FIFTY-FIFTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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UNITED STATES GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C. 20402 • 1992

For sale by the U S Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-038033-2

NATIONAL LABOR RELATIONS BOARD

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Acting Director
Division of Administration

[1] Appointment effective August 27, 1990.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., September 18, 1992

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Fifty-Fifth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1990.

Respectfully submitted,
JAMES M. STEPHENS, *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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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 1990, 41,507 cases were received by the Board.

The public filed 33,833 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected hundreds of thousands of employees. The NLRB during the year also received 7325 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 349 amendment to certification and unit clarification cases.

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

At the end of fiscal year 1990, the five-member Board was composed of Chairman James M. Stephens and Members Mary Miller Cracraft, John E. Higgins, Jr., Dennis M. Devaney, and Clifford R. Oviatt, Jr. Jerry M. Hunter served as the General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1990 include:

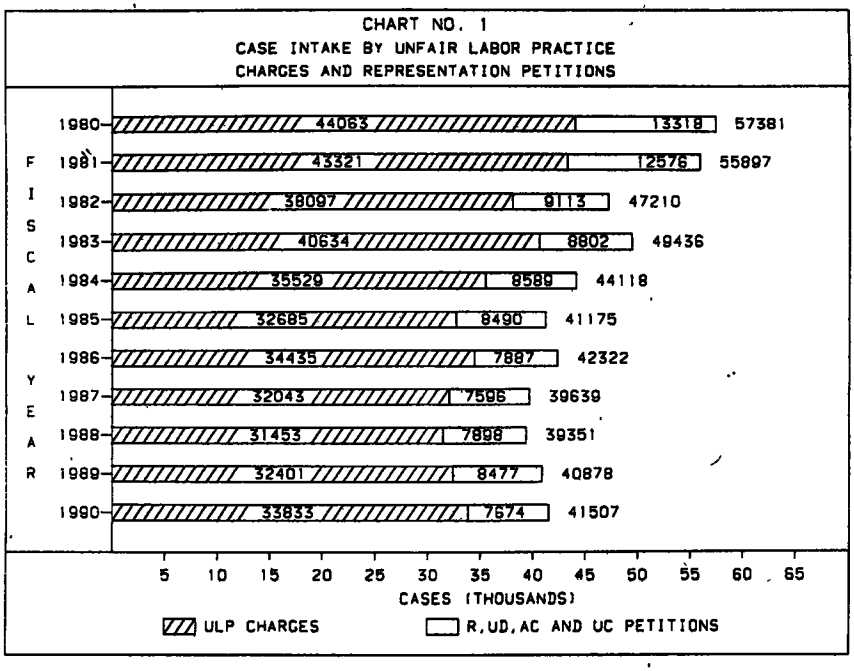
- The NLRB conducted 4210 conclusive representation elections among some 229,242 employee voters, with workers choosing labor unions as their bargaining agents in 46.7 percent of the elections.
- Although the Agency closed 40,595 cases, 25,552 cases were pending in all stages of processing at the end of the fiscal year. The closings included 32,756 cases involving unfair labor practice charges and 7271 cases affecting employee representation and 568 related cases.

• Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9874.

• The amount of $44,782,718 in reimbursement to employees illegally discharged or otherwise discriminated against in violation of their organizational rights was obtained by the NLRB from employers and unions. This total was for lost earnings, fees, dues, and fines. The NLRB obtained 4026 offers of job reinstatements, with 3294 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 3876 complaints, setting the cases for hearing.

• NLRB's corps of administrative law judges issued 688 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 1990.

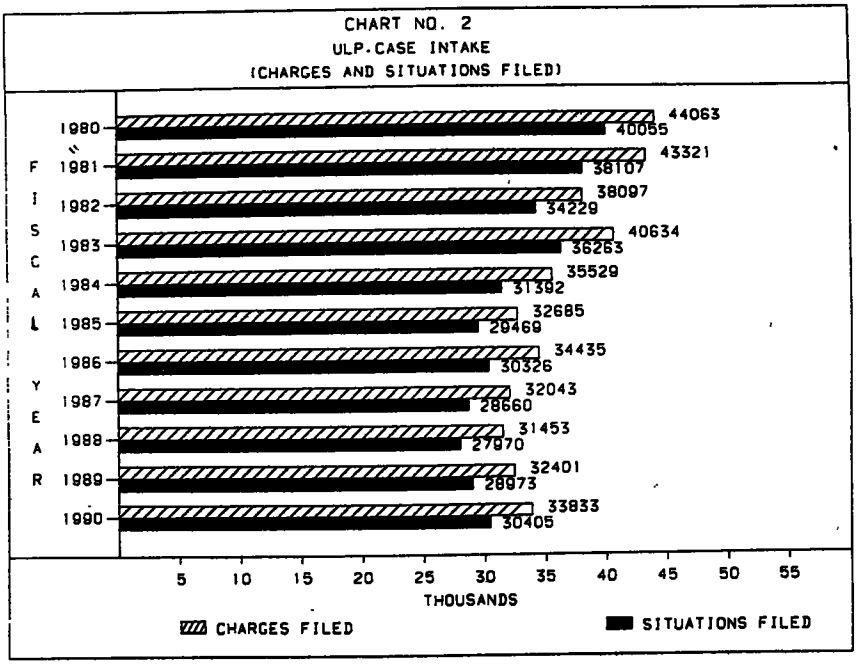
The Act's unfair labor practice provisions place certain restrictions on actions of employers and labor organizations in their relations with employees, as well as with each other. Its election provisions provide mechanics for conducting and certifying results of representation elections to determine 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 field 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.

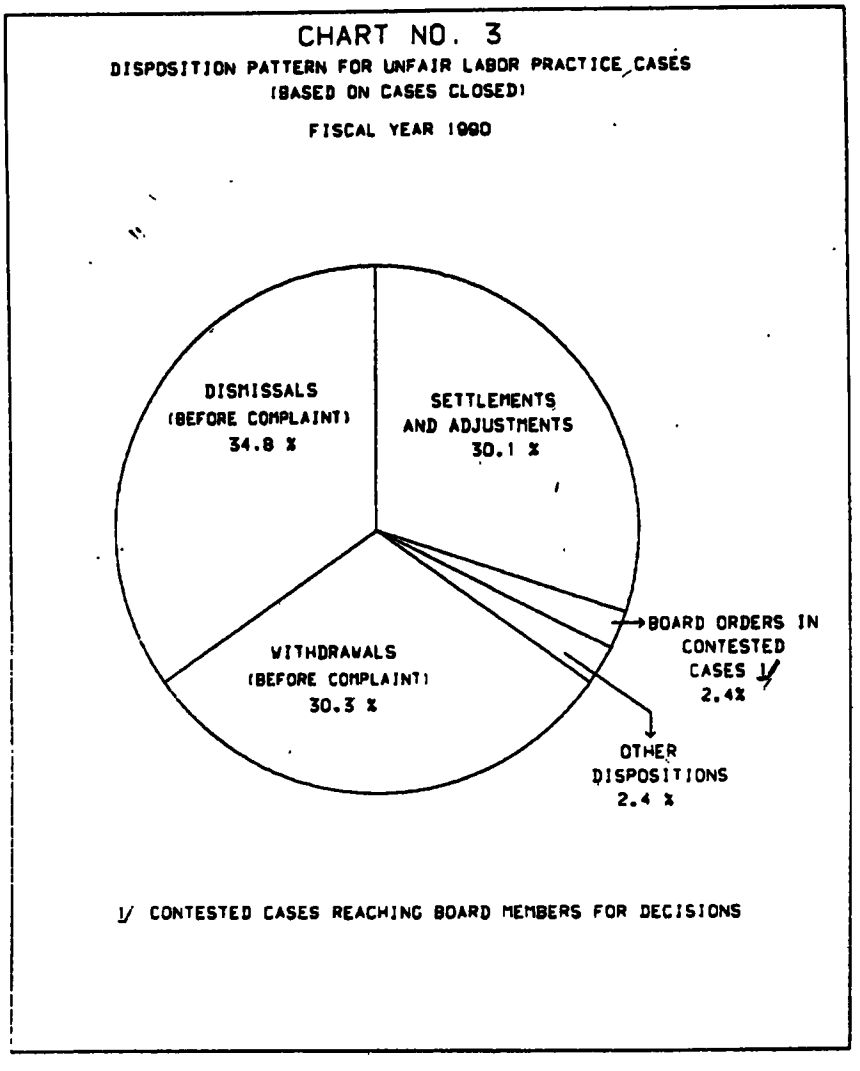
All cases coming to the NLRB begin their processing in the Regional Offices. Regional Directors, in addition to processing unfair labor practice cases in the initial stages, also have the authority to investigate representation petitions, to determine units of employees appropriate for collective-bargaining 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 a reasonable cause to believe that the Act has been violated. If such cause is



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

More than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 40 days without the necessity of formal litigation before the Board. Less than 3 percent of the cases go through to Board decision.

In fiscal year 1990, 33,833 unfair labor practice charges were filed with the NLRB, an increase of 43 percent from the 32,401 filed in fiscal 1989. In situations in which related charges are counted as a single unit, there was a 6-percent increase from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 21,910 cases, about 4 percent more than the 21,046 of 1989. Charges against unions decreased 2 percent to 10,579 from 10,813 in 1989.

There were 44 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 11,886 such charges in 54 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,024 charges, in 46 percent of the total charges. (Table 2.)

Of charges against unions, the majority (7783) alleged illegal restraint and coercion of employees, about 74 percent. There were 1262 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 27 percent from the 1725 of 1989.

There were 1269 charges (about 12 percent) of illegal union discrimination against employees, an increase of 2 percent from the 1250 of 1989. There were 265 charges that unions picketed illegally for recognition or for organizational purposes, compared with 263 charges in 1989. (Table 2.)

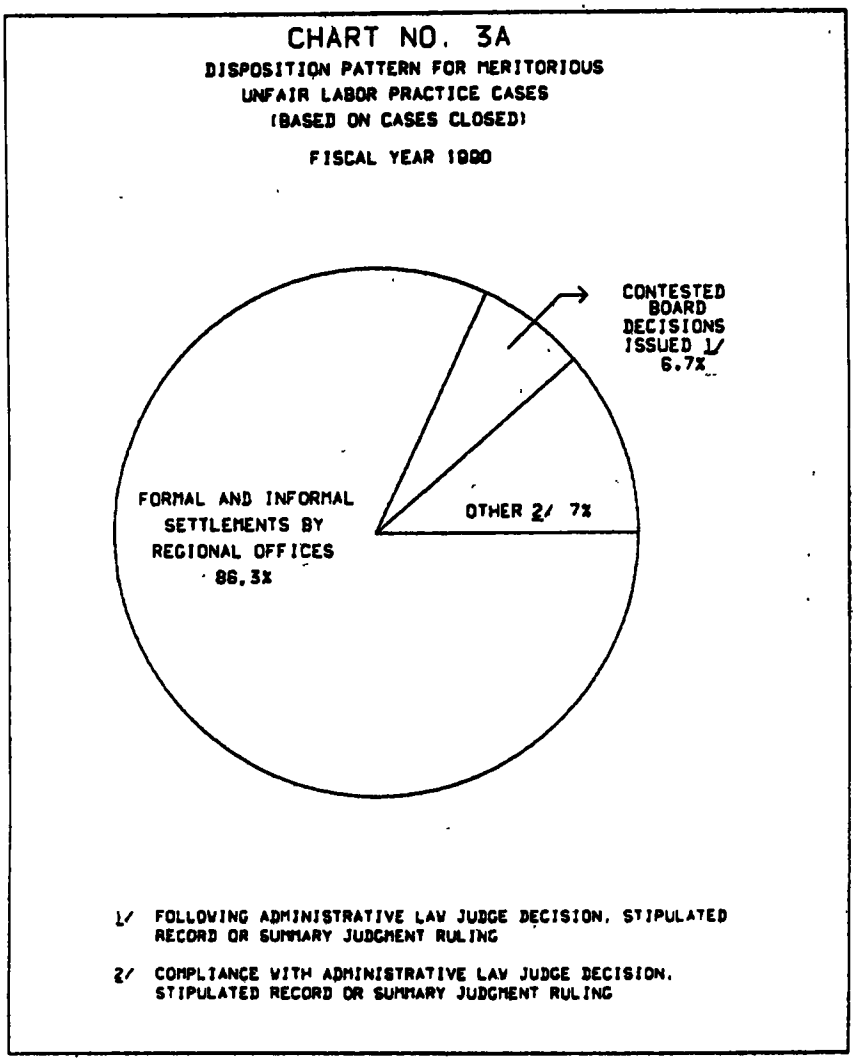
In charges filed against employers, unions led with 70 percent of the total. Unions filed 16,945 charges, individuals filed 7130.

Concerning charges against unions, 6854 were filed by individuals, or 71 percent of the total of 9714. Employers filed 2663 and other unions filed the 197 remaining charges.

In fiscal 1990, 32,756 unfair labor practice cases were closed. Some 95 percent were closed by NLRB Regional Offices, the same as in 1989. During the fiscal year, 30.1 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.3 percent were withdrawn before complaint, and 34.8 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1990, 41 percent of the unfair labor practice cases were found to have merit, a 4 percent increase from 1989.

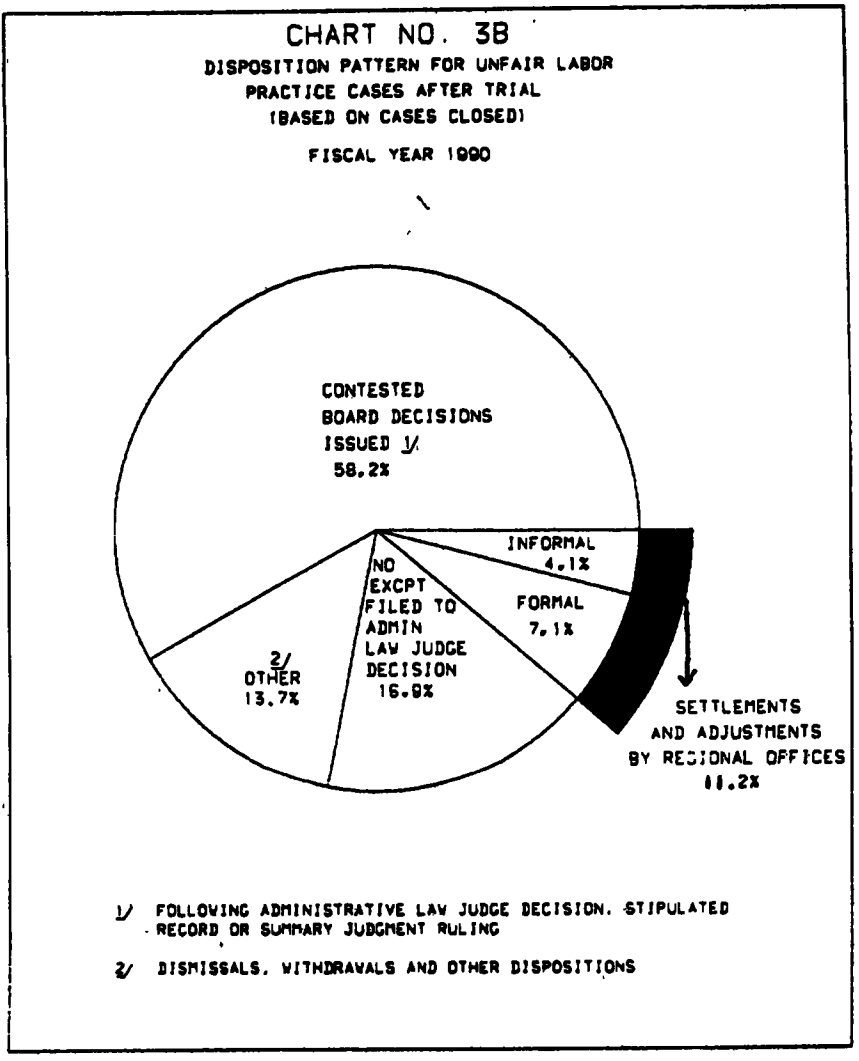
When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal 1990,



precomplaint settlements and adjustments were achieved in 9734 cases, or 27.1 percent of the charges. In 1989 the percentage was 21.3.

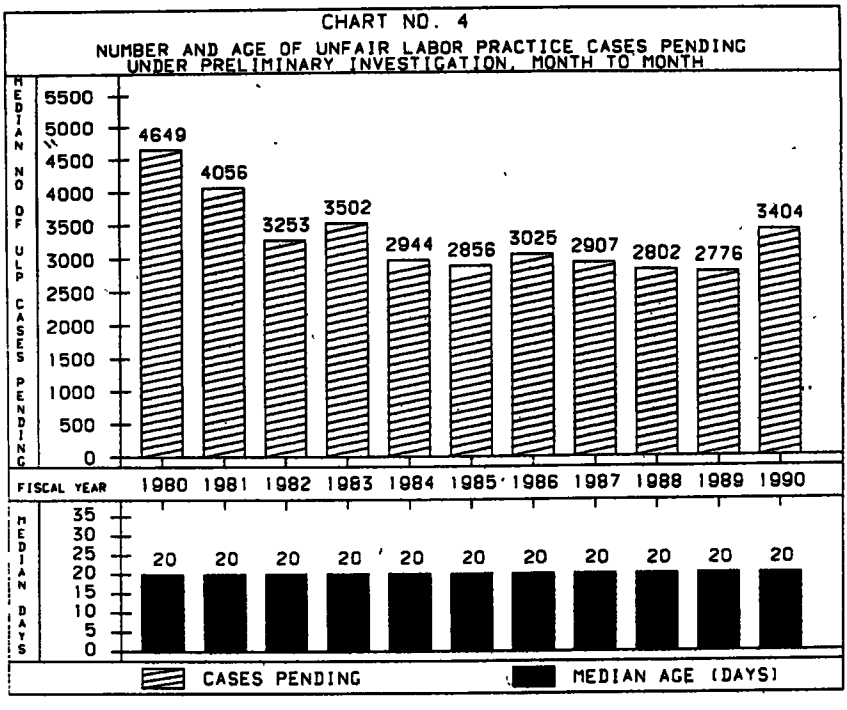
Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1990, 3876 complaints were issued, compared with 3851 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 82.6 percent were against employers, 16.5 percent against unions, and 0.9 percent against both employers and unions.



NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 48 days. The 48 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 688 decisions in 800 cases during 1990. They conducted 594 initial hearings, and 29 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

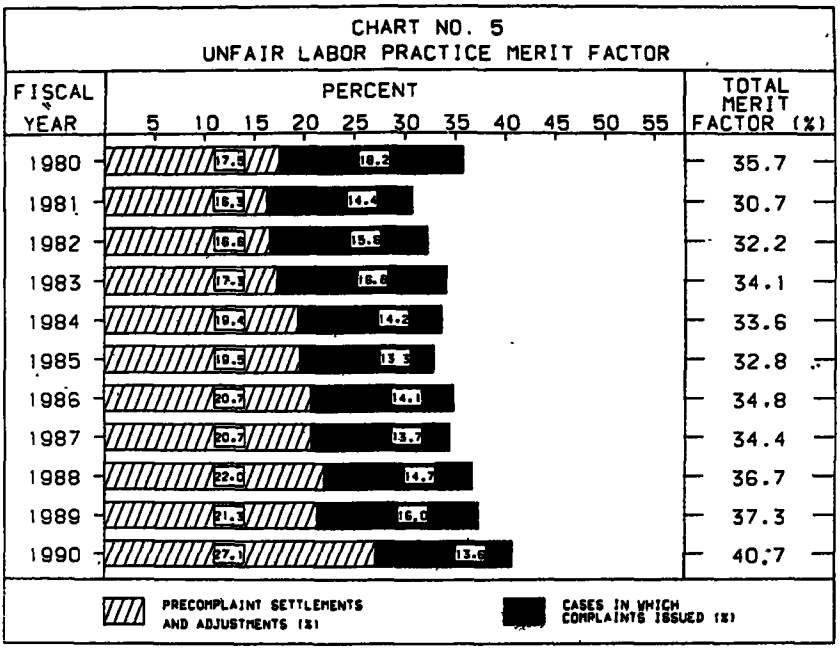


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the five-member Board for final NLRB decision.

In fiscal 1990, the Board issued 558 decisions in unfair labor practice cases contested as to the law or the facts—515 initial decisions, 31 backpay decisions, 12 determinations in jurisdictional work dispute cases, and no decisions on supplemental matters. Of the 515 initial decision cases 440 involved charges filed against employers and 75 had union respondents.

For the year, the NLRB awarded backpay of $44.4 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $338,714. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. Some 4026 employees were offered reinstatement, and 82 percent accepted.

At the end of fiscal 1990, there were 22,390 unfair labor practice cases being processed at all stages by the NLRB, compared with 21,313 cases pending at the beginning of the year.



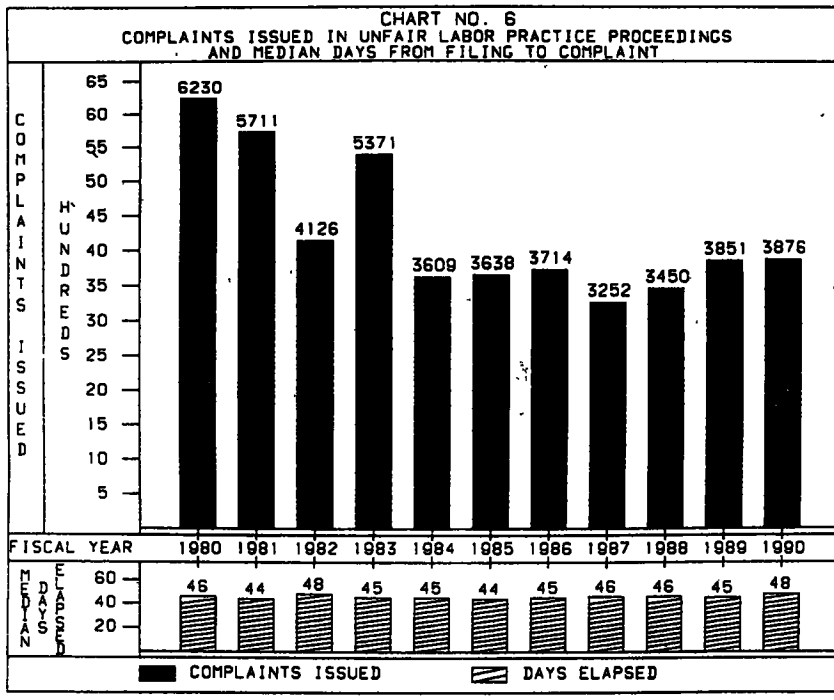
2. Representation Cases

The NLRB received 7674 representation and related case petitions in fiscal 1990, compared with 8477 such petitions a year earlier.

The 1990 total consisted of 6005 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1168 petitions to decertify existing bargaining agents; 152 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 326 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 23 amendment of certification petitions were filed.

During the year, 7839 representation and related cases were closed, compared with 8083 in fiscal 1989. Cases closed included 6074 collective-bargaining election petitions; 1197 decertification election petitions; 168 requests for deauthorization polls; and 400 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 15.1 percent of



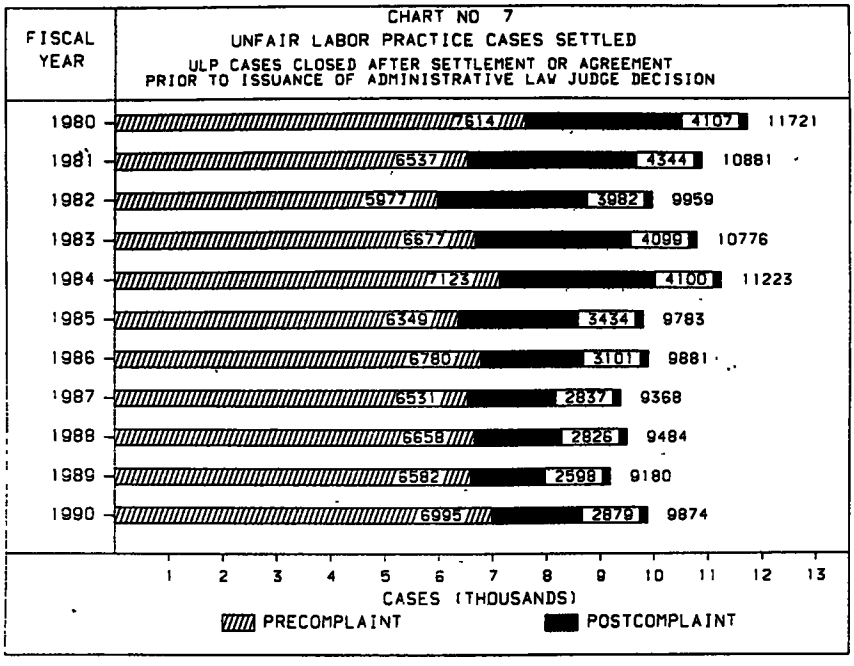
representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 122 cases in which the Board directed elections after transfers of cases from Regional Offices. (Table 10.) There were three cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

3. Elections

The NLRB conducted 4210 conclusive representation elections in cases closed in fiscal 1990, compared with the 4413 such elections a year earlier. Of 261,385 employees eligible to vote, 229,242 cast ballots, virtually 9 of every 10 eligible.

Unions won 1965 representation elections, or 46.7 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 93,789 workers. The employee vote over the course of the year was 108,198 for union representation and 121,044 against.

The representation elections were in two categories—the 3623 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 587 decertification elections determining whether incumbent unions would continue to represent employees.

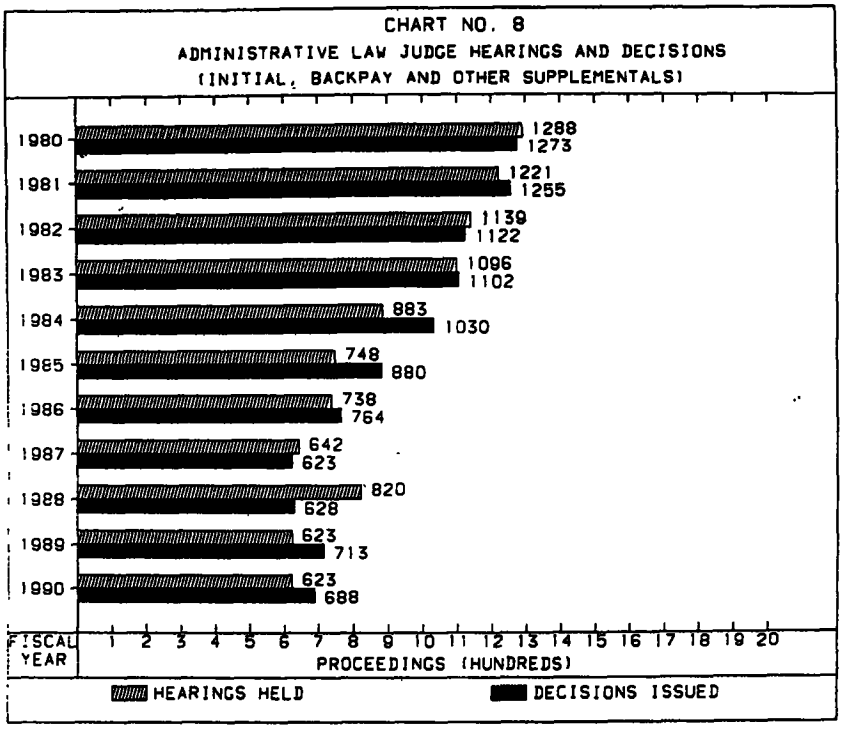


There were 4072 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1855, or 45.6 percent. In these elections, 98,969 workers voted to have unions as their agents, while 117,948 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 82,945 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 138 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 110 elections, or 79.7 percent.

As in previous years, labor organizations lost decertification elections by a substantial percentage. The decertification results brought continued representation by unions in 170 elections, or 29.0 percent, covering 13,975 employees. Unions lost representation rights for 16,341 employees in 417 elections, or 71.0 percent. Unions won in bargaining units averaging 82 employees, and lost in units averaging 39 employees. (Table 13.)

Besides the conclusive elections, there were 99 inconclusive representation elections during fiscal 1990 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 35 referendums, or 44 percent, while they maintained the right in the other 44 polls which covered 4936 employees. (Table 12.)

For all types of elections in 1990, the average number of employees voting, per establishment, was 54 the same as 1989. 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 1352 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 1638 decisions rendered during fiscal 1989.

A breakdown of Board decisions follows:

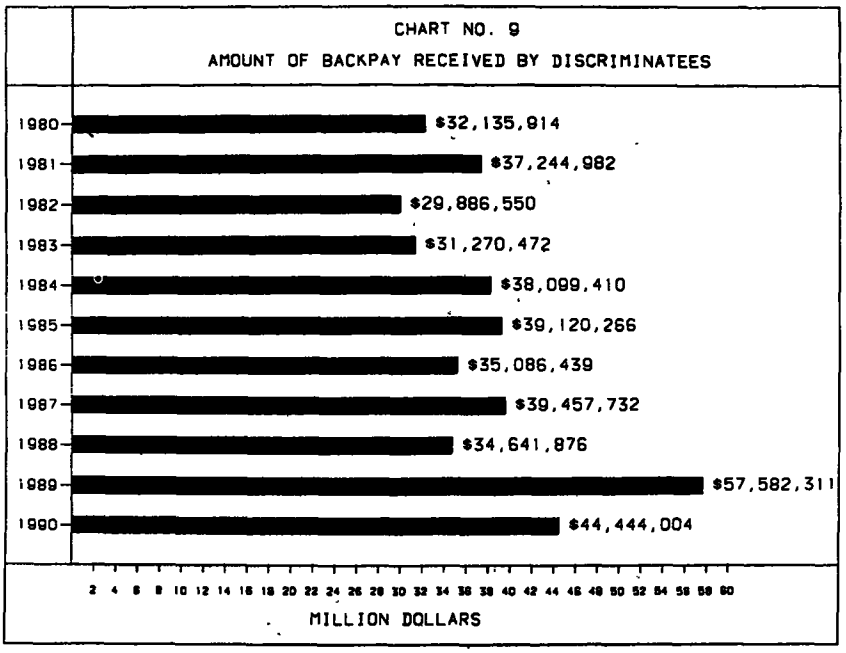


CHART NO. 9
AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES
1980 $32,135,914
1981 $37,244,982
1982 $29,886,550
1983 $31,270,472
1984 $38,099,410
1985 $39,120,266
1986 $35,086,439
1987 $39,457,732
1988 $34,641,876
1989 $57,582,311
1990 $44,444,004
2 4 6 8 10 12 14 16 18 20 22 24 26 28 30 32 34 36 38 40 42 44 46 48 50 52 54 56 58 60
MILLION DOLLARS

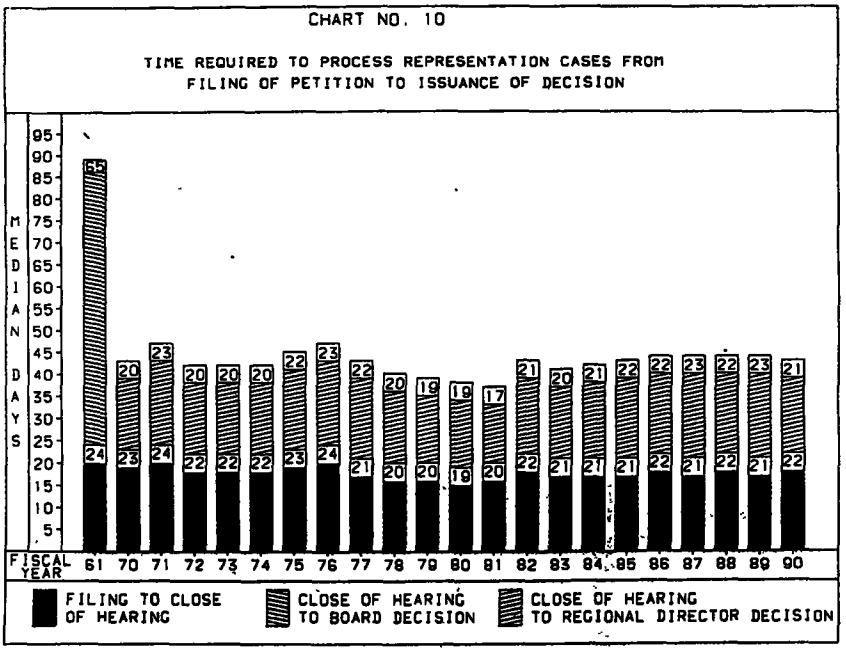
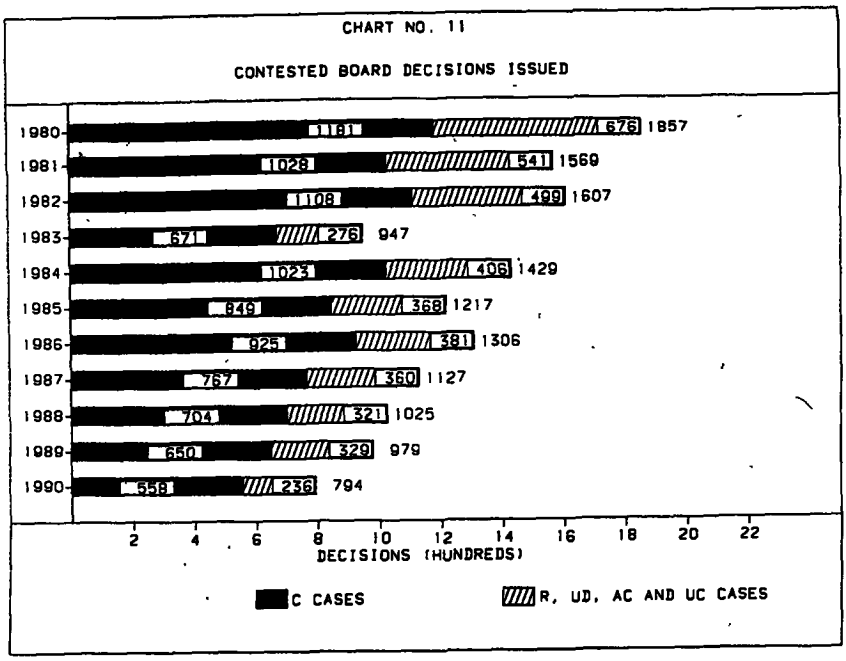


CHART NO. 10
TIME REQUIRED TO PROCESS REPRESENTATION CASES FROM FILING OF PETITION TO ISSUANCE OF DECISION
MEDIAN DAYS
95 90 85 80 75 70 65 60 55 50 45 40 35 30 25 20 15 10 5
FISCAL YEAR 61 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90
65 24 20 23 23 24 20 22 20 22 20 22 23 24 22 21 20 20 19 19 19 20 17 22 21 20 21 21 22 21 22 22 21 22 23 22 22 21 23 21
FILING TO CLOSE OF HEARING
CLOSE OF HEARING TO BOARD DECISION
CLOSE OF HEARING TO REGIONAL DIRECTOR DECISION



Total Board decisions		**1,352**
Contested decisions		**794**
Unfair labor practice decisions		558
Initial (includes those based on stipulated record)	515	
Supplemental	0	
Backpay	31	
Determinations in jurisdictional disputes	12	
Representation decisions		233
After transfer by Regional Directors for initial decision	4	
After review of Regional Director decisions	28	
On objections and/or challenges	201	
Other decisions		3
Clarification of bargaining unit	3	

Amendment to certification	0	
Union-deauthorization	0	
Noncontested decisions		558
Unfair labor practice	250	
Representation	303	
Other	5	

Thus, it is apparent that the majority (59 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 1990, about 7 percent of all meritorious charges and 58 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times more processing effort than do representation cases.

b. Regional Directors

The NLRB Regional Directors issued 1380 decisions in fiscal 1990, compared with 1,366 in 1989. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

With a leveling in case filings alleging unfair labor practices, the administrative law judges issued 688 decisions and conducted 623 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 1990, 161 cases involving the NLRB were decided by United States courts of appeals compared with 180 in fiscal 1989. Of these, 88.9 percent were won by NLRB in whole or in part compared to 87.2 percent in fiscal 1989; 3.7 percent were remanded entirely compared with 4.5 percent in fiscal 1989; and 7.4 percent were entire losses compared to 8.3 percent in fiscal 1989.

b. The Supreme Court

In fiscal 1990, there was one Board case decided by the Supreme Court. The Board participated as amicus in one case and the Board's position prevailed in that case.

c. Contempt Actions

In fiscal 1990, 137 cases were referred to the contempt section for consideration of contempt action. There were 29 contempt

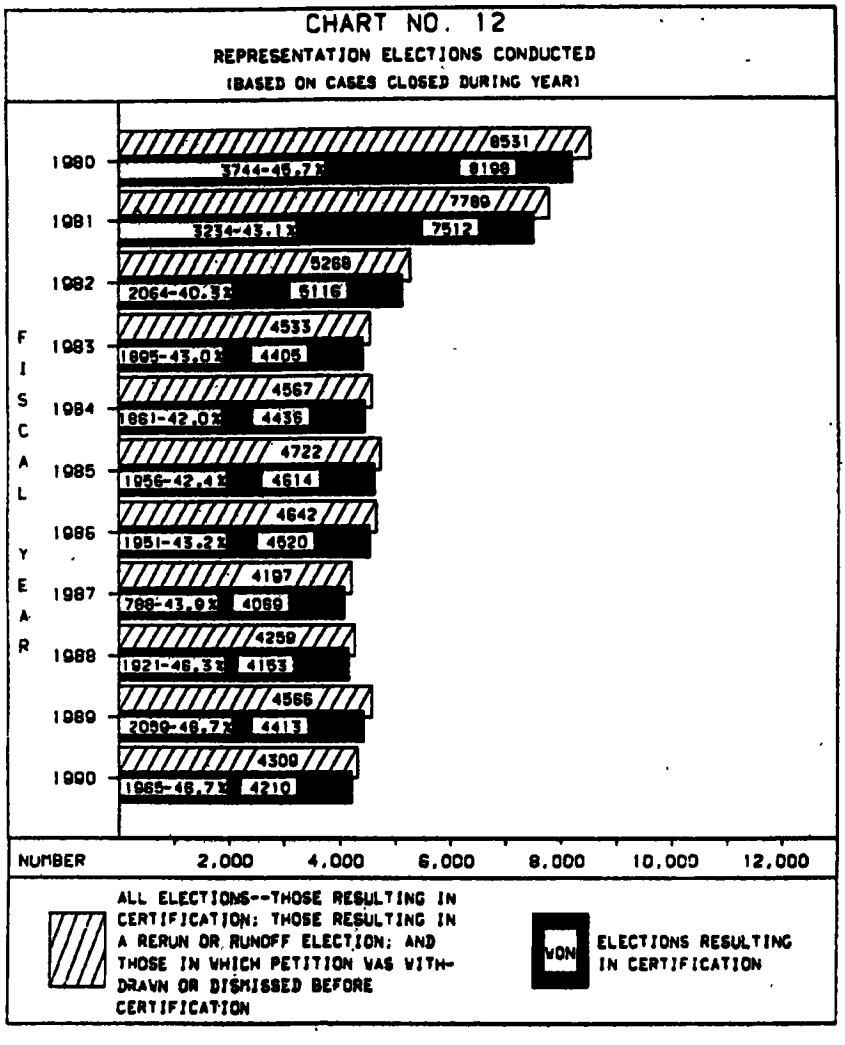
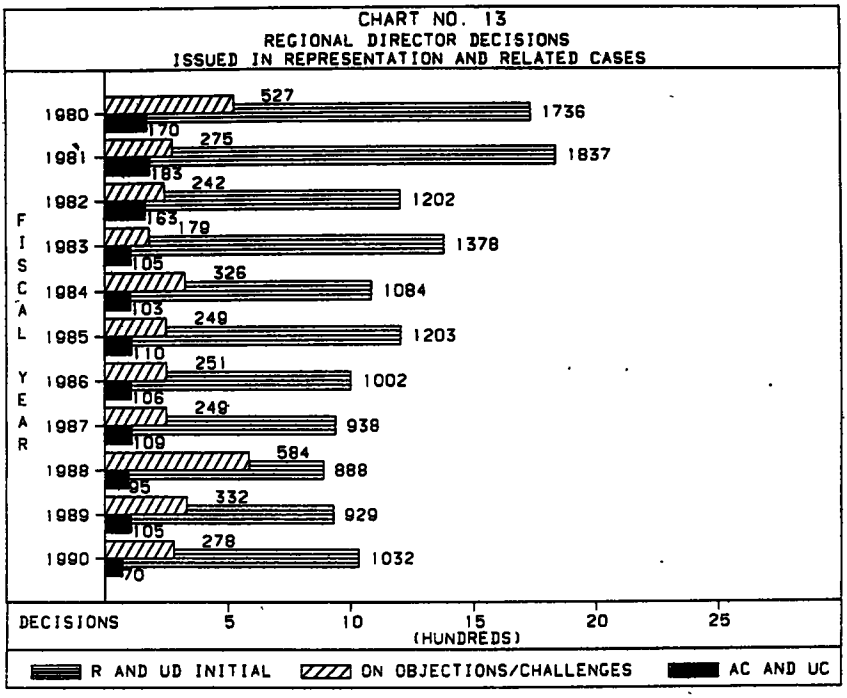


CHART NO. 12
REPRESENTATION ELECTIONS CONDUCTED
(BASED ON CASES CLOSED DURING YEAR)
FISCAL YEAR
1980
8531
3744-46.7%
8198
1981
7709
3234-43.1%
7512
1982
5268
2064-40.5%
5116
1983
4533
1895-43.0%
4405
1984
4567
1861-42.0%
4436
1985
4722
1956-42.4%
4614
1986
4642
1951-43.2%
4520
1987
4197
788-43.9%
4089
1988
4259
1921-46.3%
4163
1989
4566
2099-48.7%
4413
1990
4300
1965-46.7%
4210
NUMBER
2,000
4,000
6,000
8,000
10,000
12,000
ALL ELECTIONS--THOSE RESULTING IN CERTIFICATION; THOSE RESULTING IN A RERUN OR RUNOFF ELECTION; AND THOSE IN WHICH PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION
WON
ELECTIONS RESULTING IN CERTIFICATION



proceedings instituted. There were 17 contempt adjudications awarded in favor of the Board; 8 cases in which the court directed compliance without adjudication; and there was 1 case in which the petition was withdrawn or denied.

d. Miscellaneous Litigation

There were 30 additional cases involving miscellaneous litigation decided by appellate and district courts and bankruptcy courts. The NLRB's position was upheld in 28 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 51 petitions filed with the U.S. district courts, compared with 71 in fiscal 1989. (Table 20.) Injunctions were granted in 35, or 81 percent, of the 43 cases litigated to final order.

NLRB injunction activity in district courts in 1990:

Granted	35
Denied	8
Withdrawn	0
Dismissed	0
Settled or placed on court's inactive lists	18

Awaiting action at end of fiscal year 13

C. Decisional Highlights

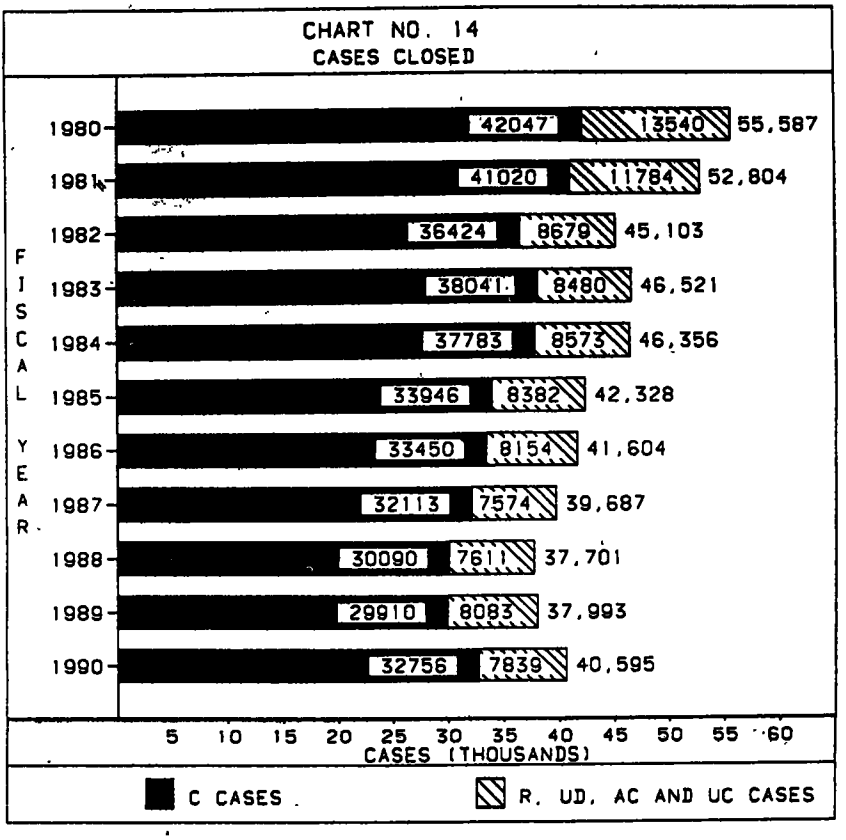
In the course of the Board's administration of the Act during the report period, it was required to consider and resolve complex problems arising from the great variety of factual patterns in the many cases reaching it. In some cases, new developments in industrial relations, as presented by the factual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

1. Interest Arbitration Clauses

In *Columbia University*,[1] the Board held that the employer violated Section 8(a)(5) of the Act by refusing to provide the union with information relating to wages, information which the union planned to use during an interest arbitration proceeding. The Board rejected the employer's defense that, because interest arbitration is a nonmandatory subject of bargaining, the employer was not obligated to provide the information for use in the interest arbitration proceeding. Although interest arbitration clauses are nonmandatory subjects of bargaining, where, as here, an agreement is made to submit the contract currently under negotiation to interest arbitration as regards the issue of wages, such an agreement serves as a substitute for further negotiations over wages and takes on the characteristics of that mandatory subject. Thus, the union was entitled to the information.

In *Electrical Workers IBEW Local 113 (Collier Electric)*,[2] the Board held that the union had not violated Sections 8(b)(1)(B) and 8(b)(3) of the Act by submitting to interest arbitration, pursuant to the terms of an expiring multiemployer agreement, unresolved issues in its contract negotiations with an individual employer who had timely withdrawn from the multiemployer association. The Board determined that there was "a reasonable basis in fact and law" for the union's position that the interest arbitration clause at issue was intended to apply not only to negotiations between the union and the multiemployer association, but also to negotiations for a successor agreement between the union and individual employers who had timely withdrawn from the association. Although the Board found such a basis in the instant

[1] 298 NLRB No. 134 (Chairman Stephens and Members Cracraft and Oviatt).
[2] 296 NLRB No. 144 (Members Cracraft, Higgins, and Devaney; Chairman Stephens dissenting)



case and thus found the submission to arbitration to be lawful, it cautioned that even when there is a reasonable contractual basis, the pursuit of interest arbitration will be deemed lawful only if the union has bargained in good faith before making the submission.

2. Organizational and Recognitional Picketing

In *Laborers Local 1184 (NVE Constructors)*,[3] the Board refused to distinguish between Section 8(f) and Section 9(a) for purposes of applying the limitations on picketing set forth in Section 8(b)(7) of the Act. Although 8(f) agreements must be entered into "voluntarily," the Board held that that is not to say that all picketing to secure such agreements is unlawfully coercive. Rather, clarifying language in *John Deklewa & Sons*,[4] the Board

[3] 296 NLRB No. 165 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).

[4] 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988)

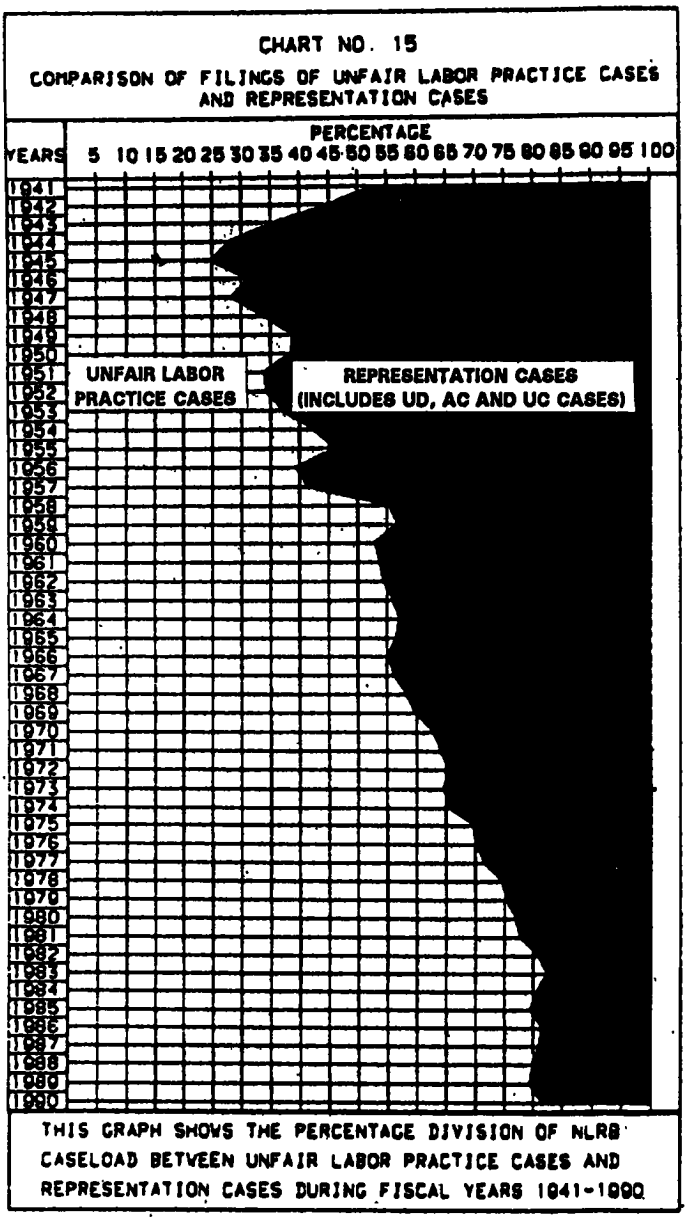


CHART NO. 15
COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES
YEARS
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UNFAIR LABOR PRACTICE CASES
REPRESENTATION CASES (INCLUDES UD, AC AND UC CASES)
THIS GRAPH SHOWS THE PERCENTAGE DIVISION OF NLRB CASELOAD BETWEEN UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES DURING FISCAL YEARS 1941-1990

indicated "that a correct statement of the law is that an employer must be free at all times from any unlawful coercion (as manifested for example by unlimited picketing), in order to ensure that an agreement entered into pursuant to Section 8(f) is 'voluntary' within the meaning of that Section." Thus, peaceful recognitional and organizational picketing that is lawful in other industries is also lawful in the construction industry.

3. Deferral to Grievance/Arbitration Procedure

In a supplemental decision in *Cone Mills Corp.*,[5] following a remand from a circuit court, the Board overruled its prior decision and decided not to defer to an arbitration award that set aside the discharge of an employee and ordered reinstatement without backpay. After reviewing the arbitrator's factual findings, the Board found that apart from this employee's union activity and certain misconduct which the arbitrator had found was provoked by the employer's wrongful actions and was condoned by the respondent, nothing provided a rational basis for this employee's discharge. Thus, the arbitrator's decision not to award backpay penalized this employee for her protected concerted and union activities that the arbitrator found precipitated the discharge, a result which the Board found to be contrary to the Act. However, the Board noted that its decision in this case was not a ruling that it would automatically refuse to defer in all situations involving arbitration awards that provide incomplete make-whole remedies.

4. Restriction on Resignation

In *Birmingham Printing Pressmen Local 55 (Birmingham News)*,[6] the Board held that the union did not violate Section 8(b)(1)(B) of the Act by refusing to accept the resignations from union membership of two statutory supervisors. In so doing the Board overruled prior precedent to the effect that the refusal by a union to accept an employer-representative's resignation from membership, without more, violates Section 8(b)(1)(B). The Board held that the union's refusal to allow these supervisors to resign from membership in the instant case could be found unlawful only if it had been shown that the respondent union thereby coerced and restrained the employer in the selection of its 8(b)(1)(B) representatives. In failing to find a violation here, the Board stated it was not satisfied from the record that the union interfered with the employer's statutory rights under Section 8(b)(1)(B) merely by refusing to accept the resignations of the two supervisors.

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[5] 298 NLRB No. 70 (Chairman Stephens and Members Cracraft, Devaney, and Oviatt).

[6] 300 NLRB No. 1 (Members Cracraft, Devaney, and Oviatt).

5. Hiring Hall Operation

In *Laborers Local 423 (Great Lakes Construction)*,[7] the Board affirmed an administrative law judge's dismissal of a complaint alleging that the union violated Section 8(b)(1)(A) of the Act by operating a hiring hall which required that individuals be physically present in order to maintain their positions on the referral list. In doing so, the Board endorsed the judge's interpretation of *Iron Workers Local 505 (Snelson Anvil)*,[8] that there is no per se rule proscribing a union from relying on physical presence in the hiring hall as a basis for referrals. Rather, it is only when physical presence, standing alone, is the basis for referral that it may be found to be a nonobjective unlawful criterion.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1990, are as follows:

Personnel compensation	$95,903,735
Personnel benefits	15,445,320
Benefits for former personnel	16,229
Travel and transportation of persons	3,156,452
Transportation of things	129,446
Rent, communications, and utilities	19,140,008
Printing and reproduction	309,065
Other services	4,297,821
Supplies and materials	1,195,663
Equipment	1,888,341
Insurance claims and indemnities	231,436
Total obligations and expenditures[9]	$140,713,516

[7] 298 NLRB No. 68 (Chairman Stephens and Members Cracraft and Devaney).
[8] 275 NLRB 1113 (1985).
[9] Includes $670,000 for reimbursables.

II

NLRB Jurisdiction

The Board's jurisdiction under the Act, regarding both representation proceedings and unfair labor practices, extends to all enterprises whose operations "affect" interstate or foreign commerce.[1] However, Congress and the courts[2] have recognized the Board's discretion to limit the exercise of its broad statutory jurisdiction to enterprises whose effect on commerce is, in the Board's opinion, substantial—such discretion being subject only to the statutory limitation[3] that jurisdiction may not be declined when it would have been asserted under the Board's self-imposed jurisdictional standards prevailing on August 1, 1959.[4] Accordingly, before the Board takes cognizance of a case, it must first be established that it has legal or statutory jurisdiction, i.e., that the business operations involved "affect" commerce within the meaning of the Act. It must also appear that the business operations meet the Board's applicable jurisdictional standards.[5]

A. Provider of Public School Bus Service

In *R. W. Harmon & Sons*,[6] a panel majority, reversing the Regional Director, found that the employer retained sufficient con-

[1] See Secs. 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Secs. 2(6) and (7), respectively. Under Sec. 2(2) the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any state or political subdivision, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Pub. L. 93-360, 88 Stat. 395, effective Aug. 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person[s]," are now included in the definition of "health care institutions" under the new Sec. 2(14) of the Act. "Agricultural laborers" and others excluded from the term "employee" as defined by Sec. 2(3) of the Act are discussed, inter alia, at 29 NLRB Ann. Rep. 52-55 (1964), and 31 NLRB Ann. Rep. 36 (1966).

[2] See 25 NLRB Ann. Rep. 18 (1960).

[3] See Sec. 14(c)(1) of the Act.

[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question: 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa*, 124 NLRB 261 (1959), for hotel and motel standards.

[5] Although a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary when it is shown that the Board's "outflow-inflow" standards are met. 25 NLRB Ann. Rep. 19-20 (1960). But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), concerning the treatment of local public utilities.

[6] 297 NLRB No. 81 (Chairman Stephens and Member Cracraft; Member Devaney dissenting).

trol over the essential terms and conditions of employment of its employees to enable it to engage in meaningful collective bargaining and, therefore, that it would effectuate the purposes and policies of the Act to assert jurisdiction over the employer.

The employer contracted to provide transportation services to the Independence, Missouri School District following the school district's acceptance of a bid that the employer had submitted. Paragraph 17 of the contract provided that the employer "shall not negotiate or enter into any agreement or arrangement with or on behalf of drivers or other personnel without the written approval" of the school district. Pursuant to this paragraph, the employer submitted for approval its driver pay schedules.

The Board majority applied the test set forth in *Res-Care, Inc.*[7] and *Long Stretch Youth Home*[8] for determining when the Board will assert jurisdiction over an employer providing services for or to a governmental entity exempt from the Board's jurisdiction. Under this test, the majority concluded that it was appropriate to assert jurisdiction over the employer because the employer had the "final say" over the terms of compensation for its employees. In so finding, the majority relied on the facts that the employer's bid did not specify wage levels and benefits; the contract did not specify wage levels or prohibit the employer from altering those levels once they had been set; and the contract did not state that the school district had the right to disapprove pay schedules established by the employer. The majority further found that paragraph 17 of the contract did not mandate school district approval of all terms of collective-bargaining agreements. In this regard, the majority found that paragraph 17 was included because the school district wanted the right to approve drivers because of its concern with liability resulting from drivers' negligence, and the clause did not expressly require approval on every term of the agreement. Additionally, the majority found no evidence that the school district's review and approval of the materials was anything other than routine, noting that the school district did not issue its approval until after the employer began providing services.

In his dissent, Member Devaney stated that in his view the employer met its burden of establishing that it did not retain the ultimate discretion over the payment of wages by showing that the contract required it to submit the pay scales for approval and that the school district exercised the right. He further found that the union did not rebut this showing by introducing evidence indicating that the approval process was routine or a sham. According to Member Devaney, because paragraph 17 on its face requires that any negotiation of or concerning its drivers be sub-

[7] 280 NLRB 670 (1986).
[8] 280 NLRB 678 (1986).

ject to the school board's written approval, the assertion of jurisdiction was not appropriate under *Ohio Inns.*[9]

B. Nonprofit Burial Service

In *Hebrew Free Burial Assn.*,[10] the Board issued an advisory opinion stating that on the basis of the petitioner employer's allegations that its gross annual revenues exceeded $500,000, and that its direct out-of-state purchases were over $15,000, the Board would assert jurisdiction over the not-for-profit charitable organization engaged in providing burial services for Jewish indigents, the homeless, and individuals without family members.

In doing so, the Board found, contrary to the union's assertion, that "the inclusion of certain alleged non-recurring revenues in calculating the Petitioner's total gross annual revenues for 1989 [did] not constitute grounds for declining to assert jurisdiction." It further noted in this regard that the union's assertion was based on speculation.

The Board also found it unnecessary to require the employer to submit a financial statement for the first 6 months of 1990 in order to determine if the employer met the Board's jurisdictional standards, as suggested by the union. Rather, the Board stated that in applying its standards, it uniformly relies "on the experience of an employer during the most recent calendar or fiscal year, or 12-month period immediately preceding the hearing before the Board, where such experience was available."

C. Community Action Agency

In *Economic Security Corp.*,[11] a majority of the Board dismissed a representation petition, holding that the employer, a community action agency receiving Federal and state funds for the administration of various antipoverty and public welfare programs, was a political subdivision of the State of Missouri, exempt from the Board's jurisdiction under Section 2(2) of the Act. The majority found that the employer was "administered by individuals who are responsible to public officials or to the general electorate," within the meaning of *NLRB v. Natural Gas Utility District of Hawkins County.*[12]

Federal and state laws established the tripartite composition of the employer's board of directors. One-third of the board members must be elected or appointed public officials; at least one-third must be representatives of the poor in the area served, chosen in accordance with democratic selection procedures; and

[9] 205 NLRB 528 (1973).
[10] 299 NLRB No. 100 (Chairman Stephens and Members Cracraft, Devaney, and Oviatt).
[11] 299 NLRB No. 68 (Members Cracraft and Devaney; Member Oviatt dissenting).
[12] 402 U.S. 600, 604–605 (1971).

the remaining members must be representatives of various community interest groups.

The panel majority found that "the Federal and state statutes envision an election by the poor of one-third of the members of the board, and . . . that individuals so chosen are 'responsible' by law 'to the general electorate' within the meaning of *Hawkins County*." Thus, the majority concluded that, by combining the board members who are representative of the poor with the public official members, two-thirds of the employer's board of directors are responsible to public officials or to the general electorate. The fact that the members of the board of directors were not subject to removal from their positions under the Federal or state statute did not alter this finding, noted the majority.

Member Oviatt, dissenting, said that he would have found that the employer was not a political subdivision and would have processed the petition. Member Oviatt believed that the representatives of the poor, once elected to the employer's board of directors, did not remain responsible to the electorate because there was no procedure by which the electorate could remove them from their positions. Thus, he, like the Regional Director, concluded that the employer was not exempt from the Board's jurisdiction because it was neither created directly by the State nor administered by individuals who are responsible to public officials or to the general electorate.

D. Statutory and Discretionary Issues

In *Princeton Health Care Center*,[13] the Board granted summary judgment and found that the employer violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the union. Chairman Stephens, dissenting, would have denied the motion on the ground that "matters going to the Board's subject matter jurisdiction" are unresolved.[14]

The majority of Members Cracraft and Devaney found that the employer had not raised any representation issues that were properly litigable in the unfair labor practice proceeding. The employer challenged the validity of the union's certification on the ground that the Board lacked jurisdiction over the employer.

In another case involving the same respondent, the Board had asserted jurisdiction,[15] and, on remand,[16] continued to assert jurisdiction after examining an employer contention that its new management agreement with Princeton Community Hospital, alleged to be a subdivision of an exempt entity within Section 2(2) of the Act, placed it outside the Board's jurisdiction. In the case on remand, Chairman Stephens, in dissent, said that whether the

[13] 299 NLRB No. 16 (Members Cracraft and Devaney; Chairman Stephens dissenting).
[14] See Chairman Stephens' dissenting opinion at 294 NLRB No. 47 (May 31, 1989).
[15] *Princeton Health Care Center*, 285 NLRB 1016 (1987).
[16] 294 NLRB 640 (1989).

control of a 2(2) exempt entity over an employer's labor relations is sufficient to make the Act inapplicable to the employment relationship is a question of statutory or subject matter jurisdiction, rather than discretionary jurisdiction, and that the issue of subject matter jurisdiction can be raised at any time.

III

NLRB Procedure

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

A. Timely Service of Charge

In *Buckeye Plastic Molding*,[1] the Board held that service of the complaint on respondent Buckeye Mold's attorney, an established agent, within the time period prescribed by Section 10(b) of the Act for timely service of a charge was sufficient notice of the charge to satisfy the timeliness requirements of the section.

The administrative law judge had found that this case was controlled by the Board's decision in *Westbrook Bowl*.[2] In that case, a Board majority held in essence that where the necessary service of a charge on the respondent employer had not been effected, service of the complaint within the 6-month period prescribed by Section 10(b) for the timely service of the charge did not satisfy the service requirements of Section 10(b).

The Ninth Circuit reversed the Board's decision in *Westbrook Bowl*, finding that the respondent had actual notice of the charges against it through the service of the complaint on it within the statutory 6-month period. The circuit court further held that such actual notice was satisfied in that case by service of the complaint within the statutory period.

On further consideration of the Board's reasoning in *Westbrook Bowl*, the Board decided to reject it in favor of the circuit court's reasoning reversing that decision. Accordingly, the Board held that failure to make timely service of a charge on a respondent will be cured by timely service within the 10(b) period of a complaint on the respondent, absent a showing that the respondent is prejudiced by the circumstances.

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[1] 299 NLRB No. 157 (Chairman Stephens and Members Cracraft and Devaney).

[2] 274 NLRB 1009 (1985), revd. and remanded sub nom. *Service Employees Local 399 v. NLRB*, 798 F.2d 1245 (9th Cir. 1986).

Applying this to the facts of the case, the Board concluded that the service requirements of the Act had been satisfied. The Board then concluded respondent Buckeye Mold had violated the Act by failing to bargain with Molders Local 45 over the effects of the closing of its operations.

B. Signing of Charge

In *Freightway Corp.*,[3] the Board held that an unfair labor practice charge should not be dismissed where the charge filed with the Regional Office was signed by the charging party but the copy of the charge served on the employer was unsigned.

The Board held that the purpose of Section 102.11 of the Board's Rules and Regulations pertaining to the signing of the charges had been satisfied and that service of the charge was sufficient under Section 10(b) of the Act to toll the statutory period and to invoke Board jurisdiction.

The employer had contended that the charge should be dismissed because the unsigned copy served on the employer did not constitute service sufficient to afford jurisdiction to the Board under Section 10(b).

Rejecting that argument, the Board noted that its requirements with respect to the signing of charges are not contained in Section 10(b) but in its Rules and Regulations and that the purpose of requiring that a charge be signed—to safeguard Board processes against abuse—had been satisfied.

With regard to the merits, in agreeing with the administrative law judge that the employer violated Section 8(a)(4) and (1) by refusing to rehire an employee, the Board did so under the analysis set forth in *Wright Line*.[4] The Board concluded that the General Counsel established a prima facie case that in refusing to rehire the employee, the employer was motivated at least in part by unlawful reasons and that the employer did not show that, absent the employee's filing charges with the Board, it would have refused to rehire him based on a poor attitude, two or three accidents, and failure to submit a proper application form.

C. Timely Submission of Evidence

In *Craftmatic Comfort Mfg. Corp.*,[5] the Board held that evidence in support of objections to an election is due 7 days from the date the objections are required to be filed, not from the date the objections are actually filed.

The Board agreed with the hearing officer that the employer's objections to an election did not warrant setting aside an election. However, it disagreed with the hearing officer's recommen-

[3] 299 NLRB No. 73 (Chairman Stephens and Members Cracraft and Devaney).
[4] 251 NLRB 1083 (1980).
[5] 299 NLRB No. 71 (Chairman Stephens and Members Cracraft and Oviatt).

dation that the evidence submitted in support of the employer's objections be found untimely.

The election was held February 1, 1990, and the tally of ballots was made available to the parties at the conclusion of the election. Under Section 102.69(a) of the Board's Rules and Regulations, objections to the election were due in the Regional Office on February 8, 7 days after the preparation of the tally of ballots. The employer timely filed its objections on February 7, 1 day before the objections were required to be filed. On February 14, the employer sent the evidence in support of its objections, which was received in the Regional Office on February 15.

The hearing officer concluded that the evidence in support of the objections was untimely because he found that the evidence was due February 14, 7 days after the objections were received by the Regional Office. (He nevertheless considered the objections on their merits.) The Board, however, found that the evidence was timely, because it agreed with the employer that the evidence was not due until February 15.

Section 102.69(a) of the Board's Rules and Regulations provides that the party filing objections to a representation election shall furnish supporting evidence "[w]ithin 7 days after the filing of objections." Section 102.112 of the Board's Rules and Regulations defines the date of filing as "the day when the matter is required to be received by the Board . . . ." The Board interpreted these rules to mean that, because the objections were not actually due until February 8, the evidence in support of the objections was not due until February 15. Thus, the evidence was timely when received on that date, the Board concluded.

The Board found that this interpretation not only gave meaning to Section 102.112, but that it was also consistent with its interpretation of other sections of the Board's Rules and Regulations, and was in accordance with the intent of the 1986 revisions to the Board's Rules and Regulations. The explanatory statement published with the 1986 revisions indicated that "[t]he new time periods for responding to Board action have been established as 7 days, or some multiple of that period, from the date of Board action, thereby avoiding the occurrence of any filing date on a Saturday or Sunday.[6] In this case, the "Board action" was the preparation of the tally of ballots. Under the Board's reading of Section 102.69(a), objections were due 7 days after the tally, and supporting evidence was due 14 days after the tally.

D. Nexus Between Charge and Complaint

In *Nippondenso Mfg. U.S.A.*,[7] the Board dismissed an 8(a)(1) complaint on the ground that it was unsupported by a charge containing allegations closely related to those in the complaint.

[6] 51 Fed.Reg. 23744 (1986).

[7] 299 NLRB No. 83 (Members Cracraft and Devaney; Chairman Stephens concurring).

The complaint alleged that the employer had promulgated and discriminatorily enforced a rule forbidding employee distribution of union literature and the display of union paraphernalia in violation of Section 8(a)(1) of the Act. An 8(a)(1) charge had been filed by the union, but had been withdrawn before the complaint issued. The only charge on file at the time the complaint issued alleged that the employer had violated Section 8(a)(3) by the discharge of a member of the in-plant organizing committee and had violated Section 8(a)(1) "[b]y the above and other acts."

A panel majority of Members Cracraft and Devaney found that the charge did not bear a sufficiently close relationship to the complaint allegations to support them. Citing *Nickles Bakery of Indiana*,[8] the majority noted that the preprinted wording at the bottom of the Board's charge form, stating that "[b]y these and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed [them] in Section 7 of the Act" may not be relied on to support more particularized 8(a)(1) complaint allegations. For the charge and complaint allegations to be sufficiently related, *Nickles* held, the Board considers whether they involve the same legal theory and whether they arise from the same factual circumstances. The Board may also look at whether a respondent would raise similar defenses to both charge and complaint allegations.

The majority here found that the General Counsel failed to establish the requisite factual nexus between the allegations of the charge, which pertain only to an employee discharge and her organizing activity, and those of the complaint, which allege only general interference with distribution of union literature and the wearing of union insignia.

Chairman Stephens, concurring, found that the withdrawal of the original 8(a)(1) charge would reasonably have led the employer to believe that it would no longer be called on to defend against the allegations in that charge. Therefore, Chairman Stephens would find that the underlying charge here—which did not reallege any of the 8(a)(1) violations from the original charge—did not constitute timely notice concerning allegations set forth in the complaint. Chairman Stephens found it unnecessary, by the analysis, to pass on whether the charge and complaint allegations were "closely related."

[8] 296 NLRB 927 (1989).

IV

Representation Proceedings

The Act requires that an employer bargain with the representative designated by a majority of its employees in a unit appropriate for collective bargaining. But it does not require that the representative be designated by any particular procedure as long as the representative is clearly the choice of a majority of the employees. As one method for employees to select a majority representative, the Act authorizes the Board to conduct representation elections. The Board may conduct such an election after a petition has been filed by or on behalf of a group of employees or by an employer confronted with a claim for recognition from an individual or a labor organization. Incident to its authority to conduct elections, the Board has the power to determine the unit of employees appropriate for collective bargaining and to formally certify a collective-bargaining representative on the basis of the results of the election. Once certified by the Board, the bargaining agent is the exclusive representative of all employees in the appropriate unit for collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

This chapter concerns some of the Board's decisions during the past fiscal year in which the general rules governing the determination of bargaining representative were adapted to novel situations or reexamined in the light of changed circumstances.

A. Showing of Interest

In *Crown Nursing Home Associates,*[1] the Board found that the Regional Director erred in approving the petitioner's request to withdraw its petition, where the intervenor had submitted a timely showing of interest to support the originally petitioned-for unit. In so doing, the Board reinstated the petition, declared that

[1] 299 NLRB No. 70 (Chairman Stephens and Members Cracraft and Devaney).

the intevernor be considered a cross-petitioner, and remanded the case to the Regional Director.

The incumbent union petitioned for a unit of service and maintenance employees. The intervenor filed a showing of interest, and amended the petition to include the employer's licensed practical nurses. Subsequently, the employer and the petitioner executed a collective-bargaining agreement covering the originally petitioned-for unit and the petitioner made a written request to withdraw its petition. Also, the intervenor supplemented its showing of interest to establish a petitioner's showing, with cards that postdated the execution of the contract.

The Regional Director approved the petitioner's request to withdraw, and further, dismissed the petition where he found that the intervenor's amendment, particularly in view of the substantial change in the character of the petition, and the considerable increase in the size of the unit, rendered the intervenor's showing of interest untimely, as it was supplemented by cards that postdated the execution of the collective-bargaining agreement.

In examining the record, the Board found that the Regional Director had failed to rule on two written requests made by the intervenor to withdraw its amendment. Because there are no rules prohibiting a party from withdrawing its own amendment to a petition, at least at anytime prior to the close of a hearing, the Board granted the intervenor's request. Further, the Board reversed the Regional Director's determination that the supplemental showing of interest was untimely.

Section 1114.1(b) of the NLRB's Casehandling Manual (Part Two, Representation Proceedings), provides that where a petitioning union seeks to withdraw its petition after approval of an election agreement or close of hearing, and an intervening union desires the election be held, that intervening union may be given a reasonable period for procuring and submitting such interest. The Casehandling Manual specifically provides that such showing need not antedate the approval of the agreement or the close of the hearing. "By the same token," the Board noted, "there is no requirement that such a showing must predate any collective-bargaining agreement executed between an employer and an incumbent union subsequent to the timely filing of a representation petition. Such a requirement effectively would nullify a party's right to intervene in an election case with only an intervenor's showing of interest, as it would, in effect, require an intervenor to have a petitioner's showing from the start."[2]

Moreover, the Board said, to treat the collective-bargaining agreement as a bar to the intervenor's desire to become the petitioning union would be contrary to the principles set forth in *RCA del Caribe, Inc.*,[3] in which the Board concluded that the

[2] Id., slip op. at 4.
[3] 262 NLRB 963 (1982).

execution of a contract between an employer and an incumbent union not only is not a violation of Section 8(a)(2) of the Act, but also that such a contract would not bar a valid representation petition timely filed by an outside union.

B. Contract Bar

In *Brown Transport Corp.*,[4] the Board found that the petition, which originally sought a single terminal unit, remained timely and was not barred by a newly executed collective-bargaining agreement, where it was determined that the only appropriate unit was the historical systemwide (nationwide) one. In so doing, the Board found that the Acting Regional Director properly distinguished *Centennial Development Co.*,[5] as the petitioner had not requested to amend its petition and remanded the case to the Regional Director for further investigation as to the showing of interest.

In *Centennial Development*, although there was an existing systemwide unit which had been represented by another union, the joint petitioners sought elections in single project units. During the course of the hearing on the petitions, the joint petitioners stated, alternatively, that they wished to represent the employees in the existing employerwide unit. The Board found that this alternative unit request constituted an amendment of the petition, and inasmuch as the alternative unit basically differed in character from the originally requested single project units, an election could be held in the existing unit only if two conditions were met: (1) The insulated period must have elapsed without execution of a new agreement to succeed the recently expired one; and (2) a sufficient showing of interest to support an election in the existing unit must have been obtained before the date of the execution of a new contract between the employer and the intervenor.

In the instant case, the petition was filed on March 1, appropriately within the 60–90 day window period of the then-existing contract between the employer and the intervenor. At the April 8 hearing, in response to a question from the hearing officer, the petitioner expressed a willingness to "take an election" in whatever unit was found appropriate, although the petitioner continued to seek the narrow, petitioned-for unit. On April 29, the employer and the intervenor executed a new 3-year contract, effective May 1, covering the existing nationwide unit.

The Board agreed with the Acting Regional Director that the petition clearly was timely filed with regard to the single terminal unit sought, and the new contract did not bar an immediate election in the broader unit, inasmuch as the petitioner had neither amended its petition at the hearing to seek any other unit

[4] 296 NLRB No. 157 (Members Cracraft and Higgins; Chairman Stephens dissenting).
[5] 218 NLRB 1284 (1975).

nor made an affirmative alternative unit request. However, the Board found that the Acting Regional Director's use of the May 1 cutoff date for such showing was consistent with the finding that the new contract does not bar the instant petition.

It is well-established that where a petition is later amended, even during the hearing itself, the filing date of the original petition is controlling "if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit to the number of employees covered."[6]

On the other hand, if the amended petition seeks a unit that is substantially larger and different in character, that amended petition would be treated as a new petition filed on the date of the amendment and as such must be supported by an adequate and timely showing of interest.[7] These policies are designed to prevent a petitioner from being able to circumvent the insulated period by an amendment of its petition.

In the instant case, however, the Board found that there was no amendment. The hearing officer simply followed normal Board practice and procedure in inquiring about the petitioner's willingness to proceed to an election in an alternative unit should the petitioned-for unit be found inappropriate. Moreover, the Board pointed out, the same treatment would not be accorded to cases where a petition is amended by the petitioner and to cases where the Board on its own initiative broadens a petitioned-for unit, if the unit has been substantially enlarged in character, size, or the number of employees covered.

A petitioner, who is confronted by a contention that only a larger unit is appropriate and who is willing to "take an election" in that unit, would be severely prejudiced were the Board to find as a bar a contract executed by the employer and the incumbent union during the insulated period and while the litigation is continuing, the Board held. Neither *Centennial Development* nor *Deluxe Metal Furniture* was ever intended to restrict the full litigation of issues raised by a timely filed petition.

Chairman Stephens, dissenting, would find that, regardless of the circumstances or of the date on which they occurred, an election in the broader unit should occur only if the conditions of *Centennial Development* have been met; and that it is clear the first of these conditions has not been met in the instant case. Moreover, he found no valid reason for distinguishing between a formal amendment or affirmative request for an alternative unit and a subtly worded assent to proceed to an election in an alternative unit, if found appropriate. Such a distinction, he said, merely elevates form over substance, and interferes with the

[6] *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 fn. 12 (1958).
[7] *Centennial Development*, supra.

rights of an employer and an incumbent union to negotiate and execute a new or amended agreement during the insulated period. Thus, this "distinction without a difference" enables the petitioner to avoid the effects of the insulated period merely because, technically, it was the Board that expanded the unit, rather than the petitioner directly.

C. Appropriate Unit Issues

1. College Faculty

In *Lewis & Clark College*,[8] a majority reversed the Regional Director and dismissed a petition for a unit of faculty members, finding the undergraduate tenured and tenure-track faculty at Lewis and Clark College were managerial employees as defined in *NLRB v. Yeshiva University*.[9]

The faculty members, the majority held, "exercise substantial, independent authority over academic matters in the majority of the academic areas identified in *Yeshiva University* and its progeny as important to a determination of managerial authority in colleges and universities."[10]

The majority disagreed with the significance that the Regional Director had attached to the authority of several administration "umbrella" or overall policymaking committees, stating that the faculty's authority was not "negated or significantly diminished by the umbrella committees' decisions."[11]

The majority found that the faculty's authority over academic matters had not been removed and faculty committees continued to meet and consider academic matters. Although excluded from the umbrella committees' decisions, faculty members had formulated other academic policies when implementing the umbrella committees' recommendations. These policies were distinct because they involved broader college policymaking decisions from which the faculty may be excluded yet still remain managerial.

The majority also noted that even though the faculty members do not possess absolute or plenary control over academic matters, *Yeshiva* does not require such authority. The standard requires "*effective* recommendation or control" which this faculty possesses because their academic recommendations are virtually always approved and some academic matters are directly decided by the faculty.[12]

Member Devaney dissented, as he would find undergraduate faculty members are statutory employees. He found that major academic policy decisions are made by the umbrella committees,

[8] 300 NLRB No. 20 (Chairman Stephens and Members Cracraft and Oviatt; Member Devaney dissenting).

[9] 444 U.S. 672 (1980).

[10] 300 NLRB No. 20, slip op. at 27.

[11] Id., slip op. at 20.

[12] Id., slip op. at 26 fn. 41.

the college president, and the board of trustees, and not by the faculty's committees. Member Devaney cited the fact that the board of trustees made decisions based on recommendations of the umbrella committees and that the faculty members constituted only a small minority on these committees.

Although acknowledging the faculty members' authority over day-to-day matters, Member Devaney found that the majority had minimized the importance of the decisions made by the umbrella committees. Although the policies of these committees may be distinct, he said, "the umbrella committees frame the administrative agenda for the college and define day-to-day matters and are thus a pervasive presence in critical decisions made by the faculty."[13]

Member Devaney also found that the *Yeshiva* case presented an "extreme case on its facts of absolute faculty authority over virtually all academic and nonacademic matters alike."[14] Thus, Member Devaney found that the facts in *Yeshiva* do not provide the best standard on which to judge other cases. Recognizing that faculty members at most colleges exercise some policymaking functions, Member Devaney concluded that where faculty members exercise less authority than the faculty in *Yeshiva*, the statute should be construed to emphasize inclusion and employee choice.

2. Nonretail Warehouse Unit

In *Esco Corp.*,[15] the Board found that a unit of warehousemen and drivers at the employer's Seattle, Washington nonretail warehouse, excluding the Seattle sales and clerical employees and all employees from other locations, was an appropriate unit for bargaining.

In deciding whether a nonretail or wholesale warehouse unit is appropriate, the Board said that it will examine whether all relevant community-of-interest factors enumerated in *A. Harris & Co.*[16] have been satisfied. In *A. Harris*, the Board found retail warehouse units appropriate only where the warehouse operation was geographically separated from the employer's retail store operations; there was separate supervision of the employees engaged in warehouse functions; and no substantial integration existed among the warehouse employees and those engaged in other functions.

Assuming, without deciding, the continued applicability of *A. Harris* to unit determinations in the retail industry, the Board found that *A. Harris* did not apply to wholesale or nonretail operations because of the following factors:

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[13] Id., slip op. at 31.
[14] Id., slip op. at 32.
[15] 298 NLRB No. 120 (Chairman Stephens and Members Cracraft and Devaney).
[16] 116 NLRB 1628 (1956).

First, the facts in *A. Harris* were limited to a retail operation and nothing in that decision indicated that it was intended to apply to nonretail warehouses. Second, only one published decision, *Roskin Bros.*,[17] has ever applied the *A. Harris* criteria to a wholesale operation. Third, extension of the *A. Harris* criteria would be inconsistent with the Board's usual approach to unit determinations in other industries which is to consider all relevant factors.

Application of *A. Harris* would permit each of the three community-of-interest factors in that case to control unit determinations for nonretail warehouse units because all three factors must be present, the Board said. It found no compelling reason to limit the Board's traditional community-of-interest analysis in that manner. The Board overruled *Roskin Bros.* to the extent that it applied the *A. Harris* criteria to the wholesale operations in that case.

Applying traditional community-of-interest factors in the instant case, the Board affirmed the Regional Director's finding that the sales and clerical employees in the Seattle warehouse operation do not share such a strong community-of-interest as to *require* their inclusion in the petitioned-for unit of warehousemen and drivers.

D. Agricultural Exemption

In *Camsco Produce Co.*,[18] the Board, in a plurality opinion to resolve conflicting prior precedent, found that the employer's fresh pack department employees who regularly spend part of their time packing and preparing for market mushrooms grown by another employer are not agricultural laborers exempt from coverage under the Act.

In reaching this conclusion, Chairman Stephens and Member Devaney decided that neither *Employer Members of Grower-Shipper Vegetable Assn.*[19] nor *DeCoster Egg Farms*[20] provided a satisfactory standard for determining the status of such employees. *Employer Members* states that secondary agricultural laborers must handle commodities grown elsewhere on a regular and substantial basis in order to lose their status as exempt agricultural employees. Whereas, *DeCoster* holds, in accordance with the Department of Labor's strict interpretation of the agricultural exemption under the Fair Labor Standards Act, that the handling of *any* nonemployer farm product will result in the loss of exempt status.

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[17] 274 NLRB 413 (1985).

[18] 297 NLRB No. 157 (Chairman Stephens and Member Devaney; Members Cracraft and Oviatt concurring and dissenting in part).

[19] 230 NLRB 1011 (1977).

[20] 223 NLRB 884 (1976).

Instead, Chairman Stephens and Member Devaney stated "the proper test for our statute should focus not on the *amount* of other-employer produce handled by the employees in question, but rather should rest on the regularity with which employees handle such outside produce." Thus, Chairman Stephens and Member Devaney, borrowing from both *DeCoster* and *Employer Members*, concluded "that the Board will assert jurisdiction if any amount of farm commodities other than those of the employer-farmer are *regularly* handled by the employees in question." Such a test, according to Chairman Stephens and Member Devaney, is consistent with the intent of Congress because "it is not unreasonable to conclude that a farmer-employer who handles the products of other producers on a regular basis, however small the quantity may be, has departed from the traditional model of the farmer who simply prepares his own products for market." Accordingly, *Employer Members* and *DeCoster* were overruled to the extent they are inconsistent with this decision.

Applying the "regularity" test to the facts of this case, Chairman Stephens and Member Devaney noted that the evidence showed that approximately 4 percent of the mushrooms handled by the employees in question were produced by a farmer other than the employer and the employer did not demonstrate that its handling of such mushrooms occurred rarely or only in an emergency. Accordingly, Chairman Stephens and Member Devaney concluded that the record did not establish that the work of fresh pack employees is within the agricultural exemption, and therefore they asserted jurisdiction.

Although Member Cracraft agreed that *Employer Members* should be overruled and concurred in the assertion of jurisdiction, she objected to the plurality opinion's addition of a "regularity" test to the "stricter" standard set out in *DeCoster*. Member Cracraft said that she believes "*DeCoster*'s strict limitation of the definition of secondary agricultural laborer fulfills the purpose of the agricultural exemption in Section 2(3) of the Act, better accords with the Department of Labor's definition of agricultural laborers, and provides a more precise standard to follow."

Dissenting from the Board's decision but agreeing with the plurality's overruling of *DeCoster*, Member Oviatt stated that he would retain the "regular and substantial" test of *Employer Members* as it provides "a practical and common sense approach" to determining who is an agricultural laborer. Member Oviatt thus concluded that since the employer only obtained approximately 4 percent of its mushrooms from other growers, the mushroom packers in dispute here are exempt from Board jurisdiction as they do not handle a "substantial" amount of farm commodities grown by other employers.

E. Election Objections

In *3-Day Blinds*,[21] a panel majority of Members Cracraft and Devaney held that the employer committed objectionable conduct by distributing an altered sample ballot that did not identify the employer as the source of the distribution, thereby giving employees the impression that the Board favored the employer.

The employer distributed a facsimile of the sample ballot used on the official notice of election. The ballot was an altered photocopy, and had a large handwritten "X" placed in the "NO" box. In addition, the sample ballot contained explanatory language at the bottom that stated in both English and Spanish "THIS IS HOW TO MARK YOUR BALLOT TO GIVE THE NEW OWNERS A CHANCE." The sample ballots were distributed to employees at their work stations while the employer's management and others visited with individual employees. The corporate officers introduced themselves to the employees and requested that employees vote "no" in the election. The employer's facsimile ballot and the ballots used by the Board in the election were printed on light green paper.

Citing *SDC Investment*,[22] in which the Board adopted a two-part analysis to determine whether an altered ballot is objectionable, the majority concluded that the altered ballot did not indicate that the employer was responsible for the alteration. Next, the majority examined the nature and contents of the document to determine whether it was likely to give employees the misleading impression that the Board favored the employer in the election. The content of the additions to the facsimile did not present itself as propaganda, and employees would not be capable of evaluating it as such, the majority noted. That the ballot was handed out under the employer's auspices, and with other material that clearly identified the employer as the preparer of the document did not establish that the employer was author of the ballot, according to the majority. It noted that there was nothing connecting the two documents.

Chairman Stephens agreed that the facsimile ballot did not, on its face, disclose that it emanated from the employer. However, Chairman Stephens concluded that the nature and contents of the ballot, taken in the context of the distribution, would not have caused employees to believe that the Board wanted them to vote against the union. He noted that the employer's owners distributed the sample ballot together with handbills that were signed by these owners. Chairman Stephens also found significant the fact that the facsimile ballot had been altered to remove several identifiers from the official sample ballot, and thus there was no reason for employees to believe that the ballot came from the Board.

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[21] 299 NLRB No. 6 (Members Cracraft and Devaney; Chairman Stephens dissenting).
[22] 274 NLRB 556 (1985).

V

Unfair Labor Practices

The Board is empowered under Section 10(c) of the Act to prevent any person from engaging in any unfair labor practice (listed in Sec. 8) affecting commerce. In general, Section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity that Congress has designated as unfair labor practices. The Board, however, may not act to prevent or remedy such activities until an unfair labor practice charge has been filed with it. Such charges may be filed by an employer, an employee, a labor organization, or any other person irrespective of any interest he or she might have in the matter. They are filed with the Regional Office of the Board in the area where the alleged unfair labor practice occurred.

This chapter deals with decisions of the Board during fiscal 1990 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

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

1. Protected Activity

In *United Cable Television Corp.*,[1] the Board declined, on repugnancy grounds, to defer to an arbitrator's decision and award that was premised on a finding that an employee's letter to coworkers posted on his union's bulletin board was "partially protected" under Section 7 of the Act.

[1] 299 NLRB No. 20 (Chairman Stephens and Members Devaney and Oviatt).

The employee's letter responded to criticism coworkers had raised to questions he had addressed to the company's president at an employee meeting about work-related matters. An arbitrator found that the employee was engaged in concerted activity when he posted the letter, but that his motivation to disturb a prevailing climate of "detente" between his employer and his union rendered his actions only "partially protected." The arbitrator awarded the grievant reinstatement without backpay.

Based on a stipulated record, a panel of Chairman Stephens and Members Devaney and Oviatt found the arbitrator's decision and award repugnant to the purposes and policies of the Act. "Either [employee] Blight's conduct is protected by the Act or it is not," the Board stated. The Board found no support in the arbitrator's opinion or in the record before it for a finding that the letter was removed from the Act's protection. "[W]hile the letter is hardly an example of an entirely temperate communication," the Board found it was not "so flagrant or extreme as to remove Blight's conduct from the Act's protections. . . . Indeed, because Blight's letter was addressed to other employees and posted on the union bulletin board, it was a form of intraunion communication, and, therefore, it is not even classifiable among those cases of third-party-directed disparagement of an employer's product, business, or reputation, condemned as 'disloyalty'" under Supreme Court precedent.[2]

The Board also disagreed with the arbitrator's reliance in support of his award on the Supreme Court's holding in *Emporium Capwell Co. v. Western Addition Community Organization*,[3] that the principle of exclusivity embodied in Section 9(a) of the Act requires represented employees not to bypass their collective-bargaining agent in airing grievances. "In contrast to the protest in *Emporium Capwell*," the Board noted, "Blight addressed his letter and its message not to his employer, but to fellow employees, and neither the content of the letter nor record evidence concerning its preparation and posting supports the arbitrator's finding that it was 'intended to block the parties' desire for detente."

Finding no basis in the arbitrator's opinion and award for the discharge other than the employee's protected activities, or anything that would warrant forfeiture of Section 7 protection or justifying withholding backpay, the Board found the award "clearly repugnant" and refused to defer to it. Based on an independent review of the record, the Board found that the letter was protected by Section 7. The parties having stipulated that the letter was the sole basis for discharge, the Board concluded that the discharge violated Section 8(a)(1) and (3) and awarded the conventional remedy, including reinstatement with backpay.

[2] *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Broadcasting)*, 346 U.S. 464 (1953).
[3] 420 U.S. 50 (1975).

2. Employer's Retaliatory Lawsuit

In *H. W. Barss Co.*,[4] a panel majority of the Board held that the respondent violated Section 8(a)(1) of the Act by filing and maintaining a civil lawsuit against the union and several of its members for alleged defamation of character based on a portion of the language on the union's picket signs.

The respondent operates as a nonunion general contractor and pays wages and benefits which are lower than the standards established by collective-bargaining agreements in the area where the respondent does business. When the respondent refused the union's request that it hire union employees and subcontractors for a current project, the union picketed the office of the employer's president, Howard Barss, with signs stating that Howard Barss is an officer of the respondent and the respondent is a scab contractor. Because of the capitalization of certain words, the signs appeared to read "HOWARD BARSS IS A SCAB" when viewed from a distance.

Barss filed a civil suit in state court concerning the picket signs alleging defamation of character and libel. The complaint named the union and nine individuals and prayed for a judgment of $500,000 against each defendant. The case was removed to Federal district court after Barss added a second count alleging violations of Section 8(b)(4)(B) and (D). The district court granted the union's Motion for Summary Judgment and dismissed the complaint. On Barss' appeal, the court of appeals affirmed the district court's judgment.

The panel majority found that the respondent's lawsuit was "baseless" under the ruling in *Bill Johnson's Restaurants v. NLRB*.[5] In so finding, the majority relied on *Phoenix Newspapers*,[6] in which the Board, in similar circumstances, found that the summary dismissal of an employer's libel suit against a union and its officers rendered the employer's suit baseless under the *Bill Johnson's* test. The majority noted that the respondent here, as in the *Phoenix* case, did not show why the court's summary dismissal of its suit should not be given deference by the Board.

Chairman Stephens also found the suit baseless on the merits under his separate opinion concurring and dissenting in *Bill Johnson's Restaurants*.[7] Noting that Barss was concededly a nonunion contractor and that the use of the epithet "scab" in connection with those who oppose or refuse to join a union has been held to be protected by Section 7, he found that the union and its members were not acting maliciously by carrying signs that stated that Barss was a scab contractor.

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[4] 296 NLRB No. 151 (Chairman Stephens and Member Higgins; Member Cracraft dissenting).

[5] 461 U.S. 731 (1983). The Court held that before the Board can find that the filing of a civil suit violates Sec. 8(a)(1), it must be shown that the suit lacks a reasonable basis in law or fact and that it was filed for a retaliatory reason.

[6] 294 NLRB 47 (1989).

[7] 290 NLRB 29 (1988).

The majority further found that the lawsuit was filed with a retaliatory motive although there was no direct evidence of unlawful intent. The majority found that the lawsuit was motivated by the union's picketing in protest of substandard wages and that it was, therefore, aimed directly at primary picketing which is protected by Section 7. The majority found additional support for the finding of retaliatory motive in the prayer for monetary damages. They noted that the respondent stated that when it filed the suit, it was aware that no business losses had been suffered, but took the position that the embarrassment caused to Barss should be compensated by at least $500,000.

In dissent, Member Cracraft would have dismissed the complaint because she found insufficient evidence of retaliatory motive. She agreed that the respondent's suit was meritless. However, she stressed that there was no further evidence of action by the respondent against the picketing or against the union. Citing her dissenting opinion in *Phoenix Newspapers*, Member Cracraft would not find the baselessness of the suit a sufficient factor to establish a retaliatory motive for the suit. Nor was she convinced that the amount of monetary damages claimed in the "standard civil suit prayer" warranted the inference of retaliatory motive.

3. Unlawfully Broad Rules

In *Universal Fuels*,[8] the Board held that the respondent violated Section 8(a)(1) of the Act by maintaining unlawfully overbroad rules which permitted discipline of employees for "misrepresentations" concerning their benefits or claims for pay or employment. The Board also found the fact that the rules were part of a collective-bargaining agreement with a union, the American Federation of Government Employees, did not waive the employees' rights in the case.

The rules at issue stated:

> Just cause for the purpose of discipline or for the purpose of discharge, or either, shall include: . . . misrepresentation in connection with any employee benefit . . . misrepresentation of any material fact in connection with any claim concerning his employment or his pay. . . .

The Board notes that truthful communications about employee benefits and pay—common topics of employee concerted discussions—are clearly protected under the Act. The Board also found that, "because of the importance of communication between employees to other protected concerted and union activities, the Act's protection extends to statements that are false, provided that the misrepresentation is not deliberate or malicious." The Board found that the rules in question "are unlawfully broad

[8] 298 NLRB No. 31 (Chairman Stephens and Members Devaney and Oviatt).

because they could reasonably be understood as encompassing conduct protected by the Act," e.g., an employee's good-faith misinterpretation of a provision of the contract, or voicing employment grievances on the basis of facts that turn out to be wrong.

The Board recognized that an employer has a substantial and legitimate interest in prohibiting falsification of insurance claims, reasons for absence, and other related matters. It also recognized that the rules could reasonably be read as encompassing those legitimate interests. It noted, however, that the rules were unlawfully overbroad because they could also be read as prohibiting protected conduct. The Board stated that if the employer wished to address falsification of timecards, funeral leave claims, or other related matters, "it must do so directly, not through an impermissibly broad rule."

The Board rejected the employer's claim that the rules were lawful because the union had agreed to them in the collective-bargaining agreement. The Board found that, because the rules could reasonably be read as infringing on employee freedom to oppose or support an incumbent union, the union's agreement to the rules was an "invalid waiver."

The Board ordered the respondent to remove the rules quoted above from the collective-bargaining agreement's definition of what constituted "just cause" for punishment.

B. Employer Discrimination Against Employees

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

1. Striker Reinstatement

In *Delta Macon Brick & Tile Co.*,[9] the Board adopted an administrative law judge's finding that the employer violated Section 8(a)(3) and (1) of the Act by recalling to work five striker replacements who had been laid off for 14–16 months rather than recalling certain unreinstated economic strikers. However, unlike the judge, who relied solely on a seniority provision in the employer's contract with the union to find that the laid-off permanent replacements did not have a reasonable expectancy of

[9] 297 NLRB No. 178 (Chairman Stephens and Members Cracraft and Devaney).

recall,[10] the Board applied the test set forth in *Aqua-Chem, Inc.*[11]

Relying on the unprecedented nature of the layoff, its indefinite duration, the fact that the laid-off employees had their medical insurance canceled, and the fact that the laid-off employees were given no specific indication regarding when, if ever, they might be recalled, the Board found that the General Counsel had made a prima facie showing under *Aqua-Chem* that the five laid-off permanent replacements had no reasonable expectancy of recall.

Further, it found that the employer had failed to rebut the General Counsel's prima facie showing and had produced no evidence to show that it had a legitimate and substantial business reason for not offering reinstatement to the strikers. For these reasons, the Board agreed with the judge that the reinstatement of the five laid-off permanent striker replacements ahead of unreinstated strikers violated the Act.

In *Teledyne Still-Man*,[12] the Board rejected the respondent employer's contention that the failure of an economic striker to make an unconditional offer to return to work within 6 months after the conclusion of a strike necessarily manifested the striker's abandonment of interest in the job and thereby entitled the employer to deny reinstatement. The Board held that delay in making an offer to return is only one factor among others in the determination whether economic strikers have abandoned interest in their prestrike jobs. It reasoned that there are many possible grounds for a delay in offering to return—e.g., temporary absence from the area, illness—that are not necessarily indicative of an abandonment of interest.

The Board also rejected the employer's argument that the same timeliness standard applicable to offers to return made by unfair labor practice strikers should apply to offers made by economic strikers and that, under that standard, the four offers at issue in this case—about 7 months after the termination of the strike in one case, about 8 months in another, and 21 months in the two others—were untimely. First, the Board noted that even under its unfair labor practice striker precedents, the first two

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[10] The seniority provision relied on by the judge provided that employees who were laid off for more than 1 week could not be recalled ahead of more senior people in the same department who were out of work and available for recall. In agreeing with the result reached by the judge, the Board stated that the seniority provision was not relevant to its determination.

[11] 288 NLRB 1108 (1988). In *Aqua-Chem*, the Board held that in determining whether an employer has violated an economic striker's right to reinstatement under *Laidlaw Corp.*, 171 NLRB 1366 (1968), by recalling laid-off striker replacements ahead of unreinstated strikers, the General Counsel bears the initial burden of proving that the laid-off permanent replacements had no reasonable expectancy of recall, and that their departure created vacancies to which the unreinstated strikers would be entitled under *Laidlaw*. Once the General Counsel has done so, the burden shifts to the employer to show that no such *Laidlaw* vacancies exist, or that it had legitimate and substantial reasons for not recalling the strikers.

[12] 298 NLRB No. 148 (Chairman Stephens and Members Cracraft and Devaney).

offers would not necessarily have been untimely,[13] and that, in any event, there was a practical reason for applying a less restrictive standard to offers made by economic strikers. Unfair labor practice strikers are entitled to immediate reinstatement, displacing if necessary any employees hired into their positions during the strike. By contrast, economic strikers have no statutory right to displace any employees hired as permanent replacements, but rather are entitled merely to have their names placed on a rehire list so that they can be offered jobs as vacancies arise.[14] The Board reasoned that the difference in the relative severity of the burdens imposed on the employer—displacing current employees in one case and adding names to a list in the other—warranted a stricter timeliness standard in the case of unfair labor practice strikers.[15]

Applying its standard to the facts of the case before it, the Board held that, despite the delay in their offers to return, the strikers had not abandoned interest in their prestrike jobs, and thus the employer violated Section 8(a)(3) and (1) of the Act in refusing to include and retain them on the rehire list.

In *Anaheim Plastics*,[16] the Board held that the striking union's offer to return to work was not made conditional by the union's refusal to provide a no-strike guarantee. Consequently, the Board found that the respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate some of the strikers.

The respondent first sought a no-strike guarantee during bargaining 7 days after the union had made an unconditional offer to return to work. The union flatly rejected the respondent's repeated demand for such a guarantee.

In finding the union's offer to return to work not conditional, the Board distinguished the decision in *Indiana Ready Mix*,[17] in which, in response to an employer's demand for a 60-day no-strike guarantee, a striking union that had made an offer to return to work gave a no-strike guarantee for a 30-day period of negotiations. The Board there found that the union's offer thus became a proposal for merely a 30-day respite in the strike rather than an unconditional offer to return to work. The Board found

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[13] *J. H. Rutter-Rex Mfg. Co.*, 158 NLRB 1414, 1543 (1966), modified on other grounds 399 F.2d 356 (5th Cir. 1968), modification vacated 396 U.S. 258 (1969) (holding that 4 years is unreasonable delay, while 10 months is not); *Crosby Chemicals*, 105 NLRB 152, 154 (1953) (2-1/2 years is unreasonable delay).

[14] *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 902 (1970).

[15] The Board acknowledged, however, that where temporary replacements are concerned, the reinstatement rights of economic strikers and unfair labor practice strikers are the same; and it expressly refrained from deciding whether, if economic strikers delayed more than a year in making an offer to return, an employer would be required to displace temporary replacements to accommodate the strikers. The Board was not required to reach that issue in this case because there were no temporary replacements; placing the four former strikers on the rehire list respectively at the times they made their offers and offering them jobs when appropriate vacancies arose was all that the employer was obligated to do.

[16] 299 NLRB No. 14 (Chairman Stephens and Members Cracraft and Devaney)

[17] 141 NLRB 651 (1963).

the facts in the present case to be markedly different. Here, the union's offer to return to work placed no limit on the employees' return, the respondent did not request a no-strike guarantee until after it had already reinstated some of the employees, and the union rejected the respondent's request. The Board, therefore, found the union's offer to return to work unconditional.

The Board also found that the respondent's backpay obligation was not tolled by the respondent's statement to the union during contract negotiations that the union should have all the unreinstated strikers report to the plant and they would be put back to work.

The Board noted that an employer may be found to have discharged its duty to offer reinstatement to strikers by conveying its reinstatement offer to the union as their agent. In this case, however, many former strikers had repeatedly reported to the plant seeking reinstatement only to be told by the respondent to come back the following day, but were not put back to work when they did so. The Board found that this conduct by the respondent undermined the credibility of the respondent's bargaining-table statements to the union that it should have all unreinstated strikers report and they would be put back to work. Under these circumstances, the Board found that the respondent's statements to the union could not reasonably be regarded as having discharged the respondent's duty to offer reinstatement to the former strikers.

2. Discriminatory Discharge

a. Union President

In *Barton Brands, Ltd.*,[18] the Board held that the employer violated Section 8(a)(3) and (1) by discharging James D. O'Daniel on June 1, 1987, because he was elected union president.

Pursuant to an arbitration award on a previous discharge in July 1986, O'Daniel was reinstated in January 1987 with the condition that he refrain from serving in any official union capacity for 3 years or face immediate termination. In May 1987, while on layoff, O'Daniel was elected union president. On being notified, the employer promptly terminated O'Daniel pursuant to the terms of the arbitration award.

The Board first rejected the employer's 10(b) defense on the grounds that the statutory period did not begin to run until the employer effectuated the arbitration award by terminating O'Daniel following his election to union office. The Board next found it inappropriate to defer to the arbitration award because the issue considered by the arbitrator was not factually parallel to the unfair labor practice issue presented in this case. In this regard, the Board noted that the arbitrator did not consider

[18] 298 NLRB No. 139 (Members Cracraft, Devaney, and Oviatt).

whether O'Daniel waived his Section 7 right to hold union office. The Board also found that the arbitrator's award, in conditioning O'Daniel's reinstatement rights, was repugnant to the Act because it was not susceptible to an interpretation consistent with the Act.

b. Strikers

In *American Linen Supply Co.*,[19] the Board held that the respondent violated Section 8(a)(3) and (1) of the Act by terminating economic strikers when it informed the strikers that they were permanently replaced although, in fact, no permanent replacements had been hired.

On the day that the strikers began, Pajunen, the respondent's district manager, distributed a memorandum to employees about 10 minutes before 7 a.m., the starting time for work. The memorandum stated that the striking employees had "until 7 a.m." to "return to work" and that if they did not, "you are permanently replaced."

Because the memorandum was drafted by Pajunen immediately after a confrontation with the union president over what was, to the respondent, an anticipated strike, the Board found it reasonable to infer that the respondent had made a false statement when it stated that striking employees would actually be permanently replaced by 7 a.m.

Relying on *Mars Sales & Equipment Co.*,[20] and *W. C. McQuaide, Inc.*,[21] cases in which the Board held "that an employer who informed lawful economic strikers that they had been permanently replaced when in fact the employer had not obtained such replacements had thereby terminated the strikers in violation of Section 8(a)(3) and (1) of the Act," the Board found that the memorandum constituted an unlawful threat of discharge at the time it was distributed.

The Board also found that the unlawful terminations occurred when the time specified in the ultimatum arrived without the respondent's having corrected its false replacement claim and without the employees having yielded to the threat by abandoning their strike.

3. Discharge Based on Illegal Warnings

In *Dynamics Corp. of America*,[22] the Board reversed the administrative law judge and held that the employer violated Section 8(a)(3) of the Act by suspending and later discharging three of the five employees named in the complaint based on unlawfully issued warnings.

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[19] 297 NLRB No. 18 (Chairman Stephens and Members Cracraft and Devaney).
[20] 242 NLRB 1097 (1979), enfd. in pertinent part 626 F.2d 567 (7th Cir. 1980).
[21] 237 NLRB 177 (1978), enfd. on other grounds 617 F.2d 349 (3d Cir. 1980).
[22] 296 NLRB No. 145 (Chairman Stephens and Members Higgins and Devaney).

In a prior decision,[23] the Board adopted the judge's finding that the respondent employer violated Section 8(a)(1) by instituting against union activists stricter enforcement of an attendance and punctuality policy after Teamsters Local 1040 won the election, and by issuing warnings to employees pursuant to that stricter enforcement of the policy. The Board modified the judge's decision in this respect, however, by holding that the issuance of any warnings pursuant to the strict enforcement also constituted an independent violation of Section 8(a)(3). To remedy this misconduct, the Board ordered that "all warnings so issued be rescinded and expunged" from the employees' personnel files. Because unlawfully issued disciplinary warnings cannot serve as the basis for discharge or suspension of an employee and because the employer had a progressive disciplinary system, the Board remanded the case to the judge to consider what role, if any, the unlawfully issued warnings may have played in the discharges and/or suspensions of the five employees named in the complaint.

In his supplemental decision, the judge found that the General Counsel failed to link the employees' discharges either to an accumulation of unlawful warnings and suspensions or to any unlawful employer motivation. The judge further found that the employer had established that the employees in question had committed the infractions with which they had been charged, and that their attendance records justified the disciplinary action taken. Finally, the judge found that the respondent had not relied on the unlawfully issued warnings in imposing discipline on the five alleged discriminatees.

Finding merit in the General Counsel's exceptions, the Board concluded that the record evidence clearly showed that the accumulation of unlawfully issued warnings did serve as a basis for subsequent discipline, including suspension and discharge, with respect to three of the five alleged discriminatees. The Board further concluded that the employer thereafter failed to carry its burden of demonstrating that it would have reached the same disciplinary decisions without reliance on the discriminatorily issued warnings.

In a case turning on employer motivation, the Board explained, "the issue is not one of whether the employer's actions were 'justified' or 'warranted,'" as the judge found, "but rather one of why the employer acted as it did. The Respondent failed to demonstrate either that it normally discharged employees based on a review of the monthly attendance sheets (i.e., without regard to warning notices), or that it in fact discharged these three employees without relying on the unlawfully imposed warning notices." Accordingly, the Board concluded that the

[23] 286 NLRB 920 (1987).

three discharges which were based on unlawfully issued warnings violated Section 8(a)(3).

With regard to the other two employees, however, the Board concluded that a different result was warranted because the evidence showed that the warnings issued to them did not coincide with the employer's unlawfully enforced attendance and punctuality policy.

C. Employer Bargaining Obligation

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

1. Mandatory Bargaining Subject

In *Columbia University*,[24] the Board agreed with the administrative law judge that the employer violated Section 8(a)(5) of the Act by refusing to provide the union with requested information to be used during an interest arbitration proceeding.

The employer and the union—Local 1199, Drug, Hospital, and Health Care Employees, RWDSU—agreed during contract negotiations to submit to interest arbitration the issue of wages for School of Social Work faculty secretaries, part of the contract under negotiation. After the interest arbitration hearing began, the union requested by subpoena that the employer provide information relating to the secretaries' compensation, grade levels, and job classifications. The employer refused to provide the requested information, contending, among other things, that it was not obligated to provide information for use during interest arbitration because interest arbitration is a nonmandatory subject of bargaining, and that the union's information request was not made in good faith.

In rejecting the employer's contentions, the Board noted that interest arbitration clauses are nonmandatory subjects of bargaining. Those clauses, it added, "represent the contracting parties' agreement, through then-current collective bargaining, to resolve future bargaining disputes by interest arbitration." Such agreements, when made, have no immediate effect on bargaining unit employees' working conditions. "In contrast," the Board explained, "an agreement, made during negotiations, to submit the contract currently under negotiation to interest arbitration is a substitute for further negotiations."

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[24] 298 NLRB No. 134 (Chairman Stephens and Members Cracraft and Oviatt).

In the instant case, the Board said, "Because wages are undeniably a mandatory subject of bargaining, the interest arbitration agreement here, serving as a substitute for further negotiations over wages, has taken on the characteristics of that mandatory subject." Thus, the union was entitled to the requested information, regardless of whether its purpose was to advance its position at the arbitration hearing, to assess the prospects for a settlement, or merely to be better informed generally about employee working conditions.

2. Overall Bad Faith

In *Thill, Inc.*,[25] a panel majority of the Board, Chairman Stephens and Member Cracraft, agreed with an administrative law judge's finding of the employer's overall bad-faith bargaining, including its conduct at the bargaining table, with a certified union. The majority ordered the employer to bargain with the union for 12 months on resumption of bargaining.

The majority declined to issue the Board's standard *Mar-Jac Poultry Co.*[26] remedy, extending the certification year only by the amount of time remaining in the certification year at the point the employer commenced its refusal to bargain in good faith, because this employer's violations commenced early in the collective-bargaining process and were all calculated to subvert the union's role as representative of the employees. "We cannot find under these circumstances that the bargaining process ever had a chance to get seriously and fairly underway," the majority said.

The Board had certified the union on March 12, 1981, the first bargaining session occurred on April 13, and the last or 26th session ended on December 15, 1981, when the employer submitted its final offer and refused to continue bargaining thereafter. The judge found, and the majority agreed, that the employer commenced unlawful systematic interrogations of unit members on June 24; discriminatorily issued a reprimand and warning to two union activists in June and July; unilaterally changed on July 1 insurance carriers and the benefits of its employees; unilaterally restored the 15-percent pay cut on July 1, only for the nonunion employees, thereby discriminating against the unit employees because they chose union representation; solicited grievances from the employees; dealt directly with the employees over working conditions; and denigrated the union in the eyes of the employees through mischaracterization of the union's bargaining position.

The majority also agreed with the judge that the employer violated Section 8(a)(5) and (1) by engaging in certain bad-faith conduct at the bargaining table. The judge found, and the majority agreed, that progress toward reaching agreement was imped-

[25] 298 NLRB No. 90 (Chairman Stephens and Member Cracraft; Member Oviatt concurring in part and dissenting in part).

[26] 136 NLRB 785 (1962).

ed by the employer's reneging on earlier agreements and its failure to include agreed-on provisions in its written revised offers. In the majority's view, these omissions were more than de minimis errors but concerned important matters, e.g., the effect on pay of absences before and after a holiday, the time for filing grievances, and how soon a laid-off employee would be removed from the seniority list. The employer corrected some of the errors but only after the union had filed an unfair labor practice charge concerning the problem. The initial omissions and delays in making corrections made it difficult for the parties to determine where negotiations stood in any given bargaining session, and necessitated needless and time-consuming discussions of matters already settled.

The judge found, and the majority agreed, that the employer engaged in additional bad-faith conduct at the bargaining table by insisting to impasse on an illegal proposal that could be read as barring any kind of union activity by the employees on the employer's premises during nonwork time; and by refusing without justification to meet with union negotiators after the December 15, 1981 bargaining session.

The majority agreed with the judge's finding that the employer's total conduct, following the union's certification and during bargaining negotiations, constituted overall bad-faith bargaining. "All this conduct was calculated to undermine the Union in the eyes of the employees and unfairly weaken its bargaining strength," the majority said.

Member Oviatt, concurring in part and dissenting in part, agreed with the majority's findings except that he would not find that the employer engaged in bad-faith conduct at the bargaining table. Accordingly, he would not extend the union's certification for 1 year because, in his view, the employer's bargaining-table conduct was the lynchpin for that remedy.

Member Oviatt pointed out that the majority failed to evaluate the role of both parties to the negotiations; that the employer did not deliberately omit, distort, or inaccurately present provisions; that the employer agreed to make any necessary changes; that the union also made errors and omissions in its proposals; and that the employer suggested that the union study the employer's proposals and return them for correction or discussion.

"With only 26 meetings held over an 8-month period, one could reasonably expect that some slippage in recollection or understanding would have occurred between meetings," Member Oviatt said. The union had ample opportunity to control and correct any omissions or distortions by submitting its own version of the agreed-on items, Member Oviatt noted. Both sides could have negotiated better and alleviated problems, he added, by keeping accurate records of proposals. The employer's conduct at the bargaining table was part of an imperfect bargaining

process, rather than bad-faith bargaining, Member Oviatt concluded.

3. Unilateral Change

In *Emhart Industries*,[27] the Board found that the respondent did not violate Section 8(a)(5) in March 1983 by failing to bargain with the union over a procedure to recall former economic strikers because the union failed to request bargaining after it received sufficient notice of the respondent's intent to recall employees.

On March 16, 1983, the union, United Auto Workers Local 376, offered to return to work from a 5-month-long economic strike. Because the respondent did not need a full complement of employees immediately, it informed the union that reinstatement of the employees would begin on March 21 and suggested a meeting for March 22 to discuss the return to work. On Friday and through the weekend, the respondent notified the employees, including certain union stewards, that it needed to reopen the plant. The employees were reinstated to the jobs they held immediately prior to the strike on the basis of seniority in their respective job classifications. Approximately 70 employees returned to work on Monday, March 21.

On the latter date, the union's shop chairman filed several grievances, including one that stated, "Employer has laid off wrong employees. Request that Employer reinstate proper employees." The respondent later met with the union over this grievance in second- and third-step meetings before denying the grievance.

On March 22, the parties met and discussed various issues, including union steward representation of recalled employees. However, the union did not request bargaining over the procedure that was being used to reinstate employees.

The Board agreed with the administrative law judge's conclusion that the respondent's conduct did not violate the Act. The Board found that the respondent's notice to the union that it would be reinstating employees was timely and sufficient under the circumstances, and did not unlawfully indicate that the method of reinstatement was unchangeable. Because the notice was sufficient, it became incumbent on the union to request bargaining, which the Board found that the union failed to do, either before or during the March 22 meeting, or in a grievance it filed. Accordingly, this complaint allegation was dismissed.

However, the Board found that the respondent did violate Section 8(a)(5) in February 1984 by implementing a change in the striker-recall procedure that was significantly different from both its pre-impasse proposal and from an agreement that the parties had reached earlier. The Board noted that the parties met

[27] 297 NLRB No. 29 (Chairman Stephens and Members Cracraft and Higgins).

several times after reinstatement began to discuss modifying the recall procedure the respondent had implemented. Specifically, the Board noted that, in November 1983, the respondent had proposed a comprehensive reinstatement procedure, and that, in December, the parties had agreed to reinstitute the use of the "recall selection form" on which employees designated the jobs to which they preferred to be recalled. In February 1984, the respondent announced that it would reinstate employees pursuant to two paragraphs of its November proposal, which prescribed certain conditions for recall. Thereafter, the respondent recalled employees in a manner which was significantly different from its November 1983 proposal and from the parties' December 1983 agreement.

Overruling the judge, who had dismissed this unilateral change allegation, the Board found that the February 1984 change violated Section 8(a)(5). Although it agreed with the judge that the parties had reached an impasse in the negotiations regarding the procedure for reinstating employees, it noted that changes that an employer makes on impasse must be reasonably encompassed within the employer's pre-impasse proposals and may not differ substantially from earlier agreements by the parties on the subject. Because the recall procedure implemented by the respondent in February 1984 differed significantly from its own November 1983 proposal and from the parties' agreement to use the "recall selection form," it violated Section 8(a)(5), the Board held.

4. Continuing Bargaining Obligation

a. Hiatus in Operation

On remand from the United States Court of Appeals for the Third Circuit,[28] the Board reversed its prior decision in *Morton Development Corp.*[29] and held that the respondent employer was obligated to recognize and bargain with the collective-bargaining representative of its service and maintenance employees.[30]

From 1979 until June 1985, the respondent operated a facility which provided intermediate care for mentally retarded adults. In June 1983, the Board certified the union as the exclusive bargaining agent for the respondent's service and maintenance employees. Thereafter, the respondent and the union entered into a collective-bargaining agreement which was effective by its terms from March 30, 1984, to March 28, 1985. The latter date was subsequently extended to June 30, 1985. When the respondent decided to close its facility, the parties bargained over the effects of the closure on the bargaining unit employees. The facility was closed from July through October 1985. On November 6, 1985,

[28] Remanded sub nom. *Hospital Employees District 1199P v. NLRB*, 864 F.2d 1096 (1989).
[29] 287 NLRB 385 (1987).
[30] 299 NLRB No. 94 (Chairman Stephens and Members Cracraft and Devaney).

the respondent reopened the facility as a skilled nursing home under the name Praxis Nursing Home.

When it reopened, Praxis hired an initial complement of employees, the majority of whom were former bargaining unit employees of the intermediate care facility. The union demanded recognition, but the respondent refused to recognize and bargain with the union. The respondent argued that the nursing home was an entirely different business from the intermediate care facility and that employee sentiment regarding union representation must have changed. It did not argue that its refusal to recognize and bargain with the union was based on a "good faith doubt" of the union's majority status.

In its supplemental decision, the Board relied on *Sterling Processing Corp.*,[31] which was decided subsequent to the Board's initial decision in this case, and determined that the respondent was not legally justified in refusing to recognize and bargain with the union. In so doing, the Board reasoned that the temporary, 4-month cessation of the respondent's operation of a residential care facility, its short-lived plan to sell the facility, and the differences between the respondent's prehiatus and posthiatus operations were not so significant in their impact on employees as to justify the employer's refusal to bargain with the union. Thus, the Board found, as stated by Member Cracraft in her dissent to the original Board decision (287 NLRB 385):

> In the end, the Respondent continued to provide residential health care albeit under different governmental regulations and to a different type resident.

b. Spinoff of Operation

In *Coca-Cola Bottling Co. of Buffalo*,[32] the administrative law judge found, and the Board agreed, that the respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize Teamsters Local 588 as the collective-bargaining representative of its employees employed at its Orchard Park, New York facility, and by refusing to apply to the latter employees the terms and conditions of its contract with the union covering warehouse and production employees employed by the respondent at its Tonawanda, New York facility. However, in agreeing with the judge, the Board said that this case did not involve an accretion issue. Thus, it did not rely on the judge's finding that the Orchard Park employees constituted an accretion to the Tonawanda unit. Instead, the Board concluded that the Orchard Park facility constituted "an extension of, or a spinoff from," the respondent's Tonawanda facility.

Prior to July 1988, the respondent operated a production and warehouse facility in Tonawanda from which it produced and

[31] 291 NLRB 208 (1988).
[32] 299 NLRB No. 152 (Chairman Stephens and Members Cracraft and Devaney).

distributed soft drink products. The union represented the respondent's 25 production and warehouse employees at the Tonawanda facility. In July 1988, the respondent opened the Orchard Park facility as a "small satellite warehouse facility" to facilitate the distribution of its products to existing customers. The respondent transferred approximately 30 percent of its Tonawanda accounts to Orchard Park, and staffed it with four employees, three of whom were formerly employed at Tonawanda. Overall managerial control over the operations of the Orchard Park warehouse facility and over its employees, however, remained vested in Tonawanda. For example, the daily work assignments for Orchard Park employees, as well as the "load maps" which employees followed in preparing their deliveries, originated in Tonawanda. Similarly, all hiring decisions for the Orchard Park facility, and decisions involving pay raises, vacations, and other benefits for the Orchard Park employees were made in Tonawanda. Additionally, the vehicles and other equipment used at Orchard Park were serviced at Tonawanda.

On these facts, the Board concluded that the Orchard Park warehouse facility did not operate as a new facility, but instead functioned "simply as an extension of the Respondent's main warehousing operations at Tonawanda." For these reasons, the Board found, as it did in *Rice Food Markets*,[33] that accretion principles did not control here. It further found that the respondent had not demonstrated that the Orchard Park employees were sufficiently dissimilar from the Tonawanda employees to justify removing them from the bargaining unit at the Tonawanda facility. Instead, the Board explained, the evidence revealed a strong community of interests between the two groups of employees. In this regard, the Board noted that the Orchard Park employees performed basically the same work performed by the Tonawanda unit employees, received substantially the same wages and benefits as did the Tonawanda unit employees, and had some degree of regular contact with each other.

Accordingly, the Board found that the Orchard Park employees were at all relevant times part of the bargaining unit represented by the union at Tonawanda, and that the respondent unlawfully refused to recognize and bargain with the union as the representative of the Orchard Park employees, and to apply to the latter employees the terms of the parties' contract.

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[33] 255 NLRB 884 (1981). In that case, the Board found, in agreement with the judge, that the transfer by the employer, a retail food store chain, of its liquor sales departments from its food stores to adjacent liquor stores under the control of a wholly owned subsidiary, was merely a spinoff from the employer's food stores operation. The Board there agreed with the judge's findings that accretion principles were not "precisely applicable" because the "new" facilities in question were in fact not wholly new either in function, staffing, or location, and "a division of an existing facility cannot and should not be viewed in precisely the same manner as the addition of a new facility or facilities."

5. Other Issues

In *Brown & Sharpe Mfg. Co.*,[34] the Board held that certain allegations of bad-faith bargaining by the respondent were barred by Section 10(b) of the Act. The Board further held that the respondent did not violate Section 8(a)(1) and (5) by refusing to reveal to the union the names of strike replacements who had been terminated.

The underlying charges that the respondent engaged in surface bargaining by insisting, without valid economic considerations, on certain proposals as absolute, without which it could not reach any agreement, were dismissed by the Regional Director because the investigation showed that the respondent's proposals were based on unlawful business considerations. Approximately 2 years later, the General Counsel reinstated the charges in light of documents generated by the respondent's steering committee in preparations for contract negotiations which were discovered during the investigation of a new unfair labor practice charge concerning the respondent's former industrial relations director.

The General Counsel argued that under the rationale of *Ducane Heating Corp.*,[35] the respondent's failure in the initial investigation to disclose documents which contradicted its assertion that its proposals were legitimate amounted to fraudulent concealment of operative facts warranting the tolling of the 10(b) limitations period. The Board, however, following the analytical approach of *Duff-Norton Co.*,[36] held that evidence allegedly fraudulently concealed must sufficiently support a charge before it can be used as a basis for extending the 10(b) period. After reviewing the evidence in a light most favorable to the General Counsel's position, the Board found that it did not support a finding that the respondent advanced proposals as genuine absolutes when it actually did not consider the proposals to be important to its operations. The Board concluded that the evidence, therefore, did not warrant the conclusion that the respondent concealed the operative facts pertaining to its bargaining intentions.

Regarding the employer's refusal to provide the union with the names of terminated strike replacements, the Board found that the respondent had a substantial reason for withholding the names of strike replacements who had been terminated in light of the evidence of widespread violence. The Board stated, "With such evidence of violence directed against strike replacements, occurring not only at the picket line but at their homes and other places away from the plant, we find that there is a clear and present danger that violent action might be taken against those who replaced strikers regardless of whether they continued to work or had been terminated."

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[34] 299 NLRB No. 89 (Chairman Stephens and Members Cracraft and Devaney).
[35] 273 NLRB 1389 (1985), enfd. mem. 785 F.2d 304 (4th Cir. 1986).
[36] 275 NLRB 646 (1985).

D. Union Interference with Employee Rights

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

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legtimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule that "invades or frustrates an overriding policy of the labor law."[37] During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union action and the types of those actions protected by the proviso to that section.

1. Restriction on Resignation

In *Graphic Communications Local 458 (Noral Color)*,[38] the Board panel unanimously agreed with the administrative law judge that, inter alia, the respondent union violated Section 8(b)(1)(A) of the Act by refusing to accept the resignations from union membership submitted by employees King, Clark, and Wayne, but that the respondent union did not violate Section 8(b)(1)(B).

In finding that the respondent did not unlawfully refuse to accept the resignations submitted by the employer-representatives, the Board found no evidence that would tend to show that the respondent's mere refusal to accept the resignations of the employer-representatives, without more, had or reasonably might have had an adverse effect on the performance of their 8(b)(1)(B) duties, and that any potential adverse effect on their performance of such duties stemming from the respondent's refusal to accept their resignations was too speculative, hypothetical, and abstract to support a conclusion that, by refusing to accept these resignations, the respondent restrained or coerced the employer in its selection of its representatives for the purposes of collective bargaining or grievance adjustment, in violation of Section 8(b)(1)(B). In dismissing this allegation, the Board relied on *Bir-*

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

[38] 300 NLRB No. 2 (Members Devaney and Oviatt; Member Cracraft concurring in part and dissenting in part).

mingham Printing Pressmen Local 55 (Birmingham News),[39] which had overruled in pertinent part *Typographical Union (Register Publishing)*.[40]

Also in this case, the Board panel majority, relying on the majority opinion in *Food & Commercial Workers Local 81 (MacDonald Meat)*,[41] found that the respondent did not violate Section 8(b)(1)(A) by expelling employees King, Clark, and Wayne from membership because of their failure to pay union dues and assessments following the respondent's unlawful rejection of their resignations from union membership.

In dismissing this allegation, the majority relied on *MacDonald Meat* for the propositions that expelling (or suspending) from membership an individual who has already signified his desire to quit the organization from which he is being expelled (or suspended) is arguably less coercive than fining such an individual; is precisely the kind of action that Congress intended to permit unions to take with relative impunity under Section 8(b)(1)(A)'s proviso protecting a union's right to set its own rules for acquisition or retention of membership; and is a logical corollary of a member's right to resign—which right the respondent violated in the instant case.

In finding that the respondent did not unlawfully expel the employees in question from union membership for their failure to pay dues and assessments following the respondent's unlawful rejection of their resignations from union membership, the majority noted that the respondent did not threaten to take any action against these employees directly to collect the dues and assessments in question, or to impose on them a monetary penalty for their failure to pay.

In dissent, Member Cracraft relied on Chairman Dotson's and her joint dissenting opinion in *MacDonald Meat*, and found that the respondent violated Section 8(b)(1)(A) by expelling the employees from union membership because of their failure to pay dues and assessments following their resignations from the union. Member Cracraft found that by expelling the employees for nonpayment of postresignation dues, the respondent was unlawfully refusing to acknowledge the effectiveness of their resignations, in violation of Section 8(b)(1)(A).

The Board panel in this case unanimously found that the respondent union did not violate Section 8(b)(1)(B) by expelling employer-representatives Evola and Slattery from union membership because of their failure to pay dues and assessments following their resignations from the union. The Board found that this was purely an internal union matter, and that, in any event, because the union did not threaten to take any other punitive action against the employer-representatives, or make any further

[39] 300 NLRB No. 1 (Members Cracraft, Devaney, and Oviatt).
[40] 270 NLRB 1386 (1984).
[41] 284 NLRB 1084 (1987).

attempts to collect the employer-representatives' postresignation dues, the respondent's expulsion of the employer-representatives did not tend to restrain or coerce the employer in its selection of representatives for the purposes of collective bargaining or the adjustment of grievances within the scope of Section 8(b)(1)(B).

Finally in this case, the Board panel unanimously found that the respondent violated Section 8(b)(1)(A) and (2) by requesting that the employer discharge employees King, Clark, and Wayne because of their failure to pay dues and assessments following their resignations from the union, where the collective-bargaining agreement had expired and the union-security clause therein was no longer in effect at the time of the respondent's request for the discharge of these employees.

In finding this violation, the Board rejected the judge's finding that the respondent's requests for the discharge were an obvious mistake because the union-security provisions had expired months before, and the respondent notified the employer that the requests for discharge were in error. In rejecting these exculpatory findings by the judge, the Board found that it would not be reasonably obvious to the employees that the respondent's requests for their discharge were inadvertent mistakes and that the respondent did not promptly notify the employees that its requests for their discharge were an error and that it had retracted them.

The Board did, however, find that the respondent did not violate Section 8(b)(1)(B) by requesting that the employer discharge employer-representatives Evola and Slattery because of their failure to pay union dues and assessments following their resignations from the union. Unlike the situation surrounding the 8(b)(1)(A) violation based on the coercive effects on the employees of the respondent's request for their discharge, the Board found that any violations of Section 8(b)(1)(B) that might be based on the respondent's request for the discharge of the employer-representatives were in any event promptly and fully cured vis-a-vis the employer by the respondent's quick repudiation and retraction of its discharge requests. Thus, the Board found it unnecessary to pass on the question of whether the respondent's requests for the discharge of the employer-representatives would have violated Section 8(b)(1)(B) in the absence of the respondent's curative steps.

2. Hiring Hall Operation

In *Laborers Local 423 (Great Lakes Construction)*,[42] the Board affirmed an administrative law judge's decision dismissing complaint allegations that the union violated Section 8(b)(1)(A) of the Act by operating its exclusive hiring hall under procedures re-

[42] 298 NLRB No. 68 (Chairman Stephens and Members Cracraft and Devaney).

quiring individuals to be physically present in order to maintain their positions on the referral list.

In so ruling, the Board endorsed the judge's interpretation of *Iron Workers Local 505 (Snelson-Anvil)*,[43] that there is no per se rule proscribing a union's reliance on physical presence in the hiring hall as a basis for referrals. Rather, a violation in a hiring hall arrangement requires a showing that the union ignored objective criteria or standards for referral and thereby permitted arbitrary preferences for certain classes of individuals. No such showing was found in this case.

The Board noted that the language in *Snelson* is susceptible to a contrary construction. The General Counsel had relied on the following language in basing her case: "use of this criterion, [physical presence] *without more* falls short of the objective nondiscriminatory standard which the Board has held must be the basis for hiring hall referrals." The Board emphasized that it is only when physical presence alone is the basis for referral that it may be found to be a nonobjective, unlawful criterion.

3. Union Constitutional Provision

In *Plumbers (Brinderson-Newberg)*,[44] a Board panel held, on the basis of a stipulated record, that the unions violated Section 8(b)(1)(A) of the Act by maintaining a provision in the International union's constitution which unconditionally required the payment of fines and loans before dues, while Locals 631 and 44 were parties to collective-bargaining agreements that contained union-security clauses which provided that the bargaining representative could seek the discharge of an employee for nonpayment of dues.

The General Counsel conceded that the charging party, Michael L. Schmidt, did not, at the time of the stipulation of facts in the instant case, work under a contract containing a union-security provision and that none of the respondents had attempted to secure his discharge for nonpayment of the fine in question. In arguing that the Board should nevertheless find a violation, the General Counsel relied primarily on the effect of the conjunction of the constitutional provision and the union-security clauses on employees covered by *other* collective-bargaining agreements maintained by the respondent locals. As case support, the General Counsel cited *Elevator Constructors Local 8 (San Francisco Elevator)*.[45] Thus, according to the General Counsel's theory, the fear that the coexistence of such provisions reasonably tended to induce reflected an unlawful use of job-related coercion to enforce internal union obligations.

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[43] 275 NLRB 1113 (1985).

[44] 297 NLRB No. 36 (Chairman Stephens and Members Cracraft and Higgins).

[45] 243 NLRB 53 (1979), 248 NLRB 951 (1980) (order denying reconsideration), enfd. 665 F.2d 376 (D.C. Cir. 1981).

While arguing that *San Francisco Elevator*, above, was distinguishable from this case, the unions also urged the Board to reconsider the holding of the earlier case and to follow instead *Teamsters Local 980 (Neilson Freight)*.[46]

Initially, the Board noted that the fact that Schmidt did not, during the period covered by the stipulation, work under an agreement containing a union-security clause, make the threat to him "more remote, operating only insofar as Schmidt might fear his next referral could place him under an agreement with a union-security obligation, making it imperative that he pay any fines in advance of the onset of the dues obligation to protect his job." However, the Board added, "Schmidt's role as the Charging Party is in no way impaired by the possibility that he is not himself within the class of coerced employees, because any person may file a charge."

In finding the violation, the Board adhered to the ruling in *San Francisco Elevator*, above, that the coexistence of two provisions—a union constitutional provision unconditionally requiring the payment of fines and assessments before dues and a union-security clause in a collective-bargaining agreement—violated Section 8(b)(1)(A) of the Act. The Board stressed that it was not considering circumstances in which a "fines-before-dues clause" is qualified by language precluding its use in tandem with a union-security clause to affect job tenure.

4. Court Collectible Fine

In *Sheet Metal Workers Local 22 (Miller Sheet Metal)*,[47] the Board held that a local union did not violate Section 8(b)(1)(A) of the Act by imposing a court collectible fine on member Richard Zimmerman for violating a provision of its constitution which prohibits dual unionism.

Zimmerman had been a member of Sheet Metal Workers Local 22 since 1963. In 1981, the International union directed that its then Local 22 merge with Local 28. Rather than merge with Local 28, however, the members of Local 22 voted to disaffiliate and form a new, independent Local 22. Zimmerman testified that he was told by leaders of Local 22 in 1981 when the merger first went into effect to pay dues to Local 28 also, and that he has continued paying dues to both unions since that time.

When Zimmerman applied for a teaching position in Local 22's evening school for apprentices in 1987, he was told that he would never become a teacher there as long as he continued paying dues to Local 28. Local 22 subsequently brought charges against Zimmerman, found him guilty of violating its constitutional provision prohibiting dual unionism, and fined and suspended him.

[46] 249 NLRB 46 (1980).
[47] 296 NLRB No. 150 (Members Cracraft, Higgins, and Devaney).

Prior to Local 22's disciplining Zimmerman, Local 28 had been attempting to get employees represented by Local 22 to reaffiliate with Local 28 and the International union. In June 1988, Local 28 engaged in organizational activities and filed petitions to represent employees at some employers with collective-bargaining agreements with Local 22, including Zimmerman's employer.

The judge found that Local 22 had fined Zimmerman to discourage him and other employees from supporting Local 28 in its organizational campaign, and that the fine tended to restrain and coerce employees in their right of free access to the Board and the invocation of Board processes. The Board concluded, however, "there is not a sufficient nexus here between the Respondent's fining of Zimmerman for maintaining dual membership and the invocation of the Board's processes to render the fine unlawful." Section 8(b)(1) was never intended to regulate the internal affairs of unions, the Board observed, including the right to fine or expel members. Noting that there was no evidence that Zimmerman ever did anything in support of Local 28's organizing drive, or that his dual membership was related to the filing of Local 28's election petition, the panel found "any connection between the Respondent's disciplining of Zimmerman and the activities of other employees involved in Local 28's organizational efforts is simply too attenuated to be violative of the Act."

E. Union Coercion of Employer

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

In *Birmingham Printing Pressmen Local 55 (Birmingham News)*,[48] the Board held, contrary to the administrative law judge, that the union did not violate Section 8(b)(1)(B) of the Act by refusing to accept the resignations from union membership of two statutory supervisors.

The judge had found the union's refusal unlawful based on the Board's decision in *Typographical Union (Register Publishing)*,[49] which held that a union's refusing to recognize and give effect to the effective resignations of various supervisor-members of the union violated Section 8(b)(1)(B). The Board reversed the judge's conclusion in this case. In doing so, it stressed that none of the cases expressly relied on in *Register* for finding an 8(b)(1)(B) violation contained any 8(b)(1)(B) issues, and thus, they provided no support for the Board's 8(b)(1)(B) finding there. Further, while noting that *Register* has been cited often

[48] 300 NLRB No. 1 (Members Cracraft, Devaney, and Oviatt).
[49] 270 NLRB 1386 (1984).

and properly in support of a finding that a union's refusal to accept an employee's resignation from membership violates Section 8(b)(1)(A), the Board explained that it has not been cited in support of a finding that the refusal to accept an employer-representative's resignation, without more, violates Section 8(b)(1)(B). Accordingly, the Board overruled *Typographical Union (Register Publishing)*, above, to the extent that it is inconsistent with the decision in this case.

Thus, the Board found that the union's refusal to recognize and give effect to the supervisors' resignations from union membership in the instant case could be found unlawful only if it had been shown that the respondent union thereby coerced and restrained the *employer* in the selection of its 8(b)(1)(B) representatives. Quoting from the U.S. Supreme Court's decision in *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*,[50] the Board noted that "[t]he statute itself reveals that it is the employer, not the supervisor-member, who is protected from coercion by the statutory scheme." The Board said it was not satisfied from the record before it in this case that the General Counsel had established that the union interfered with the *employer's* statutory rights under Section 8(b)(1)(B) merely by refusing to accept the resignations of two statutory supervisors. It therefore concluded that the union had not, as alleged, violated Section 8(b)(1)(B), because the restraint and coercion of the employer in these circumstances was too speculative.

In *Electrical Workers IBEW Local 113 (Collier Electric)*,[51] the Board held that the respondent union did not violate Section 8(b)(1)(B) and 8(b)(3) of the Act by submitting unresolved issues in negotiations for a new collective-bargaining agreement to interest arbitration pursuant to the terms of an expiring multiemployer agreement. In so doing, the Board rejected the contention of Collier, the employer, that the submission was unlawful because Collier had timely withdrawn from the multiemployer bargaining association before commencing negotiations, on an individual basis, with the union.

Beginning in 1977, Collier had been bound by a series of contracts with the union pursuant to a letter of assent by which it designated the Southern Colorado Chapter of the National Electrical Contractors Association (NECA), as its bargaining representative. The last multiemployer agreement to which Collier was bound was effective from June 1, 1985, to May 31, 1986. Before that contract expired, Collier timely withdrew its grant of bargaining authority to NECA and proposed bargaining on an individual basis with the union. The 1985–1986 NECA agreement contained an article providing that either party desiring new terms in a successor agreement should give appropriate

[50] 481 U.S. 573, 594 (1987).

[51] 296 NLRB No. 144 (Members Cracraft, Higgins, and Devaney; Chairman Stephens dissenting).

notice and that any issues left unresolved in negotiations between the parties were to be submitted to a standing interest arbitration panel, the Council on Industrial Relations (CIR).

Collier and the union commenced negotiations for a new agreement, and in the second meeting the union announced that it would submit any unresolved issues to the CIR. Collier objected, stating its view that because of its timely withdrawal from NECA, the interest arbitration clause did not apply to its negotiations with the union. The union subsequently submitted five unresolved items to the CIR over Collier's objection, and the CIR issued an award resolving the issues. The union did not take action to enforce the award in court, but it declined Collier's invitation to meet further to negotiate the issues.

In deciding the lawfulness of the union's actions, the Board first looked to see whether there was "a reasonable basis in fact and law" for the union's position that the interest arbitration clause in the 1985–1986 agreement was intended to apply not only to negotiations between the union and NECA for a new multiemployer agreement, but also to negotiations for a successor agreement between the union and individual employers, such as Collier, who had timely withdrawn from NECA. It then held that, when such a basis exists, policies favoring the stability of collective-bargaining arrangements dictate that the union be permitted to pursue normal contract enforcement remedies. On the other hand, when there is not even an arguable basis for binding an employer to the interest arbitration clause, the union will be found in violation of Section 8(b)(1)(B) and 8(b)(3) if it submits issues to interest arbitration without the employer's consent. The Board further cautioned that, even when there is a reasonable contractual basis, the pursuit of interest arbitration will be deemed lawful only if the union has bargained in good faith before making the submission.

Applying that test to the record before it, the Board held that the union had a reasonable basis for concluding that Collier was bound by the interest arbitration clause in negotiations for a new agreement and that the union therefore acted lawfully in submitting the negotiating issues to the CIR.

Chairman Stephens dissented. He noted initially that the statutory right at stake was an employer's right to select its own bargaining representative. Although he agreed that such a right could be waived, the Chairman would apply a "clear and unmistakeable" standard for determining whether, by signing the letter of assent, Collier had waived the right to choose its own representative for negotiating a separate agreement with the union after Collier had timely withdrawn from NECA. Finding that the clause in question did not meet that standard, the Chairman concluded that the union bargained in bad faith, in violation of Section 8(b)(3), by submitting unresolved issues to the CIR and refusing to continue meeting with Collier's chosen bargaining

representatives, and that this conduct also violated Section 8(b)(1)(B) because it restrained Collier in its selection of its representatives for the purposes of collective bargaining.

F. Illegal Secondary Picketing

The statutory prohibitions against certain types of strikes or boycotts are contained in Section 8(b)(4). Clause (i) of that section forbids unions to strike or to induce or encourage strikes or work stoppages by any individual employed by any person engaged in commerce, or in any industry affecting commerce; clause (ii) makes it unlawful for a union to threaten, coerce, or restrain any such person, where the actions in clause (i) or (ii) are for any of the objects proscribed by subparagraphs (A), (B), (C), or (D). Provisos to the section exempt from its prohibitions "publicity, other than picketing, for the purpose of truthfully advising the public" and "any primary strike or primary picketing."

In *Musicians Local 6 (Hyatt Regency)*,[52] a panel majority of the Board held that a union violated Section 8(b)(4)(ii)(A) of the Act by picketing at a hotel to protest performance of a self-employed "one-man band." Chairman Stephens and Member Oviatt found that an unlawful object of the picketing was to force the musician to join the union.

Don Lewis is a self-employed musician who provided musical services to the hotel. He did not employ any other musicians. While Lewis was performing at the hotel, the union picketed at the hotel with signs directed "to the public" stating that Lewis was a "non-union musician" who was "unfair" to the union. The union never contacted Lewis to have him join the union, and the union knew that Lewis was being paid above the union scale. Before the picketing, the union's attorney sent a letter to the hotel stating that the picketing was directed at Lewis, and asking the hotel to aid in remedying the "problems."

The Board majority found that the language of the union's picket signs was clearly not just to inform the public that music performed by nonunion musicians was being played at the hotel. Further, the majority noted that the union did not complain that Lewis was undermining the union's area standards by being paid less than union scale or otherwise not adhering to area practices. Chairman Stephens and Member Oviatt stated that the message to Lewis was clear—he could either join the union, endure the picketing, or cease performing at the hotel. Coercion of Lewis to join the union was a substantial and foreseeable consequence of the picketing, according to the majority.

Member Cracraft, dissenting, pointed out that in its letter to the hotel, the union expressly disavowed any recognitional objective, and instead stated it would engage in informational picket-

[52] 298 NLRB No. 99 (Chairman Stephens and Member Oviatt; Member Cracraft dissenting).

ing directed to the public. In her view, all of the union's subsequent conduct was consistent with this stated intent to engage in consumer picketing. Member Cracraft added that the picket signs were addressed to the public and the union never contacted Lewis nor otherwise attempted to have him join the union. "In these circumstances, I am unwilling to infer an unlawful object solely from the use of the words 'non-union musician' on the picket signs," she said. Member Cracraft added that the fact that the picketing may have had the potential effect of having Lewis join the union did not establish that the picketing had the unlawful object of coercing him to do so.

G. Organizational and Recognitional Picketing

Section 8(b)(7) of the Act makes it an unfair labor practice for a labor organization which is not the certified employee representative to picket or threaten to picket for an object of recognition or organization in the situations delineated in subparagraphs (A), (B), and (C). Such picketing is prohibited: (A) when another union is lawfully recognized by the employer and a question concerning representation may not be appropriately raised under Section 9(c); (B) when a valid election has been held within the preceding 12 months; or (C) when no petition for a Board election has been filed "within a reasonable period of time not to exceed thirty days from the commencement of such picketing."

A significant case decided by the Board during this past fiscal year raised the question of whether under the particular circumstances a picketing union violated Section 8(b)(7)(C).

In *Laborers Local 1184 (NVE Constructors)*,[53] the Board refused to distinguish between Section 8(f) and Section 9(a) for purposes of applying the limitations on picketing set forth in Section 8(b)(7) of the Act. In so holding, the Board clarified language in earlier decisions that arguably supported the view that unions could not picket for prehire agreements because such agreements are to be entered into "voluntarily."

In January 1988, Laborers Local 1184 began picketing the jobsite of two construction industry employers, indicating on the picket signs that these contractors had no contract with the union. The picketing ceased after about 9 days, after the contractors had filed charges with the Board. The General Counsel argued before the Board that because 8(f) agreements must be entered into "voluntarily," any picketing to secure such an agreement is unlawfully coercive, and therefore the limited right to picketing for recognition set out in Section 8(b)(7)(C) does not permit such picketing in the construction industry.

The Board disagreed, stating that "[t]he specific provisions of Section 8(b)(7) and Section 8(f), as well as their legislative histo-

[53] 296 NLRB No. 165 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).

ries, do not compel the distinction made by the General Counsel" between construction industry picketing and nonconstruction industry picketing. "Because there is no clear manifestation of congressional intent to require such a distinction . . . we find lawful in the construction industry peaceful recognitional and organizational picketing that is lawful in other industries."

The Board distinguished this case from *Operating Engineers Local 542 (Noonan, Inc.)*,[54] which held that a union violated Section 8(b)(7)(C) by picketing a construction industry employer for recognition, because Section 8(f) "makes it clear that a union cannot use coercive techniques, such as picketing, to force an employer to sign [an 8(f)] agreement."

Further, to the extent that the Board's decision in *John Deklewa & Sons*,[55] suggests that an employer may not be coerced through picketing to negotiate or adopt an 8(f) contract, the Board stated that its current decision controls over conflicting statements in *Deklewa*. The Board clarified the statements in *Deklewa*, indicating "that a correct statement of the law is that an employer must be free at all times from any *unlawful* coercion (as manifested for example by *unlimited* picketing), in order to ensure that an agreement entered into pursuant to Section 8(f) is 'voluntary' within the meaning of that Section."

In sum, the Board held that when an employer has employees, "we do not believe that recognitional and organizational picketing by a minority union in the construction industry is prohibited by Section 8(b)(7)(C) of the Act if the picketing meets the time limitations set forth in that section." Accordingly, the Board dismissed the complaint.

In *Service Employees Local 250 (Shoreline South)*,[56] a panel majority of Chairman Stephens and Member Cracraft reversed the administrative law judge and found that the union violated Section 8(b)(7)(C) of the Act by engaging in recognitional picketing of Shoreline South Intermediate Care, Inc. for more than 30 days without filing a representation petition. Member Devaney dissented.

Shoreline's predecessor and the union had a long collective-bargaining relationship before Shoreline purchased and took over operation of the nursing home in 1984. Shoreline hired only a small portion of the existing work force and announced that it planned to operate nonunion. In early November the union began picketing the facility and, on November 26, 1984, it filed unfair labor practice charges alleging violations of Section 8(a)(5), (3), and (1). The General Counsel issued complaint on January 17, 1985. Following a hearing, the administrative law judge recommended dismissing all allegations. The Board af-

[54] 142 NLRB 1132 (1963), enfd. 331 F.2d 99 (3d Cir. 1964).

[55] 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

[56] 300 NLRB No. 17 (Chairman Stephens and Member Cracraft; Member Devaney dissenting).

firmed that decision on September 30, 1985.[57] The union continued picketing. On October 23, 1985, Shoreline filed the instant unfair labor practice charge and on October 31, 1985, the union filed an election petition.

Relying on the principles set forth in *Hod Carriers Local 840 (Blinne Construction)*,[58] and *Teamsters Local 239 (Stan-Jay Auto Parts)*,[59] the majority held that while the union's picketing was privileged during the pendency of its 8(a)(5) allegations, once the Board rendered a determination of no merit to the allegations and dismissed the complaint, the union was required to comply with the time limits of Section 8(b)(7)(C) and file a representation petition within 30 days or to cease its picketing. By failing to file a petition until the 31st day following the Board's decision, the union violated the Act.

Agreeing with the majority that the union was under no obligation to file a petition prior to the Board's September 30, 1985 ruling on the 8(a)(5) complaint, Member Devaney nevertheless would have dismissed the complaint, reasoning that the 30-day filing time limit of Section 8(b)(7)(C) should not begin to run on the date the Board's decision issued, but rather on the date the union received that decision.

In *Laborers Local 98 (Fisher Construction)*,[60] the Board held that picketing to compel renewal of an expired 8(f) agreement or to compel bargaining for a successor 8(f) agreement after the expiration of the contract and after recognition had been withdrawn does not violate Section 8(b)(7)(C) as long as the picketing is within the reasonable time limitations set forth in the latter section of the Act.

Fisher Construction, Inc. is an employer engaged primarily in the building and construction industry. It entered into successive collective-bargaining agreements with the respondent, Laborers Local 98. These agreements, the last of which expired by its terms on April 30, 1987, were all authorized by Section 8(f). Thereafter, the parties were unable to reach agreement on a new contract. The company then withdrew recognition from the union, and notified its employees that changes would be in effect for new jobs after July 1, 1987. The union picketed projects at which the company was working for 16 days. The respondent union acknowledged at the hearing that the picketing was to continue the bargaining relationship.

The Board adopted the administrative law judge's recommendation to dismiss the complaint, relying on *Laborers Local 1184 (NVE Constructors)*.[61] There, the Board found that it is not un-

[57] 276 NLRB 913.
[58] 135 NLRB 1153 (1962).
[59] 127 NLRB 958 (1960).
[60] 296 NLRB No. 166 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).
[61] 296 NLRB No. 165 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).

lawful for a union to picket an employer for recognition within the reasonable time limitations set forth in Section 8(b)(7)(C), even when an object of that picketing is to seek to establish initial 8(f) recognition. Although the picketing in this case was for a different objective, the Board explained, the same result was warranted. In this regard, the Board noted that if a nonconstruction industry employer lawfully withdrew recognition from a minority nonconstruction industry union after the expiration of a contract, that union could lawfully picket the employer for recognition for a reasonable time, not to exceed 30 days. This follows even though the employer and union would violate Section 8(a) and (b) of the Act if the employer granted recognition to a minority nonconstruction union and the parties entered into a contract. In the absence of clear congressional directive from the statute, the Board said it declined to treat building and construction industry unions with less favor by applying a different standard to their recognitional picketing from that applied to unions in other industries.

In *Operating Engineers Local 12 (Sequoia Construction)*,[62] the Board held that the respondent's 2-day picketing of a construction industry subcontractor to force or require the latter to enter into an 8(f) collective-bargaining agreement did not violate Section 8(b)(7)(C) of the Act. Accordingly, the Board dismissed the complaint.

The charging party, Sequoia Construction, Inc., is a concrete contractor whose employees are represented by four different labor organizations—the Laborers, Millwrights, Carpenters, and Cement Finishers. Sequoia had never had a collective-bargaining agreement with the respondent, Operating Engineers Local 12. In August 1987, 1-1/2 years before the picketing that gave rise to the charges in this case, the respondent picketed Sequoia to force Sequoia to enter into a collective-bargaining agreement which provided for the employment of the respondent's members to operate certain cranes and other equipment. Although Sequoia did not enter into a collective-bargaining agreement with the respondent at that time, it did agree to subcontract crane work to an employer who had a contract with the respondent. Thereafter, Sequoia failed to adhere to this agreement.

In October 1988, the respondent had discussions with a signatory contractor concerning proposed changes in contract language and the Las Vegas construction projects then in progress within the respondent's jurisdiction, including the Imperial Palace project where Sequoia was the concrete subcontractor. The respondent asked the signatory contractor to contact the president of Sequoia and inform him of the new language in an effort to have him sign an agreement. However, Sequoia refused to sign any agreement. Two months later, on December 6, the

[62] 298 NLRB No. 89 (Chairman Stephens and Members Devaney and Oviatt).

respondent established a picket line at two projects at which Sequoia was performing work. The picketing ended the next day.

In adopting the administrative law judge's recommendation to reject the General Counsel's theory that the picketing involved here was void from its inception,[63] the Board relied on its decision in *Laborers Local 1184 (NVE Constructors)*,[64] which issued subsequent to the judge's decision and which held that a minority union's recognitional and organizational picketing of a construction industry employer is not barred by Section 8(b)(7)(C) if the picketing is within the time limitations set forth in that section, that is, a "reasonable period of time" not to exceed 30 days.[65] The Board rejected the charging party's exception asserting, for the first time, that the picketing was designed to coerce the charging party into complying with a subcontracting agreement that violated Section 8(e), and that the picketing to enforce that agreement was an independent violation of the Act. The Board noted that the General Counsel, not the charging party, determines the theory of the case, and that the charging party's analysis of the picketing substantially differed from the theory of the case relied on by the General Counsel and litigated by the parties.

H. Jurisdictional Dispute Proceedings

In *Laborers Local 731 (Slattery Associates)*,[66] a panel majority of the Board held that a union's filing of a grievance to enforce the subcontracting clause in its collective-bargaining agreement with a construction industry employer constitutes a competing claim for work by a rival group of employees and that the dispute, therefore, was properly before the Board for determination.

A general contractor which had a collective-bargaining agreement with Iron Workers subcontracted the removal of concrete slabs at a New York jobsite to a contractor which assigned the work to employees represented by Laborers. Iron Workers then pursued a grievance against the general contractor alleging that the subcontracting of the work violated the union signatory subcontracting clause of the general contractor's collective-bargaining agreement with Iron Workers.

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[63] In *John Deklewa & Sons*, 282 NLRB 1375, 1386 (1987), enfd sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), the Board, commenting on the continuing relationship between a construction industry employer and union which begins on their entering into an 8(f) agreement, noted:

> Even absent an election, upon the contract's expiration, the signatory union will enjoy no majority presumption and either party may repudiate the 8(f) relationship. The signatory employer will be free, at all times, from any coercive union efforts, including strikes and picketing, to compel the negotiation and/or adoption of a successor agreement.

According to the General Counsel's theory of the case, this language makes any recognitional picketing of an employer in the construction industry void from its inception.

[64] 296 NLRB No. 165 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).

[65] See also *Laborers Local 98 (Fisher Construction)*, 296 NLRB No. 166 (Chairman Stephens and Members Cracraft, Higgins, and Devaney).

[66] 298 NLRB No. 111 (Members Cracraft and Devaney; Chairman Stephens dissenting).

The majority rejected Iron Workers' argument that its grievance against the general contractor did not constitute a competing claim for the work by a rival group of employees. Instead, the majority found that "the dispute here is a traditional jurisdictional dispute in which two unions have collective-bargaining agreements and each union claims its contract covers the same work."

The majority further found that the determination of the jurisdictional dispute does not shield contractors who violate union signatory subcontracting clauses because subsequent to the 10(k) proceeding, a union is free to pursue its contractual claim against the general contractor under the holding of *Carpenters Local 33 (Blount Bros.)*.[67] The majority also found that determination of the dispute was not a waste of time and expense: "While the losing party may pursue its contractual claim under *Blount Bros.*, it is not free to engage in any type of coercive conduct in support of its position."

In dissent, Chairman Stephens would not have treated Iron Workers' limited action of pursuing a contractual grievance as a competing claim for work. He believed that conflicts arising from the alleged breach of a union signatory subcontracting clause should be excluded from the definition of a 10(k) dispute. He stated that "A general contractor forced to defend in court against an arguably meritorious allegation that it had breached a union signatory subcontracting clause is not a helpless employer caught in the kind of jurisdictional dispute that concerned Congress when it enacted Sections 8(b)(4)(D) and 10(k) of the Act."

Chairman Stephens further observed that the construction industry proviso to Section 8(e) granted an exemption to construction industry unions for the negotiation and enforcement of union signatory subcontracting clauses and that such clauses may be rendered a nullity "if the act of seeking to enforce them by noncoercive means can be thwarted by the interposition of a 10(k) proceeding . . . ."

In *Electrical Workers IBEW Local 103 (T Equipment Corp.)*,[68] the Board quashed the notice of a 10(k) hearing, holding that there is no traditional jurisdictional dispute where the real nature of the dispute is to retrieve jobs that had been subcontracted, and not to acquire new work.

Buffalo Electric Construction, Inc., whose employees were represented by Electrical Workers Local 103 (IBEW), subcontracted the unloading, handling, and distribution of precast concrete conduits/electrical raceways at the Massachusetts Bay Transit Authority Cabot Yard to the T Equipment Corp., whose

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[67] 289 NLRB 1482 (1988). The Board held that the post-10(k) pursuit of a grievance against a general contractor for breach of a subcontracting clause does not constitute coercion within the meaning of Sec. 8(b)(4)(ii)(D).

[68] 298 NLRB No. 133 (Members Cracraft and Devaney; Chairman Stephens concurring in the result).

employees were represented by Laborers. After inspecting the jobsite, IBEW's business manager informed the Buffalo project manager that the work being performed by Laborers was electrical work and that the Laborers should stop performing it. Later, Buffalo decided it agreed with IBEW and ordered T Equipment by mailgram to cease the work.

T Equipment continued to perform the disputed work, however. The IBEW business manager cited Buffalo a collective-bargaining provision prohibiting the "subletting, assigning or transfer" of work, and told Buffalo that their "contract may be cancelled." Buffalo again instructed T Equipment to stop performing the disputed work. Following a subsequent demand for arbitration of its contract claim by IBEW, Buffalo and T Equipment rescinded their contract by mutual agreement, and IBEW workers completed the work.

A panel majority of Members Cracraft and Devaney found the evidence insufficient to establish a traditional jurisdictional dispute cognizable under Section 10(k). The majority found that "the record establishes that electrical workers had historically performed for Buffalo the same type of work that is in dispute; that Buffalo essentially recognized the legitimacy of Local 103's contractual claim; and that Local 103 essentially sought work for the unit it represented at Buffalo and not elsewhere." Thus, the majority concluded the real nature of the dispute was to retrieve subcontracted jobs, rather than to acquire new work, and, accordingly, there was no reasonable cause to believe that Section 8(b)(4)(D) had been violated.

Chairman Stephens concurred in the result that the notice of the 10(k) hearing be quashed.

I. Deferral to Grievance/Arbitration Procedure

The jurisdiction of the Board over unfair labor practices is exclusive under Section 10(a) of the Act and is not "affected by any other means of adjustment or prevention that has been or may be established by agreement, law or otherwise." However, consistent with the congressional policy to encourage utilization of agreements to arbitrate grievance disputes, the Board, in the exercise of its discretion, will under appropriate circumstances withhold its processes in deference to an arbitration procedure.

The Board has long held that when an issue presented in an unfair labor practice proceeding has previously been decided in an arbitration proceeding, the Board will defer to the arbitration award if the proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act.[69]

[69] *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955).

In a supplemental decision in *Cone Mills Corp.*,[70] the Board overruled its prior decision in this proceeding[71] and decided not to defer to an arbitration award that set aside the discharge of an employee and ordered reinstatement without backpay. The Board found that the award was, under the circumstances, repugnant to the purposes and policies of the Act under the standards for deferral set forth in *Spielberg Mfg. Co.*,[72] and *Olin Corp.*[73]

Union Steward Marie Darr and other employees circulated a petition protesting the respondent's discharge of three union stewards. Around the same time, Darr protested and verbally grieved the respondent's revision of break schedules on the grounds that it limited her ability to perform her union steward duties. Shortly thereafter, one of the respondent's supervisors confiscated the petition. Darr repeatedly asked the supervisor to return the petition, but he refused. A few hours later, Darr and some other employees went to the supervisor's office to attempt again to get the petition returned. Darr was not on her scheduled breaktime, although the other employees who accompanied her were. After the supervisor once again refused to return the petition, he told her that her failure to follow her scheduled breaktime constituted a flagrant failure to follow instructions. He then suspended Darr and instructed her to go home. Darr refused to go home, and returned to her job. Subsequently, the supervisor again asked Darr to leave the plant, and Darr again refused. In the meantime, the department head decided that Darr should be left alone. Darr finished her shift and then left the plant.

Two days later, Darr was discharged because she had altered her scheduled break without permission, and had refused to leave the plant when ordered to do so following her suspension.

Darr's discharge grievance went to arbitration. The arbitrator found that Darr's suspension arose out of her efforts to process a complaint under the collective-bargaining agreement, and not out of her 15-minute deviation in her break schedule, which the arbitrator found did not interfere with the respondent's operations. However, the arbitrator found that, even though Darr's suspension was improper at the time, she was nevertheless obligated to leave the plant, and that her failure to obey her supervisor's direct order to leave the plant was insubordination. Because the arbitrator also found that the conduct and accusations of Darr's supervisor had contributed to and provoked Darr's insubordination, the arbitrator concluded that Darr should be reinstated, but without backpay.

After considering the contractual "just cause" issue, the arbitrator next addressed the unfair labor practice issues of whether

[70] 298 NLRB No. 70 (Chairman Stephens and Members Cracraft, Devaney, and Oviatt).
[71] *Cone Mills I*, 273 NLRB 1515 (1985).
[72] 112 NLRB 1080 (1955).
[73] 268 NLRB 573 (1984).

Darr's discharge was an unlawful reprisal for engaging in Section 7 protected concerted activities and whether it involved discrimination to discourage union activities. He found that the respondent's plan to stifle Darr's petition preparation activity violated Section 8(a)(1). He further found that the respondent's primary motive in suspending Darr was not to punish her for her 15-minute deviation in her break schedule, but to stop her vigorous pursuit of grievances and her petition preparation activity. The arbitrator speculated that the Board probably would order reinstatement and backpay for Darr.

The Board's Regional Director did not defer to the arbitrator's award, and issued a complaint alleging that Darr had been discharged in violation of Section 8(a)(1) and (3) of the Act.

An administrative law judge found the arbitrator's award to be clearly repugnant to the purposes and policies of the Act, and thus not appropriate for deferral. He further found that the respondent had unlawfully suspended and later discharged Darr, and he recommended that she be reinstated with backpay.

In *Cone Mills I*, above, the Board reversed the judge, deferred to the arbitrator's award, and dismissed the complaint allegation that Darr had been discharged in violation of the Act.

On review, the U.S. Court of Appeals for the District of Columbia Circuit found the Board's justification for deferring to the arbitrator's award to be inadequate, and remanded the case to the Board for further consideration (or explanation) of why deferral was appropriate.[74]

On remand, the Board found that the arbitrator's award was clearly repugnant to the purposes and policies of the Act under the *Olin* standard, namely, that the award was not susceptible to an interpretation consistent with the Act.

After reviewing the arbitrator's factual findings, the Board found that the arbitrator's award was inherently inconsistent. More specifically, the Board found that the arbitrator's conclusion that Darr's refusal to leave the plant constituted insubordination warranting discipline simply could not be reconciled with the arbitrator's findings that Darr's conduct was provoked by the respondent's own wrongful actions, and was condoned by the respondent. Given these findings by the arbitrator, the Board found that Darr's refusal to leave the plant could not properly be the basis for discipline. The Board found nothing in the arbitrator's award that provided a rational basis for Darr's discharge, apart from her union activities, or that recounted misconduct that would justify withholding her backpay. Absent any such misconduct, the Board found that the arbitrator's refusal to award Darr backpay had the effect of penalizing her for engaging in those protected concerted and union activities that the arbitrator found

[74] *Darr v. NLRB*, 801 F.2d 1404 (D.C. Cir. 1986).

precipitated her discharge, a result the Board found to be plainly contrary to the Act.

In a footnote, the Board noted that, in declining to defer to the arbitrator's award under the circumstances of this case, it was not ruling or implying that it would automatically refuse to defer in all situations involving arbitration awards that provide incomplete make-whole remedies or remedies not otherwise totally consistent with Board precedent. Member Devaney noted that, in furtherance of the national labor policy favoring voluntary arbitration of disputes, he would not find that to warrant deferral an arbitrator's award must in all circumstances include a complete make-whole remedy. However, he similarly concluded that deferral was unwarranted based on the facts here.

In *Inland Container Corp.*,[75] a Board panel granted the respondent's Motion for Summary Judgment and deferred the alleged unilateral implementation of a drug testing policy to the parties' grievance and arbitration procedure.

The complaint alleged that the respondent violated Section 8(a)(1) and (5) by implementing a drug testing program for its employees without bargaining with, and without the consent of, the Machinists and thereby unilaterally modifying the terms of the parties' existing bargaining agreement.

In its motion, the respondent contended that the unfair labor practice allegations in the complaint should be deferred to the parties' contractual grievance and arbitration procedure pursuant to *Collyer Insulated Wire*[76] and *United Technologies Corp.*[77] The respondent argued that the alleged unilateral change concerned the implementation of a company rule and the bargaining agreement provided for resolving disputes arising from such rules through the grievance and arbitration procedure.

In response, the General Counsel contended that the bargaining agreement required the union's consent to work rule changes and that the union never consented to the drug testing policy. The General Counsel also contended that deferral was inappropriate because the case did not turn on any dispute over the meaning of a contract provision.

In its decision, the panel found that the General Counsel did not raise any material issues of fact regarding the appropriateness of deferral. Instead, it said the General Counsel's contention was that deferral was inappropriate as a matter of law. The panel stated, "There is no contention or evidence that the grievance and arbitration procedure is incapable of resolving or unlikely to resolve the dispute, or that the Respondent impeded access to the grievance procedure. In these circumstances, we find that, barring any legal impediment, deferral is appropriate."

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[75] 298 NLRB No. 97 (Chairman Stephens and Members Cracraft and Devaney).
[76] 192 NLRB 837 (1971).
[77] 268 NLRB 557 (1984).

The panel rejected the General Counsel's argument that, because the case did not turn on a dispute over a contract provision, deferral was inappropriate. The panel found that, although the Board had not previously been presented with the issue of whether to defer in cases involving implementation of substance abuse or drug testing programs, the Board has deferred in other cases alleging unilateral changes, including *Collyer*, above, the lead deferral case. The panel concluded:

> [W]e find not only that there are no impediments to deferral, but also that deferral will fulfill the Act's mandate to foster the practice and procedure of collective bargaining. Although the complaint alleges that the Respondent has failed to meet its bargaining obligation by unilaterally implementing its substance abuse policy, we find that deferral will foster the Act's mandate by requiring the parties to abide by their agreed-to method of resolving such disputes through the grievance and arbitration procedure and by encouraging them to resolve their dispute through bargaining within the grievance procedure.

In *Postal Service*,[78] a panel majority of the Board, following the Board's earlier decision in *Alpha Beta Co.*,[79] deferred to a settlement of a grievance by charging party McCullough's union and employer. It accordingly dismissed the complaint, which alleged that the respondent employer had suspended McCullough for engaging in protected activities as a shop steward and thereby violated Section 8(a)(3) and (1) of the Act.

In deferring to the settlement, the majority (Members Devaney and Oviatt), following *Alpha Beta*, applied the four-factor test formulated in *Olin Corp.*[80] for deciding whether to defer to arbitral awards. It noted (1) that there was no evidence that the grievance proceedings culminating in the settlement were not fair and regular, (2) that all the parties agreed to be bound, (3) that the contractual issue was "factually parallel to the unfair labor practice issue" and that the General Counsel had not otherwise shown that the unfair labor practice issue was not considered in the settlement process, and (4) that the resolution produced by the settlement was not shown to be repugnant to the Act.

In making the determination as to factual parallels and repugnancy, the majority accepted as true factual assertions in an affidavit submitted by the respondent in support of its Motion for Summary Judgment, because the General Counsel had not disputed any of those assertions. In finding that all the parties had agreed to be bound, the majority found it irrelevant that charging party McCullough had expressed disapproval when the settlement was proposed. Quoting the court opinion enforcing the

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[78] 300 NLRB No. 23 (Members Devaney and Oviatt; Chairman Stephens dissenting).

[79] 273 NLRB 1546 (1985), petition for review denied sub nom. *Mahon v. NLRB*, 808 F.2d 1342 (9th Cir. 1987).

[80] 268 NLRB 573 (1984).

Board's order in *Alpha Beta*, it held that "the Union, as his collective-bargaining agent, was . . . empowered to bind him 'wholly apart from [his] own separate consent.'"[81]

Chairman Stephens, dissenting, would have denied the Respondent's summary judgment motion. He would not defer to a grievance settlement to which the grievant had never agreed, and he observed that in *Alpha Beta* the Board had specifically referred to evidence that the grievants there had not opposed the settlement when it was proposed.[82] The Chairman also disagreed that the Board should accept the respondent's version of the facts as undisputed. He noted that given the apparent test for deferral to settlements under existing Board law, the General Counsel had no reason to dispute the facts asserted in the respondent's affidavit because there was no reason to believe that the Board would reach the other deferral criteria once it determined that the grievant had not agreed to the settlement.

J. Remedial Order Provisions

1. Backpay Matters

On remand, the Board in *Iron Workers Local 111 (Northern States)*,[83] held that make-whole orders are appropriate to remedy union misconduct which causes a severance or interference in an employee's tenure or terms of employment in nonstrike-nonpicketing situations without employer complicity.

The respondent union, without implicating the employer, and without the use of strike or picketing misconduct, had refused to accept properly tendered travel service dues from employees because they were travelers and threatened to file intraunion charges against them in attempting to cause the travelers to quit their job in order to provide jobs for the respondent's own local members.

Based on a stipulated record, the Board found that the respondent's coercive acts caused the travelers to fail to work on several days and ordered the respondent to make whole these employees by paying them backpay.

The Court of Appeals for the District of Columbia Circuit remanded the case to the Board,[84] instructing the Board to explain its rationale, in light of *Colonial Hardwood Flooring Co.*[85] and its progeny, for deciding to award lost wages against the union. In its supplemental decision, the Board decided to adhere to its remedy awarding backpay to the discriminatees injured by the

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[81] 300 NLRB No. 23, slip op. at 6, quoting *Mahon v. NLRB*, supra, 808 F.2d at 1345.

[82] *Alpha Beta*, supra at 1547. The Chairman also noted the Fourth Circuit's view, expressed in *Roadway Express v. NLRB*, 647 F.2d 415, 425 (1981), that "the failure of [an employee] to agree to [a] settlement" is "a good basis for refusal to defer . . . ."

[83] 298 NLRB No. 129 (Chairman Stephens and Member Devaney; Member Cracraft dissenting in part).

[84] 792 F.2d 241 (1986).

[85] 84 NLRB 563 (1949).

respondent's unlawful conduct.[86] It therefore overruled *Colonial Hardwood Flooring Co.*, and its progeny insofar as they rest on the proposition that the Board lacks the power under the Act to provide backpay to employees victimized solely by union misconduct.

However, the Board did not disturb its doctrine first announced in *Colonial Hardwood* and later embraced in such cases as *Operating Engineers Local 513 (Long Construction)*[87] and *Union de Tronquistas Local 901 (Lock Joint Pipe)*,[88] of declining to grant backpay awards for losses attributable to strike or picket line union misconduct directed against employees where there has been no employer culpability. However, the Board found no basis in cases involving loss of jobs or wages for distinguishing between unlawful union conduct that violates Section 8(b)(2) of the Act, in which instances it routinely provides backpay, and union conduct that violates Section 8(b)(1)(A) occurring in the context of nonstrike-nonpicketing situations.

The Board noted that where, as in the instant case, the respondent, without implicating an employer, and without the use of strike or picketing misconduct, causes a severance or interference in an employee's tenure or terms of employment, no policies based on deference to state court resolution of tort claims or Board concerns about the right to strike come into play.

Moreover, the Board reasoned that merely ordering the offending union to cease and desist from its unlawful conduct will neither remove the chilling effect on the victimized employees' willingness to exercise their statutory rights nor restore the status quo ante. The Board concluded that only a backpay remedy can accomplish those ends.

Member Cracraft, dissenting in part, would not order backpay for two traveler foremen because she said the record did not support a finding that they were discriminated against in the manner alleged in the complaint or litigated in the underlying unfair labor practice proceeding.

In *John Cuneo, Inc.*,[89] a panel majority of the Board consisting of Chairman Stephens and Member Cracraft reversed an administrative law judge's finding that an employee automatically forfeited his entitlement to a backpay award by falsifying his job application. However, because the respondent had a policy of not hiring applicants who misstated their employment background, they limited the backpay award to the date the respondent acquired knowledge of the employee's misconduct. Member Oviatt dissented.

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[86] The Board accepted the Court's denial of enforcement of its 8(b)(2) finding regarding the respondent's indirect pressure on the company.

[87] 145 NLRB 554 (1963).

[88] 202 NLRB 399 (1973).

[89] 298 NLRB No. 125 (Chairman Stephens and Member Cracraft; Member Oviatt dissenting).

Contrary to the dissent, the panel majority said, "we do not perceive our order granting limited backpay rights as an abuse of our remedial powers or a potential windfall for [employee John] Brite." Instead, they explained, "we must balance our responsibility to remedy the Respondent's unfair labor practice against the public interest in not condoning Brite's falsification of his employment application." Unwilling to grant an "undue windfall" to either party by awarding full backpay or none at all, the majority terminated Brite's backpay period on the date the respondent first learned of the falsification, since it "probably would not have retained Brite after it learned of his misstatement." This remedy was consistent with the one approved by the Board in *Axelson, Inc.*,[90] a strike misconduct case, they added.

Member Oviatt, dissenting, said he, like the judge, would have denied Brite backpay altogether. He noted that, had the respondent known of Brite's misrepresentation about his employment history, Brite would not have been hired, gone on strike, or subjected to discrimination. Unwilling to condone such dishonesty, Member Oviatt labeled the Board's award "an abuse of [its] remedial powers." If the employer had been "guilty of pervasive or flagrant violations of the Act," said Member Oviatt, "awarding Brite backpay arguably might have some merit on the basis that, as a serious wrongdoer, the Respondent should not be permitted to benefit from its misconduct. There are no pervasive violations of the Act here, however," he noted, adding:

> Rather, the Respondent's violation involved only an arguable interpretation of an unconditional offer to return to work that turned out to be [a] wrong interpretation. That was unlawful, but it did not reflect deep-seated hostility to employee rights or the policies of the Act. The award of backpay to the other strikers who were not returned to work by this Respondent remedies the unfair labor practice and effectively vindicates the policies of the Act.

In a supplemental decision in *P*I*E Nationwide*,[91] a panel majority of the Board adhered to the view that a discriminatee's discharge from interim employment, standing alone, is not sufficient to constitute a willful loss of earnings warranting a reduction in the amount of gross backpay owed the discriminatee.

Patrick Clement, the discriminatee, worked as a driver for Aurora Fast Freight following his unlawful discharge by the respondent. After nearly 4 months of interim employment with Aurora, Clement was discharged for alleged insubordination. The administrative law judge found that the only evidence concerning Clement's discharge by Aurora consisted of a letter from Aurora's president to Clement describing the conduct which as-

[90] 285 NLRB 862 (1987).

[91] 297 NLRB No. 66 (Chairman Stephens and Member Cracraft; Member Devaney dissenting in part).

sertedly gave rise to the discharge. The judge concluded that, by introducing the letter into evidence, the respondent established Clement was discharged for insubordinate conduct and that the discharge constituted a willful loss of earnings. The judge, therefore, recommended offsetting Clement's gross backpay by the amount he would have earned if he had not been discharged by Aurora.

The panel majority of Chairman Stephens and Member Cracraft disagreed with the judge's conclusion, finding no evidence that Clement's discharge "can reasonably be equated with [a] willful loss of earnings," given the circumstances. They noted that the Board "has consistently held that discharge from interim employment, without more, is insufficient to constitute [a] willful loss of employment warranting an earnings offset subsequent to the termination date." Chairman Stephens and Member Cracraft further noted that, although a discharge for cause from interim employment may, under some circumstances, mitigate an employer's backpay obligation, the evidence in this case—a letter which they said constituted hearsay as to the truth of the matters alleged in it—fell "well short of establishing that Clement engaged in deliberate or gross misconduct constituting [a] willful loss of earnings." Therefore, in their view, the judge's reduction of the employer's backpay liability because of Clement's discharge from Aurora was unjustified.

In dissent, Member Devaney agreed with the judge that Clement's discharge from Aurora constituted a willful loss of earnings. He concluded that the respondent's introduction of the letter established a prima facie case, which was not rebutted by the General Counsel, that Clement was discharged from his interim employment for insubordination. In Member Devaney's view, a discharge for insubordination constitutes gross misconduct, which is a basis for reducing a discriminatee's backpay. Thus, he said he would apply the offset formula of *Knickerbocker Plastic Co.*,[92] in cases involving willful losses of interim employment, including both unjustified voluntary resignations and discharges for gross misconduct.

2. Other Issues

In *Concord Metal*,[93] the Board adopted the administrative law judge's decision on remand that Sheet Metal Workers Local 9's strike against the employer was caused or prolonged by unfair labor practices, but disagreed with the judge's suggestion that the Board's proposed remedy for the employer's unlawful unilateral change was too broad and should be reconsidered.

The Board's remedy required that the employer make whole the appropriate funds by remitting the payments unlawfully with-

[92] 132 NLRB 1209, 1215 (1961).
[93] 298 NLRB No. 167 (Members Cracraft, Devaney, and Oviatt).

held after September 21, 1987, the date of the union's certification. The judge questioned this remedy, insisting that because the Board had previously found that there was no contractual relationship between the employer and the union after July 1, 1987, the Board's remedy was too broad.

The judge theorized that because both the trusts' rules and Section 302 of the Act require an "active writing" in order for the employer to be able to make, and the trusts to be able to accept, such payments, the Board's remedy contravened congressional policy. The Board pointed out that it has "consistently held that an expired contract, under which the obligation to make payments to the fringe benefit funds arose, is sufficient to meet the 'written agreement' requirement of Section 302(c)(5)(B)."

In the present case, the Board noted, the parties' collective-bargaining agreement had expired June 30, 1987. That agreement required that the employer make payments to the union's pension plan. After that 8(f) contract expired, the employer repudiated its collective-bargaining relationship with the union, but continued to make the fringe benefit contributions in July and August. In September 1987, after the union was certified as the bargaining representative, the employer unilaterally ceased making the payments.

The Board found that "[i]n these circumstances, where the Respondent voluntarily continued making payments to the union fringe benefit funds that had been contractually required, even after the expiration of the contract and the repudiation of the bargaining relationship, we find that the 'written agreement' requirement has been met." Accordingly, the Board affirmed its original remedy requiring that the employer make whole the fringe benefit funds, and denied the employer's motion to reconsider the remedy.

In one case decided last fiscal year, the Board considered the issue of whether the remedy for the respondent unions' misconduct should be limited to the individuals who were named as discriminatees in the complaint or whether, as the General Counsel urged, it should also encompass any unnamed members against whom the unions took similar unlawful action.

In *Iron Workers Local 433 (Reynolds Electrical)*,[94] the Board agreed with the administrative law judge that the respondents violated Section 8(b)(1)(A) of the Act by fining and otherwise disciplining their members for refusing to join a sympathy strike in contravention of no-strike provisions contained in the respondents' contracts with Reynolds Electrical & Engineering Co. However, the Board modified the judge's proposed remedy to encompass any employee-members who were not named in the complaint but who were similarly situated to the discriminatees

[94] 298 NLRB No. 8 (Chairman Stephens and Members Cracraft and Devaney).

named in the complaint and against whom the respondents took similar unlawful action.

The respondents had contended that, in the absence of evidence to "suggest" that "others" may be similarly situated to the named discriminatees, the remedy should be limited to those individuals named as discriminatees in the complaint. In rejecting that contention, the Board stated: "Where the General Counsel has alleged and proven discrimination against a defined and easily identified class of employees, the Board, with court approval, has found it appropriate to extend remedial relief to all members of that class, including individuals not named in the complaint." The Board then pointed out that in these circumstances the General Counsel is not required at the unfair labor practice hearing to establish the existence of others similarly situated to those individuals named in the complaint "because at this stage of the proceeding the relevant inquiry is into whether there has been discrimination against a defined and easily identified class." It concluded that, "If such discrimination is shown, the question of precisely which individuals comprise the class is properly considered at the compliance stage of the case."

In the instant case, the Board found that the respondents were on notice both from the complaints and the General Counsel's remarks at the hearing that the complaints were not limited to those individuals specifically named in the complaints and that the class of employees encompassed in the remedy sought by the General Counsel was a defined and easily identifiable class, namely, those employees covered by the respondents' contracts with Reynolds who crossed the picket lines in late 1987 and who were fined or otherwise disciplined by the respondents.

The Board further found that leaving the identification of any additional discriminatees to subsequent compliance proceedings would not result in any prejudice to the respondents. Such compliance proceedings, the Board explained, would not establish any additional violations of the Act committed by the respondents, but rather would ensure that all individuals harmed by the unions' misconduct would be made whole. Further, the identification of any additional discriminatees in the compliance proceedings would not result in surprise to the respondents, who already knew the identity of the members who had been unlawfully fined. Finally, the Board said, the respondents would not be foreclosed in the compliance proceedings from litigating the issue of whether any or all of the additional discriminatees named by the General Counsel were in fact similarly situated to those named in the complaints.

VI

Supreme Court Litigation

During fiscal year 1990, the Supreme Court decided one case in which the Board was a party. The Board participated as amicus curiae in one other case.

A. Board's Refusal to Adopt Presumption that Strike Replacements Oppose the Striking Union

In *NLRB v. Curtin Matheson Scientific,*[1] the Supreme Court[2] held that the Board acted reasonably in refusing to adopt a presumption that striker replacements oppose the striking union. The relevant facts are as follows:

During an economic strike by its employees, the company hired 29 permanent replacements to replace the 22 strikers. Shortly thereafter, the union, the certified bargaining representative, ended the strike and made an offer that the strikers would return to work. The company, relying principally on its hiring of the striker replacements, expressed doubt that the union continued to represent a majority of its employees and withdrew recognition from the union. Applying its decision in *Station KKHI,*[3] the Board concluded that the company's reliance on its hiring of striker replacements was insufficient to rebut the presumption of support for an incumbent union. Accordingly, the Board held that the company violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the union. The Fifth Circuit, with one judge dissenting, held that the Board must presume that striker replacements oppose the union and that, accordingly, the company was justified in withdrawing recognition.

The Supreme Court reversed. The Court first noted that the Act's irrebuttable presumption of majority support for a certified incumbent bargaining agent becomes rebuttable after 1 year, and that the Board has held that an employer may rebut the presumption by showing that it has a "good faith" doubt, founded on a sufficient objective basis, of the union's continued majority support. 110 S.Ct. at 1545. The Court also noted that, while the

[1] 110 S.Ct. 1542 (Apr. 17, 1990), revg. 859 F.2d 362 (5th Cir. 1988).

[2] Justice Marshall delivered the opinion of the Court. Justice Rehnquist delivered a separate concurring opinion. Separate dissenting opinions were filed by Justice Blackmun and by Justice Scalia, joined by Justices O'Connor and Kennedy.

[3] 284 NLRB 1339 (1987), enfd. 891 F.2d 230 (9th Cir. 1989).

Board has changed its position over the years on the question, it now holds that it is not appropriate to employ any presumption as to the sentiments toward representation of striker replacements and that their sentiments should be ascertained on a case-by-case basis. Id. at 1548.[4]

The Court found the Board's no-presumption rule to be rational as an empirical matter. For, although replacements often may not favor the incumbent union, the Board could reasonably conclude, in light of its considerable experience, that the circumstances surrounding each strike and each replacement's reasons for crossing a picket line vary sufficiently to prevent any universal generalization. Id. at 1550.

The Court thus rejected the company's contention that the interests of strikers and replacements are necessarily always opposed and that unions inevitably side with strikers over replacements. The Court found that the Board rationally concluded that unions do not invariably demand displacement of all replacements, and the extent to which they do so varies with their bargaining power. Id. at 1551. Moreover, even if the interests of strikers and replacements are at odds during a strike, those interests may converge afterward and replacements are capable of looking past the strike in determining whether they want representation. Accordingly, the Court found the Board's no-presumption rule not inconsistent with its decisions in *Service Electric Co.*[5] and *Leveld Wholesale*,[6] which hold that an employer has no duty to bargain with a union over replacements' terms and conditions of employment during the strike. The Court noted that, while refusing to use a presumption concerning the union sentiments of striker replacements, the Board has not deemed picket line violence or a union's demand that replacements be terminated irrelevant to its evaluation of replacements' sentiments toward the union. 110 S.Ct. 1552–1553.[7]

The Court also found that the Board's no-presumption rule, by furthering stability in the collective-bargaining process, is consistent with the NLRA's "overriding policy" of achieving "industrial peace." Id. at 1553.[8] Thus, it found reasonable the Board's conclusion that the presumption of opposition to the incumbent union could allow an employer to eliminate its bargaining obligation merely by hiring a sufficient number of replacements. It also found reasonable the Board's conclusion that the presumption of opposition to the incumbent union might chill employees' exercise of their statutory right to engage in concerted activity, including the right to strike. For it would confront striking employees not only with the prospect of being permanently re-

[4] Citing *Station KKHI*, supra.
[5] 281 NLRB 633, 641 (1986).
[6] 218 NLRB 1344, 1350 (1975).
[7] Citing *Stormer, Inc.*, 268 NLRB 860 (1984); and *IT Services*, 263 NLRB 1183, 1185–1188 (1982).
[8] Quoting *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987).

placed, but also with the greater risk that they would lose their bargaining representative, thereby diminishing their chance of obtaining reinstatement through a settlement of the strike. Id. at 1553–1554.

B. Concurrent Board and Federal Court Jurisdiction Over Duty of Fair Representation Claims

In *Breininger v. Sheet Metal Workers Local 6*,[9] the Supreme Court[10] held that the Federal district courts have jurisdiction over claims that a union violated its duty of fair representation under the National Labor Relations Act (NLRA) in its administration of a hiring hall. The relevant facts are as follows:

Pursuant to a multiemployer collective-bargaining agreement, the union operates a hiring hall through which it refers both members and nonmembers for work at the request of employers. The hiring hall is "nonexclusive" in that workers are free to seek employment through other means and signatory employers are not restricted to hiring persons recommended by the union. Breininger, a member of the union, filed suit in Federal district court alleging that the union (1) violated Sections 101(a)(5) and 609 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA)[11] by refusing to refer him through the hiring hall as a result of his political opposition to the union's leadership; and (2) breached its duty of fair representation under the NLRA by discriminating against him with respect to such referrals. The district court dismissed the suit, finding that discrimination in the making of hiring hall referrals constitutes an unfair labor practice subject to the exclusive jurisdiction of the National Labor Relations Board. The Sixth Circuit affirmed, ruling that fair representation claims must be brought before the Board and that Breininger had failed to state a claim under the LMRDA.

The Supreme Court reversed the lower courts on the jurisdictional issue, but affirmed the court of appeals' holding that Breininger did not state a claim under the LMRDA. The Court first found that the fact that the alleged violation of the union's duty of fair representation might also be an unfair labor practice—over which Federal and state courts lack jurisdiction under *San Diego Building Trades Council v. Garmon*[12]—did not deprive Federal district courts of jurisdiction over fair representation claims. For, as it held in *Vaca v. Sipes*,[13] *Garmon*'s preemption rules do not extend to fair representation claims. 493 U.S. at 74. The Court declined to create an exception to the *Vaca* rule for

[9] 493 U.S. 67, affg. in part, remanding in part 841 F.2d 1125, opinion published 849 F.2d 997 (6th Cir. 1988).

[10] Justice Brennan delivered the opinion of the Court. A decision concurring in part and dissenting in part was filed by Justice Stevens, joined by Justice Scalia.

[11] 29 U.S.C. §§ 411(a)(5) and 529.

[12] 359 U.S. 236 (1959).

[13] 386 U.S. 171 (1967).

those fair representation claims arising out of the operation of hiring halls, notwithstanding the Board's considerable experience in adjudicating certain kinds of hiring hall matters. Such an exception, the Court found, would remove an unacceptably large number of fair representation claims from the Federal courts, since the Board has developed an unfair labor practice jurisprudence in many areas traditionally encompassed by the duty of fair representation. Id. at 74.

The Court also rejected the court of appeals' holding that an employee cannot prevail in a suit against his union if he fails to allege that his employer breached its collective-bargaining agreeement. Although *Vaca* recognized the desirability of having the same forum adjudicate a joint fair representation/breach-of-contract action, it in no way implied that a fair representation claim requires a concomitant claim against the employer. Id. at 75. Moreover, the Court stated, a fair representation claim is a separate cause of action from any possible suit against the employer; it is implied from the NLRA's grant of exclusive representation status to unions. Id. at 83.[14]

The Court found no merit to the union's contention that it did not breach its duty of fair representation because that duty should be coextensive with what constitutes an unfair labor practice and it committed no such unfair labor practice because the NLRA forbids only union discrimination based on union membership or lack thereof. The Court noted that such an equation would make the two causes of action redundant and undermine the prime virtues of the fair representation duty—"flexibility and adaptability." Id. at 86. The Court also rejected the union's contention that the task of job referral resembles a task that an employer might perform and, thus, the union is not acting as the employee's representative when it performs this function. Citing *Humphrey v. Moore*,[15] the Court found that, inasmuch as the union is administering a provision of the collective-bargaining agreement, it is subject to the duty of fair representation. Id. at 88.

Finally, the Court rejected Breininger's claim under Sections 101(a)(5) and 609 of the LMRDA. It found that, by using the term "otherwise discipline," those sections demonstrate a congressional intent to regulate only punishment authorized by the union as a collective entity to enforce its rules, and not ad hoc retaliation by individual union officers. Id. at 90.

[14] Citing *Tunstall v. Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944).
[15] 375 U.S. 335 (1964).

VII

Enforcement Litigation

A. Protected Activity

1. Complaints About Working Conditions

Section 8(a)(1) of the Act prohibits the discharge of employees for engaging in concerted activity for the purpose, among other things, of improving their working conditions. However, the statutory protection does not apply to all forms of concerted activity. Its scope was in issue in two cases decided during the past year.

In one of the cases,[1] employees of a newspaper were discharged for sending a letter to firms that advertised their products and services in the newspaper. The letter complained of the newspaper's alleged failure to bargain in good faith and warned of its possible demise. Relying on the Supreme Court's decision in *Jefferson Standard*,[2] the employer contended that the letter amounted to disloyalty and was therefore outside the protection of Section 7. The Ninth Circuit enforced the Board's order requiring reinstatement of the discharged employees with backpay. The court noted that in *Jefferson Standard* the employees had distributed handbills criticizing the employer's product but not referring to any labor dispute. Here, the employees' letter was clearly related to their ongoing dispute over working conditions. Moreover, the employees criticized, not the journalistic quality of the newspaper, but its labor policies. The letter was moderate in tone and was not maliciously motivated or recklessly false. The fact that it might harm the employer by bringing about a loss of customers was not decisive because any appeal to a third party by a union involved in a labor dispute is likely to have that effect. Finally, the letter disclosed no confidential information. Accordingly, the court agreed with the Board that the employees' conduct was not so unreasonable as to forfeit Section 7 protection.[3]

In the other case,[4] the employer discharged an employee for mailing a letter, drafted by a group of employees, to the employ-

[1] *Sierra Publishing Co. v. NLRB*, 889 F.2d 210 (9th Cir.).
[2] *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard)*, 346 U.S. 464 (1953).
[3] 889 F.2d at 215–220.
[4] *NLRB v. Oakes Machine Corp.*, 897 F.2d 84 (2d Cir.).

er's parent corporation. The letter protested the conduct of the employer's president in repeatedly requiring employees to work on his personal projects and suggested his removal. The Second Circuit upheld the Board's finding that sending of the letter was protected activity and that the discharge of the employee was therefore unlawful. The court noted that, although the identity of management personnel is normally outside the sphere of legitimate employee interest, concerted activity to protest or to bring about the removal of a supervisor may be protected if the supervisor's identity is directly related to employees' terms and conditions of employment. In this case, such a relationship existed because the company president dealt directly with employees in assigning them projects unrelated to company work. Moreover, the means of protest—sending a letter—was reasonable. The letter specifically referred to the president's diversion of company resources and personnel from potentially profitable company projects to his own personal projects. Because the employees' annual pay raises and bonuses were tied to company profitability, it was implicit in the letter that the president's conduct had reduced the employees' salaries, and their protest was thus directly related to terms and conditions of employment. Finally, the president's status as a high-level supervisor did not render the letter seeking his removal unprotected, since his job assignments had a direct effect on employment terms, an effect similar to that of assignments by low-level supervisors.[5]

2. Access to Private Property

In *Fairmont Hotel*,[6] the Board held that a person's right of access to the private property of another person depends on a balancing of the statutory rights asserted by the intruding person against the right of the property owner to secure its premises.[7] In *Jean Country*,[8] the Board clarified its approach to this issue by holding that the availability of alternative means of communication is a factor to be considered in every access case.

In a case decided during the year,[9] the District of Columbia Circuit concluded that "[t]he elaboration . . . advanced in *Jean Country* . . . sensibly construes the Act in light of [Supreme] Court precedent in point."[10] In *Laborers Local 204*, a restaurant chain permitted a union to handbill prospective customers urging a boycott at a location being remodeled by a general contractor paying less than the union area standard; the chain, however, prevented the union from handbilling customers at three other locations 15 miles away on parking lots owned by the chain but

[5] Id. at 89–90.
[6] 282 NLRB 139 (1986).
[7] Id. at 141–142.
[8] 291 NLRB 11 (1988).
[9] *Laborers Local 204 (Hardee's) v. NLRB*, 904 F.2d 715.
[10] Id. at 718.

open to the general public because the remodeling planned for those locations had not begun. Applying *Jean Country*, the Board found that the restaurant had not violated the Act, concluding that the Section 7 right claimed by the union was comparatively weak inasmuch as it was seeking to enforce area standards rather than represent any employees of the restaurant or contractor and it was handbilling the "'secondary' target"; that the restaurant's property interests were not compelling because the handbilling was performed unobtrusively in parking lots that were generally treated as public property; and that the union's uninhibited access to prospective customers at the location being remodeled was a sufficiently effective alternative means for the union to convey its handbilling message. The District of Columbia Circuit found "no cause to upset the reasonable balance struck by the Board," which "gave fair weight and effect to the [u]nion's right to exert pressure on [the restaurant chain] by means of a consumer boycott [without] trenching unduly on [the restaurant chain's] property rights."[11]

In another case,[12] the Seventh Circuit upheld the Board's finding that a grocery store violated the Act by preventing a union, which was on strike against a nearby meatpacker, from handbilling prospective customers on the grocery store's property urging them not to buy the meatpacker's products. The grocery store was a tenant in a strip shopping center with a leasehold interest in its store, storefront sidewalk, and parking lot. The Board found that its property right was relatively substantial and none of the parties challenged that characterization before the Seventh Circuit. The Board also found that the meatpacker's employees were asserting a relatively strong Section 7 right by engaging in struck product consumer handbilling and the Seventh Circuit agreed, rejecting the grocery store's contention that the statutory right was weak because only a tiny fraction of the struck nationwide meatpacker's customers shop at that particular store. The court stated:[13]

> [T]his alleged defect is generic to most struck product campaigns, the success of which depend not on a single outlet but instead on a comprehensive approach. Chances are that no single retail store sells more than a small percentage of the total [meatpacker] output. If the [u]nion cannot handbill [the grocery] store on this account, it probably could not handbill *any* store. The struck product campaign would inevitably fail.

Finally, the Board rejected each of the grocery store's suggested alternative means of communication that the strikers could have used as ineffective, unsafe, or too expensive, and the Seventh Circuit agreed. In *Jean Country*, the Board explained that

[11] Id. at 719.
[12] *Sentry Markets v. NLRB*, 914 F.2d 113.
[13] Id. at 116.

the use of mass media would be a feasible alternative to direct contact only in exceptional circumstances, which were not present in *Sentry Markets*. The Seventh Circuit agreed, noting that in "the typical struck product case [the struck] manufacturer . . . distributes goods through several (or even many) retailers[, but t]his simply means that the [u]nion, in order to do an effective job, needs to handbill at numerous locations," and a mass media campaign would diffuse the effectiveness of the communication by being physically removed from the actual location of the struck product and the intended audience of that product's prospective consumers.[14]

In a third case,[15] the First Circuit sustained the Board's finding that a retail store located in a shopping center violated the Act by refusing to allow nonemployee union representatives who were organizing the store's 200 employees to leaflet cars parked in the center's parking lot or to handbill employees on their way to work. The retail store argued, first, that *Jean Country*'s balancing test "does violence to" Supreme Court precedent and the Act itself, but the First Circuit disagreed, stating:[16]

> [*Jean Country*'s] elaboration constitutes a plain recognition by the Board that it must gather the three interdependent bundles of facts . . .—strength of employees' Section 7 right, strength of employer's property right, availability and efficacy of alternative means of communication—tie them together, and weigh them in the aggregate. We find this approach to the accommodation of competing interests consistent with [precedent] and in tune with the Act. In our judgment, *Jean Country* states a permissible view of the law and affords a useful analytic model for resolution of access-to-property cases.

On the facts, the First Circuit, in agreement with the Board, held that "[i]t is beyond serious question that the Section 7 interest of the company's employees in receiving organizational information from the union was robust, implicating . . . a 'core' Section 7 right." The court also agreed with the Board that the store's property right "was not quite as strong [as the Section 7 right]," given "the public nature of the parking lot and the nonexclusivity of its use [and the fact] that the planned organizational activity did not interfere with normal use of the [lot], disrupt [the store's] business, constitute harassment, or impede traffic flow."[17] Finally, in agreeing with the Board that the union did not have open to it other effective means of reaching the store's employees with its organizational message, the court rejected the store's reliance on the seminal case of *NLRB v. Babcock &*

[14] Id. at 117.
[15] *Lechmere, Inc. v. NLRB*, 914 F.2d 313.
[16] Id. at 321.
[17] Ibid.

Wilcox Co.,[18] which involved nonemployee organizing of a readily identifiable work force in a small-town setting, stating:[19]

> Unlike in *Babcock*, [the store's] work force is drawn from a much more populous area and reports to work at a place where it is difficult to discern the targeted audience from the multitude of shoppers and persons working for other businesses within the [center]. . . . [T]he union had made a good-faith effort to explore alternative routes[, but] was able to compile merely a skeletal employee roster [and could not handbill from public property because that was] unsafe and ineffectual. . . . The mail . . . was impracticable [and newspaper advertising, which t]he union had tried . . . without notable success, [was] inutile. [P]ersonal contact is an important part of any organizing effort [and] . . . the absence of other opportunities for personal contact will, in the usual case, cut sharply in favor of the union. [Finally], it is unrealistic to divorce considerations of cost from the calculus of alternative means. In theory, a union could always buy enough television time[, radio and newspaper advertising] to saturate a market and thus convey its organizational message to the affected employees. Yet in the ordinary case [involving a work force scattered throughout a metropolitan area], it would be wildly unreasonable to expect the union to embrace this extreme.

In a fourth case,[20] the Sixth Circuit upheld the Board's refusal to apply the *Jean Country* test to a case involving the right of off-duty employees to reenter their employer's property. In the case, the Board had applied the three-part test of *Tri-County Medical Center*,[21] which considers only the employees' Section 7 rights, and did not weigh those Section 7 rights against the employer's property rights, which *Jean Country* requires. The court agreed with the Board's approach, noting that the employer "fails 'to make a distinction between rules of law applicable to employees and those applicable to nonemployees.' *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 113 (1956)."[22]

B. Reinstatement Rights of Economic Strikers

Two cases arising in the Seventh Circuit presented questions arising under the Board's *Laidlaw* doctrine.[23] In *Aqua-Chem, Inc. v. NLRB*,[24] the court approved the Board's new rule, announced in *Aqua-Chem, Inc.*,[25] concerning when an employer violates the

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[18] 351 U.S. 105 (1956).
[19] 914 F.2d at 322–324.
[20] *NLRB v. Ohio Masonic Home*, 892 F.2d 449.
[21] 222 NLRB 1089 (1976).
[22] 892 F.2d at 452.
[23] 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).
[24] 910 F.2d 1487.
[25] 288 NLRB 1108 (1988). See discussion in 53 NLRB Annual Report 71–72 (1988).

rights of unreinstated economic strikers by preferentially reinstating laid-off striker replacements. Under that rule, to establish a violation of the strikers' *Laidlaw* rights, "the General Counsel first [must] make a showing that any layoffs 'truly signified the departure of the replacements,'" by demonstrating that the laid-off replacements had no "reasonable expectancy of recall." The burden then shifts to the employer "to rebut the showing of a vacancy or to show legitimate and substantial justifications for failing to recall the striking workers."[26] The court held that because the rule turned on the "*actual* expectations of all concerned," it struck "a fair balance" and was consistent with the policies of the Act.[27] The court distinguished its earlier decision in *Giddings & Lewis, Inc. v. NLRB*,[28] which had rejected the Board's pre-*Aqua-Chem* rule.

In *David R. Webb Co. v. NLRB*,[29] the court considered whether economic strikers who were reinstated to positions not substantially equivalent to their former positions and then lawfully terminated were, nevertheless, entitled to reinstatement to their former or substantially equivalent positions when vacancies occurred. In this case, three strikers accepted reemployment to jobs different from those they had held before the strike. Each was terminated within several days for unacceptable performance. The Board held the company violated its *Laidlaw* obligations when it refused to offer the employees their former positions when vacancies later occurred, and the court agreed. Declining to reach the question of what obligation an employer has to offer reemployment to a striker when his former position or substantially equivalent work is unavailable, the court held that an employee's failure to perform nonequivalent work satisfactorily does not relieve the employer of his *Laidlaw* obligation. The court reasoned that to protect the right to strike, a returning striker must not be placed in the position of having to accept, for financial reasons, a different job, but be penalized if he is unable to perform it.[30] "To ensure that the striker is not penalized for engaging in protected activity, we conclude that . . . the process of reinstatement does not end until the employee receives his original position or one substantially equivalent to it."[31]

C. The Bargaining Obligation

1. Subjects for Bargaining

In *American National Insurance*,[32] the Supreme Court held that an employer may insist in good faith on a management-

[26] 910 F.2d at 1490, quoting *Aqua-Chem, Inc.*, 288 NLRB at 1110.
[27] Ibid.
[28] 675 F.2d 926 (7th Cir. 1982).
[29] 888 F.2d 501.
[30] Id. at 506.
[31] Ibid.
[32] 343 U.S. 395 (1952).

rights clause licensing it to take unilateral action with respect to certain mandatory subjects of bargaining. In *Toledo Blade*,[33] the District of Columbia Circuit held, in disagreement with the Board, that *American National Insurance* did not justify an employer's insisting on a proposal allowing the employer to offer retirement and separation incentives directly to employees with lifetime job guarantees.

The court recognized that the *Toledo Blade* clause was similar to the *American National Insurance* clause in the sense that it reserved a mandatory issue for future determination without the participation of the union. The court found it significant, however, that the management-rights clause in *American National Insurance* merely retained for the employer unilateral authority to set certain terms and conditions of employment. Unlike the *Toledo Blade* clause, it did not contemplate the employer's bargaining directly with individual employees.[34]

The absence of union participation in the latter situation seemed to the court to be a significant infringement of the right to bargain collectively. Dealing with the employees directly, the court opined, not only displaced the union from its role as exclusive bargaining representative but also tended to place the employees in competition with each other, thereby enabling the employer to exert a highly divisive pressure against the cohesiveness of the bargaining unit. On this basis the court concluded that the controlling Supreme Court precedent was not *American National Insurance* but the portion of *Borg-Warner*,[35] which held that an employer could not insist to impasse on a proposal that the union submit to an advisory vote of the employees before calling a strike. In the court's judgment, like the *Borg-Warner* ballot clause, the proposed direct-dealing clause in *Toledo Blade* impermissibly intruded on the relationship between the individual employees and their union.[36]

Even though the *Toledo Blade* clause was narrow in scope, the court felt that the underlying principle was not. The court feared that if offering retirement incentives directly to employees was deemed a mandatory subject of bargaining, broader direct-dealing clauses setting individual employee wages and hours without union participation could also be categorized as mandatory subjects.[37]

2. Organizational Changes Affecting a Union's Representational Status

In *NLRB v. Financial Institution Employees (Seattle-First National)*,[38] the Supreme Court held that the Board had exceeded

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[33] *Toledo Typographical Union 63 (Toledo Blade) v. NLRB*, 907 F.2d 1220.
[34] Id. at 1223.
[35] *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).
[36] 907 F.2d at 1223–1224.
[37] Id. at 1224.
[38] 475 U.S. 192 (1986).

its authority under the Act by requiring that nonunion employees be allowed to vote on their representative's affiliation with an International union. The Court stated that, under the Act, a certified union must be recognized as the exclusive bargaining representative of all employees in the bargaining unit, and that the Board cannot discontinue that recognition without first determining that the affiliation raises a "question of representation" and then conducting an election to decide the question. The Court also stated that in determining the union's status following affiliation with an International the issue is whether administrative or organizational changes made as a result of the affiliation "are sufficiently dramatic to alter the union's identity." In those circumstances, the "affiliation may raise a question of representation, and the Board may then conduct a representation election."[39]

During this year, three circuit courts considered whether certain organizational changes in the collective-bargaining representative—such as affiliation with an International union or a merger with another entity—sufficiently altered the representative so as to raise a question concerning representation. The three cases involved different types of organizational changes. In *Seattle-First National Bank v. NLRB*,[40] an independent union representing a single employer's employees affiliated with an International union. In *May Department Stores Co. v. NLRB*,[41] an independent union composed of four locals merged with an International union. In *News/Sun Sentinel Co. v. NLRB*,[42] two locals of the same International union merged. In each case, the court agreed with the Board that there was substantial continuity of representative, based on continuity in the identity, responsibilities, and manner of selection of the leadership; continuation of the manner in which contract negotiations, administration, and grievance processing were conducted; and the preservation of the certified representative's assets, books, and physical facilities.

In *Seattle-First National* and *May Co.*, the courts also agreed with the Board that provisions in the newly applicable International union constitutions did not significantly diminish the autonomy of the representative. In *Seattle-First National*, the Ninth Circuit upheld the Board's determination that provisions in the International constitution authorizing the International to order a strike, place a local in trusteeship, and approve collective-bargaining agreements prior to ratification, did not reduce the autonomy of the postaffiliation local. The record showed that the International rarely, if ever, exercised those powers. In addition, the record showed that the postaffiliation local could call a strike without approval of the International; the fact that employees would not receive strike benefits during an unauthorized strike

[39] Id. at 202, 206.
[40] 892 F.2d 792 (9th Cir.).
[41] 897 F.2d 221 (7th Cir.).
[42] 890 F.2d 430 (D.C. Cir.).

was not significant because the preaffiliation local had not provided strike benefits.[43]

Similarly, in *May Department Stores*, the Seventh Circuit rejected the employer's reliance on newly applicable International union constitutional provisions—giving the International the right to review bargaining proposals and final agreements before submission to members, to authorize strikes, and to approve the local's dues. Rather, the court agreed with the Board that "these reserved rights of approval, allowing the [International] only to react to initiatives of the local, d[id] not serve to supplant the local as the entity primarily responsible for the conduct of its affairs."[44]

Finally, both the Seventh Circuit and the District of Columbia Circuit, agreeing with the Board, rejected due process challenges to the procedures used in giving union members the opportunity to vote on the organizational changes. The Seventh Circuit held that the Board did not have to require that employees in each unit be given a separate opportunity to vote on the affiliation issue.[45] The District of Columbia Circuit rejected the employer's claims based on alleged irregularities in the mail balloting system and the handling of the ballot box. The court recognized that unions are not required to conform to the standards used in Board-conducted elections.[46]

D. Remedies

In *Kenrich Petrochemicals v. NLRB*,[47] a three-judge panel of the Third Circuit unanimously agreed with the Board that an employer unlawfully discharged a supervisor, who had not engaged in prounion conduct, solely in retaliation for her relatives' participation in a union organizational campaign. A majority of the panel, however, refused to enforce the Board's remedial order on the ground that it served no valid purpose to reinstate the supervisor with backpay because the employees had chosen union representation subsequent to her discharge.[48] Thereafter, the full court, sitting in banc, disagreed with the panel majority and enforced the order.[49] The court noted the "legion of cases" that hold that the Act "does not deprive the Board of the authority to order the reinstatement of a supervisor whose firing resulted not from her own pro-union conduct, but from the employer's efforts to thwart the exercise of [S]ection 7 rights by protected rank-and-file employees."[50] Rejecting the employer's

[43] 892 F.2d at 799–800.
[44] 897 F.2d at 229.
[45] Id. at 226–228.
[46] 890 F.2d at 433–434.
[47] 893 F.2d 1468.
[48] Id. at 1480–1482.
[49] 907 F.2d 400.
[50] Id. at 406.

claim that the union's success "provides adequate assurance that [the] coercive effect [of the supervisor's discharge] has been fully dissipated and requires no remedial action," the court agreed with the Board that "the collective bargaining process is an ongoing one [and t]hus, despite the union's success at the ballot box, many opportunities remained for the coercive impact of [the] discharge to take its toll on [S]ection 7 rights." Moreover, the court further noted, the supervisor's "reinstatement was ordered to demonstrate to the employees and supervisors . . . that our labor laws do not permit employers to intimidate protected employees by using family member supervisors as hostages. If the Board were only permitted to remedy a relative's unlawful firing by posting a notice, there would be scant protection for employees seeking to freely exercise their rights."[51]

[51] Id. at 407–410.

VIII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding while the case is pending before the Board.[1] In fiscal 1990, the Board filed a total of 31 petitions for temporary relief under the discretionary provisions of Section 10(j): 25 against employers and 6 against labor organizations. Of these numbers, together with petitions authorized in the prior year, injunctions were granted in 24 cases and denied in 7 cases. Of the remaining cases, 10 were settled prior to court action, and 5 remained pending further proceedings at the end of the fiscal year.

Injunctions were granted against employers in 20 cases, and against labor organizations in 4 cases. The cases against employers involved a variety of violations, including interference with nascent organizational campaigns, undermining an incumbent union, a successor employer's refusal to recognize and bargain with an incumbent union, and several instances where an employer's cessation of operations necessitated an injunction to sequester assets to protect an eventual Board backpay remedy. The cases against labor organizations involved serious picket line misconduct, and a strike in violation of the notice provisions of Section 8(d) of the Act.

Some of the district court cases decided during the past year were of particular interest.

Several cases involved serious employer unfair labor practices designed to destroy a union's organizational campaign which had been successful in obtaining a majority of union authorization cards. In these cases where it was concluded that the employer's violations precluded a fair Board election, the Board sought in-

[1] See generally *Aguayo v. Tomco Carburetor Co.*, 853 F.2d 744 (9th Cir. 1988); *Gottfried v. Frankel*, 818 F.2d 485 (6th Cir. 1987).

terim remedial bargaining orders under *Gissel*,[2] consistent with well-established 10(j) precedent in the circuit courts.[3]

In two cases litigated in district courts in the Ninth Circuit, which has not yet passed on the propriety of interim bargaining orders under *Gissel* in 10(j) proceedings, the courts granted affirmative bargaining orders based on their findings of reasonable cause to believe that there were serious employer violations which precluded a fair election, and which made the union's card majority a sufficiently reliable indication of majority support to warrant a remedial order to bargain with the union.[4] In another case, the district court granted cease-and-desist and affirmative reinstatement relief, but denied the affirmative *Gissel* bargaining order.[5] The court in *Gottfried v. Laidlaw Waste Systems*, supra, concluded that inasmuch as the parties had already agreed to conduct an election, and in view of the relief already granted by the court, an order to bargain with the union was not necessary to restore the lawful status quo.

In one case decided during the year, an employer allegedly breached an agreement to recognize and bargain with a union after the parties had complied with an agreed-upon card check which the union won by a clear majority.[6] The district court in *Hirsch v. Research Management Corp.*,[7] granted an interim bargaining order in favor of the union to prevent irreparable harm to the union's status pending Board litigation.[8] An unusual feature of this case was that the employer's work unit at issue was scheduled to be closed in less than a year because it was solely involved in rebuilding a U.S. Government naval ship.

Three cases decided during the year dealt with unlawful employer attempts to withdraw recognition in whole or in part from an incumbent union.

In *Gottfried v. C.J.R. Transfer*,[9] the employer allegedly attempted to evade its bargaining obligation with an incumbent union by closing down its operations, terminating its employees, and transferring its business to alter ego companies in another part of the State.[10] The district court found reasonable cause to believe that the employer was carrying out an unlawful scheme to evade its inchoate bargaining obligation with the union, and

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

[3] See, e.g., *Seeler v. Trading Port*, 517 F.2d 33 (2d Cir. 1975); *Levine v. C & W Mining Co.*, 610 F.2d 432 (6th Cir. 1979); *Asseo v. Pan American Grain Co.*, 805 F.2d 23 (1st Cir. 1986).

[4] See *Scott v. McGee Plumbing & Heating*, Civil No. CIVS-90-0317 MLS-JFM (E.D.Ca.); *Clements v. Anderson-Cottonwood Disposal*, Civil No. CIV-S-90-1033 RAR EM (E.D.Ca.), appeal pending No. 90-16308 (9th Cir.).

[5] *Gottfried v. Laidlaw Waste Systems*, Miscellaneous Docket No. 90-1293 (E.D.Mich.), appeal pending No. 90-2099 (6th Cir.).

[6] See generally *Snow & Sons*, 134 NLRB 709 (1961), enfd. 308 F.2d 687 (9th Cir. 1962).

[7] Civil Action No. 90-4399 (E.D.Pa.).

[8] See also *Henderson v. Gibbons & Reed Co.*, 53 LC ¶ 11,081 (D. N.Mex. 1966), cited with approval in *Kaynard v. Palby Lingerie*, 625 F.2d 1047, 1054 (2d Cir. 1980).

[9] Civil No. 90-1187 (E.D.Mich.).

[10] C.J.R. Transfer was the subject of a recommended *Gissel* bargaining order remedy in an outstanding administrative law judge's decision which was then pending review before the Board.

thus granted 10(j) relief which ordered the employer to recall the relocated work, reinstate the unit employees, and recognize and bargain with the union.

In a second case, *Pascarell v. Gitano Distribution Center*,[11] the union recently had been recognized by the employer for a warehouse unit. While the parties were bargaining for an initial agreement, the employer discriminatorily laid off a substantial portion of its unit employees and transferred part of its operation to another warehouse several miles away. The employer also refused to offer transfers to the new location to most of the laid-off employees. The employer further took the position that the relocated operation was no longer part of the certified unit, and that the union could no longer bargain on behalf of the employees in this relocated operation.

The district court found reasonable cause to believe that the layoffs and denials of transfer were meant to retaliate against the unit employees for selecting the union, and that the relocation did not destroy the union's right to represent these employees. The district court granted 10(j) relief to compel the employer to reinstate the laid-off employees and to bargain with the union for the relocated operation. The court concluded (730 F.Supp. at 624) that interim relief was necessary to prevent irreparable harm to the parties' collective-bargaining process and the union's employee support in the unit, citing *Eisenberg v. Wellington Hall Nursing Home*, 651 F.2d 902 (3d Cir. 1981).

In a third case, *Pascarell v. Control Services*,[12] the employer had a longstanding bargaining relationship with the union. The parties' most recent labor agreement had expired and there had been a delay in negotiations. When the union sought to resume bargaining, the employer delayed meeting with the union. Further, when the union ultimately filed charges with the Board, the employer essentially withdrew recognition from the union. In these circumstances the district court granted an interim bargaining order, in order to "preserve the integrity of the bargaining process," citing *Kobell v. Suburban Lines*, 731 F.2d 1076, 1093 (3d Cir. 1984). The court concluded that without interim relief, the union would lose its "power," i.e., its ability to bargain with the employer on "fair grounds." Injunctive relief was, therefore, in the court's view, in the public interest, citing *Pascarell v. Gitano Distribution Center*, supra at 624.

Two cases decided in the fiscal year[13] dealt with allegations that successor employers had discriminatorily refused to hire the represented employees of a predecessor employer, with an objective of avoiding a statutory obligation to recognize and bargain with their union.[14] The district courts concluded that 10(j) relief

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[11] 730 F.Supp. 616 (D.N.J.).

[12] Civil No. 90-1832(HAA) (D.N.J.), appeal pending No. 90-5451 (3d Cir.).

[13] *Kinney v. Rainbow Shops*, Docket No. 89 C 2165 (N.D. Ill.); *Scott v. Honda of Hayward*, Civil No. C 90 2465 CAL (N.D.Ca.), appeal pending No. 90-16469 (9th Cir.).

[14] See generally *Love's Barbeque Restaurant v. NLRB*, 640 F.2d 1094 (9th Cir. 1981).

was necessary to restore the lawful status quo by ordering the reinstatement of the predecessor employees who were not given job offers by the successor employers, restoration of the predecessor's working conditions pending bargaining, and an affirmative bargaining order in favor of the incumbent union.[15]

Finally, several cases arising in the report period involved a Board request to a district court to sequester an employer's assets in situations where the employer was closing its business and liquidating its assets during a Board unfair labor practice proceeding. In such situations, absent a 10(j) decree to preserve assets, a Board order providing for backpay to employees could be rendered a nullity.[16] One of the decided cases was notable, in that the unfair labor practice case had already resulted in a final Board Order and a circuit court enforcing decree.[17] However, there had been no compliance with the Board's backpay order, and the Region had issued a supplemental backpay specification which alleged that two other legal entities and the owner of the original respondent shared derivative liability for the backpay award under the Board's Order.[18] The Board sought 10(j) sequestration of assets relief in this case against the newly named respondents, based on evidence that these entities were liquidating some of their assets. In these circumstances, based on its belief that there was reasonable cause to believe that these respondents were liable for the Board's backpay award under a variety of alter ego theories, the district court granted a 10(j) protective order which sequestered a total of nearly $2.2 million of respondents' assets, pending final Board disposition of the supplemental backpay proceeding.

Two circuit court decisions issued during the fiscal year were of particular interest.

In *Pascarell v. Vibra-Screw*, 904 F.2d 874, the Third Circuit reversed a district court's denial of a 10(j) injunction against an employer which, within 6 months of the union's certification as bargaining representative, the Regional Director alleged, had discriminated against and discharged union supporters, including four of the five employee members of the bargaining committee, unilaterally changed certain working conditions, and refused to bargain with the committee as long as the discharged employees remained members. The district court concluded that injunctive relief was not just and proper based on its findings that, given the small size of the bargaining unit, the union could easily re-

[15] See generally *Scott v. Bi-Fair Market*, 863 F.2d 670 (9th Cir. 1988). The district court in *Kinney v. Rainbow Shops*, supra, followed the recently enunciated 10(j) standards set forth in *Kinney v. Pioneer Press*, 881 F.2d 485 (7th Cir. 1989), which applies a traditional equitable criteria approach to 10(j) cases.

[16] See generally *Kobell v. Menard Fiberglass Products*, 678 F.Supp. 1155, 1166–1167 (M.D.Pa. 1988).

[17] *Nelson v. Blaine Protein*, Civil No. C89-10332 (W.D.Wash.).

[18] See, e.g., *Southeastern Envelope Co.*, 246 NLRB 423 (1979). The Board's authority to seek derivative liability of new respondents is based on cases such as *NLRB v. C.C.C. Associates*, 306 F.2d 534, 538–540 (2d Cir. 1962).

construct itself after a Board Order; that no evidence had been presented that the company's conduct had chilled union activity; and that the Board had inordinately delayed in seeking injunctive relief. On appeal, the Third Circuit reaffirmed the principle of *Eisenberg v. Wellington Hall Nursing Home*, 651 F.2d 902 (1981), that interim reinstatement is just and proper when an employer resorts to tactics calculated to undermine support at a critical stage of the bargaining process and thereby threatens harm to the bargaining process before a Board order issues. 904 F.2d at 879 fn.7, citing *Wellington Hall*, supra at 907. The circuit court found inapplicable the exception to the *Wellington Hall* rule, articulated in *Kobell v. Suburban Lines*, supra, that unfair labor practices may have minimal chilling effect in an established "small and intimate" bargaining unit and that even without interim relief such a unit could be expected to reconstitute itself on issuance of the Board's Order. The court distinguished the situation in *Suburban Lines*, in which the employees discriminated against were longtime union members and their union had a longstanding bargaining relationship with the predecessor employer, from the case before it, where the union here had only recently been certified and no cohesive bargaining unit had yet been formed. 904 F.2d at 879–880. In the latter circumstances, the court concluded, "the chilling effect that [the discharge of the bargaining committee members] had on collective activity is patent from the nature and extent of the discharges. Any factual finding to the contrary would be clearly erroneous." The circuit court also found inapplicable its prior decision in *Eisenberg v. Lenape Products*, 781 F.2d 999 (3d Cir. 1986), noting that the "critical factor" in denying the injunction in that case "was the absence of any management awareness" that its employees were engaged in union activities; in such circumstances it was unlikely that the employees would have perceived the employer's action as being retaliation for union activity. 904 F.2d at 880. The circuit court further rejected the district court's reliance on Board delay as a basis for denying the injunction. The court noted that the need for interim relief rested on a pattern of employer activity that occurred over a period of months. The court concluded that the 6 months that elapsed between the discharges of most of the bargaining committee and the filing of the 10(j) petition was not "too long." 904 F.2d at 882. Finally, the circuit court concluded that, although the district court had not passed on the reasonable cause aspect of the case, remand on that issue was unnecessary because there could "be no question, on this record" that the Board had met that test. Id. at 882. Accordingly, it remanded with directions to enter the injunction.

In *Asseo v. Centro Medico del Turabo*, 900 F.2d 445 (1st Cir.), the circuit court affirmed an injunction against an alleged successor hospital which refused to recognize the union which represented its predecessor's technical employees. The circuit court af-

firmed the district court's findings of reasonable cause to believe the hospital was a successor employer; that on the date designated by the Regional Director, the hospital had reached a "substantial and representative complement of its employees," and the union represented a majority of the employees; that the hospital did not have a good-faith doubt of the union's majority; and that it had refused to hire an employee of the predecessor because of his union activities. Id. at 451–453. The court further affirmed the district court's findings that an interim bargaining order was necessary to overcome the "very real danger" that the hospital's continued refusal to recognize the union would so erode support for the union that "any final remedy which the Board could impose would be ineffective." Id. at 454. It also concluded that interim employment of the union activist was appropriate because his "absence could reasonably contribute to this erosion of support." Ibid. These circumstances showed the irreparable injury required for a preliminary injunction in the First Circuit. The circuit court further affirmed the district court's conclusions that the Board had satisfied the other elements of preliminary relief—the harm to the union outweighed any harm granting the injunction would cause to the hospital; the Regional Director was likely to succeed on the merits of the case before the Board and the injunction was in the public interest. Id. at 454–455.

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[19] or Section 8(b)(7),[20] and against an employer or union charged with a violation of Section 8(e),[21] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue."

[19] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another section of the Act (Sec. 8(e)).

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

[21] Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[22] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, on a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 20 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with cases pending at the beginning of the period, 7 cases were settled, 1 continued in an inactive status, and 8 were pending court action at the close of the report year. During this period, 12 petitions went to final order, the courts granting injunctions in 11 cases and denying them in case 1. Injunctions were issued in one case involving secondary boycott action proscribed by Section 8(b)(4)(B), as well as in instances involving a violation of Section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by Section 8(e).

There was one case in which an injunction was denied, which involved secondary picketing activity by a labor organization.

One 10(l) case decided during the fiscal year was of particular interest. *Nelson v. Electrical Workers IBEW Local 46*, 899 F.2d 1557 (9th Cir.), involved a union's efforts to enforce a grievance-arbitration award that the Regional Director alleged interpreted the collective-bargaining agreement in a manner violative of Section 8(e). The union represents employees of electrical contractors in the Seattle-Tacoma area and had entered into a collective-bargaining agreement with the local chapter of the National Electrical Contractors Association which was the bargaining representative of certain of these employers. The chapter also admitted nonunion contractors to membership. It operated a program that referred applicants to its nonunion member-contractors and an apprenticeship-training program for those employers. The union filed a grievance alleging that the chapter's operation of the referral and training programs violated the exclusive hiring hall and apprentice provisions of the collective-bargaining agreement. An arbitral panel upheld the union's grievance and directed the chapter to cease operating the services; the union sought enforcement of the award in Federal district court. The Regional Director's 10(l) petition alleged that the collective-bargaining agreement as interpreted by the arbitral panel was a secondary agreement prohibited by Section 8(e) because it did not affect working conditions of unit employees covered by the agreement

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

but was directed rather to governing the business relations between the chapter and its nonunion members, none of whom employs employees covered by the collective-bargaining agreement. The petition sought an order directing the union to cease from enforcing the award in a manner that would preclude the chapter from providing referral services to nonunion members until the Board had ruled on the unfair labor practice complaint. The 10(l) case was brought before the judge who was presiding over the Section 301 case. The district court granted the injunction and, on its own motion, stayed the Section 301 proceeding. The union appealed from the orders in both cases. The circuit court affirmed that there was reasonable cause to believe the arbitral award violated Section 8(e). Id. at 1561–1562. It rejected the union's claim that the Supreme Court's decision in *NLRB v. Bill Johnson's Restaurants*, 461 U.S. 731 (1983), precluded the Board from proceeding. The circuit court noted that although *Bill Johnson's* held that the Board cannot enjoin an employer's state court lawsuit as an unfair labor practice unless the suit is filed with an unlawful motive and without a reasonable basis in fact and law, the Supreme Court had distinguished the case before it from one in which the contested suit has an objective that is illegal under Federal law. 899 F.2d at 1562. The circuit court further noted that the Board has relied on that distinction to hold that a union commits an unfair labor practice by suing to enforce a contract provision that, as construed by the union, violates Section 8(e). The circuit court concluded that because there were substantial grounds to believe that the contract as construed by the union in the case before it was violative of Section 8(e), *Bill Johnson's* did not preclude the Board or the courts from enjoining the union's attempt to enforce the contract. Id. at 1563. The circuit court further held that the district court did not abuse its discretion in staying the Section 301 action. The circuit court noted that the Board and the district courts share concurrent jurisdiction over disputes that involve allegations of an unfair labor practice and violation of a collective-bargaining agreement. The policy of deference to the Board's primary jurisdiction to construe the Act and determine unfair labor practices weighed in favor of deferring to the Board's jurisdiction in this case: Both proceedings turn on the validity of the arbitration award under Section 8(e). The Board's decision on that issue likely would be binding in the Section 301 action. The Board's initial investigation contradicts the arbitral finding and there is therefore a strong likelihood of conflict between the Board's ultimate finding and the arbitral award. Finally, by restoring the chapter's ability to provide the disputed services to its members, the injunction preserves the status quo. Id. at 1564.

IX

Contempt Litigation

In fiscal year 1990, 137 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees. Voluntary compliance was achieved in 12 cases during the fiscal year, without the necessity of filing a contempt petition. In 43 other cases, it was determined that contempt was not warranted.

During the same period, 27 civil contempt proceedings were instituted, and the Board brought two additional cases in which both civil and criminal sanctions were sought. Of the 27 civil contempt proceedings, 22 were brought against employers and 7 were brought against unions. Of the cases in which both civil and criminal proceedings were instituted, one was brought against an employer and its chief executive officer and one was brought against an International union and certain of its officers. The cases instituted in fiscal year 1990 included four in which the Board sought a writ of body attachment, requiring the civil arrest of an individual responsible for a respondent's continuing noncompliance with an enforced Board Order.

A total of 17 contempt or equivalent adjudications were awarded in favor of the Board, including three in which the court ordered the civil arrest of the respondent's agent. Seven cases were consummated by settlement orders requiring compliance. In two cases the Board's contempt petition was denied by the court and, in another, the Board withdrew its petition without compliance having been achieved.

During the fiscal year, the Contempt Litigation Branch collected $303,308 in backpay, $120,800 in fines, and $151,399 in court costs and attorneys' fees incurred in contempt litigation.

A number of the proceedings during the fiscal year were noteworthy:

A new chapter was written in the Board's efforts to control strike misconduct in the coal mining industry. In 1987, numerous contempt allegations filed by the Board against the United Mine Workers of America and its subordinate entities (the UMWA) were resolved by entry of a broad contempt adjudication. (See 52 NLRB Annual Report 163–166 (1987).) The purgation provisions of this adjudication imposed special civil contempt remedies designed to deter future strike misconduct by the UMWA and its membership in the States of West Virginia, Pennsylvania, and

Kentucky, where the vast majority of prior UMWA strike misconduct had occurred.

These remedies did not have their intended effect, however, for in early 1989 the UMWA conducted a strike at the New Beckley Mining Corp. in Beckley, West Virginia, which resulted in the Board's filing a new contempt petition alleging 47 incidents of strike misconduct in violation of Section 8(b)(1)(A) and the broad 1987 adjudication. Among those named as respondents in contempt were the UMWA and two of its subordinate entities, an International organizer, an International executive board member, and the president of District 29. These proceedings culminated in the filing of a new contempt adjudication in April 1990, which, among other purgation provisions, required the UMWA to pay $103,500 in fines and to permanently remove from picket line duties any picket line captain subsequently found to have violated the new adjudication. The new adjudication again requires the UMWA to comply with the provisions of the broad 1987 adjudication, and two special remedies were adopted by the court to control strike misconduct at New Beckley: certain limitations on strike activity that were embodied in a 10(j) injunction which had issued during the strike were incorporated into the new contempt adjudication, and the court directed that the Special Master retain jurisdiction to oversee compliance with its purgation provisions.[1]

Two significant bargaining cases were decided during the fiscal year. In one case (*NLRB v. H & H Pretzel Co.*, Nos. 86–5182, 86–5210), a Special Master appointed by the Sixth Circuit found that the company had continued the pattern of unlawful conduct found in the proceeding which led to the judgment by unreasonably delaying in furnishing relevant information to the union; refusing to recognize the union as the exclusive bargaining agent of its employees; insisting that the company could contract separately with those drivers who wished to do so despite the existence of a collective-bargaining agreement; and failing to bargain in good faith for a reasonable period of time. Although certain compliance steps were taken by the company after unfair labor practice charges were filed and again after contempt proceedings were threatened, the Master concluded that such altered behavior in the face of threats or legal action did not constitute a defense to contempt allegations.

[1] At year's end, contempt proceedings alleging numerous additional violations of the broad 1987 adjudication by the UMWA at Valley Coal Co. in Pennsylvania and Rum Creek Coal Sales, Inc., in West Virginia were pending before the Fourth Circuit. Included in the petition were allegations of criminal contempt against the UMWA and three UMWA officials. The nationally publicized UMWA strike against Pittston Coal Group was also settled during the fiscal year. Because almost all of the Pittston-related 8(b)(1)(A) charges alleged conduct occurring in the State of Virginia, this conduct was beyond the geographical scope of the broad 1987 adjudication. As part of the Pittston settlement, however, the UMWA consented to the entry of an order by the Fourth Circuit extending the broad 1987 adjudication to Virginia.

In *NLRB v. Goren Printing Co.*, 136 LRRM 2350, a Special Master, affirmed by the First Circuit (136 LRRM 2392), found that the company and Russell Goren, individually, had violated the bargaining obligations set forth in the three prior judgments by refusing to meet with the union at reasonable times and canceling, postponing, and delaying bargaining sessions; by reneging on tentative agreements reached with the union without cause and engaging in regressive bargaining; by failing to execute an agreed-upon contract; and by unduly delaying furnishing the Board's Regional Office with payroll and other records needed to calculate backpay.

Among the remedies ordered by the Special Master in *H & H*, and the court in *Goren* was a requirement that the employer pay all the union's costs and attorneys' fees incurred by the union in preparation for and participation in postjudgment collective-bargaining sessions. The employers were also ordered to pay the Board's costs and attorneys' fees, and prospective fines were imposed for future noncompliance.

Finally, in *NLRB v. Construction & General Laborers Local 1140*, 887 F.2d 868 (8th Cir.), a civil contempt proceeding involving secondary picketing by a union officer who also was a union-appointed trustee of a pension and welfare fund, the court rejected a defense, based on *NLRB v. Amax Coal Co.*, 453 U.S. 322 (1981), that the officer-trustee's picketing, ostensibly undertaken on behalf of the benefit fund, could not, as a matter of law, be attributable to the union that appointed him. Although the court recognized that, under *Amax Coal*, the trustee, Leonard Schaefer, had a fiduciary obligation as trustee to act solely on behalf of the fund's beneficiaries, it nonetheless upheld the Special Master's finding that Schaefer, while picketing with placards that identified himself as trustee of the benefit fund but did not mention the union, was in fact acting on behalf of the union and not in his capacity as trustee. The court noted that Schaefer held union office and that his actions "were those of a Union secretary responding to a breach of a collective bargaining agreement," which specifically authorized union picketing in the event of a contract violation. In contrast, as the court observed, the fund's remedy for delinquent contributions was a lawsuit. The court further noted that "all Funds action requires approval of a majority of Trustees [and] Schaefer had no such approval before he picketed the job-sites." In these circumstances, Schaefer's picketing was held to be attributable to the union. As the court reasoned, while *Amax Coal* "relieves Schaefer of any obligation as a Fund Trustee to the union that appointed him[,]. . . . Schaefer may not invoke *Amax Coal* to transform his conduct as the Union's agent into the conduct of a Funds Trustee." Accordingly, the court sustained the Special Master's findings that the union and Schaefer, as its agent, were in contempt of an enforced Board Order prohibiting the union from engaging in secondary picketing.

X

Special and Miscellaneous Litigation

A. Bankruptcy Related Litigation

In *In re Carib-Inn of San Juan Corp.*,[1] the United States Court of Appeals for the First Circuit affirmed the dismissal of a bankruptcy court complaint for injunction of Board proceedings. Subsequent to the purchase of a hotel by Horizons Hotels Corporation, the Board had issued an unfair labor practice complaint against Horizons stemming from alleged bad acts by its general manager, who had also managed the same hotel as trustee while in bankruptcy prior to its purchase. The unfair labor practice complaint claimed that the trustee, and thereafter Horizons, had refused to recognize and bargain with the employees' collective-bargaining representative. The court of appeals initially noted the exclusive jurisdiction of the Board to adjudicate unfair labor practice complaints. The court applied the general rule that, absent special circumstances, Board proceedings should not be enjoined, nor are they automatically stayed by bankruptcy. The court held that because the Board complaint was directed against Horizons, the assets of the bankrupt estate were not threatened, and thus there were no grounds for a discretionary stay in accordance with the Bankruptcy Code. While the court considered this reasoning alone adequate to affirm the lower court's ruling, it also rejected Horizons' claim that the bankruptcy court's order, authorizing the hotel's sale to Horizons "free and clear of all liens and encumbrances," served to release Horizons from liability for unfair labor practice claims. The court further found untenable the assertion that the purchaser could be protected by such an order from acts committed on its behalf by the bankruptcy trustee.

B. FOIA Litigation

In *Strang v. DeSio*,[2] the United States Court of Appeals for the District of Columbia Circuit affirmed the district court's decision holding that the requested agency "litigation advice-*amicus* brief preparation information . . . fits squarely within [Freedom of In-

[1] 905 F.2d 561.

[2] 899 F.2d 1268 (mem.), affg. 710 F.Supp. 9 (D.D.C. 1989).

formation Act] Exemption 5," 5 U.S.C. § 552(b)(5) (FOIA). The district court had concluded that the requested documents, that is, all the documents "relating to the General Counsel's position with regard to the Supreme Court's request that the Solicitor General state the views of the United States concerning the petition for certiorari in *CWA v. Beck*"[3] fell within Exemption 5 as deliberative process privilege and work product information. The court of appeals also agreed with the district court's conclusion that the Board's *Vaughn* index adequately demonstrated that these documents should be protected.

In *Schiller v. NLRB*,[4] the district court found that the Board was entitled to summary judgment as a matter of law because the documents sought were privileged under FOIA Exemptions 2 and 5, 5 U.S.C. § 552(b)(2) and (5). Schiller had requested the release under the FOIA of "all memoranda and instructions pertaining to the implementation of the Equal Access to Justice Act ("EAJA")." The Board disclosed four documents and withheld five, describing the information withheld as internal agency deadlines and guidance to personnel regarding methods and strategies in litigation. On its own motion, the district court ordered that the withheld documents be submitted for *in camera* inspection.

As to Exemption 2, the district court held that the Board met the threshold test of "predominant internality," that is, documents for internal use only, by demonstrating that the "guidelines here direct agency personnel in performing internal work assignments as part of their employment." Contrary to Schiller's contention, the court found no evidence that these guidelines and procedures were of legitimate public interest or that they established some "secret law." The district court also held that the Board met the second requirement that the disclosure would "significantly risk[] circumvention of agency regulations." The court concluded that "[t]he NLRB must be free to develop internal litigation strategies and tactics, without the public looking over its shoulder." The district court rejected Schiller's claim that the Board must release these documents because it had previously disclosed similar documents. The court found that notwithstanding such a discretionary release, due to changes in the law and the Board's right not to exercise its discretion, the instant documents could be protected. If, as further argued by Schiller, the documents in dispute were "precisely the same kind of information" as that previously disclosed, "the court fail[ed] to understand why [Schiller] requires a second look at what he knows exists and has access to in the previous documents."

In light of its finding that the documents were all exempt under Exemption 2, the district court determined that it need not

[3] *Communications Workers v. Beck*, 487 U.S. 735 (1988).
[4] Civ. No. 87-1176 (D.D.C.).

reach the question of whether the documents were exempt under FOIA Exemption 5. However, the court still was "persuaded" that all five documents contained both deliberative process and work product information and were protected under Exemption 5 as well. The court found that the internal memoranda revealed the decision-making process leading to recommendations for certain EAJA proceedings as well as opinions and legal theories as to litigation strategies. Because such documents would not normally be available in discovery, they were privileged under the FOIA.

In *Reed v. NLRB*,[5] the district court determined that the Board was entitled to withhold the requested "copies of *Excelsior* lists in cases closed from January 1, 1984 to the present" under FOIA Exemption 6, 5 U.S.C. § 552(b)(6). *Excelsior* lists are Board-required employer-compiled lists of employees eligible to vote in upcoming Board elections.[6] The district court determined that the requested *Excelsior* lists qualify as a "personnel, medical or similar" file under Exemption 6 and accordingly meet the exemption's threshold requirement. The district court relied on the broad interpretation of the scope of Exemption 6 previously given by the courts, plus well-established in-circuit law providing that "the names and addresses of individuals can be identified as applying to particular individuals and, therefore, are similar files within the meaning of Exemption 6." Further, the court held that the individuals on the lists had a "significant" privacy interest in avoiding disclosure of their names and addresses. The court disagreed with Reed that this privacy interest was undercut by virtue of the NLRB's disclosure of these lists to labor organizations, or by the NLRB's failure to place any restrictions on the labor organizations' use of the lists. In so doing, the court relied on the Supreme Court's holding in *Department of Justice v. Reporters Committee*,[7] which "recognized the privacy interest inherent in the nondisclosure of certain information even where the information may have been at one time public."

Moreover, the district court held that there is no pubic interest in the disclosure of the *Excelsior* lists to counterbalance these privacy interests. In order to determine public interest, the district court relied on the *Reporters Committee* test which requires for disclosure that the document will "open agency action to the light of public scrutiny . . . [rather than disclose] information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct."[8] The court held that because the *Excelsior* lists "do not shed any light on what the NLRB is up to, there is no public

[5] 135 LRRM 2045 (D.D.C.).
[6] *Excelsior Underwear*, 156 NLRB 1236 (1966).
[7] 489 U.S. 749.
[8] 489 U.S. at 772–773.

interest in their disclosure." Accordingly, the district court dismissed Reed's action.

C. Litigation Under NLRB v. Nash-Finch Co.[9]

NLRB v. California Horse Racing Board[10] involves a suit in which the Board sought to enjoin application of a California state law which would require that United Tote Co. enter into a collective-bargaining agreement with Local 1501 of the Electrical Workers, even though the union did not represent any of the United Tote employees. The Board's written authorization for its counsel to commence the *Nash-Finch* proceeding contained an assertion of Board jurisdiction over United Tote on the basis of the Board's earlier decision in *American Totalisator Co.*,[11] in which the Board had concluded that American Totalisator Co. was not engaged in the horseracing business and, therefore, did not fall within the discretionary exclusion from jurisdiction as expressed in 29 CFR § 103.3. Applying the traditional equitable criteria for granting preliminary injunction relief, the district court granted the Board's motion for such relief, finding that the State was regulating conduct preempted by the NLRA and that, therefore, a *Nash-Finch* injunction was proper. The court agreed with the Board that the court did not have subject matter jurisdiction to review the merit of the Board's assertion of jurisdiction and that, even assuming such district court jurisdiction, the Board did not abuse its discretion because the documents in the record before the district court—documents which had been adduced in the state administrative proceeding brought against United Tote for failing to sign a contract with the union—support the Board's analogy to the *American Totalisator* case.

The Board intervened in another similar action,[12] in which the University of Vermont had sued to enjoin application of a new state statute giving the State of Vermont Labor Relations Board jurisdiction over the university. The NLRB initially sought to join the university in requesting an injunction against application of the state law believed to be preempted by the Federal labor law. The NLRB had previously asserted jurisdiction over the University of Vermont in 1976.[13] Shortly after the NLRB moved to intervene, the Vermont Labor Relations Board petitioned the NLRB for an advisory opinion on whether the NLRB would continue to assert jurisdiction over the university. The NLRB accepted the petition and, without conducting an evidentiary hearing, issued an advisory opinion on November 21, 1989, relying on the basically undisputed facts submitted by the parties.

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[9] 404 U.S. 138 (1971).
[10] N.D.Ca. Civil No. S-89-0946 MLS, appeal pending (9th Cir. 90-15740 and 90-15744).
[11] 264 F.2d 1100 (1982).
[12] University of Vermont v. State of Vermont, 748 F.Supp. 235 (D.Vt.).
[13] *University of Vermont, 223 NLRB 423 (1976).*

The NLRB there concluded that the university was a political subdivision of the State, was not an employer within the meaning of Section 2(2) of the NLRA, and was not subject to the jurisdiction of the Board.[14]

The NLRB thereupon filed a motion to dismiss the district court proceeding because, on the basis of the new advisory opinion, preemption was no longer applicable. The court agreed with the NLRB that the latter is empowered by 29 CFR § 102.98 to determine its own jurisdiction without hearing and without review by district courts, and that the agency's interpretation of its own regulation is binding on the court, unless it is "plainly erroneous" or "inconsistent with the text of the regulation itself," neither of which is the case here. The court found that the NLRB's promulgation of advisory opinion rules to decide its jurisdiction did not exceed its rulemaking authority under 29 U.S.C. § 156, and that the "advisory opinion process comports with Congressional intent as expressed in the Act and its legislative history."

The court concluded that, as in the case of representation issues, it lacked jurisdiction to review the NLRB's advisory opinion under the NLRA, and the university had failed to demonstrate that it was entitled either to a hearing before the NLRB or before the district court on the jurisdictional question. The court went on to find that even if the university did have some liberty or property entitlement to an administrative hearing, it failed to show that the NLRB advisory opinion procedure was insufficient, or that a district court evidentiary hearing would result in more accurate results. Finally, the court concluded that due process does not require district court review of the NLRB's declination of jurisdiction.

D. EAJA Litigation

In several cases, the circuit courts of appeals affirmed the Board's finding that petitioners were not entitled to an award under the Equal Access to Justice Act (EAJA) 5 U.S.C. § 504, because substantial evidence supported the Board's decision that the General Counsel was substantially justified in prosecuting the underlying unfair labor practice allegations. In *Carpenters Local 2848 v. NLRB*,[15] the court agreed that the General Counsel was substantially justified because the General Counsel's position was reasonable in both fact and law. The underlying Board case involved negotiations for midterm modification of the parties' existing pension plan. The General Counsel had unsuccessfully argued that the union agreed to a new pension plan but subsequently tried to back out of the agreement in violation of Section 8(b)(3) and 8(d) of the NLRA. The administrative law judge dis-

[14] *University of Vermont*, 297 NLRB No. 42.
[15] 891 F.2d 1160 (5th Cir.).

missed the complaint on the ground that the employer and the union had failed to reach a meeting of the minds with respect to the change in pension plans. Subsequently, the union's petition under EAJA was denied by the administrative law judge. The Fifth Circuit agreed that the General Counsel was reasonable in law and fact because the issue of whether the parties reached agreement on a new pension plan was based on witness credibility determinations properly left to a hearing before the administrative law judge. The court also agreed that the General Counsel was reasonable as a matter of law because substantial evidence on the record supported his position that the union "clearly and unmistakably" waived the former pension agreement in order to agree to a new pension plan pursuant to the clear and unmistakable waiver of statutory rights standard as set forth in *Metropolitan Edison Co. v. NLRB.*[16]

In *Lion Uniform v. NLRB,*[17] the court considered whether the Board correctly reviewed de novo and reversed the decision of an administrative law judge which had granted EAJA fees. In the underlying unfair labor practice case, the Board found that the employer's relocation of its business was not a violation of the Act. Subsequently, the administrative law judge awarded fees under the EAJA to the employer on finding that the General Counsel was not substantially justified in issuing complaint because of the lack of evidence showing that the relocation was for unlawful reasons, and because the employer presented evidence at the unfair labor practice hearing of a plan, developed several years earlier, to relocate its business for economic reasons. The Board, on exceptions by the General Counsel, reviewed the administrative law judge's decision de novo, and reversed the award finding that the General Counsel was substantially justified at each stage of the unfair labor practice case.

The Sixth Circuit held that the Board properly applied a de novo standard of review to the administrative law judge's decision.[18] The court found that standard to be appropriate despite the employer's argument that the proper test was whether the administrative law judge's decision to award fees amounted to an abuse of discretion. As the employer observed, the courts of appeals under the EAJA must apply an abuse of discretion standard to district court decisions. The court noted, however, that the EAJA is silent on the appropriate standard to be afforded by an agency to an administrative law judge's decision. The court concluded that the de novo standard was correctly employed because (a) the administrative conference of the United States adopted a model rule which approved of de novo agency review of applications for EAJA fees;[19] (b) the relationship between an

[16] 460 U.S. 693 (1983).
[17] 905 F.2d 120 (6th Cir.).
[18] Id. at 124.
[19] Notice, EAJA: Agency Implementation, 46 Fed.Reg. 32,910 (June 25, 1981) (regulation codified at 1 CFR § 315.308 (1989).

administrative law judge and the Board is significantly different from that between a district court and a court of appeals, because the Board's normal function, unlike the appellate court, is to examine the entire record of a proceeding and make findings of fact; and (c) given the substantial evidence standard of review applied by courts in appeals from agency final decisions, use of an abuse of discretion standard would require the Board to be more deferential to an administrative law judge decision than the court would be toward the Board decision and would render the court's application of the substantial evidence standard extremely convoluted, which it is unlikely that Congress intended.[20]

In addition, the Sixth Circuit found that substantial evidence supported the Board's conclusion that the General Counsel's litigating position had a reasonable basis both in law and fact. The employer argued that the General Counsel acted unreasonably because, had the General Counsel adequately investigated the facts underlying the union's charges he would have found that the relocation was motivated solely by economic reasons. The court determined, however, that while the General Counsel has a duty to investigate, the employer failed to provide the General Counsel with written evidence concerning its ultimately successful defense until the unfair labor practice hearing and, thus, the General Counsel had a reasonable basis in fact to believe that the relocation was improperly motivated. Accordingly, the court affirmed the Board's Order denying EAJA fees.

E. Litigation Concerning the Board's Jurisdiction

In *South Carolina State Ports Authority v. NLRB*,[21] the Fourth Circuit reversed a district court order which had enjoined the Board from proceeding with a representation case hearing on whether the Authority constitutes a political subdivision of the State of South Carolina under Section 2(2) of the NLRA, and therefore falls outside the Board's jurisdiction. Local Union No. 509 of the General Drivers, Warehousemen and Helpers, an intervenor in this lawsuit, had filed a petition in an attempt to represent certain of the Authority's employees. The Authority moved to dismiss the petition on the ground that it was not an employer under Section 2(2) of the Act. The Board set the case for a hearing, but before the hearing was conducted, the Authority sought and was granted a temporary restraining order in the district court. Relying on *Leedom v. Kyne*,[22] the Authority then filed a motion for a preliminary injunction. Although there was some initial confusion about the type of hearing the Board intended to conduct, the Board indicated in its opposition to the Authority's motion that the Board intended to hold an evidentia-

[20] 905 F.2d at 124.
[21] 914 F.2d 49 (4th Cir.).
[22] 358 U.S. 184 (1958).

ry hearing on the jurisdiction issue. The district court nonetheless proceeded to find that the Authority was a political subdivision of the State of South Carolina and thus, outside the reach of the NLRA. The court further concluded that the Board was presented with the jurisdiction issue but declined to rule on it and instead, had decided to proceed with a hearing on the representation issues. The court went on to find that the Authority would suffer irreparable harm if the injunction was not granted, because the Authority would have to litigate representation issues involving employees who are not subject to the Board's jurisdiction.

The court of appeals reversed, finding that the district court lacked jurisdiction to enjoin the Board from holding an evidentiary hearing to determine its own jurisdiction. The Fourth Circuit pointed out first, as a general rule, that courts lack subject matter jurisdiction to review Board representation and certification proceedings. The court of appeals also noted that an exception to this rule was carved out in *Leedom v. Kyne*, in which the Supreme Court held that district courts possess subject matter jurisdiction in exceptional circumstances to invalidate Board actions that fall clearly outside the Board's jurisdiction. The court of appeals observed, however, that the *Leedom* exception applies only where the Board takes action, and here the Board had not taken any action and was seeking only an opportunity to pass on the Authority's employer status under the Act. Under these circumstances, the court of appeals concluded that the *Leedom* exception to the rule of no review was inapplicable and that there was no legal basis to enjoin the Board's proceeding.

INDEX OF CASES DISCUSSED

APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

(Unit Clarification cases): A petition filed by a labor organization or an employer seeking a determination as to whether certain classification of employ-

ees should or should not be included within a presently existing bargaining unit.

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

Readers are encouraged to communicate with the Agency as to questions on the tables by writing to the Office of the Executive Secretary, National Labor Relations Board, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1990[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
All cases							
Pending October 1, 1989	*24,640	9,797	2,376	949	1,344	7,737	2,437
Received fiscal 1990	41,507	16,369	4,320	951	1,411	15,303	3,153
On docket fiscal 1990	66,147	26,166	6,696	1,900	2,755	23,040	5,590
Closed fiscal 1990	40,595	15,600	4,321	918	1,510	15,099	3,147
Pending September 30, 1990	25,552	10,566	2,375	982	1,245	7,941	2,443
Unfair labor practice cases[2]							
Pending October 1, 1989	*21,313	8,173	1,828	871	1,099	7,191	2,151
Received fiscal 1990	33,833	12,599	2,710	772	1,068	13,985	2,699
On docket fiscal 1990	55,146	20,772	4,538	1,643	2,167	21,176	4,850
Closed fiscal 1990	32,756	11,780	2,685	744	1,137	13,739	2,671
Pending September 30, 1990	22,390	8,992	1,853	899	1,030	7,437	2,179
Representation cases[3]							
Pending October 1, 1989	*3,014	1,556	529	72	219	464	174
Received fiscal 1990	7,173	3,625	1,570	170	315	1,166	327
On docket fiscal 1990	10,187	5,181	2,099	242	534	1,630	501
Closed fiscal 1990	7,271	3,663	1,588	162	335	1,192	331
Pending September 30, 1990	2,916	1,518	511	80	199	438	170
Union-shop deauthorization cases							
Pending October 1, 1989	82	—	—	—	—	82	—
Received fiscal 1990	152	—	—	—	—	152	—
On docket fiscal 1990	234	—	—	—	—	234	—
Closed fiscal 1990	168	—	—	—	—	168	—
Pending September 30, 1990	66	—	—	—	—	66	—
Amendment of certification cases							
Pending October 1, 1989	17	9	1	0	6	0	1
Received fiscal 1990	23	9	2	2	2	0	8
On docket fiscal 1990	40	18	3	2	8	0	9
Closed fiscal 1990	32	16	2	2	4	0	8
Pending September 30, 1990	8	2	1	0	4	0	1
Unit clarification cases							
Pending October 1, 1989	*214	59	18	6	20	0	111
Received fiscal 1990	326	136	38	7	26	0	119
On docket fiscal 1990	540	195	56	13	46	0	230
Closed fiscal 1990	368	141	46	10	34	0	137
Pending September 30, 1990	172	54	10	3	12	0	93

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1A for totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Revised, reflects higher figures than reported pending Sept. 30, 1990, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1990[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
CA cases							
Pending October 1, 1989	*16,337	8,106	1,812	864	1,071	4,484	0
Received fiscal 1990	24,075	12,485	2,691	747	1,022	7,130	0
On docket fiscal 1990	40,412	20,591	4,503	1,611	2,093	11,614	0
Closed fiscal 1990	23,156	11,665	2,661	720	1,095	7,015	0
Pending September 30, 1990	17,256	8,926	1,842	891	998	4,599	0
CB cases							
Pending October 1, 1989	*3,730	58	14	6	15	2,707	930
Received fiscal 1990	8,157	88	18	7	27	6,854	1,163
On docket fiscal 1990	11,887	146	32	13	42	9,561	2,093
Closed fiscal 1990	7,966	86	22	8	21	6,723	1,106
Pending September 30, 1990	3,921	60	10	5	21	2,838	987
CC cases							
Pending October 1, 1989	*913	3	1	1	10	0	898
Received fiscal 1990	965	7	0	13	8	0	937
On docket fiscal 1990	1,878	10	1	14	18	0	1,835
Closed fiscal 1990	949	10	0	12	12	0	915
Pending September 30, 1990	929	0	1	2	6	0	920
CD cases							
Pending October 1, 1989	118	3	0	0	0	0	115
Received fiscal 1990	297	13	1	1	5	0	277
On docket fiscal 1990	415	16	1	1	5	0	392
Closed fiscal 1990	288	13	1	0	4	0	270
Pending September 30, 1990	127	3	0	1	1	0	122
CE cases							
Pending October 1, 1989	*60	1	0	0	3	0	56
Received fiscal 1990	44	4	0	0	3	1	36
On docket fiscal 1990	104	5	0	0	6	1	92
Closed fiscal 1990	62	3	0	0	4	1	54
Pending September 30, 1990	42	2	0	0	2	0	38
CG cases							
Pending October 1, 1989	30	1	0	0	0	0	29
Received fiscal 1990	30	1	0	0	1	0	28
On docket fiscal 1990	60	2	0	0	1	0	57
Closed fiscal 1990	41	2	0	0	1	0	38
Pending September 30, 1990	19	0	0	0	0	0	19
CP cases							
Pending October 1, 1990	125	1	1	0	0	0	123
Received fiscal 1990	265	1	0	4	2	0	258
On docket fiscal 1990	390	2	1	4	2	0	381
Closed fiscal 1990	294	1	1	4	0	0	288
Pending September 30, 1990	96	1	0	0	2	0	93

[1] See Glossary of terms for definitions

* Revised, reflects higher figures than reported pending Sept. 30, 1990, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1990[1]

	Total	Identification of filing party					
		AFL-CIO unions	Teamsters	Other national unions	Other local unions	Individuals	Employers
RC cases							
Pending October 1, 1989	*2,369	1,553	528	71	216	1	—
Received fiscal 1990	5,678	3,623	1,570	170	315	0	—
On docket fiscal 1990	8,047	5,176	2,098	241	531	1	—
Closed fiscal 1990	5,743	3,660	1,587	162	334	0	—
Pending September 30, 1990	2,304	1,516	511	79	197	1	—
RM cases							
Pending October 1, 1989	*174	—	—	—	—	—	174
Received fiscal 1990	327	—	—	—	—	—	327
On docket fiscal 1990	501	—	—	—	—	—	501
Closed fiscal 1990	331	—	—	—	—	—	331
Pending September 30, 1990	170	—	—	—	—	—	170
RD cases							
Pending October 1, 1989	**471	3	1	1	3	463	—
Received fiscal 1990	1,168	2	0	0	0	1,166	—
On docket fiscal 1990	1,639	5	1	1	3	1,629	—
Closed fiscal 1990	1,197	3	1	0	1	1,192	—
Pending September 30, 1990	442	2	0	1	2	437	—

[1] See Glossary of terms for definitions

* Revised, reflects higher figures than reported pending Sept. 30, 1990, in last year's annual report Revised totals result from post report adjustments to last year's "on docket" and/or "closed" figures

** Revised, reflects lower figures than reported pending Sept 30, 1990, in last year's annual report Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1990

	Number of cases showing specific allegations	Percent of total cases
A. Charges filed against employers under sec. 8(a)		
Subsections of Sec. 8(a): Total cases	24,075	100.0
8(a)(1)	4,129	17.2
8(a)(1)(2)	255	1.1
8(a)(1)(3)	8,617	35.8
8(a)(1)(4)	171	0 7
8(a)(1)(5)	7,477	31.1
8(a)(1)(2)(3)	263	1.1
8(a)(1)(2)(4)	6	0.0
8(a)(1)(2)(5)	127	0 5
8(a)(1)(3)(4)	600	2.5
8(a)(1)(3)(5)	2,196	9.1
8(a)(1)(4)(5)	20	0 1
8(a)(1)(2)(3)(4)	10	0.0
8(a)(1)(2)(3)(5)	91	0 4
8(a)(1)(2)(4)(5)	4	0.0
8(a)(1)(3)(4)(5)	101	0.4
8(a)(1)(2)(3)(4)(5)	8	0 0
Recapitulation[1]		
8(a)(1)[2]	24,075	100.0
8(a)(2)	764	3.2
8(a)(3)	11,886	49.4
8(a)(4)	920	3.8
8(a)(5)	10,024	41.6
B. Charges filed against unions under sec. 8(b)		
Subsections of Sec. 8(b): Total cases	9,684	100 0
8(b)(1)	6,289	64 9
8(b)(2)	97	1 0
8(b)(3)	259	2.7
8(b)(4)	1,262	13.0
8(b)(5)	2	0.0
8(b)(6)	8	0.1
8(b)(7)	265	2.7
8(b)(1)(2)	1,096	11.3
8(b)(1)(3)	311	3 2
8(b)(1)(5)	2	0.0
8(b)(1)(6)	10	0.1
8(b)(2)(3)	6	0.1
8(b)(2)(5)	1	0.0
8(b)(3)(6)	1	0.0
8(b)(1)(2)(3)	63	0.7
8(b)(1)(2)(5)	1	0.0
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	3	0 0
8(b)(1)(3)(6)	2	0.0
8(b)(1)(5)(6)	1	0.0
8(b)(1)(2)(3)(5)	1	0.0
8(b)(1)(2)(3)(6)	3	0.0
Recapitulation[1]		
8(b)(1)	7,783	80.4
8(b)(2)	1,269	13 1
8(b)(3)	649	6.7
8(b)(4)	1,262	13.0
8(b)(5)	11	0.1
8(b)(6)	26	0.3
8(b)(7)	265	2 7

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1990—Continued

	Number of cases showing specific allegations	Percent of total cases
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	1,262	100.0
8(b)(4)(A)	81	6.4
8(b)(4)(B)	842	66.7
8(b)(4)(C)	8	0.6
8(b)(4)(D)	297	23.5
8(b)(4)(A)(B)	29	2.3
8(b)(4)(A)(C)	3	0.2
8(b)(4)(B)(C)	2	0.2
Recapitulation[1]		
8(b)(4)(A)	113	9.0
8(b)(4)(B)	873	69.2
8(b)(4)(C)	13	1.0
8(b)(4)(D)	297	23.5
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	265	100.0
8(b)(7)(A)	65	24.5
8(b)(7)(B)	14	5.3
8(b)(7)(C)	183	69.1
8(b)(7)(A)(C)	2	0.8
8(b)(7)(A)(B)(C)	1	0.4
Recapitulation[1]		
8(b)(7)(A)	68	25.7
8(b)(7)(B)	15	5.7
8(b)(7)(C)	186	70.2
C Charges filed under Sec 8(e)		
Total cases 8(e)	44	100 0
Against unions alone	44	100.0
D Charges filed under Sec. 8(g)		
Total cases 8(g)	30	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

[2] Sec. 8(a)(1) is a general provision forbidding any type of employer interference with the rights of the employees guaranteed by the Act, and therefore is included in all charges of employer unfair labor practices.

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1990[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case											
		Total formal actions taken	CA	CB	CC	CD		CE	CG	CP	CA combined with CB	C combined with representation cases	Other C combinations
						Jurisdictional disputes	Unfair labor practices						
10(k) notices of hearings issued	74	72	—	—	—	72	—	—	—	—	—	—	—
Complaints issued	4,885	3,876	3,182	346	122	—	0	8	4	15	36	20	143
Backpay specifications issued	102	73	71	0	0	—	0	0	0	0	0	1	1
Hearings completed, total	721	632	523	55	12	9	1	2	0	2	10	8	10
Initial ULP hearings	683	603	496	53	12	9	1	2	0	2	10	8	10
Backpay hearings	32	26	25	1	0	—	0	0	0	0	0	0	0
Other hearings	6	3	2	1	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	800	688	591	58	9	—	1	0	0	3	5	13	8
Initial ULP decisions	689	591	500	53	8	—	1	0	0	3	5	13	8
Backpay decisions	85	79	77	2	0	—	0	0	0	0	0	0	0
Supplemental decisions	26	18	14	3	1	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,109	857	720	88	13	12	10	2	0	12	0	0	0
Upon consent of parties.													
Initial decisions	62	40	27	7	3	—	0	0	0	3	0	0	0
Supplemental decisions	12	12	10	2	0	—	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	330	222	188	30	3	—	0	0	0	1	0	0	0
Backpay decisions	25	25	25	0	0	—	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	631	515	428	48	7	12	10	2	0	8	0	0	0
Decisions based on stipulated record	12	12	12	0	0	—	0	0	0	0	0	0	0
Supplemental ULP decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Backpay decisions	37	31	30	1	0	—	0	0	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1990[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Hearings completed, total	1,233	1,070	893	47	130	7
Initial hearings	940	906	784	28	94	7
Hearings on objections and/or challenges	293	164	109	19	36	0
Decisions issued, total	1,140	1,052	770	26	95	12
By Regional Directors	1,106	1,020	743	24	92	12
Elections directed	891	812	662	16	78	10
Dismissals on record	215	196	81	8	14	2
By Board	34	32	27	2	3	0
Transferred by Regional Directors for initial decision	4	4	3	0	1	0
Elections directed	3	3	3	0	0	0
Dismissals on record	1	1	0	0	1	0
Review of Regional Directors' decisions:						
Requests for review received	355	349	307	16	26	1
Withdrawn before request ruled upon	14	14	14	0	0	0
Board action on request ruled upon, total	307	283	256	8	19	1
Granted	72	61	55	2	4	0
Denied	222	214	193	6	15	1
Remanded	13	8	8	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	30	28	24	2	2	0
Regional Directors' decisions:						
Affirmed	11	11	9	2	0	0
Modified	2	2	1	0	1	0
Reversed	17	15	14	0	1	0
Outcome:						
Election directed	15	15	13	1	1	0
Dismissals on record	15	13	11	1	1	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1990[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken	RC	RM	RD	UD
Decisions on objections and/or challenges, total	895	778	654	43	81	7
By Regional Directors	290	276	221	21	32	2
By Board	605	504	433	22	49	5
In stipulated elections	605	468	412	5	46	5
No exceptions to Regional Directors' reports	412	303	264	3	31	5
Exceptions to Regional Directors' reports	193	165	148	2	15	0
In directed elections (after transfer by Regional Director)	36	36	18	17	1	0
Review of Regional Directors' supplemental decisions:						
Request for review received	24	21	20	0	1	0
Withdrawn before request ruled upon	0	0	0	0	0	0
Board action on request ruled upon, total	19	17	16	0	1	0
Granted	2	2	0	0	0	0
Denied	16	14	13	0	1	0
Remanded	1	1	1	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	0	0	0	0	0	0
Regional Directors' decisions:						
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.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1990[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	68	3	59
Decisions issued after hearing	91	3	70
By Regional Directors	88	3	67
By Board	3	0	3
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions.			
Requests for review received	41	0	39
Withdrawn before request ruled upon	3	0	3
Board action on requests ruled upon, total	45	0	38
Granted	7	0	7
Denied	33	0	26
Remanded	5	0	5
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	3	0	3
Regional Directors' decisions.			
Affirmed	1	0	1
Modified	1	0	1
Reversed	1	0	1

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1990[1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2]10,674	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,030	2,303	1,692	90	34	328	159	727	569	30	4	104	20
Recognition or other assistance withdrawn	18	18	11	0	0	4	3	—	—	—	—	—	—
Employer-dominated union disestablished	6	6	4	0	0	1	1	—	—	—	—	—	—
Employees offered reinstatement	1,032	1,032	712	51	58	153	58	—	—	—	—	—	—
Employees placed on preferential hiring list	351	351	234	22	28	50	17	—	—	—	—	—	—
Hiring hall rights restored	44	—	—	—	—	—	—	44	17	0	2	23	2
Objections to employment withdrawn	35	—	—	—	—	—	—	35	12	0	1	22	0
Picketing ended	2	—	—	—	—	—	—	2	2	0	0	0	0
Work stoppage ended	31	—	—	—	—	—	—	31	31	0	0	0	0
Collective bargaining begun	3,079	2,872	2,627	29	29	97	90	207	200	0	0	6	1
Backpay distributed	2,399	2,260	1,939	53	34	176	58	139	94	1	3	33	8
Reimbursement of fees, dues, and fines	567	450	340	21	26	48	15	117	88	0	1	28	0
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected.													
Employees offered reinstatement, total	4,026	4,026	2,415	32	607	614	358	—	—	—	—	—	—
Accepted	3,294	3,294	1,955	27	605	458	249	—	—	—	—	—	—
Declined	732	732	460	5	2	156	109	—	—	—	—	—	—
Employees placed on preferential hiring list	831	831	470	63	230	39	29	0	0	0	0	0	0
Hiring hall rights restored	137	—	—	—	—	—	—	137	132	0	1	1	3
Objections to employment withdrawn	2	—	—	—	—	—	—	2	2	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1990[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Employees receiving backpay:													
From either employer or union	16,413	16,073	12,533	539	8	1,877	1,116	340	231	1	2	71	35
From both employer and union	13	9	9	0	0	0	0	4	3	0	0	1	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	2,510	2,250	2,060	0	0	139	51	260	232	0	0	28	0
From both employer and union	228	48	48	0	0	0	0	180	48	0	0	132	0
C. By amounts of monetary recovery, total	$44,782,718	$44,201,401	$24,866,545	$957,901	$78,235	$9,786,018	$8,512,702	$581,317	$180,939	$23,673	$21,058	$197,873	$157,774
Backpay (includes all monetary payments except fees, dues, and fines)	44,444,004	43,950,577	24,638,148	957,901	78,235	9,779,428	8,496,865	493,427	133,318	23,673	21,058	157,604	157,774
Reimbursement of fees, dues, and fines	338,714	250,824	228,397	0	0	6,590	15,837	87,890	47,621	0	0	40,269	0

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1990 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 1990[1]

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Food and kindred products	1,638	1,345	984	338	15	6	1	0	1	273	220	14	39	4	1	15
Tobacco manufacturers	9	8	5	3	0	0	0	0	0	1	1	0	0	0	0	0
Textile mill products	297	226	172	54	0	0	0	0	0	71	64	1	6	0	0	0
Apparel and other finished products made from fabric and similar materials	374	321	273	47	1	0	0	0	0	53	37	1	15	0	0	0
Lumber and wood products (except furniture)	427	325	274	48	1	1	0	0	1	96	75	4	17	2	0	4
Furniture and fixtures	362	294	246	47	1	0	0	0	0	65	53	0	12	3	0	0
Paper and allied products	636	548	402	136	6	1	0	0	3	82	61	1	20	2	0	4
Printing, publishing, and allied products	1,042	867	681	185	1	0	0	0	0	150	104	11	35	2	1	22
Chemicals and allied products	690	572	445	112	13	0	1	0	1	110	85	5	20	2	0	6
Petroleum refining and related industries	191	155	111	39	4	1	0	0	0	34	22	1	11	0	0	2
Rubber and miscellaneous plastic products	528	418	344	65	6	2	0	0	1	109	88	3	18	1	0	0
Leather and leather products	79	62	52	10	0	0	0	0	0	17	10	0	7	0	0	0
Stone, clay, glass, and concrete products	704	569	424	108	21	9	0	0	7	125	93	11	21	5	0	5
Primary metal industries	1,133	961	638	312	9	1	0	0	1	161	123	2	36	4	0	7
Fabricated metal products (except machinery and transportation equipment)	1,344	1,104	817	269	9	7	0	0	2	224	170	8	46	7	0	9
Machinery (except electrical)	1,149	930	725	185	13	6	0	0	1	203	152	12	39	10	0	6
Electrical and electronic machinery, equipment, and supplies	824	732	523	205	4	0	0	0	0	87	67	0	20	1	0	4
Aircraft and parts	444	414	226	184	3	1	0	0	0	25	18	0	7	0	1	4
Ship and boat building and repairing	156	142	89	52	1	0	0	0	0	14	10	0	4	0	0	0
Automotive and other transportation equipment	1,028	903	550	347	3	3	0	0	0	118	93	1	24	5	0	2
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	214	181	144	36	0	0	0	0	1	28	22	0	6	2	1	2
Miscellaneous manufacturing industries	374	312	216	93	2	1	0	0	0	60	51	2	7	2	0	0
Manufacturing	13,643	11,389	8,341	2,875	113	39	2	0	19	2,106	1,619	77	410	52	4	92

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Metal mining	58	44	36	8	0	0	0	0	0	12	6	1	5	0	1	1
Coal mining	618	591	379	111	88	1	7	0	5	25	20	3	2	0	0	2
Oil and gas extraction	54	46	37	8	1	0	0	0	0	7	3	0	4	0	1	0
Mining and quarrying of nonmetallic minerals (except fuels)	159	124	78	31	10	3	0	0	2	33	24	1	8	1	0	1
Mining	889	805	530	158	99	4	7	0	7	77	53	5	19	1	2	4
Construction	5,140	4,007	2,211	907	508	205	20	0	156	1,094	964	79	51	6	3	30
Wholesale trade	2,017	1,527	1,146	330	38	5	2	0	6	461	322	22	117	13	2	14
Retail trade	3,263	2,565	1,962	509	40	8	3	0	43	646	454	49	143	35	2	15
Finance, insurance, and real estate	627	495	395	84	12	1	1	0	2	117	82	5	30	2	0	13
U S Postal Service	2,361	2,359	1,723	636	0	0	0	0	0	2	1	1	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	707	573	401	159	12	0	0	0	1	129	115	3	11	3	0	2
Motor freight transportation and warehousing	2,256	1,761	1,315	387	33	13	2	0	11	478	411	19	48	4	0	13
Water transportation	209	195	94	95	3	3	0	0	0	12	11	0	1	0	0	2
Other transportation	392	308	235	67	4	1	1	0	0	81	72	4	5	2	0	1
Communication	1,052	908	565	333	4	6	0	0	0	132	87	5	40	2	0	10
Electric, gas, and sanitary services	909	669	534	116	13	2	2	0	2	216	186	6	24	2	0	22
Transportation, communication, and other utilities	5,525	4,414	3,144	1,157	69	25	5	0	14	1,048	882	37	129	13	0	50
Hotels, rooming houses, camps, and other lodging places	817	688	538	141	7	0	1	0	1	127	101	4	22	0	1	1
Personal services	294	197	155	42	0	0	0	0	0	88	53	9	26	3	0	6
Automotive repair, services, and garages	334	220	168	50	1	0	0	0	1	111	90	6	15	1	0	2
Motion pictures	203	174	107	65	1	0	0	0	1	27	23	1	3	2	0	0
Amusement and recreation services (except motion pictures)	364	294	187	88	15	2	1	0	1	68	48	4	16	0	0	2
Health services	2,653	1,984	1,673	271	10	0	0	30	0	580	476	8	96	15	6	68
Educational services	229	168	135	30	3	0	0	0	0	52	46	1	5	0	1	8
Membership organizations	666	612	212	379	14	3	0	0	4	46	37	5	4	1	0	7
Business services	1,748	1,388	1,030	319	24	3	2	0	10	343	281	6	56	5	2	10
Miscellaneous repair services	141	99	79	17	3	0	0	0	0	42	38	1	3	0	0	0
Legal services	46	34	30	3	0	1	0	0	0	12	12	0	0	0	0	0
Museums, art galleries, and botanical and zoological gardens	13	9	4	4	1	0	0	0	0	4	2	1	1	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Social services	261	186	164	22	0	0	0	0	0	73	55	3	15	0	0	2
Miscellaneous services	140	116	65	49	2	0	0	0	0	24	18	2	4	0	0	0
Services	7,909	6,169	4,547	1,480	81	9	4	30	18	1,597	1,280	51	266	27	10	106
Public administration	133	103	76	21	5	1	0	0	0	25	21	1	3	3	0	2
Total, all industrial groups	41,507	33,833	24,075	8,157	965	297	44	30	265	7,173	5,678	327	1,168	152	23	326

[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 1990[1]

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Maine	116	101	71	30	0	0	0	0	0	14	8	0	6	0	0	1
New Hampshire	69	55	44	11	0	0	0	0	0	14	10	0	4	0	0	0
Vermont	72	62	55	7	0	0	0	0	0	8	5	1	2	1	0	1
Massachusetts	1,207	1,070	749	241	54	15	6	1	4	117	87	4	26	3	0	17
Rhode Island	150	132	107	15	8	2	0	0	0	14	10	0	4	1	0	3
Connecticut	702	608	460	133	10	3	0	2	0	85	71	5	9	2	1	6
New England	2,316	2,028	1,486	437	72	20	6	3	4	252	191	10	51	7	1	28
New York	4,167	3,553	2,386	1,031	66	29	4	8	29	570	469	36	65	13	1	30
New Jersey	1,817	1,493	982	409	55	37	1	0	9	295	248	6	41	12	0	17
Pennsylvania	2,760	2,244	1,602	460	127	31	4	2	18	486	413	11	62	8	3	19
Middle Atlantic	8,744	7,290	4,970	1,900	248	97	9	10	56	1,351	1,130	53	168	33	4	66
Ohio	2,370	1,956	1,449	438	34	20	1	0	14	388	304	12	72	14	2	10
Indiana	1,518	1,242	895	302	24	2	3	0	16	258	226	3	29	10	0	8
Illinois	2,504	1,990	1,270	523	131	31	1	2	32	481	383	30	68	9	0	24
Michigan	2,561	2,101	1,527	489	62	19	0	0	4	420	314	17	89	12	0	28
Wisconsin	1,081	826	611	176	20	8	1	5	5	214	183	6	25	9	6	26
East North Central	10,034	8,115	5,752	1,928	271	80	6	7	71	1,761	1,410	68	283	54	8	96
Iowa	258	161	129	31	1	0	0	0	0	93	81	2	10	0	2	2
Minnesota	591	417	273	75	52	2	1	0	14	159	115	11	33	1	1	13
Missouri	1,387	1,121	781	268	43	17	0	1	11	254	192	10	52	4	1	7
North Dakota	47	30	25	5	0	0	0	0	0	17	15	0	2	0	0	0
South Dakota	39	30	28	2	0	0	0	0	0	9	9	0	0	0	0	0
Nebraska	101	65	49	16	0	0	0	0	0	34	30	1	3	0	0	2
Kansas	322	213	168	43	0	1	0	0	1	109	99	1	9	0	0	0
West North Central	2,745	2,037	1,453	440	96	20	1	1	26	675	541	25	109	5	4	24
Delaware	86	69	54	15	0	0	0	0	0	17	16	0	1	0	0	0
Maryland	699	573	351	201	5	11	0	5	0	122	106	3	13	1	0	3

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
District of Columbia	193	154	127	27	0	0	0	0	0	36	28	2	6	0	0	3
Virginia	587	481	377	102	1	1	0	0	0	101	91	1	9	0	0	5
West Virginia	817	739	461	179	59	4	2	0	34	75	71	2	2	2	1	0
North Carolina	423	370	301	68	1	0	0	0	0	52	42	2	8	0	0	1
South Carolina	153	122	108	14	0	0	0	0	0	30	20	2	8	0	0	1
Georgia	518	428	309	114	2	1	1	0	1	88	70	5	13	0	0	2
Florida	1,038	822	687	127	8	0	0	0	0	210	191	8	11	2	0	4
South Atlantic	4,514	3,758	2,775	847	76	17	3	5	35	731	635	25	71	5	1	19
Kentucky	721	633	491	113	17	0	5	1	6	79	65	2	12	2	0	7
Tennessee	753	651	536	111	3	1	0	0	0	96	72	4	20	0	0	6
Alabama	345	273	207	59	6	1	0	0	0	70	50	3	17	0	0	2
Mississippi	281	246	214	30	2	0	0	0	0	32	26	1	5	0	1	2
East South Central	2,100	1,803	1,448	313	28	2	5	1	6	277	213	10	54	2	1	17
Arkansas	184	146	112	34	0	0	0	0	0	38	28	3	7	0	0	0
Louisiana	327	267	208	58	0	0	0	0	1	60	40	2	18	0	0	0
Oklahoma	265	216	167	49	0	0	0	0	0	47	33	4	10	0	1	1
Texas	1,098	928	641	273	7	4	0	0	3	162	123	7	32	2	1	5
West South Central	1,874	1,557	1,128	414	7	4	0	0	4	307	224	16	67	2	2	6
Montana	188	113	91	20	2	0	0	0	0	65	49	2	14	4	0	6
Idaho	96	73	57	15	1	0	0	0	0	23	19	0	4	0	0	0
Wyoming	33	24	22	2	0	0	0	0	0	8	7	0	1	0	0	1
Colorado	480	418	317	99	2	0	0	0	0	57	44	1	12	3	0	2
New Mexico	185	126	89	37	0	0	0	0	0	59	47	0	12	0	0	0
Arizona	376	298	192	102	2	0	0	0	2	74	63	3	8	0	0	4
Utah	114	84	60	21	2	1	0	0	0	26	24	1	1	0	1	3
Nevada	513	449	326	101	13	4	3	0	2	62	42	4	16	0	0	2
Mountain	1,985	1,585	1,154	397	22	5	3	0	4	374	295	11	68	7	1	18

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Washington	895	663	465	181	10	1	0	1	5	220	137	15	68	9	0	3
Oregon	547	392	276	102	8	2	0	0	4	139	97	11	31	7	0	9
California	4,988	4,049	2,748	1,083	116	47	8	2	45	889	641	75	173	19	0	31
Alaska	114	82	54	22	3	0	2	0	1	30	24	2	4	0	0	2
Hawaii	293	210	148	49	7	2	1	0	3	80	63	1	16	0	1	2
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	6,837	5,396	3,691	1,437	144	52	11	3	58	1,358	962	104	292	35	1	47
Puerto Rico	340	256	211	43	1	0	0	0	1	77	69	3	5	2	0	5
Virgin Islands	18	8	7	1	0	0	0	0	0	10	8	2	0	0	0	0
Outlying areas	358	264	218	44	1	0	0	0	1	87	77	5	5	2	0	5
Total, all States and areas	41,507	33,833	24,075	8,157	965	297	44	30	265	7,173	5,678	327	1,168	152	23	326

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

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1990[1]

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Connecticut	702	608	460	133	10	3	0	2	0	85	71	5	9	2	1	6
Maine	116	101	71	30	0	0	0	0	0	14	8	0	6	0	0	1
Massachusetts	1,207	1,070	749	241	54	15	6	1	4	117	87	4	26	3	0	17
New Hampshire	69	55	44	11	0	0	0	0	0	14	10	0	4	0	0	0
Rhode Island	150	132	107	15	8	2	0	0	0	14	10	0	4	1	0	3
Vermont	72	62	55	7	0	0	0	0	0	8	5	1	2	1	0	1
Region I	2,316	2,028	1,486	437	72	20	6	3	4	252	191	10	51	7	1	28
Delaware	86	69	54	15	0	0	0	0	0	17	16	0	1	0	0	0
New Jersey	1,817	1,493	982	409	55	37	1	0	9	295	248	6	41	12	0	17
New York	4,167	3,553	2,386	1,031	66	29	4	8	29	570	469	36	65	13	1	30
Puerto Rico	340	256	211	43	1	0	0	0	1	77	69	3	5	2	0	5
Virgin Islands	18	8	7	1	0	0	0	0	0	10	8	2	0	0	0	0
Region II	6,428	5,379	3,640	1,499	122	66	5	8	39	969	810	47	112	27	1	52
District of Columbia	193	154	127	27	0	0	0	0	0	36	28	2	6	0	0	3
Maryland	699	573	351	201	5	11	0	5	0	122	106	3	13	1	0	3
Pennsylvania	2,760	2,244	1,602	460	127	31	4	2	18	486	413	11	62	8	3	19
Virginia	587	481	377	102	1	1	0	0	0	101	91	1	9	0	0	5
West Virginia	817	739	461	179	59	4	2	0	34	75	71	2	2	2	1	0
Region III	5,056	4,191	2,918	969	192	47	6	7	52	820	709	19	92	11	4	30
Alabama	345	273	207	59	6	1	0	0	0	70	50	3	17	0	0	2
Florida	1,038	822	687	127	8	0	0	0	0	210	191	8	11	2	0	4
Georgia	518	428	309	114	2	1	1	0	1	88	70	5	13	0	0	2
Kentucky	721	633	491	113	17	0	5	1	6	79	65	2	12	2	0	7
Mississippi	281	246	214	30	2	0	0	0	0	32	26	1	5	0	1	2
North Carolina	423	370	301	68	1	0	0	0	0	52	42	2	8	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
South Carolina	153	122	108	14	0	0	0	0	0	30	20	2	8	0	0	1
Tennessee	753	651	536	111	3	1	0	0	0	96	72	4	20	0	0	6
Region IV	4,232	3,545	2,853	636	39	3	6	1	7	657	536	27	94	4	1	25
Illinois	2,504	1,990	1,270	523	131	31	1	2	32	481	383	30	68	9	0	24
Indiana	1,518	1,242	895	302	24	2	3	0	16	258	226	3	29	10	0	8
Michigan	2,561	2,101	1,527	489	62	19	0	0	4	420	314	17	89	12	0	28
Minnesota	591	417	273	75	52	2	1	0	14	159	115	11	33	1	1	13
Ohio	2,370	1,956	1,449	438	34	20	1	0	14	388	304	12	72	14	2	10
Wisconsin	1,081	826	611	176	20	8	1	5	5	214	183	6	25	9	6	26
Region V	10,625	8,532	6,025	2,003	323	82	7	7	85	1,920	1,525	79	316	55	9	109
Arkansas	184	146	112	34	0	0	0	0	0	38	28	3	7	0	0	0
Louisiana	327	267	208	58	0	0	0	0	1	60	40	2	18	0	0	0
New Mexico	185	126	89	37	0	0	0	0	0	59	47	0	12	0	0	0
Oklahoma	265	216	167	49	0	0	0	0	0	47	33	4	10	0	1	1
Texas	1,098	928	641	273	7	4	0	0	3	162	123	7	32	2	1	5
Region VI	2,059	1,683	1,217	451	7	4	0	0	4	366	271	16	79	2	2	6
Iowa	258	161	129	31	1	0	0	0	0	93	81	2	10	0	2	2
Kansas	322	213	168	43	0	1	0	0	1	109	99	1	9	0	0	0
Missouri	1,387	1,121	781	268	43	17	0	1	11	254	192	10	52	4	1	7
Nebraska	101	65	49	16	0	0	0	0	0	34	30	1	3	0	0	2
Region VII	2,068	1,560	1,127	358	44	18	0	1	12	490	402	14	74	4	3	11
Colorado	480	418	317	99	2	0	0	0	0	57	44	1	12	3	0	2
Montana	188	113	91	20	2	0	0	0	0	65	49	2	14	4	0	6
North Dakota	47	30	25	5	0	0	0	0	0	17	15	0	2	0	0	0
South Dakota	39	30	28	2	0	0	0	0	0	9	9	0	0	0	0	0
Utah	114	84	60	21	2	1	0	0	0	26	24	1	1	0	1	3
Wyoming	33	24	22	2	0	0	0	0	0	8	7	0	1	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1990[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Region VIII	901	699	543	149	6	1	0	0	0	182	148	4	30	7	1	12
Arizona	376	298	192	102	2	0	0	0	2	74	63	3	8	0	0	4
California	4,988	4,049	2,748	1,083	116	47	8	2	45	889	641	75	173	19	0	31
Hawaii	293	210	148	49	7	2	1	0	3	80	63	1	16	0	1	2
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	513	449	326	101	13	4	3	0	2	62	42	4	16	0	0	2
Region IX	6,170	5,006	3,414	1,335	138	53	12	2	52	1,105	809	83	213	19	1	39
Alaska	114	82	54	22	3	0	2	0	1	30	24	2	4	0	0	2
Idaho	96	73	57	15	1	0	0	0	0	23	19	0	4	0	0	0
Oregon	547	392	276	102	8	2	0	0	4	139	97	11	31	7	0	9
Washington	895	663	465	181	10	1	0	1	5	220	137	15	68	9	0	3
Region X	1,652	1,210	852	320	22	3	2	1	10	412	277	28	107	16	0	14
Total, all States and areas	41,507	33,833	24,075	8,157	965	297	44	30	265	7,173	5,678	327	1,168	152	23	326

[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 1990[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	32,756	100.0	——	23,156	100.0	7,966	100.0	949	100.0	288	100.0	62	100.0	41	100 0	294	100 0
Agreement of the parties	9,773	29.8	100.0	7,891	34 0	1,297	16.2	435	45.8	4	1.3	19	30 6	17	41 4	110	37.4
Informal settlement	9,633	29.4	98.6	7,782	33.6	1,280	16.0	426	44 8	3	1 0	19	30.6	17	41.4	106	36.0
Before issuance of complaint	6,894	21.0	70.5	5,494	23.7	970	12.1	329	34.6	([2])	—	7	11 2	15	36 5	79	26.8
After issuance of complaint, before opening of hearing	2,685	8.2	27.5	2,243	9.6	307	3.8	96	10.1	2	0 6	10	16.1	2	4.8	25	8.5
After hearing opened, before issuance of administrative law judge's decision	54	0.2	0 6	45	0.1	3	0 0	1	0.1	1	0.3	2	3.2	0	—	2	0.6
Formal settlement	140	0.4	1.4	109	0.4	17	0.2	9	0.9	1	0 3	0	—	0	—	4	1.3
After issuance of complaint, before opening of hearing	46	0.1	0.5	30	0.1	9	0.1	5	0.5	0	—	0	—	0	—	2	0.6
Stipulated decision	0	—	—	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	46	0.1	0.5	30	0.1	9	0.1	5	0 5	0	—	0	—	0	—	2	0.6
After hearing opened	94	0.3	1.0	79	0.3	8	0.1	4	0 4	1	0.3	0	—	0	—	2	0.6
Stipulated decision	30	0.1	0.3	21	0.0	4	0 0	3	0.3	0	—	0	—	0	—	2	0.6
Consent decree	64	0.2	0.7	58	0.2	4	0.0	1	0.1	1	0.3	0	—	0	—	0	—
Compliance with	800	2 4	100.0	644	2 7	133	1.6	12	1.2	1	0.3	1	1.6	0	—	9	3.0
Administrative law judge's decision	43	0.1	5.4	40	0.1	2	0.0	0	—	0	—	0	—	0	—	1	0 3
Board decision	539	1.6	67.4	414	1 7	108	1.3	7	0 7	1	0.3	1	1.6	0	—	8	2.7
Adopting administrative law judge's decision (no exceptions filed)	209	0.6	26.1	155	0.6	51	0 6	2	0.2	0	—	0	—	0	—	1	0 3
Contested	330	1.0	41.3	259	1.1	57	0.7	5	0 5	1	0.3	1	1.6	0	—	7	2.3
Circuit court of appeals decree	205	0 6	25.6	180	0.7	20	0.2	5	0.5	0	—	0	—	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1990[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Supreme Court action	13	0.0	1.6	10	0.0	3	0.0	0	—	0	—	0	—	0	—	0	—
Withdrawal	10,108	30.9	100.0	7,294	31.4	2,338	29.3	346	36.4	0	—	21	33.8	12	29.2	97	32.9
Before issuance of complaint	9,810	29.9	97.1	7,046	30.4	2,312	29.0	328	34.5	([2])	—	21	33.8	11	26.8	92	31.2
After issuance of complaint, before opening of hearing	260	0.8	2.6	213	0.9	25	0.3	17	1.7	0	—	0	—	1	2.4	4	1.3
After hearing opened, before administrative law judge's decision	38	0.1	0.4	35	0.1	1	0.0	1	0.1	0	—	0	—	0	—	1	0.3
After administrative law judge's decision, before Board decision	0	—	—	0	—	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	—	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	11,699	35.7	100.0	7,251	31.3	4,181	52.4	156	16.4	0	—	21	33.8	12	29.2	78	26.5
Before issuance of complaint	11,341	34.6	96.9	6,983	30.1	4,103	51.5	149	15.7	([2])	—	21	33.8	12	29.2	73	24.8
After issuance of complaint, before opening of hearing	113	0.3	1.0	69	0.2	40	0.5	4	0.4	0	—	0	—	0	—	0	—
After hearing opened, before administrative law judge's decision	6	0.0	0.1	5	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
By administrative law judge's decision	2	0.0	0.0	0	—	2	0.0	0	—	0	—	0	—	0	—	0	—
By Board decision	227	0.7	1.9	186	0.8	34	0.4	2	0.2	0	—	0	—	0	—	5	1.7
Adopting administrative law judge's decision (no exceptions filed)	15	0.0	0.1	14	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
Contested	212	0.6	1.8	172	0.7	33	0.4	2	0.2	0	—	0	—	0	—	5	1.7
By circuit court of appeals decree	8	0.0	0.1	7	0.0	0	—	1	0.1	0	—	0	—	0	—	0	—
By Supreme Court action	2	0.0	0.0	1	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
10(k) actions (see Table 7A for details of dispositions)	283	0.9	0.0	0	—	0	—	0	—	283	98.2	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	93	0.3	0.0	76	0.3	17	0.2	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 1990[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	283	100.0
Agreement of the parties—informal settlement	96	33.9
Before 10(k) notice	67	23.7
After 10(k) notice, before opening of 10(k) hearing	27	9.5
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	2	0.7
Compliance with Board decision and determination of dispute	5	1.8
Withdrawal	124	43.8
Before 10(k) notice	101	35.7
After 10(k) notice, before opening of 10(k) hearing	14	4.9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	9	3.2
After Board decision and determination of dispute	0	0.0
Dismissal	58	20.5
Before 10(k) notice	47	16.6
After 10(k) notice, before opening of 10(k) hearing	4	1.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	3	1.1
By Board decision and determination of dispute	4	1.4

[1] See Glossary of terms for definitions

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1990[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	32,756	100.0	23,156	100.0	7,966	100.0	949	100.0	288	100.0	62	100.0	41	100.0	294	100.0
Before issuance of complaint	28,328	86.5	19,523	84.3	7,385	92.7	806	84.9	283	98.3	49	79.0	38	92.7	244	83.0
After issuance of complaint, before opening of hearing	3,104	9.5	2,555	11.0	381	4.8	122	12.9	2	0.7	10	16.1	3	7.3	31	10.5
After hearing opened, before issuance of administrative law judge's decision	192	0.6	164	0.7	13	0.2	6	0.6	2	0.7	2	3.2	0	—	5	1.7
After administrative law judge's decision, before issuance of Board decision	45	0.1	40	0.2	4	0.1	0	—	0	—	0	—	0	—	1	0.3
After Board order adopting administrative law judge's decision in absence of exceptions	224	0.7	169	0.7	52	0.7	2	0.2	0	—	0	—	0	—	1	0.3
After Board decision, before circuit court decree	612	1.9	489	2.1	102	1.1	7	0.8	1	0.3	1	1.7	0	—	12	4.2
After circuit court decree, before Supreme Court action	236	0.7	205	1.0	25	0.3	6	0.6	0	—	0	—	0	—	0	—
After Supreme Court action	15	0.0	11	0.0	4	0.1	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 1990[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	7,271	100.0	5,743	100.0	331	100.0	1,197	100.0	168	100 0
Before issuance of notice of hearing	2,517	34 6	1,702	29.6	180	54 4	635	53 0	130	77 4
After issuance of notice, before close of hearing	3,560	49.0	3,015	52.5	100	30.2	445	37.2	9	5 4
After hearing closed, before issuance of decision	105	1.4	95	1.7	2	0 6	8	0.7	4	2 3
After issuance of Regional Director's decision	936	12.9	792	13.8	46	13 9	98	8.2	25	14.9
After issuance of Board decision	153	2.1	139	2.4	3	0.9	11	0.9	0	—

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1990[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	7,271	100.0	5,743	100 0	331	100.0	1,197	100.0	168	100.0
Certification issued, total	4,236	58.3	3,522	61.3	115	34 7	599	50 0	77	45.8
After										
Consent election	57	0 8	42	0 7	5	1 5	10	0.8	4	2 4
Before notice of hearing	31	0.4	19	0.3	5	1.5	7	0.6	3	1.8
After notice of hearing, before hearing closed	26	0 4	23	0 4	0	—	3	0 3	1	0.6
After hearing closed, before decision	0	—	0	—	0	—	0	—	0	—
Stipulated election	3,426	47.1	2,833	49 3	78	23 6	515	43.0	51	30.4
Before notice of hearing	1,132	15.6	835	14 5	39	11.8	258	21.6	45	26.8
After notice of hearing, before hearing closed	2,271	31 2	1,976	34.4	39	11.8	256	21.4	6	3 6
After hearing closed, before decision	23	0.3	22	0 4	0	—	1	0 1	0	—
Expedited election	3	0.0	2	0.0	1	0.3	0	—	0	—
Regional Director-directed election	628	8 6	535	9.3	29	8.8	64	5.3	22	13.1
Board-directed election	122	1.7	110	1.9	2	0 6	10	0 8	0	—
By withdrawal, total	2,249	30 9	1,771	30 8	130	39.3	348	29 1	53	31.5
Before notice of hearing	1,005	13.8	713	12 4	83	25.1	209	17.5	48	28.6
After notice of hearing, before hearing closed	1,037	14.3	868	15.1	41	12.4	128	10 7	2	1 2
After hearing closed, before decision	61	0.8	56	1 0	2	0.6	3	0 3	3	1.8
After Regional Director's decision and direction of election	138	1.9	126	2.2	4	1 2	8	0.7	0	—
After Board decision and direction of election	8	0.1	8	0 1	0	—	0	—	0	—
By dismissal, total	786	10 8	450	7.8	86	26 0	250	20 9	38	22.6
Before notice of hearing	347	4.8	134	2 3	52	15.7	161	13 5	34	20.2
After notice of hearing, before hearing closed	225	3.1	147	2.6	20	6.0	58	4.8	0	—
After hearing closed, before decision	21	0 3	17	0 3	0	—	4	0 3	1	0.6
By Regional Director's decision	170	2 3	131	2 3	13	3 9	26	2.2	3	1.8
By Board decision	23	0.3	21	0 4	1	0.3	1	0 1	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 1990

	AC	UC
Total, all	32	368
Certification amended or unit clarified	12	5
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	12	5
By Regional Director's decision	12	5
By Board decision	0	0
Dismissed	12	135
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	12	135
By Regional Director's decision	12	134
By Board decision	0	1
Withdrawn	8	228
Before hearing	8	228
After hearing	0	0

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1990[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	4,289	63	3,552	3	670	1
Eligible voters	267,278	1,361	206,423	213	59,239	42
Valid votes	233,918	1,146	183,036	170	49,558	8
RC cases:						
Elections	3,536	44	2,930	2	559	1
Eligible voters	229,015	1,009	176,671	172	51,121	42
Valid votes	201,238	839	156,911	131	43,349	8
RM cases:						
Elections	87	4	65	0	18	0
Eligible voters	2,054	28	1,554	0	472	0
Valid votes	1,759	26	1,408	0	325	0
RD cases:						
Elections	587	11	504	1	71	0
Eligible voters	30,316	161	24,392	41	5,722	0
Valid votes	26,245	146	21,707	39	4,353	0
UD cases:						
Elections	79	4	53	0	22	—
Eligible voters	5,893	163	3,806	0	1,924	—
Valid votes	4,676	135	3,010	0	1,531	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1990

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	4,309	1	98	4,210	3,607	1	70	3,536	105	0	18	87	597	0	10	587
Rerun required	—	—	59	—	—	—	50	—	—	—	1	—	—	—	8	—
Runoff required	—	—	39	—	—	—	20	—	—	—	17	—	—	—	2	—
Consent elections	59	0	0	59	44	0	0	44	4	0	0	4	11	0	0	11
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,559	1	59	3,499	2,881	1	50	2,930	65	0	0	65	513	0	9	504
Rerun required	—	—	46	—	—	—	39	—	—	—	0	—	—	—	7	—
Runoff required	—	—	13	—	—	—	11	—	—	—	0	—	—	—	2	—
Regional Director-directed	685	0	37	648	579	0	20	559	35	0	17	18	71	0	0	71
Rerun required	—	—	12	—	—	—	11	—	—	—	1	—	—	—	0	—
Runoff required	—	—	25	—	—	—	9	—	—	—	16	—	—	—	0	—
Board-directed	4	0	1	3	2	0	0	2	0	0	0	0	1	0	1	0
Rerun required	—	—	1	—	—	—	0	—	—	—	0	—	—	—	1	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	2	0	0	2	1	0	0	1	0	0	0	0	1	0	0	1
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	1	—	—	—	0	—

[1] The total of representation elections resulting in certification excludes elections held in UD cases which are included in the totals in Table 11.

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1990

	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	4,309	443	10.3	66	1.5	77	1 8	520	12.1	143	3.3
By type of case:											
In RC cases	3,607	379	10 5	66	1.8	76	2.1	455	1 3	142	3.9
In RM cases	105	7	6.7	0	—	0	—	7	6 7	0	—
In RD cases	597	57	9.5	0	—	1	0.2	58	9.7	1	0.2
By type of election.											
Consent elections	59	5	8.5	0	—	0	—	5	8 5	0	—
Stipulated elections	3,559	270	7.6	51	1.4	61	1.7	331	9.3	112	3.1
Expedited elections	2	0	—	0	—	0	—	0	—	0	—
Regional Director-directed elections	685	166	24.2	15	2 2	16	2.3	182	26 6	31	4 5
Board-directed elections	4	2	50.0	0	—	0	—	2	50 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 1990[1]

	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	561	100.0	195	34.8	344	61 3	22	3 9
By type of case·								
RC cases	492	100.0	160	32.5	321	65.3	11	2.2
RM cases	10	100.0	3	30 0	6	60.0	1	10.0
RD cases	59	100.0	32	54.2	17	28.8	10	17.0
By type of election.								
Consent elections	5	100.0	1	20.0	3	60.0	1	20.0
Stipulated elections	360	100.0	80	22.2	275	76 4	5	1 4
Expedited elections	4	100 0	2	50 0	2	50 0	0	—
Regional Director-directed elections	190	100.0	112	58 9	64	33.7	14	7.4
Board-directed elections	2	100.0	0	—	0	—	2	100 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 1990[1]

	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained[2]	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	561	41	520	460	88 5	60	11.5
By type of case:							
RC cases	492	37	455	406	89 2	49	10.8
RM cases	10	3	7	0	—	7	100.0
RD cases	59	1	58	54	93 1	4	6 9
By type of election							
Consent elections	5	0	5	5	100 0	0	—
Stipulated elections	360	29	331	286	86.4	45	13.6
Expedited elections	4	4	0	0	—	0	—
Regional Director-directed elections	190	8	182	168	92.3	14	7.7
Board-directed elections	2	0	2	1	50 0	1	50.0

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained In 1 election in which objections were sustained, the cases were subsequently withdrawn. Therefore, in that case no rerun election was conducted.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1990[1]

	Total rerun elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	56	100.0	18	32.1	38	67.9	15	26.8
By type of case:								
RC cases	42	100.0	14	33.3	28	66.7	10	23.8
RM cases	5	100.0	1	20.0	4	80.0	2	40.0
RD cases	9	100.0	3	33.3	6	66.7	3	33.3
By type of election:								
Consent elections	4	100.0	0	—	4	100.0	0	—
Stipulated elections	37	100.0	12	32.4	25	67.6	8	21.6
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	12	100.0	6	50.0	6	50.0	7	58.3
Board-directed elections	3	100.0	0	—	3	100.0	0	—

[1] See Glossary of terms for definitions

[2] More than 1 rerun election was conducted in 3 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1990

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	79	35	44.3	44	55.7	5,893	957	16.2	4,936	83 8	4,676	79 3	858	14 6
AFL–CIO unions	57	23	40 4	34	59.6	4,244	674	15.9	3,570	84.1	3,307	77.9	621	14.6
Teamsters	13	6	46.2	7	53.8	1,381	104	7.5	1,277	92.5	1,151	83 3	95	6 9
Other national unions	2	2	100.0	0	—	110	110	100.0	0	—	90	81.8	90	81 8
Other local unions	7	4	57.1	3	42.9	158	69	43 7	89	56.3	128	81.0	52	32.9

[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 1990[1]

Participating unions	Total elections[2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A All representation elections															
AFL–CIO	2,621	47.2	1,236	1,236	—	—	—	1,385	173,789	59,700	59,700	—	—	—	114,089
Teamsters	1,167	40.7	475	—	475	—	—	692	55,810	15,032	—	15,032	—	—	40,778
Other national unions	89	49.4	44	—	—	44	—	45	6,560	3,258	—	—	3,258	—	3,302
Other local unions	195	51.3	100	—	—	—	100	95	10,268	4,955	—	—	—	4,955	5,313
1-union elections	4,072	45 6	1,855	1,236	475	44	100	2,217	246,427	82,945	59,700	15,032	3,258	4,955	163,482
AFL–CIO v. AFL–CIO	32	71 9	23	23	—	—	—	9	3,981	1,358	1,358	—	—	—	2,623
AFL–CIO v Teamsters	28	67.9	19	6	13	—	—	9	2,146	1,522	647	875	—	—	624
AFL–CIO v National	10	70.0	7	3	—	4	—	3	2,052	1,668	841	—	827	—	384
AFL–CIO v. Local	36	97.2	35	12	—	—	23	1	4,089	4,007	1,457	—	—	2,550	82
Teamsters v. National	3	66.7	2	—	0	2	—	1	285	130	—	0	130	—	155
Teamsters v. Local	13	69.2	9	—	4	—	5	4	913	698	—	321	—	377	215
Teamsters v. Teamsters	1	100.0	1	—	1	—	—	0	29	29	—	29	—	—	0
National v. Local	5	100.0	5	—	—	4	1	0	391	391	—	—	381	10	0
National v. National	1	100 0	1	—	—	1	—	0	5	5	—	—	5	—	0
Local v. Local	6	83.3	5	—	—	—	5	1	397	366	—	—	—	366	31
2-union elections	135	79.3	107	44	18	11	34	28	14,288	10,174	4,303	1,225	1,343	3,303	4,114
AFL–CIO v AFL–CIO v National	2	100.0	2	2	—	0	—	0	561	561	561	—	0	—	0
AFL–CIO v. Teamsters v National	1	100.0	1	0	1	0	—	0	109	109	0	109	0	—	0
3 (or more)-union elections	3	100.0	3	2	1	0	0	0	670	670	561	109	0	0	0
Total representation elections	4,210	46.7	1,965	1,282	494	55	134	2,245	261,385	93,789	64,564	16,366	4,601	8,258	167,596

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total elections[2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by AFL–CIO unions	In units won by Teamsters	In units won by Other national unions	In units won by Other local unions	
B Elections in RC cases															
AFL–CIO	2,183	50.4	1,101	1,101	—	—	—	1,082	149,962	47,891	47,891	—	—	—	102,071
Teamsters	1,003	43.5	436	—	436	—	—	567	50,859	13,364	—	13,364	—	—	37,495
Other national unions	72	56.9	41	—	—	41	—	31	5,843	2,893	—	—	2,893	—	2,950
Other local unions	150	62.7	94	—	—	—	94	56	8,027	4,625	—	—	—	4,625	3,402
1-union elections	3,408	49.1	1,672	1,101	436	41	94	1,736	214,691	68,773	47,891	13,364	2,893	4,625	145,918
AFL–CIO v. AFL–CIO	30	70.0	21	21	—	—	—	9	3,843	1,220	1,220	—	—	—	2,623
AFL–CIO v. Teamsters	25	68.0	17	6	11	—	—	8	2,058	1,444	647	797	—	—	614
AFL–CIO v National	10	70.0	7	3	—	4	—	3	2,052	1,668	841	—	827	—	384
AFL–CIO v Local	33	97.0	32	10	—	—	22	1	3,899	3,817	1,358	—	—	2,459	82
Teamsters v National	2	50.0	1	—	0	1	—	1	176	21	—	0	21	—	155
Teamsters v. Local	13	69.2	9	—	4	—	5	4	913	698	—	321	—	377	215
Teamsters v. Teamsters	1	100.0	1	—	1	—	—	0	29	29	—	29	—	—	0
National v. Local	5	100.0	5	—	—	4	1	0	391	391	—	—	381	10	0
National v. National	1	100.0	1	—	—	1	—	0	5	5	—	—	5	—	0
Local v. Local	6	83.3	5	—	—	—	5	1	397	366	—	—	—	366	31
2-union elections	126	78.6	99	40	16	10	33	27	13,763	9,659	4,066	1,147	1,234	3,212	4,104
AFL–CIO v AFL–CIO v. National	2	100.0	2	2	—	0	—	0	561	561	561	—	0	—	0
3 (or more)-union elections	2	100.0	2	2	0	0	0	0	561	561	561	0	0	0	0
Total RC elections	3,536	50.1	1,773	1,143	452	51	127	1,763	229,015	78,993	52,518	14,511	4,127	7,837	150,022

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL–CIO unions	Teamsters	Other national unions	Other local unions	In elections where no representative chosen
C Elections in RM cases															
AFL–CIO	50	26.0	13	13	—	—	—	37	835	252	252	—	—	—	583
Teamsters	23	13 0	3	—	3	—	—	20	663	166	—	166	—	—	497
Other local unions	8	0 0	0	—	—	—	0	8	153	0	—	—	—	0	153
1-union elections	81	19 8	16	13	3	0	0	65	1,651	418	252	166	0	0	1,233
AFL–CIO v. AFL–CIO	2	100 0	2	2	—	—	—	0	138	138	138	—	—	—	0
AFL–CIO v Teamsters	1	100 0	1	0	1	—	—	0	41	41	0	41	—	—	0
AFL–CIO v Local	1	100 0	1	1	—	—	0	0	6	6	6	—	—	0	0
Teamsters v. National	1	100.0	1	—	0	1	—	0	109	109	—	0	109	—	0
2-union elections	5	100 0	5	3	1	1	0	0	294	294	144	41	109	0	0
AFL–CIO v Teamsters v. National	1	100 0	1	0	1	0	—	0	109	109	0	109	0	—	0
3 (or more) union elections	1	100 0	1	0	1	0	0	0	109	109	0	109	0	0	0
Total RM elections	87	25 3	22	16	5	1	0	65	2,054	821	396	316	109	0	1,233
D Elections in RD cases															
AFL–CIO	388	31.4	122	122	—	—	—	266	22,992	11,557	11,557	—	—	—	11,435
Teamsters	141	25.5	36	—	36	—	—	105	4,288	1,502	—	1,502	—	—	2,786
Other national unions	17	17.6	3	—	—	3	—	14	717	365	—	—	365	—	352
Other local unions	37	16 2	6	—	—	—	6	31	2,088	330	—	—	—	330	1,758
1-union elections	583	28 6	167	122	36	3	6	416	30,085	13,754	11,557	1,502	365	330	16,331
AFL–CIO v Teamsters	2	50.0	1	0	1	—	—	1	47	37	0	37	—	—	10
AFL–CIO v Local	2	100 0	2	1	—	—	1	0	184	184	93	—	—	91	0
2-union elections	4	75 0	3	1	1	0	1	1	231	221	93	37	0	91	10

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total elections[2]	Elections won by unions						Elections in which no representative chosen	Employees eligible to vote						In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	In elections won	In units won by				
											AFL–CIO unions	Teamsters	Other national unions	Other local unions	
Total RD elections	587	29 0	170	123	37	3	7	417	30,316	13,975	11,650	1,539	365	421	16,341

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

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1990[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
A. All representation elections													
AFL–CIO	153,493	35,153	35,153	—	—	—	15,778	35,727	35,727	—	—	—	66,835
Teamsters	49,285	9,094	—	9,094	—	—	4,309	11,612	—	11,612	—	—	24,270
Other national unions	5,689	1,859	—	—	1,859	—	858	1,214	—	—	1,214	—	1,758
Other local unions	8,450	2,781	—	—	—	2,781	1,077	1,529	—	—	—	1,529	3,063
1-union elections	216,917	48,887	35,153	9,094	1,859	2,781	22,022	50,082	35,727	11,612	1,214	1,529	95,926
AFL–CIO v. AFL–CIO	3,457	1,032	1,032	—	—	—	93	728	728	—	—	—	1,604
AFL–CIO v. Teamsters	1,896	1,065	468	597	—	—	278	213	95	118	—	—	340
AFL–CIO v National	1,430	1,056	424	—	632	—	6	133	67	—	66	—	235
AFL–CIO v Local	3,346	3,166	1,322	—	—	1,844	111	32	3	—	—	29	37
Teamsters v. National	273	116	—	17	99	—	3	48	—	13	35	—	106
Teamsters v. Local	800	584	—	299	—	285	14	42	—	24	—	18	160
Teamsters v. Teamsters	24	18	—	18	—	—	6	0	—	0	—	—	0
National v. Local	323	313	—	—	237	76	10	0	—	—	0	0	0
National v. National	5	5	—	—	5	—	0	0	—	—	0	—	0
Local v. Local	318	225	—	—	—	225	69	8	—	—	—	8	16
2-union elections	11,872	7,580	3,246	931	973	2,430	590	1,204	893	155	101	55	2,498
AFL–CIO v. AFL–CIO v. National	360	352	268	—	84	—	8	0	0	—	0	—	0
AFL–CIO v Teamsters v. National	93	93	0	93	0	—	0	0	0	0	0	—	0
3 (or more)-union elections	453	445	268	93	84	0	8	0	0	0	0	0	0
Total representation elections	229,242	56,912	38,667	10,118	2,916	5,211	22,620	51,286	36,620	11,767	1,315	1,584	98,424

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
B Elections in RC cases													
AFL–CIO	133,036	28,484	28,484	—	—	—	12,381	32,549	32,549	—	—	—	59,622
Teamsters	44,821	8,098	—	8,098	—	—	3,763	10,742	—	10,742	—	—	22,218
Other national unions	5,027	1,622	—	—	1,622	—	750	1,103	—	—	1,103	—	1,552
Other local unions	6,545	2,612	—	—	—	2,612	984	1,046	—	—	—	1,046	1,903
1-union elections	189,429	40,816	28,484	8,098	1,622	2,612	17,878	45,440	32,549	10,742	1,103	1,046	85,295
AFL–CIO v. AFL–CIO	3,360	935	935	—	—	—	93	728	728	—	—	—	1,604
AFL–CIO v. Teamsters	1,814	992	465	527	—	—	278	210	92	118	—	—	334
AFL–CIO v. National	1,430	1,056	424	—	632	—	6	133	67	—	66	—	235
AFL–CIO v. Local	3,205	3,027	1,258	—	—	1,769	109	32	3	—	—	29	37
Teamsters v. National	170	16	—	2	14	—	0	48	—	13	35	—	106
Teamsters v Local	800	584	—	299	—	285	14	42	—	24	—	18	160
Teamsters v Teamsters	24	18	—	18	—	—	6	0	—	0	—	—	0
National v. Local	323	313	—	—	237	76	10	0	—	—	0	0	0
National v. National	5	5	—	—	5	—	0	0	—	—	0	—	0
Local v. Local	318	225	—	—	—	225	69	8	—	—	—	8	16
2-union elections	11,449	7,171	3,082	846	888	2,355	585	1,201	890	155	101	55	2,492
AFL–CIO v AFL–CIO v. National	360	352	268	—	84	—	8	0	0	—	0	—	0
3 (or more)-union elections	360	352	268	0	84	0	8	0	0	0	0	0	0
Total RC elections	201,238	48,339	31,834	8,944	2,594	4,967	18,471	46,641	33,439	10,897	1,204	1,101	87,787

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions	
C. Elections in RM cases													
AFL–CIO	739	168	168	—	—	—	67	130	130	—	—	—	374
Teamsters	550	115	—	115	—	—	41	89	—	89	—	—	305
Other local unions	130	0	—	—	—	0	0	34	—	—	—	34	96
1-union elections	1,419	283	168	115	0	0	108	253	130	89	0	34	775
AFL–CIO v. AFL–CIO	97	97	97	—	—	—	0	0	0	—	—	—	0
AFL–CIO v. Teamsters	41	41	1	40	—	—	0	0	0	0	—	—	0
AFL–CIO v. Local	6	6	6	—	—	0	0	0	0	—	—	0	0
Teamsters v. National	103	100	—	15	85	—	3	0	—	0	0	—	0
2-union elections	247	244	104	55	85	0	3	0	0	0	0	0	0
AFL–CIO v. Teamsters v. National	93	93	0	93	0	—	0	0	0	0	0	—	0
3 (or more)-union elections	93	93	0	93	0	0	0	0	0	0	0	0	0
Total RM elections	1,759	620	272	263	85	0	111	253	130	89	0	34	775
D Elections in RD cases													
AFL–CIO	19,718	6,501	6,501	—	—	—	3,330	3,048	3,048	—	—	—	6,839
Teamsters	3,914	881	—	881	—	—	505	781	—	781	—	—	1,747
Other national unions	662	237	—	—	237	—	108	111	—	—	111	—	206
Other local unions	1,775	169	—	—	—	169	93	449	—	—	—	449	1,064
1-union elections	26,069	7,788	6,501	881	237	169	4,036	4,389	3,048	781	111	449	9,856
AFL–CIO v. Teamsters	41	32	2	30	—	—	0	3	3	0	—	—	6
AFL–CIO v. Local	135	133	58	—	—	75	2	0	0	—	—	0	0
2-union elections	176	165	60	30	0	75	2	3	3	0	0	0	6

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1990[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won						Valid votes cast in elections lost					
		Votes for unions					Total votes for no union	Votes for unions					Total votes for no union
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions	
Total RD elections	26,245	7,953	6,561	911	237	244	4,038	4,392	3,051	781	111	449	9,862

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990

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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Maine	9	6	4	2	0	0	3	405	366	209	152	39	0	18	157	229
New Hampshire	6	2	2	0	0	0	4	101	95	48	48	0	0	0	47	11
Vermont	3	2	2	0	0	0	1	154	131	114	114	0	0	0	17	149
Massachusetts	78	37	26	7	1	3	41	3,521	3,086	1,353	949	305	15	84	1,733	924
Rhode Island	13	10	4	5	1	0	3	842	778	469	225	34	210	0	309	597
Connecticut	48	22	11	8	0	3	26	2,194	1,978	964	565	155	0	244	1,014	897
New England	157	79	49	22	2	6	78	7,217	6,434	3,157	2,053	533	225	346	3,277	2,807
New York	309	158	97	35	5	21	151	16,037	13,033	6,839	4,610	866	451	912	6,194	7,542
New Jersey	164	80	44	19	2	15	84	8,204	6,860	3,589	1,955	695	185	754	3,271	3,411
Pennsylvania	280	138	92	27	9	10	142	16,165	14,530	6,510	4,530	988	383	609	8,020	6,595
Middle Atlantic	753	376	233	81	16	46	377	40,406	34,423	16,938	11,095	2,549	1,019	2,275	17,485	17,548
Ohio	250	110	75	29	2	4	140	17,349	15,688	6,931	5,517	966	191	257	8,757	4,539
Indiana	129	48	30	16	0	2	81	7,442	7,116	3,531	2,610	811	46	64	3,585	3,760
Illinois	285	134	74	45	6	9	151	15,028	13,189	5,889	3,763	1,280	378	468	7,300	4,719
Michigan	257	101	59	29	2	11	156	12,431	11,007	5,071	3,816	901	53	301	5,936	4,082
Wisconsin	138	71	49	21	0	1	67	7,351	6,399	2,908	2,250	649	5	4	3,491	1,862
East North Central	1,059	464	287	140	10	27	595	59,601	53,399	24,330	17,956	4,607	673	1,094	29,069	18,962
Iowa	60	29	19	10	0	0	31	4,027	3,374	1,397	810	587	0	0	1,977	1,234
Minnesota	111	47	26	19	0	2	64	4,335	3,871	1,651	1,140	385	3	123	2,220	995
Missouri	138	69	53	13	0	3	69	5,554	4,824	2,424	1,767	402	0	255	2,400	2,903
North Dakota	14	8	4	4	0	0	6	536	481	224	192	32	0	0	257	233
South Dakota	5	1	1	0	0	0	4	544	515	187	185	2	0	0	328	82
Nebraska	27	15	15	0	0	0	12	843	740	346	346	0	0	0	394	384
Kansas	54	30	29	1	0	0	24	2,405	1,982	969	900	69	0	0	1,013	1,010
West North Central	409	199	147	47	0	5	210	18,244	15,787	7,198	5,340	1,477	3	378	8,589	6,841

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	9	3	3	0	0	0	6	544	466	233	208	0	0	25	233	247
Maryland	60	22	11	9	0	2	38	6,294	5,608	2,179	1,364	531	0	284	3,429	710
District of Columbia	14	7	7	0	0	0	7	348	314	147	119	23	0	5	167	136
Virginia	49	18	11	3	2	2	31	7,114	6,480	2,770	2,460	201	84	25	3,710	743
West Virginia	50	28	19	7	2	0	22	3,290	3,040	1,634	1,356	104	98	76	1,406	1,692
North Carolina	28	12	9	3	0	0	16	4,042	3,799	1,646	1,330	316	0	0	2,153	2,100
South Carolina	15	6	5	0	1	0	9	2,489	2,261	963	587	46	330	0	1,298	836
Georgia	48	25	17	6	1	1	23	3,936	3,616	1,800	1,635	132	11	22	1,816	1,214
Florida	102	52	41	7	2	2	50	5,871	5,669	2,834	1,997	770	40	27	2,835	2,452
South Atlantic	375	173	123	35	8	7	202	33,928	31,253	14,206	11,056	2,123	563	464	17,047	10,130
Kentucky	62	20	12	6	2	0	42	5,015	4,719	2,035	1,358	348	329	0	2,684	1,124
Tennessee	71	30	24	4	1	1	41	9,525	9,016	4,115	3,589	438	66	22	4,901	2,417
Alabama	51	22	19	0	1	2	29	3,751	3,478	1,504	1,316	10	26	152	1,974	1,109
Mississippi	19	9	7	1	0	1	10	2,653	2,398	1,182	1,152	24	0	6	1,216	919
East South Central	203	81	62	11	4	4	122	20,944	19,611	8,836	7,415	820	421	180	10,775	5,569
Arkansas	22	13	13	0	0	0	9	2,173	1,998	1,019	882	137	0	0	979	1,196
Louisiana	36	13	10	3	0	0	23	2,925	2,608	1,122	931	164	0	27	1,486	1,193
Oklahoma	29	12	10	2	0	0	17	758	680	322	224	51	0	47	358	303
Texas	99	47	32	10	0	5	52	9,676	8,675	4,251	1,479	2,483	0	289	4,424	3,259
West South Central	186	85	65	15	0	5	101	15,532	13,961	6,714	3,516	2,835	0	363	7,247	5,951
Montana	36	14	12	1	0	1	22	1,288	1,117	600	302	55	130	113	517	454
Idaho	19	7	6	1	0	0	12	1,121	1,014	460	187	273	0	0	554	570
Wyoming	4	3	3	0	0	0	1	213	181	105	105	0	0	0	76	143
Colorado	42	23	16	5	2	0	19	2,461	2,144	1,247	1,109	121	17	0	897	1,395
New Mexico	28	12	11	1	0	0	16	980	851	403	303	100	0	0	448	374
Arizona	43	23	18	4	0	1	20	5,088	4,392	2,032	1,838	129	8	57	2,360	742
Utah	16	7	4	3	0	0	9	1,264	1,145	496	275	221	0	0	649	467

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	28	15	9	6	0	0	13	2,060	1,659	626	371	255	0	0	1,033	814
Mountain	216	104	79	21	2	2	112	14,475	12,503	5,969	4,490	1,154	155	170	6,534	4,959
Washington	135	68	43	16	5	4	67	8,791	6,838	4,150	2,882	292	773	203	2,688	5,412
Oregon	81	35	25	8	1	1	46	2,915	2,568	1,128	662	423	25	18	1,440	990
California	517	252	146	90	7	9	265	32,587	26,645	12,718	7,112	4,713	347	546	13,927	12,373
Alaska	13	5	4	1	0	0	8	335	312	161	133	28	0	0	151	149
Hawaii	45	15	13	2	0	0	30	2,181	1,829	747	608	111	27	1	1,082	518
Guam	3	0	0	0	0	0	3	88	68	23	23	0	0	0	45	0
Pacific	794	375	231	117	13	14	419	46,897	38,260	18,927	11,420	5,567	1,172	768	19,333	19,442
Puerto Rico	53	27	4	5	0	18	26	3,772	3,282	1,729	752	220	0	757	1,553	1,376
Virgin Islands	5	2	2	0	0	0	3	369	329	194	194	0	0	0	135	204
Outlying Areas	58	29	6	5	0	18	29	4,141	3,611	1,923	946	220	0	757	1,688	1,580
Total, all States and areas	4,210	1,965	1,282	494	55	134	2,245	261,385	229,242	108,198	75,287	21,885	4,231	6,795	121,044	93,789

[1] The States are grouped according to the method used by the Bureau of the Census, U S. Department of Commerce

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1990

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Maine	7	5	3	2	0	0	2	382	343	196	139	39	0	18	147	213
New Hampshire	3	1	1	0	0	0	2	79	73	35	35	0	0	0	38	2
Vermont	2	1	1	0	0	0	1	12	11	6	6	0	0	0	5	7
Massachusetts	73	35	25	6	1	3	38	3,333	2,906	1,264	878	287	15	84	1,642	855
Rhode Island	10	7	2	5	0	0	3	363	343	173	139	34	0	0	170	118
Connecticut	41	21	11	8	0	2	20	1,858	1,693	854	532	143	0	179	839	783
New England	136	70	43	21	1	5	66	6,027	5,369	2,528	1,729	503	15	281	2,841	1,978
New York	283	153	94	34	5	20	130	13,650	11,198	5,621	3,552	842	371	856	5,577	5,833
New Jersey	148	76	42	17	2	15	72	7,708	6,445	3,407	1,844	630	185	748	3,038	3,130
Pennsylvania	243	126	84	26	9	7	117	14,426	12,929	5,950	4,167	957	383	443	6,979	6,087
Middle Atlantic	674	355	220	77	16	42	319	35,784	30,572	14,978	9,563	2,429	939	2,047	15,594	15,050
Ohio	206	94	64	25	1	4	112	15,652	14,138	6,170	4,902	873	172	223	7,968	3,690
Indiana	115	43	28	13	0	2	72	6,661	6,380	3,125	2,333	682	46	64	3,255	3,197
Illinois	253	127	67	45	6	9	126	13,950	12,282	5,525	3,417	1,274	378	456	6,757	4,464
Michigan	200	82	46	23	2	11	118	9,890	8,745	4,050	2,902	800	52	296	4,695	2,802
Wisconsin	122	65	44	20	0	1	57	5,625	5,106	2,442	1,801	632	5	4	2,664	1,417
East North Central	896	411	249	126	9	27	485	51,778	46,651	21,312	15,355	4,261	653	1,043	25,339	15,570
Iowa	57	29	19	10	0	0	28	3,961	3,308	1,376	791	585	0	0	1,932	1,234
Minnesota	92	44	25	17	0	2	48	3,868	3,455	1,497	1,072	349	0	76	1,958	934
Missouri	110	65	50	12	0	3	45	4,385	3,773	2,000	1,382	364	0	254	1,773	2,572
North Dakota	12	7	3	4	0	0	5	444	399	181	149	32	0	0	218	170
South Dakota	5	1	1	0	0	0	4	544	515	187	185	2	0	0	328	82
Nebraska	24	14	14	0	0	0	10	722	632	303	303	0	0	0	329	300
Kansas	48	29	28	1	0	0	19	2,294	1,909	955	886	69	0	0	954	1,004
West North Central	348	189	140	44	0	5	159	16,218	13,991	6,499	4,768	1,401	0	330	7,492	6,296

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	8	3	3	0	0	0	5	488	413	208	208	0	0	0	205	247
Maryland	51	20	9	9	0	2	31	5,923	5,246	1,986	1,221	496	0	269	3,260	505
District of Columbia	11	6	6	0	0	0	5	214	186	90	90	0	0	0	96	84
Virginia	43	16	9	3	2	2	27	6,574	5,995	2,526	2,320	106	75	25	3,469	544
West Virginia	49	28	19	7	2	0	21	3,280	3,036	1,634	1,356	104	98	76	1,402	1,692
North Carolina	24	8	6	2	0	0	16	3,763	3,538	1,500	1,213	287	0	0	2,038	1,821
South Carolina	15	6	5	0	1	0	9	2,489	2,261	963	587	46	330	0	1,298	836
Georgia	42	22	15	5	1	1	20	3,325	3,040	1,448	1,331	84	11	22	1,592	677
Florida	94	49	39	6	2	2	45	5,582	5,385	2,719	1,889	763	40	27	2,666	2,367
South Atlantic	337	158	111	32	8	7	179	31,638	29,100	13,074	10,215	1,886	554	419	16,026	8,773
Kentucky	57	20	12	6	2	0	37	4,531	4,250	1,839	1,171	339	329	0	2,411	1,124
Tennessee	60	26	21	3	1	1	34	8,810	8,365	3,804	3,377	344	66	17	4,561	2,060
Alabama	39	17	15	0	1	1	22	2,811	2,598	1,080	940	10	26	104	1,518	651
Mississippi	17	9	7	1	0	1	8	2,424	2,184	1,080	1,050	24	0	6	1,104	919
East South Central	173	72	55	10	4	3	101	18,576	17,397	7,803	6,538	717	421	127	9,594	4,754
Arkansas	19	12	12	0	0	0	7	1,942	1,789	944	807	137	0	0	845	1,119
Louisiana	28	13	10	3	0	0	15	2,387	2,130	981	854	117	0	10	1,149	1,193
Oklahoma	24	9	7	2	0	0	15	574	502	223	125	51	0	47	279	143
Texas	84	41	28	8	0	5	43	8,149	7,389	3,608	1,199	2,172	0	237	3,781	2,185
West South Central	155	75	57	13	0	5	80	13,052	11,810	5,756	2,985	2,477	0	294	6,054	4,640
Montana	30	13	11	1	0	1	17	1,128	975	550	252	55	130	113	425	425
Idaho	16	7	6	1	0	0	9	1,080	974	449	176	273	0	0	525	570
Wyoming	4	3	3	0	0	0	1	213	181	105	105	0	0	0	76	143
Colorado	32	19	13	5	1	0	13	1,434	1,271	613	514	94	5	0	658	568
New Mexico	22	11	10	1	0	0	11	860	740	357	283	74	0	0	383	357
Arizona	38	20	17	2	0	1	18	4,931	4,245	1,964	1,806	101	0	57	2,281	626
Utah	15	7	4	3	0	0	8	1,215	1,098	474	253	221	0	0	624	467

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	25	15	9	6	0	0	10	2,013	1,617	621	366	255	0	0	996	814
Mountain	182	95	73	19	1	2	87	12,874	11,101	5,133	3,755	1,073	135	170	5,968	3,970
Washington	99	58	37	13	5	3	41	7,623	5,841	3,718	2,574	233	773	138	2,123	5,045
Oregon	65	29	20	7	1	1	36	2,602	2,289	999	554	405	23	17	1,290	856
California	450	236	133	87	7	9	214	28,773	23,559	11,460	6,128	4,502	347	483	12,099	10,965
Alaska	11	4	3	1	0	0	7	307	287	145	117	28	0	0	142	126
Hawaii	38	14	12	2	0	0	24	1,622	1,380	511	430	58	23	0	869	211
Guam	3	0	0	0	0	0	3	88	68	23	23	0	0	0	45	0
Pacific	666	341	205	110	13	13	325	41,015	33,424	16,856	9,826	5,226	1,166	638	16,568	17,203
Puerto Rico	51	27	4	5	0	18	24	3,738	3,253	1,720	747	220	0	753	1,533	1,376
Virgin Islands	5	2	2	0	0	0	3	369	329	194	194	0	0	0	135	204
Outlying Areas	56	29	6	5	0	18	27	4,107	3,582	1,914	941	220	0	753	1,668	1,580
Total, all States and areas	3,623	1,795	1,159	457	52	127	1,828	231,069	202,997	95,853	65,675	20,193	3,883	6,102	107,144	79,814

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1990

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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Maine	2	1	1	0	0	0	1	23	23	13	13	0	0	0	10	16
New Hampshire	3	1	1	0	0	0	2	22	22	13	13	0	0	0	9	9
Vermont	1	1	1	0	0	0	0	142	120	108	108	0	0	0	12	142
Massachusetts	5	2	1	1	0	0	3	188	180	89	71	18	0	0	91	69
Rhode Island	3	3	2	0	1	0	0	479	435	296	86	0	210	0	139	479
Connecticut	7	1	0	0	0	1	6	336	285	110	33	12	0	65	175	114
New England	21	9	6	1	1	1	12	1,190	1,065	629	324	30	210	65	436	829
New York	26	5	3	1	0	1	21	2,387	1,835	1,218	1,058	24	80	56	617	1,709
New Jersey	16	4	2	2	0	0	12	496	415	182	111	65	0	6	233	281
Pennsylvania	37	12	8	1	0	3	25	1,739	1,601	560	363	31	0	166	1,041	508
Middle Atlantic	79	21	13	4	0	4	58	4,622	3,851	1,960	1,532	120	80	228	1,891	2,498
Ohio	44	16	11	4	1	0	28	1,697	1,550	761	615	93	19	34	789	849
Indiana	14	5	2	3	0	0	9	781	736	406	277	129	0	0	330	563
Illinois	32	7	7	0	0	0	25	1,078	907	364	346	6	0	12	543	255
Michigan	57	19	13	6	0	0	38	2,541	2,262	1,021	914	101	1	5	1,241	1,280
Wisconsin	16	6	5	1	0	0	10	1,726	1,293	466	449	17	0	0	827	445
East North Central	163	53	38	14	1	0	110	7,823	6,748	3,018	2,601	346	20	51	3,730	3,392
Iowa	3	0	0	0	0	0	3	66	66	21	19	2	0	0	45	0
Minnesota	19	3	1	2	0	0	16	467	416	154	68	36	3	47	262	61
Missouri	28	4	3	1	0	0	24	1,169	1,051	424	385	38	0	1	627	331
North Dakota	2	1	1	0	0	0	1	92	82	43	43	0	0	0	39	63
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	3	1	1	0	0	0	2	121	108	43	43	0	0	0	65	84
Kansas	6	1	1	0	0	0	5	111	73	14	14	0	0	0	59	6
West North Central	61	10	7	3	0	0	51	2,026	1,796	699	572	76	3	48	1,097	545

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Delaware	1	0	0	0	0	0	1	56	53	25	0	0	0	25	28	0
Maryland	9	2	2	0	0	0	7	371	362	193	143	35	0	15	169	205
District of Columbia	3	1	1	0	0	0	2	134	128	57	29	23	0	5	71	52
Virginia	6	2	2	0	0	0	4	540	485	244	140	95	9	0	241	199
West Virginia	1	0	0	0	0	0	1	10	4	0	0	0	0	0	4	0
North Carolina	4	4	3	1	0	0	0	279	261	146	117	29	0	0	115	279
South Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Georgia	6	3	2	1	0	0	3	611	576	352	304	48	0	0	224	537
Florida	8	3	2	1	0	0	5	289	284	115	108	7	0	0	169	85
South Atlantic	38	15	12	3	0	0	23	2,290	2,153	1,132	841	237	9	45	1,021	1,357
Kentucky	5	0	0	0	0	0	5	484	469	196	187	9	0	0	273	0
Tennessee	11	4	3	1	0	0	7	715	651	311	212	94	0	5	340	357
Alabama	12	5	4	0	0	1	7	940	880	424	376	0	0	48	456	458
Mississippi	2	0	0	0	0	0	2	229	214	102	102	0	0	0	112	0
East South Central	30	9	7	1	0	1	21	2,368	2,214	1,033	877	103	0	53	1,181	815
Arkansas	3	1	1	0	0	0	2	231	209	75	75	0	0	0	134	77
Louisiana	8	0	0	0	0	0	8	538	478	141	77	47	0	17	337	0
Oklahoma	5	3	3	0	0	0	2	184	178	99	99	0	0	0	79	160
Texas	15	6	4	2	0	0	9	1,527	1,286	643	280	311	0	52	643	1,074
West South Central	31	10	8	2	0	0	21	2,480	2,151	958	531	358	0	69	1,193	1,311
Montana	6	1	1	0	0	0	5	160	142	50	50	0	0	0	92	29
Idaho	3	0	0	0	0	0	3	41	40	11	11	0	0	0	29	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	10	4	3	0	1	0	6	1,027	873	634	595	27	12	0	239	827
New Mexico	6	1	1	0	0	0	5	120	111	46	20	26	0	0	65	17
Arizona	5	3	1	2	0	0	2	157	147	68	32	28	8	0	79	116
Utah	1	0	0	0	0	0	1	49	47	22	22	0	0	0	25	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1990—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	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Nevada	3	0	0	0	0	0	3	47	42	5	5	0	0	0	37	0
Mountain	34	9	6	2	1	0	25	1,601	1,402	836	735	81	20	0	566	989
Washington	36	10	6	3	0	1	26	1,168	997	432	308	59	0	65	565	367
Oregon	16	6	5	1	0	0	10	313	279	129	108	18	2	1	150	134
California	67	16	13	3	0	0	51	3,814	3,086	1,258	984	211	0	63	1,828	1,408
Alaska	2	1	1	0	0	0	1	28	25	16	16	0	0	0	9	23
Hawaii	7	1	1	0	0	0	6	559	449	236	178	53	4	1	213	307
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	128	34	26	7	0	1	94	5,882	4,836	2,071	1,594	341	6	130	2,765	2,239
Puerto Rico	2	0	0	0	0	0	2	34	29	9	5	0	0	4	20	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	2	0	0	0	0	0	2	34	29	9	5	0	0	4	20	0
Total, all States and areas	587	170	123	37	3	7	417	30,316	26,245	12,345	9,612	1,692	348	693	13,900	13,975

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Food and kindred products	176	71	42	24	0	5	105	16,964	15,250	6,657	4,485	1,891	35	246	8,593	5,464
Tobacco manufacturers	1	0	0	0	0	0	1	27	27	7	7	0	0	0	20	0
Textile mill products	22	7	6	1	0	0	15	3,248	2,996	1,231	1,118	105	2	6	1,765	624
Apparel and other finished products made from fabric and similar materials	23	9	7	1	0	1	14	6,863	5,968	2,551	2,421	41	0	89	3,417	1,136
Lumber and wood products (except furniture)	64	19	13	6	0	0	45	6,277	5,726	2,373	1,956	399	0	18	3,353	1,428
Furniture and fixtures	44	18	13	5	0	0	26	5,141	4,540	1,847	1,336	506	0	5	2,693	809
Paper and allied products	54	23	16	5	0	2	31	4,500	3,929	1,493	1,101	183	0	209	2,436	1,051
Printing, publishing, and allied products	100	40	29	6	2	3	60	4,967	4,619	2,083	1,309	535	33	206	2,536	1,361
Chemicals and allied products	69	26	21	4	0	1	43	2,894	2,721	1,405	1,057	245	0	103	1,316	1,305
Petroleum refining and related industries	18	6	2	3	0	1	12	641	593	241	100	78	0	63	352	53
Rubber and miscellaneous plastic products	62	23	16	4	2	1	39	5,888	5,472	2,225	1,826	296	38	65	3,247	1,492
Leather and leather products	13	3	1	1	0	1	10	2,089	1,924	912	665	61	0	186	1,012	555
Stone, clay, glass, and concrete products	85	32	14	15	1	2	53	4,261	3,898	1,743	963	561	40	179	2,155	1,035
Primary metal industries	96	41	34	6	0	1	55	8,233	7,575	3,589	2,973	557	4	55	3,986	2,866
Fabricated metal products (except machinery and transportation equipment)	142	60	51	7	1	1	82	10,170	9,396	4,442	3,766	597	42	37	4,954	3,695
Machinery (except electrical)	138	54	39	13	0	2	84	9,489	8,910	4,116	3,380	521	44	171	4,794	3,276
Electrical and electronic machinery, equipment, and supplies	56	22	15	3	1	3	34	4,671	4,398	1,910	1,384	243	143	140	2,488	1,585
Aircraft and parts	86	31	21	6	0	4	55	11,673	10,859	5,183	4,417	341	0	425	5,676	4,918
Ship and boat building and repairing	11	6	5	1	0	0	5	451	409	145	132	4	0	9	264	112
Automotive and other transportation equipment	19	11	7	3	1	0	8	1,836	1,753	882	830	26	26	0	871	649
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	25	8	6	1	0	1	17	2,558	2,352	960	751	162	0	47	1,392	277
Miscellaneous manufacturing industries	47	21	15	4	0	2	26	2,370	2,176	1,055	868	161	0	26	1,121	827
Manufacturing	1,351	531	373	119	8	31	820	115,211	105,491	47,050	36,845	7,513	407	2,285	58,441	34,518
Metal mining	7	2	2	0	0	0	5	638	588	274	144	0	130	0	314	175
Coal mining	15	5	1	1	3	0	10	1,085	1,026	473	44	22	401	6	553	186

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL–CIO unions	Teamsters	Other national unions	Other local unions		
Oil and gas extraction	4	2	2	0	0	0	2	354	343	172	172	0	0	0	171	52
Mining and quarrying of nonmetallic minerals (except fuels)	18	7	5	0	1	1	11	633	588	308	134	35	7	132	280	206
Mining	44	16	10	1	4	1	28	2,710	2,545	1,227	494	57	538	138	1,318	619
Construction	434	257	237	11	0	9	177	11,253	8,907	5,169	4,533	404	4	228	3,738	6,562
Wholesale trade	291	113	45	58	6	4	178	16,964	15,004	6,603	3,371	2,683	159	390	8,401	4,581
Retail trade	371	173	104	62	1	6	198	20,355	17,561	8,120	6,197	1,667	102	154	9,441	7,548
Finance, insurance, and real estate	71	39	34	4	1	0	32	3,057	2,761	1,242	901	84	256	1	1,519	1,009
U.S. Postal Service	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	79	40	22	14	1	3	39	4,355	3,686	1,718	1,105	562	13	38	1,968	1,800
Motor freight transportation and warehousing	318	149	29	109	2	9	169	13,714	12,037	5,595	826	4,486	53	230	6,442	3,511
Water transportation	8	2	2	0	0	0	6	280	225	55	55	0	0	0	170	18
Other transportation	56	28	18	6	2	2	28	3,713	3,015	1,617	939	494	138	46	1,398	1,984
Communication	94	39	34	3	0	2	55	2,406	2,209	1,006	944	21	0	41	1,203	856
Electric, gas, and sanitary services	119	46	30	16	0	0	73	6,847	6,099	2,587	1,958	629	0	0	3,512	1,284
Transportation, communication, and other utilities	674	304	135	148	5	16	370	31,315	27,271	12,578	5,827	6,192	204	355	14,693	9,453
Hotels, rooming houses, camps, and other lodging places	69	23	18	5	0	0	46	4,855	4,005	1,493	1,018	470	0	5	2,512	1,154
Personal services	61	25	11	11	0	3	36	1,704	1,453	937	546	235	0	156	516	1,103
Automotive repair, services, and garages	75	33	15	18	0	0	42	2,085	1,778	916	335	565	0	16	862	1,013
Motion pictures	11	5	3	1	0	1	6	560	510	211	65	82	60	4	299	78
Amusement and recreation services (except motion pictures)	35	19	14	3	0	2	16	1,118	920	636	520	86	5	25	284	785
Health services	367	208	146	17	13	32	159	36,595	30,124	15,541	10,836	976	1,617	2,112	14,583	16,093
Educational services	31	20	12	0	1	7	11	1,489	1,178	738	461	17	38	222	440	1,050
Membership organizations	22	17	9	4	0	4	5	611	485	315	196	58	0	61	170	345
Business services	194	113	70	17	14	12	81	7,456	5,951	3,529	1,840	348	791	550	2,422	5,020

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1990—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions					Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions					Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions				Total	AFL-CIO unions	Teamsters	Other national unions	Other local unions		
Miscellaneous repair services	29	14	4	7	0	3	15	781	682	327	70	212	0	45	355	373
Museums, art galleries, botanical and zoological gardens	1	0	0	0	0	0	1	19	18	5	0	5	0	0	13	0
Legal services	10	9	8	0	1	0	1	352	309	244	230	0	12	2	65	341
Social services	45	33	25	4	1	3	12	2,124	1,657	1,046	805	180	15	46	611	1,763
Miscellaneous services	16	7	6	1	0	0	9	461	370	115	64	28	23	0	255	129
Services	966	526	341	88	30	67	440	60,210	49,440	26,053	16,986	3,262	2,561	3,244	23,387	29,247
Public administration	8	6	3	3	0	0	2	310	262	156	133	23	0	0	106	252
Total, all industrial groups	4,210	1,965	1,282	494	55	134	2,245	261,385	229,242	108,198	75,287	21,885	4,231	6,795	121,044	93,789

[1] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1990[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL–CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
					A. Certification elections (RC and RM)									
Total RC and RM elections	231,069	3,623	100.0	—	1,159	100.0	457	100.0	52	100.0	127	100.0	1,828	100.0
Under 10	4,287	769	21.2	21.2	277	23.9	158	34.6	4	7.7	20	15.7	310	17.0
10 to 19	9,873	707	19 5	40.7	248	21.4	107	23.4	10	19.2	23	18.1	319	17.5
20 to 29	11,590	480	13.2	53.9	166	14.3	61	13.3	10	19.2	13	10 2	230	12.6
30 to 39	10,131	300	8.3	62.2	88	7.6	32	7.0	4	7.7	11	8.7	165	9.0
40 to 49	10,040	228	6.3	68.5	84	7.2	22	4.8	4	7.7	11	8.7	107	5.9
50 to 59	10,648	195	5.4	73.9	55	4.6	17	3.7	3	5.8	8	6.2	112	6.1
60 to 69	7,886	123	3.4	77.3	32	2.7	11	2.4	2	3.9	3	2.4	75	4.1
70 to 79	8,706	117	3.2	80.5	36	3.1	3	0.7	1	1.9	7	5.5	70	3.8
80 to 89	6,489	77	2.1	82.6	28	2.4	5	1 1	2	3.9	0	—	42	2.3
90 to 99	8,300	88	2.4	85.0	30	2.6	10	2.3	0	—	6	4.7	42	2.3
100 to 109	6,596	63	1.7	86.7	22	1.9	2	0.4	1	1 9	3	2.4	35	1.9
110 to 119	5,022	44	1.2	87.9	11	0.9	4	0.9	2	3.9	1	0.8	26	1.4
120 to 129	4,336	35	1.0	88.9	11	0.9	2	0.4	1	1.9	4	3 1	17	0.9
130 to 139	5,352	40	1.1	90.0	9	0.8	1	0.2	1	1 9	0	—	29	1.6
140 to 149	3,895	27	0 7	90.7	7	0.6	4	0.9	0	—	3	2.4	13	0.7
150 to 159	4,636	30	0.8	91.5	10	0.9	3	0.7	0	—	1	0 8	16	0.9
160 to 169	2,447	15	0.4	91 9	3	0.3	1	0.2	0	—	0	—	11	0.6
170 to 179	4,180	24	0.7	92.6	3	0.3	4	0.9	1	1.9	1	0.8	15	0.8
180 to 189	4,587	25	0 7	93.3	3	0.3	1	0.2	0	—	2	1.6	19	1.0
190 to 199	3,518	18	0.5	93.8	3	0.3	2	0.4	1	1.9	2	1 6	10	0.5
200 to 299	23,823	98	2 7	96 5	17	1.5	4	0.9	1	1.9	7	5.5	69	3.9
300 to 399	12,160	35	1.0	97.5	3	0.3	1	0.2	3	5.8	1	0.8	27	1.5
400 to 499	13,167	29	0.8	98.3	8	0.7	2	0 4	0	—	0	—	19	1.0
500 to 599	8,579	16	0.4	98.7	1	0.1	0	—	0	—	0	—	15	0 8
600 to 799	11,889	17	0.6	99 3	1	0.1	0	—	1	1 9	0	—	15	0.8
800 to 999	8,009	9	0.2	99.5	1	0.1	0	—	0	—	0	—	8	0 4
1,000 to 1,999	14,586	12	0.3	99.8	2	0.2	0	—	0	—	0	—	10	0.5
2,000 to 2,999	3,000	1	0.1	99.9	0	—	0	—	0	—	0	—	1	0 1
,000 to 9,999	3,337	1	0 1	100.0	0	—	0	—	0	—	0	—	1	0.1

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1990[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by								Elections in which no representative was chosen	
					AFL–CIO unions		Teamsters		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
B. Decertification elections (RD)														
Total RD elections	30,316	587	100.0	—	123	100 0	37	100.0	3	100.0	7	100.0	417	100.0
Under 10	736	132	22 5	22.5	8	6.5	7	18 9	0	—	0	—	117	28.1
10 to 19	1,800	125	21.3	43.8	12	9.8	7	18.9	0	—	1	14 3	105	25.2
20 to 29	2,014	84	14.3	58.1	16	13.0	7	18.9	2	66 7	0	—	59	14.1
30 to 39	1,594	47	8.0	66.1	13	10.6	7	18.9	0	—	1	14.3	26	6.2
40 to 49	1,287	29	4.9	71.0	8	6.5	2	5.4	0	—	1	14.3	18	4.3
50 to 59	1,627	30	5.1	76.1	11	8.9	0	—	0	—	1	14.3	18	4.3
60 to 69	1,589	25	4.3	80.4	11	8.9	3	8.2	0	—	0	—	11	2.6
70 to 79	1,700	23	3.9	84.3	5	4.1	2	5.4	0	—	1	14.3	15	3 6
80 to 89	1,022	12	2.0	86.3	4	3.3	0	—	0	—	0	—	8	1.9
90 to 99	941	10	1 7	88.0	4	3.3	0	—	0	—	1	14.3	5	1.2
100 to 109	422	4	0.7	88.7	2	1 6	1	2.7	0	—	0	—	1	0.2
110 to 119	1,031	9	1.5	90.2	4	3.3	0	—	0	—	1	14.3	4	1.0
120 to 129	623	5	0.9	91.1	2	1.6	0	—	0	—	0	—	3	0.7
130 to 139	1,075	8	1.4	92.5	3	2.4	0	—	0	—	0	—	5	1.2
140 to 149	859	6	1.0	93.5	2	1.6	0	—	0	—	0	—	4	1.0
150 to 159	303	2	0.3	93 8	1	0.8	0	—	0	—	0	—	1	0 2
160 to 169	490	3	0.5	94.3	3	2.4	0	—	0	—	0	—	0	—
170 to 199	1,089	6	1.0	95.3	2	1.6	0	—	0	—	0	—	4	1.0
200 to 299	3,341	14	2 4	97 7	5	4.1	0	—	0	—	0	—	9	2 2
300 to 499	3,300	9	1.5	99.2	5	4.1	1	2.7	1	33 3	0	—	2	0.5
500 to 799	1,916	3	0.5	99.7	1	0.8	0	—	0	—	0	—	2	0.5
800 and over	1,557	1	0.3	100.0	1	0.8	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 1990[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Total	[2]30,405	100.0	—	21,497	100.0	6,654	100.0	698	100.0	227	100.0	27	100.0	24	100.0	182	100.0	918	100.0	178	100.0
Under 10	8,516	28.0	28.0	5,545	25.8	2,163	32.5	288	41.3	99	43.6	12	44.4	2	8.3	72	39.6	217	23.6	118	66.3
10–19	2,313	7.6	35.6	1,798	8.4	314	4.7	100	14.3	22	9.7	2	7.4	0	—	22	12.1	43	4.7	12	6.7
20–29	1,888	6.2	41.8	1,454	6.8	282	4.2	57	8.2	19	8.4	2	7.4	0	—	19	10.4	43	4.7	12	6.7
30–39	1,342	4.4	46.2	1,072	5.0	187	2.8	21	3.0	15	6.6	0	—	0	—	12	6.6	31	3.4	4	2.2
40–49	1,016	3.3	49.5	791	3.7	148	2.2	35	5.0	5	2.2	1	3.7	0	—	10	5.5	24	2.6	2	1.1
50–59	1,147	3.8	53.3	830	3.9	237	3.6	23	3.3	15	6.1	0	—	0	—	10	5.5	28	3.1	4	2.2
60–69	801	2.6	55.9	613	2.9	136	2.0	12	1.7	0	—	3	11.1	0	—	3	1.6	32	3.5	2	1.1
70–79	674	2.2	58.1	550	2.6	91	1.4	9	1.3	2	0.9	0	—	0	—	2	1.1	19	2.1	1	0.6
80–89	556	1.8	59.9	440	2.0	94	1.4	3	0.4	0	—	0	—	0	—	3	1.6	15	1.6	1	0.6
90–99	342	1.1	61.0	269	1.3	56	0.8	1	0.1	4	1.8	0	—	0	—	4	2.2	6	0.7	2	1.1
100–109	1,472	4.8	65.8	1,020	4.7	352	5.3	26	3.7	15	6.6	1	3.7	3	12.5	10	5.5	40	4.4	5	2.8
110–119	232	0.8	66.6	192	0.9	35	0.5	2	0.3	0	—	0	—	1	4.2	0	—	2	0.2	0	—
120–129	468	1.5	68.1	364	1.7	83	1.2	7	1.0	4	1.8	0	—	0	—	3	1.6	7	0.8	0	—
130–139	232	0.8	68.9	193	0.9	28	0.4	1	0.1	0	—	0	—	0	—	0	—	10	1.1	0	—
140–149	149	0.5	69.4	118	0.5	17	0.3	6	0.9	2	0.9	0	—	1	4.2	0	—	4	0.4	1	0.6
150–159	617	2.0	71.4	455	2.1	124	1.9	8	1.1	2	0.9	1	3.7	2	8.3	1	0.5	23	2.5	1	0.6
160–169	162	0.5	71.9	123	0.6	37	0.6	0	—	0	—	0	—	0	—	0	—	2	0.2	0	—
170–179	180	0.6	72.5	143	0.7	28	0.4	2	0.3	2	0.9	0	—	1	4.2	0	—	4	0.4	0	—
180–189	164	0.5	73.0	134	0.6	24	0.4	3	0.4	0	—	0	—	0	—	0	—	3	0.3	0	—
190–199	57	0.2	73.2	41	0.2	8	0.1	2	0.3	0	—	0	—	0	—	1	0.5	5	0.5	0	—
200–299	1,742	5.7	78.9	1,300	6.0	336	5.0	18	2.6	4	1.8	1	3.7	0	—	6	3.3	70	7.6	7	3.9
300–399	1,093	3.6	82.5	761	3.5	268	4.0	13	1.9	2	0.9	1	3.7	0	—	1	0.5	46	5.0	1	0.6
400–499	599	2.0	84.5	387	1.8	159	2.4	20	2.9	5	2.2	0	—	2	8.3	0	—	26	2.8	0	—
500–599	643	2.1	86.6	439	2.0	171	2.6	4	0.6	0	—	0	—	0	—	0	—	29	3.2	0	—
600–699	342	1.1	87.7	229	1.1	86	1.3	6	0.9	1	0.4	0	—	4	16.7	0	—	16	1.7	0	—
700–799	249	0.8	88.5	164	0.8	65	1.0	7	1.0	3	1.3	0	—	1	4.2	0	—	8	0.9	1	0.6
800–899	255	0.8	89.3	180	0.8	65	1.0	4	0.6	1	0.4	1	3.7	0	—	0	—	4	0.4	0	—
900–999	111	0.4	89.7	78	0.4	30	0.5	0	—	0	—	0	—	2	8.3	0	—	1	0.1	0	—
1,000–1,999	1,248	4.1	93.8	793	3.7	369	5.5	11	1.6	1	0.4	0	—	5	20.8	0	—	66	7.2	3	1.7

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1990[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
2,000–2,999	612	2.1	95.9	377	1.8	205	3.1	2	0.3	0	—	0	—	0	—	0	—	28	3 1	0	—
3,000–3,999	315	1.1	97 0	169	0.8	125	1.9	2	0.3	1	0.4	1	3.7	0	—	0	—	16	1.7	1	0.6
4,000–4,999	163	0.6	97.6	101	0.5	47	0.7	0	—	1	0.4	0	—	0	—	0	—	14	1.5	0	—
5,000–9,999	374	1 3	98.9	206	1.0	137	2.1	1	0.1	1	0.4	1	3.7	0	—	1	0.5	27	2 9	0	—
Over 9,999	331	1.1	100.0	168	0.8	147	2.2	4	0 6	1	0 4	0	—	0	—	2	1 1	9	1.0	0	—

[1] See Glossary of terms for definitions.
[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1990; and Cumulative Totals, Fiscal Years 1936–1990

	Fiscal Year 1984									July 5, 1935–Sept. 30, 1990	
	Number of proceedings[1]					Percentages					
	Total	Vs. employers only	Vs unions only	Vs. both employers and unions	Board dismissal[2]	Vs. employers only	Vs. unions only	Vs both employers and unions	Board dismissal	Number	Percent
Proceedings decided by U.S. courts of appeals	189	170	14	1	4	—	—	—	—	—	—
On petitions for review and/or enforcement	161	146	10	1	4	100.0	100.0	100.0	100 0	9,999	100.0
Board orders affirmed in full	127	114	9	1	3	78 1	90.0	100.0	75.0	6,540	65.4
Board orders affirmed with modification	7	7	0	0	0	4.8	—	—	—	1,391	13 9
Remanded to Board	6	5	0	0	1	3.4	—	—	25.0	490	4.9
Board orders partially affirmed and partially remanded	9	8	1	0	0	5.5	10.0	—	—	195	2 0
Board orders set aside	12	12	0	0	0	8 2	—	—	—	1,383	13.8
On petitions for contempt	28	24	4	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	0	0	0	0	0	—	—	—	—	—	—
Court orders holding respondent in contempt	17	13	4	0	0	54.2	100.0	—	—	—	—
Court orders denying petition	2	2	0	0	0	8 3	—	—	—	—	—
Court orders directing compliance without contempt adjudication	8	8	0	0	0	33.3	—	—	—	—	—
Contempt petitions withdrawn without compliance	1	1	0	0	0	4.2	—	—	—	—	—
Proceedings decided by U.S. Supreme Court	1	1	0	0	0	100 0	—	—	—	248	100.0
Board orders affirmed in full	1	1	0	0	0	100.0	—	—	—	149	60 0
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.3
Board orders set aside	0	0	0	0	0	—	—	—	—	43	17.3
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.7
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.5
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases enforced	0	0	0	0	0	—	—	—	—	1	0.4

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

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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1990, Compared With 5-Year Cumulative Totals, Fiscal Years 1985 Through 1989[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1990	Total fiscal years 1985–1989	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1990		Cumulative fiscal years 1985–1989		Fiscal Year 1990		Cumulative fiscal years 1985–1989		Fiscal Year 1990		Cumulative fiscal years 1985–1989		Fiscal Year 1990		Cumulative fiscal years 1985–1989		Fiscal Year 1990		Cumulative fiscal years 1985–1989	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	161	931	127	78 9	727	78.1	7	4 4	50	5.4	6	3.7	58	6.2	9	5.6	23	2.5	12	7.4	73	7 8
1 Boston, MA	4	25	4	100.0	20	80.0	0	—	0	—	0	—	1	4 0	0	—	0	—	0	—	4	16.0
2. New York, NY	28	101	22	78 7	82	81 2	2	7.1	5	4.9	2	7 1	4	4.0	0	—	1	1.0	2	7.1	9	8 9
3. Phila , PA	14	109	12	85.7	101	92.7	0	—	2	1.8	0	—	5	4.6	2	14.3	0	—	0	—	1	0.9
4. Richmond, VA	10	62	8	80.0	48	77.4	0	—	5	8 1	0	—	1	1.6	0	—	1	1.6	2	20.0	7	11.3
5. New Orleans, LA	7	50	6	85.7	38	76 0	0	—	4	8.0	0	—	2	4.0	1	14.3	3	6 0	0	—	3	6.0
6. Cincinnati, OH	18	164	12	66.8	119	72.5	1	5 5	14	8.5	1	5.5	5	3.1	2	11 1	5	3 1	2	11.1	21	12.8
7. Chicago, IL	23	78	19	82.7	62	79.5	0	—	2	2 5	1	4.3	7	9 0	1	4.3	1	1.3	2	8.7	6	7.7
8. St Louis, MO	4	56	4	100.0	41	73.2	0	—	6	10.7	0	—	3	5.4	0	—	1	1.8	0	—	5	8.9
9 San Francisco, CA	21	158	18	85.6	130	82.3	1	4.8	5	3.2	1	4 8	13	8.2	1	4 8	4	2.5	0	—	6	3.8
10. Denver, CO	11	14	7	63.6	12	85.8	2	18 2	0	—	0	—	1	7 1	0	—	0	—	2	18 2	1	7.1
11. Atlanta, GA[2]	2	45	2	100.0	37	82.3	0	—	2	4.4	0	—	1	2.2	0	—	0	—	0	—	5	11.1
Washington, DC	19	69	13	68.4	37	53.6	1	5.3	5	7.3	1	5 3	15	21.7	2	10.5	7	10.1	2	10.5	5	7.3

[1] Percentages are computed horizontally by current fiscal year and total fiscal years.
[2] Commenced operations October 1, 1981.

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1990[1]

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1990
		Pending in district court Oct 1, 1989	Filed in district court fiscal year 1990		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total	46	15	31	41	24	7	10	0	0	0	5
8(a)(1)	3	0	3	2	2	0	0	0	0	0	1
8(a)(1)(3)	8	2	6	7	2	2	3	0	0	0	1
8(a)(1)(5)	7	2	5	6	2	2	2	0	0	0	1
8(a)(1)(2)(3)	3	3	0	2	2	0	0	0	0	0	1
8(a)(1)(3)(4)	1	1	0	1	0	0	1	0	0	0	0
8(a)(1)(3)(5)	15	7	8	15	11	2	2	0	0	0	0
8(a)(1)(2)(4)(5)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)(4)(5)	1	0	1	1	1	0	0	0	0	0	0
8(b)(1)	6	0	6	5	4	0	1	0	0	0	1
8(b)(3)	1	0	1	1	0	1	0	0	0	0	0
Under Sec. 10(l) total	28	8	20	20	11	1	7	0	0	1	8
8(b)(4)(A)	4	0	4	2	1	0	1	0	0	0	2
8(b)(4)(B)	16	6	10	12	9	0	2	0	0	1	4
8(b)(4)(B)(D)	2	1	1	2	0	0	2	0	0	0	0
8(b)(4)(D)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(C)	3	0	3	2	1	0	1	0	0	0	1
8(e)	2	1	1	1	0	1	0	0	0	0	1

[1] The method of calculating 10(j) statistics has been adjusted beginning this fiscal year Consequently, the number reported here for proceedings pending in district court at the beginning of this fiscal year differs from the number pending at the end of the fiscal year in the Annual Report for Fiscal Year 1989.

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1990

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	30	28	2	15	14	1	9	8	1	6	6	0
NLRB-initiated actions or interventions	5	5	0	2	2	0	2	2	0	1	1	0
To enforce subpoena	1	1	0	0	0	0	1	1	0	0	0	0
To defend Board's jurisdiction	3	3	0	2	2	0	1	1	0	0	0	0
To prevent conflict between NLRA and Bankruptcy Code	1	1	0	0	0	0	0	0	0	1	1	0
Action by other parties	25	23	2	13	12	1	7	6	1	5	5	0
To review non-final orders	2	2	0	1	1	0	0	0	0	1	1	0
To restrain NLRB from	7	6	1	2	2	0	1	0	1	4	4	0
Proceeding in R case	2	1	1	1	1	0	1	0	1	0	0	0
Proceeding in unfair labor practice case	5	5	0	1	1	0	0	0	0	4	4	0
Enforcing subpoena	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0
To compel NLRB to	8	8	0	3	3	0	5	5	0	0	0	0
Issue complaint	4	4	0	2	2	0	2	2	0	0	0	0
Take action in R case	0	0	0	0	0	0	0	0	0	0	0	0
Comply with Freedom of Information Act[1]	3	3	0	1	1	0	2	2	0	0	0	0
Other–testify in D.C. Ct action	1	1	0	0	0	0	1	1	0	0	0	0
Other	8	7	1	7	6	1	1	1	0	0	0	0
Application for EAJA fees	6	5	1	6	5	1	0	0	0	0	0	0
Nash Finch complaint	1	1	0	0	0	0	1	1	0	0	0	0
Rule making and court approval	1	1	0	1	1	0	0	0	0	0	0	0

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

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1990[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1989	1	1	0	0	0
Received fiscal 1990	11	7	2	0	2
On docket fiscal 1990	12	8	2	0	2
Closed fiscal 1990	10	6	2	0	2
Pending September 30, 1990	2	2	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1990[1]

Action taken	Total cases closed
	10
Board would assert jurisdiction	3
Board would not assert jurisdiction	2
Unresolved because of insufficient evidence submitted	0
Dismissed	4
Withdrawn	1

[1] See Glossary of terms for definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1990; and Age of Cases Pending Decision, September 30, 1990

Stage	Median days
I. Unfair labor practice cases:	
A Major stages completed—	
1. Filing of charge to issuance of complaint	48
2. Complaint to close of hearing	154
3. Close of hearing to issuance of administrative law judge's decision	155
4. Administrative law judge's decision to issuance of Board decision	314
5. Filing of charge to issuance of Board decision	688
B Age[1] of cases pending administrative law judge's decision, September 30, 1990	738
C. Age[1] of cases pending Board decision, September 30, 1990	774
II. Representation cases:	
A. Major stages completed—	
1 Filing of petition of notice of hearing issued	9
2. Notice of hearing to close of hearing	13
3. Close of hearing to—	
Board decision issued	234
Regional Director's decision issued	21
4. Filing of petition to—	
Board decision issued	314
Regional Director's decision issued	44
B. Age[2] of cases pending Board decision, September 30, 1990	166
C. Age[2] of cases pending Regional Director's decision, September 30, 1990	160

[1] From filing of charge.
[2] From filing of petition.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1990

I. Applications for fees and expenses before the NLRB.	
A. Filed with Board	4
B. Hearings held	0
C. Awards ruled on:	
1. By administrative law judges:	
Granting	1
Denying	8
2. By Board:	
Granting	1
Denying	11
D. Amount of fees and expenses in cases ruled on by Board:	
Claimed	$328,891.84
Recovered	$14,414 71
II. Applications for fees and expenses before the circuit courts of appeals:	
A Awards ruled on:	
Granting	1
Denying	5
B. Amount of fees and expenses recovered pursuant to court award	$150,000 00
II. Applications for fees and expenses before the district courts:	
A. Awards ruled on:	
Granting	0
Denying	0
B. Amounts of fees and expenses recovered pursuant to court award	0

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