	17	1053	890	453	421	11	21	437	470
Accommodation and Foodservices.....	86	41	37	2	2	45	3226	2825	1378	1299	53	26	1447	1101
Repair and Maintenance.....	26	15	14	0	1	11	1321	1159	499	496	0	3	660	440
Personal and Laundry Services.....	34	17	17	0	0	17	1170	1064	509	509	0	0	555	500
Religious, Grantmaking, Civic, and Professional and Similar Organizations....	10	8	5	0	3	2	397	335	258	234	0	24	77	393
Other Services (except Public Administration).....	70	40	36	0	4	30	2888	2558	1266	1239	0	27	1292	1333

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2002—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		
Executive, Legislative, Public Finance and General Government.....	1	1	1	0	0	0	5	5	4	4	0	0	1	5
Justice, Public Order, and Safety.....	15	13	5	4	4	2	991	783	561	78	266	217	222	924
Administration of Economic Programs... National Security and International Affairs.....	1	0	0	0	0	1	6	4	0	0	0	0	4	0
	2	2	0	2	0	0	149	123	120	0	120	0	3	149
Public Administration.....	19	16	6	6	4	3	1151	915	685	82	386	217	230	1078
Unclassified Establishments.....	49	21	17	4	0	28	2532	2187	1009	958	33	18	1178	778
Total, all industrial groups.....	3069	1618	1424	113	81	1451	202,916	168,223	84,718	74,576	4276	5866	83,505	90,098

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

² Due to technical difficulties, data discrepancies exceed 1 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 2002¹

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.....	175,144	2604	100.0	--	1260	100.0	116	100.0	79	100.0	1149	100.0
Under 10.....	4667	648	24.9	24.9	409	32.5	29	25.0	13	16.5	197	17.1
10 to 19.....	7610	500	19.2	44.1	256	20.3	16	13.8	20	25.3	208	18.1
20 to 29.....	8622	327	12.6	56.6	161	12.8	13	11.2	13	16.5	140	12.2
30 to 39.....	7539	210	8.1	64.7	102	8.1	10	8.6	5	6.3	93	8.1
40 to 49.....	6678	141	5.4	70.1	60	4.8	6	5.2	4	5.1	71	6.2
50 to 59.....	6405	103	4.0	74.1	38	3.0	5	4.3	5	6.3	55	4.8
60 to 69.....	5396	85	3.3	77.3	28	2.2	6	5.2	1	1.3	50	4.4
70 to 79.....	5792	78	3.0	80.3	32	2.5	6	5.2	1	1.3	39	3.4
80 to 89.....	5900	63	2.4	82.8	16	1.3	6	5.2	1	1.3	40	3.5
90 to 99.....	4807	51	2.0	84.7	23	1.8	1	0.9	0	0.0	27	2.3
100 to 109.....	5028	48	1.8	86.6	18	1.4	3	2.6	0	0.0	27	2.3
110 to 119.....	3174	29	1.1	87.7	5	0.4	0	0.0	1	1.3	23	2.0
120 to 129.....	6474	50	1.9	89.6	25	2.0	1	0.9	1	1.3	23	2.0
130 to 139.....	2486	17	0.7	90.2	3	0.2	1	0.9	0	0.0	13	1.1
140 to 149.....	2885	19	0.7	91.0	9	0.7	1	0.9	1	1.3	8	0.7
150 to 159.....	3842	26	1.0	92.0	7	0.6	0	0.0	2	2.5	17	1.5
160 to 169.....	3479	19	0.7	92.7	5	0.4	2	1.7	1	1.3	11	1.0
170 to 179.....	2844	16	0.6	93.3	8	0.6	0	0.0	0	0.0	8	0.7
180 to 189.....	2834	15	0.6	93.9	4	0.3	1	0.9	0	0.0	10	0.9
190 to 199.....	787	4	0.2	94.0	1	0.1	0	0.0	0	0.0	3	0.3
200 to 299.....	12,975	55	2.1	96.2	20	1.6	1	0.9	1	1.3	33	2.9
300 to 399.....	10,935	33	1.3	97.4	8	0.6	3	2.6	1	1.3	21	1.8
400 to 499.....	8196	19	0.7	98.2	5	0.4	2	1.7	4	5.1	8	0.7
500 to 599.....	7182	14	0.5	98.7	5	0.4	1	0.9	1	1.3	7	0.6
600 to 799.....	5987	10	0.4	99.1	3	0.2	2	1.7	1	1.3	4	0.3
800 to 999.....	7093	8	0.3	99.4	3	0.2	0	0.0	0	0.0	5	0.4
1,000 to 1,999.....	15,115	13	0.5	99.9	4	0.3	0	0.0	2	2.5	7	0.6

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2002¹—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		
2,000 to 2,999.....	5627	2	0.1	100.0	2	0.2	0	0.0	0	0.0	0	0.0
3,000 to 9,999.....	4785	1	0.0	100.0	0	0.0	0	0.0	0	0.0	1	0.1
Over 9,999.....	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
B. Decertification elections (RD)												
Total RD elections.....	25,600	418	100.0	--	121	100.0	7	100.0	2	100.0	288	100.0
Under 10.....	491	78	18.7	18.7	10	8.3	0	0.0	0	0.0	68	23.6
10 to 19.....	1054	75	17.9	36.6	15	12.4	1	14.3	0	0.0	59	20.5
20 to 29.....	1333	56	13.4	50.0	17	14.0	0	0.0	1	50.0	38	13.2
30 to 39.....	1577	46	11.0	61.0	14	11.6	1	14.3	1	50.0	30	10.4
40 to 49.....	1575	36	8.6	69.6	16	13.2	0	0.0	0	0.0	20	6.9
50 to 59.....	991	18	4.3	73.9	4	3.3	3	42.9	0	0.0	11	3.8
60 to 69.....	1322	20	4.8	78.7	6	5.0	0	0.0	0	0.0	14	4.9
70 to 79.....	1298	17	4.1	82.8	7	5.8	1	14.3	0	0.0	9	3.1
80 to 89.....	899	11	2.6	85.4	5	4.1	0	0.0	0	0.0	6	2.1
90 to 99.....	831	9	2.2	87.6	3	2.5	0	0.0	0	0.0	6	2.1
100 to 109.....	801	7	1.7	89.2	4	3.3	0	0.0	0	0.0	3	1.0
110 to 119.....	759	7	1.7	90.9	3	2.5	0	0.0	0	0.0	4	1.4
120 to 129.....	390	4	1.0	91.9	1	0.8	0	0.0	0	0.0	3	1.0
130 to 139.....	665	5	1.2	93.1	3	2.5	0	0.0	0	0.0	2	0.7
140 to 149.....	288	2	0.5	93.5	1	0.8	0	0.0	0	0.0	1	0.3
150 to 159.....	516	4	1.0	94.5	3	2.5	1	14.3	0	0.0	0	0.0
160 to 169.....	490	3	0.7	95.2	0	0.0	0	0.0	0	0.0	3	1.0
170 to 199.....	689	4	1.0	96.2	3	2.5	0	0.0	0	0.0	1	0.3
200 to 299.....	2325	11	2.6	98.8	4	3.3	0	0.0	0	0.0	7	2.4
300 to 499.....	1430	4	1.0	99.8	2	1.7	0	0.0	0	0.0	2	0.7
500 to 799.....	5876	1	0.2	100.0	0	0.0	0	0.0	0	0.0	1	0.3
800 and Over.....	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0

¹ See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2002¹

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.....	27,084	100.0	--	20,159	100.0	5,501	100.0	374	100.0	173	100.0	15	100.0	21	100.0	96	100.0	625	100.0	120	100.0
Under 10.....	2023	7.5	7.5	1527	7.6	351	6.4	57	15.2	28	16.2	1	6.7	0	0.0	15	15.6	29	4.6	15	12.5
10-19.....	2258	8.3	15.8	1731	8.6	351	6.4	63	16.8	39	22.5	1	6.7	3	14.3	14	14.6	39	6.2	17	14.2
20-29.....	2283	8.4	24.2	1814	9.0	301	5.5	54	14.4	24	13.9	6	40.0	1	4.8	21	21.9	45	7.2	17	14.2
30-39.....	1178	4.3	28.6	930	4.6	181	3.3	19	5.1	19	11.0	0	0.0	1	4.8	4	4.2	20	3.2	4	3.3
40-49.....	895	3.3	31.9	692	3.4	138	2.5	17	4.5	14	8.1	0	0.0	1	4.8	5	5.2	22	3.5	6	5.0
50-59.....	1875	6.9	38.8	1403	7.0	365	6.6	40	10.7	18	10.4	0	0.0	1	4.8	5	5.2	34	5.4	9	7.5
60-69.....	744	2.7	41.6	562	2.8	160	2.9	5	1.3	0	0.0	1	6.7	0	0.0	0	0.0	11	1.8	5	4.2
70-79.....	693	2.6	44.1	531	2.6	124	2.3	5	1.3	2	1.2	0	0.0	0	0.0	4	4.2	23	3.7	4	3.3
80-89.....	560	2.1	46.2	459	2.3	83	1.5	4	1.1	0	0.0	0	0.0	0	0.0	0	0.0	11	1.8	3	2.5
90-99.....	302	1.1	47.3	248	1.2	39	0.7	5	1.3	2	1.2	1	6.7	1	4.8	0	0.0	5	0.8	1	0.8
100-109.....	2101	7.8	55.1	1399	6.9	592	10.8	34	9.1	7	4.0	2	13.3	2	9.5	3	3.1	58	9.3	4	3.3
110-119.....	188	0.7	55.8	156	0.8	29	0.5	0	0.0	0	0.0	0	0.0	1	4.8	0	0.0	2	0.3	0	0.0
120-129.....	459	1.7	57.4	355	1.8	80	1.5	1	0.3	1	0.6	0	0.0	0	0.0	14	14.6	7	1.1	1	0.8
130-139.....	214	0.8	58.2	181	0.9	24	0.4	3	0.8	1	0.6	0	0.0	0	0.0	0	0.0	4	0.6	1	0.8
140-149.....	178	0.7	58.9	157	0.8	15	0.3	2	0.5	2	1.2	0	0.0	0	0.0	0	0.0	2	0.3	0	0.0
150-159.....	647	2.4	61.3	486	2.4	136	2.5	5	1.3	0	0.0	0	0.0	1	4.8	0	0.0	17	2.7	2	1.7
160-169.....	161	0.6	61.9	138	0.7	17	0.3	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	4	0.6	1	0.8
170-179.....	169	0.6	62.5	143	0.7	19	0.3	0	0.0	1	0.6	0	0.0	1	4.8	2	2.1	3	0.5	0	0.0
180-189.....	187	0.7	63.2	134	0.7	46	0.8	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	6	1.0	0	0.0
190-199.....	76	0.3	63.5	60	0.3	11	0.2	3	0.8	0	0.0	0	0.0	0	0.0	0	0.0	2	0.3	0	0.0
200-299.....	2043	7.5	71.0	1508	7.5	450	8.2	24	6.4	7	4.0	0	0.0	0	0.0	6	6.3	38	6.1	10	8.3
300-399.....	1211	4.5	75.5	887	4.4	282	5.1	2	0.5	2	1.2	1	6.7	1	4.8	1	1.0	31	5.0	4	3.3
400-499.....	812	3.0	78.5	603	3.0	168	3.1	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	33	5.3	7	5.8
500-599.....	1001	3.7	82.2	672	3.3	296	5.4	3	0.8	2	1.2	0	0.0	0	0.0	0	0.0	27	4.3	1	0.8
600-699.....	401	1.5	83.7	304	1.5	87	1.6	2	0.5	0	0.0	0	0.0	0	0.0	0	0.0	8	1.3	0	0.0
700-799.....	275	1.0	84.7	212	1.1	47	0.9	4	1.1	1	0.6	0	0.0	1	4.8	1	1.0	9	1.4	0	0.0
800-899.....	258	1.0	85.6	191	0.9	56	1.0	1	0.3	0	0.0	0	0.0	1	4.8	0	0.0	8	1.3	1	0.8
900-999.....	161	0.6	86.2	112	0.6	42	0.8	0	0.0	0	0.0	0	0.0	2	9.5	0	0.0	5	0.8	0	0.0
1,000-1,999.....	1635	6.0	92.3	1108	5.5	473	8.6	5	1.3	1	0.6	1	6.7	2	9.5	1	1.0	41	6.6	3	2.5
2,000-2,999.....	668	2.5	94.7	459	2.3	172	3.1	5	1.3	0	0.0	0	0.0	1	4.8	0	0.0	28	4.5	3	2.5
3,000-3,999.....	366	1.4	96.1	223	1.1	131	2.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	11	1.8	1	0.8
4,000-4,999.....	134	0.5	96.6	81	0.4	45	0.8	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	7	1.1	0	0.0
5,000-9,999.....	369	1.4	97.9	249	1.2	97	1.8	4	1.1	1	0.6	0	0.0	0	0.0	0	0.0	18	2.9	0	0.0
Over 9,999.....	559	2.1	100.0	444	2.2	93	1.7	3	0.8	1	0.6	1	6.7	0	0.0	0	0.0	17	2.7	0	0.0

¹ See Glossary of terms for definitions.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2002; and Cumulative Totals, Fiscal Years 1936 through 2002

	Fiscal Year 2002									July 5, 1936 Sept. 30, 2002	
	Number of proceedings ¹					Percentages				Number	Percent
	Total	vs. em- ployers only	vs. unions only	vs. both employ- ers and unions	Board dismis- sal ²	vs. em- ployers only	vs. unions only	vs. both employ- ers and unions	Board dismis- sal ²		
Proceedings decided by U.S. courts of appeals	117	110	7	0	1	--	--	--	--	--	--
On proceedings for review and/or enforcement	105	102	3	0	1	100.0	100.0	--	100.0	11,572	100.0
Board orders affirmed in full	65	63	2	0	0	61.8	66.7	--	0.0	7633	66.0
Board orders affirmed with modification	8	8	0	0	0	7.8	0.0	--	0.0	1536	13.3
Remanded to the Board	7	7	0	0	0	6.9	0.0	--	0.0	576	5.0
Board orders partially affirmed and partially remanded	2	2	0	0	0	2.0	0.0	--	0.0	255	2.2
Board orders set aside	23	22	1	0	1	21.6	33.3	--	100.0	1572	13.5
On petitions for contempt	12	8	4	0	0	--	--	--	--	--	--
Total Court Orders	19	14	5	0	0	100.0	100.0	--	--	--	--
Compliance after filing of petition, before court order	8	5	3	0	0	35.7	60.0	--	--	--	--
Court orders holding respondent in contempt	6	5	1	0	0	35.7	20.0	--	--	--	--
Court orders denying petition	2	2	0	0	0	14.3	0.0	--	--	--	--
Court orders directing compliance without contempt adjudication	3	2	1	0	0	14.3	20.0	--	--	--	--
Proceedings decided by U.S. Supreme Court ³	2	2	0	0	0	100.0	--	--	--	259	100.0
Board orders affirmed in full	0	0	0	0	0	0.0	--	--	--	155	59.8
Board orders affirmed with modification	0	0	0	0	0	0.0	--	--	--	18	6.9
Board orders set aside	1	1	0	0	0	50.0	--	--	--	46	17.8
Remanded to the Board	0	0	0	0	0	0.0	--	--	--	20	7.7
Remanded to court of appeals	1	1	0	0	0	50.0	--	--	--	17	6.6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	0.0	--	--	--	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	0.0	--	--	--	1	0.4
Contempt cases enforced	0	0	0	0	0	0.0	--	--	--	1	0.4

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

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

³ The Board appeared as "amicus curiae" in 0 cases.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2002, Compared With 5-Year Cumulative Totals, 1997 Through 2001¹

Circuit courts of appeals (headquarters)	Total fiscal year 2002	Total fiscal years 1997- 2001	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2002		Cumulative fiscal years 1997–2001		Fiscal Year 2002		Cumulative fiscal years 1997–2001		Fiscal Year 2002		Cumulative fiscal years 1997–2001		Fiscal Year 2002		Cumulative fiscal years 1997–2001		Fiscal Year 2002		Cumulative fiscal years 1997–2001	
			Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent
Total all circuits	105	526	65	61.9	361	68.6	8	7.6	47	8.9	7	6.7	31	5.9	2	1.9	33	6.3	23	21.9	54	10.3
Boston, MA	3	17	1	33.3	13	76.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	11.8	2	66.7	2	11.8
New York, NY	6	35	6	100.0	26	74.3	0	0.0	0	0.0	0	0.0	2	5.7	0	0.0	2	5.7	0	0.0	5	14.3
Philadelphia, PA	6	35	4	66.7	28	80.0	1	16.7	3	8.6	0	0.0	0	0.0	1	16.7	1	2.8	0	0.0	3	8.6
Richmond, VA	11	47	6	54.5	26	55.3	1	9.1	8	17.0	2	18.2	0	0.0	0	0.0	4	8.5	2	18.2	9	19.2
New Orleans, LA	4	14	2	50.0	9	64.3	1	25.0	1	7.1	0	0.0	0	0.0	0	0.0	1	7.1	1	25.0	3	21.4
Cincinnati, OH	18	105	12	66.7	73	69.5	0	0.0	12	11.4	0	0.0	3	2.9	1	5.6	6	5.7	5	27.8	11	10.5
Chicago, IL	7	41	5	71.4	28	68.3	1	14.3	4	9.8	0	0.0	1	2.4	0	0.0	2	4.9	1	14.3	6	14.6
St. Louis, MO	7	24	2	28.6	20	83.3	1	14.3	1	4.2	1	14.3	2	8.3	0	0.0	1	4.2	3	42.9	0	0.0
San Francisco, CA	6	34	6	100.0	28	82.4	0	0.0	2	5.9	0	0.0	1	2.9	0	0.0	3	8.8	0	0.0	0	0.0
Denver, CO	3	15	1	33.3	10	66.7	0	0.0	1	6.6	0	0.0	0	0.0	0	0.0	4	26.7	2	66.7	0	0.0
Atlanta, GA	4	30	3	75.0	24	80.0	0	0.0	1	3.3	0	0.0	1	3.3	0	0.0	0	0.0	1	25.0	4	13.4
Washington, DC	30	129	17	56.7	76	58.9	3	10.0	14	10.9	4	13.3	21	16.3	0	0.0	7	5.4	6	20.0	11	8.5

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

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 2002

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in appellate court Sept. 30, 2002
		Pending in appellate court Oct. 01, 2001	Filed in appellate court fiscal year 2002		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(e) total.....	1	0	1	1	1	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in district court Sept. 30, 2002
		Pending in district court Oct. 01, 2001	Filed in district court fiscal year 2002		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total.....	17	3	14	10	4	0	5	1	7
8(a)(1)(2)(3)(4) 8(b)(1)(A)	1	0	1	0	0	0	0	0	1
8(a)(1)(2)(5) 8(b)(1)(A)	1	1	0	1	0	0	1	0	0
8(a)(1)(3).....	3	0	3	2	1	0	1	0	1
8(a)(1)(3)(5)	9	2	7	6	3	0	3	0	3
8(a)(1)(5)	3	0	3	1	0	0	0	1	2
Under Sec. 10(l) total.....	7	3	4	4	4	0	0	0	3
8(b)(1)(B) 8(b)(4)(A)	2	1	1	1	1	0	0	0	1
8(b)(4)(B)	3	1	2	2	2	0	0	0	1
8(b)(4)(D)	2	1	1	1	1	0	0	0	1

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 2002—Continued

Type of Litigation	Number of Proceedings														
	Total – all courts			In courts of appeals			In district courts			In bankruptcy courts			In state courts		
	Court Determination			Court Determination			Court Determination			Court Determination			Court Determination		
	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position
Other	3	3	0	2	2	0	1	1	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	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EAJA	2	2	0	2	2	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 §§ 8(b)(4) & 303	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2002¹

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2001	0	0	0	0	0
Received fiscal 2002	0	0	0	0	0
On docket fiscal 2002	0	0	0	0	0
Closed fiscal 2002	0	0	0	0	0
Pending September 30, 2002.....	0	0	0	0	0

¹ See Glossary for definitions of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2002¹

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 2002; and Age of Cases Pending Decision, September 30, 2002

Stage	Median days
I. Unfair Labor Practice Cases:	
A. Major Stages Completed—	
1. Filing of charge to issuance of complaint.....	91
2. Complaint to close of hearing.....	134
3. Close of hearing to administrative law judge’s decision.....	74
4. Receipt of briefs or submissions to issuance of administrative law judge’s decision.....	27
5. Administrative law judge’s decision to issuance of Board decision.....	461
6. Originating document to Board decision.....	288
7. Assignment to Board decision.....	231
8. Filing of charge to issuance of Board decision.....	889
B. Age of cases pending administrative law judge’s decision, September 30, 2001	
1. From filing of charge.....	347
2. From close of hearing.....	66
C. Age of cases pending Board decision, September 30, 2001	
1. From filing of charge.....	906
2. From originating document.....	373
3. From assignment.....	310
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition to notice of hearing issued.....	1
2. Notice of hearing to close of hearing.....	13
3. Close of hearing to Regional Director’s decision issued.....	21
4. Close of pre-election hearing to Board’s decision issued.....	219
5. Close of post-election hearing to Board’s decision issued.....	165
6. Filing of petition to—	
a. Board decision issued.....	231
b. Regional Director’s decision issued.....	38
7. Originating document to Board decision.....	93
8. Assignment to Board’s decision.....	77
B. Age of cases pending Board decision, September 30, 2001	
1. From filing of petition.....	291
2. From originating document.....	142
3. From assignment.....	146
C. Age of cases pending Regional Director’s decision, September 30, 2001.....	46

Table 24.—NLRB Activity Under the Equal Access to Justice Act, FY 2002

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	3
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	1
Denying fees	9
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	\$401,232.00
Recovered	\$ 22,406.00
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	1
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)	2
B. Awards denying fees	1
C. Amount of fees and expenses recovered	\$ 10,000.00
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered.....	0