FIFTY-EIGHTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., December 9, 1994

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Fifty-Eighth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1993.

Respectfully submitted,
WILLIAM B. GOULD IV, *Chairman*

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

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Operations In Fiscal Year 1993

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 1993, 40,322 cases were received by the Board.

The public filed 33,744 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 6246 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 332 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.

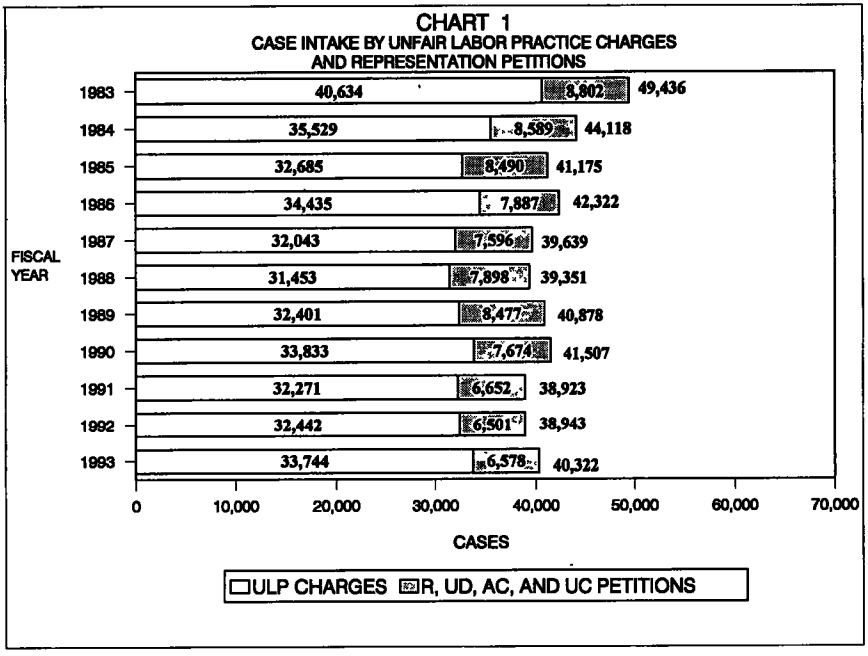
At the end of fiscal year 1993, the Board was composed of Chairman James M. Stephens and Members John N. Raudabaugh and Dennis M. Devaney. Jerry M. Hunter served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1993 include:

- The NLRB conducted 3586 conclusive representation elections among some 201,557 employee voters, with workers choosing labor unions as their bargaining agents in 47.6 percent of the elections.
- Although the Agency closed 39,987 cases, 27,390 cases were pending in all stages of processing at the end of the fiscal year. The closings included 32,855 cases involving unfair labor practice charges and 6707 cases affecting employee representation and 425 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,264.
- The amount of $54,497,461 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 4177 offers of job reinstatements, with 3488 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 3576 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 473 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, em-

ployers, 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.

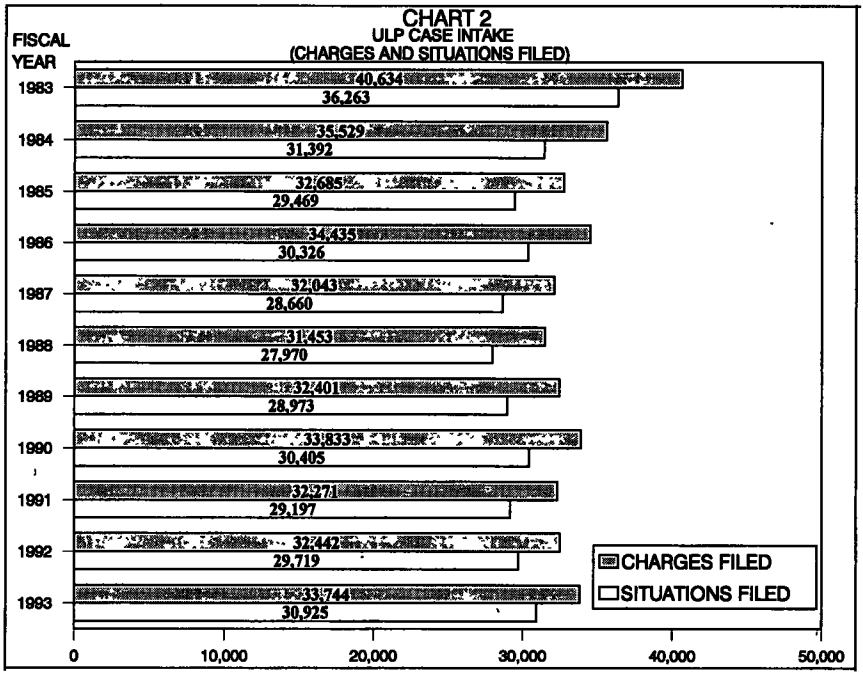
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1993.

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.

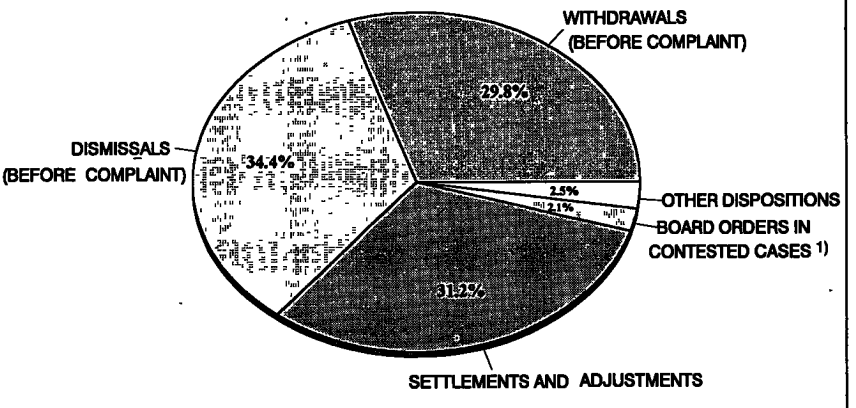
NLRB authority is divided by law and by delegation. The Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints in cases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



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

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

CHART 3
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES
(BASED ON CASES CLOSED)
FISCAL YEAR 1993



1) CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

B. Operational Highlights

1. Unfair Labor Practices

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

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

believe that the Act has been violated. If such cause is not found, the Regional Director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, the Regional Director seeks voluntary settlement or adjustment by the parties to the case to remedy the apparent violation; however, if settlement efforts fail, the case goes to hearing before an NLRB administrative law judge and, lacking settlement at later stages, on to decision by the 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 50 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1993, 33,744 unfair labor practice charges were filed with the NLRB, an increase of about 4 percent from the 32,442 filed in fiscal year 1992. In situations in which related charges are counted as a single unit, there was a 4-percent increase from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 22,272 cases, about 5 percent more than the 21,245 of 1992. Charges against unions decreased 2 percent to 10,077 from 10,272 in 1992.

There were 53 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 11,678 such charges in 52 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,594 charges, in about 48 percent of the total charges. (Table 2.)

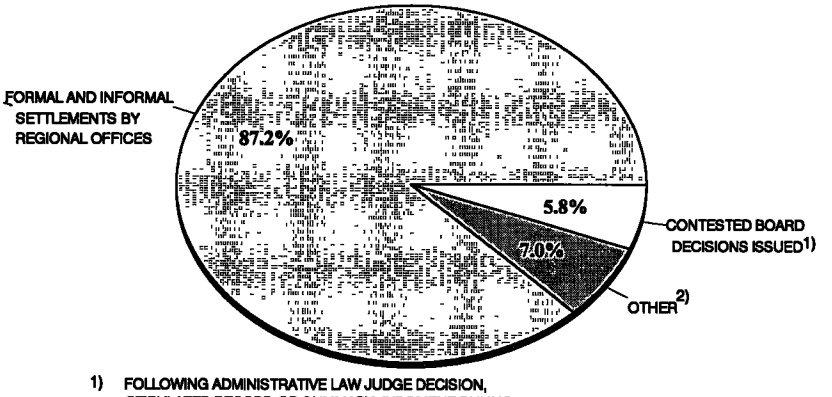
Of charges against unions, the majority (7824) alleged illegal restraint and coercion of employees, about 78 percent. There were 961 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of less than 1 percent from the 964 of 1992.

There were 1174 charges (about 12 percent) of illegal union discrimination against employees, a decrease of 10 percent from the 1300 of 1992. There were 118 charges that unions picketed illegally for recognition or for organizational purposes, compared with 208 charges in 1992. (Table 2.)

In charges filed against employers, unions led with 72 percent of the total. Unions filed 17,752 charges and individuals filed 6748.

Concerning charges against unions, 6806 were filed by individuals, or 74 percent of the total of 9191. Employers filed 2277 and other unions filed the 108 remaining charges.

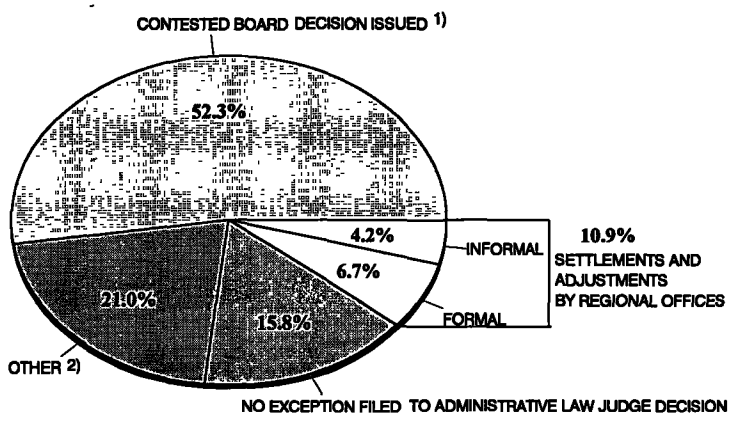
CHART 3A
DISPOSITION PATTERN FOR MERITORIOUS
UNFAIR LABOR PRACTICE CASES
(BASED ON CASES CLOSED)
FISCAL YEAR 1993



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

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

CHART 3B
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(BASED ON CASES CLOSED)
FISCAL YEAR 1993



1) FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY JUDGMENT RULING
2) DISMISSALS, WITHDRAWALS AND OTHER DISPOSITIONS

In fiscal year 1993, 32,855 unfair labor practice cases were closed. About 95 percent were closed by NLRB Regional Offices, virtually the same as in 1992. During the fiscal year, 31.2 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 29.8 percent were withdrawn before complaint, and 34.4 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1993, 41 percent of the unfair labor practice cases were found to have merit, a 3-percent increase from 1992.

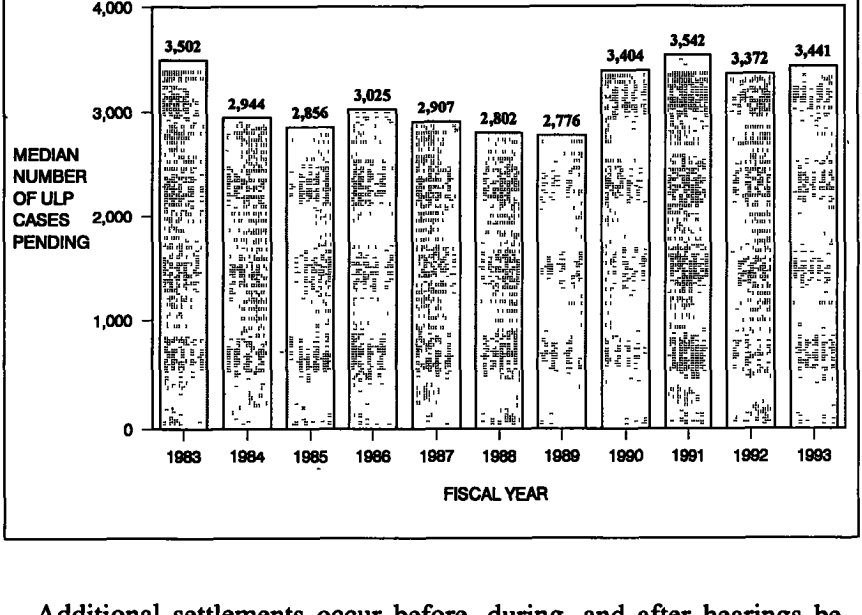
When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1993, precomplaint settlements and adjustments were achieved in 9913 cases, or 28.0 percent of the charges. In 1992, the percentage was 27.2. (Chart 5.)

Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1993, 3576 complaints were issued, compared with 3521 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 85.8 percent were against employers and 14.2 percent against unions.

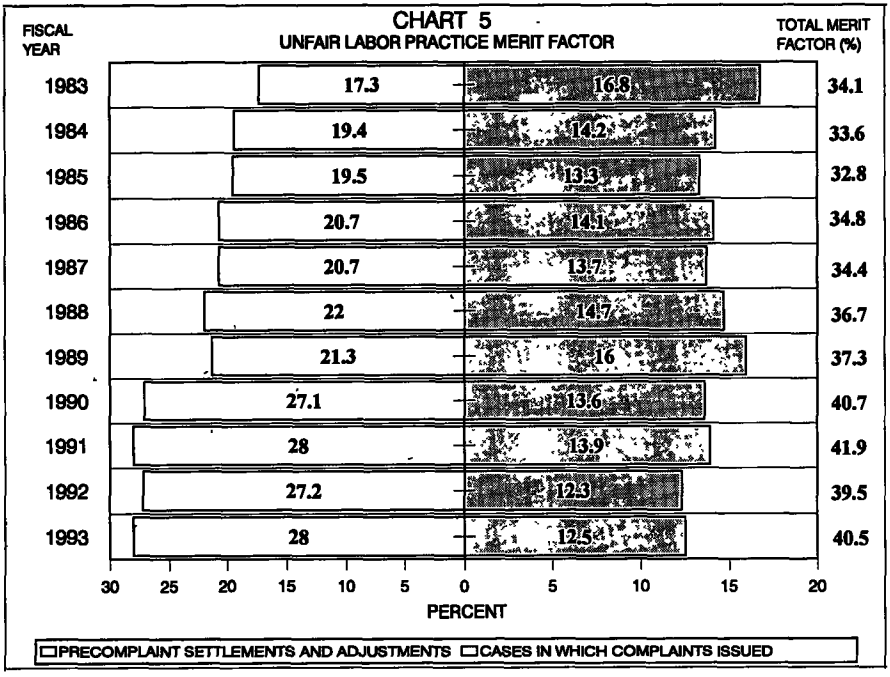
NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 46 days. The 46 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

CHART 4
NUMBER OF UNFAIR LABOR PRACTICE CASES PENDING UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH



Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 473 decisions in

777 cases during 1993. They conducted 410 initial hearings, and 3 additional hearings in supplemental matters. (Chart 8 and Table 3A.)



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

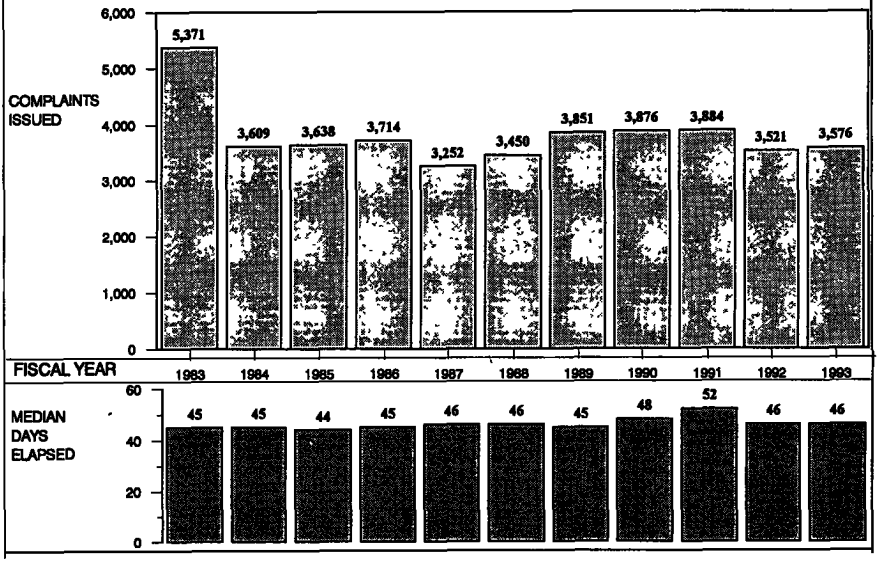
In fiscal year 1993, the Board issued 683 decisions in unfair labor practice cases contested as to the law or the facts—575 initial decisions, 49 backpay decisions, 21 determinations in jurisdictional work dispute cases, and 38 decisions on supplemental matters. Of the 575 initial decision cases, 511 involved charges filed against employers and 64 had union respondents.

For the year, the NLRB awarded backpay of $53.4 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $1,055,793. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 4177 employees were offered reinstatement, and 84 percent accepted.

At the end of fiscal 1993, there were 24,499 unfair labor practice cases being processed at all stages by the NLRB, compared with 23,610 cases pending at the beginning of the year.

CHART 6

COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS AND MEDIAN DAYS FROM FILING TO COMPLAINT

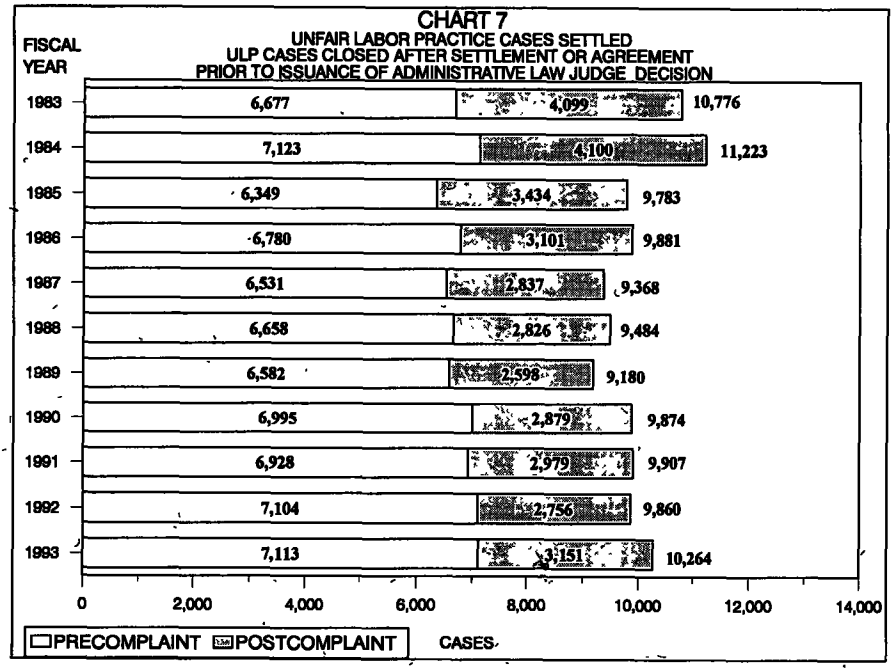


2. Representation Cases

The NLRB received 6578 representation and related case petitions in fiscal 1993, compared with 6501 such petitions a year earlier.

The 1993 total consisted of 5084 petitions that the NLRB conduct secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1056 petitions to decertify existing bargaining agents; 106 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 313 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from

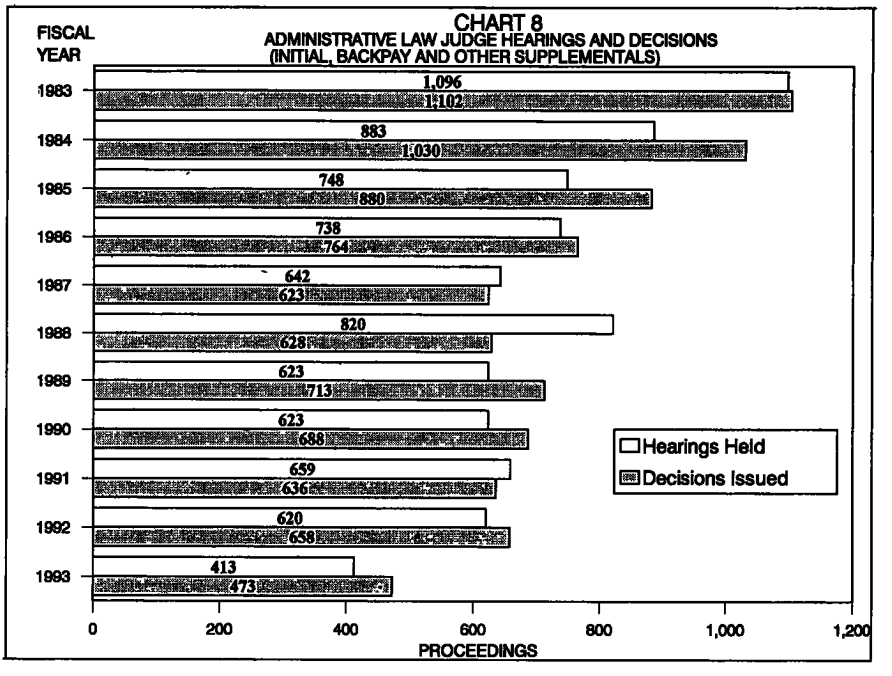
existing bargaining units. Additionally, 19 amendment of certification petitions were filed.



During the year, 7132 representation and related cases were closed, compared with 6324 in fiscal 1992. Cases closed included 5611 collective-bargaining election petitions; 1096 decertification election petitions; 108 requests for deauthorization polls; and 317 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 13.8 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 12 cases where the Board directed elections after transfers of cases from the Regional Office. (Table 10.) There was one case that resulted in expedited

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



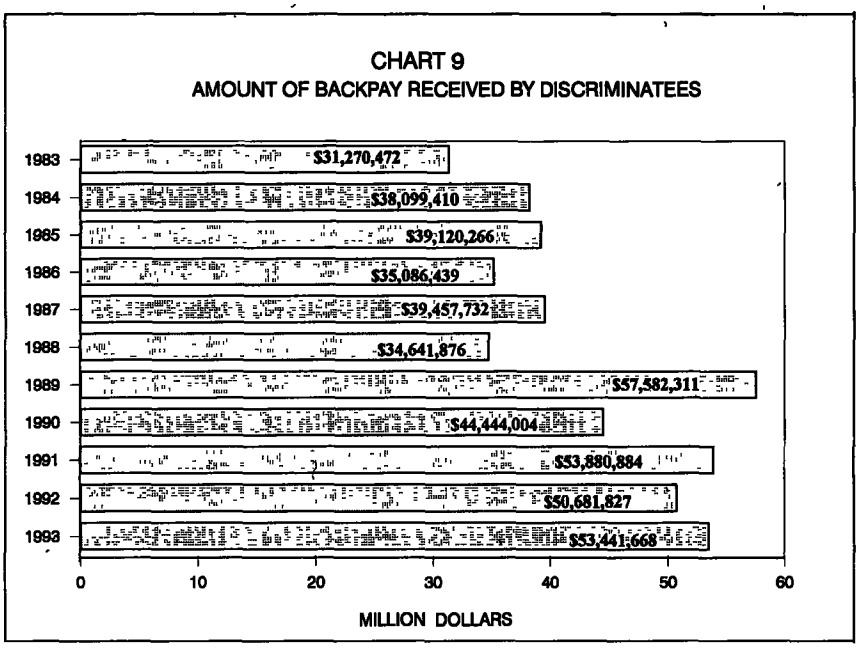
3. Elections

The NLRB conducted 3586 conclusive representation elections in cases closed in fiscal 1993, compared with the 3599 such elections a year earlier. Of 231,187 employees eligible to vote, 201,557 cast ballots, virtually 9 of every 10 eligible.

Unions won 1706 representation elections, or 47.6 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 97,166 workers. The employee vote over the course of the year was 99,918 for union representation and 101,639 against.

The representation elections were in two categories—the 3055 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 531 decerti-

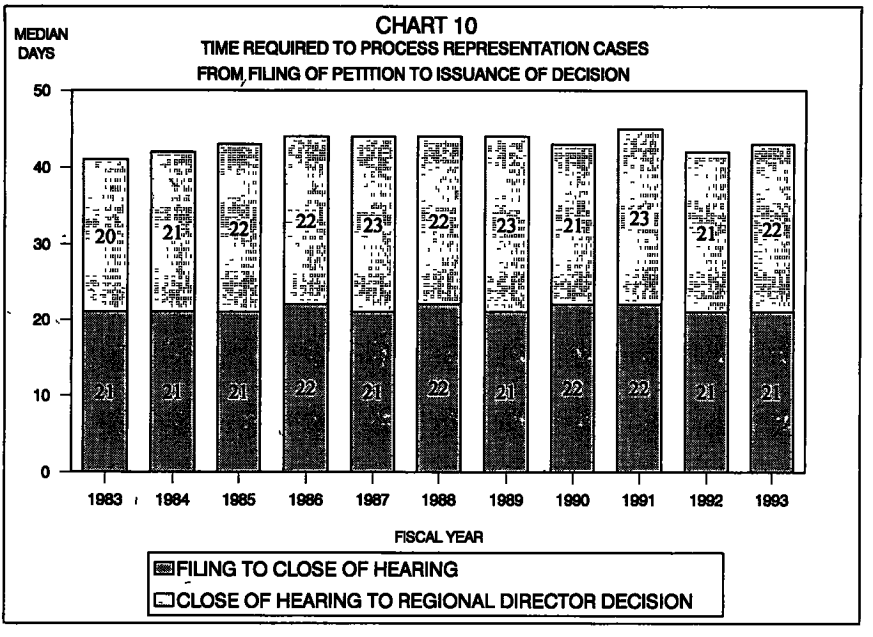
fication elections determining whether incumbent unions would continue to represent employees.



There were 3478 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1614, or 46.4 percent. In these elections, 83,898 workers voted to have unions as their agents, while 96,662 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 78,204 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 108 multiunion elections, in which 2 or more labor organizations were on the ballot, as well as a choice for no representa-

tion. Employees voted to continue or to commence representation by 1 of the unions in 92 elections, or 85.2 percent.



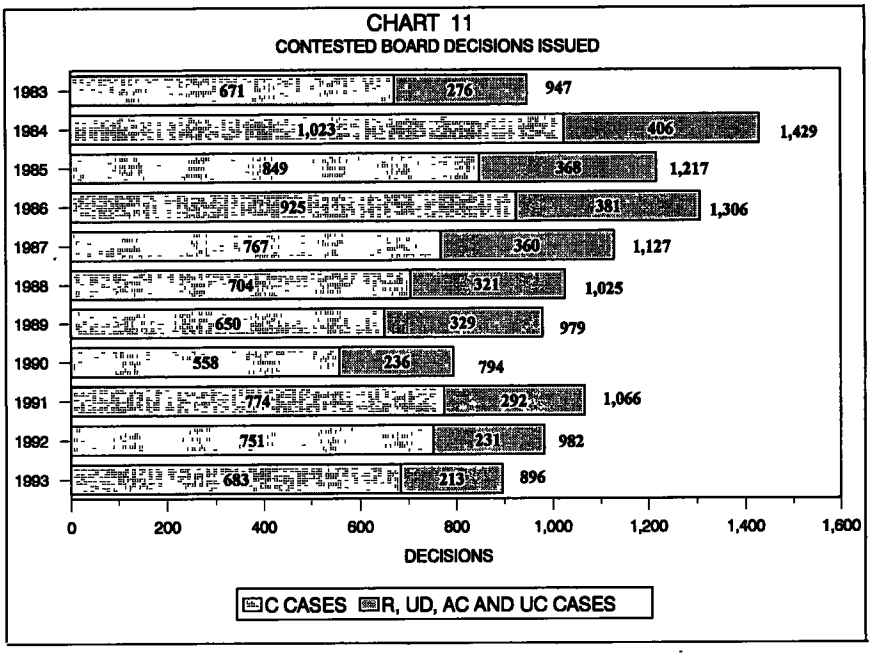
As in previous years, labor organizations lost decertification elections by a substantial percentage. The decertification results brought continued representation by unions in 165 elections, or 31.1 percent, covering 10,003 employees. Unions lost representation rights for 14,482 employees in 366 elections, or 68.9 percent. Unions won in bargaining units averaging 61 employees, and lost in units averaging 40 employees. (Table 13.)

Besides the conclusive elections, there were 184 inconclusive representation elections during fiscal year 1993 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 19 referendums, or 42.2 percent, while they maintained the right in the other 26 polls which covered 1983 employees. (Table 12.)

For all types of elections in 1993, the average number of employees voting, per establishment, was 56, about the same as 1992. About

73 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 1320 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 1478 decisions rendered during fiscal year 1992.

A breakdown of Board decisions follows:

Total Board decisions		**1,320**
Contested decisions		**896**
Unfair labor practice decisions	683	
Initial (includes those based on stipulated record)	575	
Supplemental	38	
Backpay	49	
Determinations in jurisdictional disputes	21	

Representation decisions		201	
After transfer by Regional Directors for initial decision	3		
After review of Regional Director decisions	29		
On objections and/or challenges	169		
Other decisions		12	
Clarification of bargaining unit	8		
Amendment to certification	1		
Union-deauthorization	3		
Noncontested decisions			**424**
Unfair labor practice	246		
Representation	177		
Other	1		

The majority (68 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 1993 about 6 percent of all meritorious charges and 52 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times longer to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 877 decisions in fiscal 1993, compared with 862 in 1992. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

With a leveling in case filings alleging unfair labor practices, administrative law judges issued 473 decisions and conducted 413 hearings. (Chart 8 and Table 3A.)

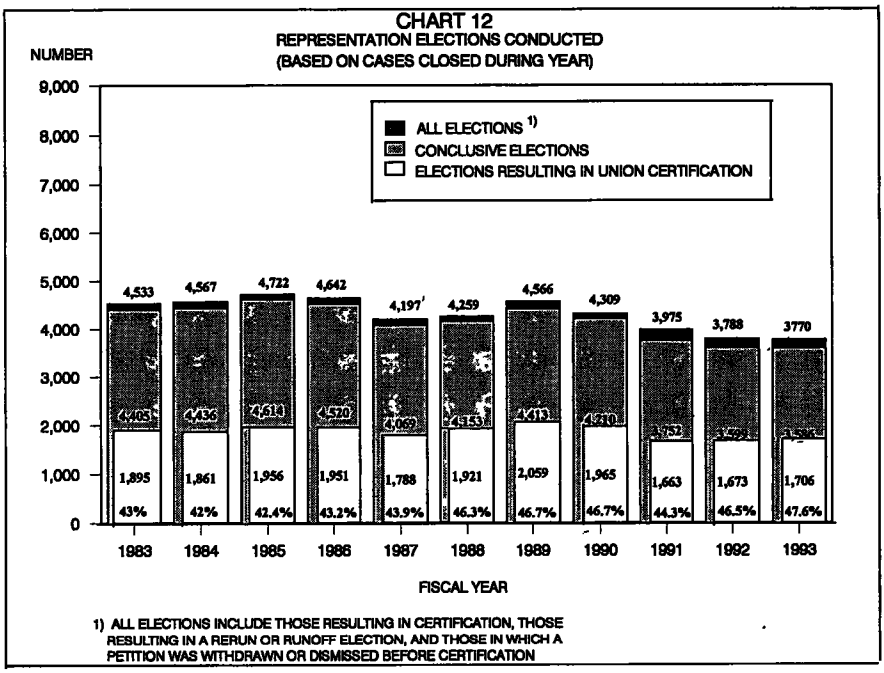


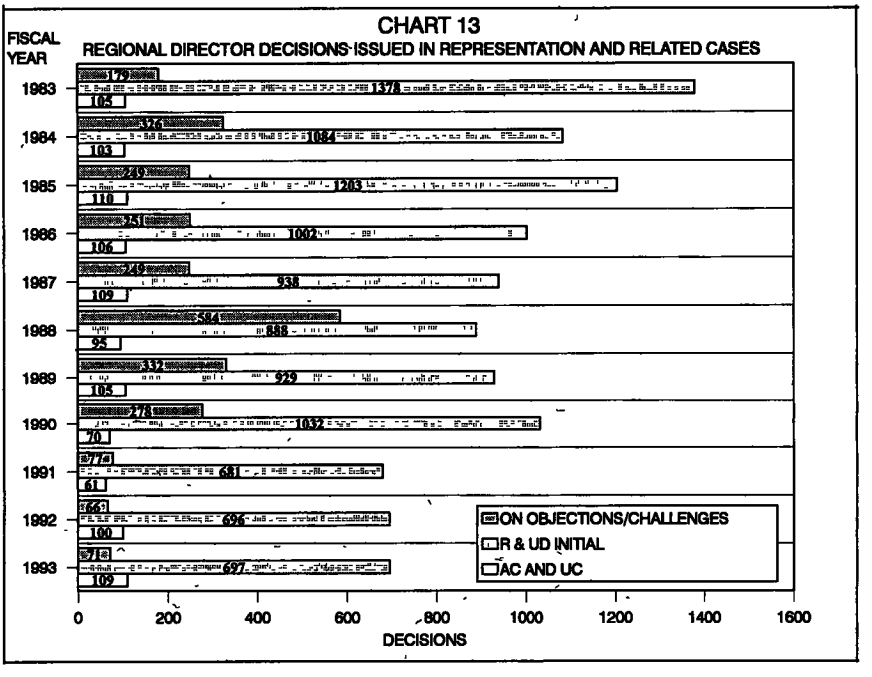
CHART 12
REPRESENTATION ELECTIONS CONDUCTED
(BASED ON CASES CLOSED DURING YEAR)
NUMBER
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
ALL ELECTIONS 1)
CONCLUSIVE ELECTIONS
ELECTIONS RESULTING IN UNION CERTIFICATION
4,533
4,567
4,722
4,642
4,197
4,259
4,566
4,309
3,975
3,788
3770
4,405
4,436
4,611
4,520
4,069
4,153
4,413
4,210
3,752
3,673
3,606
1,895
1,861
1,956
1,951
1,788
1,921
2,059
1,965
1,663
1,673
1,706
43%
42%
42.4%
43.2%
43.9%
46.3%
46.7%
46.7%
44.3%
46.5%
47.6%
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
FISCAL YEAR
1) ALL ELECTIONS INCLUDE THOSE RESULTING IN CERTIFICATION, THOSE RESULTING IN A RERUN OR RUNOFF ELECTION, AND THOSE IN WHICH A PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION

5. Court Litigation

a. Appellate Courts

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

In fiscal year 1993, 179 cases involving the NLRB were decided by the United States courts of appeals compared with 161 in fiscal year 1992. Of these, 88.8 percent were won by NLRB in whole or in part compared to 83.8 percent in fiscal year 1992; 5.6 percent were remanded entirely compared with 5.0 percent in fiscal year 1992; and 5.6 percent were entire losses compared with 11.2 percent in fiscal year 1992.



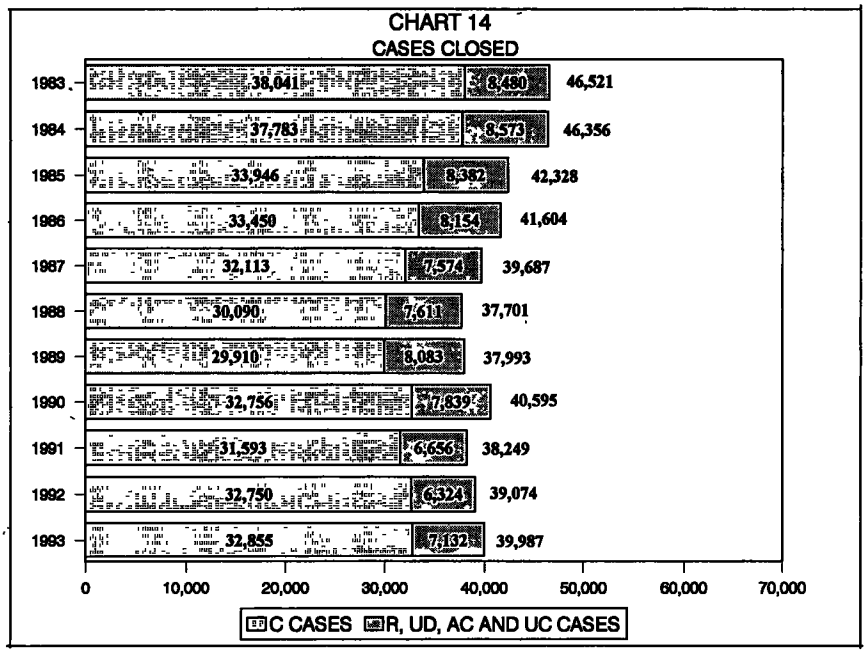
b. The Supreme Court

In fiscal 1993, there were no Board cases decided by the Supreme Court. The Board participated as amicus in one case in fiscal 1993.

c. Contempt Actions

In fiscal 1993, 154 cases were referred to the contempt section for consideration of contempt action. There were 21 contempt proceedings instituted. There were 16 contempt adjudications awarded in favor of the Board; 6 cases in which the court directed compliance

without adjudication; and 2 cases in which the petition was withdrawn or denied.



d. Miscellaneous Litigation

There were 24 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 19 cases. (Table 21.)

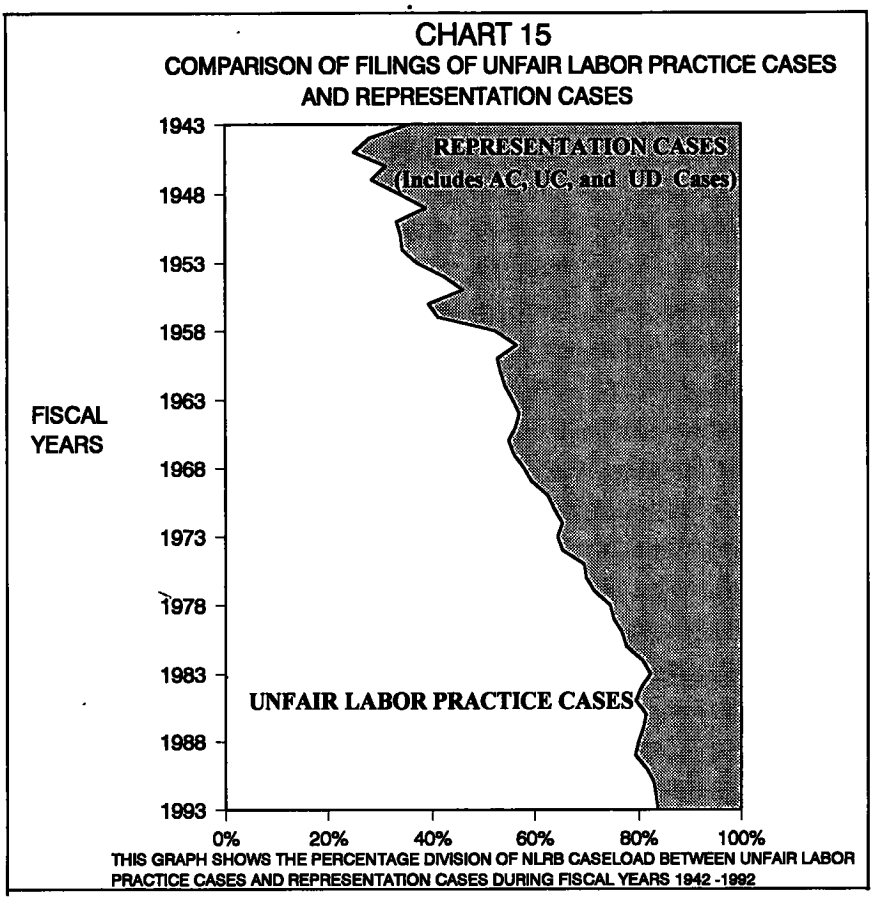
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 78 petitions filed with the U.S. district courts, compared with 43 in fiscal year 1992. (Table 20.) Injunctions were granted in 29, or 85 percent, of the 34 cases litigated to final order.

NLRB injunction activity in district courts in 1993:

Granted	29
Denied	5
Withdrawn	11
Dismissed	6

Settled or placed on court's inactive lists	27
Awaiting action at end of fiscal year	10



C. Decisional Highlights

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

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

1. Permanently Replaced Economic Strikers

In *Curtis Industries*,[1] the Board held that permanently replaced economic strikers who had engaged in a strike which commenced more than 12 months prior to the scheduled election would be permitted to vote challenged ballots because their status as bargaining unit employees remained unresolved pending the resolution of a class action lawsuit in United States district court alleging that their permanent replacement was a pretext for their termination for reasons which are illegal under other Federal statutes. The Board, however, held that if their challenged votes were determinative and their employment status remained unresolved after the election, the Regional Director should sustain the challenges if he determines, after investigating, that the Federal lawsuit would not be resolved within a reasonable period of time. The Board distinguished *Wahl Clipper*,[2] in that there the permanently replaced economic strikers were, pursuant to a strike settlement agreement, entitled to reinstatement in the future but were not members of the bargaining unit on the eligibility date, whereas here, a determination in the class action suit that the strikers were replaced in violation of Federal law would be, in effect, a finding that their employee status had continued without interruption.

2. Showing of Interest

In *Metal Sales Mfg.*,[3] the Board reversed the Regional Director's administrative dismissal of the decertification petition and held that an affidavit filed within a reasonable time after the otherwise timely filing of an undated signature list cured the technical defect in the showing of interest even though the affidavit was filed during the insulated period. In reinstating the petition, the Board relied on its decision in *Dart Container Corp.*,[4] that the date of a showing of interest in support of a representative petition may be met by an affidavit, as well as the more traditional method of individually dated signatures.

3. Access to Employer Property

In *Bristol Farms*,[5] the Board held, contrary to the administrative law judge, that the employer, located on private property in a strip shopping mall in Southern California, violated the Act by prohibiting peaceful picketing and handbilling on a sidewalk in front of its store and by threatening the union agents with arrest. The Board concluded that the employer did not have a property right entitling it to exclude the union agents, who were engaged in protected activity. The Board

[1] 310 NLRB 1212 (Chairman Stephens and Members Oviatt and Raudabaugh).
[2] 195 NLRB 634 (1972).
[3] 310 NLRB 597 (Chairman Stephens and Members Oviatt and Raudabaugh).
[4] 294 NLRB 798 (1989).
[5] 311 NLRB 437 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

looked to California law to determine the extent of the employer's property rights and found that under California law neither a shopping center nor its tenant-retailers have the right to prohibit individuals from handbilling or picketing on even privately owned shopping center premises. The Board also found that the Supreme Court's decision in *Lechmere, Inc. v. NLRB*[6] did not alter the principle that, when an employer lacks a property interest entitling it to exclude individuals from property, the employer's exclusion of union representatives from that property violates the Act.

4. Employer Assistance to Labor Organization

In *Electromation, Inc.*,[7] the Board found than an employer violated Section 8(a)(2) and (1) of the Act by establishing and dominating five "Action Committees" whose purpose was to address and resolve employees' disaffection concerning their conditions of employment. The Board held that the committees constituted a labor organization within the meaning of Section 2(5) of the Act inasmuch as employees participated in the committees and the committees existed for the purpose of dealing with the employer concerning conditions of employment. It also found that the employee members of the committees acted in a representational capacity and that the committees were, in fact, an "employee representative committee or plan" as set forth in Section 2(5). The Board held that the employer's conduct vis-a-vis the committees amounted to "domination" in their formation and administration and thus constituted unlawful support. The Board did emphasize that the unfair labor practice finding rested on the particular facts of the case and cautioned that it was not suggesting that employee committees formed under other circumstances and for other purposes necessarily would be deemed to be "labor organizations" or that employer actions in other contexts necessarily would constitute unlawful support, interference, or domination violative of the Act.

5. Paid Union Organizers as Employees

In *Sunland Construction Co.*,[8] the Board held that paid union organizers are "employees" under the Act, and found that the employer violated Section 8(a)(3) and (1) of the Act by refusing to hire paid union organizers. However, the Board found, on policy grounds, that the employer did not violate the Act by refusing to hire an organizer who applied during his union's strike against the employer. In determining that the two organizers who submitted applications were employees entitled to the Act's protection, the Board relied on the broad definition of "employee" in Section 2(3) of the Act, and that section's narrow category of enumerated exclusions, as well as the legislative history of Section 2(3), Supreme Court decisions broadly inter-

[6] 112 S.Ct. 841 (1992).

[7] 309 NLRB 990 (Chairman Stephens; Members Devaney, Oviatt, and Raudabaugh concurring).

[8] 309 NLRB 1224 (Chairman Stephens and Member Devaney, Members Oviatt and Raudabaugh concurring).

preting Section 2(3), and the Board's own precedent holding that paid organizers are "employees."

Likewise, in *Town & Country Electric*,[9] which the Board considered together with *Sunland Construction*, supra, the Board held that full-time, paid union organizers are "employees" entitled to the Act's protections. Accordingly, the Board upheld the administrative law judge's findings that the employer violated Section 8(a)(3) and (1) of the Act by refusing to consider for employment 10 applicants, including 2 full-time, paid organizers, because of their union affiliation and by subsequently discharging an employee because of his organizing efforts.

6. Employer's Duty to Furnish Information

In *Coca-Cola Bottling Co.*,[10] the Board held that the union was not entitled to requested information concerning the cost to the employer of providing certain benefits, because the union's information request indicated that the information was sought by the employer's competitors pursuant to a most-favored-nation clause in their agreements with the union. The Board majority found that the union forfeited any right it may have had to the information when it indicated that the purpose of the request was to satisfy an information request submitted to the union by the employer's competitors. Even assuming that the requested information was presumptively relevant to the union's bargaining responsibilities, the majority concluded that the employer had rebutted the presumption by pointing to the evidence that the union sought the information for disclosure to the employer's competitors because the Act does not require an employer to disclose information sought by a union for this purpose.

7. Resignation of Union Membership

In *Pattern Makers (Michigan Model Mfrs.)*,[11] the Board formulated a new standard for determining when a union member's mailed resignation is effective for purposes of immunity from union discipline. The new rule is that a mailed resignation takes effect at 12:01 a.m. local time on the day following deposit in the mail, as determined by the postmark. The old standard presumed a resignation was effective the day after it was mailed unless the actual time of receipt was known, in which case the time of receipt controlled. The Board found that the old rule did not enable employees or unions to accurately determine their legal rights. Under the new rule, the Board believes that an employee seeking to resign union membership will have no difficulty knowing when his mailed resignation is effective. Likewise, a union can determine the effective date of resignation by simply checking the postmark of what it received to determine the lawfulness of proceeding to discipline an employee for crossing the picket line.

[9] 309 NLRB 1250 (Chairman Stephens and Member Devaney; Members Oviatt and Raudabaugh concurring)

[10] 311 NLRB 424 (Chairman Stephens; Member Oviatt concurring; Member Devaney dissenting).

[11] 310 NLRB 929 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1993, are as follows in thousands of dollars:

Personnel compensation	$110,261
Personnel benefits	19,125
Travel and transportation of persons	2,973
Transportation of things	120
Rent, communications, and utilities	21,973
Printing and reproduction	367
Other services	6,062
Supplies and materials	1,910
Equipment	6,593
Insurance claims and indemnities	152
Total obligations and expenditures[12]	$169,536

[12] Includes $147,000 for reimbursables from the administrative law judge program.

II

Board Procedure

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

A. Limitation of Section 10(b)

In *Brown & Sharpe Mfg. Co.*,[1] the Board, on remand from the United States Court of Appeals for the District of Columbia, found that the employer's alleged concealment of documents did not make a critical difference in establishing a violation and thus did not toll the 10(b) limitations period. The Board reaffirmed its original order[2] dismissing the complaint. At the court's request, the Board clarified its standard for determining whether allegedly concealed evidence warrants the tolling of the 10(b) period.

The Board stated that it consistently has applied the equitable doctrine set forth in *Holmberg v. Armbrecht*[3] that if a party is injured by fraud and remains ignorant of it without any fault or want of due diligence on its part, the bar of the statute does not begin to run until the fraud is discovered. It asserted that this doctrine is the basis for the *Ducane*[4] exception for fraudulent concealment which the Board applied in the underlying proceeding to find that the allegedly concealed evidence did not warrant tolling the 10(b) period. The Board acknowledged that in *Ducane* and in other subsequent cases, it used the phrase "operative facts" to describe the character of the evidence that was concealed. "We regret doing so," the Board stated, noting that it agreed with the standard of *Fitzgerald v. Seamans*,[5] a case in which the court stated that "deliberate concealment of material facts" tolls the Federal statutes of limitations until the plaintiff discovers or with due diligence should have discovered the basis of the lawsuit. The Board wrote: "We did not intend to denote a disagreement with the standard of 'material facts,' the phrase used in *Fitzgerald*. In this case and in the future, we shall use the latter term."

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[1] 312 NLRB 444 (Chairman Stephens and Members Devaney and Raudabaugh).
[2] 299 NLRB 586 (1990).
[3] 327 U.S 392, 397 (1946).
[4] *Ducane Heating Corp.*, 273 NLRB 1389 (1985), enfd. mem. 785 F.2d 304 (4th Cir. 1986).
[5] 553 F.2d 220, 228 (D.C. Cir. 1977)

The Board held that concealed evidence is "material" if it would make a critical difference between establishing a violation and not doing so. If the absence of that evidence results in the dismissal or withdrawal of the charge, the subsequent discovery of that evidence will permit the resurrection of the charge provided that the evidence was fraudulently concealed and the injured party could not have discovered the evidence earlier through the exercise of due diligence.

In the underlying proceeding, the General Counsel, relying on the discovery of documents concerning the employer's preparations for negotiations, reinstated charges alleging bad-faith bargaining which he had dismissed 2 years earlier. Applying the "material facts" standard to the documents, the Board found that the papers, taken as a whole, did not make a critical difference in establishing the allegation that the employer engaged in surface bargaining. The Board concluded that although the documents may be relevant to the charge of surface bargaining, they did not constitute material facts. Accordingly, the alleged concealment of such facts did not toll the 10(b) period.

B. Subpoenas Seeking Affidavits of Potential Witnesses

In *H. B. Zachry Co.*,[6] the Board granted the Charging Party's and the General Counsel's requests for special permission to appeal the administrative law judge's ruling; reversed the judge; and remanded the proceeding to the judge to quash paragraph 7 of the subpoenas duces tecum, which were served on the union by the employer, to the extent that they seek the production of statements from individuals who were not called to testify.

Prior to the hearing, the employer served on the Boilermakers International identical subpoenas duces tecum seeking a variety of documents. Paragraph 7 of each subpoena covers affidavits reflecting communications between any agent of the union and any of the 21 alleged discriminatees. Paragraph 7, by its terms, includes affidavits taken by the General Counsel in the investigation of the case. The employer contended that it was entitled to the affidavits, even if the affiants do not testify, because they gave copies to the union. The judge ruled that the union must turn over the affidavits at the close of the General Counsel's case-in-chief including "affidavits in the union's possession of witnesses who have neither been called by the General Counsel in its case, nor intend to be called by the Charging Party in its case."

C. Postponement of Unfair Labor Practice Hearing

In *Carriage Inn of Steubenville*,[7] the Board held that a Regional Director may not unilaterally postpone the unfair labor practice hearing under Section 102.16(a)(2) in which the charging party merely indicates that it intends to file new charges; but held that even if the

[6] 310 NLRB 1037 (Chairman Stephens and Members Devaney and Raudabaugh).
[7] 309 NLRB 383 (Members Devaney, Oviatt, and Raudabaugh).

Regional Director improperly did so, that is not a basis for dismissing the complaint absent a showing that the respondent has been prejudiced thereby.

The Board found that the Regional Director had twice unilaterally postponed the unfair labor practice hearing, the first time within 20 days of the hearing and the second time the day before the hearing, without either filing a motion or attempting to ascertain the respondent's position. The Board found that, given the language and history of Section 102.16, the appropriate practice under the circumstances would have been for the Regional Director to request a postponement from the chief administrative law judge. The Board noted in this regard that the Regional Director had failed to explain the basis of the first postponement 20 days before the hearing, and found that the Regional Director's justification for the second postponement—that the charging party's representative had informed the Region the day before the hearing that the charging party intended to file new additional charges the following morning—was insufficient inasmuch as Section 102.16(a)(2) only permits the Regional Director to postpone the hearing where a new charge or charges "have been" filed, not where a charging party merely indicates that it intends to file a new charge.

Nevertheless, the Board rejected the respondent's contention that the complaint should be dismissed because of the postponements. The Board found that inasmuch as no substantive rights of the respondent had been affected thereby, there was no basis for dismissing the complaint. Although acknowledging that this result would leave a Regional Director's allegedly improper postponements unremedied, the Board noted that parties have the right to file a request for special permission to appeal such postponements, either by fascimile transmission or otherwise, and that such appeals will normally be expedited.

D. Submission of Documents Out of Time

In *Postal Service*,[8] the Board addressed the issue of what constitutes "excusable neglect" under Section 102.111(c) of the Board's Rules and Regulations, whereby an otherwise late-filed document will be accepted as timely received.

A panel majority comprised of Chairman Stephens and Member Raudabaugh granted the respondent's motion for enlargement of time to file its brief in answer to the General Counsel's cross-exceptions and accepted it as timely despite its receipt 1 day beyond the filing deadline. In his motion, the respondent's counsel stated that he had simply miscalculated the due date for submission of the brief by 1 day (June 11 rather than June 10); had noted the erroneous date on his desk calendar; and had relied on the notation in sending the brief to the Board via overnight mail on June 10. The Board received the brief on June 11.

[8] 309 NLRB 305 (Chairman Stephens and Member Raudabaugh; Member Oviatt dissenting).

Acknowledging that counsel's conduct may well fall within the meaning of "neglectful," the majority nevertheless reasoned that an arithmetic error in the calculation of a due date, resulting in a single day's delay in the brief's receipt, and causing no prejudice to any party was not so inexcusable as to warrant rejection of the document. These circumstances were viewed as being the type of excusable neglect contemplated by the rule.

Construing Section 102.111(c) more narrowly, Member Oviatt, in dissent, would have denied the respondent's motion and rejected its brief. In his view, a finding of excusable neglect is appropriate "[o]nly when a party demonstrates that, despite its assiduous attempts to comply with the Board's Rules and Regulations, it has missed the filing date."[9] Among those circumstances constituting excusable neglect in his view are support staff errors, confusion arising from a rejected extension request, and unforeseeable events, such as illness. By contrast, inattention of counsel resulting in the erroneous computation of a due date, does not fall within the ambit of Member Oviatt's definition.

E. Effect of Settlement Agreement

In *Ratliff Trucking Corp.*,[10] the Board, affirming the administrative law judge's recommendation, dismissed the complaint on the ground that the union-security clause at issue had been the subject of an earlier complaint and had not been specifically reserved from the settlement agreement of the prior case.

The majority, Chairman Stephens and Member Oviatt, found that the rule enunciated in *Hollywood Roosevelt Hotel*[11] operated to bar the complaint, which alleged that an employee had been discharged in violation of Sections 8(a)(3) and (1) and 8(b)(1)(A) pursuant to an unlawful union-security provision, because

> [t]he same union-security language, the maintenance and enforcement of which is alleged to be unlawful in the instant case, also was contained in the clause at the time of the settlement of a prior unfair labor case in which the lawfulness of the union-security clause also was challenged—but only on the basis of *other* language. The language alleged to be unlawful in the instant case was not alleged to be unlawful in the prior case, nor was it reserved from the scope of the settlement agreement by the parties. In light of the intervening settlement, therefore, the maintenance and enforcement of the preexisting language cannot properly be alleged as being unlawful in the instant case.

Member Raudabaugh, dissenting, concluded that the instant case and the settled case "are not one and the same," noting that the instant charges were filed by employee William Covington and alleged that the union-security clause unlawfully required the employees to be

[9] Id. at 306.
[10] 310 NLRB 1224 (Chairman Stephens and Member Oviatt; Member Raudabaugh dissenting).
[11] 235 NLRB 1397 (1978).

"members in good standing." The charge in the settled case, on the other hand, was filed by a different employee and concerned whether the clause provided for an adequate grace period. Thus, although Member Raudabaugh acknowledged that the union-security clause was agreed to prior to the settlement agreement in the prior case, he concluded that "the settlement agreement, by its reservation language, preserved the General Counsel's right to litigate other cases based on presettlement events."

F. Filing Deadline for an EAJA Application

In *Michael's Enterprises,*[12] the Board clarified the deadline for the filing of an application for an award of attorneys' fees and expenses under the Equal Access to Justice Act[13] (EAJA) in cases in which the administrative law judge, pursuant to Section 102.27 of the Board's Rules and Regulations, issues an order dismissing the complaint and no party files a request for review. In these circumstances, the Board held that it will deem the judge's dismissal order to be the final order in the case at the date of the expiration of the 28-day period permitted for filing a request for review of the judge's dismissal order. Accordingly, the Board explained that at the expiration of the 28-day period, if no request for review has been filed, the 30-day statutory filing period for filing an EAJA application shall commence.

In adopting this rule, the Board set aside its holding in *Columbia Mfg. Corp.*,[14] in which the Board treated the date of the judge's dismissal order as the date of the final order for determining the filing deadline for an EAJA application. The Board explained that the *Columbia Mfg.* rule created uncertainty as to the filing deadline for an EAJA application depending on whether or not a request for review of the dismissal order is filed.

Applying the Board's new rule to the instant case, the Board reinstated the fee application of the employer. The Board explained that the judge's dismissal order was filed on October 24, 1990, and that the period for filing a request for review expired 28 days thereafter, on November 21, 1990. The Board explained that in the absence of a request for review, the dismissal order is deemed the final order in the proceeding as of the expiration of the 28-day period—here, November 21—and the EAJA application may be timely filed up to 30 days thereafter. The Board thus concluded that the instant EAJA application was timely filed on December 21, 1990, precisely 30 days following the expiration of the period for filing a request for review.

[12] 310 NLRB 150 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

[13] 5 U.S.C. § 504.

[14] 265 NLRB 109 (1982), affd. 715 F.2d 1409 (9th Cir. 1983).

G. Nexus Between Charge and Complaint

The issue in *Embassy Suites Resort*,[15] as stated by the Board, was "whether a charge which alleges a violation of Section 8(a)(1) of the Act, using general statutory language, is legally sufficient to support a complaint alleging particularized violations of Section 8(a)(1)." A panel majority consisting of Members Devaney and Raudabaugh found that it was; Chairman Stephens dissented.

The charge filed by the union alleged a violation of Section 8(a)(1) and (3). In the space provided on the unfair labor practice form for detailing the "Basis of the Charge," the union typed in the following with respect to the 8(a)(1) allegation:

> Within the last six months, and thereafter, the above-named Employer . . . interfered with, restrained, and coerced its employees in the exercise of their rights as guaranteed by Section 7 of the Act.

The complaint alleged a number of specific 8(a)(1) violations, including the threat to withhold a wage increase if employees voted for the union. The judge found the respondent violated Section 8(a)(1) by threatening to withhold the wage increase, and the panel majority affirmed the judge's finding.

In concluding that the 8(a)(1) charge supported the 8(a)(1) complaint, the majority found instructive the Supreme Court's decision in *NLRB v. Fant Milling Co.*,[16] in which the Court found that the charge in that case alleging a general 8(a)(5) violation, i.e., reciting the broad language of that provision's statutory language, was sufficient to support the complaint which alleged particularized 8(a)(5) conduct. The majority reasoned that "if a broad 8(a)(5) charge can support a specific 8(a)(5) complaint allegation, then a broad 8(a)(1) charge can support a specific 8(a)(1) complaint allegation." The majority acknowledged that the sole difference between this case and *Nickles Bakery of Indiana*[17] was that, in this case, the broad language has been typed by the union in the body of the charge form in addition to having been preprinted by the Board on the bottom of it. However, in finding the distinction "a significant one," the majority stated:

> Where, as here, the charging party types in the broad language, that party is asking the Agency to conduct a broad investigation of 8(a)(1) allegations. Hence, when the Agency does so, it is not acting sua sponte. However, where the charging party does not type in that language, that party is not seeking a broad inquiry. The only basis for a broad inquiry is the preprinted language on the form. But that language is *the Agency's language*, not the charging party's language. Hence, if the Agency conducted a broad inquiry, it would be acting sua sponte.

[15] 309 NLRB 1313 (Members Devaney and Raudabaugh, Chairman Stephens dissenting).
[16] 360 U.S. 301 (1959).
[17] 296 NLRB 927 (1989).

The majority added:

> We further recognize that our finding does not squarely comport with the requirement of Section 102.12(d) of the Board's Rules and Regulations that the charge shall contain "[a] clear and concise statement of the facts constituting the alleged unfair labor practices affecting commerce" nor with the charge form itself which provides with respect to the basis of the charge that the charging party "be specific as to facts, names, addresses, plants involved, dates, places, etc." These requirements, however, are merely "'for the information of the Board' to aid it in conducting its investigation," and cannot serve to engraft onto the Act procedural hurdles that the Act does not contemplate or require.

Accordingly, the majority denied the respondent's motion to dismiss the complaint after finding that the generalized statutory language used in the charge was sufficient to initiate an investigation of unfair labor practices by the General Counsel, and that the charge was legally sufficient to support the 8(a)(1) complaint allegations regarding the respondent's threats to withhold wage increases.

Dissenting Chairman Stephens found "unconvincing" his colleagues' attempt to "avoid confronting the case law" by pointing out that in *Nickles* the "other acts" language was preprinted, whereas here the charging party has typed it on the charge form. "Thus, they reason that although the General Counsel may not conduct a broad unfair labor practice investigation sua sponte, i.e., based on preprinted boilerplate charge language, a charging party, by consciously intoning the same boilerplate language may legitimately give the General Counsel the carte blanche that the statute itself withholds." The Chairman added: "we would surely not find that the General Counsel had warrant for an investigation in a charge stating that the charging party had no knowledge of anything in particular done by the employer but wanted the General Counsel to investigate to see if any coercive act within the last 6 months might be turned up. I cannot see that the charge filed here is, in principle, different."

III

Representation Proceedings

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

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

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are being currently recognized by the employer. Decertification petitions may be filed by employees, by individuals other than management representatives, or by labor organizations acting on behalf of employees.

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

A. Permanently Replaced Economic Strikers

In *Curtis Industries*,[1] the Board held that 69 permanently replaced economic strikers who engaged in a strike which commenced more than 12 months prior to the scheduled election would be permitted to vote challenged ballots because their status as bargaining unit employees was unresolved pending the resolution of a class action lawsuit. The suit was filed in United States district court alleging that

[1] 310 NLRB 1212 (Chairman Stephens and Members Oviatt and Raudabaugh).

the strikers' permanent replacement was a pretext for their termination for reasons which are illegal under other Federal statutes.[2]

In reaching its holding, the Board distinguished this case from *Wahl Clipper*.[3] The Board noted that in *Wahl Clipper* the permanently replaced economic strikers were, pursuant to a strike settlement, entitled to reinstatement in the future but were not members of the bargaining unit on the eligibility date. Here, on the other hand, a determination in the class action suit that the disputed individuals were permanently replaced in violation of other Federal statutes would be, in effect, a finding that their employee status had continued without interruption. The Board noted that prior cases have held that when an individual's employment status is unresolved due to pending Federal court litigation or arbitration proceedings the individual is allowed to cast a challenged ballot.[4]

B. Appropriate Unit Issues

1. Unit Clarification Petition

In *Armco Steel Co.*,[5] the Board held, contrary to the Regional Director's decision, that unit clarification proceedings are not limited by *Gitano Distribution Center*[6] to a determination of whether relocated employees remain part of an existing bargaining unit but may also be used to resolve other unit status issues, including whether the relocated employees constitute a separate appropriate unit. Accordingly, the Board remanded the proceeding to the Regional Director to make a full analysis under *Gitano*, supra.

In *Gitano*, supra at 1175, the Board rejected the spinoff doctrine as applicable to partial relocations and held that the Board would apply the rebuttable presumption that the unit at the new facility is a separate appropriate unit and that, if the presumption is not rebutted, a simple fact-based majority test would be used to determine whether the respondent was obligated to recognize the union as bargaining representative of the unit at the new facility.

The petitioner, Salaried Employees Auxiliary of the Armco Employees Independent Federation, Inc., sought to clarify the existing bargaining unit of clerical and technical employees at the employer's Middletown, Ohio steelworks to include certain job classifications that had been within the unit but were relocated to the employer's general offices complex elsewhere in Middletown. The Board agreed with the Regional Director that the general offices complex to which unit positions had been relocated was a separate facility and that the single plant presumption had not been rebutted. Accordingly, the

[2] The Board, however, held that if the votes of the disputed individuals are determinative and their employment status remains unresolved after the election, the Regional Director should sustain the challenges if he determines, after investigating, that the Federal lawsuit will not be resolved within a reasonable period of time.

[3] 195 NLRB 634 (1972).

[4] Citing *Machinists*, 159 NLRB 137 (1966); *Pacific Tile & Porcelain*, 137 NLRB 1358 (1968); *Advance Industrial Security*, 217 NLRB 17 (1975).

[5] 312 NLRB 257 (Chairman Stephens and Members Devaney and Raudabaugh).

[6] 308 NLRB 1172 (1992).

Board held that the existing clerical and technical unit could not be clarified to include the relocated employees.

The Regional Director further found that, pursuant to the Board's Rules and Regulations, Section 102.60(b), a unit clarification (UC) proceeding is available only to define the composition of an existing unit and may not be used to define a new, separate unit. Accordingly, the Regional Director found that, even assuming that the relocated employees would constitute a majority in a separate appropriate unit, the petitioner's representative status in such a unit could not be determined in a UC proceeding.

Contrary to the Regional Director, the Board held that further clarification of the unit status of the relocated employees was appropriate under its Rules and Regulations. The Board reasoned that "UC proceedings are not limited to placement of employees in existing units but have been applied to unit scope issues as well." The Board stated that clarification here would not be substantially different from clarifying historical units as no longer appropriate. In either instance, "UC proceedings would clarify previously recognized units by determining what units have come into being by reason of the employer's reorganization, and hence are cognizable within Section 102.60(b) of the Board's Rules." Accordingly, the Board remanded the proceeding to the Regional Director to make a full *Gitano* analysis.

2. Nonacute Care Facility

In *McLean Hospital Corp.*,[7] the Board denied the employer's request for review of the Regional Director's decision and direction of election, finding the petitioned-for unit, limited to the psychiatric hospital's registered nurses (RNs), is an appropriate unit for bargaining. The employer contended that the only appropriate unit would be one containing all the professional employees.

The employer provides an array of services to severely mentally ill patients. In addition to RNs, the employer's other professional employees include physicians, psychiatrists, social workers, psychologists, and rehabilitation professionals. All-RN units, apart from other professionals, are appropriate in acute care hospitals.

In determining unit appropriateness in nonacute care health facilities, the Board considers background information gathered during rulemaking and prior precedent involving the type of unit sought or particular type of health facility in dispute and traditional community-of-interest factors. *Park Manor Care Center.*[8] Applying *Park Manor*, the Regional Director observed in her decision that, "While there are some important differences between the roles of nurses in psychiatric and acute care hospitals, I find that the factors which supported the Board's [rulemaking] decision to permit separate nurses units in acute care hospitals are present at McLean and justify a similar result." Thus, the employer's RNs had the education, training, wages, hours, nursing skills, transfers, administrative structure, and collective-bar-

[7] 311 NLRB 1100 (Chairman Stephens and Members Devaney and Raudabaugh).
[8] 305 NLRB 872 (1991).

gaining concerns similar to those in acute care hospitals and the vast majority of the employer's RNs work for and report to the nursing department.

Although the Regional Director found that there is somewhat more overlap between the functions of nurses and other team members at the employer's hospital than between the RNs and other professionals at acute care hospitals as a result of the focus on mental rather than medical treatments and on counseling, traditional nursing tasks still constitute a significant aspect of the RNs' role. RNs provide medical treatment for psychiatric conditions; monitor psychotropic drugs; may act in a charge capacity; prepare, implement, and update the nursing plan; manage the patients' concurrent medical problems; and alone monitor patients to ensure that physicians' orders are carried out. Despite dual placement in the nursing and clinical programs, the RNs are directly supervised by RNs. RNs have a separate nurse recruiter, separate orientation, and annual mandatory training. The staff RNs do not have access to the special appeals procedures available to the employer's other professionals.

The Regional Director rejected the employer's contention that certain factors common to acute care hospital RNs and the employer's RNs were intrinsic to RNs and should be discounted (for example, 24-hour patient coverage); even if all RNs shared this factor, the Board had relied on these factors in the rulemaking in finding that the RNs constitute a separate appropriate unit.

In rejecting the employer's argument that a separate unit of RNs conflicts with the role of the psychiatric hospital in providing a therapeutic milieu, the Regional Director, citing the rulemaking, found, as did the Board, that "[t]he industry offered only unsubstantiated speculation that team care would be adversely affected by separate RN units." The Regional Director distinguished *Mount Airy Psychiatric Center*,[9] the only prior Board decision involving RNs at a psychiatric hospital, in which the Board rejected the petitioned-for unit of RNs in favor of an all-professional unit. Unlike that case, no nonnurse professionals stand in virtually the identical position with the RNs.

C. Bars to an Election

1. Contract Bar

In *Stay Security*,[10] the Board determined that a collective-bargaining agreement covering a unit of guards between an employer and a union that admits both guards and nonguards to membership (a guard/nonguard union) will bar a petition for an election in a unit composed solely of guards filed by a guards-only labor organization.

Under Section 9(b)(3) the Board is prohibited from certifying a guard/nonguard union as the representative of a guards unit. This prohibition was inserted in the Act as part of the 1947 amendments and the Board initially held that a contract with a guards/nonguards union

[9] 253 NLRB 1003 (1981).

[10] 311 NLRB 252 (Chairman Stephens and Members Devaney and Raudabaugh).

would not be a bar. See *Columbia Southern Chemical Corp.*[11] That policy was reversed in *Burns Detective Agency.*[12] In a series of cases dealing with other aspects of Section 9(b)(3), the Board did not disturb its *Burns* decision even though a dissenting Board Member suggested that *Burns* was of questionable validity. *Stay Security* removes any doubt as to the validity of *Burns* and reaffirms that while the Board would not certify a contracting guard/nonguard union, that union's contract will bar an election in a unit of guards.

2. Multiemployer, Multi-industry Bargaining History

In *Maramount Corp.*,[13] the Board directed that elections be conducted in petitioned-for, single employer bargaining units, despite the employers' long history of collective-bargaining on a multiemployer basis. The Board balanced the employees' Section 7 rights of self-organization and freedom of choice against the interest of stable labor relations, and decided the balance should be struck in favor of employees rights.

Most of the employers involved were members of the multiemployer, multi-industry Williamsburgh Trade Association (WTA), which has a 15-year collective-bargaining relationship with Production Workers Local 17-18. The Board found that the employees in the WTA unit enjoyed no community of interest other than sharing a common bargaining representative. Specifically, the Board relied on the wide diversity of businesses of the WTA members; the geographical diversity of the WTA members' shops; the lack of employee interchange, integration of work functions, and common supervision of the WTA members' employees; and, most significantly, the WTA/Local 17-18 contracts have never reflected any industry-specific concerns nor have these concerns been addressed on a shop-by-shop basis.

The Board concluded that the WTA bargaining unit was "a heterogeneous aggregation of distinct groups of employees with widely differing interests and concerns" and that the WTA did not present "adequate justification for deeming the historical pattern of bargaining to be a bar to the instant petitions."

3. Settlement Agreement

In *Jefferson Hotel*,[14] the Board reversed the Regional Director's decision to dismiss the decertification petition in this case, finding that he had "misinterpreted" the Board's requirements regarding how to ensure the dismissal of a decertification petition as part of a settlement agreement to remedy unfair labor practices, as set forth in *Nu-Aimco, Inc.*,[15] as the Board did not intend in *Nu-Aimco* that the decertification petition could be dismissed absent the consent of the decertification petitioner. Accordingly, the Board reinstated the petition and

[11] 110 NLRB 1189 (1954).
[12] 134 NLRB 451 (1961).
[13] 310 NLRB 508 (Chairman Stephens and Members Devaney and Oviatt).
[14] 309 NLRB 705 (Chairman Stephens and Members Devaney and Oviatt).
[15] 306 NLRB 978 (1992).

remanded the case for further processing on the employer's compliance with a settlement agreement which was signed by the employer and the union, but not the petitioner.

In October and December 1991, the union filed four separate unfair labor practice charges against the employer, and complaints were subsequently issued alleging that the employer facilitated and participated in the circulation among its employees of a decertification petition in another case, withdrew recognition of the union, and made unilateral changes in the working conditions of unit employees. On January 14, 1992, an individual petitioner filed the instant petition seeking to decertify the union. The Regional Director held the decertification petition in abeyance pursuant to the Board's blocking charge policy pending resolution of the unfair labor practice charges.

Thereafter, the Regional Director approved an informal settlement agreement of the four unfair labor practice cases which required the employer to take certain actions to remedy the alleged violations. The settlement agreement, signed by the employer and the union, but not the petitioner, included a nonadmissions clause and a provision which provided that "[the] approval of this agreement precludes the processing of any RD petition filed prior to the fulfillment of all terms of this agreement by Respondent," including the instant petition.

Prior to the parties entering into the settlement agreement, the Regional Director advised them and the petitioner by letter that the unfair labor practice violations as alleged were sufficient to taint the instant petition and would require dismissal of the petition. Moreover, the Regional Director advised that he would fully litigate the cases if the settlement agreement did not include the provision described above. The Regional Director stated that "[the] Board has very recently made clear that such a position should be made known to all parties in the cases involved, and made part of the settlement agreement," citing *Nu-Aimco*, supra. The petitioner's counsel subsequently objected by letter to requiring the dismissal of the instant petition as a condition of the settlement agreement. The Regional Director then dismissed the petition, citing *Nu-Aimco*.

In granting the petitioner's request for review of that decision, the Board noted as follows:

> We did not intend in *Nu-Aimco* that the decertification petition could be dismissed absent the consent of the decertification petitioner (or, of course, the finding of a violation in a litigated case, or an admission by the respondent). Rather, it was our aim to include the petitioner in the settlement discussions to allow for the possibility that the petitioner could agree to a settlement agreement which provides for the dismissal of the petition as a condition for the settlement. Without the petitioner's agreement, however, we did not intend that the petitioner be bound to a settlement by others that has the effect of waiving the petitioner's right under the Act to have the decertification petition processed. In the alternative, as noted in *Nu-Aimco*, in the absence of an admission by the employer, the Regional Director must choose between litigating the

unfair labor practice cases, which could result in a finding of an unfair labor practice violation sufficient to "taint" the petition and require dismissal, or accepting a settlement agreement between the union and the employer, and processing the decertification petition upon compliance with the settlement agreement.

Here, the Board stated, the settlement agreement was approved over the petitioner's objection. Thus, the agreement was insufficient to preclude the processing of the petitioner's decertification petition.

D. Showing of Interest

In *Metal Sales Mfg.*,[16] the Board, reversing the administrative law judge's administrative dismissal of the decertification petition, found that an affidavit filed within a reasonable time after the otherwise timely filing of an undated signature list cured the technical defect in the showing of interest even though the affidavit was filed during the insulated period. The Board reinstated the petition and remanded to the Regional Director for further processing.

The parties' collective-bargaining agreement was by its terms, effective from February 1, 1992, through January 31, 1993. The open period for filing a petition was from November 2 through December 1, 1992. The instant decertification petition was filed on December 1, 1992. On December 4, 1992, the Regional Office informed the petitioner that the petition was defective because the signatures constituting the showing of interest were undated and it was too late to correct the defect. On December 8, the Regional Director administratively dismissed the petition for the stated reasons. The next day, the petitioner sent the Regional Office an affidavit attesting that he had collected all signatures on the showing of interest on November 30, 1992. The Regional Office rejected the affidavit, relying on the NLRB Casehandling Manual (Part Two) Representation Proceedings (CHM), Section 11028.5, which provides that only signatures that are dated may be counted toward the requisite showing of interest, and that "[n]o independent proof of the date of signing should be solicited or accepted."

In reinstating the petition, the Board relied on its decision in *Dart Container Corp.*,[17] that the date of a showing of interest in support of a representation petition may be met by an affidavit, as well as the more traditional method of individually dated signatures. The Board wrote:

> In determining what constitutes timeliness under *Dart Container*, we have considered that the absence of signature dates is only a technical defect. Although we require that failure to provide a numerically sufficient showing of interest be cured no later than the last day on which a petition might be timely filed, we do not believe that such a strict limitation is necessary in permitting a party to cure a technical defect in the dating of the signatures. Rather,

[16] 310 NLRB 597 (Chairman Stephens and Members Oviatt and Raudabaugh)
[17] 294 NLRB 798 (1989).

we conclude that the timeliness requirement of *Dart Container* for the filing of an affidavit is satisfied if the affidavit is filed within a reasonable time after the timely filed signature list (or authorization cards), without regard to whether the affidavit itself is filed during the insulated period preceding the extant contract's expiration.

In the instant case, the Petitioner submitted an affidavit attesting to the date of the signatures only 8 days (6 working days) after submitting the timely showing of interest, and 5 days (3 working days) after the Regional Office orally informed the petitioner that the showing of interest was defective for lack of dates. We hold that this is a reasonable time after the Petitioner's filing of the signature list within which to file an affidavit, even though the affidavit was filed during the insulated period.

E. Construction Industry Issues

In *Northern Pacific Sealcoating*,[18] the Board held that by virtue of the waiver provision contained in the 8(f) memorandum agreement between the employer and the union, the employer effectively waived its right to file a representation petition during the term of the agreement.

On December 29, 1988, the employer entered into an 8(f) relationship with the Laborers' union by executing a memorandum agreement binding it to the then-current master agreement. The memorandum agreement contained a provision which required the parties to give timely written notice of an intention to terminate, change, or cancel the agreement. There was no evidence that the employer provided such notice. Consequently, the Board found that the employer became bound to the terms of successor master agreements, the most recent of which was effective from January 1, 1989, to June 30, 1993.

The agreement contained the following provision:

> It is the intention of the undersigned to enforce the provisions of this Agreement only to the extent permitted by law. Except as set forth below, the individual employer waives any right that he or it may have to terminate, abrogate, repudiate, or cancel this Agreement during its term, or during the term of any future modifications, changes, amendments, supplements, extensions, or renewals of or to said Master Agreement; or to file or process any petition before the National Labor Relations Board seeking such termination, abrogation, repudiation, or cancellation.

In finding that this provision constituted a valid waiver of the employer's right to file a petition during the term of the contract, the Board reasoned that the employer executed the waiver provision well after the decision in *John Deklewa & Sons*[19] and, therefore, the employer "knew or should have known, the nature of the rights it

[18] 309 NLRB 759 (Chairman Stephens and Members Devaney and Raudabaugh).

[19] 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

agreed to waive at the time it signed the memorandum agreement." The Board also analogized the issue in *Northern Pacific* to that presented in *Briggs Indiana Corp.*,[20] in which the Board "enforced an express contractual agreement by the union to forgo its right to represent or seek to represent certain of an employer's employees." The Board reasoned that it was a logical corollary of that proposition that it should enforce an employer's waiver of its right to challenge the union's representation of certain employees during the term of the particular contract involved. Finally, the Board stated that it was "reluctant to permit parties to use Board processes in a manner contrary to their contractual commitments or obligations."

During this year, the Board resolved an issue left open by its 1987 *John Deklewa & Sons*[21] decision. Thus, in *PSM Steel Construction*,[22] the Board held that a union's request that an employer sign an 8(f) agreement does not constitute a claim for recognition as a 9(a) majority representative and thus will not support the processing of an RM petition under Section 9(c)(1)(B).

The Board's decision affirmed the continuing vitality of *Albuquerque Insulation*,[23] a pre-*Deklewa* decision. In *PSM* the Board first analyzed the nature of the unit sought by the RM petition and by the union's request for an 8(f) agreement. Finding that the requests were co-extensive with each other and that the petition was therefore otherwise valid, the Board turned to the issue of whether the union's request was a "claim." The Board commented that the 1959 amendments in creating RM petitions, also sought "to prevent employers from utilizing such petitions as a means to undermine employee free choice." RM elections could, therefore, "be held only if there was a majority claim," the Board concluded. It noted that a decision to allow an RM petition on a mere request that an 8(f) contract be signed would deprive 8(f) of any meaningful purpose because a union would have to organize the employer before it made an 8(f) request or "face a possible election defeat."

In *Casale Industries*,[24] the Board held that a challenge to majority status in the construction industry must be made within a reasonable period of time after 9(a) recognition is granted.

Paul Miller and Casale are employers engaged in the construction industry and members of the Sheet Metal Contractors' Association of Union, Morris, Somerset, and Sussex Counties (the Association), a multiemployer association. The Association and the employers agreed to hold a private election, which was conducted on September 10, 1982. Local 22, having received a majority of the valid votes, was certified as the bargaining representative of the employees employed by the Association. On September 29, 1982, the Association and Local 22 entered into a written recognition agreement based on the results of the election and, since then, have been parties to four suc-

[20] 63 NLRB 1270 (1945).
[21] 282 NLRB 1375 (1987)
[22] 309 NLRB 1302 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[23] 256 NLRB 61 (1981).
[24] 311 NLRB 951 (Chairman Stephens and Member Raudabaugh; Member Oviatt dissenting in part).

cessive collective-bargaining agreements. During the open period of the third agreement, the petitioner, Local 28, filed petitions seeking to represent separate units of employees employed by Paul Miller and employees employed by Casale.

The Board found that the Association and Local 22 intended a Section 9 relationship, noting in particular that the parties themselves agreed to hold the election and that the winner of the election would be recognized by the employers "as if the election had been conducted by the NLRB itself and an appropriate certification(s) issued." The Board concluded, however, that it would not process the petitions for single-employer units because a challenge to majority status must be made within a reasonable time after Section 9 recognition is granted, citing its decision in *Comtel Systems Technology*.[25] The Board, analogizing this to the 6-month limitation in the nonconstruction industry after which it will not entertain a claim that majority status was lacking at the time of recognition. The Board reasoned that construction industry employers should not be treated less favorably than nonconstruction industry employers. The Board concluded, therefore, that if a construction industry employer extends 9(a) recognition to a union, and more than 6 months elapse without a charge or petition, the Board will not entertain a claim that majority of status was lacking at the time of recognition. In *Casale*, because the challenge to majority status was made substantially more than 6 months after the grant of 9(a) recognition, the Board concluded that it would not process the petitions in single-employer units. Further, the Board found that the petitions were not barred by the new contract executed by Local 22 and the Association after the petitions were filed and, as the appropriate unit was the recognized multiemployer unit, the Regional Director, under *Brown Transport Corp.*,[26] properly gave the petitioner the customary 10 days to demonstrate that it had the necessary showing of interest in the broader unit. Finally, the Board held that the Regional Director should apply the Board's special construction industry eligibility rule set forth in *Steiny & Co.*[27]

F. Election Objections

In *Brookville Healthcare Center*,[28] the Board agreed with the Regional Director's finding that intervenor's Objections 3 and 4, alleging that several days before the election the employer caused a sample ballot to be marked and displayed indicating the Board's and the employer's support for the petitioner, should be overruled, but rejected the Regional Director's reliance on *SDC Investment*[29] because of the Board's recent revisions in its notice of election. In *SDC Investment*, the Board held that the central issue in evaluating altered Board documents is whether the altered document is likely to have

[25] 305 NLRB 287 (1991).
[26] 296 NLRB 1213 (1989).
[27] 308 NLRB 1323 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[28] 312 NLRB 594 (Chairman Stephens and Members Devaney and Raudabaugh).
[29] 274 NLRB 556 (1985).

given voters the misleading impression that the Board favored one of the parties to the election.

The Board noted that it recently revised its notice of election to include language specifically disavowing Board participation or involvement in any defacement, as well as specifically asserting its neutrality in the election process. In finding that the *SDC Investment* analysis is no longer required in cases involving defacement of a revised notice, the Board stated that the new language itself is sufficient to preclude a reasonable impression that the Board favors or endorses any choice in the election, noting that it would be extremely unlikely that an employee would overlook the disclaimer of Board involvement in any markings, given the prominance of the bold, large-print lettering "warning" that precedes the large, bold lettering in the revised language. Applying the new rationale to this case, the Board found that Objections 3 and 4 should be overruled solely because the notice of election at issue, which contains this new language, thereby precludes a reasonable impression that the "X" marking in the box indicating a choice for the petitioner emanated from the Board.

In *Madera Enterprises*,[30] the Board reversed the Regional Director's supplemental decision and certification of representative, sustained the employer's objection 1, and set aside the election on the ground that the integrity of the Board's election procedures was compromised when two Board agents opened a sealed envelope containing impounded ballots outside the presence of the parties.

During an election, the Board agent challenged the ballots of certain employees, but did not maintain a separate list of the challenged voters. At the end of the balloting, the Board agent placed all the ballots, challenged and unchallenged, in an envelope, properly sealed the envelope with the parties' signatures across the seal, and impounded the ballots pending the Board's ruling on the petitioner's request for review.

Thereafter, when the petitioner made a formal request for the names of the challenged voters, the Regional Office discovered that the file contained no such list. As a result, the Region's election specialist and a Regional supervisor removed the sealed envelope from the safe, opened it, removed the challenged ballots, and made a list of the challenged voters. The Board agents then returned the challenged ballots to the envelope and returned the envelope to the safe.

The Board disagreed with the Regional Director's finding, relying on *N. Sumergrade & Sons*,[31] that the Board agents' action was purely "administrative." and noted that the Board's Casehandling Manual[32] provides that impounded ballots shall be sealed in the presence of the parties and that "[r]emoval of the ballots for counting shall be done at the count *in the presence of the parties' representatives.*" (Emphasis added.) Finally, the Board noted that, because none of the impounded ballots had been counted, and no list of the challenged bal-

[30] 309 NLRB 774 (Members Devaney, Oviatt, and Raudabaugh).
[31] 123 NLRB 1951 (1959).
[32] Sec. 11344.2.

lots was maintained, there was no independently verifiable way to know how many total ballots had been cast. Thus, the Board concluded

> that the Board agents' conduct in breaking the signed seal on the impounded ballot envelope, and opening that envelope, out of the presence of the parties, compromised the integrity of the election process and constituted conduct which reasonably would destroy confidence in the election process.

IV

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal 1993 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 by-product of any of the types of conduct specifically identified in paragraphs (2) through (5) of Section 8(a), or may consist of any other employer conduct that independently tends to interfere with, restrain, or coerce employees in exercising their statutory rights. This section treats only decisions involving activities that constitute such independent violations of Section 8(a)(1).

1. Access to Employer Property

In *Bristol Farms*,[1] the Board held, contrary to the administrative law judge, that the respondent violated the Act by prohibiting peaceful picketing and handbilling on a sidewalk in front of its store and by threatening the union agents with arrest.

The respondent's gourmet grocery store, located on private property in a strip mall in Manhattan Beach, California, is separated from

[1] 311 NLRB 437 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh). See also *Payless Drug Stores*, 311 NLRB 678 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh), in which the Board reaches the same conclusion with respect to another employer located in the same strip mall.

a public street by a substantial parking lot. Agents of Food and Commercial Workers Local 1442 handed out flyers and picketed with sandwich boards to inform potential customers that the respondent's employees are not covered by a collective-bargaining agreement and to urge them to patronize nearby "union" stores.

The Board concluded that the respondent did not have a property right entitling it to exclude the union agents, who were engaged in protected activity. The Board determined the extent of the respondent's property rights by looking to California law, under which neither a shopping center nor its tenant-retailers have a right to prohibit individuals from handbilling or picketing on shopping center premises, even if they are privately owned.[2] Thus, the Board found it unnecessary to engage in a more complex analysis as would be required if there were a conflict between the employer's property rights and the union's Section 7 rights, as in *Lechmere, Inc. v. NLRB*[3] and other related cases. The Board found that *Lechmere* did not alter the principle that, when an employer lacks a property interest entitling it to exclude individuals from property, the employer's exclusion of union representatives from that property violates the Act.

2. Protected Nature of Activity

In *Cambro Mfg. Co.*,[4] the Board by a 2–1 majority voted to reverse the administrative law judge's recommendation and found that the employer lawfully discharged 11 employees for engaging in an in-plant work stoppage. The Board found that initially the stoppage was a statutorily protected activity because it was protesting working conditions. However, it lost this protected status when the employees refused to return to work or to clock out and leave the premises until a scheduled meeting with the plant manager later in the day.

In dissent, Member Devaney would affirm the judge. Noting that the work stoppage had been going on for 4 hours but was undisputedly peaceful and nondisruptive and did not prevent other employees from going about their work, Member Devaney found nothing in the record to support the conclusion that the employer had an immediate interest that was served by the strikers' removal from the premises.

B. Employer Assistance to Labor Organization

In *Electromation, Inc.*,[5] the Board found that an employer violated Section 8(a)(2) and (1) of the Act by establishing and dominating five "Action Committees" whose purpose was to address and resolve employees' disaffection concerning their conditions of employment.

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[2] See, e.g., *Robins v. Pruneyard Shopping Center*, 153 Cal.Rptr. 854, 592 P.2d 341 (Cal.1979), affd. 447 U.S. 74 (1980), and *Northern California Newspaper Organizing Committee v. Solano Associates*, 239 Cal.Rptr. 227 (Cal.App. 1 Dist. 1987)

[3] 112 S.Ct. 841 (1992).

[4] 312 NLRB 634 (Chairman Stephens and Member Raudabaugh; Member Devaney dissenting).

[5] 309 NLRB 990 (Chairman Stephens; Members Devaney, Oviatt, and Raudabaugh concurring).

On receiving a petition signed by employees asking management to reconsider its unilateral decision to drop an attendance bonus program and a wage increase, the employer created action committees comprised of employees and management. Employees on the committees were to meet with management in order to, according to the employer's president, "try to come up with ways to resolve these problems." The employer not only created the committees, but also determined the subject of each committee, their policy goals, the number of employees permitted to join the committees, and appointed a management representative to facilitate discussions. Managerial personnel served as committee members and dealt with employees concerning employees' conditions of employment. About a month after formation of the committees, the Teamsters Union made a demand to the employer for recognition. Thereafter, the employer informed management committee members that it could no longer participate in the committees until after the election but that the employees could continue to meet if they so desired.

The Board held that the committees were a labor organization within the meaning of Section 2(5) of the Act inasmuch as employees participated in the committees and the committees existed for the purpose of dealing with the employer concerning conditions of employment. The Board stated that the purpose of the committees "was to address employees' disaffection concerning conditions of employment through the creation of a bilateral process involving employees and management in order to reach bilateral solutions" to problems. It also found that employee members of the committees acted in a representational capacity and that the committees were, in fact, an "employee representation committee or plan" as set forth in Section 2(5).

The Board also held that the employer's conduct vis-a-vis the committees amounted to "domination" in their formation and administration and constituted unlawful support. The Board reasoned that employees essentially were "presented with the Hobson's choice of accepting the status quo, which they disliked, or undertaking a bilateral 'exchange of ideas' within the framework" of the committees, as presented by the employer.

The Board emphasized that the unfair labor practice rested on the particular facts of the case and that the violations found were not intended to suggest that employee committees formed under other circumstances and for other purposes necessarily would be deemed "labor organizations" or that other employer actions in other contexts necessarily would constitute unlawful support, interference, or domination.

In *E. I. du Pont & Co.*,[6] the Board held that six labor-management committees dealing with safety and a seventh dealing with fitness were employer-dominated labor organizations within the meaning of Section 2(5) and Section 8(a)(2) of the Act and that the employer bypassed the exclusive collective-bargaining representative of the employees by dealing with the seven committees in violation of Section

[6] 311 NLRB 893 (Members Oviatt and Raudabaugh, Member Devaney concurring).

8(a)(5). The case provided the first opportunity after the issuance of *Electromation, Inc.*[7] for the Board to address issues raised by employee participation committees in circumstances where employees have selected an exclusive bargaining representative.

Members Oviatt and Raudabaugh found that the committees established by the employer existed in part for the purpose of dealing with the employer on such subjects as safety, incentive awards for safety, or benefits such as employee picnic areas and jogging tracks. They noted that the committees involved group action, made proposals to management representatives either on the committee or outside the committee, and that management representatives responded to the proposals and had the power to veto them. The majority concluded that this activity between the committees and management is "virtually identical" to that found to be "dealing" in *NLRB v. Cabot Carbon Co.*,[8] a Supreme Court decision defining the term "dealing with" in Section 2(5).

The majority emphasized that not all committees involving employees and management representatives would meet the definition of "dealing with" under Section 2(5): "For example, there would be no 'dealing with' management if the committee were governed by majority decision-making, management representatives were in the minority, and the committee had the power to decide matters for itself, rather than simply make proposals to management." The majority also noted that if a committee exists for the sole purpose of imparting information or for planning educational programs, there would be no dealing with management. Similarly, a "brainstorming" session designed to develop a wide range of ideas, or a "suggestion box" procedure involving only proposals made by individuals would not be considered instances where a committee was dealing with management.

With respect to the issue of bypassing the exclusive collective-bargaining representative, the majority found that some committees dealt with issues which were identical to those dealt with by the union, and brought about resolutions that the union had failed to achieve. All the safety committees established incentive awards when in the past the union had negotiated with the employer about safety incentive awards. The majority concluded that by these actions, the employer bypassed the incumbent labor organization in violation of Section 8(a)(5).

The majority concluded that the employer did not violate Section 8(a)(5) by holding quarterly all-day safety conferences. The majority found that the conferences were brainstorming sessions where employees were encouraged to develop ideas concerning certain safety issues. The conferences were not charged with the task of deciding on proposals and the employer provided a mechanism for seeking to keep bargainable issues out of the discussion. The majority emphasized that the employer mentioned the union at each conference and

[7] 309 NLRB 990 (Chairman Stephens; Members Devaney, Oviatt, and Raudabaugh concurring).
[8] 360 U.S. 203 (1959).

made clear to the employees that it recognized the union's role on bargainable issues.

Member Devaney concurred, emphasizing that "the conduct the majority finds unlawful is also unlawful under my narrower and more historically focused perspective." Member Devaney expressed the view that while Section 8(a)(2) does not ban an employer from such activities as establishing or dissolving committees, setting agendas, or placing managers and statutory employees together on a committee, it does outlaw manipulating such committees so that they appear to be representatives of the employees when they are not. Member Devaney stated that, "As a practical matter, the Respondent's conduct as to the safety and fitness committees comes close to a textbook example of an employer's manipulation of employee committees to weaken and undermine the employees' freely chosen exclusive bargaining agent."

C. Employer Discrimination Against Employees

Following oral argument, the Board held in *Sunland Construction Co.*,[9] that paid union organizers are "employees" under the Act. Adopting the administrative law judge's recommendation, the Board found that Sunland violated Section 8(a)(3) and (1) by refusing to hire paid union organizers. The Board further agreed with the judge, however, that Sunland did not violate the Act by refusing to hire an organizer who applied during his union's strike against it.

In late 1987, Sunland began overhauling a boiler at the James River Paper Mill in St. Francisville, Louisiana. When the union learned of this project, it solicited about 90 applications—including 2 from full-time, paid union organizers—and tendered them to Sunland. None of these applicants was hired, although Sunland subsequently hired welders and boilermakers for the St. Francisville project.

In April 1988, the union struck the St. Francisville jobsite. After the strike commenced, a paid organizer telephoned Sunland for work. Although Sunland initially said that it desperately needed welders, it announced that none was needed after learning of the organizer's union affiliation. Sunland later hired eight welders on the project.

In determining that the two organizers who submitted applications were employees entitled to the Act's protection, the Board relied on the broad definition of "employee" in Section 2(3) of the Act, and that section's narrow category of enumerated exclusions. The Board also relied on the legislative history of Section 2(3)—which reflected Congress' intent to expansively interpret "employee," Supreme Court decisions broadly interpreting Section 2(3), and the Board's own precedent holding that paid organizers are "employees."

The Board further found that protecting paid union organizers as "employees" furthered organizational rights which were fundamental

[9] 309 NLRB 1224 (Chairman Stephens and Member Devaney; Members Oviatt and Raudabaugh concurring).

to the purposes of the Act. The Board rejected generalized arguments that, if hired, paid organizers would not effectively work, or would engage in conduct inimical to legitimate employer interests. Instead, the Board found that the Act was "founded on the belief that an employee may legitimately give allegiance to both a union and an employer."

The Board was careful to note that "employee" status did not give paid organizers carte blanche in the workplace. Like any employees, the Board found that organizers were responsible for performing assigned work, and that their organizing activities could be restricted by lawful no-solicitation rules.

Although the Board concluded that paid union organizers were "employees," it further determined, on policy grounds, that an employer does not violate the Act by refusing to hire paid organizers of a union striking it. "[G]iven the conflict between an employer's interest . . . in operating during a strike and a striking union's evident interest in persuading employees *not* to help it operate," an employer has a "'substantial and legitimate' business justification for declining to hire a paid agent of the Union."

Member Oviatt concurred in the Board's opinion, noting that he had reconsidered, and reversed, his earlier position that paid organizers are not "employees." Member Raudabaugh separately concurred, noting that the Board's decision did not "foreclose an employer from protecting itself against the union stratagem" by enforcing nondiscriminatory policies such as barring moonlighting, or refusing to hire simultaneously employed individuals, or those employed "by companies or other institutions which are adversaries of the employer."

In *Town & Country Electric*,[10] which the Board considered together with *Sunland Construction*, supra, following oral argument, the Board similarly held that full-time, paid union organizers are "employees" entitled to the Act's protections. Thus, the Board adopted the judge's findings that Town & Country Electric violated Section 8(a)(3) and (1) of the Act by refusing to consider for employment 10 applicants, including 2 full-time, paid organizers, of their union affiliation and by subsequently discharging an employee because of his organizing efforts.

Town & Country Electric is the largest nonunion electrical contractor in the State of Wisconsin. In early September 1989, Boise Cascade awarded Town & Country a contract to perform electrical renovation work at Boise's facility in International Falls, Minnesota. Because Town & Country did not have a single electrician licensed in Minnesota at the time Boise Cascade awarded it the contract, Town & Country retained a temporary employment agency to recruit electricians licensed in Minnesota. Town & Country, which retained exclusive discretion regarding interviewing and hiring the electricians,

[10] 309 NLRB 1250 (Chairman Stephens and Member Devaney; Members Oviatt and Raudabaugh concurring).

made it clear to the temporary agency that the job applicants had to be "able to work a merit [nonunion] shop."

After the temporary agency ran an advertisement for "licensed journeymen electricians" in a major Minneapolis newspaper, about a dozen unemployed members of the union, including two full-time, paid organizers, reported for interviews that Town & Country was conducting. Town & Country interviewed two applicants, including one person who was nonunion, but did not hire either of them. On learning that the rest of the applicants were probably union members, Town & Country attempted to cancel the rest of the interviews. One union member, unlike the others, had scheduled an interview in advance and insisted that Town & Country fulfill this commitment. Town & Country then interviewed that person, hired him to work on the Boise Cascade job, and discharged him 2 days after he began work for attempting to organize the nonunion employees working there. Town & Country refused to interview the other applicants.

Applying the same rationale used in *Sunland Construction*, supra, the Board concluded that both the applicants whom Town & Country discriminatorily refused to consider for hire, as well as the employee whom it later discharged for union activity, were employees within the statutory definition of that term in Section 2(3) of the Act. Members Oviatt and Raudabaugh concurred for the reasons stated in their separate concurring opinions in *Sunland Construction.*

In *TNS, Inc.*,[11] the Board addressed one of the most seldom discussed sections of the Act, i.e., Section 502 which states in pertinent part: "Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent . . . nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act." Applying this statutory provision in this case, the Board found by a 3–1 vote that conditions at the respondent's plant were not abnormally dangerous within the meaning of Section 502 when employees engaged in a work stoppage on May 1, 1981, and, accordingly, the respondent did not violate Section 8(a)(3) and (1) by permanently replacing the employees.

The respondent is engaged in the manufacture of radioactive depleted uranium metal products under the jurisdiction of the Nuclear Regulatory Commission (NRC). The NRC entered into agreement with the State of Tennessee for the latter to exercise primary regulatory responsibility over facilities within that State, including the respondent, in a manner consistent with the Atomic Energy Act. The Tennessee Division of Radiological Health (TDRH) was the state agency "commissioned" by the NRC to ensure the protection of Tennessee employees from hazards caused by radioactive materials.

The depleted uranium (DU) used in the respondent's manufacturing process posed a risk of cancer, as well as a toxic threat to the kid-

[11] 309 NLRB 1348 (Chairman Stephens and Member Oviatt; Member Raudabaugh concurring, Member Devaney dissenting).

neys. To keep contaminated DU dust levels as low as possible, the respondent utilized a physical engineering airborne contaminant control system using equipment shields, barrier seals, and ventilation. In the event that engineering controls became impracticable in keeping dust levels low, TDRH authorized the use of respirators and 3 months before the walkout employees were required to start wearing them.

To monitor radioactive exposure to employees, employees were required to wear thermoluminescent dosimeters (TLD badges) and to submit to bimonthly urine samples. The Respondent also monitored air quality using various types of air samples throughout the plant.

Six weeks prior to the walkout, the parties commenced negotiations for a new contract to succeed the one that was due to expire on April 30, 1981. The parties held eight negotiation sessions before the April 30 contract expiration. At the last session held on April 29, the respondent submitted a final offer. The union negotiator responded that the wage offer made by the respondent was "still $2.00 low" and added that "[o]ur biggest problem is health and safety. You have over-exposed everyone at this table . . . and we are going to have a strike tomorrow night." On April 30, virtually the entire work force of 100 men and women engaged in a work stoppage that the General Counsel alleged was undertaken because of abnormally dangerous working conditions as contemplated by Section 502—specifically, dangerously high levels of radioactive DU dust. The complaint alleged that by hiring permanent replacements and refusing to reinstate the employees when they made an unconditional offer to return to work 10 months after the walkout, the respondent violated Section 8(a)(3) and (1).

Chairman Stephens and Member Oviatt found that the "protective intent" of Section 502 applies to the "intangible threat of occupational exposure to carcinogens and chemical toxins" posed by the manufacture of radioactive DU metal products at the respondent's facility. However, they found that the General Counsel failed to prove that the employees "reasonably believed, on the basis of objective evidence, *either* (1) that inherently dangerous conditions in the subject workplace had changed significantly for the worse, so as to impose a substantial threat of imminent danger if exposure were continued at the time the employees began to withhold their services, *or* (2) that the cumulative effects of exposure to those substances had reached the point at which any further exposure would pose an unacceptable risk of future injury to employees."

In reaching their decision, Chairman Stephens and Member Oviatt gave "substantial weight" to the fact that the respondent's operations were "highly regulated" by state and Federal agencies, and that these agencies had taken no action to shut down the facility. Further, they observed, there was "undisputed evidence" that the union "stated an intention to strike over safety issues as early as March 10, but evidently perceived no need at that time either to walk out immediately or to seek answers concerning its complaints" from TDRH which had the power to make unannounced inspections and to require the employer to submit safety data. They concluded, "[w]e see nothing oc-

curring or made known to the Union and the employees between March 10 and May 1 that provided a reasonable basis for converting a belief that conditions were not abnormally dangerous (i.e., so dangerous as to call for immediate departure from the workplace) into a belief that they were." Having found that conditions were not "abnormally dangerous" under Section 502 at the time of the walkout, Chairman Stephens and Member Oviatt found that the respondent did not violate Section 8(a)(3) and (1) by refusing to reinstate the employees on their unconditional offer to return to work.

Member Raudabaugh concurred in the decision to dismiss the 8(a)(3) and (1) complaint allegations but wrote separately to discuss his "discomfort" with the approach taken by the plurality. In his view, it was not necessary to resolve the "difficult issue" of whether the employees here had a reasonable belief, based on objective evidence, that the working conditions were abnormally dangerous at the time of the work stoppage because, in his view, there was no causal connection between the purported abnormally dangerous working conditions and the employees' work stoppage. He concluded that abnormally dangerous working conditions must be "the sole cause" of the work stoppage to come within the ambit of Section 502, and found that here the work stoppage "was caused, at least in part, by a desire to achieve a satisfactory collective-bargaining agreement, rather than solely by a reaction to abnormally dangerous conditions in the plant."

Member Devaney dissented, arguing that both the plurality and the concurring opinion "impose arbitrary and unreasonable standards which deny . . . the protection of the statute" to employees facing dangers from slow-acting toxins or radioactive substances. Noting that he would reach a different result in both law and policy, Member Devaney said he would adopt the judge's finding that the employer violated Section 8(a)(3) and (1) by refusing to reinstate the employees who walked out of the plant.

Calling for an "industrywide hazard comparison," Member Devaney said he would "take conditions prevailing in the nuclear industry as a whole as indicating 'normally dangerous conditions' in an inherently dangerous industry, and, noting how far below standard the conditions at TNS had fallen, I would find this gap a significant factor, among others, in assessing whether employees had an objective basis for a belief that conditions were abnormally dangerous." Member Devaney said his inquiry would not stop there, however, because the "reasonable belief" standard "requires an examination of the facts as the employees knew them, the characteristics of day-to-day operations in the TNS plant are of central importance." In agreement with the judge, Member Devaney concluded "that conditions at TNS were so far below those prevailing in the industry and evidence of excessive exposure to toxins with no indication of a management commitment to improving safety conditions was so abundant, that the TNS employees were justified in viewing conditions as abnormally dangerous and in walking off the job when other efforts to correct the problems failed."

D. Employer Bargaining Obligation

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

1. Mandatory Subject of Bargaining

In *Antelope Valley Press*,[12] the Board held that when the bargaining unit description is couched in terms of work performed, the employer, after reaching impasse, may insist on transferring work of a type covered by the description to employees other than those currently performing it.

The employer may not either change the unit description itself or insist that nonunion employees to whom the work is transferred will remain outside the unit. Whether such employees fall within the unit may then be determined by the Board either in an unfair labor practice proceeding or in a unit clarification.

Previously, the Board attempted to resolve the issue by determining whether the contract proposal was a unit description or a work assignment provision. In this case, however, the Board stated that "[b]ecause such proposals, including the one at issue in this case, have aspects of both kinds of provisions, we have decided to abandon the 'either/or' semantic debate in favor of an approach that will better enable us to resolve these matters while recognizing and accommodating the legitimate concerns of the parties." It added, "We anticipate that the approach we adopt today will satisfy the needs of both unions and employers" and "focus on the crux of the problem, namely, the unit placement of the employees to whom unit work is to be assigned." This new test allows the employer to act to take advantage of new technology, without unilaterally deciding questions regarding scope of the unit.

Applying the new approach to the instant case, the Board found that because the employer did not insist on changing the unit description, and because its proposal did not attempt to deny the union the right to assert that any individuals to whom unit work might be assigned were unit members, the employer's proposed contract term allowing it to assign certain specified kinds of work to persons outside the bargaining unit was a mandatory subject of bargaining and, thus, the employer did not violate Section 8(a)(5) and (1) of the Act by bargaining to impasse over, and then unilaterally implementing, the proposal.

In *Bremerton Sun Publishing Co.*,[13] the Board applied its newly articulated test for determining under what circumstances, if at all, a

[12] 311 NLRB 459 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).
[13] 311 NLRB 467 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

party may lawfully insist to impasse on changes in work assignments when the previously agreed-upon bargaining unit description is based on descriptions of work performed. Under the principles set forth in the companion case of *Antelope Valley Press*, supra, the Board found that the respondent's insistence to impasse on a proposal to delete a section of the recognition and jurisdiction article that had been contained in the parties' previous contracts amounted to an insistence on altering the scope of the bargaining unit and thereby violated Section 8(a)(5) of the Act.

The parties' contractual recognition and jurisdiction article provided that the jurisdiction of the union "begins with the markup of copy and continues until the material is ready for the printing press . . . and the appropriate collective-bargaining unit consists of all employees performing any such work." The union's unit description and its work jurisdiction were thus interconnected, and the type of work performed defined who is in the bargaining unit.

In 1990, the parties reached impasse in an attempt to negotiate a new agreement. The respondent's final offer sought to delete the language in the recognition and jurisdiction article providing that "the appropriate collective-bargaining unit consists of all employees performing any such work." The respondent's final offer reserved to it the "right to assign work within the jurisdiction of the Union to any individual including non-employees."

The Board found that the parties' description of the bargaining unit was that contained in the recognition and jurisdiction article, as modified by the parties' 1978 supplemental agreement. The supplemental agreement permitted the respondent to utilize, in certain specified circumstances, employees outside the bargaining unit to perform by electronic technology work which had theretofore been performed exclusively by the bargaining unit employees pursuant to the recognition and jurisdiction article.

The Board held that the respondent ran afoul of the rule in *Antelope Valley* by insisting to impasse on changing the unit description set forth in the recognition and jurisdiction article, as modified by the 1978 supplemental agreement. The Board further held that the respondent was, by insisting to impasse on the deletion of the contractual language that "the appropriate collective-bargaining unit consists of all employees performing any such work," insisting on having no meaningful unit definition at all in the collective-bargaining agreement. The Board held that this constituted a violation of Section 8(a)(5) of the Act because a collective-bargaining representative is "entitled to have . . . the unit it represent[s] incorporated in any contract reached by the parties."

2. Continuing Bargaining Obligation

In *Rock Bottom Stores*,[14] the Board found that the respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the union and repudiating their collective-bargaining agreement following

[14] 312 NLRB 400 (Chairman Stephens and Members Devaney and Raudabaugh).

the closure of its discount variety store and relocation to a new facility one-fourth mile away.

The Board's decision reaffirmed the rule set forth in *Harte & Co.*[15] and *Westwood Import Co.*,[16] that if the operations of a new facility are substantially the same as the old facility, and 40 percent or more of the employees at the new facility are transferees from the old facility, an employer must continue to recognize the union and apply an existing contract at the new facility.

Applying this rule, the Board found that the first prong of this test was met as evidenced by the parties' stipulation that the operations at the new facility were substantially the same as at the old facility. The Board found that the second prong of the test was also met, noting that 56 percent of the work force at the new facility were transferees from the old facility. In calculating this figure, the Board affirmed *Arrow Co.*[17] and counted as transferees all the trainees who worked at the old facility during the few weeks preceding the relocation. In this regard, the Board relied on the fact that (1) the trainees were hired on a permanent basis at the old facility, (2) their seniority date commenced on their first day of training at the old facility, (3) they received the benefits of the existing contract while in training at the old facility, and (4) the trainees were indistinguishable from replacements hired for workers at the old facility who declined to transfer to the new facility.

Although 56 percent of the employees at the new facility in *Rock Bottom* were transferees from the old facility and thus, arguably, would have supported the finding of an 8(a)(5) violation even under the majority test recently articulated in *Gitano Distribution Center*,[18] the Board specifically held that that case was inapplicable here because the relocation in *Gitano* involved a partial relocation rather than, as here, a total relocation and because there was no contract in existence at the time of the relocation in *Gitano*.

3. Duty to Furnish Information

In *Coca-Cola Bottling Co.*,[19] the Board held that the union was not entitled to requested information concerning the cost to the employer of providing certain benefits, because the union's information request indicated that the information was sought by the respondent's competitors pursuant to a most-favored-nation clause in their agreements with the union.

In 1989, the respondent withdrew from participation in a multiemployer pension fund and executed separate collective-bargaining agreements with the union. A month later, two of the respondent's competitors, who continued to participate in the multiemployer funds, invoked the most-favored-nation clause in their collective-bargaining agreements with the union and demanded that it provide them with

[15] 278 NLRB 947 (1986).
[16] 251 NLRB 1213 (1980).
[17] 147 NLRB 829 (1964).
[18] 308 NLRB 1172 (1992).
[19] 311 NLRB 424 (Chairman Stephens; Member Oviatt concurring; Member Devaney dissenting).

information concerning the respondent's costs of providing retirement benefits under its new, separate collective-bargaining agreement. The union eventually responded by submitting a written request to the respondent for the information, including copies of the competitors' letters demanding the information, and requesting the respondent to direct any questions concerning the request to the competitors or to the union as intermediary. The respondent refused. The union subsequently repeated its request, asserting that the information sought was relevant and necessary for contract administration and offering to negotiate appropriate provisions to protect its confidentiality. The respondent again refused, after which the union ultimately filed an unfair labor practice charge.

The majority of Chairman Stephens and Member Oviatt found that the union forfeited any right it may have had to the information when it indicated that the purpose of the request was to satisfy an information request submitted to the union by the respondent's competitors. Even assuming that the retirement benefit cost data was presumptively relevant to the union's bargaining responsibilities, the majority concluded that the respondent had rebutted the presumption by pointing to the evidence that the union sought the information for disclosure to the respondent's competitors because the Act does not require an employer to disclose information sought by a union for this purpose.

Member Oviatt concurred in the majority decision, but stated that even if a duty to provide the requested information had been established, he would have required, at least initially, only that the respondent bargain over the scope and terms of disclosure.

Member Devaney, dissenting, would have found that the requested information was presumptively relevant, and that that presumption was not rebutted by the union's disclosure that the information would also be provided to the other employers. In this regard, the dissent noted that the Board has previously found that the presumption of relevance is not rebutted by a showing that the union also seeks information for a purpose unrelated to its representative function.[20] Moreover, the dissent noted that the possibility of such disclosure is inherent whenever a union is party to a contract with another employer with a most-favored-nation clause, and a union's right to information under those circumstances was implicitly recognized in the Board's recent decision in *Chicago Typographical Union 16 (Chicago Sun-Times)*.[21] The dissent further stated that, by refusing to order disclosure under the circumstances of this case, the Board would seriously undermine the utility of most-favored-nation clauses in stabilizing collective-bargaining relationships.

[20] See, e.g., *E. I. du Pont & Co.*, 264 NLRB 48, 51 (1982), enfd. 744 F.2d 537 (6th Cir. 1984).
[21] 296 NLRB 180, 181 fn. 7 (1989).

E. Union Interference with Employee Rights

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

The Board faces a continuing problem of reconciling the prohibitions of Section 8(b)(1)(A) with the proviso to that section. It is well settled that a union may enforce a properly adopted rule reflecting a legitimate interest if it does not impair any congressional policy imbedded in the labor laws. However, a union may not, through fine or expulsion, enforce a rule that "invades or frustrates an overriding policy of the labor law."[22] During the fiscal year, the Board had occasion to consider the applicability of Section 8(b)(1)(A) as a limitation on union action and the types of those actions protected by the proviso to that section.

1. Duty of Fair Representation

In *Electrical Workers IUE Local 444 (Paramax Systems)*,[23] a majority of the Board reversed the administrative law judge and found that the union breached its duty of fair representation under Section 8(b)(1)(A) by maintaining a union-security clause requiring, as a condition of employment, that unit employees become and remain "members of the Union in good standing," without additionally informing them that their sole obligation under *NLRB v. General Motors*[24] is to pay dues and fees. Because the majority found that the union-security clause was "ambiguous" and not facially unlawful, it dismissed allegations that maintenance of the clause additionally violated Section 8(b)(2).

In evaluating whether maintenance of the challenged union-security clause violated the Act, the Board initially found that Section 8(a)(3) of the Act provides that employees may be required, as a condition of employment, to be "members" of the union which exclusively represents them. The Board further found that the legislative history of Section 8(a)(3), and case law interpreting it, make clear that this statutory "membership" requirement is quite limited; employees lawfully cannot be discharged because of nonconpliance with union-security provisions if unions exclude them from membership or for reasons other than their nonpayment of periodic dues and initiation fees. Despite these well-settled limitations on lawful union-security obliga-

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

[23] 311 NLRB 1031 (Chairman Stephens and Members Oviatt and Raudabaugh; Member Devaney dissenting in part).

[24] 373 U.S. 734 (1963).

tions—limitations which the Supreme Court further restricted in *Communications Workers v. Beck*,[25] the Board determined that neither it nor the courts had clarified any "statutory imprecision or apprise[d] employees of their actual obligations." The Board similarly found that unions and employers frequently did not apprise employees of their actual union-security obligations. As a result, the Board concluded that the average employee, "unversed in the torturous complexities of statutory interpretation," likely would construe "membership in good standing" as mandating full union membership.

Having concluded that the requirement of "membership in good standing" was ambiguous, and that it directly implicated employees' fundamental statutory rights, the Board next evaluated whether unions, as exclusive bargaining representatives, were required inform employees of their actual union-security obligations. In finding that unions were so obligated, the Board noted that under the judicially created doctrine of the duty of representation, unions are obligated to notify employees they represent of matters directly affecting their employment. Further, reasoned the Board, because unions are "the direct beneficiaries of the dues and fees exacted under this provision, they logically and fairly bear the burden of informing employees of their [union-security] obligations." Because the union here failed to clarify the lawful limits of "members of the Union in good standing," the Board ordered it to "notify each Paramax unit employee in writing that the only required condition of employment under the union-security clause is the tendering of uniform initiation fees (if any) and dues." The Board further stated that its decision would be retroactively applied to pending cases.

In his dissent, Member Devaney said that he would adopt the judge's recommendation and dismiss the complaint. Member Devaney argued that the disputed union-security clause was lawful, and accused the majority of a "heavy-handed effort to impose a partisan notion of what labor laws *ought* to require from unions rather than a careful application of what the law *does* require."

2. Resignation of Union Membership

In *Pattern Makers (Michigan Model Mfrs.)*,[26] the Board formulated a new standard for determining when a union member's mailed resignation is effective for the purposes of immunity from union discipline. The Board held that a mailed resignation takes effect at 12:01 a.m. local time on the day following deposit in the mail, as determined by the postmark. In adopting this new rule, the Board set aside its old standard, which presumed a resignation was effective the day after it was mailed unless the actual time of receipt was known, in which case the time of receipt controlled. The problem with that rule was that it did not enable employees or unions accurately to determine their legal rights. The Board stated that the uncertainty concerning whether the member was still lawfully subject to the union's

[25] 487 U.S. 735 (1988).

[26] 310 NLRB 929 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

power to discipline, "represents a serious flaw in the set of principles that the Board has heretofore applied in this area."

The case arose after the Pattern Makers League fined an employee for crossing a picket line to return to work during a strike. The employee had mailed his resignation by certified mail on Thursday and crossed the picket line the following Monday at 7 a.m. The union, however, did not actually receive his resignation until after 9:30 a.m. that morning, when the mail was delivered. The union fined the employee nearly $5000. The administrative law judge found that the union did not violate Section 8(b)(1)(A) of the Act by fining him, because his resignation was not effective as of the time he crossed the picket line, under existing Board law.

The Board reversed the judge, and found under its new rules that the union had violated Section 8(b)(1)(A) by fining the employee. The Board stated, "we should attempt to construct standards that maximize the ability of parties involved in conduct affected by the standards to determine their legal rights." It also noted that where the rules touch on membership in a union, they should "reflect the congressional policy of voluntary unionism." The Board decided that retroactive application of the rule would be appropriate in order to further both the statutory policies of voluntary unionism and protection of employees from union coercion directed at their exercise of Section 7 rights.

Under the new rule, the Board believes that an employee seeking to resign union membership will have no difficulty knowing when his mailed resignation is effective. The employee need only deposit the resignation in the mail and wait until 1 minute past midnight to be able to cross the line without coming under the threat of union fines or other discipline. The union seeking to discipline members for crossing a picket line does not necessarily need to know the exact date of resignation at the moment an employee crosses. It does need to have this information, however, when the time comes to investigate the possible violation of its rules. The Board stated that, "[b]y the time a union is ready to [start up its fine-imposing machinery] with respect to an employee who resigned by mail, it is likely that it will have received the mailed resignation. A rule that allows the union to determine the effective date of a resignation by simply checking the postmark of what it received should satisfy the union's need for a reasonable degree of certainty about the lawfulness of proceeding to discipline an employee for crossing the picket line."

The Board also held that a labor organization may require that a member provide written notification of the member's intention to resign. When the member personally serves an agent of the labor organization, including the business agent at the member's work place, as well as at the union hall, the resignation shall be effective on receipt.

In *Steelworkers (Asarco, Inc.)*,[27] the Board held that an employee may, in certain circumstances, escape his financial obligations to a union arising from a maintenance-of-membership contract clause even

[27] 309 NLRB 964 (Chairman Stephens and Members Devaney, Oviatt, and Raudabaugh).

where the successor contract contains the same maintenance-of-membership provision and there is no hiatus between contracts. The Board ruled that "at least absent clear and unmistakable language in the initial contract informing employees of the possibility that, in the absence of a contract hiatus, they will have a continuing union financial obligation, an employee who resigns his union membership during the term of the initial contract has no financial obligations to the union under a successor contract regardless of any maintenance-of-membership clause in the successor agreement."

The Board overruled *Machinists Lodge 1129 (Sunbeam Appliance)*,[28] in which the Board held "that maintenance-of-membership contracts may lawfully require employees to remain financial core members where there is no escape period within any one contract and contracts follow one another without hiatus." The Board, considerd "the congressional policy of voluntary unionism" discussed in *Pattern Makers League v. NLRB*,[29] as already applied by the Board in *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,[30] to allow a former union member to cancel his dues checkoff during a contract term despite the checkoff authorization form's provision that the checkoff would be "irrevocable" during the term of the contract. The Board in *Lockheed*, supra, relied on the *Metropolitan Edison*[31] test to require clear and unmistakable notice for waivers of statutory rights.

In this case, employee/member Timothy R. Emineth resigned his union membership during the term of a contract with a maintenance-of-membership provision. The union continued to demand dues from Emineth during the term of a successor contract which followed the preceding contract without hiatus and contained the same maintenance-of-membership provision. Following the new rule, the Board finds that Emineth's resignation became effective before the successor contract began and the union violated Section 8(b)(1)(A) of the Act by continuing to demand dues from him.

3. Imposition of Union Discipline

In *Boilermakers (Kaiser Cement)*,[32] a Board panel affirmed an administrative law judge's dismissal of allegations that the respondent union violated Section 8(b)(1)(A) of the Act by threatening four dissident employee-members with enforcement of the union-security clause if the employees discontinued paying membership dues after the respondent imposed discipline that substantially impaired their membership rights.

The four dissident employees were unit employees and union officials who attempted to convert either some or all of the unit jobs into salaried, supervisory positions. This action, if successful, would have

[28] 219 NLRB 1019 (1975), petition for review denied sub nom. *Horwath v. NLRB*, 539 F.2d 1093 (7th Cir. 1976).

[29] 473 U.S. 95, 114 (1985).

[30] 302 NLRB 322 (1991).

[31] *Metropolitan Edison v. NLRB*, 460 U S. 693, 708 (1983).

[32] 312 NLRB 218 (Chairman Stephens and Members Devaney and Raudabaugh).

eliminated a portion of the larger bargaining unit that the respondent represented. After another unit employee filed internal union charges against the four employees, the respondent found them guilty of all charges and imposed discipline substantially impairing their membership rights. Thereafter, the four employees jointly sent the respondent a letter inquiring about the penalties the respondent would impose on them if they ceased paying dues. The respondent informed the employees that "you would no longer be allowed to work at the plant" if they ceased paying union dues.

In finding no violation, the Board stressed that the four employees chose not to exercise their right to resign from membership and that, therefore, they all remained members of the respondent at the time they engaged in the conduct deemed offensive to the respondent. The Board stated that, because the members' conduct was designed to oust or undermine the respondent in its role as the representative of the employees, the respondent was free to impose discipline on them. The Board held that the respondent's decision to discipline them by impairing their membership, rather than by expelling or fining them, did not transform lawful discipline into unlawful discipline. Because the respondent's discipline of these members did not violate the Act, the Board further concluded that they continued, as unit employees, to be required under the union-security agreement to satisfy the sole obligation a union may enforce under a union-security provision: "the tendering of uniform initiation fees (if any) and dues."

F. Illegal Secondary Conduct

In *Carpenters District Council of Northeast Ohio (Alessio Construction)*,[33] the Board found that an anti-dual-shop clause was unlawful under Section 8(e) of the Act. A majority of Chairman Stephens and Members Oviatt and Raudabaugh also found that the clause was not protected by the construction industry proviso to Section 8(e) and, accordingly, found that the union violated Section 8(b)(3) by insisting to impasse that the clause be included in any agreement with the employer.

Section 8(e) generally prohibits agreements between employers and unions in which the employer promises to cease doing business with any other person. As interpreted by the Supreme Court, Section 8(e) bans such agreements only if they have secondary, as opposed to primary objectives—such as work preservation.[34] The Board found that the clause at issue in *Alessio* fell within this prohibition because it would have prohibited the employer from maintaining any ownership or control of a nonunion contractor performing the same type of work

[33] 310 NLRB 1023 (Chairman Stephens and Members Oviatt and Raudabaugh, Member Devaney concurring in part and dissenting in part).

[34] *National Woodwork Mfrs. Assn. v. NLRB*, 386 U.S. 612 (1967).

in the same geographic area.[35] The Board also found that the agreement on its face did not have primary objectives. In this regard, the clause would not have preserved unit work for unit employees, would have applied to work which the signatory employer did not have the right to assign, and would have required not only the observance of union standards by the double breast but that it sign an agreement with the union as well. For these reasons, the Board concluded that the clause had the secondary objective of affecting any nonunion breast's labor relations.

Although the construction industry proviso to Section 8(e) authorizes certain types of secondary agreements in the construction industry, the majority found the proviso inapplicable on the facts of the case. The proviso protects agreements between unions and construction industry employers "relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work." However, the majority found that the proviso only protects agreements which relate to the signatory employer's contracting or subcontracting practices, and thus was inapplicable to agreements such as the proposed anti-dual-shop clause, which regulate the contracting arrangements of the signatory employer's double breast. In this regard, the majority stated that it was "strictly construe[ing]" the proviso to protect only those types of contract clauses which were in existence in 1959, when Section 8(e) was enacted.

Member Devaney dissented from the finding that the *Alessio* clause was not protected by the construction industry proviso. He noted that the clause falls within the literal terms of the proviso, as it relates to the contracting and subcontracting practices of the nonunion breast by requiring that the work be performed under the terms and conditions of employment specified in the agreement. The dissent further noted that the Board has previously found that the proviso applies to agreements regarding the contracting or subcontracting practices of general employers at sites at which the signatory employer is a subcontractor,[36] and also protects clauses allowing employees to cease working on projects declared "unfair,"[37] and that the legislative history indicates that the proviso is applicable both to "promises not to subcontract work to a nonunion contractor" and to "all other agreements involving understandings not to do work on a construction project site with other contractors and subcontractors regardless of the precise relationship between them."

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[35] The clause stated:

In the event that the partners, stock holders or beneficial owners of the company form or participate in the formation of another company which engages or will engage in the same or simular type of business enterprise in the jurisdiction of this Union and employs or will employ the same or similar classifications of employees covered by this Collective Bargaining Agreement, then that business enterprise shall be manned in accordance with the referral provisions herein and covered by all the terms of this contract.

[36] *Plumbers Local 217 (Carvel Co.)*, 152 NLRB 1672 (1965), enfd. in pertinent part 361 F.2d 160 (1st Cir. 1966).

[37] *Hod Carriers District Council of Southern California (Swimming Pool Gunite)*, 158 NLRB 303, 307 fn. 14 (1966). See also *Operating Engineers Local 12 (Griffith Co.)*, 243 NLRB 1121, 1124 (1979).

G. Remedial Order Provisions

1. Nationwide Remedy

In *Beverly Enterprises*,[38] a panel majority of the Board considered a significant remedial issue in determining the scope of the injunctive relief to be granted in consolidated cases in which unfair labor practices were found to have been committed at 32 different nursing home and extended care facilities owned and operated by the respondent employer. The majority, affirming the administrative law judge, held that a corporatewide remedy, with posting of notices at all of the respondent's approximately 1000 facilities was appropriate.

The majority relied on evidence of centralized control over labor relations policies—control which was reflected, for example, in the respondent's practice of dispatching human resources representatives from its divisional offices to serve as campaign managers whenever a facility faced an organizing campaign by a union. The majority also noted the large number and different types of violations committed in opposition to organizing campaigns and the respondent's unlawful refusal to bargain in good faith at the facilities where the union was the certified bargaining representative. The majority viewed the broad remedy not as punitive but rather as a appropriate means of addressing "what this and earlier litigation reveal to be the Respondent's pattern of thwarting union organizing campaigns and otherwise disregarding the fundamental statutory rights of its employees."

Member Oviatt, in dissent, would limit the remedy to the respondent's Eastern Division, where most of the violations were committed, and the individual facilities outside that division where violations also occurred. In addition, he would run the order against one particular manager, regardless of the division in which he currently worked, because that manager was personally involved in a number of the violations. In declining to join the broader remedy approved by his colleagues, Member Oviatt stressed that the 32 facilities in which unfair labor practices were found represented only a small percentage of the nearly 1000 nursing home and extended care facilities that the respondent operated nationwide.

2. Joint Employer Liability

In *Capitol EMI Music*,[39] the Board considered the circumstances under which it might be proper to impose in one employer in a joint employer relationship liability for a discriminatorily motivated action taken by the other joint employer in violation of Section 8(a)(3) of the Act. The Board majority held that, at least under the circumstances of this case, in which one joint employer (Graham) was a supplier of temporary employees and the other (Capitol EMI) was one of its customers, there was no basis for vicariously imputing to Graham liability for Capitol EMI's unlawfully motivated termination

[38] 310 NLRB 222 (Members Devaney and Raudabaugh; Member Oviatt dissenting in part).

[39] 311 NLRB 997 (Chairman Stephens and Members Devaney and Oviatt; Member Raudabaugh dissenting).

of a Graham-supplied employee. This was so because the record did not show that Graham knew or reasonably could have known that antiunion considerations motivated Capitol EMI's decision to terminate the employee from his temporary job and send him back to Graham.

The Board majority formulated the applicable liability rule as follows:

> [I]n joint employer relationships in which one employer supplies employees to the other, we will find both joint employers liable for an unlawful employee termination (or other discriminatory discipline short of termination) only when the record permits an inference (1) that the nonacting joint employer knew or should have known that the other employer acted against the employee for unlawful reasons and (2) that the former has acquiesced in the unlawful action by failing to protest it or to exercise any contractual right it might possess to resist it.

The majority then considered how to allocate burdens of proof under that rule between the General Counsel, as the proponent of a complaint allegation, and the respondent employer charged with liability for the action of its joint employer. Burdens of proof were allocated as follows:

> The General Counsel must first show (1) that two employers are joint employers of a group of employees and (2) that one of them has, with unlawful motivation, discharged or taken other discriminatory actions against an employee or employees in the jointly managed work force. The burden of proof then shifts to the employer who seeks to escape liability for this joint employer's unlawfully motivated action to show that neither knew, nor should have known, of the reason for the other employer's action or that, if it knew, it took all measures within its power to resist the unlawful action.

The Board majority emphasized that the rule, insofar as it provides a defense to one of the participants in a joint employer relationship, is limited to relationships between labor suppliers and their customers and to unfair labor practices dependent upon specific findings of unlawful motive.

Member Raudabaugh, dissenting, would have found both joint employers liable for the unfair labor practice at issue. He reasoned that Capitol and Graham had essentially been partners in the employment of the terminated employee, and would find Graham liable under general principles of Agency law imputing actions taken by one partner within the scope of the joint employment relationship to its copartner.

V

Supreme Court Litigation

During fiscal year 1993, the Board participated as amicus curiae in one case involving the doctrine of preemption under the NLRA.

In *Building Trades Council of Metropolitan District v. Associated Builders of Massachusetts/Rhode Island*,[1] the Supreme Court,[2] adopting the position advocated by the Board, held that the doctrine of preemption under the NLRA does not prohibit a state agency from implementing a project labor agreement respecting a state public works construction project. The relevant facts are as follows:

The Massachusetts Water Resources Authority (MWRA) was ordered by a Federal court to carry out the cleanup of Boston Harbor under a timetable imposed by the court. MWRA retained Kaiser Engineers, Inc. (Kaiser), a private construction contractor, as its project manager, and gave Kaiser responsibility for developing a labor-relations policy that would maintain peace and stability during the expected 10-year life of the project. Kaiser negotiated with the local building and construction unions, the Building & Construction Trades Council (council), a project agreement requiring all contractors performing work on the Boston Harbor project to recognize the council as the bargaining representative for all craft laborers performing work on the project, to hire workers through the hiring halls of the council's constituent unions, to require them to abide by the union-security provisions of the agreement, and to adhere to the wage and benefit provisions of the agreement. In return, the unions agreed not to engage in any strikes or work stoppages during the 10-year life of the project. MWRA approved the project labor agreement and incorporated it in the bid specifications for work on the project.

The Associated Builders & Contractors of Massachusetts/Rhode Island, Inc. (ABC), a group of nonunion contractors in the construction industry, brought suit to enjoin the bid specification requiring each successful bidder to agree to be bound by the terms of the project agreement on the ground that it impermissibly interfered with the system of free collective bargaining contemplated by the NLRA. The First Circuit, sitting en banc, agreed with ABC by a vote of three to two, and enjoined MWRA from giving effect to the bid specification.

The Supreme Court reversed. After reviewing its preemption precedents, the Court held that "[o]ur decisions in this area support the distinction between government as *regulator* and government as *pro-*

[1] 113 S.Ct. 1190, revg. 935 F.2d 345 (1st Cir. 1991).

[2] Justice Blackmun delivered the opinion for a unanimous Court.

prietor.'' 113 S.Ct. at 1196 (emphasis added). The Court explained that, ''[w]hen we say that the NLRA pre-empts state law, we mean that the NLRA prevents a State from regulating within a protected zone, whether it be a zone protected and reserved for market freedom'' (citing *Machinists v. Wisconsin Employment Relations Commission*)[3] ''or for NLRB jurisdiction'' (citing *San Diego Building Trades Council v. Garmon*).[4] 113 S.Ct. at 1196. However, ''[w]hen a State owns and manages property . . . it must interact with private participants in the marketplace. In so doing, the State is not subject to pre-emption by the NLRA, because pre-emption doctrines apply only to state *regulation.*'' Ibid.

The Court added that, ''[p]ermitting the States to participate freely in the marketplace is not only consistent with NLRA pre-emption principles generally but also, in this case, promotes the legislative goals that animated the passage of the 8(e) and 8(f) exceptions for the construction industry.'' 113 S.Ct. at 1197. Thus, the Court noted that it was undisputed that the project labor agreement between Kaiser and the council was a lawful construction industry ''pre-hire'' agreement under Section 8(e) and (f) of the NLRA, 29 U.S.C. §158(e) and (f). Although those provisions are not made specifically applicable to the State because the State is excluded from the definition of ''employer'' (see 29 U.S.C. §152(2)), the Court found ''no reason to expect [the] defining features of the construction industry'' which prompted Congress to enact the provisions ''depend[ed] upon the public or private nature of the entity purchasing contracting services.'' Id. at 1198. Accordingly, the Court concluded, ''[t]o the extent that a private purchaser may choose a contractor based upon that contractor's willingness to enter into a prehire agreement, a public entity *as purchaser* should be permitted to do the same.'' Ibid. ''In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.'' Ibid.

The Court rejected ABC's reliance on *Wisconsin Department of Industry v. Gould*,[5] in which the Court held that the State of Wisconsin was preempted from enforcing a policy of refusing to do business with persons who had violated the NLRA three times within 5 years. The Court explained that, in *Gould*, Wisconsin ''simply [was] not functioning as a private purchaser of services'' because its policy was ''unrelated to the employer's performance of contractual obligations to the State'' and was merely intended ''to deter NLRA violations.'' Therefore, ''for all practical purposes, Wisconsin's debarment scheme [was] tantamount to regulation.'' 113 S.Ct at 1197. That is not the case where, as here, ''the State acts as a market participant with no interest in setting policy.'' Ibid.

[3] 427 U.S. 132 (1976).
[4] 359 U.S. 236 (1959).
[5] 475 U.S. 282 (1986).

VI

Enforcement Litigation

A. Preemption

In *Loehmann's Plaza*,[1] the Board held that once the General Counsel issues a complaint alleging that organizational activity on private property is protected by Section 7 of the Act, and that an employer's interference with that activity violates the Act, the Board's jurisdiction over that activity preempts state court jurisdiction. Accordingly, after complaint issues, an employer violates the Act by instituting a state court lawsuit to enjoin the organizational activity and, if it has already instituted such a lawsuit, it violates the Act unless it moves to stay the action in state court within 7 days. The Board also held that its decision would be applied retroactively.

During the year, two circuit courts considered the application of the Board's *Loehmann's Plaza* preemption doctrine with differing results. In *Oakwood Hospital*,[2] a case involving nonemployee union solicitation in a hospital cafeteria, the employer filed a state court trespass action. Three months later, the General Counsel issued a complaint against the employer based on its conduct in barring union organizers from the cafeteria. Less than 2 months after issuance of the complaint, the state court dismissed the suit without prejudice pending the outcome of the unfair labor practice proceeding. The Board found that the employer violated the Act by failing to stay the state court action after issuance of the complaint.

On appeal, the Sixth Circuit held that the employer's conduct in prohibiting the solicitation did not violate the Act and, on the facts of that case, refused to apply the Board's *Loehmann's Plaza* preemption doctrine retroactively.[3] The court relied on the fact that *Loehmann's Plaza* had not been decided at the time of the employer's actions and on its finding that "no one suffered any significant prejudice" as a result of the state court suit.[4] The court stated that "[p]reemption may have occurred upon the issuance of the unfair labor practice [complaint], but all that happened thereafter in the state court proceedings was a brief hearing in which the judge, having been told what had happened, decided to dismiss the case on preemp-

[1] 305 NLRB 663 (1991).
[2] 305 NLRB 680 (1991).
[3] *Oakwood Hospital v. NLRB*, 983 F.2d 698.
[4] Id. at 703.

tion grounds."[5] Accordingly, although the court refused to apply the preemption doctrine retroactively, it did not reject the doctrine itself.

In *Davis Supermarkets*,[6] the Board applied the *Loehmann's Plaza* preemption doctrine in a case where it found that the employer had violated the Act by banning union pickets and handbillers from its property while permitting other organizations access for other forms of solicitation. The employer had obtained a state court injunction 2 months before the General Counsel issued the complaint. In the months following issuance of the complaint, the employer continued to maintain the state court lawsuit. It also enforced the injunction with the assistance of the county sheriff and obtained a state court order requiring the union and four individual pickets to show cause why they should not be held in contempt of court for demonstrating on the sidewalk in front of its store. The Board found that the employer violated the Act by continuing to process the state court suit.

On appeal the District of Columbia Circuit upheld the Board's findings that the employer's action barring the union activity and its maintenance of the state court suit both violated the Act.[7] In approving the Board's preemption finding, the court noted that the Board had taken a conservative approach in finding that preemption does not occur until issuance of complaint. Accordingly, the court found that "federal preemption is triggered by the issuance of a complaint by the General Counsel, if not earlier."[8]

B. Definition of Employer

Under Section 2(2) of the Act, the definition of "employer" includes "any person acting as an agent of an employer, directly or indirectly . . . ." In *Blankenship & Associates*,[9] the Board applied the foregoing principle to find that a labor consulting firm acting on behalf of another employer violated Section 8(a)(1) of the Act. The case involved the Board's assertion of jurisdiction over a labor consulting firm and its principal for unfair labor practices committed on behalf of another employer. The client employer settled the case against it. On appeal, the consultant and his firm did not contest the unfair labor practice findings themselves, but only the Board's jurisdiction over them and the breadth of the Board's Order.

The Seventh Circuit enforced the Board's Order,[10] which included a broad cease-and-desist provision applying to the consulting firm "when acting as an agent for any employer subject to the jurisdiction of the Board . . . ."[11] The court noted that although the Board did not specify whether its action was premised on the satisfaction of its jurisdictional standards by the consulting firm or by the client employer, both were satisfied on the facts of this case. Nevertheless, the

[5] Ibid.
[6] 306 NLRB 426 (1992)
[7] *Davis Supermarkets v. NLRB*, 2 F.3d 1162.
[8] Id. at 1179–1180.
[9] 306 NLRB 994 (1992).
[10] 999 F.2d 248
[11] 306 NLRB at 1000.

court observed, both the statutory definition of "employer" and practical considerations point to the status of the client employer as determinative. Thus, as the court pointed out, most unfair labor practices are committed by individuals acting as agents of their employers, and "[t]o confine attention to the agent's direct involvement in interstate commerce could have the consequence of excluding most unfair labor practices from the Board's jurisdiction . . . ."[12] The court approved the Board's use of its nonretail jurisictional standard for evaluating the consulting firm, and its decision not to treat the consultant as a law firm, notwithstanding its employment of a lawyer.

The court also rejected the argument that the Board's taking account of prior decisions involving the consultant's and his firm's activities denied them due process. First, the court noted that the judge's resolution of credibility and other issues underlying the violations was based on the record in this case alone, and not on any prior decisions. Although the court deemed "questionable" the Board's use of prior decisions to determine the scope of the order, because the consultant and his firm had not been a party to any of the earlier cases, the court nevertheless enforced the Board's Order.[13] The court noted that they did not present any argument that the earlier decisions contained erroneous findings concerning their activities. The court also noted that because the client employer in this case had terminated its relationship with the consultant and his firm, a cease-and-desist order limited to their work for that client would serve no purpose. Finally, the court rejected their argument that the Board was barred from issuing a broad order because the Board had never before issued a broad order against a labor consultant who had not been found liable as a respondent in a previous case. The court noted that no prior decision of the Board had enunciated such a rule, nor had the Board created a reasonable expectation that a labor consultant would be given "one free bite at the apple."[14]

C. Subjects for Bargaining

In *Dubuque Packing Co.*,[15] the Board announced a new test for determining when a decision to relocate operations is a mandatory subject of bargaining: Initially, the General Counsel has the burden of establishing that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the employer's operations. The employer may rebut the General Counsel's prima facie case by showing that work previously done at the old plant is to be discontinued, rather than moved to the new location, or that the relocation involves a change in the scope and direction of the enterprise. Alternatively, the employer may prove, as an affirmative defense, that

[12] 999 F.2d at 250.
[13] Ibid.
[14] Id. at 252.
[15] 303 NLRB 386 (1991).

labor costs were not a factor in the decision to relocate or that labor cost concessions by the union could not have changed that decision.

On review[16] the District of Columbia Circuit upheld this test as a reasonable interpretation of the Act. The court noted that the Supreme Court, while holding in *First National Maintenance Corp. v. NLRB*[17] that an employer's decision to shut down part of a business was not a mandatory subject of bargaining, expressly declined to pass on other types of management decisions, including plant relocations, and did not purport to disturb its earlier holding in *Fibreboard Paper Products Corp. v. NLRB*[18] that a decision to subcontract maintenance work, based on a desire to reduce labor costs, was a mandatory subject of bargaining.

The court, observing that the validity of the Board's allocation of the burden of proof had not been challenged, viewed the Board's test as involving three distinct layers of analysis. First, where a decision lay at the core of entrepreneurial control because it involved a basic change in the nature of the employer's operation or the scope and direction of the enterprise; because the work performed at the old location was to be discontinued rather than moved; or because the work performed at the new location varied significantly from that performed at the old one, bargaining would not be required. Second, bargaining would be required where the relocation was motivated, directly or indirectly, by labor costs, but not where it was motivated by other factors. Finally, bargaining would not be required where it would be futile because the union either could not or would not agree to sufficient concessions to change the decision to relocate. Thus, the duty to bargain would be limited to "relocations that leave the firm occupying much the same entrepreneurial position as previously, that were taken because of the cost of labor, and that offer a realistic hope for a negotiated settlement."[19]

The court observed that any relocation satisfying the foregoing criteria would resemble the subcontracting in *Fibreboard* in that it would not alter the employer's basic operation, a desire to reduce labor costs would lie at the base of the decision, and there would be some prospect of resolving the relocation dispute within the collective-bargaining framework. Thus, the court held, the Board could reasonably conclude, as required by *First National Maintenance*, that the benefits of bargaining over such decisions outweighed the burdens placed on the conduct of the employer's business.

The court also held that the fact that relocations involve the expenditure of capital did not require a conclusion that relocations as a class are not a mandatory subject of bargaining because many terms and conditions of employment, which are plainly mandatory subjects of bargaining, such as installation of safety equipment, involve capital expenditure, and *First National Maintenance* did not indicate that all decisions involving such expenditure were to be excluded from the

[16] *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24.
[17] 452 U.S. 666 (1981).
[18] 379 U.S. 203 (1964).
[19] 1 F.3d at 31–32.

realm of mandatory bargaining. In addition, the Board's test did not deprive management of the degree of certainty to which *First National Maintenance* held it was entitled as to when it must bargain about decisions of this type. The court observed that *First National Maintenance* "does not require that the Board establish standards devoid of ambiguity at the margins,"[20] that the Board's test would make it clear in most cases whether bargaining over a relocation decision was required, and that future adjudications would further narrow the remaining areas of uncertainty.

The court also held that the Board properly applied its new standard to the case before it to find that the employer's relocation of its hog kill and cut operations was a mandatory subject of bargaining. The relocation did not result in a basic change in the nature of the employer's operation; the slaughtering and processing operations at the new plant were the same as those previously carried on at the old plant. In addition, it could not be assumed that bargaining would have been futile; on prior and subsequent occasions, the union had accepted concessions in a vain attempt to keep the plant open, and the decision to relocate was made in response, not to a categorical rejection of further concessions, but to a demand for disclosure of relevant financial information. Finally, the court held the Board was warranted in applying its new standard retroactively to this case. The Board's decision represented a clarification, rather than a reversal, of established doctrine; it closed a "gap in the law"[21] which *First National Maintenance* had opened, and in the years between the decision in *First National Maintenance* and the decision in this case, a majority of the Board never embraced any standard which would not have required bargaining in this case.

D. Health Care Unit Issues

The legislative history of the 1974 amendment to the Act, which extends coverage of the Act to nonprofit hospitals, manifests a concern that the Board prevent an undue proliferation of bargaining units at health care facilities. Relying on that legislative history, the Third Circuit and certain other courts initially faulted the Board for continuing to use a traditional community-of-interest analysis in deciding whether skilled maintenance units were appropriate in health care facilities.[22] Responding to that concern, the Board considered the appropriateness of skilled maintenance units in a rulemaking proceeding and, in 1989, concluded that such units were among the eight that, except in extraordinary circumstances, were appropriate in acute care hospitals.

As discussed in the 1991 Annual Report (pp. 113–114), the Supreme Court upheld the Board's new rules generally against the chal-

[20] Id. at 33.

[21] Id. at 35.

[22] *St. Vincent's Hospital v. NLRB*, 567 F.2d 588 (3d Cir. 1977), *NLRB v. West Suburban Hospital*, 570 F.2d 213 (7th Cir. 1978); *NLRB v. Mercy Hospital Assn.*, 606 F.2d 22 (2d Cir. 1979), cert. denied 445 U.S. 971 (1980); *Allegheny General Hospital v. NLRB*, 608 F.2d 965 (3d Cir. 1979).

lenge that they were in conflict with the legislative history admonishing the Board to give due consideration to unit proliferation.[23] Among other things, the Court pointed out that the legislative history did not have the force of law and that the rulemaking proceeding reflected extensive Board consideration of the unit proliferation issue.

In *St. Margaret Memorial Hospital*,[24] decided in this report year, the Third Circuit acknowledged that, in light of the Supreme Court's approval of the Board's new rules, prior Third Circuit cases holding skilled maintenance units inappropriate on the ground that they lead to an undue proliferation of bargaining units were no longer binding. Accordingly, the Third Circuit upheld the Board's finding that 18 skilled maintenance employees constituted an appropriate bargaining unit for bargaining. The court also agreed with the Board that the hospital's arguments to the contrary did not raise any issue that had not already been considered in the Board's rulemaking proceeding.[25]

[23] *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991).

[24] *St. Margeret Memorial Hospital v. NLRB*, 991 F.2d 1146.

[25] Id. at 1154–1155.

VII
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 1993, the Board filed a total of 33 petitions for temporary relief under the discretionary provisions of Section 10(j): 29 against employers and 4 against labor organizations. Five cases authorized in the prior year were also pending at the beginning of the year. Of these 38 cases, 17 were either settled or adjusted prior to court action. Four cases were withdrawn prior to decision because of changed circumstances. Injunctions were granted in eight cases and denied in three cases. Five cases remained pending at the end of the fiscal year.

District courts granted injunctions against employers in eight cases and none against a labor organization. Among the violations that gave rise to the actions against employers were interference with nascent organizing campaigns, including several cases where an employer's violations precluded a fair election and warranted a remedial bargaining order based on a union's showing of a majority of authorization cards,[2] withdrawal of recognition from an incumbent union, and "successor" employers refusals to recognize and bargain with an incumbent union.[3]

One case during the year presented a classic "nip in the bud" situation where the employer's violations threatened to irreparably injure a union's nascent organizational campaign.[4] In *Blyer v. SSC Corp.*,[5] the court concluded that there was reasonable cause to believe that during a union's organizational drive among a group of employees performing commercial and residential refuse hauling, the employer had engaged in unlawful interrogations, placed its employees under surveillance, threatened to close its business and terminated 11 employees because of their union membership or support. The court

[1] See, e.g., *Kobell v. Paperworkers Union*, 965 F.2d 1401 (6th Cir. 1992); *Arlook v. Lichtenberg & Co.*, 952 F.2d 367 (11th Cir. 1992).

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

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

[4] See generally *Angle v. Sacks*, 382 F.2d 655 (10th Cir. 1967).

[5] CV-93-2938 (E.D.N.Y.).

granted a broad cease-and-desist order, the interim reinstatement of the 11 employees to their former positions and work crews, a posting of the court's opinion and order at the employer's facility, and the requirement that the employer file an affidavit of compliance with the court.

Among the cases involving remedial *Gissel* bargaining orders, was one which arose in the Fourth Circuit, which has not yet passed on the propriety of interim *Gissel* bargaining orders under Section 10(j).[6] In *D'Amico v. Allegany Aggregates*,[7] a union obtained authorization cards from a majority of employees in an appropriate unit during an organizational campaign. The district court found reasonable cause to believe that the employer engaged in serious violations which precluded a fair election under the rationale of *Gissel*. In particular the court noted the discriminatory mass layoff of employees which was meant to "send a message of intimidation" to all employees who would consider union activities. The court concluded the employer had demonstrated a willingness to "do anything it can get away with to defeat the ability of its employees to be represented by the Union of their choice" and, relying in part on prior decisions of its district,[8] issued an interim remedial bargaining order based on the union's card showing of majority support.

One case during the period involved an employer's unlawful withdrawal of recognition from an incumbent union. In *Calatrello v. Independent*,[9] the court concluded that there was reasonable cause to believe that the employer had unlawfully assisted in the circulation of an antiunion petition, threatened employees with reprisals if they did not sign the petition, through its supervisors, assisted in soliciting employee signatures on the petition, and interrogated employees about their union support. The court also concluded that the employer violated its bargaining obligation both by obstructive conduct at the bargaining table, including reneging on items already agreed on, and by withdrawing recognition from the union in the absence of a good-faith doubt of the union's majority status. The court concluded that, because respondent's activities were designed to erode support for the union, injunctive relief was just and proper to "return the parties to status quo pending the Board's proceedings." The court granted, inter alia, an affirmative bargaining order in favor of the union and an order to reinstate the tentative agreements reached during bargaining regarding terms and conditions of employment.

The Board continued to achieve success in obtaining interim bargaining orders in successorship situations governed by the Supreme Court's decision in *Burns*.[10] In *Sharp v. Flame Metals Processing*

[6] See, e.g., *Asseo v. Pan American Grain Co.*, 805 F.2d 23 (1st Cir. 1986); *Kaynard v. MMIC, Inc.*, 734 F.2d 950 (2d Cir. 1984); *Levine v. C & W Mining Co.*, 610 F.2d 432 (6th Cir. 1979).

[7] Civil Action No. MJG-92-2342 (D.Md.).

[8] See *D'Amico v. Cox Creek Refining Co.*, 719 F.Supp. 403 (D.Md.1989); *Smith v. Old Angus*, 82 LRRM 2930 (D.Md.1973).

[9] Case No. 5.92CV2643 (N.D.Ohio East. Div.).

[10] See, e.g., *Watson v. Moeller Rubber Products*, 792 F.Supp. 1459 (N.D.Miss.1992), discussed in the 1992 Annual Report.

Corp.,[11] the court granted an interim bargaining order to "preserve the status quo" and to prevent the "real danger of further erosion [of union support] if the Union continues to have no voice in ongoing discipline and employee grievance matters." Similarly, in *Frye v. Wilson Tree Co.*,[12] the court granted an interim bargaining order against an alleged *Burns* successor as well as an interim reinstatement order for several employees who were allegedly not offered jobs by the successor because of their union membership or support.

Finally, one case during the year involved civil contempt of a 10(j) decree. In *Frye v. Seminole Intermodal Transport*,[13] the district court had ordered a respondent to reopen a closed terminal, to transfer back to the reopened terminal work that had been reassigned to another terminal, and to reinstate the drivers who had been terminated on the closing of the terminal. Over 2 months passed before any driver was reinstated. In a supplemental proceeding, the district court concluded that this was "clear and convincing" evidence that the employer had not promptly complied with the terms of the 10(j) decree,[14] and found the employer in civil contempt of the injunction. Inter alia, the court granted the affected employees compensatory damages of 30 days' backpay and further granted the Board access to those employer payroll records and shipping documents necessary either to compute backpay or to monitor compliance with the 10(j) decree.

Three appellate court decisions on 10(j) matters, which issued in the fiscal year, are noteworthy. First, in *Miller v. California Pacific Medical Center*,[15] a case described in the 1992 Annual Report, a panel of the Ninth Circuit vacated the district court's injunction on the view that the district court had applied an erroneous legal standard in evaluating the propriety of interim relief. Consistent with the circuit's decisions in *Aguayo v. Tomco Carburetor Co.*,[16] and *Scott v. El Farra Enterprises*,[17] the district court had considered whether there was "reasonable cause" to believe the violations alleged had occurred and whether interim relief was "just and proper" to avoid frustrating the remedial purposes of the Act. The appellate panel held that the "just and proper" standard of Section 10(j) requires traditional balancing of the equities, including likelihood of success on the merits. It concluded that "reasonable cause" goes "only to the maturity of the proof supporting the Board's decision to seek an injunction."[18] The Board sought rehearing with suggestion for rehearing en banc, which was granted by the Ninth Circuit. Rehearing en banc was pending at the end of the fiscal year.

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[11] Civ. No. 4-92-795 (D.Minn. 4th Div.)

[12] Civil Action No. 2:92-0867 (S.D.W.Va. Charleston Div.).

[13] 141 LRRM 2265 (S.D.Ohio 1992), discussed in the 1992 Annual Report.

[14] See generally *Maness v. Meyers*, 419 U.S 449, 458 (1975).

[15] 991 F.2d 536.

[16] 853 F.2d 744 (1988).

[17] 863 F.2d. 670 (1988).

[18] 991 F.2d at 543.

The second case, *Frye v. Hospital Employees District 1199*,[19] also described in the 1992 Annual Report, involved picket line misconduct by a union engaged in a strike against a nursing home. The district court had issued an initial cease-and-desist order and thereafter issued a supplemental order which limited the types of signs that could be displayed and the number, location, and noise level of the pickets—none of which the Regional Director had sought. The union appealed, arguing that the district court lacked the authority to order relief not specifically requested by the Regional Director and that the district court's order proscribed lawful conduct.

Relying on the language of the statute, the Sixth Circuit held that the "clear language of the Act gives the district court discretion to grant whatever relief it considers just and proper," citing those cases where other courts "recognized this discretion when granting relief under Section 10(j)."[20] The appellate panel also noted that the Regional Director's petition, as well as requesting specific relief, asked that the court grant "such further and other relief as may be deemed just and proper."[21] This statement, the court concluded, gave the district court "explicit authority to grant whatever relief it deemed appropriate."[22]

The court then examined the specific relief granted by the district court. Given Congress' concern about health care institutions, and the specific facts of the case before it, the panel concluded that the limitations on the picketing activities placed by the district court were proper and affirmed the lower court's supplemental order with the notation that "the district court may re-examine the underlying issues to determine the extent to which the relief ordered is still necessary."[23]

In a third case, *Lightner v. Dauman Pallet, Inc.*,[24] the Third Circuit affirmed a district court decision[25] granting an interim *Gissel* bargaining order based on the company's extensive campaign of antiunion conduct both before and after an election. Because the company conceded there was reasonable cause to believe the alleged violations occurred; the district court addressed only whether interim relief was just and proper. It found that the record supported the Regional Director's contention that the union had enjoyed a card majority prior to the election and that the company had engaged in "extensive and egregious" unfair labor practices. The court concluded that the company's threats of future violations and the passage of time "would continue to undermine union support if this court did not issue an interim bargaining order."[26] Accordingly, it granted an interim bargaining order, concluding that the company's burden "in having to bargain in good faith does not exceed the harm which the current situa-

[19] 996 F.2d 141 (6th Cir.)
[20] Id. at 143
[21] Id. at 144.
[22] Ibid.
[23] Id. at 145.
[24] 993 F.2d 877 (mem.).
[25] 823 F.Supp. 249 (D.N.J.1992).
[26] Id at 253.

tion creates for the perception of the remedial powers of the Board and the effectuation of the purposes of the Act."[27]

Of particular note is the district court's admission of the testimony of the union business agent recounting statements employees made to her expressing fear of employer retaliation. The court found the statements admissible under Federal Rule of Evidence 803(3) to show the declarant's then-existing state of mind. The court found the statements admissible to prove that employees "in fact feared retaliation but not to prove what caused the declarant's state of mind."[28]

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),[29] or Section 8(b)(7),[30] and against an employer or union charged with a violation of Section 8(e),[31] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[32] 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 45 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with 5 cases pending at the beginning of the period, 10 cases were settled, 5 were dismissed, 2 continued in an inactive status, 7

[27] The court, however, refused to reinstate approximately six discriminatees because of "disputed questions related to reinstatement of those employees." 823 F.Supp. at 253.

[28] 823 F.Supp. at 252 fn 2.

[29] 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).

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

[31] 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.

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

were withdrawn, and 5 were pending court action at the close of the report year. During this period, 23 petitions went to final order, the courts granting injunctions in 21 cases and denying them in 2 cases. Injunctions were issued in 10 cases 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). Injunctions were granted in 3 cases involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were also issued in three cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

Of the two cases in which injunctions were denied, one involved secondary picketing activity by labor organizations, and one involved recognitional picketing.

Two appellate decisions dealing with Section 10(l), decided during the fiscal year, are of particular interest. In one, *Kinney v. Operating Engineers Local 150*,[33] the Seventh Circuit affirmed a district court injunction staying a union's internal disciplinary proceedings against employees who crossed a picket line to work for neutral employers, pending the Board's order. The court addressed the standards to be applied by a district court in a 10(l) proceeding. The Seventh Circuit had previously held that traditional equitable principles govern the evaluation of a 10(j) petition. *Kinney v. Pioneer Press*.[34] Noting that the statutory language authorizing courts to grant relief that is "just and proper" is identical in both Section 10(j) and (l), the court held that the traditional equitable standards required under *Pioneer Press* are equally applicable to 10(l) proceedings.[35]

The court rejected the Board's alternative contention that 10(j) and 10(l) cases should be judged under the so-called public interest test, applied in cases such as *Federal Trade Commission v. Elders Grain*,[36] and *Federal Trade Commission v. World Travel Vacation Brokers*.[37] That is a two-prong test which evaluates only likelihood of success and the balance of the equities.[38] Although the court acknowledged that *Pioneer Press* might be read to suggest that this test should apply in 10(j) and 10(l) cases, it declined to do so because it did not want to send a mistaken signal to district courts "to relax the standards for granting injunctive relief to government agencies."[39]

[33] 994 F.2d 1271.

[34] 881 F.2d 485 (1989).

[35] 994 F.2d at 1276.

[36] 868 F.2d 901 (7th Cir. 1989).

[37] 861 F.2d 1020 (7th Cir. 1988).

[38] The court suggested that the "sliding scale" analysis—under which the degree of likelihood of success on the merits necessary to support an injunction varies inversely with the degree to which the balance of harms favors the petitioner—is used only in the public interest test. The Seventh Circuit routinely applies the sliding scale analysis, however, in any preliminary injunction case where the petitioner has shown some likelihood of success on the merits and no adequate remedy at law and irreparable injury. See, for example, *Abbott Laboratories v. Mead Johnson & Co*, 791 F.2d 6, 11–12 (7th Cir 1992); *Roland Machinery Co. v. Dresser Industries*, 743 F.2d 380, 378–388 (7th Cir. 1984), cited with approval in *Kinney v. Operating Engineers Local 150*, 994 F.2d at 1275 fn. 5.

[39] 994 F.2d at 1277.

In a second case, *Dowd v. Longshoremen ILA*,[40] the appellate court affirmed the district court's grant of injunctive relief in a case which involved the geographical jurisdiction of the Act. As discussed in the 1991 Annual Report, the respondent union had primary labor disputes with two Florida stevedoring companies involved in the citrus fruit trade between Florida and Japan. In furtherance of its dispute, the union requested Japanese unions to threaten to refuse to unload in Japan any citrus fruit that had been loaded in Florida by the targeted stevedoring companies. The Japanese unions complied and notified shipping companies and Japanese importers that they faced a boycott of their ships and produce if they continued to do business with the Florida stevedoring companies. These messages were also conveyed to the American exporting companies. As a result, the loading of citrus fruit was diverted from the primary stevedoring companies to other stevedoring companies under contract with the union. The Regional Director alleged that the union was responsible for the Japanese unions' threats to boycott neutral importers, exporters, and shipping companies and that the union thereby violated Section 8(b)(4)(ii)(B).

The court of appeals agreed that the Board had presented substantial and not frivolous legal theories under which the conduct of the Japanese unions could be attributed to the respondent ILA.[41] The court also accepted the Regional Director's interpretation that the union's conduct came within paragraph (ii) of Section 8(b)(4)(B). The court expressed doubt about the validity of the union's arguments to the contrary and held that even accepting the union's claim "would not warrant holding the Board's legal theory unsubstantial or frivolous at this stage in the proceeding. ILA has not suggested any way in which we would frustrate Congress' intent in enacting section 8(b) by upholding the Board's theory."[42]

Finally, the court of appeals rejected the ILA's contention that the line of cases limiting the territorial jurisdiction of the Act precluded assertion of jurisdiction.[43] The court reasoned that although those cases preclude the Board from asserting jurisdiction over labor disputes between foreign seamen and the owners of foreign vessels, the Act is specifically designed to protect neutrals doing business in the United States such as the parties in the instant case. The court concluded that because the union's object was to implement a secondary boycott within the United States, to gain an advantage in a domestic labor dispute, by pressuring neutrals protected under the NLRA, the fact that the threats were uttered overseas is of "little significance."[44] In addition, the court found relevant that the ILA took significant actions in the United States to effect the boycott and that the union was

[40] 975 F.2d 779 (11th Cir.).

[41] Id. at 784–786.

[42] Id. at 787.

[43] See, for example, *Benz v. Compania Naviera Hidalgo*, 325 U.S. 138 (1957); *American Radio Assn v. Mobile Steamship Assn.*, 415 U.S. 104 (1974).

[44] The court relied, by analogy, on cases construing other statutes to reach conduct outside the United States which is intended to and does result in substantial effects within the United States. See 975 F.2d at 790-791 fn. 11–13.

a domestic labor organization. The court held the union could not "immunize" its conduct from the reach of the Act simply by acting through a foreign intermediary or by "confining its coercion and threats to those participants in the flow of commerce between the United States and Japan, who happen to reside in the latter country."[45]

[45] 975 F.2d at 791.

VIII

Contempt Litigation

In fiscal year 1993, 154 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 107 cases in fiscal year 1992. Voluntary compliance was achieved in 16 cases during the fiscal year, without the necessity of filing a contempt petition, while in 30 others, it was determined that contempt was not warranted.

During the same period, 19 civil contempt proceedings were instituted as compared to 20 civil proceedings in fiscal year 1992. These included three motions for assessment of fines and writ of body attachment. In addition, one criminal contempt proceeding was initiated during the year. Twenty civil contempt or equivalent adjudications were awarded in favor of the Board, including three where the court ordered civil arrest or assessment of fines. Protective orders enjoining the dissipation of assets were obtained in three cases.

During the fiscal year, the Contempt Litigation Branch collected $87,770 in fines and $754,644 in backpay, while recouping $46,829 in court costs and attorneys' fees incurred in contempt litigation.

A number of proceedings during the fiscal year were noteworthy. In a case of major importance to the Board in its efforts to collect backpay from recalcitrant respondents, the Second Circuit held that backpay awards are debts "owing to the United States" within the meaning of the Federal Debt Collection Procedures Act of 1990 (FDCPA), 28 U.S.C. §3001.[1] In the past, government agencies seeking to collect debts owed to the United States were required to utilize collection procedures provided under state law. These procedures vary widely from state to state, and certain procedures thought to be essential to protect creditors' rights are not available in all jurisdictions. In 1990, Congress enacted the FDCPA to ensure uniform, effective procedures for the collection of Federal debts. The Board immediately recognized that these procedures, if applicable to the collection of backpay under the NLRA, would significantly facilitate the Board's collection efforts by streamlining and standardizing its collection proceedings nationwide, and by making available to the Board certain procedures, such as prejudgment attachment, that are not always available under state laws.

[1] *NLRB v. E.D.P. Medical Computer Systems*, 6 F.3d 951.

In *E.D.P.*, the Board had been unable to collect on a backpay judgment against a defunct respondent, but subsequently learned that the respondent was operating through an alter ego corporation (EDP). When EDP claimed inability to pay the backpay owed, the Board instituted contempt proceedings in the court of appeals against the new entity, and commenced a collection proceeding in district court under the FDCPA, seeking a prejudgment writ of garnishment against an account receivable owned by EDP, pending disposition of the Board's contempt petition. Subsequently, the district court issued a prejudgment writ freezing the account receivable, and EDP moved to dissolve the writ. EDP contended that because the proceeds of the backpay judgment were to be distributed to private citizens (i.e., the discriminatees), the backpay obligation was not a debt "owing to the United States" under the FDCPA.

The district court denied EDP's motion, and in a 2–1 decision, the Second Circuit affirmed. Citing early Supreme Court precedent, the court pointed out that in granting appropriate relief from unfair labor practices, the Board acts in the public interest and is the "only entity allowed to enforce the relief ordered . . . ."[2] The court said that it is "precisely because the Board acts in the public's interest and not those of private individuals that persuades us that the backpay award sought by the Board may be considered a debt to the United States under the FDCPA."[3] The court went on to find that the purposes underlying the FDCPA were served by this result: "Effective debt collection by the government is not only to fill the public coffers and lower the federal budget; we should also consider the importance of effective collection as a necessary tool for enforcement of the federal labor laws."[4]

Finally, the court rejected the contention that a contrary result was required by *Nathanson, Trustee v. NLRB*,[5] in which the Supreme Court held that the Board's unsecured claim for backpay was not entitled to priority in bankruptcy because it was not a debt due the United States within the meaning of the priority provisions of the Bankruptcy Act. As the Second Circuit explained, however, the Supreme Court "did hold [in *Nathanson*] that the Board is a creditor because the backpay order is a 'debt, demand, or claim provable in bankruptcy,'" and the "reasons for not granting the Board the same priority as other debts owing to the United States are different from the Court's reasons for holding that a backpay award is a debt to the Board."[6] In the court's view, "[i]t is for precisely this difference that . . . *Nathanson* lend[s] support for our decision that a backpay award is a debt owing to the United States under the FDCPA."[7]

In two other proceedings, the Board obtained unusual pendente lite relief to protect its ultimate recovery of backpay against recalcitrant

[2] Id. at 955
[3] Ibid.
[4] Ibid.
[5] 344 U.S 25 (1952).
[6] 6 F.3d at 955, quoting 344 U.S. at 27–28.
[7] 6 F 3d at 955.

respondents. In one proceeding, *R.E.C. Corp.*,[8] backpay had been liquidated, and after the respondent claimed that it was unable to comply with the court's judgment enforcing the Board's supplemental order, the Region conducted an investigation, which revealed that the respondent's sole shareholder may have been secreting assets by diverting funds to three corporate entities ostensibly owned by members of his immediate family. The Board then filed a contempt proceeding naming as additional respondents the sole shareholder and all three of the previously unnamed family entities. That same day, the Board filed a motion for an asset freeze order directed to the shareholder and all the corporate entities. The Board also took the exceptional step of asking the court to rule on its motion ex parte, alleging in its motion papers that there was a "virtual certainty" that the assets of the newly named persons and entities "will be secreted if [respondent's shareholder] receives notice of this motion." After the Board's ex parte motion was granted by the Second Circuit and served on respondents, a settlement was reached with the Board pursuant to which respondents paid $300,000 in backpay and interest, representing virtually all the amounts due under the Board's Supplemental Order.

In *Apex Decorating Co.*,[9] the Board obtained another unusual form of pendente lite relief, this time from the Fourth Circuit. In this case, the Board had issued a make-whole order that had been enforced, but before backpay could be liquidated, the Region uncovered evidence that respondent may have been siphoning assets to other, newly created entities that appeared to be mere alter egos of the named respondents. On the Board's motion, the Fourth Circuit issued an asset-freeze order directed to several family members and their various enterprises that required them to place in escrow any amounts received that were in excess of what was necessary to cover "reasonable and necessary" business expenses. When the Region's subsequent investigation revealed numerous apparent violations of this order, the Board returned to court with an emergency motion seeking to compel certain family members to immediately deposit $147,000 in the registry of the district court, which was the amount the Board alleged should have been placed in escrow pursuant to the earlier order, and to compel the corporate respondents henceforth to pay into the registry 10 percent of their gross monthly income. This motion was granted by the court in an unpublished order. Shortly thereafter, the respondents entered into a settlement which liquidated backpay at $300,000 and provided that several individual family members, in addition to the corporate respondents, would be personally liable for backpay, which was to be paid in five equal installments.

[8] The Board's Supplemental Decision and Order was unpublished. The underlying Decision and Order are reported at 296 NLRB 1293 (1989), enfd. mem. No. 91-4190 (2d Cir.).

[9] 275 NLRB 1459 (1985), enfd. mem. No. 86-2558 (4th Cir.).

IX

Special Litigation

A. Litigation Under the Freedom of Information Act

In *Gallant v. NLRB*,[1] the United States District Court for the District of Columbia granted summary judgment to the Board and dismissed Gallant's effort under FOIA to obtain copies of correspondence retained by a former Board Member, and copies of fax logs listing the recipients of some of that correspondence. The Board Member had sent correspondence in support of renomination to the Board after one term as a Board Member had expired. The court found that the correspondence did not constitute "agency records" under the FOIA, and thus were not subject to the FOIA. The court found that the effort to retain a job, even with a public agency, was a person's own business. The court also found that the Board Member did not intend to relinquish control of the documents, that Agency personnel did not rely on the correspondence in their work, and that the correspondence was not integrated into the Agency's record system or files. As a result, the correspondence was found to be personal, rather than Agency records. The court also examined whether names of recipients of such correspondence listed on a fax log were exempt from disclosure pursuant to 5 U.S.C. § 552(b)(6). The court found that the documents fell within Exemption 6, which applies to "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The court found that the disclosure of individual names must be subject to balancing the public gain against the private harm that would result from disclosure. The court held that, in these circumstances, the mere release of an individual's name implicates important privacy interests. On the other hand, the court found that Gallant had failed to show any compelling need for public knowledge of these individuals' names. As a result, the court found that the names on the fax log were not subject to compelled disclosure.

[1] No. 92-0873 (D.D.C.).

B. Litigation Involving Intervention in Suits Under Section 301

In *Sheet Metal Workers Local 66 v. Western Furnaces*,[2] a union brought a Section 301 action against a member of a multiemployer association to enforce an arbitration award relating to the terms for renewal of a collective-bargaining agreement between the union and the association. The Board moved to intervene and to stay the district court proceedings pending resolution of a pending unfair labor practice case, in which the General Counsel had charged that the union violated the Act by refusing to bargain directly with the employer for a new collective-bargaining agreement after the employer's timely withdrawal from the association's bargaining unit. The court granted both Board motions. The court first held that the Board was entitled to intervene to protect its jurisdictional integrity and to avoid the risk of conflicting court and agency decisions. The court then concluded that a stay of proceedings was appropriate because the Section 301 action was "inextricably bound up" with the (8)(b)(3) issue before the Board, the Board's decision would have preclusive effect on the court, and the employer had brought its unfair labor practice charge prior to the union's initiation of the Section 301 action.

In *Plumbers Local 577 v. Ross Bros. Construction Co.*,[3] a union filed a Section 301 suit alleging that several employers had breached a collective-bargaining agreement by not adhering to its wage and benefit provisions. The union also had filed an unfair labor practice charge alleging that the same employers violated Sections 8(a)(1) and (5) and 8(d) of the Act by repudiating the agreement's wage and benefit provisions. The Board moved to intervene and to stay the district court proceedings pending resolution of the unfair labor practice case. Though acknowledging that the Board had met all other prerequisites to intervention, the court denied the Board's motion to intervene, holding that its application was untimely because the court case was less than 2 months from trial, and because a stay of proceedings at that time would have substantially prejudiced the employer, which was entitled to prompt judicial resolution of the counterclaims it had asserted against the union.

C. Litigation Involving the Board's Jurisdiction

Schweitzer v. Teamsters Local 215[4] arose out of a rivalry between two AFL–CIO affiliates—Local 399 of the ILGWU and Local 215 of the IBT. Six employees of T.J. Maxx sought to mandamus the Board to certify Local 215 of the IBT as the bargaining representative of the approximate 1200 employee unit at T.J. Maxx's Evansville, Indiana distribution center, despite the fact that T.J. Maxx had voluntarily recognized Local 399 of the ILGWU in 1986. Three years after

[2] 143 LRRM 2227, No. C92-5472Z (W D. Wash.).
[3] No. C2-92-705 (S.D. Ohio), appeal pending No. 93-3895 (6th Cir.).
[4] S.D Ind No. EV 93-46C

the voluntary recognition, Local 215 filed an election petition, which the Board initially deferred processing due to the ILGWU's invocation of a provision of the AFL–CIO constitution providing for an umpire's prompt determination when two AFL–CIO affiliates are vying for representation of the same unit. Despite the fact that the umpire found that Local 215's actions were in violation of the AFL–CIO constitution, and the AFL–CIO's executive board sustained that ruling, Local 215 continued seeking to represent the employees. As a result, it was threatened first with being placed "under sanction" by the IBT, and then with trusteeship. When Local 215 continued to pursue its election petition, the Board processed the petition and conducted an election. After Local 215 received a majority of the votes cast, ILGWU filed objections to the conduct of the election, which resulted in a lengthy hearing over a 6-month period. While the hearing officer's recommended findings of fact and conclusions of law were pending review before the Board, Local 215 requested that its petition to represent the T.J. Maxx employees be withdrawn due to the threat of trusteeship. The Board accepted Local 215's request that its representation case petition be withdrawn. The plaintiffs then asked the court to enjoin the Board from granting Local 215's withdrawal and to mandate that the Board certify Local 215 as the bargaining representative. The court granted the Board's motion to dismiss on the grounds that it was "totally without jurisdiction to address those pleas" as the certification of "an election rests solely within the sound discretion of the NLRB," and can be reviewed only when "there has been a violation of clear and specific statutory directive" as set forth in *Leedom v. Kyne*.[5] There was no violation of statutory directive by the Board's processing of an election petition, or by its acceding to the clear, unequivocal request for withdrawal. Because the court found no proper basis for subject matter jurisdiction, it dismissed the complaint.

In *NLRB v. State of Illinois Department of Employment Security*,[6] the Seventh Circuit affirmed the district court's order granting the Board's request for preliminary and permanent injunction and for declaratory judgment. The court found that section 900D of the State of Illinois Unemployment Insurance Act[7] is preempted by the NLRA. Section 900D provides, inter alia, that Government agency backpay awards are to be paid to individuals by check made payable jointly to the individual and the director of the Department of Employment Security (IDES), where the individual received unemployment compensation for the same period of time covered by the backpay award. The Board objected to the practice because joint payee checks infringe on the Board's exclusive jurisdiction to remedy unfair labor practices. Relying on *San Diego Building Trades Council v. Garmon*,[8] the court agreed with the Board's position that section

[5] 358 U.S. 184, 190 (1958)
[6] 988 F.2d 735.
[7] Ill. Rev. Stat., ch. 48 par. 490D (1989).
[8] 359 U.S. 236 (1959).

900D's method of recouping unemployment benefits interferes with the Board's mission to remedy unfair labor disputes. The court found inapplicable either of two exceptions to *Garmon* preemption. The activity regulated is not "merely a peripheral concern to the Act" because "the Board's broad authority to remedy unfair labor practices is central to its purpose."[9] The issuance of joint payee checks also is not "related to any conduct touching 'interests so deeply rooted in local feeling that preemption cannot be inferred absent compelling congressional direction.'"[10] The court also found inapplicable cases cited by IDES involving state unemployment statutes found not to be preempted by the NLRA. The court found, inter alia, that those cases stand for the proposition that "states have discretion to grant or deny unemployment compensation to striking workers."[11] However, the court found that this does not mean that States can interfere with the NLRB's authority to remedy unfair labor practices through backpay awards to injured employees. The court noted that IDES is free to recoup benefits paid to employees, "but its collection efforts must be independent of the Board's order to the offending employer."[12] Because the Board decided that the employer in issue in the case engaged in conduct prohibited by Section 8, the court found that the State is ousted of all jurisdiction.

D. Litigation Under the Bankruptcy Code

In *Kapernekas v. Continental Airlines*,[13] Continental employee Gus Kapernekas was awarded reinstatement and backpay by the Illinois Department of Human Relations, which decision was enforced by the state court in 1992. Meanwhile, in 1990, Continental filed a petition for relief under Chapter 11 of the Bankruptcy Code. Subsequently, Kapernekas requested administrative priority for lost wages and benefits for his backpay accruing postpetition. After the bankruptcy court denied Kapernekas' claim for postpetition priority, he appealed the dispute to the District Court for the District of Delaware. The Board filed an amicus curiae brief supporting Kapernekas' position that victims of discrimination are entitled to administrative priority for backpay accruing postpetition. The district court affirmed the judgment of the bankruptcy court. The district court held that "Section 503(b)(1)(A) clearly requires that for wage claims to qualify for administrative priority status, a service must have been rendered to the estate post petition. Since Kapernekas did not render any service to the estate for the time in question, his claim does not meet the criteria required of wages under 503(b)(1)(A)."[14] The court noted that the bankruptcy code provides for a lower priority for wages actually earned within 90 days preceding the petition, and observed that the

[9] 988 F.2d at 739.
[10] Id. (quoting *Talbot v. Robert Matthews Distributing Co.*, 961 F.2d 654, 660-61 (7th Cir. 1992)).
[11] 988 F.2d at 740.
[12] Id. at 739.
[13] 148 B.R. 207 (D.Del.).
[14] Id. at 212.

code does not afford all backpay claims equal status. It refused to grant a higher priority to the postpetition claim of Kapernekas for time when he did not work compared to wage claims of employees who did work prepetition. The district court further held that Kapernekas' claim does not fall within the Supreme Court's decision in *Reading Co. v. Brown*,[15] which granted administrative priority to claims without requiring a benefit to the estate. The district court found that "[t]he *Reading* analysis requires a post-petition action causing harm, such as a violation of a statute or a tort. . . . While appellant and the NLRB attempt to characterize Continental's failure to reinstate Kapernekas before exhausting their right to appeal, as a post-petition violation of the Illinois Human Rights Act . . . Continental's failure to reinstate Kapernekas . . . was in fact nothing more than Continental's legitimate use of the 'natural appellate process' . . . ."[16] Finally, the court noted that Kapernekas and the Board had made compelling arguments that the denial of priority in this case may threaten the effectiveness of the Board's broad remedial powers. Nonetheless, the court concluded that the potential threat to the Board represented a clash of the public policies underlining the NLRA and the bankruptcy code, which must be resolved by the legislature, not the judiciary.

[15] 391 U.S. 471 (1968)
[16] 148 B.R. at 214.

INDEX OF CASES DISCUSSED

APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

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

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1993[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	All cases					
Pending October 1, 1992	*27,055	14,371	1,129	1,157	8,549	1,849
Received fiscal 1993	40,322	20,411	1,147	1,398	14,719	2,647
On docket fiscal 1993	67,377	34,782	2,276	2,555	23,268	4,496
Closed fiscal 1993	39,987	20,037	1,146	1,345	14,737	2,722
Pending September 30, 1993	27,390	14,745	1,130	1,210	8,531	1,774
	Unfair labor practice cases[2]					
Pending October 1, 1992	*23,610	11,945	1,029	978	8,038	1,620
Received fiscal 1993	33,744	15,901	948	1,019	13,557	2,319
On docket fiscal 1993	57,354	27,846	1,977	1,997	21,595	3,939
Closed fiscal 1993	32,855	15,017	948	970	13,534	2,386
Pending September 30, 1993	24,499	12,829	1,029	1,027	8,061	1,553
	Representation cases[3]					
Pending October 1, 1992	*3,211	2,352	94	162	456	147
Received fiscal 1993	6,140	4,337	181	335	1,056	231
On docket fiscal 1993	9,351	6,689	275	497	1,512	378
Closed fiscal 1993	6,707	4,848	179	332	1,095	253
Pending September 30, 1993	2,644	1,841	96	165	417	125
	Union-shop deauthorization cases					
Pending October 1, 1992	*55	—	—	—	55	—
Received fiscal 1993	106	—	—	—	106	—
On docket fiscal 1993	161	—	—	—	161	—
Closed fiscal 1993	108	—	—	—	108	—
Pending September 30, 1993	53	—	—	—	53	—
	Amendment of certification cases					
Pending October 1, 1992	12	5	1	3	0	3
Received fiscal 1993	19	7	5	2	0	5
On docket fiscal 1993	31	12	6	5	0	8
Closed fiscal 1993	22	8	5	2	0	7
Pending September 30, 1993	9	4	1	3	0	1
	Unit clarification cases					
Pending October 1, 1992	*167	69	5	14	0	79
Received fiscal 1993	313	166	13	42	0	92
On docket fiscal 1993	480	235	18	56	0	171
Closed fiscal 1993	295	164	14	41	0	76
Pending September 30, 1993	185	71	4	15	0	95

[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 September 30, 1992, 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 1993[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA cases					
Pending October 1, 1992	*18,720	11,873	1,006	937	4,904	0
Received fiscal 1993	24,500	15,847	934	971	6,748	0
On docket fiscal 1993	43,220	27,720	1,940	1,908	11,652	0
Closed fiscal 1993	23,537	14,954	914	929	6,740	0
Pending September 30, 1993	19,683	12,766	1,026	979	4,912	0
	CB cases					
Pending October 1, 1992	*3,947	64	3	29	3,131	720
Received fiscal 1993	8,074	36	4	24	6,806	1,204
On docket fiscal 1993	12,021	100	7	53	9,937	1,924
Closed fiscal 1993	7,996	45	4	23	6,790	1,134
Pending September 30, 1993	4,025	55	3	30	3,147	790
	CC cases					
Pending October 1, 1992	*655	2	12	7	0	634
Received fiscal 1993	750	3	6	15	0	726
On docket fiscal 1993	1,405	5	18	22	0	1,360
Closed fiscal 1993	861	4	18	10	0	829
Pending September 30, 1993	544	1	0	12	0	531
	CD cases					
Pending October 1, 1992	*132	3	6	1	0	122
Received fiscal 1993	211	10	0	2	0	199
On docket fiscal 1993	343	13	6	3	0	321
Closed fiscal 1993	217	10	6	2	0	199
Pending September 30, 1993	126	3	0	1	0	122
	CE cases					
Pending October 1, 1992	43	2	0	3	3	35
Received fiscal 1993	53	3	0	5	3	42
On docket fiscal 1993	96	5	0	8	6	77
Closed fiscal 1993	46	3	0	4	4	35
Pending September 30, 1993	50	2	0	4	2	42
	CG cases					
Pending October 1, 1992	20	0	0	0	0	20
Received fiscal 1993	38	0	0	1	0	37
On docket fiscal 1993	58	0	0	1	0	57
Closed fiscal 1993	38	0	0	1	0	37
Pending September 30, 1993	20	0	0	0	0	20
	CP cases					
Pending October 1, 1992	*93	1	2	1	0	89
Received fiscal 1993	118	2	4	1	0	111
On docket fiscal 1993	211	3	6	2	0	200
Closed fiscal 1993	160	1	6	1	0	152
Pending September 30, 1993	51	2	0	1	0	48

[1] See Glossary of terms for definitions

* Revised, reflects higher figures than reported pending September 30, 1992, 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 1993[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	RC cases					
Pending October 1, 1992	*2,604	2,350	93	160	1	—
Received fiscal 1993	4,853	4,337	181	335	0	—
On docket fiscal 1993	7,457	6,687	274	495	1	—
Closed fiscal 1993	5,358	4,848	178	332	0	—
Pending September 30, 1993	2,099	1,839	96	163	1	—
	RM cases					
Pending October 1, 1992	*147	—	—	—	—	147
Received fiscal 1993	231	—	—	—	—	231
On docket fiscal 1993	378	—	—	—	—	378
Closed fiscal 1993	253	—	—	—	—	253
Pending September 30, 1993	125	—	—	—	—	125
	RD cases					
Pending October 1, 1992	*460	2	1	2	455	—
Received fiscal 1993	1,056	0	0	0	1,056	—
On docket fiscal 1993	1,516	2	1	2	1,511	—
Closed fiscal 1993	1,096	0	1	0	1,095	—
Pending September 30, 1993	420	2	0	2	416	—

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1992, 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 1993

	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	24,500	100.0
8(a)(1)	4,076	16.6
8(a)(1)(2)	259	1.1
8(a)(1)(3)	8,457	34.5
8(a)(1)(4)	194	0 8
8(a)(1)(5)	8,120	33.1
8(a)(1)(2)(3)	225	0.9
8(a)(1)(2)(4)	1	0 0
8(a)(1)(2)(5)	144	0.6
8(a)(1)(3)(4)	668	2 7
8(a)(1)(3)(5)	2,051	8.4
8(a)(1)(4)(5)	24	0.1
8(a)(1)(2)(3)(4)	26	0 1
8(a)(1)(2)(3)(5)	109	0.5
8(a)(1)(2)(4)(5)	4	0.0
8(a)(1)(3)(4)(5)	126	0.5
8(a)(1)(2)(3)(4)(5)	16	0.1
Recapitulation[1]		
8(a)(1)	24,500	100.0
8(a)(2)	784	4.2
8(a)(3)	11,678	47.7
8(a)(4)	1,059	4 9
8(a)(5)	10,594	43.2
B Charges filed against unions under Sec. 8(b)		
Subsections of Sec 8(b)· Total cases	9,153	100.0
8(b)(1)	6,337	69.2
8(b)(2)	54	0 6
8(b)(3)	184	2.0
8(b)(4)	961	10.5
8(b)(5)	4	0 0
8(b)(6)	3	0 0
8(b)(7)	118	1.3
8(b)(1)(2)	1,057	11.5
8(b)(1)(3)	356	3 9
8(b)(1)(5)	5	0 2
8(b)(1)(6)	8	0.2
8(b)(2)(3)	2	0.0
8(b)(2)(5)	1	0.0
8(b)(3)(6)	1	0.0
8(b)(1)(2)(3)	51	0.6
8(b)(1)(2)(5)	4	0.0
8(b)(1)(2)(6)	3	0.0
8(b)(1)(3)(5)	2	0 0
8(b)(2)(3)(5)	1	0 0
8(b)(1)(2)(3)(6)	1	0.0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1993—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	7,824	85.5
8(b)(2)	1,174	12.8
8(b)(3)	598	6.5
8(b)(4)	961	10.5
8(b)(5)	17	0 2
8(b)(6)	16	0.2
8(b)(7)	118	1.3
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	961	100.0
8(b)(4)(A)	116	12.0
8(b)(4)(B)	568	59.1
8(b)(4)(C)	19	2.0
8(b)(4)(D)	211	22.0
8(b)(4)(A)(B)	40	4.2
8(b)(4)(A)(C)	3	0.3
8(b)(4)(B)(C)	2	0.2
8(b)(4)(A)(B)(C)	2	0.2
Recapitulation[1]		
8(b)(4)(A)	161	16.8
8(b)(4)(B)	612	63.7
8(b)(4)(C)	26	2.7
8(b)(4)(D)	211	22 0
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	118	100.0
8(b)(7)(A)	34	28.8
8(b)(7)(B)	7	5.9
8(b)(7)(C)	72	61.0
8(b)(7)(A)(B)	1	0 9
8(b)(7)(A)(C)	3	2.5
8(b)(7)(B)(C)	1	0.9
Recapitulation[1]		
8(b)(7)(A)	38	32.2
8(b)(7)(B)	9	7.6
8(b)(7)(C)	76	64.4
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	53	100.0
Against unions alone	52	98.1
Against employers alone	1	1.9
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	38	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 1993[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	48	35	—	—	—	35	—	—	—	—	—	—	—
Complaints issued	4,449	3,576	3,069	355	49	—	7	3	4	10	0	0	79
Backpay specifications issued	158	113	106	7	0	—	0	0	0	0	0	0	0
Hearings completed, total	643	429	362	42	1	16	0	0	1	0	1	0	6
Initial ULP hearings	640	426	359	42	1	16	0	0	1	0	1	0	6
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	3	3	3	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	777	473	408	48	6	—	0	0	0	1	1	1	8
Initial ULP decisions	772	470	405	48	6	—	0	0	0	1	1	1	8
Backpay decisions	5	3	3	0	0	—	0	0	0	0	0	0	0
Supplemental decisions	0	0	0	0	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,843	929	755	75	8	21	1	1	0	2	19	45	2
Upon consent of parties													
Initial decisions	189	51	34	10	5	—	0	0	0	1	0	0	1
Supplemental decisions	25	16	12	2	0	—	0	0	0	0	0	2	0
Adopting administrative law judges' decisions (no exceptions filed)													
Initial ULP decisions	272	174	147	15	0	—	0	0	0	0	5	7	0
Backpay decisions	18	5	4	1	0	—	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	1,187	586	470	42	3	21	1	1	0	1	13	33	1
Decisions based on stipulated record	10	10	8	2	0	—	0	0	0	0	0	0	0
Supplemental ULP decisions	77	38	33	2	0	—	0	0	0	0	1	2	0
Backpay decisions	65	49	47	1	0	—	0	0	0	0	0	1	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1993[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Hearings completed, total	970	939	820	24	95	8
Initial hearings	839	814	709	23	82	7
Hearings on objections and/or challenges	131	125	111	1	13	1
Decisions issued, total	750	722	628	21	73	7
By Regional Directors	717	690	597	21	72	7
Elections directed	627	604	535	12	57	7
Dismissals on record	90	86	62	9	15	0
By Board	33	32	31	0	1	0
Transferred by Regional Directors for initial decision	4	3	3	0	0	0
Elections directed	4	3	3	0	0	0
Dismissals on record	0	0	0	0	0	0
Review of Regional Directors' decisions. Requests for review received	299	291	268	9	14	1
Withdrawn before request ruled upon	20	20	20	0	0	0
Board action on request ruled upon, total	254	244	222	9	13	1
Granted	34	32	30	0	2	0
Denied	215	208	189	8	11	1
Remanded	5	4	3	1	0	0
Withdrawn after request granted, before Board review	3	2	2	0	0	0
Board decision after review, total	29	29	28	0	1	0
Regional Directors' decisions						
Affirmed	10	10	10	0	0	0
Modified	8	8	7	0	1	0
Reversed	11	11	11	0	0	0
Outcome:						
Election directed	21	21	20	0	1	0
Dismissals on record	8	8	8	0	0	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1993[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Decisions on objections and/or challenges, total	434	417	376	7	34	4
By Regional Directors	80	71	61	3	7	0
By Board	354	346	315	4	27	4
In stipulated elections	324	316	286	4	26	2
No exceptions to Regional Directors' reports	182	177	156	3	18	1
Exceptions to Regional Directors' reports	142	139	130	1	8	1
In directed elections (after transfer by Regional Director)	27	27	26	0	1	2
Review of Regional Directors' supplemental decisions						
Request for review received	46	44	38	0	6	3
Withdrawn before request ruled upon	0	0	0	0	0	1
Board action on request ruled upon, total	46	44	40	0	4	3
Granted	4	4	4	0	0	1
Denied	39	37	33	0	4	2
Remanded	3	3	3	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	3	3	3	0	0	0
Regional Directors' decisions:						
Affirmed	0	0	0	0	0	0
Modified	1	1	1	0	0	0
Reversed	2	2	2	0	0	0

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

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1993[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	89	9	77
Decisions issued after hearing	119	11	107
By Regional Directors	109	10	99
By Board	10	1	8
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions			
Requests for review received	40	1	37
Withdrawn before request ruled upon	2	0	2
Board action on requests ruled upon, total	31	1	28
Granted	10	0	9
Denied	18	0	17
Remanded	3	1	2
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	10	1	8
Regional Directors' decisions			
Affirmed	6	0	5
Modified	0	0	0
Reversed	4	1	3

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1993[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]11,286	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,396	2,496	1,801	135	15	371	174	900	542	200	1	73	84
Recognition or other assistance withdrawn	51	51	31	1	0	13	6	—	—	—	—	—	—
Employer-dominated union disestablished	21	21	14	1	0	4	2	—	—	—	—	—	—
Employees offered reinstatement	1,293	1,293	860	116	16	209	92	—	—	—	—	—	—
Employees placed on preferential hiring list	453	453	297	46	7	72	31	—	—	—	—	—	—
Hiring hall rights restored	58	—	—	—	—	—	—	58	29	6	0	17	6
Objections to employment withdrawn	49	—	—	—	—	—	—	49	25	6	0	12	6
Picketing ended	193	—	—	—	—	—	—	193	163	25	0	3	2
Work stoppage ended	68	—	—	—	—	—	—	68	41	27	0	0	0
Collective bargaining begun	3,470	3,269	2,948	64	30	141	86	201	195	1	0	5	0
Backpay distributed	2,682	2,514	2,078	98	16	232	90	168	120	9	0	28	11
Reimbursement of fees, dues, and fines	709	597	411	50	6	100	30	112	79	7	1	18	7
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

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1993[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
B. By number of employees affected.													
Employees offered reinstatement, total	4,177	4,177	3,484	274	18	219	182	—	—	—	—	—	—
Accepted	3,488	3,488	3,168	117	7	88	108	—	—	—	—	—	—
Declined	689	689	316	157	11	131	74	—	—	—	—	—	—
Employees placed on preferential hiring list	373	373	157	10	34	117	55	0	0	0	0	0	0
Hiring hall rights restored	229	—	—	—	—	—	—	229	221	0	0	8	0
Objections to employment withdrawn	203	—	—	—	—	—	—	203	203	0	0	0	0
Employees receiving backpay:													
From either employer or union	21,408	21,106	16,908	625	583	2,304	686	302	174	2	0	122	4
From both employer and union	14	11	10	0	0	0	1	3	0	2	0	0	1
Employees reimbursed for fees, dues, and fines.													
From either employer or union	1,064	759	485	118	0	156	0	305	82	200	2	5	16
From both employer and union	2	2	2	0	0	0	0	0	0	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1993[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
			Pursuant to—						Pursuant to—				
		Total	Agreement of parties		Recommendation of administrative law judge	Order of—		Total	Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
C. By amounts of monetary recovery, total	$54,497,461	$53,747,804	$31,829,177	$1,700,797	$1,895,776	$11,255,798	$7,066,256	$749,657	$388,713	$82,597	$513	$239,322	$38,512
Backpay (includes all monetary payments except fees, dues, and fines)	53,441,668	52,820,501	31,372,682	1,637,860	1,895,776	11,226,214	6,687,969	621,167	309,090	56,034	0	226,392	29,651
Reimbursement of fees, dues, and fines	1,055,793	927,303	456,495	62,937	0	29,584	378,287	128,490	79,623	26,563	513	12,930	8,861

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1991 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 1993[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	1,573	1,349	1,025	313	5	2	1	0	3	213	164	9	40	1	1	9
Tobacco manufacturers	9	8	3	5	0	0	0	0	0	1	0	1	0	0	0	0
Textile mill products	177	152	120	29	2	0	0	0	1	25	20	0	5	0	0	0
Apparel and other finished products made from fabric and similar materials	245	214	174	39	0	0	0	0	1	26	18	1	7	3	0	2
Lumber and wood products (except furniture)	370	298	235	55	6	2	0	0	0	69	53	1	15	2	0	1
Furniture and fixtures	340	285	235	50	0	0	0	0	0	48	37	4	7	3	0	4
Paper and allied products	496	435	320	112	3	0	0	0	0	57	44	2	11	2	0	2
Printing, publishing, and allied products	830	704	555	137	5	5	0	0	2	114	77	5	32	1	0	11
Chemicals and allied products	682	582	454	122	6	0	0	0	0	90	62	1	27	2	0	8
Petroleum refining and related industries	187	154	118	31	4	0	1	0	0	28	18	1	9	0	0	5
Rubber and miscellaneous plastic products	466	392	330	61	1	0	0	0	0	71	57	0	14	1	0	2
Leather and leather products	62	55	42	13	0	0	0	0	0	6	5	0	1	1	0	0
Stone, clay, glass, and concrete products	634	516	361	125	21	5	2	0	2	111	76	5	30	1	0	6
Primary metal industries	1,048	933	644	276	9	1	2	0	1	110	71	5	34	0	1	4
Fabricated metal products (except machinery and transportation equipment)	1,140	973	721	236	8	4	0	0	4	158	115	6	37	7	1	1
Machinery (except electrical)	1,099	938	707	200	27	1	2	0	1	156	107	6	43	1	1	3
Electrical and electronic machinery, equipment, and supplies	622	540	395	141	2	2	0	0	0	79	58	4	17	1	0	2
Aircraft and parts	412	390	220	163	6	0	0	0	1	22	18	1	3	0	0	0
Ship and boat building and repairing	192	178	132	41	2	1	0	0	2	14	8	0	6	0	0	0
Automotive and other transportation equipment	900	795	483	311	1	0	0	0	0	98	78	3	17	4	1	2

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1993[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
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks	223	191	145	45	1	0	0	0	0	30	21	2	7	0	0	2
Miscellaneous manufacturing industries	293	254	161	90	2	0	1	0	0	36	29	0	7	3	0	0
Manufacturing	12,000	10,336	7,580	2,595	111	23	9	0	18	1,562	1,136	57	369	33	5	64
Metal mining	68	51	35	15	1	0	0	0	0	16	8	0	8	0	0	1
Coal mining	711	693	323	277	84	3	6	0	0	17	15	0	2	0	0	1
Oil and gas extraction	91	55	43	12	0	0	0	0	0	29	20	0	9	0	3	4
Mining and quarrying of nonmetallic minerals (except fuels)	113	96	78	15	3	0	0	0	0	14	11	1	2	1	0	2
Mining	983	895	479	319	88	3	6	0	0	76	54	1	21	1	3	8
Construction	4,740	3,948	2,632	814	304	131	21	0	46	769	652	61	56	2	1	20
Wholesale trade	1,724	1,335	1,050	259	15	4	3	0	4	369	268	15	86	10	0	10
Retail trade	3,099	2,557	1,973	531	27	6	2	0	18	505	355	32	118	16	3	18
Finance, insurance, and real estate	764	627	467	141	16	2	1	0	0	122	92	5	25	1	0	14
U.S Postal Service	2,347	2,339	1,648	691	0	0	0	0	0	7	7	0	0	0	1	0
Local and suburban transit and interurban highway passenger transportation	702	517	379	136	1	1	0	0	0	173	156	7	10	7	0	5
Motor freight transportation and warehousing	2,472	1,897	1,426	398	50	11	1	0	11	561	483	16	62	2	1	11
Water transportation	191	176	85	83	3	4	1	0	0	11	9	0	2	0	0	4
Other transportation	448	371	272	86	9	2	1	0	1	77	72	0	5	0	0	0
Communication	758	653	468	182	2	0	0	0	1	96	62	6	28	1	0	8
Electric, gas, and sanitary services	985	781	589	169	19	3	1	0	0	183	156	1	26	0	0	21
Transportation, communication, and other utilities	5,556	4,395	3,219	1,054	84	21	4	0	13	1,101	938	30	133	10	1	49
Hotels, rooming houses, camps, and other lodging places	797	662	488	161	5	1	2	0	5	131	110	1	20	3	0	1
Personal services	241	175	140	32	3	0	0	0	0	58	44	1	13	2	0	6
Automotive repair, services, and garages	385	284	216	64	3	1	0	0	0	99	74	2	23	2	0	0
Motion pictures	233	218	124	88	1	2	1	0	2	15	9	3	3	0	0	0
Amusement and recreation services (except motion pictures)	424	350	244	89	15	0	1	0	1	67	59	0	8	3	0	4
Health services	3,114	2,459	2,028	365	23	1	0	38	4	571	473	11	87	14	0	70
Educational services	300	230	171	42	11	6	0	0	0	62	56	2	4	0	2	6
Membership organizations	599	516	289	217	5	5	0	0	0	69	55	1	13	2	0	12
Business services	2,189	1,799	1,258	494	34	3	3	0	7	364	317	6	41	5	3	18

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1993[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
Miscellaneous repair services	92	72	54	14	2	2	0	0	0	20	12	1	7	0	0	0
Legal services	38	33	25	8	0	0	0	0	0	5	4	0	1	0	0	0
Museums, art galleries, and botanical and zoological gardens	13	8	6	1	1	0	0	0	0	5	4	0	1	0	0	0
Social services	415	292	248	44	0	0	0	0	0	114	91	1	22	2	0	7
Miscellaneous services	168	141	97	42	2	0	0	0	0	24	21	1	2	0	0	3
Services	9,008	7,239	5,388	1,661	105	21	7	38	19	1,604	1,329	30	245	33	5	127
Public administration	101	73	64	9	0	0	0	0	0	25	22	0	3	0	0	3
Total, all industrial groups	40,322	33,744	24,500	8,074	750	211	53	38	118	6,140	4,853	231	1,056	106	19	313

[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 1993[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	147	127	92	35	0	0	0	0	0	16	10	2	4	0	0	4
New Hampshire	54	43	38	4	1	0	0	0	0	10	7	0	3	0	0	1
Vermont	46	40	29	9	1	0	1	0	0	5	3	0	2	1	0	0
Massachusetts	1,335	1,183	921	221	23	12	3	2	1	138	116	3	19	2	0	12
Rhode Island	192	152	122	23	7	0	0	0	0	37	37	0	0	1	0	2
Connecticut	735	622	501	111	7	1	0	2	0	100	86	5	9	3	1	9
New England	2,509	2,167	1,703	403	39	13	4	4	1	306	259	10	37	7	1	28
New York	4,341	3,755	2,385	1,181	114	31	8	13	23	531	441	19	71	14	1	40
New Jersey	1,880	1,543	1,085	369	49	35	0	0	5	313	255	10	48	12	0	12
Pennsylvania	2,711	2,277	1,690	490	53	22	5	7	10	393	321	11	61	15	1	25
Middle Atlantic	8,932	7,575	5,160	2,040	216	88	13	20	38	1,237	1,017	40	180	41	2	77
Ohio	2,345	1,988	1,520	432	25	5	3	3	0	337	265	20	52	3	3	14
Indiana	1,135	965	740	205	9	4	0	1	6	160	120	1	39	5	0	5
Illinois	2,450	2,026	1,377	455	136	26	5	0	27	404	306	23	75	7	1	12
Michigan	2,232	1,875	1,359	475	31	8	0	0	2	329	253	6	70	7	0	21
Wisconsin	785	616	452	144	10	8	0	1	1	165	126	3	36	1	1	2
East North Central	8,947	7,470	5,448	1,711	211	51	8	5	36	1,395	1,070	53	272	23	5	54
Iowa	241	168	141	26	0	1	0	0	0	69	62	0	7	0	0	4
Minnesota	576	399	261	105	22	5	0	0	6	167	133	5	29	5	0	5
Missouri	1,236	1,018	733	238	33	11	1	0	2	210	155	10	45	4	0	4
North Dakota	42	32	26	6	0	0	0	0	0	9	7	0	2	0	0	1
South Dakota	42	27	24	3	0	0	0	0	0	14	7	2	5	0	0	1
Nebraska	118	89	68	21	0	0	0	0	0	29	27	1	1	0	0	0
Kansas	260	186	150	34	1	1	0	0	0	71	58	1	12	0	0	3
West North Central	2,515	1,919	1,403	433	56	18	1	0	8	569	449	19	101	9	0	18
Delaware	98	79	57	19	3	0	0	0	0	19	15	1	3	0	0	0
Maryland	697	614	410	191	10	2	1	0	0	79	69	0	10	1	1	2
District of Columbia	258	224	187	31	2	0	3	0	1	30	26	0	4	0	0	4
Virginia	494	431	322	108	1	0	0	0	0	60	48	3	9	0	0	3

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1993[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
West Virginia	950	868	518	263	81	2	3	0	1	78	67	2	9	1	0	3
North Carolina	395	330	270	60	0	0	0	0	0	62	50	0	12	0	0	3
South Carolina	151	131	95	34	1	0	0	0	1	20	16	1	3	0	0	0
Georgia	708	619	457	161	0	0	0	0	1	86	73	2	11	0	0	3
Florida	982	836	691	141	3	0	0	1	0	131	115	3	13	0	1	14
South Atlantic	4,733	4,132	3,007	1,008	101	4	7	1	4	565	479	12	74	2	2	32
Kentucky	718	613	475	128	9	0	0	0	1	97	80	1	16	2	0	6
Tennessee	615	533	397	132	4	0	0	0	0	79	56	4	19	0	0	3
Alabama	447	366	298	67	1	0	0	0	0	80	62	3	15	0	0	1
Mississippi	258	224	185	38	1	0	0	0	0	34	30	0	4	0	0	0
East South Central	2,038	1,736	1,355	365	15	0	0	0	1	290	228	8	54	2	0	10
Arkansas	171	141	113	28	0	0	0	0	0	29	22	0	7	1	0	0
Louisiana	406	350	299	50	1	0	0	0	0	51	37	2	12	0	2	3
Oklahoma	240	193	154	39	0	0	0	0	0	42	28	3	11	1	0	4
Texas	1,039	873	636	234	1	1	1	0	0	157	126	7	24	1	3	5
West South Central	1,856	1,557	1,202	351	2	1	1	0	0	279	213	12	54	3	5	12
Montana	120	78	65	13	0	0	0	0	0	41	28	1	12	1	0	0
Idaho	90	70	65	5	0	0	0	0	0	18	15	0	3	0	0	2
Wyoming	70	63	60	3	0	0	0	0	0	6	5	0	1	0	0	1
Colorado	522	451	352	98	1	0	0	0	0	67	41	5	21	1	0	3
New Mexico	155	118	87	31	0	0	0	0	0	33	17	1	15	1	2	1
Arizona	333	274	196	76	1	0	1	0	0	54	48	3	3	0	0	5
Utah	127	96	77	18	1	0	0	0	0	29	27	1	1	1	0	1
Nevada	510	440	309	118	9	4	0	0	0	70	58	3	9	0	0	0
Mountain	1,927	1,590	1,211	362	12	4	1	0	0	318	239	14	65	4	2	13

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1993[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	977	788	571	207	4	2	1	0	3	173	118	5	50	4	0	12
Oregon	463	338	223	97	3	6	1	1	7	105	77	8	20	3	0	17
California	4,627	3,853	2,748	966	82	21	10	7	19	738	568	45	133	5	1	30
Alaska	121	99	72	25	1	0	1	0	0	21	19	1	1	1	0	0
Hawaii	345	290	199	74	8	3	5	0	1	53	42	1	10	0	0	2
Guam	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Pacific	6,535	5,368	3,813	1,369	98	32	18	8	30	1,092	818	60	214	13	1	61
Puerto Rico	307	218	188	30	0	0	0	0	0	81	73	3	5	0	1	7
Virgin Islands	23	12	10	2	0	0	0	0	0	8	8	0	0	2	0	1
Outlying areas	330	230	198	32	0	0	0	0	0	89	81	3	5	2	1	8
Total, all States and areas	40,322	33,744	24,500	8,074	750	211	53	38	118	6,140	4,853	231	1,056	106	19	313

[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 1993[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	735	622	501	111	7	1	0	2	0	100	86	5	9	3	1	9
Maine	147	127	92	35	0	0	0	0	0	16	10	2	4	0	0	4
Massachusetts	1,335	1,183	921	221	23	12	3	2	1	138	116	3	19	2	0	12
New Hampshire	54	43	38	4	1	0	0	0	0	10	7	0	3	0	0	1
Rhode Island	192	152	122	23	7	0	0	0	0	37	37	0	0	1	0	2
Vermont	46	40	29	9	1	0	1	0	0	5	3	0	2	1	0	0
Region I	2,509	2,167	1,703	403	39	13	4	4	1	306	259	10	37	7	1	28
Delaware	98	79	57	19	3	0	0	0	0	19	15	1	3	0	0	0
New Jersey	1,880	1,543	1,085	369	49	35	0	0	5	313	255	10	48	12	0	12
New York	4,341	3,755	2,385	1,181	114	31	8	13	23	531	441	19	71	14	1	40
Puerto Rico	307	218	188	30	0	0	0	0	0	81	73	3	5	0	1	7
Virgin Islands	23	12	10	2	0	0	0	0	0	8	8	0	0	2	0	1
Region II	6,649	5,607	3,725	1,601	166	66	8	13	28	952	792	33	127	28	2	60
District of Columbia	258	224	187	31	2	0	3	0	1	30	26	0	4	0	0	4
Maryland	697	614	410	191	10	2	1	0	0	79	69	0	10	1	1	2
Pennsylvania	2,711	2,277	1,690	490	53	22	5	7	10	393	321	11	61	15	1	25
Virginia	494	431	322	108	1	0	0	0	0	60	48	3	9	0	0	3
West Virginia	950	868	518	263	81	2	3	0	1	78	67	2	9	1	0	3
Region III	5,110	4,414	3,127	1,083	147	26	12	7	12	640	531	16	93	17	2	37
Alabama	447	366	298	67	1	0	0	0	0	80	62	3	15	0	0	1
Florida	982	836	691	141	3	0	0	1	0	131	115	3	13	0	1	14
Georgia	708	619	457	161	0	0	0	0	1	86	73	2	11	0	0	3
Kentucky	718	613	475	128	9	0	0	0	1	97	80	1	16	2	0	6
Mississippi	258	224	185	38	1	0	0	0	0	34	30	0	4	0	0	0
North Carolina	395	330	270	60	0	0	0	0	0	62	50	0	12	0	0	3

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1993[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	151	131	95	34	1	0	0	0	1	20	16	1	3	0	0	0
Tennessee	615	533	397	132	4	0	0	0	0	79	56	4	19	0	0	3
Region IV	4,274	3,652	2,868	761	19	0	0	1	3	589	482	14	93	2	1	30
Illinois	2,450	2,026	1,377	455	136	26	5	0	27	404	306	23	75	7	1	12
Indiana	1,135	965	740	205	9	4	0	1	6	160	120	1	39	5	0	5
Michigan	2,232	1,875	1,359	475	31	8	0	0	2	329	253	6	70	7	0	21
Minnesota	576	399	261	105	22	5	0	0	6	167	133	5	29	5	0	5
Ohio	2,345	1,988	1,520	432	25	5	3	3	0	337	265	20	52	3	3	14
Wisconsin	785	616	452	144	10	8	0	1	1	165	126	3	36	1	1	2
Region V	9,523	7,869	5,709	1,816	233	56	8	5	42	1,562	1,203	58	301	28	5	59
Arkansas	171	141	113	28	0	0	0	0	0	29	22	0	7	1	0	0
Louisiana	406	350	299	50	1	0	0	0	0	51	37	2	12	0	2	3
New Mexico	155	118	87	31	0	0	0	0	0	33	17	1	15	1	2	1
Oklahoma	240	193	154	39	0	0	0	0	0	42	28	3	11	1	0	4
Texas	1,039	873	636	234	1	1	1	0	0	157	126	7	24	1	3	5
Region VI	2,011	1,675	1,289	382	2	1	1	0	0	312	230	13	69	4	7	13
Iowa	241	168	141	26	0	1	0	0	0	69	62	0	7	0	0	4
Kansas	260	186	150	34	1	1	0	0	0	71	58	1	12	0	0	3
Missouri	1,236	1,018	733	238	33	11	1	0	2	210	155	10	45	4	0	4
Nebraska	118	89	68	21	0	0	0	0	0	29	27	1	1	0	0	0
Region VII	1,855	1,461	1,092	319	34	13	1	0	2	379	302	12	65	4	0	11
Colorado	522	451	352	98	1	0	0	0	0	67	41	5	21	1	0	3
Montana	120	78	65	13	0	0	0	0	0	41	28	1	12	1	0	0
North Dakota	42	32	26	6	0	0	0	0	0	9	7	0	2	0	0	1
South Dakota	42	27	24	3	0	0	0	0	0	14	7	2	5	0	0	1
Utah	127	96	77	18	1	0	0	0	0	29	27	1	1	1	0	1
Wyoming	70	63	60	3	0	0	0	0	0	6	5	0	1	0	0	1
Region VIII	923	747	604	141	2	0	0	0	0	166	115	9	42	3	0	7

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1993[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Arizona	333	274	196	76	1	0	1	0	0	54	48	3	3	0	0	5
California	4,627	3,853	2,748	966	82	21	10	7	19	738	560	45	133	5	1	30
Hawaii	345	290	199	74	8	[3]	5	0	1	53	42	1	10	0	0	2
Guam	2	0	0	0	0	0	0	0	0	2	2	0	0	0	0	0
Nevada	510	440	309	118	9	4	0	0	0	70	58	3	9	0	0	0
Region IX	5,817	4,857	3,452	1,234	100	28	16	7	20	917	710	52	155	5	1	37
Alaska	121	99	72	25	1	0	1	0	0	21	19	1	1	1	0	0
Idaho	90	70	65	5	0	0	0	0	0	18	15	0	3	0	0	2
Oregon	463	338	223	97	3	6	1	1	7	105	77	8	20	3	0	17
Washington	977	788	571	207	4	2	1	0	3	173	118	5	50	4	0	12
Region X	1,651	1,295	931	334	8	8	3	1	10	317	229	14	74	8	0	31
Total, all States and areas	40,322	33,744	24,500	8,074	750	211	53	38	118	6,140	4,853	231	1,056	106	19	313

[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 1993[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	32,855	100.0	0.0	23,537	100.0	7,996	100.0	861	100.0	217	100.0	46	100.0	38	100.0	160	100.0
Agreement of the parties	10,170	31.0	100.0	8,354	35.4	1,270	15.8	471	54.7	2	0.9	4	8.6	9	23.6	60	37.5
Informal settlement	9,819	29.9	96.5	8,213	34.8	1,184	14.8	347	40.3	2	0.9	4	8.6	9	23.6	60	37.5
Before issuance of complaint	7,019	21.4	69.0	5,823	24.7	875	10.9	280	32.5	[2]	—	1	2.1	6	15.7	34	21.2
After issuance of complaint, before opening of hearing	2,745	8.4	27.0	2,339	9.9	305	3.8	67	7.7	2	0.9	3	6.5	3	7.8	26	16.2
After hearing opened, before issuance of administrative law judge's decision	55	0.2	0.5	51	0.2	4	0.0	0	—	0	—	0	—	0	—	0	—
Formal settlement	351	1.1	3.5	141	0.5	86	1.0	124	14.4	0	—	0	—	0	—	0	—
After issuance of complaint, before opening of hearing	264	0.8	2.6	61	0.2	80	1.0	123	14.2	0	—	0	—	0	—	0	—
Stipulated decision	12	0.0	0.1	9	0.0	1	0.0	2	0.2	0	—	0	—	0	—	0	—
Consent decree	252	0.8	2.5	52	0.2	79	0.9	121	14.0	0	—	0	—	0	—	0	—
After hearing opened	87	0.3	0.9	80	0.3	6	0.0	1	0.1	0	—	0	—	0	—	0	—
Stipulated decision	4	0.0	0.0	2	0.0	1	0.0	1	0.1	0	—	0	—	0	—	0	—
Consent decree	83	0.3	0.8	78	0.3	5	0.0	0	—	0	—	0	—	0	—	0	—
Compliance with	853	2.6	100.0	682	2.8	154	1.9	14	1.6	1	0.4	1	2.1	1	2.6	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1993[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
Administrative law judge's decision	33	0.1	3.9	32	0.1	1	0 0	0	—	0	—	0	—	0	—	0	—
Board decision	537	1 6	63 0	453	1.9	69	0 8	12	1.3	1	0.4	1	2 1	1	2.6	0	—
Adopting administrative law judge's decision (no exceptions filed)	200	0 6	23 4	172	0 7	23	0.2	4	0.4	0	—	1	2.1	0	—	0	—
Contested	337	1 0	39 5	281	1 1	46	0.5	8	0.9	1	0.4	0	—	1	2 6	0	—
Circuit court of appeals decree	278	0.8	32.6	192	0 8	84	1.0	2	0.2	0	—	0	—	0	—	0	—
Supreme Court action	5	0.0	0 6	5	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	9,979	30.4	100.0	7,467	31 7	2,168	27.1	235	27 2	0	—	26	56.5	15	39.4	68	42.5
Before issuance of complaint	9,700	29 5	97.3	7,220	30 7	2,146	26.8	228	26.4	(2)	—	26	56.5	12	31.5	68	42 5
After issuance of complaint, before opening of hearing	252	0 8	2.5	222	0 9	21	0.2	6	0.6	0	—	0	—	3	7.8	0	—
After hearing opened, before administrative law judge's decision	19	0.1	0 2	17	0.0	1	0.0	1	0.1	0	—	0	—	0	—	0	—
After administrative law judge's decision, before Board decision	8	0.0	0 1	8	0.0	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0 0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	11,476	34.9	100 0	6,887	29 2	4,398	55.0	131	15.2	0	—	15	32 6	13	34.2	32	20 0
Before issuance of complaint	11,273	34.3	98.5	6,738	28.6	4,372	54.7	106	12.3	(2)	—	12	26.0	13	34.2	32	20.0
After issuance of complaint, before opening of hearing	84	0 3	0.7	67	0.2	11	0.1	5	0.5	0	—	1	2 1	0	—	0	—
After hearing opened, before administrative law judge's decision	17	0.1	0 1	15	0.0	2	0.0	0	—	0	—	0	—	0	—	0	—
By administrative law judge's decision	32	0.1	0.0	20	0.1	2	0.0	10	1 1	0	—	0	—	0	—	0	—
By Board decision	65	0.2	0.6	42	0 1	11	0.1	10	1.1	0	—	2	4.3	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	6	0 0	0.1	6	0 0	0	—	0	—	0	—	0	—	0	—	0	—
Contested	59	0 2	0.5	36	0 1	11	0.1	10	1.1	0	—	2	4.3	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1993[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
By circuit court of appeals decree	5	0.0	0.0	5	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
10(k) actions (see Table 7A for details of dispositions)	212	0.6	0.0	0	—	0	—	0	—	212	97.2	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	165	0.5	0.0	145	0.6	5	0.0	13	1.1	2	0.9	0	—	0	—	0	—

[1] 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 1993[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	212	100.0
Agreement of the parties—informal settlement	85	40.2
Before 10(k) notice	61	28.8
After 10(k) notice, before opening of 10(k) hearing	19	9.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	5	2.4
Compliance with Board decision and determination of dispute	9	4.3
Withdrawal	82	38.5
Before 10(k) notice	76	35.6
After 10(k) notice, before opening of 10(k) hearing	4	1.9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.5
After Board decision and determination of dispute	1	0.5
Dismissal	36	17.0
Before 10(k) notice	26	12.3
After 10(k) notice, before opening of 10(k) hearing	7	3.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	3	1.4
By Board decision and determination of dispute	0	—

[1] See Glossary of terms for definitions

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1993[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	32,855	100 0	23,537	100.0	7,996	100.0	861	100 0	217	100.0	46	100.0	38	100.0	160	100.0
Before issuance of complaint	28,204	86.0	19,780	84 0	7,393	92.4	614	71.3	212	97.7	39	84.8	31	81 6	134	83.8
After issuance of complaint, before opening of hearing	3,345	10 2	2,689	11.4	417	5.2	201	23.3	2	0.9	4	8.7	6	15.8	26	16 3
After hearing opened, before issuance of administrative law judge's decision	178	0.5	163	0 7	13	0.2	2	0.2	0	—	0	—	0	—	0	—
After administrative law judge's decision, before issuance of Board decision	73	0 2	60	0.3	3	0.0	10	1.2	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	206	0.6	178	0 7	23	0.3	4	0.5	1	0.5	1	2 2	0	—	0	—
After Board decision, before circuit court decree	396	1.2	317	1.3	57	0.7	18	2.1	1	0.4	2	4 3	1	2.6	0	—
After circuit court decree, before Supreme Court action	283	1 0	197	1 0	84	1.1	2	0.2	0	—	0	—	0	—	0	—
After Supreme Court action	5	0.0	5	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Otherwise	165	0.5	145	0.6	5	0.0	13	1 1	2	0 9	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1993[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	6,707	100 0	5,358	100.0	253	100.0	1,096	100.0	108	100.0
Before issuance of notice of hearing	2,608	38.9	1,882	35.1	131	51.8	595	54.3	85	78.7
After issuance of notice, before close of hearing	3,274	48.8	2,774	51.8	91	36.0	409	37 3	4	3 7
After hearing closed, before issuance of decision	69	1.0	60	1.1	1	0 4	8	0 7	0	—
After issuance of Regional Director's decision	741	11.1	627	11.7	30	11.8	84	7.7	18	16.7
After issuance of Board decision	15	0.2	15	0.3	0	—	0	—	1	0 9

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1993[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	6,707	100.0	5,358	100.0	253	100.0	1,096	100.0	108	100.0
Certification issued, total	3,778	56.4	3,152	58.8	80	31.6	546	49 8	55	50.9
After:										
Consent election	27	0.4	22	0.4	1	0 4	4	0 4	0	—
Before notice of hearing	10	0.1	10	0.2	0	—	0	—	0	—
After notice of hearing, before hearing closed	16	0 2	11	0.2	1	0 4	4	0.4	0	—
After hearing closed, before decision	1	0.0	1	0.0	0	—	0	—	0	—
Stipulated election	3,224	48.1	2,671	49.9	62	24 5	491	44 8	38	35.2
Before notice of hearing	1,017	15.2	742	13.8	25	9 9	250	22.8	38	35.2
After notice of hearing, before hearing closed	2,180	32 5	1,904	35.5	37	14 6	239	21.8	0	—
After hearing closed, before decision	27	0.4	25	0.5	0	—	2	0.2	0	—
Expedited election	1	0.0	0	—	1	0 4	0	—	0	—
Regional Director-directed election	514	7.7	447	8.3	16	6.3	51	4.7	16	14.8
Board-directed election	12	0.2	12	0.2	0	—	0	—	1	0.9
By withdrawal, total	2,457	36.6	2,001	37.3	113	44.7	343	31.3	46	42.6
Before notice of hearing	1,312	19.6	1,040	19.4	74	29 2	198	18 1	41	38.0
After notice of hearing, before hearing closed	999	14 9	830	15.5	37	14 6	132	12.0	3	2.8
After hearing closed, before decision	38	0.6	33	0.6	1	0 4	4	0 4	0	—
After Regional Director's decision and direction of election	108	1 6	98	1.8	1	0 4	9	0.8	2	1.9
After Board decision and direction of election	0	—	0	—	0	—	0	—	0	—
By dismissal, total	472	7.0	205	3.9	60	23.7	207	18.9	7	6.5
Before notice of hearing	268	4.0	90	1.7	31	12.3	147	13.4	6	5.6
After notice of hearing, before hearing closed	79	1.2	29	0.5	16	6.3	34	3.1	1	0.9
After hearing closed, before decision	3	0.0	1	0.0	0	—	2	0.2	0	—
By Regional Director's decision	119	1.8	82	1.6	13	5.1	24	2.2	0	—
By Board decision	3	0.0	3	0.1	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1993

	AC	UC
Total, all	22	295
Certification amended or unit clarified	10	37
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	10	37
By Regional Director's decision	10	37
By Board decision	0	0
Dismissed	1	72
Before hearing	0	9
By Regional Director's decision	0	9
By Board decision	0	0
After hearing	1	63
By Regional Director's decision	1	63
By Board decision	0	0
Withdrawn	11	186
Before hearing	10	179
After hearing	1	7

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1993[1]

Type of case	Type of election					
	Total	Consent	Supulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total						
Elections	3,631	28	3,060	2	540	1
Eligible voters	223,623	1,141	193,880	78	38,482	42
Valid votes	203,280	973	169,800	53	32,446	8
RC cases						
Elections	2,991	23	2,496	2	470	0
Eligible voters	203,674	925	167,342	78	35,329	0
Valid votes	177,527	812	146,656	53	30,006	0
RM cases.						
Elections	64	1	54	0	8	1
Eligible voters	3,028	163	2,742	0	81	42
Valid votes	2,482	120	2,255	0	99	8
RD cases						
Elections	531	4	481	0	46	0
Eligible voters	24,485	53	22,800	0	1,632	0
Valid votes	21,548	41	20,142	0	1,365	0
UD cases:						
Elections	45	0	29	0	16	—
Eligible voters	2,436	0	996	0	1,440	—
Valid votes	1,723	0	747	0	976	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1993

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	3,770	94	90	3,586	3,152	82	79	2,991	72	5	3	64	546	7	8	531
Rerun required	—	—	69	—	—	—	59	—	—	—	2	—	—	—	8	—
Runoff required	—	—	21	—	—	—	20	—	—	—	1	—	—	—	0	—
Consent elections	30	0	2	28	25	0	2	23	1	0	0	1	4	0	0	4
Rerun required	—	—	2	—	—	—	2	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,171	68	72	3,031	2,619	60	63	2,496	60	4	2	54	492	4	7	481
Rerun required	—	—	55	—	—	—	47	—	—	—	1	—	—	—	7	—
Runoff required	—	—	17	—	—	—	16	—	—	—	1	—	—	—	0	—
Regional Director-directed	565	25	16	524	505	21	14	470	10	1	1	8	50	3	1	46
Rerun required	—	—	12	—	—	—	10	—	—	—	1	—	—	—	1	—
Runoff required	—	—	4	—	—	—	4	—	—	—	0	—	—	—	0	—
Board-directed	2	0	0	2	2	0	0	2	0	0	0	0	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	2	1	0	1	1	1	0	0	1	0	0	1	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1993

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	3,770	156	4 1	121	3.2	39	1 0	195	5.2	160	4.2
By type of case											
In RC cases	3,152	136	4.3	105	3.3	37	1.2	173	5.5	142	4.5
In RM cases	72	2	2.8	6	8.3	1	1.4	3	4.2	7	9.7
In RD cases	546	18	3.3	10	1.8	1	0.2	19	3.5	11	2.0
By type of election											
Consent elections	30	2	6.7	0	—	0	—	2	6 7	0	—
Stipulated elections	3,171	105	3.3	93	2 9	24	0.8	129	4 1	117	3 7
Expedited elections	2	0	—	0	—	0	—	0	—	0	—
Regional Director-directed elections	565	49	8.7	28	5 0	15	2 7	64	11.3	43	7.6
Board-directed elections	2	0	—	0	—	0	—	0	—	0	—

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1993[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	299	100.0	109	36 5	182	60.9	8	2 6
By type of case								
RC cases	267	100 0	104	39.0	155	58.1	8	2 9
RM cases	6	100 0	0	—	6	100.0	0	—
RD cases	26	100.0	5	19.2	21	80.8	0	—
By type of election								
Consent elections	3	100.0	0	—	30	100.0	0	—
Stipulated elections	213	100.0	71	33.3	138	64.8	4	1.9
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	83	100.0	38	45 8	41	49.4	4	4 8
Board-directed elections	0	—	0	—	0	—	0	—

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1993[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	299	104	195	147	75 4	48	24.6
By type of case							
RC cases	267	947	173	133	76.9	40	23.1
RM cases	6	3	3	1	33 3	2	66.7
RD cases	26	7	19	13	68.4	6	31.6
By type of election:							
Consent elections	3	1	2	1	50 0	1	50.0
Stipulated elections	213	84	129	97	75 2	32	24.8
Expedited elections	0	0	0	0	—	0	—
Regional Director-directed elections	83	19	64	49	76.6	15	23.4
Board-directed elections	0	0	0	0	—	0	—

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1993[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	68	100.0	17	25.0	51	75.0	18	26.5
By type of case								
RC cases	59	100.0	12	20.3	47	79.7	15	25.4
RM cases	7	100.0	4	57.1	3	42.9	2	28.6
RD cases	2	100.0	1	50.0	1	50.0	1	50.0
By type of election								
Consent elections	2	100.0	1	50 0	1	50.0	1	50.0
Stipulated elections	55	100 0	13	23.6	42	76.4	11	20.0
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	11	100 0	3	27.3	8	72.7	6	54.5
Board-directed elections	0	—	0	—	0	—	0	—

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

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1993

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	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total	45	19	42 2	26	57.8	2,436	453	18.6	1,983	81.4	1,723	70 7	372	15.3
AFL–CIO unions	39	16	41.0	23	59 0	1,957	251	12 8	1,706	87.2	1,496	76 4	223	11.4
Other national unions	4	2	50.0	2	50.0	109	35	32.1	74	67.9	76	69.7	28	25.7
Other local unions	2	1	50.0	1	50.0	370	167	45.1	203	54.9	151	40.8	121	32 7

[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 1993[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by AFL–CIO unions	In units won by Other national unions	In units won by Other local unions	
	A All representation elections												
AFL–CIO	3,216	45.7	1,471	1,471	—	—	1,745	189,662	70,997	70,997	—	—	118,665
Other national unions	103	56.3	58	—	58	—	45	5,867	3,182	—	3,182	—	2,685
Other local unions	159	53 5	85	—	—	85	74	8,983	4,025	—	—	4,025	4,958
1-union elections	3,478	46.4	1,614	1,471	58	85	1,864	204,512	78,204	70,997	3,182	4,025	126,308
AFL–CIO v. AFL–CIO	38	78 9	30	30	—	—	8	3,826	3,209	3,209	—	—	617
AFL–CIO v. National	5	80 0	4	2	2	—	1	866	407	242	165	—	459
AFL–CIO v. Local	50	88 0	44	26	—	18	6	18,756	12,166	10,284	—	1,882	6,590
National v. Local	3	100.0	3	—	3	0	0	239	239	—	239	0	0
National v. National	1	100 0	1	—	1	—	0	84	84	—	—	84	—
Local v. Local	7	85 7	6	—	—	6	1	1,726	1,679	—	—	1,679	47
2-union elections	104	84.6	88	58	6	24	16	25,497	17,784	13,735	488	3,561	7,713
AFL–CIO v AFL–CIO v. AFL–CIO	2	100.0	2	2	—	—	0	941	941	941	—	—	0
AFL–CIO v AFL–CIO v. Local	2	100.0	2	2	—	0	0	237	237	237	—	0	0
3 (or more)-union elections	4	100.0	4	4	0	0	0	1,178	1,178	1,178	0	0	0
Total representation elections	3,586	47.6	1,706	1,533	64	109	1,880	231,187	97,166	85,910	3,670	7,586	134,021

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1993[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
	B. Elections in RC cases												
AFL–CIO	2,656	48.9	1,300	1,300	—	—	1,356	166,623	61,745	61,745	—	—	104,878
Other national unions	93	61.3	57	—	57	—	36	5,405	3,089	—	3,089	—	2,316
Other local unions	139	56.8	79	—	—	79	60	6,957	2,910	—	—	2,910	4,047
1-union elections	2,888	49 7	1,436	1,300	57	79	1,452	178,985	67,744	61,745	3,089	2,910	111,241
AFL–CIO v AFL–CIO	34	79.4	27	27	—	—	7	2,008	1,673	1,673	—	—	335
AFL–CIO v National	4	75.0	3	1	2	—	1	698	239	74	165	—	459
AFL–CIO v. Local	50	88.0	44	26	—	18	6	18,756	12,166	10,284	—	1,882	6,590
National v. Local	3	100.0	3	—	3	0	0	239	239	—	239	0	0
National v National	1	100.0	1	—	1	—	0	84	84	—	84	—	0
Local v. Local	7	85 7	6	—	—	6	1	1,726	1,679	—	—	1,679	47
2-union elections	99	84.8	84	54	6	24	15	23,511	16,080	12,031	488	3,561	7,431
AFL–CIO v. AFL–CIO v AFL–CIO	2	100.0	2	2	—	—	0	941	941	941	—	—	0
AFL–CIO v AFL–CIO v. Local	2	100.0	2	2	—	0	0	237	237	237	—	0	0
3 (or more)-union elections	4	100 0	4	4	0	0	0	1,178	1,178	1,178	0	0	0
Total RC elections	2,991	51 0	1,524	1,358	63	103	1,467	203,674	85,002	74,954	3,577	6,471	118,672
	C. Elections in RM cases												
AFL–CIO	56	23.2	13	13	—	—	43	1,190	457	457	—	—	733
Other national unions	1	0.0	0	—	0	—	1	40	0	—	0	—	40
Other local unions	3	0 0	0	—	—	0	3	94	0	—	—	0	94
1-union elections	60	21 7	13	13	0	0	47	1,324	457	457	0	0	867
AFL–CIO v. AFL–CIO	3	100.0	3	3	—	—	0	1,536	1,536	1,536	—	—	0
AFL–CIO v. National	1	100.0	1	1	0	—	0	168	168	168	0	—	0
2-union elections	4	100.0	4	4	0	0	0	1,704	1,704	1,704	0	0	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1993[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
Total RM elections	64	26 6	17	17	0	0	47	3,028	2,161	2,161	0	0	867
	D. Elections in RD cases												
AFL–CIO	504	31.3	158	158	—	—	346	21,849	8,795	8,795	—	—	13,054
Other national unions	9	11.1	1	—	1	—	8	422	93	—	93	—	329
Other local unions	17	35.3	6	—	—	6	11	1,932	1,115	—	—	1,115	817
1-union elections	530	31.1	165	158	1	6	365	24,203	10,003	8,795	93	1,115	14,200
AFL–CIO v. AFL–CIO	1	0.0	0	0	—	—	1	282	0	0	—	—	282
2-union elections	1	0 0	0	0	0	0	1	282	0	0	0	0	282
Total RD elections	531	31.1	165	158	1	6	366	24,485	10,003	8,795	93	1,115	14,482

[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 1993[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
	A. All representation elections										
AFL–CIO	167,653	41,026	41,026	—	—	20,501	36,258	36,258	—	—	69,868
Other national unions	5,127	1,914	—	1,914	—	893	856	—	856	—	1,464
Other local unions	7,780	2,379	—	—	2,379	1,000	1,465	—	—	1,465	2,936
1-union elections	180,560	45,319	41,026	1,914	2,379	22,394	38,579	36,258	856	1,465	74,268
AFL–CIO v AFL–CIO	3,149	2,299	2,299	—	—	280	171	171	—	—	399
AFL–CIO v National	786	322	148	174	—	8	210	127	83	—	246
AFL–CIO v. Local	14,900	8,842	5,955	—	2,887	385	2,083	1,331	—	752	3,590
National v. Local	224	212	—	153	59	12	0	—	0	0	0
National v. National	66	59	—	59	—	7	0	—	0	—	0
Local v. Local	1,368	1,312	—	—	1,312	10	18	—	—	18	28
2-union elections	20,493	13,046	8,402	386	4,258	702	2,482	1,629	83	770	4,263
AFL–CIO v. AFL–CIO v AFL–CIO	323	313	313	—	—	10	0	0	—	—	0
AFL–CIO v. AFL–CIO v Local	181	179	177	—	2	2	0	0	—	0	0
3 (or more)-union elections	504	492	490	0	2	12	0	0	0	0	0
Total representation elections	201,557	58,857	49,918	2,300	6,639	23,108	41,061	37,887	939	2,235	78,531

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1993[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
	B Elections in RC cases										
AFL–CIO	147,444	35,849	35,849	—	—	17,510	32,512	32,512	—	—	61,573
Other national unions	4,750	1,869	—	1,869	—	861	771	—	771	—	1,249
Other local unions	5,970	1,739	—	—	1,739	649	1,221	—	—	1,221	2,361
1-union elections	158,164	39,457	35,849	1,869	1,739	19,020	34,504	32,512	771	1,221	65,183
AFL–CIO v AFL–CIO	1,673	1,123	1,123	—	—	245	71	71	—	—	234
AFL–CIO v. National	628	164	67	97	—	8	210	127	83	—	246
AFL–CIO v. Local	14,900	8,842	5,955	—	2,887	385	2,083	1,331	—	752	3,590
National v. Local	224	212	—	153	59	12	0	—	0	0	0
National v. National	66	59	—	59	—	7	0	—	0	—	0
Local v. Local	1,368	1,312	—	—	1,312	10	18	—	—	18	28
2-union elections	18,859	11,712	7,145	309	4,258	667	2,382	1,529	83	770	4,098
AFL–CIO v AFL–CIO v. AFL–CIO	323	313	313	—	—	10	0	0	—	—	0
AFL–CIO v AFL–CIO v. Local	181	179	177	—	2	2	0	0	—	0	0
3 (or more)-union elections	504	492	490	0	2	12	0	0	0	0	0
Total RC elections	177,527	51,661	43,484	2,178	5,999	19,699	36,886	34,041	854	1,991	69,281
	C Elections in RM cases										
AFL–CIO	991	241	241	—	—	112	172	172	—	—	466
Other national unions	38	0	—	0	—	0	17	—	17	—	21
Other local unions	84	0	—	—	0	0	20	—	—	20	64
1-union elections	1,113	241	241	0	0	112	209	172	17	20	551
AFL–CIO v. AFL–CIO	1,211	1,176	1,176	—	—	35	0	0	—	—	0
AFL–CIO v. National	158	158	81	77	—	0	0	0	0	—	0
2-union elections	1,369	1,334	1,257	77	0	35	0	0	0	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1993[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
Total RM elections	2,482	1,575	1,498	77	0	147	209	172	17	20	551
	D. Elections in RD cases										
AFL–CIO	19,218	4,936	4,936	—	—	2,879	3,574	3,574	—	—	7,829
Other national unions	339	45	—	45	—	32	68	—	68	—	194
Other local unions	1,726	640	—	—	640	351	224	—	—	224	511
1-union elections	21,283	5,621	4,936	45	640	3,262	3,866	3,574	68	224	8,534
AFL–CIO v. AFL–CIO	265	0	0	—	—	0	100	100	—	—	165
2-union elections	265	0	0	0	0	0	100	100	0	0	165
Total RD elections	21,548	5,621	4,936	45	640	3,262	3,966	3,674	68	224	8,699

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1993

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	12	5	3	1	1	7	550	529	213	137	16	60	316	174
New Hampshire	13	6	6	0	0	7	1,052	1,006	357	357	0	0	649	84
Vermont	3	1	1	0	0	2	48	46	22	22	0	0	24	15
Massachusetts	94	39	36	1	2	55	4,454	4,265	1,978	1,424	330	224	2,287	1,382
Rhode Island	11	7	7	0	0	4	1,765	1,631	927	927	0	0	704	1,316
Connecticut	48	27	21	2	4	21	2,403	2,050	1,044	789	7	248	1,006	1,250
New England	181	85	74	4	7	96	10,272	9,527	4,541	3,656	353	532	4,986	4,221
New York	270	146	124	9	13	124	15,987	12,946	7,085	5,746	664	675	5,861	8,519
New Jersey	162	82	69	1	12	80	7,007	5,992	3,422	2,744	32	646	2,570	3,974
Pennsylvania	227	111	89	10	12	116	19,734	17,337	7,953	6,159	361	1,433	9,384	6,222
Middle Atlantic	659	339	282	20	37	320	42,728	36,275	18,460	14,649	1,057	2,754	17,815	18,715
Ohio	203	92	87	4	1	111	12,881	11,617	5,120	5,023	79	18	6,497	4,210
Indiana	106	43	38	2	3	63	6,308	6,008	2,661	2,549	101	11	3,347	1,561
Illinois	215	85	74	5	6	130	9,663	8,474	3,858	3,398	199	261	4,616	3,521
Michigan	194	89	85	0	4	105	9,575	8,422	3,865	3,597	74	194	4,557	3,830
Wisconsin	104	41	39	1	1	63	5,057	4,519	2,142	1,938	86	118	2,377	2,462
East North Central	822	350	323	12	15	472	43,484	39,040	17,646	16,505	539	602	21,394	15,584
Iowa	58	31	31	0	0	27	2,768	2,424	1,091	1,085	6	0	1,333	932
Minnesota	113	59	57	0	2	54	5,399	4,697	2,097	2,040	0	57	2,600	1,658
Missouri	126	50	50	0	0	76	6,982	6,185	2,740	2,740	0	0	3,445	1,912
North Dakota	4	1	1	0	0	3	154	127	42	42	0	0	85	65
South Dakota	7	1	1	0	0	6	411	330	115	115	0	0	215	5
Nebraska	18	12	12	0	0	6	398	317	167	167	0	0	150	255
Kansas	43	19	19	0	0	24	2,657	2,466	1,153	1,153	0	0	1,313	989
West North Central	369	173	171	0	2	196	18,769	16,546	7,405	7,342	6	57	9,141	5,816

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Delaware	12	3	3	0	0	9	1,771	1,437	679	677	0	2	758	247
Maryland	56	23	17	0	6	33	3,100	2,640	1,306	966	0	340	1,334	1,273
District of Columbia	15	12	9	0	3	3	2,007	1,635	1,424	313	0	1,111	211	1,924
Virginia	36	17	15	2	0	19	3,020	2,647	1,235	1,121	114	0	1,412	1,075
West Virginia	48	28	24	4	0	20	1,632	1,531	742	603	139	0	789	776
North Carolina	38	19	14	4	1	19	4,798	4,306	1,881	1,823	33	25	2,425	1,187
South Carolina	11	6	6	0	0	5	2,000	1,919	778	778	0	0	1,141	760
Georgia	54	31	30	1	0	23	3,719	3,175	1,673	1,662	11	0	1,502	2,355
Florida	69	31	28	3	0	38	3,197	3,033	1,406	1,201	91	114	1,627	949
South Atlantic	339	170	146	14	10	169	25,244	22,323	11,124	9,144	388	1,592	11,199	10,546
Kentucky	67	37	34	3	0	30	5,686	5,134	2,320	2,242	78	0	2,814	2,223
Tennessee	39	20	20	0	0	19	4,031	3,687	1,801	1,785	0	16	1,886	2,169
Alabama	45	26	25	1	0	19	4,253	3,872	1,907	1,749	158	0	1,965	1,521
Mississippi	25	14	14	0	0	11	4,443	3,888	1,948	1,948	0	0	1,940	2,165
East South Central	176	97	93	4	0	79	18,413	16,581	7,976	7,724	236	16	8,605	8,078
Arkansas	27	9	9	0	0	18	6,639	5,573	4,026	3,039	0	987	1,547	4,629
Louisiana	28	16	15	1	0	12	3,367	3,020	1,594	1,450	130	14	1,426	2,154
Oklahoma	28	11	11	0	0	17	1,699	1,495	620	611	9	0	875	576
Texas	96	49	46	1	2	47	9,752	8,645	4,389	4,030	138	221	4,256	5,085
West South Central	179	85	81	2	2	94	21,457	18,733	10,629	9,130	277	1,222	8,104	12,444
Montana	25	10	10	0	0	15	657	598	312	312	0	0	286	283
Idaho	9	5	5	0	0	4	325	283	188	188	0	0	95	208
Wyoming	2	0	0	0	0	2	46	42	13	13	0	0	29	0
Colorado	30	12	10	0	2	18	1,130	1,015	432	403	4	25	583	216
New Mexico	24	10	8	0	2	14	603	506	224	209	9	6	282	209
Arizona	37	20	17	1	2	17	3,335	2,591	1,188	1,078	28	82	1,403	885
Utah	16	4	3	1	0	12	559	458	196	166	30	0	262	190
Nevada	28	14	14	0	0	14	896	777	456	442	0	14	321	619
Mountain	171	75	67	2	6	96	7,551	6,270	3,009	2,811	71	127	3,261	2,610

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Washington	114	53	48	1	4	61	7,241	6,245	3,456	3,358	3	95	2,789	3,632
Oregon	72	28	26	1	1	44	3,666	3,216	1,371	1,273	63	35	1,845	1,074
California	386	191	177	4	10	195	18,484	15,752	7,928	7,090	224	614	7,824	8,585
Alaska	16	4	4	0	0	12	658	565	229	229	0	0	336	130
Hawaii	34	15	15	0	0	19	5,849	4,131	3,257	2,581	22	654	874	4,643
Guam	2	0	0	0	0	2	4,091	3,613	1,602	1,602	0	0	2,011	0
Pacific	624	291	270	6	15	333	39,989	33,522	17,843	16,133	312	1,398	15,679	18,064
Puerto Rico	60	36	21	0	15	24	2,859	2,431	1,143	569	0	574	1,288	893
Virgin Islands	6	5	5	0	0	1	421	309	142	142	0	0	167	195
Outlying Areas	66	41	26	0	15	25	3,280	2,740	1,285	711	0	574	1,455	1,088
Total, all States and areas	3,586	1,706	1,533	64	109	1,880	231,187	201,557	99,918	87,805	3,239	8,874	101,639	97,166

[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 1993

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	10	5	3	1	1	5	525	504	202	126	16	60	302	174
New Hampshire	11	5	5	0	0	6	1,046	1,000	354	354	0	0	646	80
Vermont	2	1	1	0	0	1	23	21	15	15	0	0	6	15
Massachusetts	87	39	36	1	2	48	4,234	4,049	1,901	1,362	330	209	2,148	1,382
Rhode Island	11	7	7	0	0	4	1,765	1,631	927	927	0	0	704	1,316
Connecticut	46	26	20	2	4	20	2,210	1,862	950	695	7	248	912	1,069
New England	167	83	72	4	7	84	9,803	9,067	4,349	3,479	353	517	4,718	4,036
New York	232	136	115	9	12	96	14,180	11,379	6,279	5,020	664	595	5,100	7,487
New Jersey	143	77	65	1	11	66	6,245	5,286	3,076	2,439	32	605	2,210	3,628
Pennsylvania	200	105	84	10	11	95	18,319	16,066	7,414	5,878	348	1,188	8,652	5,878
Middle Atlantic	575	318	264	20	34	257	38,744	32,731	16,769	13,337	1,044	2,388	15,962	16,993
Ohio	174	82	77	4	1	92	11,703	10,563	4,653	4,560	75	18	5,910	3,740
Indiana	84	36	31	2	3	48	5,805	5,511	2,448	2,336	101	11	3,063	1,382
Illinois	177	71	60	5	6	106	8,073	7,135	3,275	2,828	186	261	3,860	2,850
Michigan	154	70	67	0	3	84	7,837	6,998	3,068	2,893	74	101	3,930	2,554
Wisconsin	81	37	35	1	1	44	3,748	3,315	1,665	1,511	86	68	1,650	2,106
East North Central	670	296	270	12	14	374	37,166	33,522	15,109	14,128	522	459	18,413	12,632
Iowa	53	28	28	0	0	25	2,658	2,321	1,032	1,026	6	0	1,289	857
Minnesota	99	55	53	0	2	44	4,850	4,189	1,917	1,860	0	57	2,272	1,539
Missouri	103	46	46	0	0	57	5,533	4,931	2,273	2,273	0	0	2,658	1,805
North Dakota	3	1	1	0	0	2	112	91	32	32	0	0	59	65
South Dakota	5	1	1	0	0	4	232	207	68	68	0	0	139	5
Nebraska	17	11	11	0	0	6	373	293	154	154	0	0	139	230
Kansas	33	18	18	0	0	15	2,354	2,183	1,041	1,041	0	0	1,142	932
West North Central	313	160	158	0	2	153	16,112	14,215	6,517	6,454	6	57	7,698	5,433

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Delaware	11	3	3	0	0	8	1,761	1,427	676	674	0	2	751	247
Maryland	50	21	15	0	6	29	2,810	2,389	1,174	835	0	339	1,215	1,050
District of Columbia	15	12	9	0	3	3	2,007	1,635	1,424	313	0	1,111	211	1,924
Virginia	34	16	14	2	0	18	2,932	2,562	1,193	1,079	114	0	1,369	1,056
West Virginia	45	27	23	4	0	18	1,495	1,397	700	561	139	0	697	716
North Carolina	33	15	10	4	1	18	4,466	3,997	1,699	1,641	33	25	2,298	954
South Carolina	9	5	5	0	0	4	1,600	1,533	574	574	0	0	959	483
Georgia	50	29	28	1	0	21	3,578	3,082	1,639	1,628	11	0	1,443	2,299
Florida	62	30	27	3	0	32	2,944	2,783	1,334	1,143	91	100	1,449	912
South Atlantic	309	158	134	14	10	151	23,593	20,805	10,413	8,448	388	1,577	10,392	9,641
Kentucky	57	32	29	3	0	25	4,514	4,113	1,975	1,897	78	0	2,138	2,107
Tennessee	29	15	15	0	0	14	3,480	3,174	1,524	1,508	0	16	1,650	1,865
Alabama	38	23	22	1	0	15	3,994	3,630	1,785	1,638	147	0	1,845	1,414
Mississippi	22	11	11	0	0	11	3,895	3,361	1,676	1,676	0	0	1,685	1,617
East South Central	146	81	77	4	0	65	15,883	14,278	6,960	6,719	225	16	7,318	7,003
Arkansas	24	8	8	0	0	16	6,361	5,402	3,963	2,976	0	987	1,439	4,476
Louisiana	24	14	13	1	0	10	3,083	2,752	1,454	1,310	130	14	1,298	1,933
Oklahoma	20	9	9	0	0	11	1,295	1,143	521	521	0	0	622	486
Texas	79	44	42	1	1	35	8,219	7,376	3,862	3,653	138	71	3,514	4,570
West South Central	147	75	72	2	1	72	18,958	16,673	9,800	8,460	268	1,072	6,873	11,465
Montana	19	8	8	0	0	11	465	417	235	235	0	0	182	235
Idaho	8	5	5	0	0	3	302	261	181	181	0	0	80	208
Wyoming	2	0	0	0	0	2	46	42	13	13	0	0	29	0
Colorado	26	11	9	0	2	15	958	864	370	341	4	25	494	205
New Mexico	16	8	6	0	2	8	439	361	163	148	9	6	198	161
Arizona	34	19	16	1	2	15	3,246	2,509	1,143	1,033	28	82	1,366	844
Utah	15	4	3	1	0	11	531	432	184	154	30	0	248	190
Nevada	22	12	12	0	0	10	655	549	343	329	0	14	206	440
Mountain	142	67	59	2	6	75	6,642	5,435	2,632	2,434	71	127	2,803	2,283

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Washington	89	44	39	1	4	45	6,610	5,694	3,197	3,099	3	95	2,497	3,256
Oregon	59	26	25	0	1	33	3,333	2,947	1,261	1,226	0	35	1,686	948
California	322	174	161	4	9	148	16,014	13,616	6,964	6,301	224	439	6,652	7,636
Alaska	15	4	4	0	0	11	648	559	228	228	0	0	331	130
Hawaii	33	14	14	0	0	19	5,825	4,114	3,245	2,569	22	654	869	4,619
Guam	2	0	0	0	0	2	4,091	3,613	1,602	1,602	0	0	2,011	0
Pacific	520	262	243	5	14	258	36,521	30,543	16,497	15,025	249	1,223	14,046	16,589
Puerto Rico	60	36	21	0	15	24	2,859	2,431	1,143	569	0	574	1,288	893
Virgin Islands	6	5	5	0	0	1	421	309	142	142	0	0	167	195
Outlying Areas	66	41	26	0	15	25	3,280	2,740	1,285	711	0	574	1,455	1,088
Total, all States and area	3,055	1,541	1,375	63	103	1,514	206,702	180,009	90,331	79,195	3,126	8,010	89,678	87,163

[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 1993

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	2	0	0	0	0	2	25	25	11	11	0	0	14	0
New Hampshire	2	1	1	0	0	1	6	6	3	3	0	0	3	4
Vermont	1	0	0	0	0	1	25	25	7	7	0	0	18	0
Massachusetts	7	0	0	0	0	7	220	216	77	62	0	15	139	0
Rhode Island	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Connecticut	2	1	1	0	0	1	193	188	94	94	0	0	94	181
New England	14	2	2	0	0	12	469	460	192	177	0	15	268	185
New York	38	10	9	0	1	28	1,807	1,567	806	726	0	80	761	1,032
New Jersey	19	5	4	0	1	14	762	706	346	305	0	41	360	346
Pennsylvania	27	6	5	0	1	21	1,415	1,271	539	281	13	245	732	344
Middle Atlantic	84	21	18	0	3	63	3,984	3,544	1,691	1,312	13	366	1,853	1,722
Ohio	29	10	10	0	0	19	1,178	1,054	467	463	4	0	587	470
Indiana	22	7	7	0	0	15	503	497	213	213	0	0	284	179
Illinois	38	14	14	0	0	24	1,590	1,339	583	570	13	0	756	671
Michigan	40	19	18	0	1	21	1,738	1,424	797	704	0	93	627	1,276
Wisconsin	23	4	4	0	0	19	1,309	1,204	477	427	0	50	727	356
East North Central	152	54	53	0	1	98	6,318	5,518	2,537	2,377	17	143	2,981	2,952
Iowa	5	3	3	0	0	2	110	103	59	59	0	0	44	75
Minnesota	14	4	4	0	0	10	549	508	180	180	0	0	328	119
Missouri	23	4	4	0	0	19	1,449	1,254	467	467	0	0	787	107
North Dakota	1	0	0	0	0	1	42	36	10	10	0	0	26	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
South Dakota	2	0	0	0	0	2	179	123	47	47	0	0	76	0
Nebraska	1	1	1	0	0	0	25	24	13	13	0	0	11	25
Kansas	10	1	1	0	0	9	303	283	112	112	0	0	171	57
West North Central	56	13	13	0	0	43	2,657	2,331	888	888	0	0	1,443	383
Delaware	1	0	0	0	0	1	10	10	3	3	0	0	7	0
Maryland	6	2	2	0	0	4	290	251	132	131	0	1	119	223
District of Columbia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	2	1	1	0	0	1	88	85	42	42	0	0	43	19
West Virginia	3	1	1	0	0	2	137	134	42	42	0	0	92	60
North Carolina	5	4	4	0	0	1	332	309	182	182	0	0	127	233
South Carolina	2	1	0	0	0	1	400	386	204	44	0	0	182	277
Georgia	4	2	2	0	0	2	141	93	34	34	0	0	59	56
Florida	7	1	1	0	0	6	253	250	72	58	0	14	178	37
South Atlantic	30	12	12	0	0	18	1,651	1,518	711	696	0	15	807	905
Kentucky	10	5	5	0	0	5	1,172	1,021	345	345	0	0	676	116
Tennessee	10	5	5	0	0	5	551	513	277	277	0	0	236	304
Alabama	7	3	3	0	0	4	259	242	122	111	11	0	120	107
Mississippi	3	3	3	0	0	0	548	527	272	272	0	0	255	548
East South Central	30	16	16	0	0	14	2,530	2,303	1,016	1,005	11	0	1,287	1,075
Arkansas	3	1	1	0	0	2	278	171	63	63	0	0	108	153
Louisiana	4	2	2	0	0	2	284	268	140	140	0	0	128	221
Oklahoma	8	2	2	0	0	6	404	352	99	90	9	0	253	90
Texas	17	5	4	0	1	12	1,533	1,269	527	377	0	150	742	515
West South Central	32	10	9	0	1	22	2,499	2,060	829	670	9	150	1,231	979
Montana	6	2	2	0	0	4	192	181	77	77	0	0	104	48
Idaho	1	0	0	0	0	1	23	22	7	7	0	0	15	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	4	1	1	0	0	3	172	151	62	62	0	0	89	11
New Mexico	8	2	2	0	0	6	164	145	61	61	0	0	84	48

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1993—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Arizona	3	1	1	0	0	2	89	82	45	45	0	0	37	41
Utah	1	0	0	0	0	1	28	26	12	12	0	0	14	0
Nevada	6	2	2	0	0	4	241	228	113	113	0	0	115	179
Mountain	29	8	8	0	0	21	909	835	377	377	0	0	458	327
Washington	25	9	9	0	0	16	631	551	259	259	0	0	292	376
Oregon	13	2	1	1	0	11	333	269	110	47	63	0	159	126
California	64	17	16	0	1	47	2,470	2,136	964	789	0	175	1,172	949
Alaska	1	0	0	0	0	1	10	6	1	1	0	0	5	0
Hawaii	1	1	1	0	0	0	24	17	12	12	0	0	5	24
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	104	29	27	1	1	75	3,468	2,979	1,346	1,108	63	175	1,633	1,475
Puerto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total, all States and areas	531	165	158	1	6	366	24,485	21,548	9,587	8,610	113	864	11,961	10,003

[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 1993

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Food and kindred products	149	71	68	1	2	78	15,205	13,490	6,354	5,980	153	221	7,136	6,327
Textile mill products	13	5	5	0	0	8	1,512	1,398	662	702	0	0	736	888
Apparel and other finished products made from fabric and similar materials	17	7	7	0	0	10	2,415	2,142	881	874	0	7	1,261	794
Lumber and wood products (except furniture)	46	12	12	0	0	34	2,863	2,698	1,062	1,040	18	4	1,636	549
Furniture and fixtures	27	12	11	0	1	15	2,536	2,311	1,085	921	112	52	1,226	1,246
Paper and allied products	43	20	20	0	0	23	3,107	2,948	1,284	1,284	0	0	1,664	1,033
Printing, publishing, and allied products	68	30	26	1	3	38	3,298	3,019	1,287	1,170	19	98	1,732	1,128
Chemicals and allied products	57	17	17	0	0	40	4,549	4,270	1,922	1,869	13	40	2,348	1,943
Petroleum refining and related industries	14	4	4	0	0	10	922	866	436	436	0	0	430	576
Rubber and miscellaneous plastic products	50	15	13	1	1	35	4,565	4,248	1,723	1,636	77	10	2,525	767
Leather and leather products	5	1	1	0	0	4	441	408	148	141	7	0	260	62
Stone, clay, glass, and concrete products	72	33	28	1	4	39	3,247	2,983	1,463	1,273	28	162	1,520	1,132
Primary metal industries	82	32	31	1	0	50	8,221	7,661	3,400	3,295	53	52	4,261	3,530
Fabricated metal products (except machinery and transportation equipment)	107	53	52	1	0	54	7,886	7,294	3,545	3,482	43	20	3,749	3,111
Machinery (except electrical)	90	27	27	0	0	63	8,153	7,566	3,038	2,978	9	51	4,528	2,394
Electrical and electronic machinery, equipment, and supplies	52	17	16	0	1	35	8,198	7,186	4,470	3,596	18	856	2,716	4,264
Aircraft and parts	78	41	35	2	4	37	7,008	6,537	3,084	2,746	87	251	3,453	2,972
Ship and boat building and repairing	4	3	3	0	0	1	133	119	39	39	0	0	80	33
Automotive and other transportation equipment	10	6	6	0	0	4	1,127	1,047	457	371	0	86	590	341
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	19	12	12	0	0	7	949	880	468	468	0	0	412	677
Miscellaneous manufacturing industries	21	6	6	0	0	15	1,332	1,235	556	508	0	48	679	499
Manufacturing	1,024	424	400	8	16	600	87,667	80,306	37,364	34,769	637	1,958	42,942	34,246

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1993—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Metal mining	8	3	2	0	1	5	757	722	262	251	0	11	460	89
Coal mining	10	8	1	7	0	2	326	308	190	36	154	0	118	272
Oil and gas extraction	23	11	11	0	0	12	593	517	257	257	0	0	260	331
Mining and quarrying of nonmetallic minerals (except fuels)	6	2	1	1	0	4	238	228	97	44	53	0	131	100
Mining	47	24	15	8	1	23	1,914	1,775	806	588	207	11	969	792
Construction	289	139	133	1	5	150	8,120	6,001	3,422	3,218	2	202	2,579	4,266
Wholesale trade	233	97	93	2	2	136	15,193	13,536	5,963	5,613	180	170	7,573	3,570
Retail trade	293	130	123	3	4	163	11,303	9,774	4,854	4,605	115	134	4,920	5,018
Finance, insurance, and real estate	53	28	23	3	2	25	1,332	1,156	642	278	316	48	514	819
U.S. Postal Service	6	3	2	0	1	3	1,861	1,515	1,239	212	0	1,027	276	1,434
Local and suburban transit and interurban highway passenger transportation	107	48	35	3	10	59	9,194	7,769	3,915	2,749	307	859	3,854	3,373
Motor freight transportation and warehousing	331	171	166	3	2	160	15,079	12,785	6,661	6,527	31	103	6,124	7,406
Water transportation	5	2	1	1	0	3	309	254	96	71	25	0	158	138
Other transportation	56	28	27	0	1	28	2,898	2,503	1,208	1,203	0	5	1,295	972
Communication	68	30	28	0	2	38	3,436	3,002	1,360	1,288	0	72	1,642	1,013
Electric, gas, and sanitary services	113	51	51	0	0	62	10,480	9,248	3,682	2,957	0	725	5,566	1,065
Transportation, communication, and other utilities	680	330	308	7	15	350	41,396	35,561	16,922	14,795	363	1,764	18,639	13,967
Hotels, rooming houses, camps, and other lodging places	62	31	30	0	1	31	3,735	3,174	1,315	1,163	0	152	1,859	1,192
Personal services	40	19	18	0	1	21	1,404	1,293	733	714	0	19	560	784
Automotive repair, services, and garages	72	35	35	0	0	37	1,674	1,507	679	666	13	0	828	526
Motion pictures	7	6	5	0	1	1	135	120	70	54	0	16	50	112
Amusement and recreation services (except motion pictures)	31	16	14	1	1	15	1,472	1,188	680	586	15	79	508	971
Health services	324	189	160	7	22	135	31,295	26,241	14,056	11,883	613	1,560	12,185	16,525
Educational services	38	20	8	2	10	18	1,815	1,642	798	564	34	200	844	712
Membership organizations	29	14	10	0	4	15	1,249	1,072	577	510	0	67	495	638
Business services	226	132	91	21	20	94	14,445	11,269	7,202	5,098	720	1,384	4,067	8,985
Miscellaneous repair services	14	4	4	0	0	10	371	328	219	217	0	2	109	182
Museums, art galleries, botanical and zoological gardens	1	1	1	0	0	0	20	18	18	18	0	0	0	20

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1993—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Legal services	7	5	4	0	1	2	217	205	162	115	0	47	43	176
Social services	76	47	45	0	2	29	3,061	2,514	1,622	1,580	8	34	892	1,982
Miscellaneous services	17	8	7	1	0	9	528	487	152	145	7	0	335	65
Services	944	527	432	32	63	417	61,421	51,058	28,283	23,313	1,410	3,560	22,775	32,870
Public administration	17	4	4	0	0	13	980	875	423	414	9	0	452	184
Total, all industrial groups	3,586	1,706	1,533	64	109	1,880	231,187	201,557	99,918	87,805	3,239	8,874	101,639	97,166

[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 1993[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	206,702	3,055	100.0	—	1,375	100 0	63	100.0	103	100.0	1,514	100.0
Under 10	3,351	598	19.6	19.6	317	23.1	12	19.0	21	20.4	248	16.4
10 to 19	8,764	627	20.5	40 1	319	23.2	13	20.5	14	13.6	281	18.6
20 to 29	8,868	371	12.1	52 2	173	12.6	6	9.5	18	17.4	174	11.5
30 to 39	8,565	251	8 2	60.4	101	7.4	7	11.1	7	6.8	136	9 0
40 to 49	8,382	190	6 2	66.6	81	5.9	4	6.3	7	6 8	98	6.5
50 to 59	7,785	143	4 7	71.3	50	3.6	3	4.8	6	5 8	84	5.5
60 to 69	9,231	144	4.7	76.0	67	4.9	2	3 2	6	5.8	69	4.6
70 to 79	6,511	88	2.9	78 9	37	2.7	3	4.8	3	2.9	45	3.0
80 to 89	7,156	85	2.8	81.7	29	2 1	1	1 6	4	3.9	51	3 4
90 to 99	5,752	61	2 0	83.7	24	1 8	1	1.6	1	1 0	35	2 3
100 to 109	5,330	51	1.7	85.4	17	1.2	3	4.8	1	1 0	30	2 0
110 to 119	7,296	64	2.1	87.5	28	2.0	2	3.2	4	3.9	30	2.0
120 to 129	5,563	45	1.5	89.0	24	1.7	0	—	3	2 9	18	1.2
130 to 139	4,269	32	1.0	90 0	12	0.9	0	—	1	1.0	19	1.3
140 to 149	4,893	34	1.1	91.1	15	1.1	1	1.6	2	1.9	16	1.1
150 to 159	3,244	21	0 7	91.8	13	0 9	1	1.6	0	—	7	0 5
160 to 169	2,642	16	0.5	92.3	7	0.5	0	—	0	—	9	0.6
170 to 179	3,657	21	0.7	93.0	7	0.5	0	—	2	1.9	12	0.8
180 to 189	2,586	14	0.5	93.5	2	0.1	0	—	0	—	12	0.8
190 to 199	4,082	21	0.7	94.2	4	0.3	1	1.6	0	—	16	1.1
200 to 299	19,305	80	2.6	96 8	20	1 5	6	1 6	1	1.0	58	3 8
300 to 399	11,127	33	1.1	97 9	9	0.7	1	1.6	0	—	23	1.5
400 to 499	8,950	20	0.7	98 6	5	0 4	1	1.6	0	—	14	0 9
500 to 599	8,901	16	0.5	99.1	3	0.2	0	—	1	1 0	12	0.8
600 to 799	6,318	9	0.3	99.4	3	0.2	0	—	0	—	6	0.4
800 to 999	4,408	5	0.2	99.6	2	0.1	0	—	0	—	3	0.2
1000 to 1,999	13,919	11	0.3	99.9	4	0.3	0	—	1	1.0	6	0.4
2,000 to 2,999	2,295	1	0.0	99 9	0	—	0	—	0	—	1	0 1
3,000 to 9,999	13,552	3	0.1	100 0	2	0.1	0	—	0	—	1	0 1

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1993[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	B Decertification elections (RD)											
Total RD elections	24,485	531	100.0	—	158	100.0	1	100.0	6	100.0	366	100.0
Under 10	680	113	21.3	21.3	14	8.9	0	—	0	—	99	27.0
10 to 19	1,795	131	24.7	46.0	30	19.0	0	—	0	—	101	27.6
20 to 29	1,814	76	14.3	60.3	28	17.7	0	—	0	—	48	13.1
30 to 39	1,373	39	7.3	67.6	14	8.9	0	—	0	—	25	6.8
40 to 49	1,510	34	6.4	74.0	15	9.5	4	—	0	—	19	5.2
50 to 59	1,437	26	4.9	78.9	11	7.0	0	—	0	—	15	4.1
60 to 69	1,825	28	5.3	84.2	10	6.3	0	—	2	33.3	16	4.4
70 to 79	972	13	2.4	86.6	4	2.6	0	—	0	—	9	2.5
80 to 89	748	9	1.7	88.3	5	3.2	0	—	0	—	4	1.1
90 to 99	676	7	1.3	89.6	3	1.9	1	100.0	0	—	3	0.8
100 to 109	507	5	0.9	90.5	2	1.3	0	—	0	—	3	0.8
110 to 119	466	4	0.8	91.3	4	2.5	0	—	0	—	0	—
120 to 129	500	4	0.8	92.1	0	—	0	—	0	—	4	1.1
130 to 139	272	2	0.4	92.5	1	0.6	0	—	0	—	1	0.3
140 to 149	280	2	0.4	92.9	2	1.3	0	—	0	—	0	—
150 to 159	614	4	0.8	93.7	2	1.3	0	—	0	—	2	0.5
160 to 169	819	5	0.9	94.6	3	1.9	0	—	1	16.7	1	0.3
170 to 199	1,469	8	1.5	96.1	3	1.9	0	—	0	—	5	1.4
200 to 299	3,714	15	2.7	98.8	6	3.8	0	—	3	50.0	6	1.6
300 to 499	1,539	4	0.8	99.6	1	0.6	0	—	0	—	3	0.8
500 to 799	534	1	0.2	99.8	0	—	0	—	0	—	1	0.3
800 and over	941	1	0.2	100.0	0	—	0	—	0	—	1	0.3

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1993[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
Totals	[2]30,925	100.0	——	22,220	100.0	6,801	100.0	642	100.0	193	100.0	50	100.0	35	100.0	111	100.0	836	100.0	37	100.0
Under 10	3,884	12.6	12.6	2,727	12.3	814	12.0	181	28.2	60	31.1	10	20.0	2	5.7	27	24.3	52	6.2	11	29.7
10–19	2,970	9.6	22.2	2,246	10.1	533	7.7	93	14.5	33	17.1	5	10.0	1	2.9	16	14.4	38	4.5	5	13.5
20–29	2,301	7.4	29.6	1,750	7.9	367	5.4	84	13.1	24	12.4	7	14.0	1	2.9	14	12.7	51	6.1	3	8.2
30–39	1,486	4.8	34.4	1,120	5.0	262	3.9	35	5.5	6	3.1	4	8.0	0	——	16	14.4	41	4.9	2	5.4
40–49	1,215	3.9	38.3	981	4.4	189	2.8	16	2.5	7	3.6	1	2.0	0	——	4	3.6	17	2.1	0	——
50–59	1,836	5.9	44.2	1,300	5.9	428	6.2	36	5.6	13	6.8	5	10.0	2	5.7	6	5.4	41	4.9	5	13.5
60–69	935	3.0	47.2	762	3.4	127	1.9	11	1.7	4	2.1	4	8.0	2	5.7	6	5.4	18	2.2	1	2.7
70–79	834	2.7	49.9	651	2.9	147	2.2	7	1.1	4	2.1	0	——	1	2.9	2	1.8	22	2.6	0	——
80–89	624	2.0	51.9	498	2.2	99	1.5	6	0.9	3	1.6	0	——	1	2.9	2	1.8	14	1.7	1	2.7
90–99	393	1.3	53.2	326	1.5	54	0.8	4	0.6	0	——	0	——	0	——	2	1.8	6	0.7	1	2.7
100–109	2,257	7.3	60.5	1,492	6.7	625	9.2	42	6.5	15	7.8	0	——	7	20.0	2	1.8	73	8.7	1	2.7
110–119	272	0.9	61.4	234	1.1	24	0.4	7	1.1	0	——	0	——	0	——	2	1.8	5	0.6	0	——
120–129	515	1.7	63.1	400	1.8	90	1.3	2	0.3	1	0.5	1	2.0	0	——	2	1.8	19	2.3	0	——
130–139	232	0.8	63.9	198	0.9	27	0.4	0	——	0	——	0	——	2	5.7	1	0.9	4	0.5	0	——
140–149	178	0.6	64.5	155	0.7	19	0.3	2	0.3	0	——	0	——	0	——	0	——	2	0.2	0	——
150–159	681	2.2	66.7	496	2.2	154	2.3	7	1.1	4	2.1	0	——	1	2.9	1	0.9	18	2.2	0	——
160–169	145	0.5	67.2	116	0.5	23	0.3	1	0.2	1	0.5	0	——	0	——	0	——	4	0.5	0	——
170–179	220	0.7	67.9	192	0.9	23	0.3	0	——	0	——	0	——	0	——	2	1.8	1	0.1	2	5.4
180–189	140	0.5	68.4	110	0.5	26	0.4	2	0.3	0	——	0	——	0	——	0	——	2	0.2	0	——
190–199	65	0.2	68.6	48	0.2	16	0.2	0	——	0	——	0	——	0	——	0	——	1	0.1	0	——
200–299	1,994	6.4	75.0	1,385	6.2	503	7.3	24	3.7	5	2.6	5	10.0	1	2.9	2	1.8	68	8.1	1	2.7
300–399	1,196	3.9	78.9	841	3.8	304	4.5	4	0.6	0	——	0	——	1	2.9	1	0.9	45	5.4	0	——
400–499	739	2.4	81.3	560	2.5	142	2.1	5	0.8	2	1.0	1	2.0	0	——	1	0.9	28	3.3	0	——
500–599	961	3.1	84.4	612	2.8	290	4.3	14	2.2	4	2.1	0	——	1	2.9	0	——	39	4.7	1	2.7
600–699	389	1.3	85.7	282	1.3	89	1.3	0	——	0	——	0	——	0	——	0	——	17	2.1	1	2.7
700–799	248	0.8	86.5	153	0.7	74	1.1	4	0.6	0	——	0	——	0	——	0	——	17	2.1	0	——

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1993—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
800–899	276	0 9	87 4	189	0.9	78	1.1	2	0.3	0	—	0	—	0	—	0	—	7	0.8	0	—
900–999	143	0 5	87.9	94	0.4	38	0.6	3	0 5	0	—	0	—	1	2.9	0	—	7	0 8	0	—
1,000–1,999	1,636	5.3	93.2	995	4.4	530	7.7	28	4 4	0	—	2	4.0	4	11.2	2	1 8	75	9.0	0	—
2,000–2,999	684	2.2	95.4	398	1 8	242	3 6	8	1 2	2	1.0	1	2 0	3	8.4	0	—	28	3.3	2	5.4
3,000–3,999	278	0.9	96.3	145	0.7	107	1.6	1	0.2	1	0.5	1	2.0	1	2.9	0	—	22	2.6	0	—
4,000–4,999	168	0.5	96.8	97	0.4	58	0.9	0	—	1	0.5	0	—	1	2 9	0	—	11	1.3	0	—
5,000–9,999	470	1.4	98.2	300	1.4	145	2.1	2	0.3	1	0.5	2	4.0	2	5.7	0	—	18	2 2	0	—
Over 9,999	560	1.8	100.0	367	1.6	154	2.3	11	1 7	2	1 0	1	2 0	0	—	0	—	25	3.0	0	—

[1] See Glossary of terms for definitions.
[2] Based on revised situation count which absorbs companion cases, cross-filing, and multiple filings as compared to situations shown in charts 1 and 2 of Chapter 1, which are based on single and multiple filings of same type of case.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1993; and Cumulative Totals, Fiscal Years 1936 Through 1993

	Fiscal Year 1993									July 5, 1935–Sept. 30, 1993	
	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	204	187	11	0	6	—	—	—	—	—	—
On petitions for review and/or enforcement	179	165	8	0	6	100.0	100.0	—	100 0	10,517	100.0
Board orders affirmed in full	140	130	5	0	5	78.8	62 5	—	83.3	6,934	65 9
Board orders affirmed with modification	14	12	2	0	0	7.3	25 0	—	—	1,429	13.6
Remanded to Board	10	9	0	0	1	5.5	—	—	16.7	518	4.9
Board orders partially affirmed and partially remanded	5	5	0	0	0	3 0	—	—	—	211	2.0
Board orders set aside	10	9	1	0	0	5.5	12.5	—	—	1,425	13 5
On petitions for contempt	25	22	3	0	0	100.0	100 0	—	—	—	—
Compliance after filing of petition, before court order	1	1	0	0	0	4.5	—	—	—	—	—
Court orders holding respondent in contempt	16	14	2	0	0	63.6	66.7	—	—	—	—
Court orders denying petition	1	1	0	0	0	4.5	—	—	—	—	—
Court orders directing compliance without contempt adjudication	6	5	1	0	0	22.7	33.3	—	—	—	—
Contempt petitions withdrawn without compliance	1	1	0	0	0	—	—	—	—	—	—
Proceedings decided by U S Supreme Court[3]	0	0	0	0	0	—	—	—	—	251	100 0
Board orders affirmed in full	0	0	0	0	0	—	—	—	—	151	60 2
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.2
Board orders set aside	0	0	0	0	0	—	—	—	—	44	17.5
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.6
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6 4
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

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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1993, Compared With 5-Year Cumulative Totals, Fiscal Years 1988 Through 1992[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1993	Total fiscal years 1988–1992	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1993		Cumulative fiscal years 1988–1992		Fiscal Year 1993		Cumulative fiscal years 1988–1992		Fiscal Year 1993		Cumulative fiscal years 1988–1992		Fiscal Year 1993		Cumulative fiscal years 1988–1992		Fiscal Year 1993		Cumulative fiscal years 1988–1992	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	179	846	140	78 2	646	76.4	14	7.8	51	6 0	10	5.6	40	4 7	5	2.8	27	3.2	10	5.6	82	9.7
1. Boston, MA	7	21	4	57 1	16	76.2	0	—	1	4.8	3	42 9	2	9.5	0	—	0	—	0	—	2	9 5
2. New York, NY	13	96	11	84.6	75	78.1	1	7 7	7	7.3	0	—	6	6.3	0	—	0	—	1	7.7	8	8.3
3. Phila., PA	26	90	26	100.0	82	91.1	0	—	2	2 2	0	—	2	2.2	0	—	2	2.2	0	—	2	2.2
4. Richmond, VA	13	61	11	84.6	36	59.0	1	7.7	6	9.8	0	—	4	6 6	1	7.7	1	1.6	0	—	14	23 0
5. New Orleans, LA	9	49	6	66 7	35	71.4	2	22 2	3	6.1	0	—	3	6 1	1	11.1	3	6.1	0	—	5	10 2
6 Cincinnati, OH	27	142	18	66.7	103	72.5	3	11.1	11	7.7	1	3 7	5	3 5	0	—	5	3.5	5	18 5	18	12.7
7 Chicago, IL	20	92	17	85 0	71	77.2	2	10 0	5	5 4	0	—	4	4 3	1	5.0	2	2.2	0	—	10	10.9
8. St Louis, MO	9	44	7	77.8	28	63.6	0	—	7	15 9	0	—	0	—	0	—	0	—	2	22.2	9	20.5
9. San Francisco, CA	17	104	15	88 2	89	85.6	1	5.9	3	2 9	1	5.9	7	6.7	0	—	4	3.8	0	—	1	1.0
10. Denver, CO	8	29	6	75.0	23	79.3	1	12.5	2	6.9	0	—	0	—	0	—	1	3.4	1	12.5	3	10 3
11. Atlanta, GA	9	30	9	100 0	27	90.0	0	—	0	—	0	—	0	—	0	—	1	3.3	0	—	2	6 7
Washington, DC	21	88	10	47.6	61	69.3	3	14.3	4	4.5	5	23.8	7	8.0	2	9.5	8	9.1	1	4.8	8	9 1

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

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1993

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1993
		Pending in district court Oct. 1, 1992	Filed in district court fiscal year 1993		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	38	5	33	33	8	3	17	4	1	0	5
8(a)(1)	1	0	1	1	0	0	0	1	0	0	0
8(a)(1)(3)	6	0	6	6	2	0	3	0	1	0	0
8(a)(1)(5)	8	2	6	7	2	1	4	0	0	0	1
8(a)(1)(2)(3)	2	1	1	1	0	0	0	1	0	0	1
8(a)(1)(3)(5)	15	2	13	13	4	2	6	1	0	0	2
8(a)(1)(3)(4)(5)	2	0	2	1	0	0	0	1	0	0	1
8(b)(1)	4	0	4	4	0	0	4	0	0	0	0
Under Sec 10(l) total	50	5	45	45	21	2	10	7	5	0	5
8(b)(1)(A)(3)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B)	25	3	22	22	10	1	6	3	2	0	3
8(b)(4)(D)	12	2	10	10	3	0	1	3	3	0	2
8(b)(7)(A)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(C)	4	0	4	4	2	1	0	1	0	0	0
8(e)	5	0	5	5	4	0	1	0	0	0	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1993

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	24	19	5	9	8	1	13	9	4	2	2	0
NLRB-initiated actions or interventions	3	2	1	1	1	0	1	0	1	1	1	0
To enforce subpoena	0	0	0	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	1	1	0	1	1	0	0	0	0	0	0	0
To prevent conflict between NLRA and other statutes	2	1	1	0	0	0	1	0	1	1	1	0
Action by other parties	21	17	4	8	7	1	12	9	3	1	1	0
To review nonfinal orders	1	1	0	1	1	0	0	0	0	0	0	0
To restrain NLRB from	2	2	0	0	0	0	1	1	0	1	1	0
Proceeding in R case	1	1	0	0	0	0	1	1	0	0	0	0
Proceeding in unfair labor practice case	1	1	0	0	0	0	0	0	0	1	1	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	13	12	1	7	6	1	6	6	0	0	0	0
Issue complaint	8	8	0	5	5	0	3	3	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 (FOIA)[1]	1	1	0	0	0	0	1	1	0	0	0	0
Other—Pay fees under EAJA	2	1	1	2	1	1	0	0	0	0	0	0
Produce records (not under FOIA)	2	2	0	0	0	0	2	2	0	0	0	0
Other	5	2	3	0	0	0	5	2	3	0	0	0
Pay fees under FOIA	1	0	1	0	0	0	1	0	1	0	0	0
Priority of claim in Bankruptcy	1	0	1	0	0	0	1	0	1	0	0	0
Intervention in Section 301 lawsuits	2	1	1	0	0	0	2	1	1	0	0	0
Privacy Act compliance	1	1	0	0	0	0	1	1	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 1993[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1992	0	0	0	0	0
Received fiscal 1993	5	5	0	0	0
On docket fiscal 1993	5	5	0	0	0
Closed fiscal 1993	5	5	0	0	0
Pending September 30, 1993	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1993[1]

Action taken	Total cases closed
	5
Board would assert jurisdiction	3
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	1
Withdrawn	0
Denied	1

[1] See Glossary of terms for definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1993; and Age of Cases Pending Decision, September 30, 1993

Stage	Median days
I. Unfair labor practice cases	
A Major stages completed—	
1. Filing of charge to issuance of complaint	46
2. Complaint to close of hearing	198
3 Close of hearing to issuance of administrative law judge's decision	140
4 Administrative law judge's decision to issuance of Board decision	227
5 Filing of charge to issuance of Board decision	535
B. Age[1] of cases pending administrative law judge's decision, September 30, 1993	483
C. Age[1] of cases pending Board decision, September 30, 1993	715
II. Representation cases.	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	7
2. Notice of hearing to close of hearing	14
.3 Close of hearing to—	
Board decision issued	235
Regional Director's decision issued	22
4. Filing of petition to—	
Board decision issued	266
Regional Director's decision issued	45
B. Age[2] of cases pending Board decision, September 30, 1993	174
C. Age[2] of cases pending Regional Director's decision, September 30, 1993	108

[1] From filing of charge.
[2] From filing of petition.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1993

I Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504	
A. Number of applications filed	4
B Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements).	
Granting fees	0
Denying fees	4
C Amount of fees and expenses in cases listed in B, above.	
Claimed	$361,156.89
Recovered	0
II. Petitions for review of Board Orders denying fees under 5 U S C § 504.	
A. Awards granting fees (includes settlements)	1
B. Awards denying fees	1
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	$29,716.00
III. Applications for fees and expenses before the circuit courts of appeals under 5 U S C § 2412	
A. Awards granting fees (includes settlements)	2
B. Awards denying fees	1
C Amount of fees and expenses recovered	$70,707.06
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered	0

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