SIXTY-FOURTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1999

NATIONAL LABOR RELATIONS BOARD

Members of the Board

JOHN C. TRUESDALE, *Chairman*[1]

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PETER J. HURTGEN
J. ROBERT BRAME III

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ROBERT A. GIANNASI, *Chief Administrative Law Judge*
DAVID B. PARKER, *Director of Information*

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FREDERICK L. FEINSTEIN, *General Counsel*[3]
MARY JOYCE CARLSON, *Deputy General Counsel*

RICHARD SIEGEL
Associate General Counsel
Division of Operations Management

LINDA R. SHER
Associate General Counsel
Division of Enforcement Litigation

BARRY J. KEARNEY
Associate General Counsel
Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Recess appointment effective on December 4, 1998.
[2] Appointment effective on December 12, 1998.
[3] Recess appointment effective on October 22, 1998.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., April 20, 2001.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-Fourth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1999.

Respectfully submitted,
JOHN C. TRUESDALE, *Chairman*

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

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I

Operations In Fiscal Year 1999

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 1999, 33,232 cases were received by the Board.

The public filed 27,450 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 5572 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 210 amendment to certification and unit clarification cases.

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

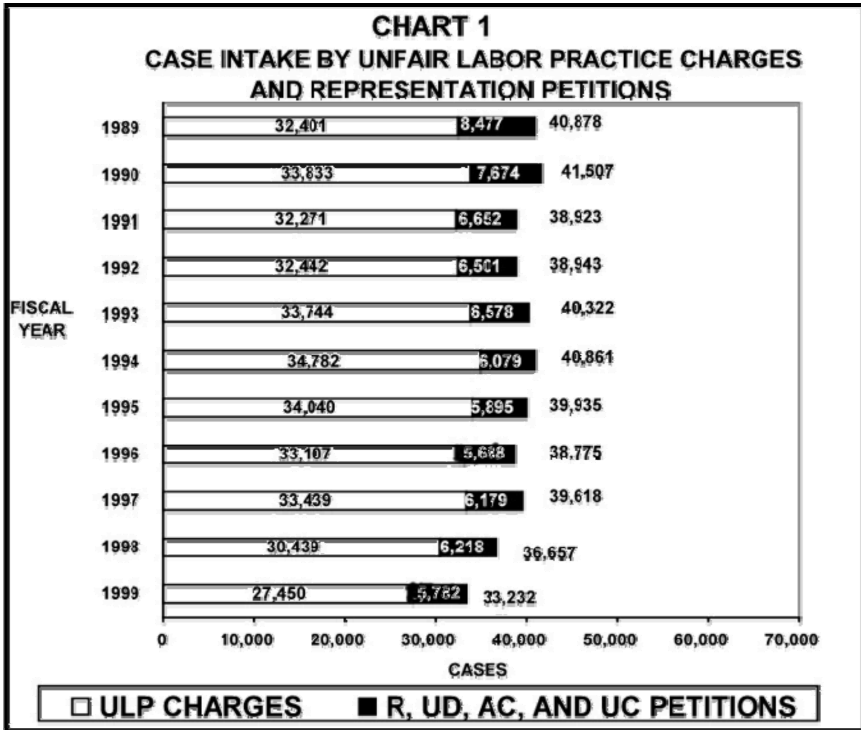
During fiscal year 1999, the five-member Board was composed of Chairman John C. Truesdale and Members Sarah M. Fox, Wilma B. Liebman, Peter J. Hurtgen, and J. Robert Brame III. Frederick L. Feinstein served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1999 include:

- The NLRB conducted 3585 conclusive representation elections among some 210,387 employee voters, with workers choosing labor unions as their bargaining agents in 50.5 percent of the elections.
- Although the Agency closed 35,806 cases, 32,056 cases were pending in all stages of processing at the end of the fiscal year. The closings included 29,741 cases involving unfair labor practice charges and 5,708 cases affecting employee representation and 357 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9104.
- The amount of $60,690,044 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 2043 offers of job reinstatements, with 1420 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 2226 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 419 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.

Operations in Fiscal Year 1999

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

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

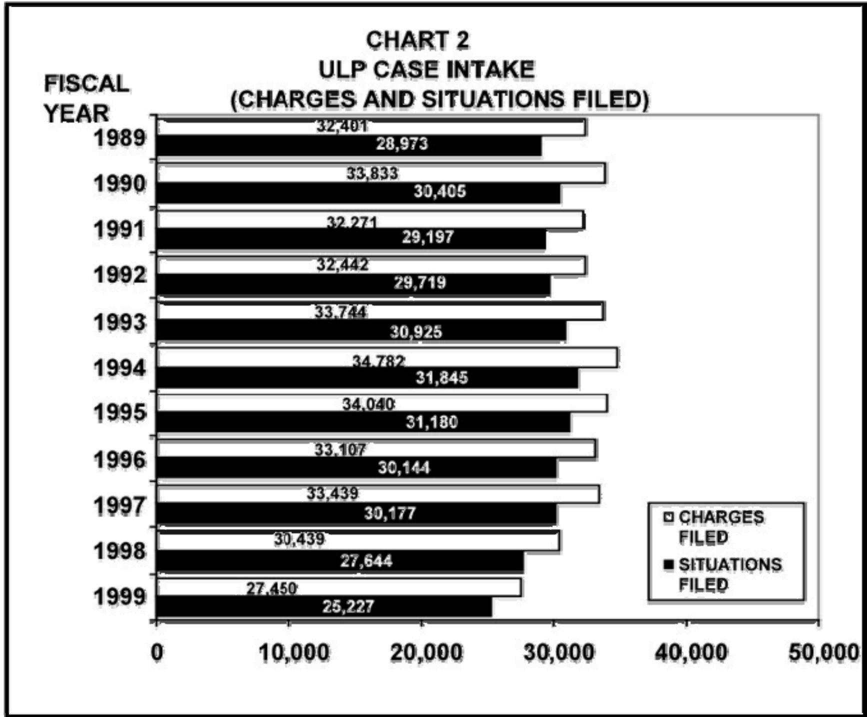
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1999.

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 quasijudicial proceedings, or by way of secret-ballot employee elections.

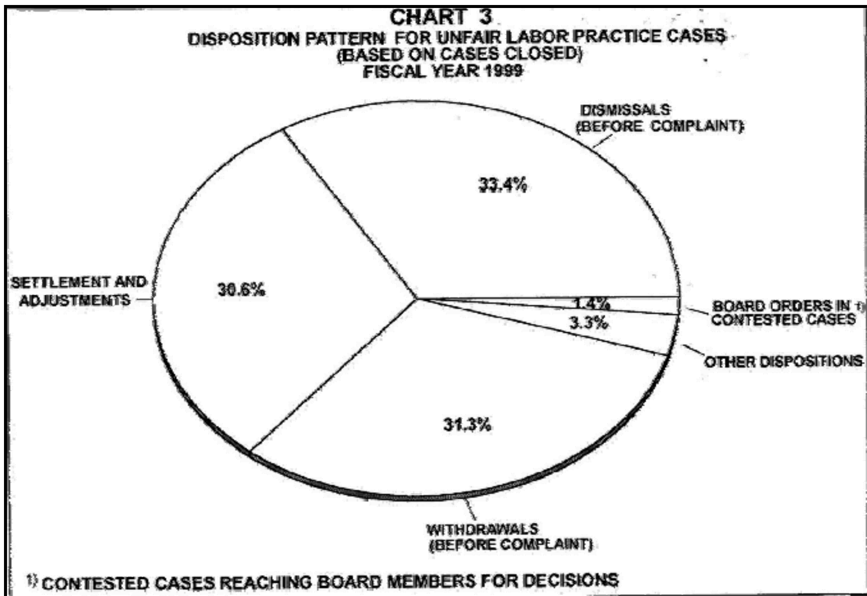
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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



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

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



B. Operational Highlights

1. Unfair Labor Practices

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

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

Approximately 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 97 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1999, 27,450 unfair labor practice charges were filed with the NLRB, a decrease of about 10 percent from the 30,439 filed in fiscal year 1997. In situations in which related charges are counted as a

single unit, there was a decrease of 8 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 21,063 cases, a decrease of 11 percent from the 23,630 of 1998. Charges against unions decreased 8 percent to 6204 from 6751 in 1998.

There were 35 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 10,061 such charges in 54 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 8731 charges, in about 46 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5392) alleged illegal restraint and coercion of employees, about 80 percent. There were 616 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 8 percent from the 669 of 1998.

There were 662 charges (about 10 percent) of illegal union discrimination against employees, a decrease of 7 percent from the 711 of 1998. There were 80 charges that unions picketed illegally for recognition or for organizational purposes, compared with 121 charges in 1998. (Table 2.)

In charges filed against employers, unions led with about 78 percent of the total. Unions filed 16,341 charges and individuals filed 4722.

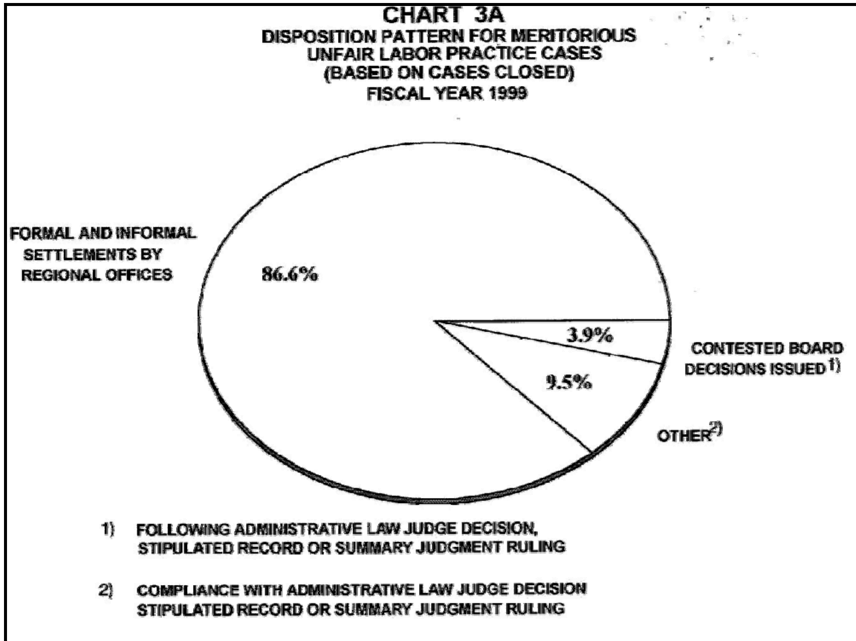


CHART 3A
DISPOSITION PATTERN FOR MERITORIOUS
UNFAIR LABOR PRACTICE CASES
(BASED ON CASES CLOSED)
FISCAL YEAR 1999
FORMAL AND INFORMAL
SETTLEMENTS BY
REGIONAL OFFICES
86.6%
3.9%
CONTESTED BOARD
DECISIONS ISSUED 1)
9.5%
OTHER 2)
1) FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION,
STIPULATED RECORD OR SUMMARY JUDGMENT RULING
2) COMPLIANCE WITH ADMINISTRATIVE LAW JUDGE DECISION
STIPULATED RECORD OR SUMMARY JUDGMENT RULING

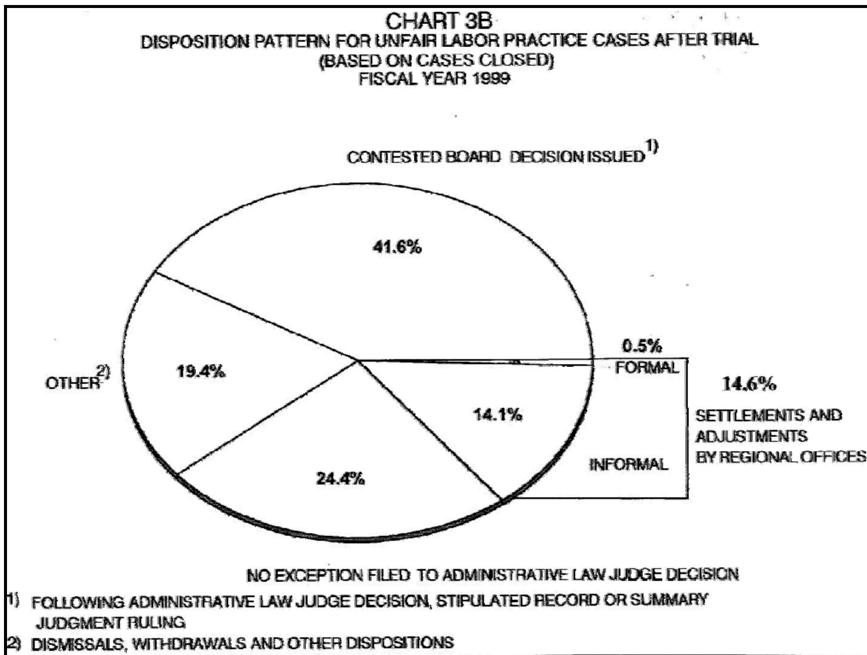


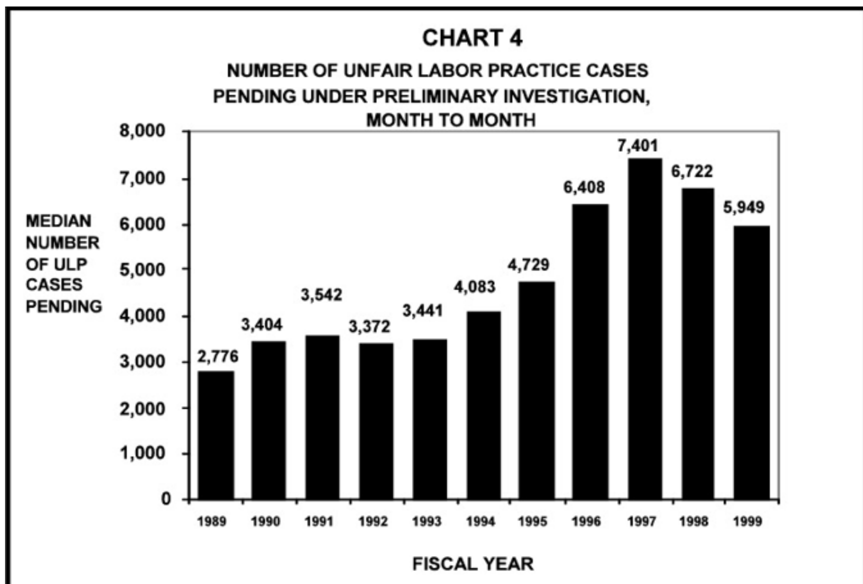
CHART 3B
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(BASED ON CASES CLOSED)
FISCAL YEAR 1999
CONTESTED BOARD DECISION ISSUED 1)
41.6%
0.5%
FORMAL
14.6%
SETTLEMENTS AND
ADJUSTMENTS
BY REGIONAL OFFICES
OTHER 2)
19.4%
14.1%
INFORMAL
24.4%
NO EXCEPTION FILED TO ADMINISTRATIVE LAW JUDGE DECISION
1) FOLLOWING ADMINISTRATIVE LAW JUDGE DECISION, STIPULATED RECORD OR SUMMARY
JUDGMENT RULING
2) DISMISSALS, WITHDRAWALS AND OTHER DISPOSITIONS

Concerning charges against unions, 4789 were filed by individuals, or about 75 percent of the total of 6352. Employers filed 1332 and other unions filed the 231 remaining charges.

In fiscal year 1999, 29,741 unfair labor practice cases were closed. Over 95 percent were closed by NLRB Regional Offices, a percent less than the previous year. During the fiscal year, 30.6 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 31.3 percent were withdrawn before complaint, and 33.4 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 1999, 38.3 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1999, precomplaint settlements and adjustments were achieved in 9066 cases, or 29.0 percent of the charges. In 1999, the percentage was 25.0. (Chart 5.)

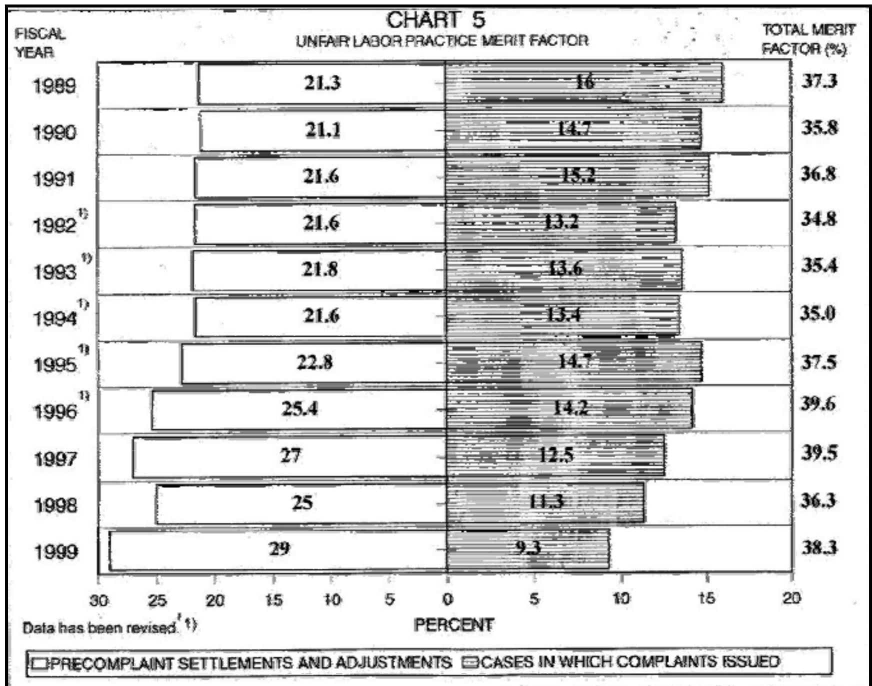


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1999, 2226 complaints were issued, compared with 2775 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 91.5 percent were against employers and 8.5 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 89 days. The 89 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 419 decisions in 903 cases during 1999. They conducted 401 initial hearings, and 39 additional hearings in supplemental matters. (Chart 8 and Table 3A.)



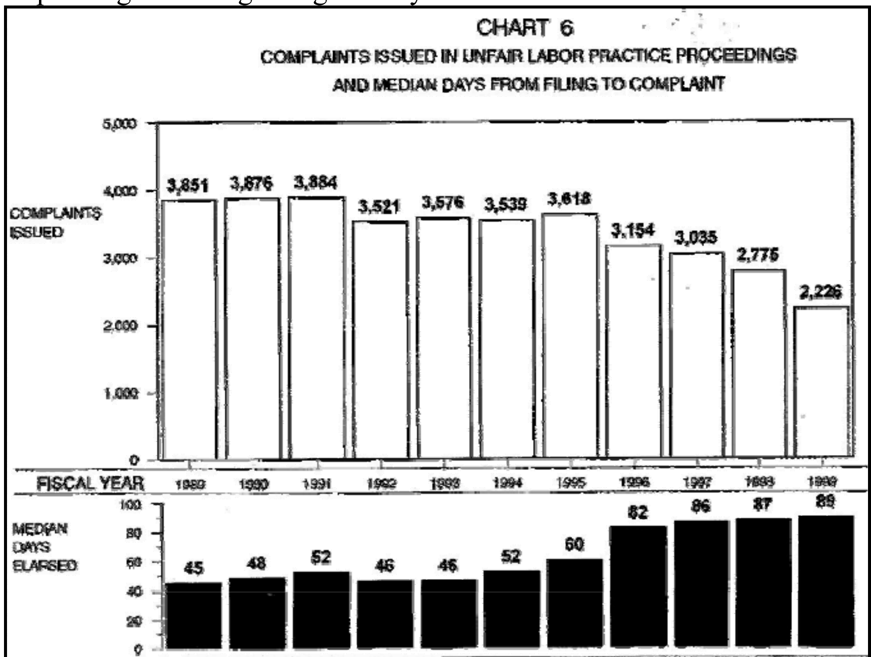
By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 1999, the Board issued 423 decisions in unfair labor practice cases contested as to the law or the facts—373 initial decisions, 14 backpay decisions, 10 determinations in jurisdictional work dispute

cases, and 26 decisions on supplemental matters. Of the 373 initial decision cases, 324 involved charges filed against employers and 49 had union respondents.

For the year, the NLRB awarded backpay of $59.7 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $987 thousand. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 2943 employees were offered reinstatement, and about 70 percent accepted.

At the end of fiscal 1999, there were 29,815 unfair labor practice cases being processed at all stages by the NLRB, compared to 32,106 cases pending at the beginning of the year.

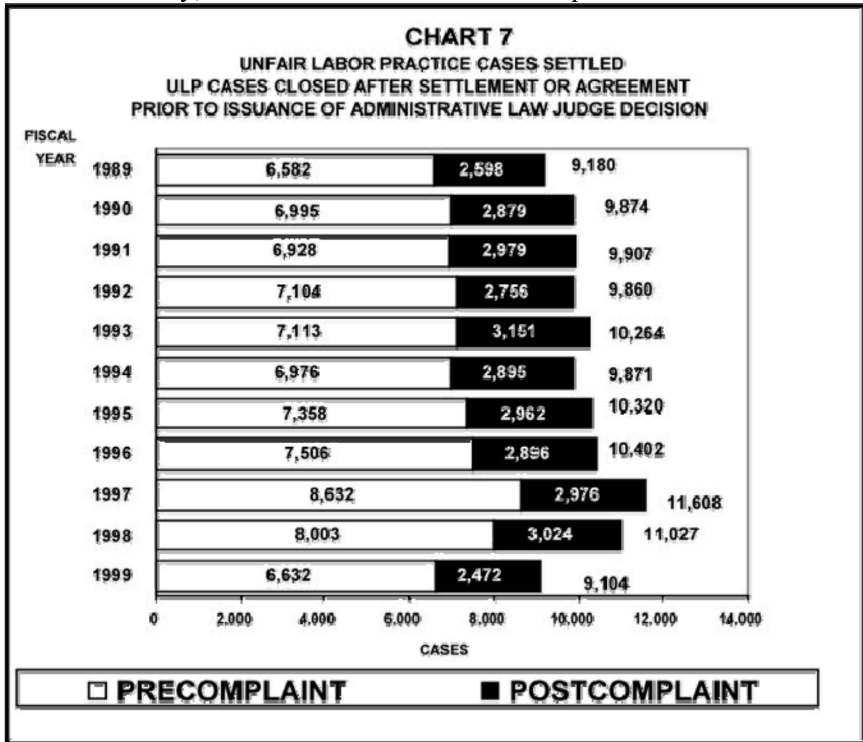


2. Representation Cases

The NLRB received 5782 representation and related case petitions in fiscal 1999, compared to 6179 such petitions a year earlier.

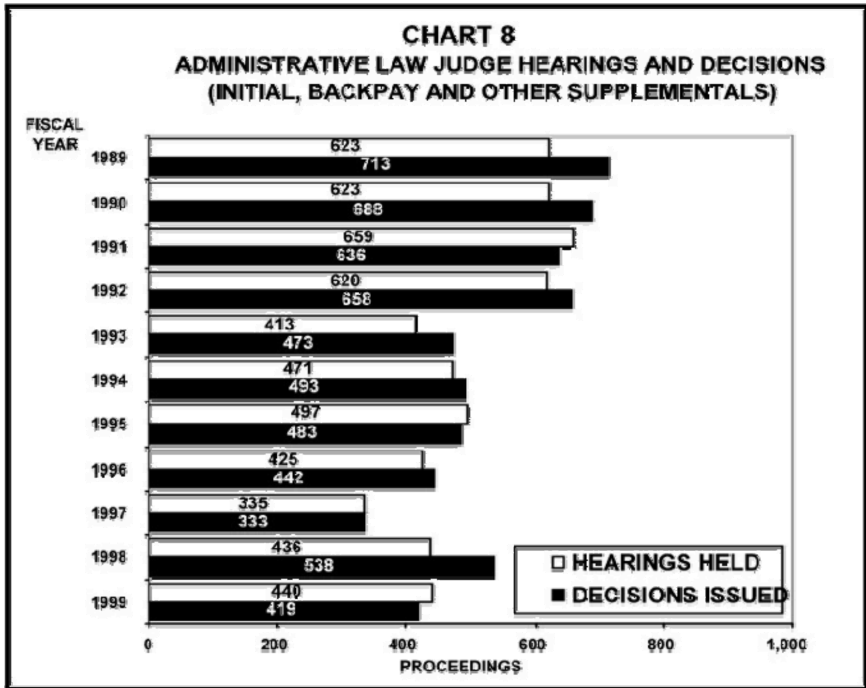
The 1999 total consisted of 4679 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 783 petitions to decertify existing bargaining agents; 110 deauthorization petitions for referendums on rescinding a union’s authority to enter into union-shop contracts; and 195 petitions for unit clarification to determine whether certain classifications

of employees should be included in or excluded from existing bargaining units. Additionally, 15 amendment of certification petitions were filed.



During the year, 6065 representation and related cases were closed, compared to 6300 in fiscal 1998. Cases closed included 4868 collective-bargaining election petitions; 840 decertification election petitions; 128 requests for deauthorization polls; and 229 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 11.5 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 36 cases where the Board directed an election after transfer of a case from the Regional Office. (Table 10.) There were three cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

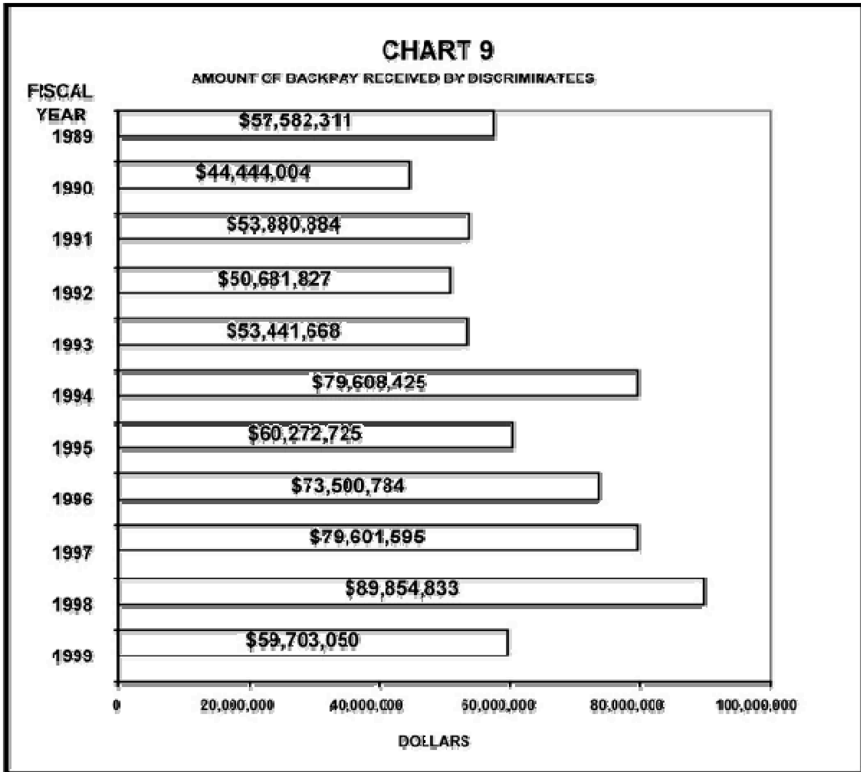


3. Elections

The NLRB conducted 3585 conclusive representation elections in cases closed in fiscal 1999, compared to the 3795 such elections a year earlier. Of 242,123 employees eligible to vote, 210,387 cast ballots, virtually 9 of every 10 eligible.

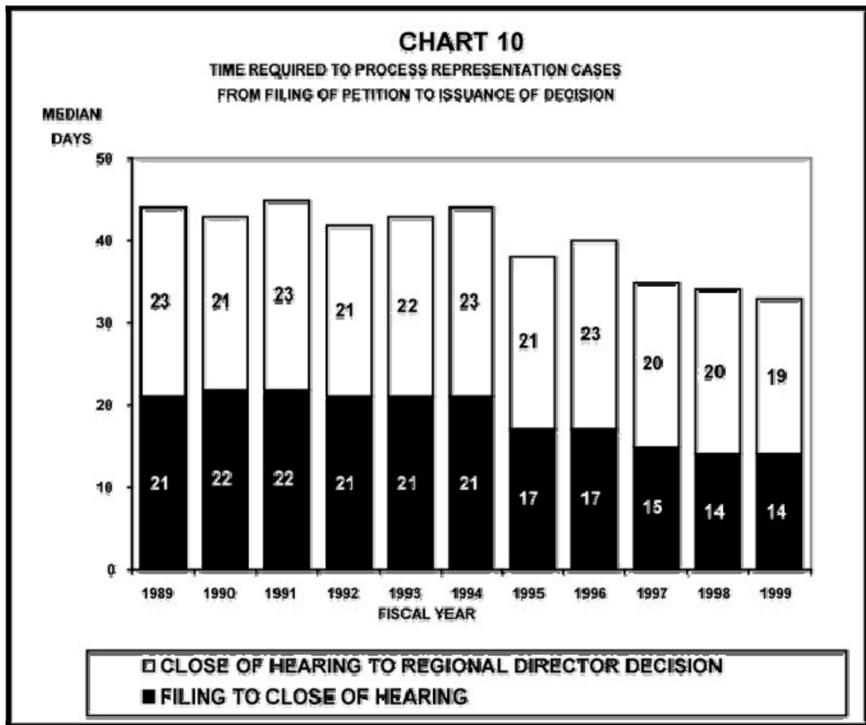
Unions won 1811 representation elections, or 50.5 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 112,291 workers. The employee vote over the course of the year was 106,529 for union representation and 103,858 against.

The representation elections were in two categories—the 3162 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 423 decertification elections determining whether incumbent unions would continue to represent employees.



There were 3468 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1703, or 49.1 percent. In these elections, 93,580 workers voted to have unions as their agents, while 102,314 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 95,371 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 117 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 108 elections, or 92.3 percent.

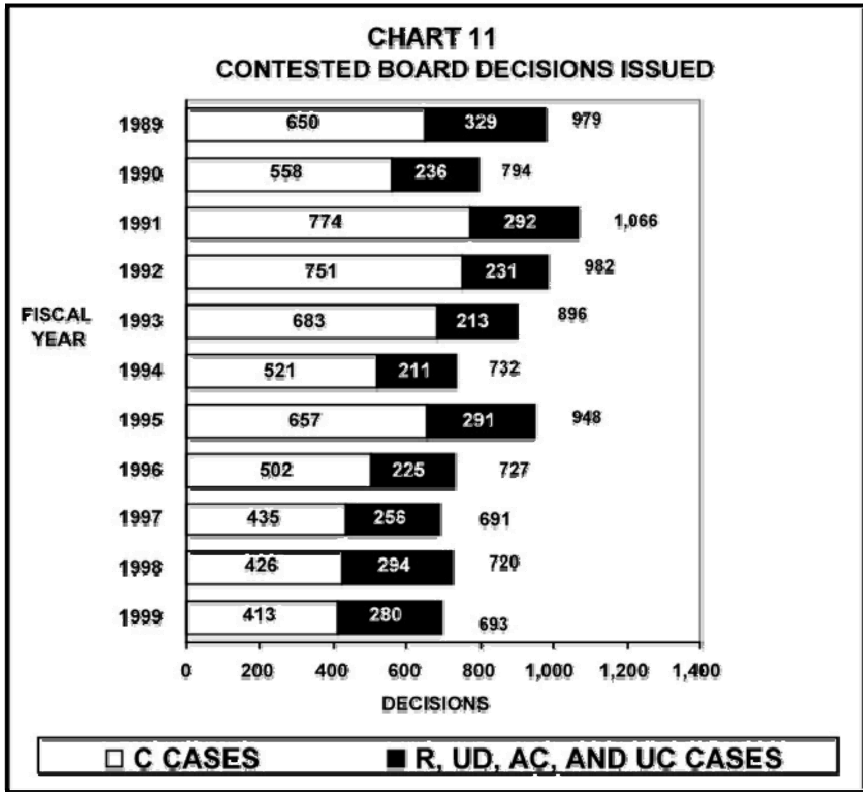


As in previous years, labor organization results brought continued representation by unions in 135 elections, or 31.9 percent, covering 8246 employees. Unions lost representation rights for 10,638 employees in 288 elections, or 68.1 percent. Unions won in bargaining units averaging 61 employees, and lost in units averaging 37 employees. (Table 13.)

Besides the conclusive elections, there were 158 inconclusive representation elections during fiscal year 1999 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 34 referendums, or 48.6 percent, while they maintained the right in the other 36 polls which covered 3332 employees. (Table 12.)

For all types of elections in 1999, the average number of employees voting, per establishment, was 59, compared to 57 in 1998. About 71 percent of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1059 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1139 decisions rendered during fiscal year 1998.

A breakdown of Board decisions follows:

Total Board decisions.. **1059**

Contested decisions **703**

Unfair labor practice decisions 423

Initial (includes those based on

stipulated record) 373

Supplemental 26

Backpay 14
Determinations in jurisdictional
disputes 10

Representation decisions 267
After transfer by Regional Directors
for initial decision 2
After review of Regional Director
decisions....................................79
On objections and/or challenges ...186
Other decisions 13
Clarification of bargaining unit.......11
Amendment to certification 0
Union-deauthorization 2
Noncontested decisions **356**
Unfair labor practice 157
Representation 196
Other 3

The majority (66 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.)

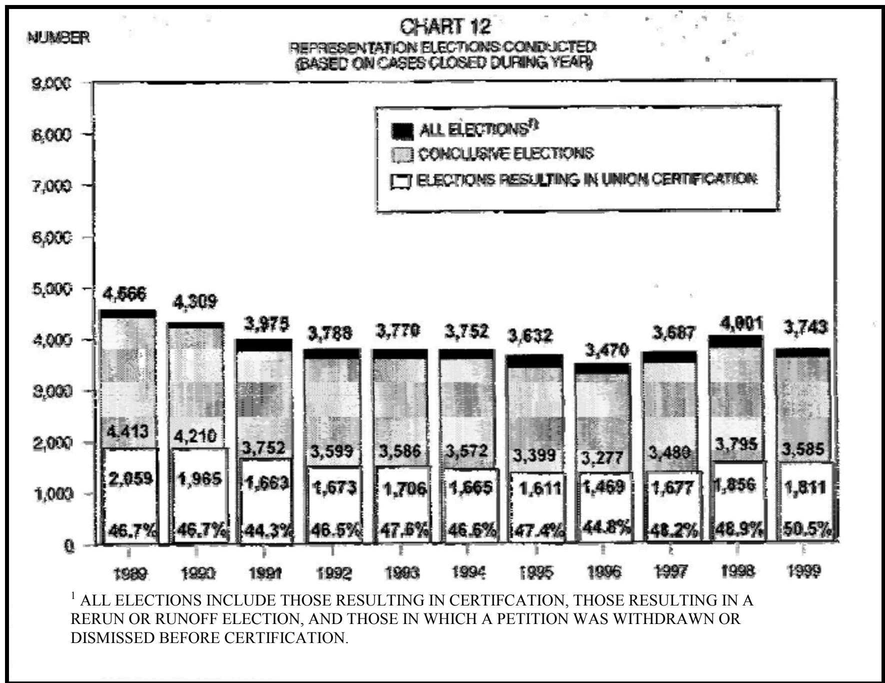
In fiscal 1999, about 4 percent of all meritorious charges and 42 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 736 decisions in fiscal 1999, compared to 752 in 1998. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

Administrative law judges issued 419 decisions and conducted 440 hearings. (Chart 8 and Table 3A.)



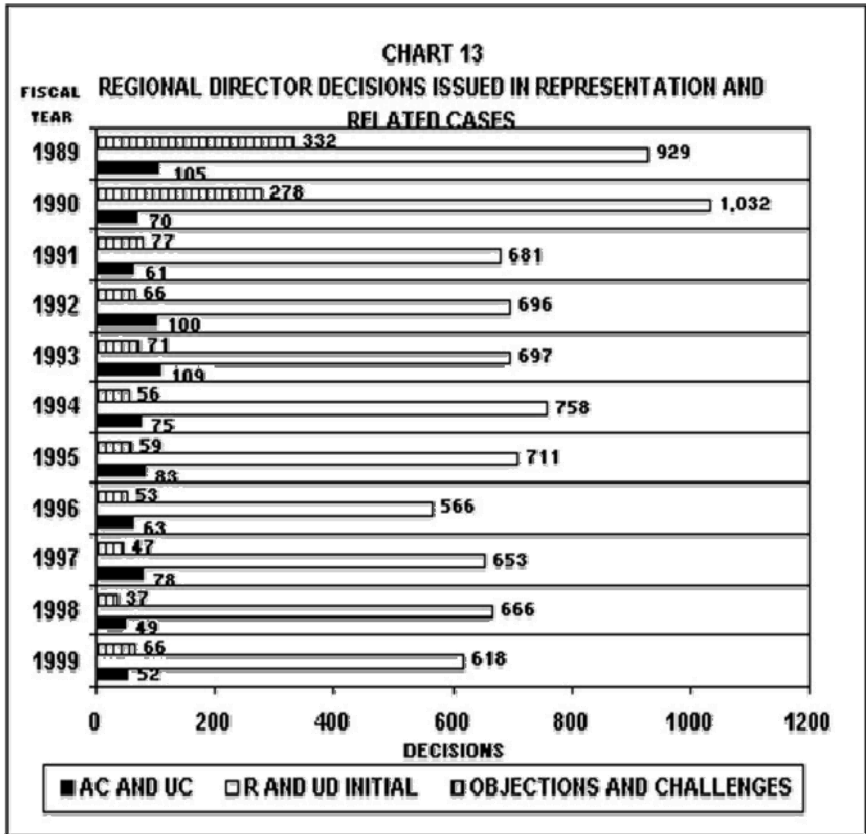
[1] ALL ELECTIONS INCLUDE THOSE RESULTING IN CERTIFCATION, THOSE RESULTING IN A RERUN OR RUNOFF ELECTION, AND THOSE IN WHICH A PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION.

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 1999, 132 cases involving the NLRB were decided by the United States courts of appeals compared to 144 in fiscal year 1998. Of these, 84.1 percent were won by NLRB in whole or in part compared to 83.4 percent in fiscal year 1998; 3.0 percent were remanded entirely compared to 5.6 percent in fiscal year 1998; and 12.9 percent were entire losses compared to 11.0 percent in fiscal year 1998.

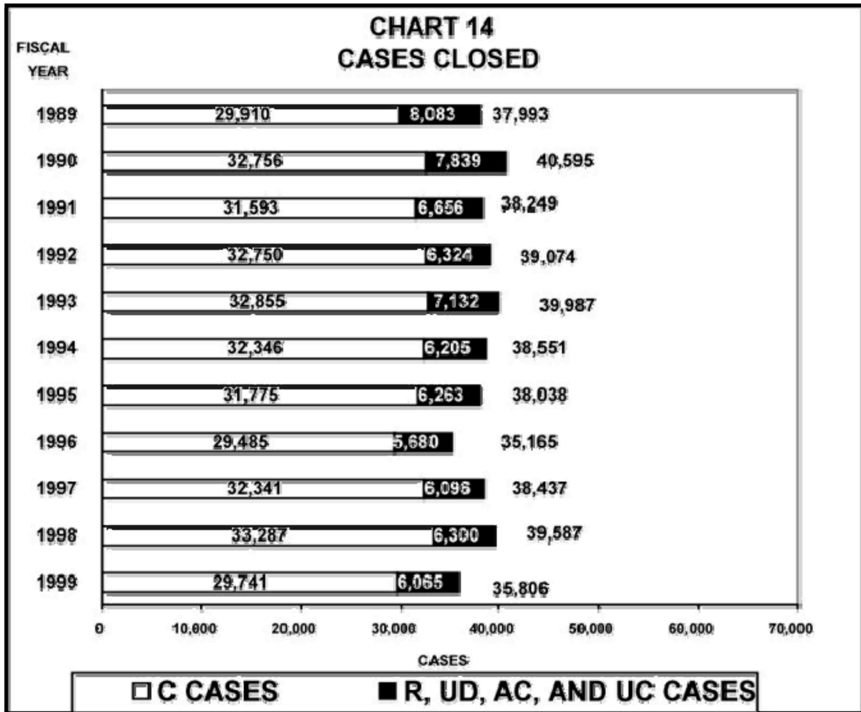


b. The Supreme Court

In fiscal 1999, there were no Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 1999.

c. Contempt Actions

In fiscal 1999, 176 cases were referred to the contempt section for consideration of contempt action. There were 11 contempt proceedings instituted. There were five contempt adjudications awarded in favor of the Board; four cases in which the court directed compliance without adjudication; and there were no cases in which the petition was withdrawn.



d. Miscellaneous Litigation

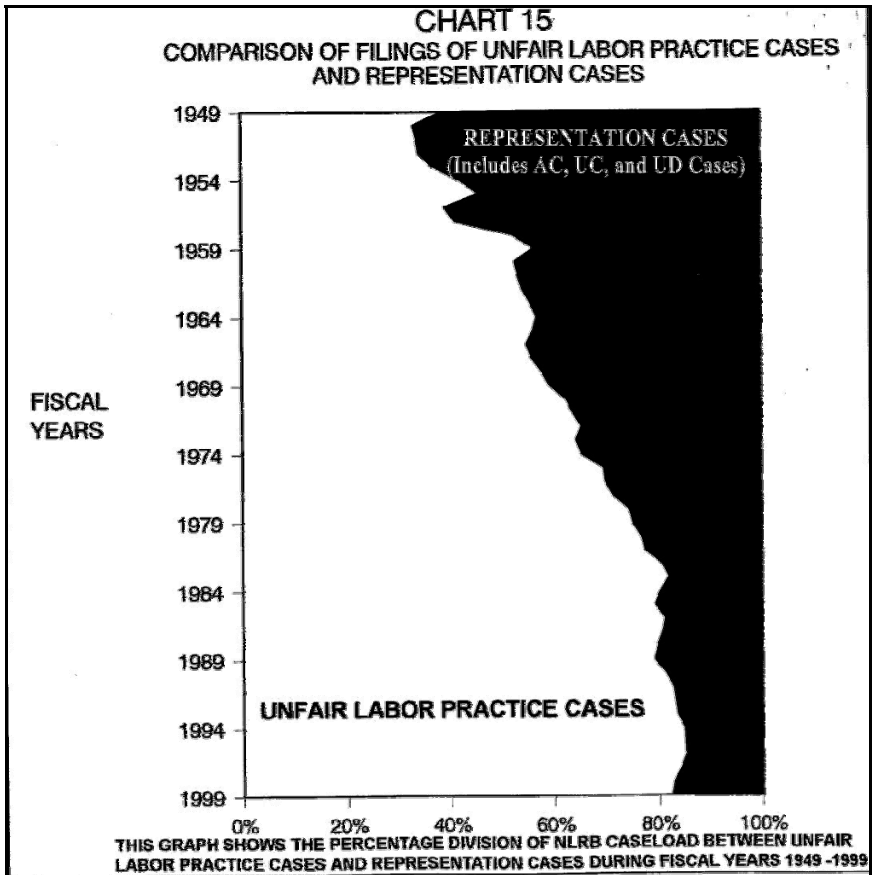
There were 24 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 19 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 38 petitions filed with the U.S. district courts, compared to 45 in fiscal year 1998. (Table 20.) Injunctions were granted in 17, or 68 percent, of the 25 cases litigated to final order.

NLRB injunction activity in district courts in 1998:

Granted	17
Denied	8
Withdrawn	1
Dismissed	0
Settled or placed on court's inactive lists	8
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 "NLRB Jurisdiction," Chapter III on "Board Procedure," Chapter IV on "Representation Proceedings," and Chapter V on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly some of the decisions establishing or reexamining basic principles in significant areas.

1. Subpoena Enforcement

In *Best Western City View Motor Inn*,[1] the Board held that an attorney's affirmation was sufficient to prove service of a subpoena. The employer had subpoenaed one of its former employees to appear at a hearing on alleged objectionable conduct in an election held among the employer's employees. When the witness did not appear at the hearing, the employer requested that the Board institute subpoena enforcement proceedings in Federal court. As proof of service of the subpoena, the employer submitted a document signed by him, which stated that he had mailed the subpoena by certified mail, return receipt requested, to the witness by placing it in an official postal depository with postage prepaid. The unsworn document was dated, and specified the date of mailing and the address to which the subpoena had been mailed. The employer did not, however, submit the postal return receipt card prior to its request for subpoena enforcement. Under these circumstances, the Region declined to institute subpoena enforcement proceedings.

The Board held that the employer had sufficiently proved service of the subpoena by submitting the attorney's signed affirmation of service, and directed the Region to institute enforcement proceedings in Federal court. The Board's procedural Rules state that, while the postal return receipt is acceptable as proof of service by mail, this method is not exclusive and "any sufficient proof may be relied on to establish service." The Board stated that it was immaterial that the employer did not prove that the witness actually received the subpoena. Because service was effective when the subpoena was mailed, proof that it was mailed was sufficient to prove service.

2. Single-Facility Presumption

In *Central Transport, Inc.*,[2] a Board majority held that the employer had rebutted the board's presumption in favor of representation petitions filed for a single-employer bargaining unit by demonstrating a significant history of bargaining on a multiemployer basis for the petitioned-for unit.

The record showed that the collective-bargaining history for the petitioned-for bargaining unit was on a single-employer basis from the unit's inception in 1982, was scheduled to continue on that basis until 1988 by virtue of contract extension, and that single-employer bargaining ceased when the employer unlawfully abrogated the collective-bargaining agreement in 1986. Following 1986, however, bargaining

[1] 327 NLRB 468 (Members Fox, Liebman, Hurtgen, and Brame).

[2] 328 NLRB No. 60 (Chairman Truesdale and Member Hurtgen; Member Fox dissenting).

had been exclusively on a multiemployer basis, culminating with a multiemployer contract effective until March 1998.

The Board majority held on these facts that the unit employees "have had a distinct identity in the multiemployer unit for a significant period of time,"[3] while further recognizing that there had been an earlier period of collective bargaining on a single-employer basis. Faced with the unusual factual situation in which there is a history of collective bargaining in the petitioned-for unit on both a single-employer and multiemployer basis, the Board majority held that ensuring stability in collective-bargaining relationships compelled the preservation of the current multiemployer bargaining relationship.

In dissent, Member Fox observed that the multiemployer bargaining history came about only as a result of the employer's unlawful abrogation of the single-employer bargaining agreement in 1986, and cautioned that in such circumstances the Board should be hesitant to assign controlling weight to that multiemployer bargaining history, and declined to do so. The Board majority explained, however, that the multiemployer bargaining was in compliance with the earlier bargaining order issued by the Board and enforced by the Sixth Circuit, and had resulted in a stable and beneficial multiemployer bargaining relationship.

3. Unpaid Staff

In *WBAI Pacifica Foundation*,[4] the Board found that the employer's unpaid staff are not employees within the meaning of Section 2(3) of the Act and clarified the existing bargaining unit to exclude them. The employer is a not-for-profit corporation engaged in operating a noncommercial FM radio station. Paid and unpaid staff have been included in the bargaining unit in successive collective-bargaining agreements since 1987 when the employer voluntarily recognized the union. Unpaid staff produce a majority of the employer's programs under the general direction of the program director. They do not receive wages, sick leave, vacations, medical, dental, and health benefits. No workers' compensation or unemployment insurance payments are made on their behalf. The number of hours they work is a matter within their discretion. Unpaid staff are allowed essentially to act independently after the program director initially approves their programs.

Relying on Supreme Court decisions concerning employee status in *NLRB v. Town & Country Electric*,[5] *Phelps Dodge Corp. v. NLRB*,[6] and

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[3] Id., slip op. at 2.
[4] 328 NLRB No. 179 (Members Fox, Liebman, and Hurtgen).
[5] 516 U.S. 85 (1995).
[6] 313 U.S. 177 (1941).

Chemical Workers v. Pittsburgh Plate Glass,[7] the Board held that unpaid staff are not statutory employees because there is no economic aspect to their relationship with the employer. They receive no compensation for labor or services at the station. In this regard, the Board found that the occasional reimbursement for travel, the contractual eligibility for a child care allowance, the payment of paid staff wages when substituting for paid staff, and the finances for producing programs are insufficient evidence of compensation, either monetary or in the form of a benefit given in exchange for labor. The Board concluded:[8]

> Unpaid staff do not depend upon the Employer, even in part, for their livelihood or for the improvement of their economic standards. They do not work for hire and thus the Act's concern with balancing the bargaining power between employer and employees does not extend to them.

4. Section 502 Work Stoppage

In *TNS, Inc.*,[9] a case on remand from the United States Court of Appeals for the District of Columbia Circuit,[10] the Board reconsidered whether the respondent violated Section 8(a)(3) and (1) of the Act by permanently replacing employees who quit work based on a good-faith belief that their working conditions had become "abnormally dangerous" within the meaning of Section 502 of the Act.[11] A panel majority consisting of Members Fox and Liebman found the violation. Member Hurtgen dissented.

Section 502 states in relevant part that "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 . . . be deemed a strike."

The respondent produces various forms of ammunition made from depleted uranium (DU), a radioactive substance that is both a carcinogen and a toxic threat to internal organs, particularly the kidneys. Because of DU's radioactive quality, the respondent was under the jurisdiction of the United States Nuclear Regulatory Commission (NCR) which, pursuant to an agreement with the State of Tennessee where respondent's plant was located, delegated its plant oversight duties to the Tennessee Division of Radiological Health (TDRH). TDRH adopted the official dose limits set

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[7] 404 U.S. 157 (1971).
[8] Id., slip op. at 4.
[9] 329 NLRB No. 61 (Members Fox and Liebman; Member Hurtgen dissenting).
[10] *TNS, Inc. v. Oil Workers*, 46 F.3d 82 (1995).
[11] The Board dismissed the complaint in the original decision. See 309 NLRB 1348 (1992).

by NRC for external and internal exposure to DU, and inspected the plant semiannually to ensure compliance with the dose limits. In addition, a joint labor-management safety committee conducted monthly tours of the plant.

Over time, employees came to believe that the respondent's production process was emitting increasingly dangerous amounts of DU-contaminated smoke and vapors. After a number of failed attempts to persuade the respondent to improve its production methods to lessen DU emissions, the employees finally walked off the job in protest of their employer's perceived intransigence. The employer responded by hiring permanent replacements. After a lengthy trial, the administrative law judge concluded that working conditions at TNS had become abnormally dangerous when, following expiration of their collective-bargaining agreement, the employees engaged in a work stoppage. The judge further concluded that by hiring permanent replacements and refusing to reinstate the employees upon their unconditional offer to return to work, the respondent violated Section 8(a)(3) and (1) of the Act.

Majority Members Fox and Liebman found that the protective intent of Section 502 applies to "abnormally dangerous threats to employee health and safety caused by cumulative exposure to radioactive and toxic substances, even where, as here, there may be no immediate, quantifiable physical injury."[12] To establish that a work stoppage is protected under Section 502, the majority articulated the following test to be applied in cases involving cumulative, slow-acting dangers to employee health and safety:

The General Counsel must demonstrate by a preponderance of the evidence that the employees believed in good faith that their working conditions were abnormally dangerous; that their belief was a contributing cause of the work stoppage; that the employees' belief is supported by ascertainable, objective evidence; and that the perceived danger posed an immediate threat of harm to employee health or safety.[13]

In concluding that the General Counsel met this test, the majority cited evidence of the repeated efforts by employees to have the respondent correct the production methods that regularly subjected them to contact with DU. The majority also relied on exposure readings compiled by TDRH confirming the employees safety and health concerns. Having concluded that the employees engaged in a work stoppage protected by Section 502, the next question was whether the Respondent was entitled under *NLRB v. Mackay Radio & Telegraph*,[14] to

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[12] 329 NLRB No. 61, slip op. at 4.
[13] Id. slip op. at 2.
[14] 304 U.S. 333 (1938).

hire permanent replacements. The majority reasoned that a Section 502 work stoppage is not an economic strike and because the *Mackay Radio* right to hire permanent replacements exists only in an economic strike situation, the respondent was prohibited from continuing its business with permanent replacements. By doing so and refusing to reinstate employees when they offered to return to work, the majority found that the respondent violated Section 8(a)(3) and (1).

Member Hurtgen, in dissent, stated that Section 502 applied "only where the abnormally dangerous conditions are the proximate cause of the work stoppage, i.e., but for the abnormally dangerous conditions, the employees would not have stopped work."[15] He found that economic considerations, which did not concern health and safety matters, would have caused the work stoppage and, hence, the "work stoppage was not proximately tied to abnormally dangerous conditions."[16] Member Hurtgen concluded that, even assuming that abnormally dangerous conditions did exist under whatever test is applied, permanent replacement of the employees was not precluded by Section 502.

5. Union Disclaimer of Representation

In *Production & Maintenance Local 101 (Bake-Line Products)*,[17] a Board majority held that a union may tell employees that it may disclaim its role as a collective-bargaining representative in apparent response to the employees' filing of a deauthorization petition or the loss of a deauthorization election, without providing the employees with objective evidence that its continued representation of them would be infeasible. The Board thus overruled *Hospital Employees 1115 Joint Board (Pinebrook Nursing Home)*,[18] which held that, in the absence of objective evidence of economic infeasibility, a union's preelection threat to abandon its representational obligations if the election resulted in deauthorization was unlawful.

The majority reasoned that there is a necessary connection between a union's collection of dues and its continued representation of employees, since it is an economic reality that a union needs the assured payment of dues from at least some employees to afford continuing to represent them. The majority found that, because a union that loses a deauthorization election has no assurance that enough employees will make regular payments voluntarily, its statement that it may disclaim

[15] 329 NLRB No. 61, slip op. at 12.
[16] Id., slip op. at 13.
[17] 329 NLRB No. 29 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).
[18] 305 NLRB 802 (1991).

representation if it loses a deauthorization election is based on the objective reality of representation. Thus, unlike statements by employers threatening plant closure in the event of unionization, "there is full symmetry between cessation of representation statements and the decision to cease representation in the deauthorization context."[19] In a footnote, the majority stated that if, as in *Pinebrook*, a union's statements went beyond economic realities and indicated that, if employees voted for deauthorization, the union would continue to represent them but would not do so properly, such conduct would be unlawful.

In dissent, Members Hurtgen and Brame stated that they would treat a statement about cessation of representation in the same way that the law treats statements about plant closure because, in the absence of a union's explanation of a threatened abandonment of representation, employees would reasonably believe that the threat was "in retaliation for their deauthorization vote, rather than a mere economic consequence of the vote."[20] Members Hurtgen and Brame denied that there is a necessary connection between union security and representation, noting that in right-to-work states and elsewhere in contracts without union-security clauses, many unions represent employees who are not subject to a union-security clause. To the extent that there is an economic connection, Members Hurtgen and Brame asserted, the union should explain that connection to employees.

6. Remedial Order Provisions

In *TNT Skypak, Inc.*,[21] the Board overruled precedent[22] and held that where a respondent's unlawful conduct frustrates the formation of a contract, the "execution date" is the date the agreement would have been executed but for the respondent's unfair labor practice.

On August 27, 1993, the respondent in *TNT* withdrew from numerous tentative agreements with the union because it became apparent that a union was about to accept virtually all of the respondent's proposals thereby making a contract inevitable. The Board noted that the *Driftwood* remedy for this violation required the respondent to apply prospectively any contract to which the union agreed from the date upon which the parties executed their agreement. The Board reasoned that this inadequately remedied the unlawful conduct at issue. The Board noted the well-established principle that any refusal to execute an agreed-upon contract is remedied with retroactive execution of that contract. In this

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[19] 329 NLRB No. 29, slip op. at 3.
[20] Id., slip op. at 4.
[21] 328 NLRB No. 67 (Chairman Truesdale and Members Fox and Liebman).
[22] *Driftwood Convalescent Hospital*, 312 NLRB 247 (1993), enfd. 67 F.3d 307 (9th Cir. 1995).

context, the Board reasoned "it does not follow that, where Respondent has delayed execution of the agreement by its unlawful conduct, the date of physical execution of the agreement is the effective date of said agreement. Rather, the crucial date here is the initial date upon which, *but for* Respondent's unlawful conduct, the agreement would have been executed."[23] The Board further reasoned that to allow any later effective date of the agreement would permit the wrongdoer to benefit from its misconduct.

The Board found the August 27, 1993 date of the respondent's unlawful withdrawal from tentative agreements to be the starting date of any collective-bargaining agreement between the parties. The Board reasoned that unlike the prospective remedy in *Driftwood*, this retroactive remedy furthers the policies of the Act "because it recreates as nearly as possible, the circumstances and relationships that likely would have resulted had the unfair labor practice in question not occurred."[24] The Board also noted that this remedy does not put the Board in the position of compelling parties to agree to any substantive contractual provision because the parties had already agreed to a provision of the contract that provided that the collective-bargaining agreement would become effective upon execution.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1999, are as follows:

Item	Amount
Personnel compensation	$121,609,235
Personnel benefits	23,380,524
Benefits for former personnel	23,000
Travel and transportation of persons	2,488,920
Transportation of things	165,542
Rent, communications, and utilities	23,094,605
Printing and reproduction	141,970
Other services	9,149,595
Supplies and materials	800,707
Equipment	3,412,378
Insurance claims and indemnities	149,905
Total obligations and expenditures[25]	$184,416,381

[23] 328 NLRB No. 67, slip op. at 2, quoting *Crimptex, Inc.*, 221 NLRB 595 (1975). (Emphasis in original.)
[24] 328 NLRB No. 67, slip op. at 3.
[25] Includes $369,095 for reimbursables for casehandling in Saipan. Also includes $29,300 for reimbursables from Agriculture (Fitness Facility).

II

NLRB Jurisdiction

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

Off-Reservation Commercial Facility

In *Yukon Kuskokwim Health Corp.*,[6] the Board found that under *Sac & Fox Industries*,[7] it would effectuate the purposes of the Act to assert jurisdiction over the employer, an acute care hospital that is located off of a treaty reservation. The employer provides primary and acute care to

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[1] See Secs. 9(c) and 10(a) of the Act and also the definitions of "commerce" and "affecting commerce" set forth in Sec. 2(6) and (7), respectively. Under Sec. 2(2) the term "employer" does not include the United States or any wholly owned Government corporation, any Federal Reserve Bank, any state or political subdivision, any person subject to the Railway Labor Act, or any labor organization other than when acting as an employer. The exclusion of nonprofit hospitals from the definition of employer was deleted by the health care amendments to the Act (Pub. L. 93–360, 88 Stat. 395, effective Aug. 25, 1974). Nonprofit hospitals, as well as convalescent hospitals, health maintenance organizations, health clinics, nursing homes, extended care facilities, and other institutions "devoted to the care of sick, infirm, or aged person[s]," are now included in the definition of "health care institutions" under the new Sec. 2(14) of the Act. "Agricultural laborers" and others excluded from the term "employee" as defined by Sec. 2(3) of the Act are discussed, inter alia, at 29 NLRB Ann. Rep. 52–55 (1964), and 31 NLRB Ann. Rep. 36 (1966).
[2] See 25 NLRB Ann. Rep. 18 (1960).
[3] See Sec. 14(c)(1) of the Act.
[4] These self-imposed standards are primarily expressed in terms of the gross dollar volume of business in question: 23 NLRB Ann. Rep. 18 (1958). See also *Floridan Hotel of Tampa,* 124 NLRB 261 (1959), for hotel and motel standards.
[5] Although a mere showing that the Board's gross dollar volume standards are met is ordinarily insufficient to establish legal or statutory jurisdiction, no further proof of legal or statutory jurisdiction is necessary when it is shown that the Board's "outflow-inflow" standards are met. 25 NLRB Ann. Rep. 19–20 (1960). But see *Sioux Valley Empire Electric Assn.*, 122 NLRB 92 (1958), concerning the treatment of local public utilities.
[6] 328 NLRB No. 101 (Chairman Truesdale and Members Fox and Brame).
[7] 307 NLRB 241 (1992).

Alaskan Natives (about 95 percent of its patients) and nonnatives in Bethel, Alaska. The hospital is governed by a 20-member board of directors whose members are elected by the membership of the tribal governments of 58 Alaskan Native tribes. Only 1 or 2 members of the 40–44-member petitioned-for bargaining unit of licensed practical nurses and registered nurses are Alaskan Natives. The Federal Government owns the building occupied by the hospital and the land on which it is located.

The Board found that the Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*[8] supports the conclusion that the hospital is not located on or near Indian land that should be treated as tantamount to a reservation, or "Indian country." In that case, the Court found that former reservation land, conveyed in fee simple title to Native corporations under Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 and et seq., and subsequently transferred to the Native Village of Venetie Tribal Government (the Tribe), did not constitute Indian country. The Court found that the Tribe's ANCSA lands did not satisfy either of the two requirements that define "dependent Indian communities"—i.e., the lands must have been set aside by the Federal Government for the use of the Indians as Indian land, and the lands must be under Federal superintendence. See *Native Village of Venetie*.[9]

In finding that the employer in *Yukon Kuskokwim* is not located on or near "Indian country," the Board noted that the hospital is not located on any land owned by any tribe, and that there is no evidence that the Yukon Kuskokwim Delta area is subject to any protective treaty. The Board further noted that under *Native Village of Venetie*, the fact that the hospital is located in 1 of the 12 regions set up by ANCSA is not sufficient to find this area to be Indian country. In addition, the Supreme Court made clear that Federal aid to fund health care programs does not establish the requisite dependency on the Federal Government to find Federal superintendence.[10]

The Board, in agreement with the Acting Regional Director, found this case to be distinguishable from *Southern Indian Health Council*.[11] In *Southern Indian*, unlike here, the clinic was located on the reservation of one of the consortium members, and most of the 31 nonprofessionals sought were Native American. The Board further rejected the employer's contention that it is exempt from coverage because it does

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[8] 522 U.S. 520 (1998).
[9] 522 U.S. at 527–533.
[10] Id. at 534.
[11] 290 NLRB 436 (1988).

not qualify as an employer under Section 2(2) of the Act. Under *Sac & Fox*, the employer does not constitute a political subdivision under the Act because it is not located on a reservation or on Indian country. In addition, the employer does not function as an arm of the United States, and, thus, is not exempt as an "integral part of the government of the United States as a whole."

III

Board Procedure

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

A. Limitation of Section 10(b)

In *Ross Stores, Inc.*,[1] a Board majority affirmed an administrative law judge's finding that Section 10(b) did not bar litigation of two 8(a)(1) allegations because, under the *Nickles Bakery*[2]*/Redd-I*[3] test, a sufficient factual relationship existed between those allegations and a timely filed 8(a)(3) discharge allegation in the original charge. The majority overruled *Nippondenso Mfg. U.S.A.*[4] and found that the factual nexus could be established through the allegations' occurrence during the employer's antiunion campaign.

The Board majority described the *Nippondenso* decision as an "aberrant" departure from its usual rule of finding a sufficient relationship in "acts that are part of the same course of conduct, such as a single campaign against a union."[5] Members Hurtgen and Brame would find the 8(a)(1) allegations time-barred under Section 10(b).

The Board, via a different majority (Chairman Truesdale and Members Brame and Hurtgen), also found that the Respondent did not violate Section 8(a)(1) by stating that the Respondent "would do anything in [its] power to keep the union out of the building." The majority found that the statement, by itself, did not indicate possible retaliation. The majority distinguished cases cited by the judge in support of his finding of a violation as involving other threats or circumstances indicating possible retaliation. Members Fox and Liebman, dissenting in part, would find this statement to violate Section 8(a)(1) as indicating that the respondent would resort to unlawful conduct to maintain its nonunion status.

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[1] 329 NLRB No. 59 (Chairman Truesdale and Members Fox, Liebman, Hurtgen, and Brame; Member Brame concurring in part and dissenting in part; Members Fox and Liebman dissenting in part; Member Hurtgen separately dissenting in part).

[2] *Nickles Bakery of Indiana*, 296 NLRB 927 (1989).

[3] *Redd-I, Inc.*, 290 NLRB 1115 (1988).

[4] 299 NLRB 545 (1990).

[5] 329 NLRB No. 59, slip op. at 1, quoting *NLRB v. Central Power & Light Co.*, 425 F.2d 1318, 1321 (5th Cir. 1970).

B. Subpoena Enforcement

In *Best Western City View Motor Inn,*[6] the Board held that an attorney's affirmation was sufficient to prove service of a subpoena. In light of the fact that proof of service of the subpoena had been made, the Board remanded the case to the Region with instructions to institute subpoena enforcement proceedings pursuant to the employer's prior request.

The employer subpoenaed one of its former employees to appear at a hearing held in 1996 on alleged objectionable conduct at an election held among the employer's employees. According to the employer, prior to the election the witness had been visited by agents of the union who threatened him with reprisals if he did not vote for the union. When the witness did not appear at the hearing, the employer requested that the Board institute subpoena enforcement proceedings in Federal court.

As proof of service of the subpoena, the employer's counsel submitted a document signed by him, which stated that he had mailed the subpoena by certified mail, return receipt requested, to the witness by placing it in an official postal depository with postage prepaid. The document was dated, and specified the date of mailing and the address to which the subpoena had been mailed. The employer did not, however, submit the postal return receipt card prior to its request for subpoena enforcement. Under these circumstances, the Region declined to institute subpoena enforcement proceedings.

The Board held that the employer had sufficiently proved service of the subpoena by submitting the signed attorney's affirmation of service. The Board's procedural Rules state that, while the postal return receipt is acceptable as proof of service by mail, this method is not exclusive and "any sufficient proof may be relied on to establish service." The Board stated that "it is evident from the plain language of the Board's Rules and Regulations that service may be proved without submission of the postal return receipt card."[7]

The Board also stated that it was immaterial that the employer did not prove that the witness actually received the subpoena. Because service was effective when the subpoena was mailed, proof that it was mailed was sufficient to prove service. In this regard, noting that the document described in detail the date and method of mailing and the address to which the subpoena was mailed, the Board held that the attorney's affirmation was sufficient proof that service had been made even though it was unsworn. Because the employer had sufficiently proved service of

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[6] 327 NLRB 468 (Members Fox, Liebman, Hurtgen, and Brame).
[7] Id., slip op. at 2.

the subpoena, the Board directed the Region to institute enforcement proceedings in Federal court.

C. Withdrawal of Decertification Petition

In *Transportation Maintenance Services*,[8] a Board majority denied the employer's motion to reconsider its approval of the employee-petitioner's request to withdraw his decertification petition after the election had been held but before the ballots had been tallied.

In *Transportation Maintenance,* a unit employee filed a petition seeking to decertify the union as the bargaining representative. The Regional Director directed an election. Because the union filed an appeal to the Board from this direction of election, the Region impounded the ballots. While the appeal was pending, the employee-petitioner sought to withdraw the decertification petition. The Board granted that request and, in response to the employer's motion for reconsideration, reaffirmed its Order.

In reaffirming approval of the withdrawal request, the Board majority rejected the employer's argument that it was inequitable to permit the single-employee-petitioner to withdraw the petition because it deprived unit employees of their vote. Citing Casehandling Manual Section 11116,[9] the majority found that withdrawal requests will be granted unless they appear to have the purpose of circumventing Section 9©(3)'s 1-year election bar rule. Relying on Casehandling Manual Section 11110.1,[10] the majority further concluded that "effectuation of the petitioner's desire to withdraw the petition, in the absence of any indication that it is anything other than voluntary or any evidence that other employees oppose the withdrawal, actually furthers one of the primary purposes of the Act, namely that of promoting stability in collective-bargaining relationships."[11]

In dissent, Members Hurtgen and Brame argued that the employer's motion should be granted, the petition reinstated, and the impounded ballots tallied. In their view, a secret-ballot election, conducted under the Board's supervision, "most accurately reflects the views of unit employees regarding representation." Therefore, where a decertification election has been conducted, Members Hurtgen and Brame would not permit the views of unit employees to be negated by the subsequent withdrawal by an individual employee.

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[8] 328 NLRB No. 93 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).

[9] NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11116.

[10] This section states that there is a general policy which favors the effectuation of a petitioner's genuine voluntary desire to drop the proceeding.

[11] Slip op. at 1.

D. Interpreter Services

In *Solar International Shipping Agency*,[12] the Board endorsed the General Counsel's longstanding policy that the Agency will provide and pay for interpreter services in pre- and post-election representation proceedings. However, in order to reduce the Agency's interpreter costs, the Board stated that, where it is unclear whether a non-English speaking witness' testimony would be relevant or necessary, the Region or hearing officer could appropriately request the party that intends to call the witness to identify, either through a formal offer of proof or any other method satisfactory to the Region or hearing officer, the nature of the testimony to be given by the witness. In this manner, the Region would be able to determine in advance (i.e., prior to retaining the interpreter) whether the testimony would be probative of the issues and assist the Region's investigation. The Board noted that if the party declined to identify the nature of the witness' testimony, the Region could properly decline to retain an interpreter for that witness' testimony and the party would then have to decide whether to forgo calling that witness or retain an interpreter for the witness itself.

E. Effect of Settlement Agreement

In *Outdoor Venture Corp.*,[13] the Board denied the respondent's Motion for Summary Judgment. The Board held that a settlement agreement in a prior case did not bar litigation of a complaint allegation that the presettlement conduct prolonged a strike and converted it to an unfair labor practice strike. The Board found that the settlement agreement in the prior case specifically reserved in the "SCOPE OF THE AGREEMENT" clause the General Counsel's right to use the settled conduct for the purpose of establishing the unfair labor practice strike allegation in the present case. The Board found that the use of presettlement conduct for the purpose of establishing the unfair labor practice strike allegation falls within the phrase, "any relevant purpose in the litigation of . . . any other case."[14]

The Board also rejected the respondent's argument that summary judgment was appropriate because the execution of the settlement agreement and the notice posting reconverted the work stoppage to an economic strike prior to the employees' unconditional offer to return to work. The Board stated that because the notice posting period was still in effect at the time of the offer to return to work the Board could not find that the unfair labor practices allegedly prolonging the strike were

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[12] 327 NLRB 369 (Chairman Truesdale and Members Fox, Liebman, Hurtgen, and Brame).

[13] 327 NLRB 706 (Chairman Truesdale and Members Fox and Liebman).

[14] Id, at 707.

fully remedied or that the strike was converted to an economic strike at that time.

The Board further rejected the respondent's argument that the allegations in the complaint were barred by Section 10(b). The General Counsel was not seeking a remedy for the conduct occurring more than 6 months before the filing of the charge. The litigation of that conduct was required only to establish that the strike was an unfair labor practice strike.

IV

Representation Proceedings

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

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

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

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

A. Single-Facility Presumption

In *Central Transport, Inc.*,[1] a Board majority held that the employer had rebutted the Board's presumption in favor of representation petitions filed for a single-employer bargaining unit by demonstrating a significant history of bargaining on a multiemployer basis for the petitioned-for unit. The representation petition for a single-employer bargaining unit of the employer's dock and yard workers was accordingly dismissed.

The record showed that the collective-bargaining history for the petitioned-for bargaining unit was on a single-employer basis from the unit's inception in 1982, was scheduled to continue on that basis until

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[1] 328 NLRB No. 60 (Chairman Truesdale and Member Hurtgen; Member Fox dissenting).

1988 by virtue of contract extension, and that single-employer bargaining ceased when the employer unlawfully abrogated the collective-bargaining agreement in 1986. Following 1986, however, bargaining had been exclusively on a multiemployer basis, culminating with a multiemployer contract effective until March 1998.

The Board majority held on these facts that the unit employees "have had a distinct identity in the multiemployer unit for a significant period of time,"[2] while further recognizing that there had been an earlier period of collective bargaining on a single-employer basis. Faced with the unusual factual situation in which there is a history of collective bargaining in the petitioned-for unit on both a single-employer and multiemployer basis, the Board majority held that ensuring stability in collective-bargaining relationships compelled the preservation of the current multiemployer bargaining relationship.

In dissent, Member Fox found that the employer had failed to rebut the presumption in favor of the petitioned-for single-employer unit. Member Fox observed that the multiemployer bargaining history came about only as a result of the employer's unlawful abrogation of the single-employer bargaining agreement in 1986. Member Fox cautioned that in such circumstances the Board should be hesitant to assign controlling weight to that multiemployer bargaining history, and declined to do so. The Board majority explained, in contrast, that the multiemployer bargaining was in compliance with the earlier bargaining order issued by the Board and enforced by the Sixth Circuit, and had resulted in a stable and beneficial multiemployer bargaining relationship.

B. Appropriate Unit Issues

1. Firefighters

In *Boeing Co., Inc.*,[3] a Board majority held that the employer's firefighters should be severed from the existing bargaining unit of guards and firefighters because the firefighters' security-related responsibilities, including those assigned to them during a 1995 strike at the employer's facilities, are minor and incidental to their overall firefighting responsibilities. Thus, the Board held that the firefighters' continued inclusion in the unit of guards and firefighters conflicts with Section 9(b)(3) of the Act.[4]

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[2] Id., slip op. at 2.

[3] 328 NLRB No. 25 (Chairman Truesdale and Member Liebman; Member Brame dissenting).

[4] Sec. 9(b)(3) of the Act prohibits the Board from certifying for collective-bargaining purposes a unit of employees that includes both guards and nonguards.

Having found over four decades ago that the employer's firefighters performed significant security-related duties, the Board certified the United Plant Guard Workers of America (UPGWA) as the bargaining representative for a unit composed of both the employer's firefighters and its security guards.[5] In 1996, the International Association of Fire Fighters petitioned the Board to represent a unit consisting solely of firefighters. The petitioner argued that the firefighters' duties and responsibilities have changed substantially, and that because the firefighters no longer perform security-related responsibilities their continued inclusion in a guard unit is unwarranted. After thoroughly examining the firefighters' present-day duties and responsibilities, including those assumed during periods of strike by other bargaining units at the employer's facilities, the Regional Director concluded that the firefighters' continued inclusion in the mixed unit was contrary to Section 9(b)(3) of the Act. Therefore, the Regional Director recommended that the Board conduct a severance election among a bargaining unit composed solely of firefighters. The employer and UPGWA, the intervenor, petitioned the Board to review and reverse the Regional Director's determination, arguing in particular that the firefighters' significant security-related responsibilities during a 1995 strike cloaked them with guard status under Section 9(b)(3) of the Act. The Board granted review and, employing a modified rationale with respect to the analysis of the firefighters' responsibilities during periods of strike at the employer's facilities, affirmed the Regional Director's decision that the firefighters are not statutory guards.

In examining the firefighters' security-related responsibilities assumed during periods of strike at the employer's facility, the Board concluded that only security-related responsibilities that are not minor and incidental to the employees' overall responsibilities during the strike will cause the employees to acquire guard status under the Act. Thus, during the 1995 strike in this case, the Board found that the firefighters retained their primary and fundamental responsibilities to prevent fires and other hazardous conditions from arising, and to respond to fire and other emergency calls. The increased frequency of the firefighters' standard building tours remained essentially fire and safety-related in nature, and any assigned security-related responsibilities during the strike, such as the charge to notify the security department if any suspicious circumstances arose, were minor and incidental to their overall firefighting responsibilities during the strike.

Member Brame disagreed that the firefighters' severance from the guard unit is permitted under Section 9(b)(3) of the Act. He rejected the

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[5] *Boeing Airplane Co.*, 116 NLRB 1265 (1956).

Board's limited construction of Section 9(b)(3), and adopted the broader view of the Eighth Circuit, which holds that employees are guards if they are charged with the responsibility of enforcing the employer's rules, regardless of whether those rules are security rules or fire safety rules. Under that broad definition of guard status, Member Brame concluded that the firefighters in this case have rules enforcement responsibilities during both strike and nonstrike periods, and that they are, therefore, guards within the meaning of Section 9(b)(3).

2. Combination Retail and Wholesale Operations

In *A. Russo & Sons, Inc.*,[6] the Board majority found that the standard for warehouse units in the retail industry set forth in *A. Harris & Co.*[7] is no longer applicable to combination retail and wholesale operations. The issue of whether *A. Harris* applies where an employer operates on both a retail and wholesale basis was specifically left open in *Esco Corp.*,[8] where the Board found that *A. Harris* is not applicable to wholesale or nonretail operations. Under the *A. Harris* test, separate warehouse units would be permitted where the employer's warehousing operation is geographically separated from its retail store operations; there is separate supervision of the employees engaged in warehousing functions; and there is no substantial integration among the warehousing employees and those engaged in other store functions. These criteria had been applied, without explanation, to a combination retail and wholesale operation in *Napa Columbus Parts Co.*[9] In *A. Russo*, the Board majority overruled *Napa Columbus Parts* to the extent that it was decided under the *A. Harris* criteria. The Board majority found *Napa* to be an aberration, and noted that during the 15 years from the *Napa* decision until the present no other published Board case has applied *A. Harris* to mixed wholesale/retail operations.

The employer in *A. Russo* is engaged in the retail and wholesale distribution of fruits, vegetables, flowers, and plants. The employer houses its retail and wholesale operation in the same facility. Applying the traditional community-of-interest test to the facts of the case, the Board majority found that the petitioned-for unit, consisting of truckdrivers, order pickers, and processors, constitutes an appropriate unit for bargaining.

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[6] 329 NLRB No. 43 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame separately dissenting).
[7] 116 NLRB 1628 (1956).
[8] 298 NLRB 837, 841 fn. 7 (1990).
[9] 269 NLRB 1052 (1984).

In separate dissents, Members Hurtgen and Brame both stated that they would continue to apply *A. Harris* to combination retail and wholesale establishments, and that they would find a separate warehouse unit not to be appropriate. Both Members emphasized that *Napa* has been on the books for 15 years and is therefore established precedent, and both rejected the majority's claim that compelling considerations support the overruling of *Napa*. Members Hurtgen and Brame emphasized that the wholesale operation in this case is fully integrated into the retail operation. Member Brame also emphasized the significant retail component in this case, and noted that the majority failed to explain why the retail component of the employer's business does not activate the criteria on its own. He noted that "the proper inquiry should start with the premise that the *A. Harris* criteria apply to retail operations since that has been the law since 1956. From this premise, one should then move forward to determine if a combined retail/wholesale business retains enough of the retail aspect for the *A. Harris* criteria to apply in that mixed setting."[10]

3. Unpaid Staff

In *WBAI Pacifica Foundation*,[11] the Board found that the employer's unpaid staff were not employees within the meaning of Section 2(3) of the Act and clarified the existing bargaining unit to exclude them.

The employer is a not-for-profit corporation engaged in operating a noncommercial FM radio station. Paid and unpaid staff have been included in the bargaining unit in successive collective-bargaining agreements since 1987 when the employer voluntarily recognized the union.

Unpaid staff produce a majority of the employer's programs under the general direction of the program director. They do not receive wages, sick leave, vacations, medical, dental, and health benefits. No workers compensation or unemployment insurance payments are made on their behalf. The number of hours they work is a matter within their discretion. Unpaid staff are allowed essentially to act independently after the program director initially approves their programs.

Reviewing the Supreme Court's decisions concerning employee status in *NLRB v. Town & Country Electric*,[12] *Phelps Dodge Corp. v. NLRB*,[13] and *Chemical Workers v. Pittsburgh Plate Glass*,[14] the Board stated:[15]

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[10] Id., slip op. at 6.
[11] 328 NLRB No. 179 (Members Fox, Liebman, and Hurtgen).
[12] 516 U.S. 85 (1995).
[13] 313 U.S. 177 (1941).
[14] 404 U.S. 157 (1971).
[15] 328 NLRB No. 179, slip op. at 3.

> At the heart of each of the Court's decisions is the principle that employee status must be determined against the background of the policies and purposes of the Act. The damage caused to the nation's commerce by the inequality of bargaining power between employees and their employers was one of the central problems addressed by the Act. A central policy of the Act is that the protection of the right of employees to organize and bargain collectively restores equality of bargaining power between employers and employees and safeguards commerce from the harm caused by labor disputes. The vision of a fundamentally economic relationship between employers and employees is inescapable.

Under this rationale, the Board found that unpaid staff were not statutory employees because there was no economic aspect to their relationship with the employer. They received no compensation for labor or services at the station. In this regard, the Board found that the occasional reimbursement for travel, the contractual eligibility for a child care allowance, the payment of paid staff wages when substituting for paid staff, and the finances for producing programs were insufficient evidence of compensation, either monetary or in the form of a benefit given in exchange for labor. The Board concluded:[16]

> Unpaid staff do not depend upon the Employer, even in part, for their livelihood or for the improvement of their economic standards. They do not work for hire and thus the Act's concern with balancing the bargaining power between employer and employees does not extend to them.

Having concluded that unpaid staff were not statutory employees, the Board clarified the existing bargaining unit to exclude them.

C. Election Objections

In *Laidlaw Transit, Inc.,*[17] the Board directed a new election after concluding that a Board agent had improperly allowed an employee to vote after the polls had closed. The majority considered and rejected the contention that the Board agent's testimony should be taken.

The Board agent conducting the election had, on his own initiative, permitted a late-arriving voter to cast a ballot, then opened and counted the ballot with the others. The vote was tied, with the result that the petitioner failed to establish a majority. The petitioner objected to the election, contending that it was improper for the Board agent to have allowed the late employee to vote.

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

[17] 327 NLRB 315 (Members Fox and Brame; Member Hurtgen dissenting).

The employer argued that the petitioner had acquiesced in the vote; however, the hearing officer discredited the employer witnesses who testified to that effect. Members Fox and Brame adopted the hearing officer's conclusion that the Board agent had neither sought the positions of the parties nor obtained their agreement before accepting the ballot. The majority also noted that the Board agent had not challenged the ballot himself pursuant to the Board's Casehandling Manual on Representation Proceedings. Because the procedural improprieties could have affected the results, the majority ordered a second election.

Member Hurtgen dissented, based on his view that the Board should, sua sponte, call the Board agent to testify, as he was the person through whom an agreement would be reached. The majority disagreed, concluding that, notwithstanding the Board agent's role, there was no record basis for disregarding the hearing officer's credibility resolutions or for reversing his ruling that the record as it stood contained sufficient evidence to decide the issues. The majority noted that all six employer and petitioner witnesses who participated in the disputed events had testified.

The majority additionally relied on the Board's strong and longstanding policy, adopted to avoid the appearance of partiality, against Board employees appearing as witnesses in Board proceedings. The majority noted that pursuant to the Board's Rules and Regulations and applicable case law Board employees may appear only on special application to the General Counsel demonstrating unusual circumstances. The majority concluded that "[u]nusual circumstances are not present where other witnesses are available and the issues can be resolved through credibility resolutions."[18]

In *Browning-Ferris Industries of California,*[19] a majority set aside an election because the Board agent denied the union's request to use as its observers individuals who were not current employees of the employer, and conducted the election with two observers for the employer and none for the union. The majority found that the Board agent's action constituted a material breach of the stipulated election agreement, which invalidated the election.

The day before the election the union informed the Region that it had been unable to persuade any current employee of the employer to act as an observer, and that it wished to use individuals employed elsewhere. At the preelection conference, however, the employer objected to the use of observers who were not its employees. The Board agent declined to

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[18] Id. at 316.
[19] 327 NLRB 704 (Members Fox and Liebman; Member Hurtgen dissenting).

allow the individuals to serve as observers. As a result, the employer had two observers and the union had none.

The majority agreed with the Acting Regional Director that the Board agent's action caused a breach of the Stipulated Election Agreement's provision that each party could have an equal number of observers, and that such a breach is a material breach of the agreement that warrants setting the election aside, without a showing of prejudice.[20] The majority noted that to have allowed individuals who were not employees of the employer to be the union's observers would not have been a material breach of the election agreement and thus would not have been objectionable per se.[21] Therefore, the majority held, the Board agent should have advised the parties of the potential adverse consequences of using the individuals in question as observers, i.e., that the employer could file election objections on the basis that the union's observers were not employees of the employer and that, if the use of those individuals was determined to be unreasonable under all the circumstances, the election could be set aside. With the union thus on notice, the election could proceed with the observers chosen by the parties.

In dissent, Member Hurtgen would not have invalidated the election. In his view, the Board agent did not abuse his discretion by denying the union's request to use nonemployee observers. Member Hurtgen noted that the Board agent acted consistently with Section 11310 of the Board's Casehandling Manual, which provides that observers must be nonsupervisory employees of the employer, unless the parties agree otherwise. He also observed that the Board agent had consulted with both parties and was willing to allow the union to have the same number of observers as the employer, provided that they were employees of the employer.[22]

In *Millsboro Nursing & Rehabilitation Center*,[23] the Board majority held that the election proceedings were not tainted by the prounion conduct of supervisors, including the solicitation of authorization cards by a supervisor. The majority agreed with the hearing officer that the employer's objection should be overruled, finding that the employer clearly communicated its antiunion position to employees early in the campaign, and no threats or promises of benefits were made by any charge nurse. The majority applied Board precedent and rejected the dissent's assertion that supervisory solicitation of authorization cards is inherently coercive and objectionable.

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[20] *NLRB v. Frontier Hotel*, 625 F.2d 293 (9th Cir. 1980).
[21] *Kelley & Hueber*, 309 NLRB 578, 579 (1992).
[22] In this respect, Member Hurtgen found the case distinguishable from *Frontier Hotel*, supra, in which the Board agent acted without justification and without consulting the employer.
[23] 327 NLRB 879 (Members Liebman and Brame; Member Hurtgen dissenting in part).

In dissent, Member Hurtgen stated that he did not agree with current Board law. Instead, he found that supervisory solicitation of cards is coercive and objectionable, absent mitigating circumstances. Member Hurtgen analogized supervisory solicitation of authorization cards to the impermissible supervisory solicitation of employees to revoke their authorization cards. Member Hurtgen would "treat evenhandedly" prounion and antiunion supervisory solicitation.

In *Randell Warehouse of Arizona*, [24] the Board overruled employer objections to an election based on the union's having photographed union representatives distributing union literature outside the employer's facility. Overruling *Pepsi-Cola Bottling Co.*,[25] the Board held that the union's photographing of employees, which was not accompanied by any threats or other coercive conduct, was not unlawful.

The majority noted that a long line of Board and court decisions permits unions to ask employees directly whether they support the union, to attempt to persuade employees to sign petitions in support of representation, and to record the employees' responses.[26] The Board has also found that a union did not interfere with employee free choice when it asked prounion employees to report to the union the activities of coworkers who were assisting management during the election campaign.[27] Because *Pepsi-Cola's* premise that union photographing or videotaping of employees engaged in protected activities during an election campaign, without more, necessarily interferes with employee free choice is inconsistent with these principles, the Board overruled it.

The Board noted, however, that this case did not involve photographing of employees in connection with picket line activities, and the Board expressed no opinion as to the coercive nature of photographing by a union under those circumstances. Likewise, the Board held that photographing that is accompanied by threats, such as the statement that "we've got it on film; we know who you guys are . . .

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[24] 328 NLRB No. 153 (Chairman Truesdale and Members Fox and Liebman; Member Brame concurring in the result; Member Hurtgen dissenting).

[25] 289 NLRB 736 (1988).

[26] See *Springfield Hospital*, 281 NLRB 643, 692−693 (1986) (overruling employer's objection that union coerced employees by asking them whether they were for or against union and recording responses on charts, in the absence of threats of reprisal), enfd. 899 F.2d 1305 (2d Cir. 1990); *Kusan Mfg. Co*., 267 NLRB 740 (1983) (overruling employer's objection that union interfered with the election by soliciting employees to sign a prounion petition, by circulating the petition, and by distributing copies of the petition, in the absence of threats of reprisal), enfd. 749 F.2d 362 (6th Cir. 1984); *J.C. Penney Food Dept.,* 195 NLRB 921 fn. 4 (1972) (overruling employer's objection that union interfered with the election by polling employees as to how they were going to vote in the election, in the absence of coercion), enfd. 82 LRRM 2173 (7th Cir. 1972), followed in *Melrose-Wakefield Hospital v. NLRB*, 615 F.2d 563, 569 (1st Cir. 1980).

[27] *Mercy-Memorial Hospital,* 279 NLRB 360 (1986), affd. in the summary judgment proceeding 282 NLRB No. 5 (1986) (not reported in Board volumes), enfd. sub nom. *NLRB v. Mercy-Memorial Hospital Corp.,* 836 F.2d 1022 (6th Cir. 1988).

after the union wins the election some of you may not be here,"[28] is unlawful because the union's conduct, in light of the threat, was coercive under the circumstances.[29]

The Board rejected any criticism of its decision as inconsistent with cases holding that employers may not lawfully photograph employees engaged in protected activities absent proper justification. Noting that employers have virtually absolute control over employees' terms and conditions of employment, the Board held that applying a different standard to employer photographing properly recognizes the difference in the coercive impact of employer, as compared to union, conduct.

Member Brame, concurring, agreed that the union's photographing of employees was not coercive, but would have found that employer photographing also was not coercive under similar circumstances. Reviewing the legislative history of the Taft-Hartley Act and the development of the law concerning employer and union photographing, Member Brame concluded that a per se standard, in which conduct is presumed to be coercive, is not permissible under the Act. Rather, the coercive nature of employer conduct, and union conduct, must be determined under all the circumstances of a case and by application of a uniform standard.

Member Brame proposed five criteria to determine whether union or employer photographing or videotaping is coercive: (1) whether the photographing occurred in the context of serious independent unfair labor practice conduct; (2) whether the activity photographed was carried on in an open and public way; (3) whether the photographing took place at the employer's or union's premises, or at a location unconnected with either party; (4) whether the photographing was done in a "conspicuous" manner; and (5) whether the party photographing the activity had a "legitimate" or "proper" justification as previously recognized by the Board. Applying these criteria, Member Brame concluded that the union's conduct in this case was not coercive.

Member Hurtgen, dissenting, would have found that the union's photographing of employees was coercive, and would not have overruled *Pepsi-Cola.* Member Hurtgen also noted that the majority's holding was inconsistent with the Board's approach to employer photographing and stated that, in agreement with Member Brame, he would apply a uniform standard to determine whether photographing is objectionable conduct irrespective of whether the photographing is by a union or an employer. However, Member Hurtgen found it unnecessary to pass on the broader

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[28] 328 NLRB No. 153, slip op. at 2.

[29] *Mike Yurosek & Son, Inc.*, 292 NLRB 1074 (1989).

issues posed by Member Brame concerning the proper evaluation of union and employer photographing as unfair labor practices.

D. Bars to an Election

1. Recognition Bar

In *Ford Center for the Performing Arts*,[30] the Board found that an employer's recognition of an intervenor bars a subsequent petition filed 9 months later because a sufficient time for bargaining between the employer and the intervenor had not elapsed at the time the petitioner filed its petition. After voluntarily recognizing the intervenor union as the representative of a majority of its employees, the employer and intervenor commenced bargaining for an initial contract. Subsequently, the parties agreed to a draft contract, and the employer operated under the terms of this agreement with regard to wages, holidays, and disciplinary procedure. The employer later hired a director of labor relations to finalize the agreement. Over the course of the next several months, the director negotiated certain additional agreements and side letters with the intervenor. Nine months after the employer's recognition of the intervenor, but before their contract was finalized, the petitioner filed a petition seeking to represent a portion of the employer's employees.

The Board found that the employer's voluntary recognition of the intervenor should bar the petition because a reasonable time for bargaining had not yet elapsed. The Board explained that "[w]here an employer has voluntarily recognized a union as the representative of its employees in good faith and based upon a demonstrated showing of majority status, that recognition serves as a bar for a reasonable period of time to allow the parties to bargain free from challenge to the union's majority status."[31] The Board concluded that under the circumstances, "[i]t is plain that the parties were working diligently to reach a final agreement. That the process took 9 months was clearly not unreasonable, especially given the difficulties of initial contract bargaining."[32]

2. Successor Bar

In *St. Elizabeth Manor, Inc.*,[33] the Board announced the adoption of a "successor bar" rule and held that once a successor employer's obligation

[30] 328 NLRB No. 1 (Members Fox, Liebman, and Hurtgen).
[31] Id., slip op. at 1.
[32] Id., slip op. at 2.
[33] 329 NLRB No. 36 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).

to recognize an incumbent union attaches, the union is entitled to a reasonable period of time for bargaining without challenge to its majority status.

The employer assumed the predecessor's operations without hiatus and retained a majority of the predecessor's employees in the bargaining unit of service and maintenance employees represented by the union. The union requested, and the employer granted, recognition and the parties thereafter held several bargaining sessions. On the day a fourth bargaining session was to have been held, the employer filed an RM petition.

The Regional Director concluded that the employer's voluntary recognition of the union did not constitute a bar to the petition based on *Southern Moldings, Inc.*,[34] which held that a recognition bar applies only in initial organizing situations and not in situations involving recognition by a successor employer. The Board overruled *Southern Moldings*. The Board reasoned that, as in initial recognition situations, the parties are undergoing a stressful transitional period, and that bargaining in a successor situation is likely to present a greater challenge than bargaining between partners in an established relationship. Furthermore, because a successor employer "may be reluctant to commit itself wholeheartedly" to bargaining if the union's majority status can be attacked at any time following recognition, "[a] reasonable period free of outside distractions will permit the parties to attempt to bring their new relationship to fruition."[35] Finally, the successor bar rule serves to balance the competing policies of employee freedom of choice and the promotion of stable bargaining relationships, in furtherance of the Act's overriding objective of industrial peace.

Members Hurtgen and Brame, dissenting, would have adhered to existing Board and court precedent as articulated in *Southern Moldings*, as the extension of the recognition bar rule to successor employers "den[ies] the employees their Section 7 right to change or reject their collective-bargaining representative"[36] and gives the incumbent union an unfair advantage.

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[34] 219 NLRB 119 (1975).
[35] 329 NLRB No. 36, slip op. at 3.
[36] Id., slip op. at 9.

V

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal year 1999 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Domination of Labor Organization

In *EFCO, Corp.*, [1] the Board found that the respondent's Employee Benefits Committee, Policy Review Committee, and Safety Committee were labor organizations as defined by Section 2(5) of the Act, and that the respondent violated Section 8(a)(2) by forming and dominating these three employee committees. However, in disagreement with the administrative law judge, the Board found that the respondent's Employee Suggestion Screening Committee was not a labor organization and therefore the respondent did not violate Section 8(a)(2) with regards to it. The Board applied *Electromation, Inc.* [2] and *E. I. Du Pont & Co.*[3]

In finding labor organization status for the Employee Benefits Committee, Policy Review Committee, and Safety Committee, the Board found that the committees existed for the purpose, at least in part, of "dealing with" the employer concerning the matters set forth in Section 2(5) of the Act, which include "grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." The Board found that the Employee Benefits Committee and the Policy Review Committee solicited ideas and comments from employees and formulated and presented numerous proposals to management for its consideration, some of which management adopted and others it rejected.

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[1] 327 NLRB 372 (Members Fox, Liebman, and Brame).
[2] 309 NLRB 990 (1992), enfd. 35 F.3d 1148 (7th Cir. 1994).
[3] 311 NLRB 893, 894 (1993).

With regard to the Safety Committee, the Board found that a significant portion of its purposes and functions, such as the reporting and correcting of safety problems, would not contribute to a finding that it is a labor organization. It noted that an employer's delegation of safety duties, such as the reporting of safety hazards, the imparting of safety information or the planning of educational programs, by itself, does not constitute dealing. However, the Board found that the Safety Committee constituted a labor organization because its functions included reviewing safety rules and policies, developing safety incentive programs, and making employee compensation proposals.

In contrast, the Board found that the Employee Suggestion Screening Committee did not constitute a labor organization because the respondent did not deal with it. It found that this committee, which reviewed and forwarded suggestions made by individual employees to management committees, performed a clerical or ministerial function. Thus, it found, the committee essentially operated as a screening portion of an employee "suggestion box" program," which the Board has found to be lawful. The Board noted that, in theory, an employee committee could "deal with" an employer by weeding out proposals it does not like and recommending others that it prefers, but that, in fact, the Employee Suggestion Screening Committee did not do so.

The Board found that the respondent dominated the Employee Benefits Committee, Policy Review Committee, and Safety Committee because it created the committees, explained to employees their goals and purposes, held the committee meetings on its premises and essentially determined the structure and function of the committees, selected the initial members, and chose the subjects they were to address.

B. Employer Discrimination Against Employees

Section 502 Work Stoppage

In *TNS, Inc.*,[4] a case on remand from the United States Court of Appeals for the District of Columbia Circuit,[5] the Board reconsidered whether the respondent violated Section 8(a)(3) and (1) of the Act by permanently replacing employees who quit work based on a good-faith belief that their working conditions had become "abnormally dangerous" within the meaning of Section 502 of the Act.[6] A panel majority consisting of Members Fox and Liebman found the violation. Member Hurtgen dissented.

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[4] 329 NLRB No. 61 (Members Fox and Liebman; Member Hurtgen dissenting).
[5] *TNS, Inc. v. Oil Workers*, 46 F.3d 82 (1995).
[6] The Board dismissed the complaint in an original decision. See 309 NLRB 1348 (1992).

Section 502 states in relevant part that "[n]othing 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 . . . be deemed a strike." After a lengthy trial, the administrative law judge concluded that working conditions at TNS had become abnormally dangerous under this provision when, following expiration of their collective-bargaining agreement, the employees engaged in a work stoppage. The judge further concluded that by hiring permanent replacements and refusing to reinstate the employees upon their unconditional offer to return to work, the respondent violated Section 8(a)(3) and (1).

The respondent produces various forms of ammunition made from depleted uranium (DU), a radioactive substance that is both a carcinogen and a toxic threat to internal organs, particularly the kidneys. Because of DU's radioactive quality, the respondent was under the jurisdiction of the United States Nuclear Regulatory Commission (NRC) which, pursuant to an agreement with the State of Tennessee where respondent's plant was located, delegated its plant oversight duties to the Tennessee Division of Radiological Health (TDRH). TDRH adopted the official dose limits set by NRC for external and internal exposure to DU, and inspected the plant semiannually to ensure compliance with the dose limits. In addition, a joint labor-management safety committee conducted monthly tours of the plant.

Over time, employees came to believe that the respondent's production process was emitting increasingly dangerous amounts of DU-contaminated smoke and vapors. After a number of failed attempts to persuade the respondent to improve its production methods to lessen DU emissions, the employees finally walked off the job in protest of their employer's perceived intransigence.

Majority Members Fox and Liebman found that the protective intent of Section 502 applies to "threats to employee health and safety caused by cumulative exposure to radioactive and toxic substances, even where, as here, there may be no immediate, quantifiable physical injury."[7] To establish that a work stoppage is protected under Section 502, the majority articulated the following test to be applied in cases involving cumulative, slow-acting dangers to employee health and safety:

> The General Counsel must demonstrate by a preponderance of the evidence that the employees believed in good faith that their working conditions were abnormally dangerous; that their belief was a contributing cause of the work stoppage; that the

[7] 329 NLRB No. 61, slip op. at 4.

> employees' belief is supported by ascertainable, objective evidence; and that the perceived danger posed an immediate threat of harm to employee health and safety.[8]

In concluding that the General Counsel met this test, the majority cited evidence of the repeated efforts by employees to have the respondent correct the production methods that regularly subjected them to contact with DU. The majority also relied on exposure readings compiled by TDRH confirming the employees' safety and health concerns.

Having concluded that the employees engaged in a work stoppage protected by Section 502, the next question was whether the Respondent was entitled under *NLRB v. Mackay Radio & Telegraph*,[9] to hire permanent replacements. The majority reasoned that a Section 502 work stoppage is not an economic strike and because the *Mackay Radio* right to hire permanent replacements exists only in an economic strike situation, the respondent was prohibited from continuing its business with permanent replacements. By doing so and refusing to reinstate employees when they offered to return to work, the majority found that the respondent violated Section 8(a)(3) and (1).

Member Hurtgen, in dissent, stated that Section 502 applied "only where the abnormally dangerous conditions are the proximate cause of the work stoppage, i.e., but for the abnormally dangerous conditions, the employees would not have stopped work." He found that economic considerations, which did not concern health and safety matters, would have caused the work stoppage and, hence, the "work stoppage was not proximately tied to abnormally dangerous conditions." Accordingly, Member Hurtgen concluded that because "the 'but for' causation standard [was] not met here . . . the employees' work stoppage did not meet the criteria of Section 502."

Even assuming, however, that abnormally dangerous conditions did not exist under whatever test is applied, Member Hurtgen concluded that permanent replacement is not precluded by Section 502. Among the bases supporting this conclusion, Member Hurtgen noted the absence of Congressional intent and Board and court precedent protecting Section 502 work stoppage participants from permanent replacement. In addition, Member Hurtgen stated that a Section 502 work stoppage is not a strike of any kind, economic or unfair labor practice, and that employees who walk off the job pursuant to Section 502 are "quitters" rather than economic or unfair labor practice strikers. Submitting that the issue, therefore, is whether quitters "should be immune from

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[8] Id. at 2.
[9] 304 U.S. 333 (1938).

permanent replacement," Member Hurtgen provided two reasons why they should not—(1) Section 502's purpose can be achieved without according the employees the "superprotection" of immunity from permanent replacement and (2) superprotection from permanent replacement is accorded only to unfair labor practice strikers and the walkout here was not in protest of any unfair labor practice committed by the respondent.

C. Deferral to Arbitration Procedure

In *Hallmor, Inc*., [10] the Board majority held that the Regional Director properly revoked his decision to defer to arbitration because the respondent reneged on its commitment not to raise a timeliness defense before the arbitrator.

In 1996 the respondent laid-off employee Groff. The union filed a grievance and an unfair labor practice charge concerning the layoff. The Regional Director advised the respondent that he would defer further proceedings on the 8(a)(3) charge in accord with *Collyer Insulated Wire*,[11] if the respondent agreed to arbitrate the matter notwithstanding any contractual time limitations on filing the grievance. The respondent executed a "*Collyer* willingness form" in which it agreed to arbitrate and not to raise any timeliness issues.

In its May 1997 posthearing brief to the arbitrator, the respondent argued that the grievance should be dismissed as untimely. In June 1997 the arbitrator ruled that the grievance must be denied as untimely. The arbitrator also ruled on the merits of the grievance. Thereafter, the Regional Director revoked his decision to defer and issued an 8(a)(3) complaint concerning the layoff. The respondent filed a motion to dismiss the complaint on the grounds that the Board should defer to the arbitrator's award.

The Board majority held that where "a party has reneged on its agreement under *Collyer* not to raise a timeliness issue before the arbitrator, such agreement being necessary to secure deferral of the unfair labor practice case to arbitration, the party forfeits any right to obtain the Board's deferral to the resulting arbitration award."[12] The Board majority disagreed with the dissent's suggestion that *Spielberg Mfg. Co*., [13] is applicable because the arbitration proceedings have been completed. According to the majority, the waiver of contractual time limitations is a critical requirement of the *Collyer* deferral doctrine because it ensures that the arbitration process focuses on the merits of the

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[10] 327 NLRB 292 (Members Liebman and Brame; Member Hurtgen dissenting).
[11] 192 NLRB 837 (1971).
[12] 327 NLRB 292, 293.
[13] 112 NLRB 1080 (1955).

grievance and promotes a fair resolution of the dispute to which the Board can ultimately defer. The Board is entitled to insist that a party adhere to provisions of a deferral agreement in order to ensure that a fair adjudication of the grievance occur.

In dissent, Member Hurtgen would have found it appropriate to defer to the arbitrator's award and therefore would have dismissed the complaint. Member Hurtgen accused the majority of confusing the standards for holding an unfair labor practice charge in abeyance pending the parties' resort to grievance-arbitration machinery and deferring to an arbitral result. Where the arbitration has been held, Member Hurtgen stated that *Spielberg Mfg. Co.*,[14] applied. Member Hurtgen, noting that the arbitrator had addressed both the timeliness issue and the merits of the unfair labor practice, would have found that the arbitration proceedings were fair and regular, all parties had agreed to be bound, the decision of the arbitrator was not repugnant to the Act, and the arbitrator had adequately considered the unfair labor practice issue. He therefore would have found the arbitrator's award worthy of deferral.

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.

Construction Industry Agreement

In *E.S.P. Concrete Pumping,* [15] the Board found that the respondent had adopted a prehire collective-bargaining agreement by its actions indicating an intent to be bound by the agreement, and therefore violated Section 8(a)(5) by repudiating the agreement during its term. The Board overruled its prior decision in *Garman Construction Co.*[16] to the extent it held that an employer could not adopt an 8(f) prehire agreement by its conduct.

The respondent, a concrete contractor, was formed in 1990 following the dissolution of a predecessor entity. The predecessor had been party to an 8(f) collective-bargaining agreement with the union which was effective by its terms from May 1, 1988 to April 30, 1993. At the time of the predecessor's dissolution, it had one ongoing contract, which the

[14] Id.
[15] 327 NLRB 711 (Chairman Truesdale and Members Fox, Hurtgen, and Brame).
[16] 287 NLRB 88 (1987).

respondent completed. The respondent applied the collective-bargaining agreement to the job, including remitting union dues, and acquiesced in a judgment against it for unpaid benefit fund contributions. In 1991, the respondent obtained a concrete pouring subcontract after advising the general contractor that it was a union signatory employer. After obtaining the subcontract and starting work at the jobsite, the respondent told the union that it was "not going to be union anymore" and failed to apply the collective-bargaining agreement to the jobsite.

The Board found that the respondent had entered into the collective-bargaining agreement by its voluntary conduct in applying the agreement at one jobsite and holding itself out as a union contractor for the purpose of obtaining work at a second jobsite. The Board held that the adoption of an 8(f) agreement, as is the case with agreements governed by Section 9(a), is not dependant on the reduction to writing of an agreement to be bound, but instead requires only conduct manifesting an intent to abide by the terms of an agreement.

The Board rejected the view that a signed writing was required under its seminal decision in *John Deklewa & Sons*,[17] because the finding of a valid 8(f) agreement was based on the employer's voluntary conduct. The Board also found that applying the adoption by conduct doctrine to 8(f) cases would effectuate the intent of Congress by preventing a party from reaping the benefits of an 8(f) agreement and then avoiding paying the bargained for consideration, and to prevent the jobsite friction that would result if an employer could hold itself out as a union contractor for the purpose of obtaining a job and then repudiate its obligations to the union once the job began. The Board cautioned, however, that its decision should not be read as establishing that an employer will be bound by an 8(f) agreement merely because it pays wages and benefits equal to those specified in an 8(f) agreement.

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.

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[17] 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).

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."[18] 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. Union Disclaimer of Representation

In *Production & Maintenance Local 101 (Bake-Line Products)*,[19] a Board majority held that a union may tell employees that it may disclaim its role as a collective-bargaining representative in apparent response to the employees' filing of a deauthorization petition or the loss of a deauthorization election, without providing the employees with objective evidence that its continued representation of them would be infeasible. The Board thus overruled *Hospital Employees 1115 Joint Board (Pinebrook Nursing Home)*,[20] which held that, in the absence of objective evidence of economic infeasibility, a union's preelection threat to abandon its representational obligations if the election resulted in deauthorization was unlawful.

During a deauthorization election campaign, the respondent told employees that if it lost the election by a decisive margin it would consider disclaiming recognition and that this would leave the employees unrepresented and would void the collective-bargaining agreement. The respondent told employees that in the absence of the contract the employer might not give them the next scheduled wage increase and would be free to fire employees without good cause.

The administrative law judge rejected the argument by the General Counsel and the charging party that *Pinebrook* compelled finding a violation. The judge found that the majority opinion in *Pinebrook* did not represent the current state of Board law, but was, in reality, a dissenting view of what the law should be. The judge dismissed the complaint.

The Board majority agreed with the judge's conclusions that the Respondent neither violated the Act nor engaged in objectionable preelection conduct, but did not rely on the judge's statements to the

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

[19] 329 NLRB No. 29 (Chairman Truesdale and Members Fox and Liebman; Members Hurtgen and Brame dissenting).

[20] 305 NLRB 802 (1991).

effect that *Pinebrook* was not Board law or that the judge was not bound by that law. Rather, the majority overruled *Pinebrook*.

The majority reasoned that there is a necessary connection between a union's collection of dues and its continued representation of employees, since it is an economic reality that a union needs the assured payment of dues from at least some employees to afford continuing to represent them. The majority found that, because a union that loses a deauthorization election has no assurance that enough employees will make regular payments voluntarily, its statement that it may disclaim representation if it loses a deauthorization election is based on the objective reality of representation. Thus, unlike statements by employers threatening plant closure in the event of unionization, "there is full symmetry between cessation of representation statements and the decision to cease representation in the deauthorization context." In a footnote, the majority stated that if, as in *Pinebrook*, a union's statements went beyond economic realities and indicated that, if employees voted for deauthorization, the union would continue to represent them but would not do so properly, such conduct would be unlawful.

In dissent, Members Hurtgen and Brame would have found that the respondent violated Section 8(b)(1)(A) of the Act and engaged in objectionable conduct that warranted setting aside the election. Members Hurtgen and Brame stated that they would have adhered to *Pinebrook*.

The dissenters stated that they would treat a statement about cessation of representation in the same way that the law treats statements about plant closure because, in the absence of a union's explanation of a threatened abandonment of representation, employees would reasonably believe that the threat was "in retaliation for their deauthorization vote, rather than a mere economic consequence of the vote."

Members Hurtgen and Brame denied that there is a necessary connection between union security and representation, noting that in right-to-work states and elsewhere in contracts without union-security clauses, many unions represent employees who are not subject to a union-security clause. To the extent that there is an economic connection, Members Hurtgen and Brame asserted, the union should explain that connection to employees.

2. Chargeability of Organizing Expenses

In *Commercial Workers Locals 951, 1036 & 7 (Meijer, Inc.)*,[21] the Board, in a 4-1 decision, held that two Unions did not violate Section 8(b)(1)(A) of the Act by including expenses for organizing activities in

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[21] 329 NLRB No. 69 (Chairman Truesdale and Members Fox, Liebman and Hurtgen; Member Brame, concurring in part and dissenting in part).

the dues charged objecting nonmembers. Under the Supreme Court's decision in *Communications Workers v. Beck*,[22] a union violates its duty of fair representation if, over the objection of nonmember employees, it expends their dues, collected under a union-security agreement, on nonrepresentational activities, that is, activities unrelated to collective bargaining, contract administration, or grievance adjustment. In *Meijer,* the Board majority found that the unions' organizing expenses, used to organize competitors of employers whose employees the unions represented, were for representational activities and thus properly chargeable.

Based on its review of Congress' intent, the knowledge and views of expert economists, and testimony concerning how organizing affected contract negotiations, the majority found:

> [O]rganizing is both germane to a union's role as a collective-bargaining representative and can benefit all employees in a unit already represented by a union. Unions are able to negotiate higher wages for the employees they represent when the employees of employers in the same competitive market are organized, and unions are less able to do so when they are not organized. Thus, represented employees, whether or not they are members of the union that represents them, benefit, through the results of collective bargaining, from that union's organization of other employees and consequently, under *Beck,* may be charged their fair share of the union's organizing expenses.[23]

The majority found that the Supreme Court's decision in *Ellis v. Railway Clerks,*[24] which held organizing expenses not chargeable to objecting nonmembers under the Railway Labor Act, was not controlling under the NLRA. The majority noted that congressional testimony relied on in *Ellis*, indicating that the purpose of allowing union-security agreements under the Railway Labor Act was not to strengthen unions' bargaining power, was given in the context of a railroad industry that was already highly organized. By contrast, one of Congress' principal purposes in enacting the NLRA was to foster organization in industries that, in general, were thinly organized. Additionally, the majority noted that, unlike *Meijer*, in *Ellis* there was no empirical evidence presented demonstrating the relationship between represented employees' wages and the level of organization of other employees.

In dissent, Member Brame disagreed with the majority's finding that organizing expenses are chargeable to objecting nonmembers. He

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[22] 487 U.S. 735 (1988).
[23] 329 NLRB No. 69, slip op. at 6–7.
[24] 466 U.S. 435 (1984).

pointed out that *Ellis* held that, under section 2, Eleventh of the Railway Labor Act, organizing expenses are not chargeable to objectors, and *Beck* found that Section 8(a)(3) of the NLRA has the same meaning as section 2, Eleventh of the Railway Labor Act. Consequently, in Member Brame's view, Supreme Court precedent compelled the conclusion that organizing expenses, as a matter of law, are not chargeable to objecting nonmembers under the NLRA. He contended that the majority's rationale distinguishing *Ellis* came "too late in the day," as it was foreclosed by *Beck*. Member Brame further contended that, as a factual matter, the evidence in *Meijer* fell far short of establishing a relationship between expenditures for organizing and the wages received by already-represented employees.

F. Remedial Order Provisions

In *TNT Skypak, Inc.*,[25] the Board overruled precedent[26] and held that where a respondent's unlawful conduct frustrates the formation of a contract, the "execution date" is the date the agreement would have been executed but for the respondent's unfair labor practice.

On August 27, 1993, the Respondent in *TNT* withdrew from numerous tentative agreements with the union because it became a466 U.S. 435 (1984).pparent that the union was about to accept virtually all of the respondent's proposals thereby making a contract inevitable. The Board noted that the *Driftwood* remedy for this violation required the respondent to apply prospectively any contract to which the union agreed from the date upon which the parties executed their agreement. The Board reasoned that this inadequately remedied the unlawful conduct at issue. The Board noted the well-established principle that any refusal to execute an agreed-upon contract is remedied with retroactive execution of that contract. In this context, the Board reasoned "it does not follow that, where Respondent has delayed execution of the agreement by its unlawful conduct, the date of physical execution of the agreement is the effective date of said agreement. Rather, the crucial date here is the initial date upon which, *but for* Respondent's unlawful conduct, the agreement would have been executed."[27] The Board further reasoned that to allow any later effective date of the agreement would permit the wrongdoer to benefit from its misconduct.

The Board then noted the similarities in *TNT*. Here the respondent withdrew from numerous tentative agreements when a contract was imminent thereby thwarting mutual agreement on a contract. Certainly

[25] 328 NLRB No. 67 (Chairman Truesdale and Members Fox and Liebman).
[26] *Driftwood Convalescent Hospital*, 312 NLRB 247 (1993), enfd. 67 F.3d 307 (9th Cir. 1995).
[27] *Crimptex, Inc.*, 221 NLRB 595 (1975). (Emphasis in original.)

the crucial date was the date of the respondent's misconduct not the date at some future time when the parties might agree on a contract. The Board also noted that any uncertainty as to the date when the parties would have reached a final and complete agreement should be resolved against the respondent. This accorded with well-established principles providing that the wrongdoer bore any uncertainty. The Board particularly noted the Supreme Court's statement that: "The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of uncertainty which his own wrong has created."[28]

The Board therefore found the August 27, 1993 date of the Respondent's unlawful withdrawal from tentative agreements to be the starting date of any collective-bargaining agreement between the parties. The Board reasoned that unlike the prospective remedy in *Driftwood*, this retroactive remedy furthered the policies of the Act "because it recreates as nearly as possible, the circumstances and relationships that would have resulted had the unfair labor practice in question not occurred." The Board also noted that this remedy did not put the Board in the position of compelling parties to agree to any substantive contractual provision because the parties had already agreed to a provision of the contract that provided that the collective-bargaining agreement would become effective upon execution.

[28] *Bigelow v. R.K.O. Pictures*, 327 U.S. 251, 256 (1946).

VI

Supreme Court Litigation

During the period covered by this report, the Supreme Court decided, on the merits, no Board cases. However, it decided a private party court case, *Marquez v. Screen Actors Guild*,[1] which has a direct bearing on the interpretation of the National Labor Relations Act (NLRA) and its preemptive scope.

The collective-bargaining agreement between respondent union, the Screen Actors Guild (SAG), and respondent movie producer, Lakeside Productions (Lakeside), contained a standard "union security clause" providing that any performer who worked under the agreement must be "a member of the Union in good standing." Tracking the language of Section 8(a)(3), the clause further provided that the union membership required "shall not apply until on or after the thirtieth day following the beginning of such employment."[2] The union-security clause did not explain that the Supreme Court has held that an employee can satisfy 8(a)(3)'s "membership" condition merely by paying to the union an amount equal to its initiation fees and dues, *NLRB v. General Motors Corp.,*[3] and that Section 8(a)(3) does not permit unions to exact dues or fees over the objection of nonmembers for activities that are not germane to collective bargaining, grievance adjustment, or contract administration, *Communications Workers v. Beck*.[4] The clause did specify, however, that its 30-day grace period provision should be interpreted "to mean that [SAG] membership . . . cannot be required of any performer until . . . 30 . . . days after his first employment as a performer in the motion picture industry."

Petitioner Marquez, a part-time actress who had previously worked in the industry for more than 30 days, successfully auditioned for a one-line role in a television series produced by Lakeside, but was denied the part when she did not pay SAG's required fees before beginning work. She filed suit alleging, among other things, that SAG had breached its duty of fair representation by negotiating and enforcing a union-security clause with two basic flaws. First, she averred, the clause required union "membership" and the payment of full fees and dues when those terms could not be legally enforced under *General Motors* and *Beck*. She

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[1] 525 U.S. 33.

[2] Sec. 8(a)(3) of the NLRA, 29 U.S.C. 158(a)(3), authorizes "an agreement . . . to require as a condition of employment membership [in a union] on or after the thirtieth day following the beginning of such employment."

[3] 373 U.S. 734, 742–743 (1963).

[4] 487 U.S. 735, 745, 762–763 (1988).

argued that the collective-bargaining agreement should have contained language in addition to the statutory language, informing her of her rights not to join the union and to pay only for the union's representational activities. Second, she asserted, the clause language interpreting the 30-day grace period to begin running with any employment in the industry contravened Section 8(a)(3), which requires a new grace period with each "such employment." The district court granted summary judgment to the defendants on all claims. Affirming in pertinent part, the Ninth Circuit held that SAG had not breached its duty of fair representation merely by negotiating a union-security clause that tracked the NLRA language. The Ninth Circuit also held that petitioner's challenge to the grace period provision was at bottom a claim that the clause violated the NLRA and that this claim fell within the primary jurisdiction of the National Labor Relations Board (NLRB).[5]

The Supreme Court unanimously affirmed the Ninth Circuit. The Court held that SAG did not breach its duty of fair representation by negotiating a union-security clause that tracked the statutory language. The Court explained: A breach of the duty of fair representation occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. See *Vaca v. Sipes.*[6] Petitioner does not argue that SAG's conduct was discriminatory, and the mere negotiation of a contract that uses terms of art cannot be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary. After the Court in *General Motors* and *Beck* stated that the statutory language incorporates an employee's rights not to "join" the union (except by paying fees and dues) and to pay for only representational activities, SAG cannot be faulted for using this very language to convey these very concepts. The Court also found unpersuasive petitioner's assertion that SAG acted in bad faith in that it had no reason to use the statutory language except to mislead employees about their *Beck* and *General Motors* rights. The Court noted that a union might choose the statutory language precisely *because* it is a shorthand description of workers' legal rights that incorporates all of the refinements associated with it. Petitioner's argument that the failure to explain all the intricacies of a term of art in a contract is bad faith has no logical stopping point; that argument would require that all the intricacies of *every* term used in a contract be spelled out.

The Court further held that, because petitioner's challenge to the union-security clause's grace period provision was based purely on an alleged inconsistency with the statute, the district court lacked

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[5] The Ninth Circuit's opinion is reported at 124 F.3d 1034 (1997).
[6] 386 U.S. 171, 190 (1967).

jurisdiction over it. The Court explained: A challenge to an action that is "arguably subject to §7 or §8 of the [NLRA]" is within the NLRB's primary jurisdiction, *San Diego Building Trades Council v. Garmon*,[7] but a claim alleging a breach of the duty of fair representation is cognizable in Federal court, *Vaca v. Sipes*.[8] However, the mere incantation of the phrase "duty of fair representation" is insufficient to invoke the primary jurisdiction of Federal courts. When a plaintiff's only claim is that the union violated the NLRA, the plaintiff cannot avoid the NLRB's jurisdiction by characterizing this alleged statutory violation as a breach of the duty of fair representation. See *Beck*.[9] To invoke Federal jurisdiction when the claim is based in part on an NLRA violation, the plaintiff must adduce facts suggesting that the union's statutory violation was arbitrary, discriminatory, or in bad faith. Although Federal courts have power to resolve Section 7 and Section 8 issues that arise as collateral matters in a duty of fair representation suit, this does not open the door for Federal court first instance resolution of all statutory claims. Applying these principles in this case, the Court concluded that petitioner's challenge falls squarely within the NLRB's primary jurisdiction. Her claim is that SAG employed a term in the collective-bargaining agreement that was inconsistent with the NLRA. "This claim is not collateral to any independent basis for federal jurisdiction; there are no facts alleged suggesting that this violation was arbitrary, discriminatory, or in bad faith."[10]

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[7] 359 U.S. 236, 245 (1959).
[8] 386 U.S. at 177–183.
[9] 487 U.S. at 743.
[10] 525 U.S. at 50–51.

VII

Enforcement Litigation

A. Jurisdiction Over Government Contractors

Section 2(2) of the Act (29 U.S.C. § 152(2)), which broadly defines the term "employer," exempts from Board jurisdiction "the United States or any wholly owned Government corporation . . . or any State or political subdivision thereof." By its terms, Section 2(2) does not exempt a private entity that contracts with an exempt government entity to provide goods or services. Nevertheless, the Board over the past two decades has exercised its discretion under the Act[1] and, under various formulations, declined to assert jurisdiction over some classes of government contractors. For example, in *Res-Care, Inc.,*[2] the Board declined to exercise statutory jurisdiction where the government contractor did not possess sufficient control over the employment conditions of its employees to enable it to engage in meaningful collective bargaining with a labor organization.

In *Management Training Corp.*,[3] however, the Board abandoned the so-called governmental control test and announced that it would exercise its statutory jurisdiction to the fullest extent possible; therefore, the Board explained, "in determining whether the Board should assert jurisdiction, the Board will only consider whether the employer meets the [statutory] definition of 'employer' . . . and whether such employer meets the applicable monetary jurisdictional standards." Two cases reaching the courts of appeals this year agreed with the Board that the Board can assert jurisdiction over a government contractor without regard to whether the contractor's contract with the exempt government entity impeded its ability to engage in meaningful collective bargaining.

In *Aramark Corp. v. NLRB*, [4] the Tenth Circuit, sitting en banc, upheld the Board's assertion of jurisdiction over Aramark Corporation, a government contractor that managed food service operations for a public school system in Florida and The Citadel in South Carolina. The court rejected the contractor's argument that the governmental control test is a

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[1] Sec. 14(c)(1) of the Act (29 U.S.C. § 164(c)(1)) provides that "[t]he Board, in its discretion, may, by rule of decision . . . decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect . . . on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction."

[2] 280 NLRB 670, 672, 674 (1986).

[3] 317 NLRB 1355, 1358 (1995).

[4] 179 F.3d 872.

jurisdictional prerequisite mandated by Section 2(2) of the Act and, relying on the Act's plain language, the Board's consistent view of its statutory jurisdiction, and the substantial deference due the Board's determination of its own statutory jurisdiction, agreed with the holding in *Management Training* that the Board's exercise of statutory jurisdiction over a government contractor does not depend on whether the contractor is able to engage in meaningful collective bargaining.[5] In so holding, the Tenth Circuit overruled a line of cases[6] that had held that the governmental control test was a jurisdictional element inherent in Section 2(2). The court agreed with the Board that those cases were "founded on a mistaken failure to distinguish between the Board's statutory and discretionary jurisdictions. . . . Whatever the genesis of the *Memorial Hospital* line, this court is convinced that the entire pedigree is faulty."[7]

In the other case, *NLRB v. Young Women's Christian Assn. of Metropolitan St. Louis,*[8] the Eighth Circuit upheld the Board's assertion of jurisdiction over a private not-for-profit corporation that administered a Federal Head Start program under a Federal grant and extensive Federal regulations. The YWCA argued that *Management Training* was wrongly decided and that it was not subject to the Board's jurisdiction because those Federal regulations so controlled its employees' working conditions that the YWCA was prevented from engaging in meaningful bargaining. The court rejected this argument, "hold[ing] that the Board acted within its authority when it abandoned the control test of *Res-Care* and announced in *Management Training* its new intent to look only at the plain jurisdictional requirements of the statute."[9] In other words, the Court held, the Board need not examine "whether a private employer is able to engage in effective or meaningful collective bargaining when asserting jurisdiction."[10]

B. Access to the Employer's Property

In *NLRB v. Babcock & Wilcox Co.*,[11] and more recently in *Lechmere, Inc. v. NLRB,*[12] the Supreme Court held that only rarely will nonemployees be permitted access to private property to engage in activity protected by Section 7 of the Act. In several cases decided

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[5] Id. at 877–881.
[6] See *Board of Trustees of Memorial Hospital v. NLRB*, 624 F.2d 177, 185 (10th Cir. 1980), and id. at 874 fn. 2, 881–882.
[7] Id. at 881–882.
[8] 192 F.3d 1111.
[9] Id. at 1118.
[10] Id. at 1116–1117.
[11] 351 U.S. 105 (1956).
[12] 502 U.S. 527 (1992).

during the past year, however, the courts, in agreement with the Board, made clear that there continue to be some circumstances where outsiders will be granted access.

In *NLRB v. Babcock & Wilcox Co.*, the Court stated that an employer's right to post its property against trespassers extends only to a "notice or order [that] does not discriminate against the union by allowing other distribution."[13] In accordance with that principle, the Tenth Circuit in *Four B Corp. v. NLRB*,[14] upheld the Board's finding that the employer unlawfully discriminated by refusing to allow a union to solicit off-duty employees in the parking lots and sidewalks outside of its stores, where the evidence established that the employer had permitted various charitable groups to solicit customers "periodically but regularly" in those areas, and the employer's written no-solicitation rule did not even purport to reach solicitation of off-duty employees outside the store.

A different exception to *Lechmere* underlaid the Ninth Circuit's conclusion that the Board acted reasonably in compelling the employer *in Nabors Alaska Drilling, Inc. v. NLRB* [15] to grant union organizers access to its property. In that case, the court upheld the portion of the Board's order allowing the union access to four oil drilling camps located on the employer's property in Alaska. Most of the employees whom the union sought to reach alternated 2-week stints during which they lived on the employer's jobsites in remote parts of Alaska with 2-week leaves, and were flown to and from those sites on employer-chartered planes between the jobsites and Anchorage. From the Anchorage airport, employees arranged their own transportation to their widely scattered homes.

The court agreed with the Board in finding applicable *Lechmere's* provision that a union may be granted access to private property to reach employees for organizational purposes where the employees "are isolated from the ordinary flow of information that characterizes our society," thereby "mak[ing] ineffective the reasonable attempts by non-employees to communicate with them through the usual channels."[16] The court rejected the employer's argument that the union was required to show that it had *no* alternative means of reaching employees. Rather, the court found that the Board acted reasonably in considering the dispositive issue in this case to be whether the union had "reasonably effective" means of communicating with the employees.[17]

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[13] 351 U.S. at 112.
[14] 163 F.3d 1177.
[15] 190 F.3d 1008.
[16] 190 F.3d at 1013.
[17] 190 F.3d at 1014.

In finding that substantial evidence supported the Board's finding that the union did not have a "reasonably effective" means of reaching the employees, the court highlighted evidence showing: that newspaper and radio advertising was cost-prohibitive and unlikely to reach employees; that there were only a few pay telephones at the worksite, none of which were in employees' rooms; and that employees' residences were widely scattered, with many employees travelling during their 2-week leaves, rather than returning to their homes. The court rejected the employer's argument that the union had an adequate opportunity to communicate with the employees as they passed through the Anchorage airport on their way to and from their charter flights.[18]

Another Ninth Circuit case. *NLRB v. Calkins*, [19] turned on the threshold issue of whether a grocery store employer was exercising a cognizable property right when it expelled union representatives engaged in informational picketing from the sidewalk in front of its store. Finding that state law afforded the employer no such right, the court affirmed the Board's conclusion that the employer's actions violated the Act.

The case arose in California, whose state courts have long treated modern shopping centers as public forums from which the owner may not prohibit expressive activity. The court first agreed with the Board that the employer's *Lechmere* right to exclude outside union representatives emanates from state law, and that absent a state-law right to exclude the representatives as trespassers, the expulsion of such representatives when engaged in Section 7 activity is unlawful.[20]

The court then turned to the Board's interpretation of the state constitution, and concluded that the Board had correctly determined the employer had no right to exclude the union representatives.[21] The court and the Board found the case to be controlled by a 1967 California Supreme Court decision prohibiting the owner of a freestanding grocery store, similar in size to the one here, from expelling union picketers from its property.[22] Although the 1967 decision had not expressly cited the state constitution, the court noted, the California courts have subsequently treated the case as one applying the state constitution.[23]

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[18] Id.
[19] 187 F.3d 1080.
[20] 187 F.3d at 1088.
[21] 187 F.3d at 1089–1092.
[22] 187 F.3d at 1090.
[23] 187 F.3d at 1090–1091 fn. 5.

C. Supervisory Status of Nurses

The issue of the supervisory status of registered and licensed practical nurses under Section 2(11) of the Act generated a significant amount of litigation this fiscal year, producing 13 opinions by six of the courts of appeals, including 2 en banc decisions. Much of the focus of the litigation this year concerned the appropriate standard of judicial review for assessing the validity of the Board's construction of Section 2(11).

Section 2(11) provides that an individual is a supervisor, and therefore excluded from the protection of the Act, only if he or she exercises "independent judgment" in performing one or more of the functions enumerated in that section. As the Board explained in *Providence Hospital*,[24] in applying that definition to nurses, the Board follows its "traditional approach," distinguishing "supervisors who share management's power or have some relationship or identification with management" from "skilled nonsupervisory employees whose direction of other employees reflects their superior training, experience, or skill."[25]

In decisions issued this fiscal year, the First Circuit and Seventh Circuit joined the Eighth,[26] Ninth,[27] and District of Columbia Circuits[28] in upholding the Board's approach to assessing the supervisory status of nurses. In contrast, the Third Circuit and Fourth Circuit agreed with the Sixth Circuit[29] in disapproving the Board's approach to analyzing the "independent judgment" requirement of Section 2(11).

In *Audubon Health Care Center*, [30] the Seventh Circuit, sitting en banc, deferred to the Board's construction of Section 2(11) "independent judgment" under *Chevron USA, Inc. v. Natural Resources Defense Council*,[31] because it involved "a permissible construction of an ambiguous term." The court thus upheld, as permissible, the Board's view that the "judgment of [nurses] in exercising their incidental supervisory authority over [aides] is not the 'independent judgment' concerned with management prerogatives contemplated by §2(11)," but rather was "'professional judgment' exercised in getting . . . assigned

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[24] 320 NLRB 717, 729 (1996), enfd. 121 F.3d 548 (9th Cir. 1997).
[25] 320 NLRB at 729.
[26] *Lynwood Health Care Center Minnesota, Inc. v. NLRB*, 148 F.3d 1042 (8th Cir. 1998).
[27] *Providence Alaska Medical Center v. NLRB*, 121 F.3d 548 (9th Cir 1997). In *Northern Montana Healthcare Center v. NLRB*, 178 F.3d 1089, the Ninth Circuit extended its approval of the Board's standard in *Providence Hospital* to the nursing home setting.
[28] *Beverly Enterprises-Pennsylvania*, *Inc. v. NLRB*, 129 F.3d 1269 (D.C. Cir. 1997).
[29] *Mid-America Care Foundation v. NLRB*, 148 F.3d 638 (6th Cir. 1998).
[30] 170 F.3d 662, 668.
[31] 467 U.S. 837 (1984). In *Chevron*, the Supreme Court held that "if the statute is silent or ambiguous with respect to the specific issue, . . . a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by . . . an agency."

work done with the assistance of" other employees.[32] On the facts before it, the court found that the record supported the Board's finding that the licensed practical nurses were not supervisors because they exercised their authority in assignment, scheduling, and discipline of nurses aides "in fairly routine, preordained ways."[33] The court also observed that finding the nurses to be supervisors would produce a "highly improbable ratio" which would remove 40 percent of the nursing staff from the protection of the Act.[34]

Similarly, in *NLRB v. Provident Nursing Home,*[35] the First Circuit upheld the Board's standard under *Chevron*. The court explained that the Board's interpretation of independent judgment harmonized the Act's definitions of supervisory and professional employee "in a sensible way, consistent with Congress's intent to exclude as supervisors only those employees with 'genuine management prerogatives."[36] Applying that standard, the court upheld the Board's finding that the nurses did not exercise independent judgment in assignment, grievance resolution or discipline. Specifically, the court agreed that the nurses' assignment power was too circumscribed to constitute the independent judgment required by the Act, because admitted supervisors determined the shift or floor to which each aide was assigned, the groups of residents to which nurses could assign aides, and the specific duties to be performed for each resident, and because all floating work or work beyond a shift was based on predetermined requirements that there be a certain number of aides per unit.[37]

The court also found that the nurses' role in completing aides' evaluations, by commenting on different areas of performance and giving a score in each area, was not supervisory. The court held that, even assuming the evaluation process required the use of independent judgment, the Board reasonably determined that the nurses did not have authority "effectively" to "recommend" a reward to other employees, within the meaning of Section 2(11), because there was no "direct correlation" between the evaluation as completed by the nurse and the merit increase to the employee.[38] The court observed that two aides who received the same evaluation scores received different merit pay increases, two aides who received different evaluation scores earned the same increase, and three levels of management independently reviewed

[32] 170 F.3d at 668.
[33] Id.
[34] Id. at 667.
[35] 187 F.3d 133.
[36] Id. at 142.
[37] Id. at 146–147.
[38] Id. at 145.

the evaluations, and could suggest or order the nurses to change certain ratings.[39]

In contrast, the Third Circuit and Fourth Circuit, agreeing with the Sixth Circuit, disapproved the Board's approach to analyzing the "independent judgment" requirement of Section 2(11). In *Carter Hall Nursing Home v. NLRB*, [40] the Fourth Circuit, sitting en banc, concluded that the Board's *Providence* approach was merely an attempt to skirt the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp.*,[41] which had rejected the Board's position that nurses were not supervisors because they acted in the interest of patients, not in the interest of the employer, as Section 2(11) requires. The court concluded that, although "the use of independent judgment is distinct from mere exercise of professional expertise," the Board "would collapse the distinction between management prerogatives and professional knowledge."[42] In the court's view, "assignment of work, direction of nursing assistants, discipline of nursing assistants and similar duties are not simply professional medical functions," but are "part and parcel of what it means to be a manager and a supervisor." Thus, the court concluded, "certain types of decisional authority, regardless of the manager's professional knowledge, make one a supervisor under the [Act]."[43]

Similarly, in *Attleboro Nursing & Rehabilitation Center v. NLRB*, [44] the Third Circuit found that LPNs were supervisors because they possessed the authority to assign, direct, effectively recommend discipline of, and adjust grievances of CNAs, and that they exercised such authority with independent judgment. In a prior decision, *Passavant Retirement & Health Ctr. v. NLRB*,[45] the Third Circuit had found supervisory status based on the nurses' authority in that case to suspend aides for flagrant conduct violations, such as resident abuse, and their authority to resolve minor problems concerning daily assignments or break times. In *Attleboro,* the court extended its disagreement with the Board's interpretation of "independent judgment" to nurses' authority to assign and responsibly direct, and to issue verbal and written warnings to aides for misconduct. In the court's view, "decisions to assign workers are inserverable from the exercise of independent judgment,

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[39] Id. at 144.

[40] 165 F.3d 290. On the same day, the Fourth Circuit issued a second en banc decision relying on the principles of *Carter Hall* to find licensed practical nurses to be statutory supervisors. *Glasgow Rehabilitation & Living Center v. NLRB*, 165 F.3d 307.

[41] 511 U.S. 571 (1994).

[42] 165 F.3d at 298.

[43] Id.

[44] 176 F.3d 154, petition for rehearing denied, June 19.

[45] 149 F.3d 243 (3d Cir. 1998).

especially in the health care context where staffing decisions can have such an important impact on patient health and well-being."[46] With respect to discipline, the court determined that because the charge nurses could make a decision to counsel an offending aide, or initiate a progressive disciplinary process that became part of the aide's permanent personnel file and could lead to termination, the charge nurses effectively recommended discipline using independent judgment within the meaning of Section 2(11).[47]

[46] 176 F.3d at 167, quoting *Glenmark Assoc., Inc. v. NLRB*, 147 F.3d 333, 342 (4th Cir. 1998).
[47] 176 F.3d at 165.

VIII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair practice proceeding, while the case is pending before the Board.[1] In fiscal 1999, the Board filed a total of 28 petitions for temporary injunctive relief under the discretionary provisions of Section 10(j). Of these petitions, 26 were filed against employers, 1 was filed against a labor organization, and 1 was filed against both an employer and a labor organization. Four cases authorized in the prior year were also pending in court at the beginning of the year. Of these 32 cases, 6 were either settled or adjusted prior to court action. Injunctions were granted in 14 cases and denied in 5 cases. Seven cases remained pending in district court at the end of the fiscal year.

District courts granted injunctions against employers in 13 cases and against a labor organization in 1 case. Among the violations enjoined were employer interference with nascent union organizing campaigns, including cases where the violations precluded a fair election and warranted a remedial bargaining order,[2] improper withdrawal of recognition from incumbent unions.

Two significant decisions involving union organizing campaigns issued during this fiscal year. In *Sharp v. Webco Industries, Inc.,*[3] the Board sought a 10(j) injunction, including interim reinstatement of five employee members of a union organizing committee. Previously, in 1997, the union had begun organizing the employer's 280 employees, to which the employer responded with an antiunion campaign. After an administrative law judge issued a decision finding the employer's conduct unlawful, the union resumed organizing by holding two meetings and leafleting. In response, the employer engaged in a renewed campaign to interfere with the union's second organizing effort,

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[1] See, e.g., *NLRB v. Electro-Voice, Inc.,* 83 F.3d 1559 (7th Cir. 1996), cert. denied mem. 519 U.S. 1055 (1997); *Bernstein v. Carter & Sons Freightways*, 983 F.3d 994 (D.Kan. 1997); and *Friend v. Painters District Council 8*, 157 LRRM 2653 (N.D.Ca. 1997). *Carter & Sons* and *Painters District Council* were discussed in the 1998 Annual Report.

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

[3] No. 99 CV 0352H(M) (N.D.Okla.), appeal pending No. 99-5111 (10th Cir.).

including discriminatorily selecting union committee members for an economic layoff. In view of the discriminatory layoffs, the Board sought, and the district court granted, 10(j) relief, including interim reinstatement. The court relied on the nature and extent of the unfair labor practices and the need to protect the employees' unionization efforts and the collective-bargaining process.

In contrast, in *Sharp v. Parents in Community Action,*[4] the Eighth Circuit denied interim reinstatement to an employee organizer. The Board sought 10(j) relief, in part, to obtain the interim reinstatement of a teacher who was the primary union leader in this multilocation head start organization. Initially, the appellate court adopted the four-prong equitable criteria standard for analyzing 10(j) cases currently used in the First, Seventh, and Ninth Circuits. Applying this test, the court affirmed the district court's denial of interim reinstatement. The court recognized that the firing of union activists can so chill ongoing protected activity that it will frustrate the effectiveness of the Board's remedies. Nonetheless, the court rejected as insufficient the Board's specific evidence showing that the teacher's discharge chilled union organizing activity during the school year, in part, because union organizing stopped over the summer and there was no evidence that organizing resumed during the following school year. When balanced against the considerations weighing against the interim reinstatement of the teacher, including the displacing of a parent-teacher, the court concluded that the district court did not abuse its discretion in denying the injunction.

Three cases during the year involved employer misconduct which threatened to undermine the status of a newly certified union. In *Kobell v. United Refining Co.,*[5] the union had represented the 200 production and maintenance employees of the employer's refinery for many years. In 1998, six formerly unrepresented warehouse employees voted to be represented by the union as part of the larger, historical production and maintenance unit. After certification, the union demanded recognition and bargaining concerning the working conditions of the warehousemen. The employer responded by unilaterally classifying the six employees as laborers under the parties' existing labor agreement in the historical unit and applying the terms of that agreement to them. This decision negatively impacted the six employees by, inter alia, reducing their levels of insurance coverage, seniority rights, wages, health care benefits, sick leave, and vacation pay. The district court agreed with the Regional Director that there was reasonable cause to believe that when a formerly unrepresented group of employees votes in a Board election to be

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[4] 172 F.3d 1034 (8th Cir.).
[5] 159 LRRM 2762 (W.D.Pa.).

included in an established bargaining unit the parties become obligated to bargain over which of the contractual terms or conditions of employment will be applicable to the new unit members.[6] Thus, the court found reasonable cause to believe that by unilaterally changing the working conditions of the warehousemen and refusing to meet and bargain with the union the employer violated Section 8(a)(5) of the Act. It also concluded that the employer's conduct constituted retaliation against the warehousemen in violation of Section 8(a)(3).[7] The court further concluded that injunctive relief was just and proper. By requiring the parties to bargain in good faith and by restoring the status quo regarding the preelection working conditions of the warehousemen, "we justly and properly safeguard the Union's position as the exclusive collective bargaining representative" and protect the parties' collective-bargaining process. The court also noted that the violations likely sent a "strong signal" to the employer's remaining nonunion employees who could fear retribution if they attempted to organize. The violations also "dilute the authority and bargaining power" of the union by calling into question its effectiveness.[8] Finally, the court concluded that the interim rescission of the unilateral changes would "even the playing field" to permit collective bargaining to proceed in the "correct atmosphere" of good faith to reach an agreement.[9]

In the second "certification year" case, *Fleischut v. Burrows Paper Corp.*,[10] the Regional Director alleged that there was reasonable cause to believe that the employer engaged in bad faith or "surface bargaining" with a newly certified union in violation of Section 8(a)(5) of the Act. In a decision delivered from the bench, the district court agreed, finding reasonable cause to believe that the employer had failed or refused to meet and confer at reasonable times with the union, that the employer's president had personally failed to recognize the union as the representative of the employees, and that the employer had not bargained in good faith. The court also found that the employer had implemented unilateral changes in unit employees' working conditions, including a failure to implement a scheduled unitwide wage increase. The court agreed with the Regional Director's contention that interim relief was necessary to protect the status of this newly certified union. In its bench opinion, the court ordered the employer to cease and desist from "failing and refusing to bargain in good faith and engage in bargaining without the intention of entering an agreement with the union." The court also

[6] The district court relied on *Federal Mogul Corp.,* 209 NLRB 343 (1974).
[7] See 159 LRRM at 2767.
[8] Id.
[9] 159 LRRM at 2767–2768.
[10] Civil No. 3:98CV791 (S.D.Miss.).

directed the employer to "bargain in good faith with the union relative to any wage increase."

In the third case, *Aguayo v. South Coast Refuse Corp.,*[11] the parties were bargaining for their first labor agreement following the union's certification. The Regional Director alleged that the employer's refusal to meet and bargain at reasonable times had caused an unfair labor practice strike and that the employer had either discharged the strikers or had failed to reinstate them upon their offer to return to work. The Regional Director had also alleged that the parties had agreed on the terms of a collective-bargaining agreement and that the employer had refused the union's request to sign and apply the terms of the agreement. The district court agreed that the Regional Director was likely to succeed on the contentions that the employer had violated the Act as alleged. The court further concluded that a purported non-Board adjustment between the union and the employer did not bar the Board from proceeding on the administrative case or seeking an injunction.[12] It also rejected the employer's defense that the Board improperly delayed in moving for an injunction.[13] The court found that interim reinstatement of the strikers, a bargaining order, and an order to comply with the terms of the parties' agreed-upon labor agreement was just and proper. Where the Regional Director had demonstrated a likelihood of success on the merits, irreparable injury to employee statutory rights could be presumed and further delay in providing relief "would only exacerbate that injury."[14]

One case during the year involved alleged union picket line misconduct during a labor dispute. In *Kollar v. Steelworkers, Local 2155,*[15] two local unions had commenced a strike against an employer after expiration of the parties' last labor agreement. The Regional Director alleged the union was responsible for picket line violence and misconduct that accompanied the strike, including, inter alia, rock throwing at employer guard houses, mass picketing which blocked ingress to and egress from the facility, spreading of jack rocks and nails on the streets near the facility, throwing debris at employer vehicles, throwing rocks at employee, cars and making oral threats at employees. The district court agreed with the Regional Director that normal Board procedures would not adequately protect the Section 7 rights of the employees who desired to refrain from engaging in the unions' strike and

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[11] 161 LRRM 2867 (C.D.Ca.).
[12] 161 LRRM at 2879.
[13] Id., citing *Aguayo v. Tomco Carburetor Co.*, 853 F.2d 744, 750 (9th Cir. 1988).
[14] 161 LRRM at 2880 fn. 15, citing *Miller v. California Pacific Medical Center*, 19 F.3d 449, 460 (9th Cir. 1994) (en banc).
[15] 161 LRRM 2307 (N.D.Oh.).

picketing activities.[16] The court granted a broad injunctive decree, which proscribed the misconduct taking place at the unions' picket lines. The decree also required the unions to designate a picket line captain to be present at all picket lines and forced the unions to police and remove all debris in the entranceways and roadways at the facility before each employee shift change.[17]

Finally, *Dunbar v. Carrier Corp.,*[18] also decided during this fiscal year, concerned an employer's relocation of bargaining unit work. The Regional Director alleged that the employer refused to bargain over the decision to relocate unit work from one of its plants and insisted that, as a condition of retaining the work at the existing facility, the union agree to an addendum to the collective-bargaining agreement that would, in effect, establish the work in a separate unit, apart from the existing multiplant unit. After the employer began constructing a facility in another State in which to relocate the work, the Board sought a temporary injunction to stop any further construction or relocation of the disputed work and to restore good-faith bargaining over this issue.

The district court concluded that if the relocation were completed before the Board could issue a final order to restore the operation the effectiveness of that order would be diminished: the cost of restoring the work to the original facility would be prohibitive, unit employees might be scattered, and the union's power to negotiate over the work would be weakened.[19] Although the court acknowledged the severity of the relief sought, it noted that the employer knew of the pending unfair labor practice charges when it proceeded with the relocation. It discounted the company's argument that an injunction would impose too great an economic burden, given the costs it had already incurred in relocating and the losses it suffered in its existing operation. The court concluded it was unable to fully evaluate this argument because the company failed to present evidence of its overall financial situation and thus prevented the court from evaluating its claims in the context of its entire operation.[20] On these bases, the court granted an interim bargaining order and enjoined any further construction of the new facility, purchase of new equipment, removal of equipment from the original plant, or terminating any unit employees working there.

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[16] See *Frye v. Service Employees, District 1199,* 996 F.2d 141, 144 (6th Cir. 1993).
[17] See 161 LRRM at 2311.
[18] 161 LRRM 2112 (N.D.N.Y.).
[19] 161 LRRM at 2117.
[20] 161 LRRM at 2118.

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),[21] or Section 8(b)(7),[22] and against an employer or union charged with a violation of Section 8(e),[23] 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.[24] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 10 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with two cases pending at the beginning of the period, two cases were settled, none were dismissed, none continued in an inactive status, one was withdrawn, and three were pending court action at the close of the report year. During this period, six petitions went to final order, the courts granting injunctions in three cases and denying them in three cases. Injunctions were issued in two 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

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[21] 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).

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

[23] 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.

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

obtain hot cargo agreements barred by Section 8(e). There were no injunctions granted in cases involving jurisdictional disputes in violation of Section 8(b)(4) or cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

IX

Contempt Litigation

During fiscal year 1999, 278 cases were referred to the Contempt Litigation and Compliance Branch (CLCB) for advice, or for consideration for contempt or other appropriate action to achieve compliance with court decrees. In addition, CLCB conducted 191 asset/entity database investigations to assist Regions in their compliance efforts. Voluntary compliance was achieved in 34 cases during the fiscal year, without the necessity of filing a contempt petition.

During the same period, 17 civil contempt or equivalent proceedings were instituted, including 1 in which body attachment was sought. A number of other proceedings were also instituted by CLCB during fiscal year 1999, including four requests for writs of pre- or post-judgment garnishment under the Federal Debt Collection Procedures Act (FDCPA); two requests for issuance of protective restraining orders or other interim relief; two complaints for nondischargeability of debts in bankruptcy; two proceedings to freeze bank accounts and to require the deposit of funds in the court's registry; and three proceedings to enforce administrative subpoenas.

Ten civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year, including one writ of body attachment. CLCB also obtained seven subpoena enforcement orders; one writ of post-judgment garnishment; two orders requiring banks to freeze accounts and to deposit those funds into the registry of the court; two orders requiring the disbursement of garnished funds; two orders declaring the Board's debts in bankruptcy to be nondischargeable; one order under seal requiring delayed notification to respondent that requests for bank records had been made; and two orders requiring parties to submit to Rule 2004 examinations in bankruptcy.

During the fiscal year, CLCB collected $19,591 in fines and $700,423 in backpay, while recouping $29,678 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases arose during the fiscal year. Two of them arose in bargaining situations. In *Leach Corp. v. NLRB*,[1] the collective-bargaining negotiations were at a stalemate and unfair labor practice charges had been filed by both the employer and the union. CLCB made the determination that contempt proceedings were warranted, but

[1] 54 F.3d 802 (D.C. Cir. 1995).

persuaded the parties to return to the bargaining table. In order to assure that neither party used the renewed negotiations as a means of bolstering or undercutting potential contempt allegations, CLCB persuaded the parties to treat the negotiations as settlement negotiations within the meaning of Rule 408, Federal Rules of Evidence, and to agree that conduct at those negotiations could not be introduced into evidence in the event that it became necessary to resuscitate the contempt proceedings. After extensive further negotiations, the parties reached a 3-year collective-bargaining agreement. Similarly, in *Super K-Mart*,[2] Oakland, California, the parties had strong disagreements at negotiations as to whether particular items of information had to be furnished, among other matters. After carefully reviewing each party's contentions, CLCB determined which items of information needed to be produced and obtained the company's cooperation in making them available. A settlement calling for a consent order, with prospective sanctions, was also reached. By lowering the level of acrimony, it is more likely that more productive negotiation sessions can be conducted.

There were also a number of unusually effective orders obtained in collection cases handled by CLCB during fiscal year 1999. In *NLRB v. Horizons Hotel Corp.*,[3] for example, CLCB was able to obtain a court order freezing transactions relating to certain bank accounts and requiring that the funds in those accounts be deposited and to deposit all the funds into the court's registry. The fact that the court was willing to freeze the accounts on an ex parte basis led to the deposit of a substantial amount of money which was eventually disbursed to the Board. In another order obtained in *Horizons*, the court ruled under seal that notification to a respondent individual that requests for his bank records had been made could be delayed because there was a danger of dissipation of assets. CLCB also continued its success in having bankruptcy courts declare that the Board's backpay claims are nondischargeable under Section 523(a)(6) of the Bankruptcy Code (*Kenco Electric & Signs*,[4] *Ellis Electric*[5]) and continued its effective use of FDCPA by, among things, obtaining writs of post-judgment garnishment. See, e.g., *Capitol Steel & Iron Co.*,[6] where CLCB obtained full backpay principle, interest, and surcharge through garnishment proceedings.

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[2] 322 NLRB 583 (1996).
[3] 159 LRRM 2449 (1st Cir. 1998).
[4] 325 NLRB 1118 (1998).
[5] 315 NLRB 1187 (1994).
[6] 317 NLRB 809 (1995).

Finally, CLCB continued to successfully invoke Section 11 of the Act to obtain information. In *Brooklyn Manor Corp. v. NLRB*,[7] the District Court for the Eastern District of New York agreed with the Board that the court did not have jurisdiction to consider respondent's objections to an administrative subpoena unless and until the Board moves for enforcement. It also agreed that respondent improperly filed the case in Brooklyn and that it should have been filed in Puerto Rico, where the Board's investigation is centered. CLCB also obtained orders finding respondents in civil contempt for failure to obey orders enforcing Board subpoenas. In *Warminster Investment Corp. v. Horizons Hotel*,[8] the United States District Court, District Court of Puerto Rico, imposed a $10,000 prospective contempt fine against a corporation and its responsible officials because of the contumacious refusal to comply with the court's orders enforcing the Board's subpoenas.

[7] WL 1011935 (E.D.N.Y.).
[8] WL 1112617 (D.Puerto Rico).

X

Special Litigation

A. Preemption Litigation

In *NLRB v. Pueblo of San Juan*,[1] the Board sued the Pueblo of San Juan Indian Tribe to invalidate a tribal ordinance which prohibited private employers and unions from entering into union-security agreements. The Board's suit also sought to invalidate a lease provision between the Tribe and a private employer which similarly prohibited the employer from agreeing to a union-security clause which would require tribal members to become members of a union or pay dues to a union. A union which represented the employees of that private employer filed charges with the Board, and intervened in the district court lawsuit. The district court granted summary judgment in favor of the Tribe, relying on Section 14(b) of the Act to conclude that Federal law does not preempt such local regulation of contracts, which require union membership as a condition of employment.[2] The court rejected the Board's argument that because Section 14(b) refers only to the laws of any "State or Territory," it does not permit tribes to enact laws regulating union security. The court further rejected the Board's reliance on caselaw invalidating municipal laws, which prohibit union-security agreements. The court reasoned that tribal sovereignty may not be abrogated by silence, and since the Act is silent as to tribes, and there is no other "clear indication" that Congress intended to abrogate tribal sovereignty in this area, the court concluded that the Tribe has authority to enact laws which prohibit union security.[3]

B. Litigation Concerning the Board's Subpoena Power

In *NLRB v. D.L. Baker, Inc.*,[4] the Fourth Circuit, in an unpublished decision, affirmed a district court order enforcing various Board subpoenas served on D.L. Baker, Inc., Baker Electric, Inc., and their principals. The Fourth Circuit agreed that service of the application for subpoena enforcement was sufficient to give the district court personal jurisdiction, notwithstanding the lack of technical compliance with Federal Rules of Civil Procedure, Rule 4 (FRCP). The Fourth Circuit found that Section 11(2) of the NLRA provides for commencement of

[1] 30 F. Supp. 1348 (D.N.M.), appeal pending (10th Cir.) No. 99–2011, 2030.
[2] Id. at 1353.
[3] Id. at 1353–1355.
[4] 166 F.3d 333 (4th Cir.) (per curiam).

subpoena enforcement proceedings by "application," not summons and complaint, that FRCP Rule 81(a)(3) was dispositive, and that this rule permits a court to order service by means different from those required in Rule 4. The Fourth Circuit also held that the district court acted within its discretion in finding that the Board had satisfied applicable statutory requirements by service of the subpoenas via certified mail to the correct business address of both corporate entities. It did not render service invalid that the envelopes had been returned and marked "refused" by the Postal Service, as the proper question is not actual receipt, but rather whether the method of service was reasonably calculated under the circumstances to give notice to the respondent. Thus, the court agreed that the Board served the subpoenas as authorized by Section 11(4) of the Act and the Board's Rules and Regulations, and that service by certified mail was a permissible and reasonable interpretation of Section 11(4).

In *NLRB v. Detroit Newspapers*,[5] the Sixth Circuit held that the Federal district court erred in directing the Board's administrative law judge to conduct an in camera review of subpoenaed documents during an unfair labor practice proceeding to determine whether the documents were privileged from disclosure. The respondent had filed a petition to revoke the Board's subpoena on the grounds that the materials sought were protected from disclosure by the attorney-client privilege and/or the attorney work-product doctrine. The respondent contended, however, that the district court judge, not the administrative law judge, should review the documents in camera to rule on the privilege claims. The Board argued that under the NLRA's statutory subpoena enforcement scheme and the doctrine of exhaustion of administrative remedies, the administrative law judge should have the *first* opportunity to rule on the documents' privileged status. The Circuit Court noted that the issue of whether the district court judge or the administrative law judge should review the documents was one of first impression in the circuit. Further, the court reviewed the district court's determination de novo, rather than under the abuse of discretion standard relied on by both parties, because the district court "had no 'discretion' to do what it did." Reversing the district court's judgment, the circuit court found it "implicit in the enforcement authority Congress has conferred upon the district court . . . that the district court, not the ALJ, must determine whether any privileges protect the documents from production." The court concluded that the district court judge erred as a matter of law in delegating an article III responsibility to an article II judge.

[5] 185 F.3d 602 (6th Cir.).

C. Equal Access to Justice Act Litigation

Several decisions issued concerning the time for filing applications for attorneys' fees under the Equal Access to Justice Act (EAJA).

In *NLRB v. I.W.G., Inc.*,[6] the Tenth Circuit denied respondent Gordon's application for fees under the EAJA. In the underlying proceeding, the Board had found Gordon personally liable for unfair labor practices committed by I.W.G. and its alter egos. On appeal, the Tenth Circuit remanded the issue of Gordon's personal liability to the Board. Gordon then filed with the court an application for attorneys' fees and expenses in which he argued that he was a prevailing party under the EAJA. The court denied Gordon's application as premature, because Gordon had yet to prevail on the merits of any of his claims. According to the court, Gordon's "procedural victory" was insufficient to establish that Gordon had prevailed for purposes of an award under the EAJA.

In *Hoagland Electric, Inc. v. NLRB*,[7] the District Court for the Southern District of Indiana refused to issue a writ of mandamus compelling the Board to rule on the merits of a request for fees under the EAJA. The court explained that it was without jurisdiction over the case because judicial review of final Board decisions lies exclusively with the Circuit Courts. The district court further explained that a mandamus action can only be brought in the court which normally has jurisdiction over the agency proceeding. Finally, the court observed that the plaintiff had filed his application for attorneys' fees with the NLRB outside of the 30-day requirement set forth in the EAJA (5 U.S.C. § 504(a)(2)), and in the NLRB's Regulation (29 CFR Sec. 102.148). The court also noted that the 30-day requirement as set forth in the EAJA is a jurisdictional prerequisite for seeking attorneys' fees and expenses.

In *E.W. Grobbel Sons, Inc. v. NLRB*,[8] the Sixth Circuit granted fees under the EAJA for a portion of an unfair labor practice case which, in the underlying proceeding, the court had remanded to the Board for reconsideration. After the court's remand and issuance of mandate, the charging party union informed the Board that it did not wish to proceed, and the Regional Director dismissed the remanded portions of the complaint. Apparently unsure of where to file the EAJA application, the charged party employer simultaneously submitted applications both to the Board and the Sixth Circuit. The Board contended it had jurisdiction over the EAJA application, given the 30-day time limit for filing the application, and the long period of time which had elapsed since the

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[6] 159 LRRM 2703 (10th Cir.).
[7] (S.D. Ind IP 98-1221-C-Y/G) (unreported).
[8] 176 F.3d 875 (6th Cir.).

court's judgment and issuance of mandate. The court disagreed. The court ruled that since its earlier remand order contemplated further proceedings, the court had retained jurisdiction under the principles of *Melkonyan v. Sullivan*,[9] and the EAJA application was therefore timely as filed with the court. The Circuit Court further found that the belated decision by the charging party union not to pursue the charges was a "compelling circumstance" supporting the conclusion that the Board's position on the remanded issues was not substantially justified. However, the court agreed with the Board that the fees requested were excessive, and awarded only $6000 of the approximately $38,000 requested.

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[9] 501 U.S. 89 (1991).

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

The formal document, a "pleading," which is served on the parties when the Regional Director and the respondent are unable to agree as to the amounts of backpay due discriminatees pursuant to a Board order or court decree requiring

payment of such backpay. It sets forth in detail the amount held by the Regional Director to be owing each discriminatee and the method of computation employed. The specification is accompanied by a notice of hearing setting a date for a backpay hearing.

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

An election conducted by the Regional Director after an initial election, having three or more choices on the ballot, has turned out to be inconclusive (none of the choices

receiving a majority of the valid votes cast). The Regional Director conducts the runoff election between the choices on the original ballot which received the highest and the next highest number of votes.

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

The carrying out of remedial action as agreed upon by the parties in writing (see "Formal Agreement," "Informal Agreement"); as recommended by the

administrative law judge in the decision; as ordered by the Board in its decision and order; or decreed by the court.

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

(Advisory Opinion cases): As distinguished from the other types of cases described above, which are filed in and processed by Regional Offices of the Board, AO or “advisory opinion” cases are filed directly with the Board in Washington and seek a determination as to whether the Board would or would not assert jurisdiction, in any given situation on the basis of its current standards over the party or parties to a proceeding pending

before a state or territorial agency or a court. (See subpart H of the Board's Rules and Regulations, Series 8, as amended.)

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

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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 1999[1]

	Total	AFL-CIO Unions	Other National Unions	Other Local Unions	Individuals	Employers
		All cases				
Pending October 1, 1998 …………	34,630	18,771	2,947	1,829	9,745	1,338
Received fiscal 1999 ……………..	33,232	17,041	2,931	1,450	10,289	1,521
On docket fiscal 1999 …………….	67,862	35,812	5,878	3,279	20,034	2,859
Closed fiscal 1999 ………………..	35,806	18,214	3,282	1,526	10,985	1,799
Pending September 30, 1999 ……..	32,056	17,598	2,596	1,753	9,049	1,060
		Unfair labor practice cases[2]				
Pending October 1, 1998 …………	32,106	17,310	2,602	1,639	9,369	1,186
Received fiscal 1999 ……………..	27,450	13,437	2,019	1,118	9,511	1,365
On docket fiscal 1999 …………….	59,556	30,747	4,621	2,757	18,880	2,551
Closed fiscal 1999 ………………..	29,741	14,474	2,328	1,164	10,145	1,630
Pending September 30, 1999 ……..	29,815	16,273	2,293	1,593	8,735	921
		Representation cases[3]				
Pending October 1, 1998…………	2,250	1,378	311	173	311	77
Received fiscal 1999 ……………..	5,462	3,496	861	306	686	113
On docket fiscal 1999 …………….	7,712	4,874	1,172	479	997	190
Closed fiscal 1999 ………………..	5,708	3,620	895	339	735	119
Pending September 30, 1999 ……..	2,004	1,254	277	140	262	71
		Union-shop deauthorization cases				
Pending October 1, 1998…………	74	0	9	0	65	0
Received fiscal 1999 …………….	110	0	18	0	92	0
On docket fiscal 1999 …………….	184	0	27	0	157	0
Closed fiscal 1999 ………………..	128	0	23	0	105	0
Pending September 30, 1999 ……..	56	0	4	0	52	0
		Amendment of certification cases				
Pending October 1, 1998…………	8	4	0	1	0	3
Received fiscal 1999 ……………..	15	10	2	1	0	2
On docket fiscal 1999 …………….	23	14	2	2	0	5
Closed fiscal 1999 ………………..	12	7	2	1	0	2
Pending September 30, 1999 ……..	11	7	0	1	0	3
		Unit clarification cases				
Pending October 1, 1998 …………	192	79	25	16	0	72
Received fiscal 1999 ……………..	195	98	31	25	0	41
On docket fiscal 1999 …………….	387	177	56	41	0	113
Closed fiscal 1999 ………………..	217	113	34	22	0	48
Pending September 30, 1999 ……..	170	64	22	19	0	65

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1B for totals by types of cases.
[3] See Table 1A for totals by types of cases.
*Revised, reflects higher/lower figures than reported pending, September 30, 1999, 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 1999[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	CA Cases					
Pending October 1, 1998 ………….	27,104	17,211	2,597	1,595	5,701	0
Received fiscal 1999 ……………...	21,063	13,312	1,999	1,030	4,722	0
On docket fiscal 1999 ……………..	48,167	30,523	4,596	2,625	10,423	0
Closed fiscal 1999 ………………....	22,966	14,350	2,314	1,093	5,209	0
Pending September 30, 1999 ……...	25,201	16,173	2,282	1,532	5,214	0
	CB Cases[2]					
Pending October 1, 1998 …………..	4,339	89	1	34	3,666	549
Received fiscal 1999 ……………...	5,611	102	3	66	4,789	651
On docket fiscal 1999 ……………..	9,950	191	4	100	8,455	1,200
Closed fiscal 1999 ………………....	5,848	101	2	60	4,934	751
Pending September 30, 1999 ……...	4,102	90	2	40	3,521	449
	CC Cases					
Pending October 1, 1998 …………..	410	3	2	7	0	398
Received fiscal 1999 ……………...	461	7	11	9	0	434
On docket fiscal 1999 ……………..	871	10	13	16	0	832
Closed fiscal 1999 ………………...	570	7	9	7	0	547
Pending September 30, 1999 ……...	301	3	4	9	0	285
	CD Cases					
Pending October 1, 1998 …………..	119	5	0	2	0	112
Received fiscal 1999 …………….....	155	15	3	5	0	132
On docket fiscal 1999 ……………..	274	20	3	7	0	244
Closed fiscal 1999 ………………....	168	15	1	1	0	151
Pending September 30, 1999 ……...	106	5	2	6	0	93
	CE Cases					
Pending October 1, 1998 …………	53	1	1	1	2	48
Received fiscal 1999 ……………...	35	0	0	2	0	33
On docket fiscal 1999 ……………..	88	1	1	3	2	81
Closed fiscal 1999 ………………....	60	0	0	0	2	58
Pending September 30, 1999 ……...	28	1	1	3	0	23
	CG Cases					
Pending October 1, 1998 …………..	19	0	0	0	0	19
Received fiscal 1999 …………….....	45	0	2	2	0	41
On docket fiscal 1999 ……………..	64	0	2	2	0	60
Closed fiscal 1999 ………………....	49	0	1	2	0	46
Pending September 30, 1999 ……...	15	0	1	0	0	14
	CP Cases					
Pending October 1, 1998 …………	62	1	1	0	0	60
Received fiscal 1999 ……………..	80	1	1	4	0	74
On docket fiscal 1999 …………….	142	2	2	4	0	134
Closed fiscal 1999 ………………..	80	1	1	1	0	77
Pending September 30, 1999 ……..	62	1	1	3	0	57

[1] See Glossary of terms for definitions.
*Revised, reflects higher/lower figures than reported pending September 30, 1999, 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 1999[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	RC cases					
Pending October 1, 1999 …………	1,793	1,378	242	173	0	0
Received fiscal 1999 ……………..	4,551	3,495	751	305	0	0
On docket fiscal 1999 …………….	6,344	4,873	993	478	0	0
Closed fiscal 1999 ………………..	4,731	3,619	773	339	0	0
Pending September 30, 1999 ……..	1,613	1,254	220	139	0	0
	RM cases					
Pending October 1, 1999 …………	87	0	10	0	0	77
Received fiscal 1999 ……………..	128	0	15	0	0	113
On docket fiscal 1999 …………….	215	0	25	0	0	190
Closed fiscal 1999 ………………..	137	0	18	0	0	119
Pending September 30, 1999 ……..	78	0	7	0	0	71
	RD cases					
Pending October 1, 1999 …………	370	0	59	0	311	0
Received fiscal 1999 ……………..	783	1	95	1	686	0
On docket fiscal 1999 …………….	1,153	1	154	1	997	0
Closed fiscal 1999 ………………..	840	1	104	0	735	0
Pending September 30, 1999 ……..	313	0	50	1	262	0

[1.] See Glossary of terms for definitions.
*Revised, reflects higher/lower figures than reported pending September 30, 1999, 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 1999

	Number of cases showing-specific allegations	Percent of total cases
A. Charges filed against employers under Sec. 8(a)		
Subsections of Sec. 8(a):		
Total cases	21,063	100.0
8(a)(1)	3,929	18.7
8(a)(1)(2)	211	1.0
8(a)(1)(3)	7,444	35.3
8(a)(1)(4)	135	0.6
8(a)(1)(5)	6,594	31.3
8(a)(1)(2)(3)	129	0.6
8(a)(1)(2)(4)	4	0.0
8(a)(1)(2)(5)	106	0.5
8(a)(1)(3)(4)	462	2.2
8(a)(1)(3)(5)	1,827	8.7
8(a)(1)(4)(5)	21	0.1
8(a)(1)(2)(3)(4)	14	0.1
8(a)(1)(2)(3)(5)	60	0.3
8(a)(1)(2)(4)(5)	4	0.0
8(a)(1)(3)(4)(5)	97	0.5
8(a)(1)(2)(3)(4)(5)	25	0.1
Recapitulation[1]		
8(a)(1)	21,063	100.0
8(a)(2)	553	2.6
8(a)(3)	10,061	47.8
8(a)(4)	762	3.6
8(a)(5)	8,731	41.5
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b):		
Total cases	6,159	100.0
8(b)(1)	4,510	73.2
8(b)(2)	26	0.4
8(b)(3)	194	3.1
8(b)(4)	616	10.0
8(b)(5)	2	0.0
8(b)(6)	11	0.2
8(b)(7)	80	1.3
8(b)(1)(2)	600	9.7
8(b)(1)(3)	217	3.5
8(b)(1)(5)	2	0.0
8(b)(1)(6)	23	0.4
8(b)(2)(3)	8	0.1
8(b)(3)(6)	1	0.0
8(b)(5)(6)	1	0.0
8(b)(1)(2)(3)	30	0.5
8(b)(1)(2)(5)	0	0.0
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	2	0.0
8(b)(2)(3)(6)	1	0.0
8(b)(1)(2)(3)(5)	0	0.0
8(b)(1)(2)(3)(6)	1	0.0
8(b)(2)(3)(5)(6)	0	0.0
8(b)(1)(2)(3)(5)(6)	0	0.0

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 1999—Continued

	Number of cases showing-specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	5,392	87.5
8(b)(2)	662	10.7
8(b)(3)	449	7.3
8(b)(4)	616	10.0
8(b)(5)	7	0.1
8(b)(6)	39	0.6
8(b)(7)	80	1.3
B1. Analysis of 8 (b)(4)		
Total cases 8(b)(4)	616	100.0
8(b)(4)(A)	75	12.2
8(b)(4)(B)	350	56.8
8(b)(4)(C)	9	1.5
8(b)(4)(D)	155	25.2
8(b)(4)(A)(B)	17	2.8
8(b)(4)(A)(C)	3	0.5
8(b)(4)(B)(C)	3	0.5
8(b)(4)(A)(B)(C)	4	0.6
Recapitulation[1]		
8(b)(4)(A)	99	16
8(b)(4)(B)	374	61
8(b)(4)(C)	19	3
8(b)(4)(D)	155	25
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	80	100
8(b)(7)(A)	28	35
8(b)(7)(B)	7	9
8(b)(7)(C)	40	50
8(b)(7)(A)(B)	0	0
8(b)(7)(A)(C)	5	6
8(b)(7)(A)(B)(C)	0	0
Recapitulation[1]		
8(b)(7)(A)	33	41
8(b)(7)(B)	7	9
8(b)(7)(C)	45	56
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	35	100
Against unions alone	34	97
Against employers alone	1	97
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	45	100

[1] A single case may include allegations of violations of more than one subsection of the Act. Therefore, the total of the various allegations is greater than the total number of cases.

Table 3A.–Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1999[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	22	22	0	0	0	21	1	0	0	0	0	0	0
Complaints issued	2,887	2,226	2,036	120	23	0	0	4	3	8	0	0	32
Backpay specifications issued	77	43	43	0	0	0	0	0	0	0	0	0	0
Hearings completed, total	1,091	440	369	26	6	0	0	3	0	1	8	25	2
Initial ULP hearings	938	401	333	25	6	0	0	2	0	1	8	24	2
Backpay hearings	16	7	7	0	0	0	0	0	0	0	0	0	0
Other hearings	137	32	29	1	0	0	0	1	0	0	0	1	0
Decisions by administrative law judges, total	903	419	363	19	4	0	0	2	0	0	11	19	1
Initial ULP decisions	827	387	332	19	4	0	0	2	0	0	11	18	1
Backpay decisions	16	9	9	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	60	23	22	0	0	0	0	0	0	0	0	1	0
Decisions and orders by the Board, total	1268	580	474	32	3	10	1	2	0	1	13	37	7
Upon consent of parties:													
Initial decisions	70	22	18	0	1	0	0	0	0	1	0	1	1
Supplemental decisions	11	4	3	0	0	0	0	0	0	0	1	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	196	115	103	5	0	0	0	0	0	0	3	4	0
Backpay decisions	21	10	10	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	22	6	5	0	0	0	0	0	0	0	0	1	0
Contested:													
Initial ULP decisions	856	373	299	20	2	10	0	2	0	0	9	25	6
Decisions based on stipulated record	11	10	5	4	0	0	1	0	0	0	0	0	0
Supplemental ULP decisions	55	26	17	3	0	0	0	0	0	0	0	6	0
Backpay decisions	26	14	14	0	0	0	0	0	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 3B.–Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1999[1]

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken	Total formal actions taken[2]	RC	RM	RD	UD
Hearings completed, total	154	154	143	1	10	0
Initial hearings	102	102	98	1	3	0
Hearings on objections and/or challenges	52	52	45	0	7	0
Decisions issued, total	179	177	161	9	5	4
By Regional Director	96	96	90	1	3	2
Elections directed	95	95	89	1	3	2
Dismissals on record	1	1	1	0	0	0
By Board	83	81	71	8	2	2
Transferred by Regional Directors for initial decision	2	2	2	0	0	0
Elections directed	1	1	1	0	0	0
Dismissals on record	1	1	1	0	0	0
Review of Regional Directors' decisions: Requests for review received	341	324	277	9	38	1
Withdrawn before request ruled upon	28	27	21	0	6	0
Board action on request ruled upon, total	324	308	263	7	38	2
Granted	54	50	46	0	4	1
Denied	260	248	208	7	33	1
Remanded	10	10	9	0	1	0
Withdrawn after request granted, before Board review	2	2	2	0	0	0
Board decision after review, total	81	79	69	8	2	2
Regional Directors' decisions:						
Affirmed	36	36	31	5	0	1
Modified	6	6	6	0	0	0
Reversed	39	37	32	3	2	1
Outcome:						
Election directed	60	60	57	2	1	2
Dismissals on record	21	19	12	6	1	0

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

Table 3B.–Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1999[1]—Continued

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken	Total formal actions taken[2]	RC	RM	RD	UD
Decision on objections and/or challenges, total ...	458	445	400	4	41	5
By Regional Directors …………………………….	59	66	59	0	7	0
By Board …………………………………………..	399	379	341	4	34	5
In stipulated elections …………………………..	336	330	295	4	31	5
No exceptions to Regional Directors' reports	199	196	175	3	18	3
Exceptions to Regional Directors' reports ….	137	134	120	1	13	2
In directed elections (after transfer by Regional Director)	63	49	46	0	3	0
Review of Regional Directors' supplemental decisions:						
Request for review received ………………...	35	33	31	0	2	0
Withdrawn before request ruled upon ………	1	1	1	0	0	0
Board action on request ruled upon, total …..	37	35	32	0	3	2
Granted …………………………………	8	8	8	0	0	2
Denied …………………………………..	25	24	21	0	3	0
Remanded ………………………………	4	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 …………………………….	1	1	1	0	0	0
Modified …………………………….	0	0	0	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 1999[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	45	5	36
Decisions issued after hearing	65	5	58
By Regional Directors	54	5	47
By Board	11	0	11
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	33	1	30
Withdrawn before request ruled upon	5	0	4
Board action on requests ruled upon, total	29	4	24
Granted	7	0	7
Denied	14	2	11
Remanded	9	2	7
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	11	0	11
Regional Directors' decisions:			
Affirmed	4	0	4
Modified	1	0	1
Reversed	6	0	6

[1] See Glossary of terms for definitions.

Table 4.–Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1999[1]

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant–					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 ….	10,380	0	0	0	0	0	0	0	0	0	0	0	0
Notice posted ………………...	2,840	2,495	1,914	144	11	238	188	345	304	8	3	23	7
	27	27	12	11	0	4	0	0	0	0	0	0	0
Employer–dominated union Disestablished ……………...	17	17	13	0	0	4	0	0	0	0	0	0	0
Employees offered reinstate-ment ……………………….	856	855	638	114	1	55	47	1	1	0	0	0	0
Employees placed on preferen-tial hiring list ………………..	580	539	343	131	1	41	23	41	29	10	0	2	0
Hiring hall rights restored ……..	11	0	0	0	0	0	0	11	6	0	0	5	0
Objections to employment withdrawn …………………...	214	209	153	46	0	4	6	5	3	1	0	1	0
Picketing ended ………………..	112	0	0	0	0	0	0	112	110	2	0	0	0
Work stoppage ended …………	66	0	0	0	0	0	0	66	66	0	0	0	0
Collective bargaining begun ….	2,602	2,403	2,097	95	5	97	109	199	194	2	0	3	0
Backpay distributed …………...	2,473	2,379	1,928	162	9	156	124	94	75	6	1	8	4
Reimbursement of fees, dues, and fines ……………………..	72	24	20	2	0	0	2	48	43	3	0	2	0
Other conditions of employment improved …………………….	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies ………………..	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected: ……………………….	0	0	0	0	0	0	0	0	0	0	0	0	0
Employees offered reinstate-ment, total …………………...	2,043	2,041	1,340	472	12	83	134	2	2	0	0	0	0
Accepted …………………...	1,420	1,418	1,054	224	9	48	83	2	2	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1999[1]—Continued

Action taken	Total all	Employer: Total	Employer: Agreement of parties: Informal settlement	Employer: Agreement of parties: Formal settlement	Employer: Recommendation of administrative law judge	Employer: Order of– Board	Employer: Order of– Court	Union: Total	Union: Agreement of parties: Informal settlement	Union: Agreement of parties: Formal settlement	Union: Recommendation of administrative law judge	Union: Order of– Board	Union: Order of– Court
Declined	623	623	286	248	3	35	51	0	0	0	0	0	0
Employees placed on preferential hiring list	666	666	439	8	108	110	1	0	0	0	0	0	0
Hiring hall rights restored	13	0	0	0	0	0	0	13	7	0	0	6	0
Objections to employment withdrawn	2	0	0	0	0	0	0	2	1	0	0	1	0
Employees receiving backpay:													
From either employer or union	22,879	22,669	18,088	802	134	2,764	881	210	204	0	0	4	2
From both employer and union	18	5	1	4	0	0	0	13	1	12	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	805	463	356	104	0	0	3	342	310	28	0	4	0
From both employer and union	1	0	0	0	0	0	0	1	1	0	0	0	0
C. By amounts of monetary recovery, total	60,690,044	59,035,753	28,446,485	11,682,826	196,806	6,297,834	12,411,802	1,654,291	391,447	824,235	0	434,338	4,271
Backpay (includes all monetary payments except fees, dues, and fines)	59,703,050	58,596,798	28,071,850	11,682,826	196,806	6,284,439	12,360,877	1,106,252	246,588	824,235	0	31,158	4,271
Reimbursement of fees, dues, and fines	986,994	438,955	374,635	0	0	13,395	50,925	548,039	144,859	0	0	403,180	0

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1999 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 1999[1]

Industrial groups[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	1,241	1,004	788	206	8	1	0	0	1	220	174	4	42	6	0	11
Tobacco manufacturers	3	2	1	1	0	0	0	0	0	1	1	0	0	0	0	0
Textile mill products	112	87	70	15	1	1	0	0	0	25	19	1	5	0	0	0
Apparel and other finished products made from fabric and similar materials	70	64	56	8	0	0	0	0	0	5	4	0	1	1	0	0
Lumber and wood products (except furniture)	294	229	191	33	3	2	0	0	0	59	43	3	13	2	0	4
Furniture and fixtures	220	175	140	29	5	0	1	0	0	41	39	0	2	3	0	1
Paper and allied products	374	315	236	77	1	0	0	0	1	52	43	0	9	2	1	4
Printing, publishing, and allied products	485	409	345	60	3	1	0	0	0	71	50	4	17	0	0	5
Chemicals and allied products	489	402	346	54	1	0	0	0	1	82	67	4	11	0	0	5
Petroleum refining and related industries	157	134	114	18	1	0	0	0	1	22	16	1	5	0	0	1
Rubber and miscellaneous plastic products	328	273	215	57	1	0	0	0	0	53	47	0	6	2	0	0
Leather and leather products	40	36	25	11	0	0	0	0	0	4	1	1	2	0	0	0
Stone, clay, glass, and concrete products	477	371	297	70	3	0	0	0	1	103	83	2	18	0	0	3
Primary metal industries	841	764	599	161	4	0	0	0	0	74	65	0	9	3	0	0
Fabricated metal products (except machinery and transportation equipment)	758	597	472	123	2	0	0	0	0	156	123	7	26	3	0	2
Machinery (except electrical)	643	533	404	116	11	1	0	0	1	103	82	2	19	6	0	1
Electrical and electronic machinery, equipment and supplies	517	460	347	111	1	0	0	0	1	51	44	1	6	2	0	4
Aircraft and parts	248	226	139	86	1	0	0	0	0	20	18	0	2	0	0	2
Ship and boat building and repairing.	144	142	117	24	1	0	0	0	0	2	2	0	0	0	0	0
Automotive and other transportation equipment	875	770	527	241	1	1	0	0	0	104	96	0	8	0	0	1
Measuring, analyzing, and controlling instruments; photographic, medical, and optical	90	70	53	17	0	0	0	0	0	19	15	0	4	1	0	0
Miscellaneous manufacturing industries	154	96	64	30	1	0	0	0	1	55	47	2	6	2	0	1
Manufacturing	8,560	7,159	5,546	1,548	49	7	1	0	8	1,322	1,079	32	211	33	1	45
Metal mining	51	46	37	9	0	0	0	0	0	3	3	0	0	0	1	1
Coal mining	80	73	57	14	1	1	0	0	0	7	6	0	1	0	0	0
Oil and gas extraction	30	19	15	4	0	0	0	0	0	10	5	1	4	0	1	0
Mining and quarrying of nonmetallic minerals (except fules)	86	65	54	11	0	0	0	0	0	19	14	2	3	1	0	1
Mining	247	203	163	38	1	1	0	0	0	39	28	3	8	1	2	2
Construction	3,480	3,040	2,187	493	216	98	5	0	41	434	371	21	42	2	0	4

Table 5.–Industrial Distribution of Cases Received, Fiscal Year 1999[1]—Continued

Industrial groups[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
Wholesale trade	1,117	880	718	152	6	4	0	0	0	226	183	5	38	4	0	7
Retail trade	1,817	1,464	1,160	274	21	5	0	0	4	332	256	13	63	13	0	8
Finance, insurance, and real estate	474	369	272	77	14	3	0	0	3	95	69	6	20	5	0	5
U.S. Postal Service	2,106	2,102	1,477	623	1	0	1	0	0	4	4	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	745	553	449	102	2	0	0	0	0	182	158	2	22	5	2	3
Motor freight transportation and warehousing	2,098	1,720	1,374	312	29	2	1	0	2	367	317	9	41	7	0	4
Water transportation	234	210	103	92	9	3	0	0	3	24	20	1	3	0	0	0
Other transportation	471	377	300	72	4	1	0	0	0	94	80	1	13	0	0	0
Communication	862	729	577	143	4	5	0	0	0	116	92	2	22	6	0	11
Electric, gas, and sanitary services	871	665	495	166	4	0	0	0	0	192	165	4	23	2	1	11
Transportation, communication, and other utilities	5,281	4,254	3,298	887	52	11	1	0	5	975	832	19	124	20	3	29
Hotels, rooming houses, camps, and other lodging places	638	531	405	116	8	1	0	0	1	103	85	1	17	3	1	0
Personal services	295	198	163	34	0	1	0	0	0	93	69	0	24	1	0	3
Automotive repair, services, and garages	355	240	181	53	3	1	0	0	2	112	97	2	13	1	0	2
Motion pictures	134	111	85	25	0	0	0	0	1	23	22	0	1	0	0	0
Amusement and recreation services (exception motion pictures)	426	339	258	73	5	3	0	0	0	87	78	3	6	0	0	0
Health services	3,285	2,491	2,095	337	11	1	1	45	1	728	639	4	85	12	3	51
Educational services	236	172	121	44	4	1	2	0	0	59	54	1	4	0	0	5
Membership organizations	653	526	285	186	26	4	21	0	4	112	94	2	16	2	4	9
Business services	1,881	1,524	1,105	365	33	10	3	0	8	342	308	3	31	10	0	5
Miscellaneous repair services	63	48	39	8	1	0	0	0	0	15	13	0	2	0	0	0
Legal services	31	22	21	1	0	0	0	0	0	8	5	1	2	0	0	1
Museums, art galleries, and botanical and zoological gardens	6	5	3	1	1	0	0	0	0	1	1	0	0	0	0	0
Social services	314	210	178	31	1	0	0	0	0	97	79	1	17	0	0	7
Miscellaneous services	1,760	1,514	1251	253	6	2	0	0	2	234	165	11	58	2	0	11
Services	10,078	7,931	6,190	1,527	99	24	27	45	19	2,014	1,709	29	276	31	8	94
Public administration	87	63	52	7	2	2	0	0	0	21	20	0	1	1	1	1
Total, all industrial groups	33,247	27,465	21,063	5,626	461	155	35	45	80	5,462	4,551	128	783	110	15	195

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

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1999[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	101	82	72	7	3	0	0	0	0	19	16	0	3	0	0	0
New Hampshire	68	54	49	4	1	0	0	0	0	14	12	0	2	0	0	0
Vermont	45	32	30	2	0	0	0	0	0	13	12	0	1	0	0	0
Massachusetts	937	790	633	130	16	9	0	1	1	136	127	1	8	2	0	9
Rhode Island	191	167	135	28	2	0	0	2	0	19	17	0	2	2	0	3
Connecticut	814	660	505	134	15	1	0	4	1	151	136	0	15	1	0	2
New England	2,156	1,785	1,424	305	37	10	0	7	2	352	320	1	31	5	0	14
New York	3,217	2,663	1,832	706	66	27	5	7	20	510	429	16	65	13	1	30
New Jersey	1,613	1,280	976	241	37	16	3	1	6	318	282	7	29	3	1	11
Pennsylvania	2,180	1,822	1,421	322	48	22	1	5	3	333	283	4	46	6	0	19
Middle Atlantic	7,010	5,765	4,229	1,269	151	65	9	13	29	1,161	994	27	140	22	2	60
Ohio	2,324	2,024	1,500	441	45	8	21	7	2	287	233	8	46	8	1	4
Indiana	926	774	612	141	9	8	1	0	3	144	109	4	31	5	0	3
Illinois	1,482	1,074	766	227	51	16	0	1	13	386	310	7	69	13	1	8
Michigan	1,840	1,512	1,152	329	20	3	1	2	5	306	254	7	45	11	0	11
Wisconsin	657	491	394	88	6	1	0	0	2	151	110	1	40	8	0	7
East North Central	7,229	5,875	4,424	1,226	131	36	23	10	25	1,274	1,016	27	231	45	2	33
Iowa	267	193	150	34	6	0	0	0	3	71	55	1	15	0	0	3
Minnesota	424	292	223	61	5	0	2	1	0	126	96	1	29	3	0	3
Missouri	998	833	589	199	27	17	0	0	1	158	117	10	31	5	0	2
North Dakota	36	26	25	1	0	0	0	0	0	9	8	0	1	0	0	1
South Dakota	27	18	16	2	0	0	0	0	0	9	8	0	1	0	0	0
Nebraska	81	67	59	6	1	0	0	1	0	13	11	0	2	0	0	1
Kansas	191	153	122	29	2	0	0	0	0	38	32	0	6	0	0	0
West North Central	2,024	1,582	1,184	332	41	17	2	2	4	424	327	12	85	8	0	10
Delaware	111	87	79	8	0	0	0	0	0	24	20	0	4	0	0	0
Maryland	496	411	332	78	1	0	0	0	0	82	73	1	8	0	0	3

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1999[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
District of Columbia	164	141	106	31	0	2	0	2	0	22	19	1	2	0	0	1
Virginia	314	237	201	35	1	0	0	0	0	76	68	1	7	0	0	1
West Virginia	330	260	225	34	0	0	0	1	0	66	57	1	8	0	0	4
North Carolina	305	276	206	69	1	0	0	0	0	28	23	1	4	0	0	1
South Carolina	113	92	82	10	0	0	0	0	0	21	17	0	4	0	0	0
Georgia	610	539	432	102	4	0	0	1	0	71	56	1	14	0	0	0
Florida	1,236	1,061	855	202	3	0	0	0	1	171	150	4	17	0	0	4
South Atlantic	3,679	3,104	2,518	569	10	2	0	4	1	561	483	10	68	0	0	14
Kentucky	333	259	223	33	2	0	0	1	0	71	61	2	8	0	1	2
Tennessee	573	511	385	124	2	0	0	0	0	62	55	1	6	0	0	0
Alabama	444	395	326	68	0	0	0	1	0	49	43	1	5	0	0	0
Mississippi	175	148	130	18	0	0	0	0	0	25	22	0	3	1	1	0
East South Central	1,525	1,313	1,064	243	4	0	0	2	0	207	181	4	22	1	2	2
Arkansas	147	122	107	15	0	0	0	0	0	24	21	0	3	0	0	1
Louisiana	530	493	379	113	1	0	0	0	0	36	28	1	7	0	0	1
Oklahoma	184	151	109	42	0	0	0	0	0	31	21	1	9	2	0	0
Texas	979	878	639	238	1	0	0	0	0	100	84	3	13	0	0	1
West South Central	1,840	1,644	1,234	408	2	0	0	0	0	191	154	5	32	2	0	3
Montana	118	84	73	7	4	0	0	0	0	31	22	2	7	1	0	2
Idaho	71	56	55	1	0	0	0	0	0	13	9	0	4	0	0	2
Wyoming	44	36	24	12	0	0	0	0	0	8	7	0	1	0	0	0
Colorado	582	506	430	75	1	0	0	0	0	69	61	1	7	2	0	5
New Mexico	163	134	108	25	1	0	0	0	0	28	24	0	4	1	0	0
Arizona	394	346	267	78	1	0	0	0	0	46	36	2	8	0	1	1
Utah	81	61	55	6	0	0	0	0	0	17	17	0	0	0	1	2
Nevada	601	504	391	101	7	2	0	1	2	93	82	5	6	0	0	4
Mountain	2,054	1,727	1,403	305	14	2	0	1	2	305	258	10	37	4	2	16

Table 6A.–Geographic Distribution of Cases Received, Fiscal year 1999[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	581	408	350	47	9	2	0	0	0	164	130	10	24	4	0	5
Oregon	347	264	203	51	5	5	0	0	0	71	51	3	17	5	0	7
California	3,856	3,240	2,404	755	48	14	0	5	14	580	493	18	69	11	1	24
Alaska	108	66	55	10	1	0	0	0	0	37	28	1	8	0	4	1
Hawaii	326	264	209	47	3	2	0	0	3	60	49	0	11	0	2	0
Guam	39	39	38	1	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	5,257	4,281	3,259	911	66	23	0	5	17	912	751	32	129	20	7	37
Puerto Rico	448	371	308	56	5	0	1	1	0	68	63	0	5	3	0	6
Virgin Islands	25	18	16	2	0	0	0	0	0	7	7	0	0	0	0	0
Outlying areas	473	389	324	58	5	0	1	1	0	75	70	0	5	3	0	6
Total, all States and areas	33,232	27,450	21,063	5,611	461	155	35	45	80	5,462	4,554	128	780	110	15	195

[1] See Glossary for definitions of terms.
[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 1999[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	814	660	505	134	15	1	0	4	1	151	136	0	15	1	0	2
Maine	101	82	72	7	3	0	0	0	0	19	16	0	3	0	0	0
Massachusetts	937	790	633	130	16	9	0	1	1	136	127	1	8	2	0	9
New Hampshire	68	54	49	4	1	0	0	0	0	14	12	0	2	0	0	0
Rhode Island	191	167	135	28	2	0	0	2	0	19	17	0	2	2	0	3
Vermont	45	32	30	2	0	0	0	0	0	13	12	0	1	0	0	0
Region I	2,156	1,785	1,424	305	37	10	0	7	2	352	320	1	31	5	0	14
Delaware	111	87	79	8	0	0	0	0	0	24	20	0	4	0	0	0
New Jersey	1,613	1,280	976	241	37	16	3	1	6	318	282	7	29	3	1	11
New York	3,217	2,663	1,832	706	66	27	5	7	20	510	429	16	65	13	1	30
Puerto Rico	448	371	308	56	5	0	1	1	0	68	63	0	5	3	0	6
Virgin Islands	25	18	16	2	0	0	0	0	0	7	7	0	0	0	0	0
Region II	5,414	4,419	3,211	1,013	108	43	9	9	26	927	801	23	103	19	2	47
District of Columbia	164	141	106	31	0	2	0	2	0	22	19	1	2	0	0	1
Maryland	496	411	332	78	1	0	0	0	0	82	73	1	8	0	0	3
Pennsylvania	2,180	1,822	1,421	322	48	22	1	5	3	333	283	4	46	6	0	19
Virginia	314	237	201	35	1	0	0	0	0	76	68	1	7	0	0	1
West Virginia	330	260	225	34	0	0	0	1	0	66	57	1	8	0	0	4
Region III	3,484	2,871	2,285	500	50	24	1	8	3	579	500	8	71	6	0	28
Alabama	444	395	326	68	0	0	0	1	0	49	43	1	5	0	0	0
Florida	1,236	1,061	855	202	3	0	0	0	1	171	150	4	17	0	0	4
Georgia	610	539	432	102	4	0	0	1	0	71	56	1	14	0	0	0
Kentucky	333	259	223	33	2	0	0	1	0	71	61	2	8	0	1	2
Mississippi	175	148	130	18	0	0	0	0	0	25	22	0	3	1	1	0
North Carolina	305	276	206	69	1	0	0	0	0	28	23	1	4	0	0	1
South Carolina	113	92	82	10	0	0	0	0	0	21	17	0	4	0	0	0
Tennessee	573	511	385	124	2	0	0	0	0	62	55	1	6	0	0	0
Region IV	3,789	3,281	2,639	626	12	0	0	3	1	498	427	10	61	1	2	7

Table 6B.–Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1999[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
Illinois	1,231	1,074	766	227	51	16	0	1	13	153	112	0	41	3	0	1
Indiana	896	774	612	141	9	8	1	0	3	115	83	3	29	5	0	2
Michigan	1,840	1,512	1,152	329	20	3	1	2	5	306	254	7	45	11	0	11
Minnesota	424	292	223	61	5	0	2	1	0	126	96	1	29	3	0	3
Ohio	2,354	2,024	1,500	441	45	8	21	7	2	316	259	9	48	8	1	5
Wisconsin	908	491	394	88	6	1	0	0	2	384	308	8	68	18	1	14
Region V	7,653	6,167	4,647	1,287	136	36	25	11	25	1,400	1,112	28	260	48	2	36
Arkansas	147	122	107	15	0	0	0	0	0	24	21	0	3	0	0	1
Louisiana	530	493	379	113	1	0	0	0	0	36	28	1	7	0	0	1
New Mexico	163	134	108	25	1	0	0	0	0	28	24	0	4	1	0	0
Oklahoma	184	151	109	42	0	0	0	0	0	31	21	1	9	2	0	0
Texas	976	876	637	238	1	0	0	0	0	99	84	2	13	0	0	1
Region VI	2,000	1,776	1,340	433	3	0	0	0	0	218	178	4	36	3	0	3
Iowa	267	193	150	34	6	0	0	0	3	71	55	1	15	0	0	3
Kansas	191	153	122	29	2	0	0	0	0	38	32	0	6	0	0	0
Missouri	998	833	589	199	27	17	0	0	1	158	117	10	31	5	0	2
Nebraska	81	67	59	6	1	0	0	1	0	13	11	0	2	0	0	1
Region VII	1,537	1,246	920	268	36	17	0	1	4	280	215	11	54	5	0	6
Colorado	582	506	430	75	1	0	0	0	0	69	61	1	7	2	0	5
Montana	118	84	73	7	4	0	0	0	0	31	22	2	7	1	0	2
North Dakota	36	26	25	1	0	0	0	0	0	9	8	0	1	0	0	1
South Dakota	27	18	16	2	0	0	0	0	0	9	8	0	1	0	0	0
Utah	83	63	57	6	0	0	0	0	0	17	17	0	0	0	1	2
Wyoming	44	36	24	12	0	0	0	0	0	8	7	0	1	0	0	0
Region VIII	890	733	625	103	5	0	0	0	0	143	123	3	17	3	1	10

Table 6B.–Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1999[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	394	346	267	78	1	0	0	0	0	46	36	2	8	0	1	1
California	3,856	3,240	2,404	755	48	14	0	5	14	580	493	18	69	11	1	24
Hawaii	326	264	209	47	3	2	0	0	3	60	49	0	11	0	2	0
Guam	39	39	38	1	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	601	504	391	101	7	2	0	1	2	93	82	5	6	0	0	4
Region IX	5,216	4,393	3,309	982	59	18	0	6	19	779	660	25	94	11	4	29
Alaska	108	66	55	10	1	0	0	0	0	37	28	1	8	0	4	1
Idaho	71	56	55	1	0	0	0	0	0	13	9	0	4	0	0	2
Oregon	347	264	203	51	5	5	0	0	0	71	51	3	17	5	0	7
Washington	581	408	350	47	9	2	0	0	0	164	130	10	24	4	0	5
Region X	1,107	794	663	109	15	7	0	0	0	285	218	14	53	9	4	15
Total, all States and areas	33,232	27,450	21,063	5,611	461	155	35	45	80	5,462	4,554	128	780	110	15	195

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

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1999[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	29,741	100.0	----	22,966	100.0	5,848	100.0	570	100.0	168	100.0	60	100.0	49	100.0	80	100.0
Agreement of the parties	9,020	30.3	100.0	7,804	34.0	965	16.5	199	34.9	1	0.6	6	10.0	19	38.8	26	32.5
Informal settlement	8,982	30.2	99.6	7,781	33.9	963	16.5	186	32.6	1	0.6	6	10.0	19	38.8	26	32.5
Before issuance of complaint	6,548	22.0	72.6	5,623	24.5	721	12.3	161	28.2	----	----	4	6.7	16	32.7	23	28.8
After issuance of complaint, before opening of hearing	2,294	7.7	25.4	2,053	8.9	208	3.6	24	4.2	1	0.6	2	3.3	3	6.1	3	3.8
After hearing opened, before issuance of administrative law judge's decision	140	0.5	1.6	105	0.5	34	0.6	1	0.2	0	----	0	----	0	----	0	----
Formal settlement	38	0.1	0.4	23	0.1	2	0.0	13	2.3	0	----	0	----	0	----	0	----
Before opening of hearing	33	0.1	0.4	18	0.1	2	0.0	13	2.3	0	----	0	----	0	----	0	----
Stipulated decision	3	0.0	0.0	3	0.0	0	----	0	----	0	----	0	----	0	----	0	----
Consent decree	30	0.1	0.3	15	0.1	2	0.0	13	2.3	0	----	0	----	0	----	0	----
After hearing opened	5	0.0	0.1	5	0.0	0	----	0	----	0	----	0	----	0	----	0	----
Stipulated decision	0	----	-----	0	----	0	----	0	----	0	----	0	----	0	----	0	----
Consent decree	5	0.0	0.1	5	0.0	0	----	0	----	0	----	0	----	0	----	0	----
Compliance with	622	2.1	100.0	575	2.5	39	0.7	5	0.9	0	----	3	5.0	0	----	0	----
Administrative law judge's decision	20	0.1	3.2	17	0.1	2	0.0	1	0.2	0	----	0	----	0	----	0	----
Board decision	354	1.2	56.9	320	1.4	28	0.5	3	0.5	0	----	3	5.0	0	----	0	----
Adopting administrative law judge's decision (no exceptions filed)	204	0.7	32.8	190	0.8	12	0.2	2	0.4	0	----	0	----	0	----	0	----
Contested	150	0.5	24.1	130	0.6	16	0.3	1	0.2	0	----	3	5.0	0	----	0	----

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1999[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
Circuit court of appeals decree	247	0.8	39.7	237	1.0	9	0.2	1	0.2	0	----	0	----	0	----	0	----
Supreme Court action	1	0.0	0.2	1	0.0	0	----	0	----	0	----	0	----	0	----	0	----
Withdrawal	9,641	32.4	100.0	7,716	33.6	1,643	28.1	191	33.5	3	1.8	46	76.7	9	18.4	33	41.3
Before issuance of complaint	9,246	31.1	95.9	7,372	32.1	1,618	27.7	189	33.2	1	0.6	25	41.7	8	16.3	33	41.3
After issuance of complaint, before opening of hearing	355	1.2	3.7	305	1.3	24	0.4	2	0.4	2	1.2	21	35.0	1	2.0	0	----
After hearing opened, before administrative law judge's decision	40	0.1	0.4	39	0.2	1	0.0	0	----	0	----	0	----	0	----	0	----
After administrative law judge's decision, before Board decision	0	----	----	0	----	0	----	0	----	0	----	0	----	0	----	0	----
After Board or court decision	0	----	----	0	----	0	----	0	----	0	----	0	----	0	----	0	----
Dismissal	10,157	34.2	100.0	6,742	29.4	3,188	54.5	175	30.7	5	3.0	5	8.3	21	42.9	21	26.3
Before issuance of complaint	9,897	33.3	97.4	6,587	28.7	3,142	53.7	116	20.4	5	3.0	5	8.3	21	42.9	21	26.3
After issuance of complaint, before opening of hearing	200	0.7	2.0	101	0.4	40	0.7	59	10.4	0	----	0	----	0	----	0	----
After hearing opened, before administrative law judge's decision	4	0.0	0.0	4	0.0	0	----	0	----	0	----	0	----	0	----	0	----
By administrative law judge's decision	2	0.0	0.0	2	0.0	0	----	0	----	0	----	0	----	0	----	0	----
By Board decision	49	0.2	0.5	43	0.2	6	0.1	0	----	0	----	0	----	0	----	0	----
Adopting administrative law judge's decision (no exceptions filed)	38	0.1	0.4	34	0.1	4	0.1	0	----	0	----	0	----	0	----	0	----
Contested	11	0.0	0.1	9	0.0	2	0.0	0	----	0	----	0	----	0	----	0	----

Table 7.–Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1999[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	----
10(k) actions (see Table 7A for details of dispositions)	174	0.6	0.0	5	0.0	10	0.2	0	----	159	94.6	0	----	0	----	0	----
Otherwise (compliance with order of administrative law judge or Board not achieved-firm went out of business	127	0.4	0.0	124	0.5	3	0.1	0	----	0	----	0	----	0	----	0	----

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

Table 8.–Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1999[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	29,741	100.0	22,966	100.0	5,848	100.0	570	100.0	168	100.0	60	100.0	49	100.0	80	100.0
Before issuance of complaint	25,865	87.0	19,587	85.3	5,491	93.9	466	81.8	165	98.2	34	56.7	45	91.8	77	96.3
After issuance of complaint, before opening of hearing	2,849	9.6	2,459	10.7	272	4.7	85	14.9	3	1.8	23	38.3	4	8.2	3	3.8
After hearing opened, before issuance of administrative law judge's decision	184	0.6	148	0.6	35	0.6	1	0.2	0	----	0	----	0	----	0	----
After administrative law judge's decision, before issuance of Board decision	22	0.1	19	0.1	2	0.0	1	0.2	0	----	0	----	0	----	0	----
After Board order adopting administrative law judge's decision in absence of exceptions	568	1.9	510	2.2	39	0.7	16	2.8	0	----	3	5.0	0	----	0	----
After Board decision, before circuit court decree	5	0.0	5	0.0	0	----	0	----	0	----	0	----	0	----	0	----
After circuit court decree, before Supreme Court action	247	0.8	237	1.0	9	0.2	1	0.2	0	----	0	----	0		0	----
After Supreme Court action	1	0.0	1	0.0	0	----	0	----	0	----	0	----	0	----	0	----

[1] See Glossary of terms for definitions.

Table 9.– Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1999[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	Per-cent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed ………………………..	5,708	100.0	4,731	100.0	137	100.0	840	100.0	128	100.0
Before issuance of notice of hearing ……………………….	1,267	22.2	883	18.7	56	40.9	328	39.0	95	74.2
After issuance of notice, before close of hearing …………..	3,637	63.7	3,125	66.1	69	50.4	443	52.7	8	6.3
After hearing closed, before issuance of decision ………….	153	2.7	141	3.0	1	0.7	11	1.3	2	1.6
After issuance of Regional Director's decision …………….	613	10.7	550	11.6	10	7.3	53	6.3	23	18.0
After issuance of Board decision …………………………..	38	0.7	32	0.7	1	0.7	5	0.6	0	----

[1] See Glossary of terms for definitions.

Table 10.– Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1999[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	5,708	100.0	4,731	100.0	137	100.0	840	100.0	128	100.0
Certification issued, total	3,693	64.7	3,163	66.9	58	42.3	472	56.2	86	67.2
After:										
Consent election	15	0.3	15	0.3	0	0.0	0	0.0	1	0.8
Before notice of hearing	2	0.0	2	0.0	0	0.0	0	0.0	1	0.8
After notice of hearing, before hearing closed	13	0.2	13	0.3	0	0.0	0	0.0	0	0.0
After hearing closed, before decision	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	3,225	56.5	2,743	58.0	54	39.4	428	51.0	63	49.2
Before notice of hearing	729	12.8	542	11.5	16	11.7	171	20.4	49	38.3
After notice of hearing, before hearing closed	2,387	41.8	2,101	44.4	37	27.0	249	29.6	14	10.9
After hearing closed, before decision	109	1.9	100	2.1	1	0.7	8	1.0	0	0.0
Expedited election	3	0.1	3	0.1	0	0.0	0	0.0	0	0.0
Regional Director-directed election	414	7.3	371	7.8	4	2.9	39	4.6	22	17.2
Board-directed election	36	0.6	31	0.7	0	0.0	5	0.6	0	0.0
By withdrawal, total	1,658	29.0	1,343	28.4	58	42.3	257	30.6	34	26.6
Before notice of hearing	384	6.7	267	5.6	21	15.3	96	11.4	29	22.7
After notice of hearing, before hearing closed	1,131	19.8	938	19.8	36	26.3	157	18.7	3	2.3
After hearing closed, before decision	42	0.7	39	0.8	0	0.0	3	0.4	1	0.8
After Regional Director's decision and direction of election	100	1.8	98	2.1	1	0.7	1	0.1	1	0.8
After Board decision and direction of election	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
By dismissal, total	357	6.3	225	4.8	21	15.3	111	13.2	8	6.3
Before notice of hearing	141	2.5	72	1.5	8	5.8	61	7.3	7	5.5
After notice of hearing, before hearing closed	117	2.0	73	1.5	7	5.1	37	4.4	1	0.8
After hearing closed, before decision	2	0.0	2	0.0	0	0.0	0	0.0	0	0.0
By Regional Director's decision	96	1.7	78	1.6	5	3.6	13	1.5	0	0.0
By Board decision	1	0.0	0	0.0	1	0.7	0	0.0	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 1999[1]

	AC	UC
Total, all	12	217
Certification amended or unit clarified	8	43
Before hearing	3	27
By Regional Director's decision	3	27
By Board decision	0	0
After hearing	5	16
By Regional Director's decision	5	16
By Board decision	0	0
Dismissed	2	57
Before hearing	1	10
By Regional Director's decision	1	10
By Board decision	0	0
After hearing	1	47
By Regional Director's decision	1	47
By Board decision	0	0
Withdrawn	2	117
Before hearing	2	109
After hearing	0	8

Table 11.–Types of Elections Resulting in Cases Closed, Fiscal Year 1999

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	3,639	17	3,038	6	578	0
Eligible voters	245,768	367	191,561	319	53,521	0
Valid votes	212,990	309	167,748	262	44,671	0
RC cases:						
Elections	3,120	16	2,598	6	500	0
Eligible voters	221,210	363	171,428	319	49,100	0
Valid votes	192,450	305	150,695	262	41,188	0
RM cases:						
Elections	42	0	39	0	3	0
Eligible voters	2,029	0	1,655	0	374	0
Valid votes	1,644	0	1,330	0	314	0
RD cases:						
Elections	423	1	369	0	53	0
Eligible voters	18,884	4	16,347	0	2,533	0
Valid votes	16,293	4	14,233	0	2,056	0
UD cases:						
Elections	54	0	32	0	22	----
Eligible voters	3,645	0	2,131	0	1,514	----
Valid votes	2,603	0	1,490	0	1,113	----

Table 11A.–Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1999

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	3,743	79	79	3,585	3,264	73	71	3,120	45	1	2	42	434	5	6	423
Rerun required	0	0	63	0	0	0	56	0	0	0	1	0	0	0	6	0
Runoff required	0	0	16	0	0	0	15	0	0	0	1	0	0	0	0	0
Consent elections	17	0	0	17	16	0	0	16	0	0	0	0	1	0	0	1
Rerun required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Runoff required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Stipulated elections	3,136	60	70	3,006	2,717	56	63	2,598	41	0	2	39	378	4	5	369
Rerun required	0	0	54	0	0	0	48	0	0	0	1	0	0	0	5	0
Runoff required	0	0	16	0	0	0	15	0	0	0	1	0	0	0	0	0
Regional Director–directed	583	18	9	556	524	16	8	500	4	1	0	3	55	1	1	53
Rerun required	0	0	9	0	0	0	8	0	0	0	0	0	0	0	0	0
Runoff required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Board–directed	7	1	0	6	7	1	0	6	0	0	0	0	0	0	0	0
Rerun required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Runoff required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Expedited–Sec. 8(b)(7)(C)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Runoff required	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

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

Table 11B.–Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1999

Method and stage of disposition	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 …………………....	3,743	118	3.2	40	1.1	34	0.9	152	4.1	74	2.0
By type of cases:											
In RC cases ……………………………..	3,264	103	3.2	36	1.1	30	0.9	133	4.1	66	2.0
In RM cases …………………………….	45	0	0.0	1	2.2	0	0.0	0	0.0	1	2.2
In RD cases …………………………….	434	15	3.5	3	0.7	4	0.9	19	4.4	7	1.6
By type of election:											
Consent elections ……………………….	17	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections ……………………..	3,136	101	3.2	28	0.9	27	0.9	128	4.1	55	1.8
Expedited elections ……………………..	0	0	0.0	0	0.0	0	0.0	0	0.0	0	.0.0
Regional Director-directed elections ……	583	16	2.7	6	1.0	6	1.0	22	3.8	12	2.1
Board-directed elections ………………..	7	1	14.3	6	85.7	1	14.3	2	28.6	7	100.0

[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 1999[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 …...	210	100.0	77	36.7	126	60.0	7	3.3
By type of case:								
RC cases ……………………………..	187	100.0	69	36.9	112	59.9	6	3.2
RM cases …………………………….	0	0.0	0	0.0	0	0.0	0	0.0
RD cases ……………………………..	23	100.0	8	34.8	14	60.9	1	4.3
By type of election:								
Consent elections …………………….	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections ………………….	176	100.0	64	36.4	106	60.2	6	3.4
Expedited elections ………………….	0	0.	0	0.0	0	0.0	0	0.0
Regional Director-directed elections ...	32	100.0	11	34.4	20	62.5	1	3.1
Board-directed elections ……………..	2	100.0	2	100.0	0	0.0	0	0.0

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

Table 11D.–Disposition of Objections in Representation Cases Closed, Fiscal Year 1999[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 ………………...	210	58	152	96	63.2	56	36.8
By type of case: ………………………………………...							
RC cases …………………………………………	187	54	133	85	63.9	48	36.1
RM cases ………………………………………...	0	0	0	0	0.0	0	0.0
RD cases …………………………………………	23	4	19	11	57.9	8	42.1
By type of election: …………………………………….							
Consent elections ………………………………...	0	0	0	0	0.0	0	0.0
Stipulated elections ………………………………	176	48	128	77	60.2	51	39.8
Expedited elections ………………………………	0	0	0	0	0.0	0	0.0
Regional Director-directed elections …………….	32	10	22	17	77.3	5	22.7
Board-directed elections …………………………	2	0	2	2	100.0	0	0.0

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained. In 3 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted.

Table 11E.–Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1999[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 …...	61	100.0	19	31.1	42	68.9	18	29.5
By type of case:								
RC cases ……………………………..	54	100.0	16	29.6	38	70.4	15	27.8
RM cases …………………………….	1	100.0	1	100.0	0	----	0	----
RD cases ……………………………..	6	100.0	2	33.3	4	66.7	3	50.0
By type of election:								
Consent elections …………………….	0	----	0	----	0	----	0	----
Stipulated elections ………………….	51	100.0	16	31.4	35	68.6	16	31.4
Expedited elections ………………….	0	----	0	----	0	----	0	----
Regional Director-directed elections ..	10	100.0	3	30.0	7	70.0	2	20.0
Board-directed elections …………….	0	----	0	----	0	----	0	----

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 8 cases; however, only the final election is included in this table.

Table 12.–Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1999[1]

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total				
Total	70	34	48.6	36	51.4	5,312	1,980	37.3	3,332	62.7	2,603	49.0	1,547	29.1
AFL-CIO unions	61	29	47.5	32	52.5	4,782	1,803	37.7	2,979	62.3	2,451	51.3	1,402	29.3
Other national unions	6	3	50.0	3	50.0	412	101	24.5	311	75.5	61	14.8	77	18.7
Other local unions	3	2	66.7	1	33.3	118	76	64.4	42	35.6	91	77.1	68	57.6

[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 Election, in Cases Closed, Fiscal Year 1999[1]

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Other national unions	Other local unions	In elections where no representative chosen
A. All representation elections													
AFL-CIO ……………………………..	3,144	48.3	1,519	1,519	----	----	1,625	201,126	85,709	85,709	----	----	115,417
National…………....………………....	69	53.6	37	----	37	----	32	4,028	1,593	----	1,593	----	2,435
Local…………………….…………….	255	57.6	147	----	----	147	108	18,387	8,069	----	----	8,069	10,318
1-union elections ……………….	3,468	49.1	1,703	1,519	37	147	1,765	223,541	95,371	85,709	1,593	8,069	128,170
AFL-CIO v. AFL-CIO ………………..	33	81.8	27	27	----	----	6	5,088	4,277	4,277	----	----	811
AFL-CIO v. National………….....….....	12	100.0	12	8	4	----	0	1,654	1,654	1,321	333	----	0
AFL-CIO v. Local…………………..…	56	94.6	53	37	----	16	3	7,490	6,639	4,444	----	2,195	851
National v. Local……………………..	3	100.0	3	----	2	1	0	326	326	----	288	38	0
Local v. Local ………………………...	12	100.0	12	----	----	12	0	1,222	1,222	----	----	1,222	0
2-union elections ……....……….	116	92.2	107	72	6	29	9	15,780	14,118	10,042	621	3,455	1,662
AFL-CIO v. AFL-CIO v. Local…….....	1	100.0	1	1	----	0	0	2,802	2,802	2,802	----	0	0
3 (or more)-union elections …….	1	100.0	1	1	0	0	0	2,802	2,802	2,802	0	0	0
Total representation elections ….	3,585	50.5	1,811	1,592	43	176	1,774	242,123	112,291	98,553	2,214	11,524	129,832

Table 13.– Final Outcome of Representation Election, in Cases Closed, Fiscal Year 1999[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	2,729	51.0	1,392	1,392	----	----	1,337	183,131	78,233	78,233	----	----	104,898
National	63	55.6	35	----	35	----	28	3,859	1,457	----	1,457	----	2,402
Local	221	60.6	134	----	----	134	87	16,669	7,129	----	----	7,129	9,540
1-union elections	3,013	51.8	1,561	1,392	35	134	1,452	203,659	86,819	78,233	1,457	7,129	116,840
AFL-CIO v. AFL-CIO	29	79.3	23	23	----	----	6	4,400	3,589	3,589	----	----	811
AFL-CIO v. National	12	100.0	12	8	4	----	0	1,654	1,654	1,321	333	----	0
AFL-CIO v. Local	54	94.4	51	37	---	14	3	7,411	6,560	4,444	----	2,116	851
National v. Local	3	100.0	3	----	2	1	0	326	326	----	288	38	0
Local v. Local	8	100.0	8	----	----	8	0	958	958	----	----	958	0
2-union elections	106	91.5	97	68	6	23	9	14,749	13,087	9,354	621	3,112	1,662
AFL-CIO v. AFL-CIO v. Local	1	100.0	1	1	----	0	0	2,802	2,802	2,802	----	0	0
3 (or more)-union elections	1	100.0	1	1	0	0	0	2,802	2,802	2,802	0	0	0
Total RC elections	3,120	53.2	1,659	1,461	41	157	1,461	221,210	102,708	90,389	2,078	10,241	118,502
C. Elections in RM cases													
AFL-CIO	38	34.2	13	13	----	----	25	1,327	635	635	----	----	692
1-union elections	38	34.2	13	13	0	0	25	1,327	635	635	0	0	692
AFL-CIO v. AFL-CIO	3	100.0	3	3	----	----	0	666	666	666	----	----	0
Local v. Local	1	100.0	1	----	----	1	0	36	36	----	----	36	0
2-union elections	4	100.0	4	3	0	1	0	702	702	666	0	36	0
Total RM elections	42	40.5	17	16	0	1	25	2,029	1,337	1,301	0	36	692

Table 13.–Final Outcome of Representation Election, in Cases Closed, Fiscal Year 1999[1]—Continued

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL-CIO unions	Other national unions	Other local unions	In elections where no representative chosen
D. Elections in RD cases													
AFL-CIO ……………………………..	377	30.2	114	114	----	----	263	16,668	6,841	6,841	----	----	9,827
National……………. ………………...	6	33.3	2	----	2	----	4	169	136	----	136	----	33
Local…………………………………..	34	38.2	13	----	----	13	21	1,718	940	----	----	940	778
1-union elections………………..	417	30.9	129	114	2	13	288	18,555	7,917	6,841	136	940	10,638
AFL-CIO v. AFL-CIO………………..	1	100.0	1	1	----	----	0	22	22	22	----	----	0
AFL-CIO v. Local…………………….	2	100.0	2	0	----	2	0	79	79	0	----	79	0
Local v. Local…………………………	3	100.0	3	----	----	3	0	228	228	----	----	228	0
2-union elections………………..	6	100.0	6	1	0	5	0	329	329	22	0	307	0
Total RD elections………………	423	31.9	135	115	2	18	288	18,884	8,246	6,863	136	1,247	10,638

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

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1999[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	176,638	48,326	48,326	----	----	24,866	36,016	36,016	----	----	67,430
National	3,716	1,052	----	1,052	----	423	862	----	862	----	1,379
Local	15,540	4,657	----	----	4,657	1,835	2,667	----	----	2,667	6,381
1-union elections	195,894	54,035	48,326	1,052	4,657	27,124	39,545	36,016	862	2,667	75,190
AFL-CIO v. AFL-CIO	4,193	3,331	3,331	----	----	129	274	274	----	----	459
AFL-CIO v. National	1,236	1,224	742	482	----	12	0	0	0	----	0
AFL-CIO v. Local	5,877	4,796	2,876	----	1,920	307	286	46	----	240	488
National v. Local	223	179	----	145	34	44	0	----	0	0	0
Local v. Local	832	775	----	----	775	57	0	----	----	0	0
2-union elections	12,361	10,305	6,949	627	2,729	549	560	320-	0	240	947
AFL-CIO v. AFL-CIO v. Local	2,132	2,084	2,084	----	0	48	0	0	----	0	0
3 (or More) union elections	2,132	2,084	2,084	----	0	48	0	0	----	----	0
Total representation elections	210,387	66,424	57,359	1,679	7,386	27,721	40,105	36,336	862	2,907	76,137

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1999[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	160,933	44,174	44,174	----	----	22,510	33,047	33,047	----	----	61,202
National	3,555	963	----	963	----	382	854	----	854	----	1,356
Local	14,248	4,193	----	----	4,193	1,585	2,483	----	----	2,483	5,987
1-union elections	178,736	49,330	44,174	963	4,193	24,477	36,384	33,047	854	2,483	68,545
AFL-CIO v. AFL-CIO	3,700	2,844	2,844	----	----	123	274	274	----	----	459
AFL-CIO v. National	1,236	1,224	742	482	----	12	0	0	0	----	0
AFL-CIO v. Local	5,817	4,743	2,868	----	1,875	300	286	46	----	240	488
National v. Local	223	179	----	145	34	44	0	----	0	0	0
Local v. Local	606	551	----	----	551	55	0	----	----	0	0
2-union elections	11,582	9,541	6,454	627	2,460	534	560	320	0	240	947
AFL-CIO v. AFL-CIO v. Local	2,132	2,084	2,084	----	0	48	0	0	----	0	0
3 (or more)-union elections	2,132	2,084	2,084	0	0	48	0	0	0	0	0
Total RC elections	192,450	60,955	52,712	1,590	6,653	25,059	36,944	33,367	854	2,723	69,492
C. Elections in RM cases											
AFL-CIO	1,140	418	418	----	----	116	171	171	----	----	435
1-union elections	1,140	418	418	0	0	116	171	171	0	0	435
AFL-CIO v. AFL-CIO	472	466	466	----	----	6	0	0	----	----	0
Local v. Local	32	32	----	----	32	0	0	----	----	0	0
2-union elections	504	498	466	0	32	6	0	0	0	0	0
Total RM elections	1,644	916	884	0	32	122	171	171	0	0	435

Table 14.–Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1999[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	
D. Elections in RD cases											
AFL-CIO ……………………………….	14,565	3,734	3,734	----	----	2,240	2,798	2,798	----	----	5,793
National………….... ……………………...	161	89	----	89	----	41	8	----	8	----	23
Local……………………………………………	1,292	464	----	----	464	250	184	----	----	184	394
1-union elections ………………	16,018	4,287	3,734	89	464	2,531	2,990	2,798	8	184	6,210
AFL-CIO v. AFL-CIO…………………..	21	21	21	----	----	0	0	0	----	----	0
AFL-CIO v. Local…………………...…...	60	53	8	----	45	7	0	0	----	0	0
Local v. Local……….……..........…….	194	192	----	----	192	2	0	----	----	0	0
2-union elections ………………	275	266	29	0	237	9	0	0	0	0	0
Total RD elections …………….	16,293	4,553	3,763	89	701	2,540	2,990	2,798	8	184	6,210

[1] See Glossary of terms for definitions.

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999

Division and State[1]	Total elec-tions	Number of elections in which representation rights were won by unions				Number of elec-tions in which no rep-resenta-tive was chosen	Number of em-ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ-ees in units choos-ing rep-resentation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Maine	15	6	4	1	1	9	912	852	394	363	11	20	458	180
New Hampshire	11	6	5	1	0	5	341	318	168	74	53	41	150	156
Vermont	13	8	7	0	1	5	2,531	2,332	1,030	669	0	361	1,302	557
Massachusetts	82	35	29	4	2	47	7,049	6,520	2,612	2,487	82	43	3,908	2,372
Rhode Island	15	10	6	2	2	5	605	559	325	188	41	96	234	261
Connecticut	135	89	78	1	10	46	7,299	6,127	3,495	2,889	133	473	2,632	4,515
New England	271	154	129	9	16	117	18,737	16,708	8,024	6,670	320	1,034	8,684	8,041
New York	323	192	151	4	37	131	19,352	15,854	10,108	8,213	203	1,692	5,746	12,981
New Jersey	205	100	91	1	8	105	10,224	8,632	4,335	3,813	7	515	4,297	4,561
Pennsylvania	238	112	81	6	25	126	15,848	13,609	6,946	4,499	431	2,016	6,663	7,852
Middle Atlantic	766	404	323	11	70	362	45,424	38,095	21,389	16,525	641	4,223	16,706	25,394
Ohio	203	102	98	2	2	101	15,007	13,616	6,802	6,668	89	45	6,814	6,219
Indiana	92	43	41	0	2	49	5,364	4,871	2,154	2,095	0	59	2,717	2,029
Illinois	240	112	98	3	11	128	15,017	12,602	7,020	5,763	367	890	5,582	8,370
Michigan	199	100	95	2	3	99	13,929	12,027	5,963	5,865	57	41	6,064	6,750
Wisconsin	94	44	43	0	1	50	6,905	6,185	2,709	2,590	47	72	3,476	1,720
East North Central	828	401	375	7	19	427	56,222	49,301	24,648	22,981	560	1,107	24,653	25,088
Iowa	40	16	16	0	0	24	2,134	1,936	934	934	0	0	1,002	611
Minnesota	84	56	50	0	6	28	4,482	3,804	2,201	1,974	14	213	1,603	3,529
Missouri	113	58	54	1	3	55	5,605	5,097	2,489	2,148	22	319	2,608	2,759
North Dakota	6	2	2	0	0	4	105	99	35	35	0	0	64	7
South Dakota	6	4	4	0	0	2	293	280	132	132	0	0	148	92
Nebraska	13	4	4	0	0	9	1,667	1,534	705	705	0	0	829	190
Kansas	27	8	7	1	0	19	1,137	1,017	393	368	25	0	624	178
West North Central	289	148	137	2	9	141	15,423	13,767	6,889	6,296	61	532	6,878	7,366

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	15	4	4	0	0	11	703	606	238	238	0	0	368	181
Maryland	61	31	28	0	3	30	3,072	2,578	1,273	1,213	0	60	1,305	1,398
District of Columbia	12	9	5	0	4	3	1,495	973	559	329	0	230	414	991
Virginia	55	28	22	1	5	27	3,357	3,005	1,321	1,029	145	147	1,684	1,082
West Virginia	44	19	16	2	1	25	3,478	3,199	1,647	1,448	183	16	1,552	2,131
North Carolina	29	12	12	0	0	17	6,762	5,723	3,736	3,704	11	21	1,987	3,691
South Carolina	11	3	3	0	0	8	1,903	1,774	701	497	0	204	1,073	240
Georgia	52	24	22	0	2	28	4,672	3,888	1,722	1,685	0	37	2,166	1,791
Florida	84	48	45	0	3	36	8,835	8,510	3,889	3,280	0	609	4,621	3,129
South Atlantic	363	178	157	3	18	185	34,277	30,256	15,086	13,423	339	1,324	15,170	14,634
Kentucky	51	28	23	4	1	23	3,884	3,602	1,841	1,660	178	3	1,761	1,678
Tennessee	37	15	12	1	2	22	4,967	4,648	1,828	1,811	6	11	2,820	1,438
Alabama	35	13	13	0	0	22	3,203	2,946	1,205	1,173	25	7	1,741	980
Mississippi	20	7	6	1	0	13	3,445	3,130	1,394	1,381	13	0	1,736	592
East South Central	143	63	54	6	3	80	15,499	14,326	6,268	6,025	222	21	8,058	4,688
Arkansas	18	7	6	0	1	11	2,573	2,312	1,038	887	0	151	1,274	923
Louisiana	23	12	11	0	1	11	1,754	1,333	774	674	0	100	559	1,145
Oklahoma	23	8	8	0	0	15	882	825	346	346	0	0	479	239
Texas	68	33	32	0	1	35	5,598	4,568	2,267	2,162	80	25	2,301	2,591
West South Central	132	60	57	0	3	72	10,807	9,038	4,425	4,069	80	276	4,613	4,898
Montana	18	9	9	0	0	9	415	358	184	180	4	0	174	203
Idaho	6	3	2	0	1	3	375	334	216	210	0	6	118	338
Wyoming	2	1	1	0	0	1	17	17	8	8	0	0	9	13
Colorado	20	10	10	0	0	10	875	774	404	404	0	0	370	383
New Mexico	20	12	11	0	1	8	1,128	1,007	504	489	0	15	503	401
Arizona	25	10	10	0	0	15	1,765	1,498	739	739	0	0	759	1,260
Utah	10	4	3	1	0	6	461	443	217	191	26	0	226	137
Nevada	51	28	28	0	0	23	4,408	3,792	1,976	1,976	0	0	1,816	2,039

Table 15A.–Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL-CIO unions	Other national unions	Other local 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	AFL-CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
Mountain	152	77	74	1	2	75	9,444	8,223	4,248	4,197	30	21	3,975	4,774
Washington	118	58	57	0	1	60	5,974	5,170	2,740	2,443	5	292	2,430	3,139
Oregon	48	27	22	2	3	21	2,347	1,948	1,058	869	94	95	890	1,746
California	351	182	171	2	9	169	21,899	18,622	9,507	8,830	189	488	9,115	10,475
Alaska	28	10	9	0	1	18	1,422	1,140	542	435	0	107	598	439
Hawaii	39	18	17	0	1	21	2,166	1,752	756	746	0	10	996	868
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	584	295	276	4	15	289	33,808	28,632	14,603	13,323	288	992	14,029	16,667
Perto Rico	52	27	6	0	21	25	2,209	1,835	874	157	0	717	961	688
Virgin Island	5	4	4	0	0	1	273	206	75	29	0	46	131	53
Outlying Areas	57	31	10	0	21	26	2,482	2,041	949	186	0	763	1,092	741
Total, all States and areas	3,585	1,811	1,592	43	176	1,774	242,123	210,387	106,529	93,695	2,541	10,293	103,858	112,291

[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 1999

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	13	5	3	1	1	8	870	813	375	346	9	20	438	147
New Hampshire	9	6	5	1	0	3	326	306	167	74	53	40	139	156
Vermont	12	7	6	0	1	5	2,213	2,048	870	509	0	361	1,178	239
Massachusetts	80	34	28	4	2	46	7,026	6,498	2,603	2,478	82	43	3,895	2,356
Rhode Island	13	10	6	2	2	3	591	545	324	187	41	96	221	261
Connecticut	125	88	78	1	9	37	7,017	5,873	3,419	2,841	133	445	2,454	4,472
New England	252	150	126	9	15	102	18,043	16,083	7,758	6,435	318	1,005	8,325	7,631
New York	291	183	147	4	32	108	18,194	14,915	9,653	8,030	197	1,426	5,262	12,412
New Jersey	188	97	90	1	6	91	9,630	8,111	4,133	3,655	7	471	3,978	4,418
Pennsylvania	217	103	75	6	22	114	14,980	12,818	6,477	4,215	431	1,831	6,341	7,278
Middle Atlantic	696	383	312	11	60	313	42,804	35,844	20,263	15,900	635	3,728	15,581	24,108
Ohio	173	92	88	2	2	81	14,390	13,058	6,600	6,466	89	45	6,458	6,020
Indiana	67	37	35	0	2	30	4,219	3,845	1,711	1,652	0	59	2,134	1,399
Illinois	191	99	86	3	10	92	13,244	11,064	6,355	5,177	367	811	4,709	7,812
Michigan	175	88	84	1	3	87	12,728	11,007	5,526	5,452	33	41	5,481	6,066
Wisconsin	72	35	35	0	0	37	5,911	5,295	2,265	2,181	47	37	3,030	1,221
East North Central	678	351	328	6	17	327	50,492	44,269	22,457	20,928	536	993	21,812	22,518
Iowa	32	14	14	0	0	18	1,887	1,705	816	816	0	0	889	456
Minnesota	66	47	43	0	4	19	3,515	3,061	1,784	1,592	14	178	1,277	2,828
Missouri	99	56	52	1	3	43	5,054	4,617	2,317	1,976	22	319	2,300	2,688
North Dakota	5	2	2	0	0	3	102	96	35	35	0	0	61	7
South Dakota	6	4	4	0	0	2	293	280	132	132	0	0	148	92
Nebraska	10	3	3	0	0	7	1,429	1,314	600	600	0	0	714	18
Kansas	23	7	6	1	0	16	1,036	925	365	340	25	0	560	154
West North Central	241	133	124	2	7	108	13,316	11,998	6,049	5,491	61	497	5,949	6,243

Table 15B.–Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1999—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	15	4	4	0	0	11	703	606	238	238	0	0	368	181
Maryland	54	28	26	0	2	26	2,635	2,224	1,094	1,078	0	16	1,130	1,231
District of Columbia	12	9	5	0	4	3	1,495	973	559	329	0	230	414	991
Virginia	50	26	20	1	5	24	3,216	2,880	1,264	990	145	129	1,616	1,057
West Virginia	40	19	16	2	1	21	3,245	3,004	1,587	1,388	183	16	1,417	2,131
North Carolina	22	9	9	0	0	13	6,047	5,049	3,379	3,368	11	0	1,670	3,243
South Carolina	10	3	3	0	0	7	1,855	1,726	686	482	0	204	1,040	240
Georgia	43	19	17	0	2	24	3,415	2,755	1,185	1,148	0	37	1,570	1,263
Florida	80	47	44	0	3	33	8,714	8,392	3,861	3,252	0	609	4,531	3,101
South Atlantic	326	164	144	3	17	162	31,325	27,609	13,853	12,273	339	1,241	13,756	13,438
Kentucky	47	27	23	3	1	20	3,635	3,360	1,713	1,597	113	3	1,647	1,582
Tennessee	35	14	11	1	2	21	4,873	4,565	1,771	1,754	6	11	2,794	1,354
Alabama	34	13	13	0	0	21	3,191	2,934	1,205	1,173	25	7	1,729	980
Mississippi	20	7	6	1	0	13	3,445	3,130	1,394	1,381	13	0	1,736	592
East South Central	136	61	53	5	3	75	15,144	13,989	6,083	5,905	157	21	7,906	4,508
Arkansas	17	6	5	0	1	11	2,547	2,290	1,022	871	0	151	1,268	897
Louisiana	22	12	11	0	1	10	1,697	1,287	752	652	0	100	535	1,145
Oklahoma	17	4	4	0	0	13	742	691	278	278	0	0	413	137
Texas	64	33	32	0	1	31	5,289	4,372	2,191	2,086	80	25	2,181	2,591
West South Central	120	55	52	0	3	65	10,275	8,640	4,243	3,887	80	276	4,397	4,770
Montana	16	9	9	0	0	7	379	324	178	174	4	0	146	203
Idaho	4	2	1	0	1	2	203	192	99	93	0	6	93	173
Wyoming	2	1	1	0	0	1	17	17	8	8	0	0	9	13
Colorado	17	8	8	0	0	9	781	684	356	356	0	0	328	312
New Mexico	19	12	11	0	1	7	1,089	973	490	475	0	15	483	401
Arizona	21	8	8	0	0	13	1,693	1,444	711	711	0	0	733	1,201
Utah	9	4	3	1	0	5	347	329	184	158	26	0	145	137
Nevada	49	28	28	0	0	21	4,374	3,759	1,962	1,962	0	0	1,797	2,039

Table 15B.–Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1999—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		
Mountain	137	72	69	1	2	65	8,883	7,722	3,988	3,937	30	21	3,734	4,479
Washington	101	55	54	0	1	46	5,018	4,363	2,368	2,071	5	292	1,995	2,919
Oregon	42	25	20	2	3	17	2,227	1,842	1,010	821	94	95	832	1,674
California	318	169	160	2	7	149	20,237	17,275	8,815	8,260	189	366	8,460	9,718
Alaska	25	10	9	0	1	15	1,257	1,026	508	401	0	107	518	439
Hawaii	33	17	16	0	1	16	1,736	1,393	642	639	0	3	751	859
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	519	276	259	4	13	243	30,475	25,899	13,343	12,192	288	863	12,556	15,609
PuertoRico	52	27	6	0	21	25	2,209	1,835	874	157	0	717	961	688
Virgin Island	5	4	4	0	0	1	273	206	75	29	0	46	131	53
Outlying Areas	57	31	10	0	21	26	2,482	2,041	949	186	0	763	1,092	741
Total, all States and areas	3,162	1,676	1,477	41	158	1,486	223,239	194,094	98,986	87,134	2,444	9,408	95,108	104,045

[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 1999

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	1	1	0	0	1	42	39	19	17	2	0	20	33
New Hampshire	2	0	0	0	0	2	15	12	1	0	0	1	11	0
Vermont	1	1	1	0	0	0	318	284	160	160	0	0	124	318
Massachusetts	2	1	1	0	0	1	23	22	9	9	0	0	13	16
Rhode Island	2	0	0	0	0	2	14	14	1	1	0	0	13	0
Connecticut	10	1	0	0	1	9	282	254	76	48	0	28	178	43
New England	19	4	3	0	1	15	694	625	266	235	2	29	359	410
New York	32	9	4	0	5	23	1,158	939	455	183	6	266	484	569
New Jersey	17	3	1	0	2	14	594	521	202	158	0	44	319	143
Pennsylvania	21	9	6	0	3	12	868	791	469	284	0	185	322	574
Middle Atlantic	70	21	11	0	10	49	2,620	2,251	1,126	625	6	495	1,125	1,286
Ohio	30	10	10	0	0	20	617	558	202	202	0	0	356	199
Indiana	25	6	6	0	0	19	1,145	1,026	443	443	0	0	583	630
Illinois	49	13	12	0	1	36	1,773	1,538	665	586	0	79	873	558
Michigan	24	12	11	1	0	12	1,201	1,020	437	413	24	0	583	684
Wisconsin	22	9	8	0	1	13	994	890	444	409	0	35	446	499
East North Central	150	50	47	1	2	100	5,730	5,032	2,191	2,053	24	114	2,841	2,570
Iowa	8	2	2	0	0	6	247	231	118	118	0	0	113	155
Minnesota	18	9	7	0	2	9	967	743	417	382	0	35	326	701
Missouri	14	2	2	0	0	12	551	480	172	172	0	0	308	71
North Dakota	1	0	0	0	0	1	3	3	0	0	0	0	3	0

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1999—Continued

Division and State[1]	Total elec-tions	Number of elections in which representation rights were won by unions				Number of elec-tions in which no rep-resenta-tive was chosen	Number of em-ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ-ees in units choos-ing rep-resentati on
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	3	1	1	0	0	2	238	220	105	105	0	0	115	172
Kansas	4	1	1	0	0	3	101	92	28	28	0	0	64	24
West North Central ………………	48	15	13	0	2	33	2,107	1,769	840	805	0	35	929	1,123
Delaware ………………………………..	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Maryland ………………………………..	7	3	2	0	1	4	437	354	179	135	0	44	175	167
District of Columbia ……………………	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia …………………………………	5	2	2	0	0	3	141	125	57	39	0	18	68	25
West Virginia …………………………..	4	0	0	0	0	4	233	195	60	60	0	0	135	0
North Carolina …………………………	7	3	3	0	0	4	715	674	357	336	0	21	317	448
South Carolina …………………………	1	0	0	0	0	1	48	48	15	15	0	0	33	0
Georgia ………………………………….	9	5	5	0	0	4	1,257	1,133	537	537	0	0	596	528
Florida …………………………………..	4	1	1	0	0	3	121	118	28	28	0	0	90	28
South Atlantic ……………………	37	14	13	0	1	23	2,952	2,647	1,233	1,150	0	83	1,414	1,196
Kentucky ………………………………..	4	1	0	1	0	3	249	242	128	63	65	0	114	96
Tennessee ……………………………….	2	1	1	0	0	1	94	83	57	57	0	0	26	84
Alabama ………………………………...	1	0	0	0	0	1	12	12	0	0	0	0	12	0
Mississippi ……………………………...	0	0	0	0	0	0	0	0	0	0	0	0	0	0
East South Central ………………..	7	2	1	1	0	5	355	337	185	120	65	0	152	180
Arkansas ………………………………..	1	1	1	0	0	0	26	22	16	16	0	0	6	26
Louisiana ………………………………..	1	0	0	0	0	1	57	46	22	22	0	0	24	0
Oklahoma ……………………………….	6	4	4	0	0	2	140	134	68	68	0	0	66	102
Texas ……………………………………	4	0	0	0	0	4	309	196	76	76	0	0	120	0
West South Central ………………	12	5	5	0	0	7	532	398	182	182	0	0	216	128
Montana ………………………………..	2	0	0	0	0	2	36	34	6	6	0	0	28	0
Idaho ……………………………………	2	1	1	0	0	1	172	142	117	117	0	0	25	165
Wyoming ……………………………….	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado ………………………………..	3	2	2	0	0	1	94	90	48	48	0	0	42	71

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1999—Continued

Division and State[1]	Total elec- tions	Number of elections in which representation rights were won by unions				Number of elec- tions in which no rep- resenta- tive was chosen	Number of em- ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ- ees in units choos- ing rep- resentati on
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
New Mexico	1	0	0	0	0	1	39	34	14	14	0	0	20	0
Arizona	4	2	2	0	0	2	72	54	28	28	0	0	26	59
Utah	1	0	0	0	0	1	114	114	33	33	0	0	81	0
Nevada	2	0	0	0	0	2	34	33	14	14	0	0	19	0
Mountain	15	5	5	0	0	10	561	501	260	260	0	0	241	295
Washington	17	3	3	0	0	14	956	807	372	372	0	0	435	220
Oregon	6	2	2	0	0	4	120	106	48	48	0	0	58	72
California	33	13	11	0	2	20	1,662	1,347	692	570	0	122	655	757
Alaska	3	0	0	0	0	3	165	114	34	34	0	0	80	0
Hawaii	6	1	1	0	0	5	430	359	114	107	0	7	245	9
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	65	19	17	0	2	46	3,333	2,733	1,260	1,131	0	129	1,473	1,058
Perto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Island	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	423	135	115	2	18	288	18,884	16,293	7,543	6,561	97	885	8,750	8,246

[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 1999

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		
Food and kindred products	134	49	49	0	0	85	10,582	9,217	4,708	4,421	211	76	4,509	5,083
Tobacco manufacturers	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Textile mill products	6	3	3	0	0	3	492	464	237	237	0	0	227	234
Apparel and other finished products made from fabric and similar materials	9	5	4	0	1	4	1,412	1,184	512	338	0	174	672	522
Lumber and wood products (except furniture)	52	22	19	1	2	30	5,226	4,812	2,227	2,035	181	11	2,585	2,232
Furniture and fixtures	23	5	5	0	0	18	2,080	1,965	635	635	0	0	1,330	158
Paper and allied products	32	15	11	0	4	17	2,950	2,768	1,296	1,033	0	263	1,472	1,263
Printing, publishing, and allied products	48	16	13	0	3	32	3,629	3,301	1,390	1,333	0	57	1,911	810
Chemicals and allied products	73	26	24	0	2	47	5,261	4,758	1,853	1,644	53	156	2,905	1,024
Petroleum refining and related industries	8	5	5	0	0	3	158	149	77	77	0	0	72	91
Rubber and miscellaneous plastic products	37	12	10	2	0	25	4,400	4,034	1,701	1,543	158	0	2,333	1,483
Leather and leather products	1	0	0	0	0	1	147	146	37	37	0	0	109	0
Stone, clay, glass, and concrete products	74	23	22	1	0	51	5,579	5,115	2,394	2,265	106	23	2,721	1,186
Primary metal industries	89	31	28	1	2	58	8,959	8,414	3,843	3,377	65	401	4,571	2,868
Fabricated metal products (except machinery and transportation equipment)	93	35	34	1	0	58	9,424	8,862	4,239	4,084	155	0	4,623	4,823
Machinery (except electrical)	75	33	33	0	0	42	9,291	8,591	4,060	3,476	122	462	4,531	3,380
Electrical and electronic machinery, equipment, and supplies	34	15	14	0	1	19	3,138	2,769	1,266	1,236	0	30	1,503	1,145
Aircraft and parts	72	32	29	0	3	40	10,637	9,713	4,904	4,341	7	556	4,809	5,119
Ship and boat building and repairing	3	0	0	0	0	3	211	103	12	12	0	0	91	0
Automotive and other transportation equipment	4	1	1	0	0	3	360	320	115	115	0	0	205	14
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	19	9	7	0	2	10	774	673	338	280	0	58	335	236
Miscellaneous manufacturing industries	33	8	7	0	1	25	2,986	2,779	1,069	917	129	23	1,710	270
Manufacturing	919	345	318	6	21	574	87,696	80,137	36,913	33,436	1,187	2,290	43,224	31,941

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999–Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL–CIO unions	Other national unions	Other local 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	AFL-CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
Metal mining	2	1	1	0	0	1	1,481	1,231	499	499	0	0	732	22
Coal mining	4	2	0	2	0	2	127	120	79	11	68	0	41	67
Oil and gas extraction	7	2	2	0	0	5	362	347	159	157	0	2	188	30
Mining and quarrying of nonmetallic minerals (except fuels)	12	7	6	1	0	5	246	230	103	60	43	0	127	148
Mining	25	12	9	3	0	13	2,216	1,928	840	727	111	2	1,088	267
Construction	298	140	133	3	4	158	7,582	6,440	3,256	3,159	57	40	3,184	3,134
Wholesale trade	189	85	81	1	3	104	11,425	10,581	4,185	4,053	45	87	6,396	2,432
Retail trade	213	102	94	1	7	111	9,468	7,815	3,715	3,277	43	395	4,100	4,080
Finance, insurance, and real estate	45	29	27	0	2	16	1,417	1,273	611	530	0	81	662	490
U.S. Postal Service	4	3	2	0	1	1	321	257	144	90	0	54	113	198
Local and suburban transit and interurban highway passenger transportation	124	71	64	1	6	53	8,670	6,779	3,639	3,140	76	423	3,140	4,834
Motor freight transportation and warehousing	270	128	121	3	4	142	10,604	9,308	4,677	4,468	89	120	4,631	4,881
Water transportation	19	9	8	0	1	10	691	606	325	249	24	52	281	268
Other transportation	62	34	28	0	6	28	3,129	2,625	1,369	946	0	423	1,256	1,391
Communication	82	41	41	0	0	41	3,709	3,359	1,559	1,546	0	13	1,800	1,425
Electric, gas, and sanitary services	137	78	75	1	2	59	6,767	6,054	3,140	2,776	26	338	2,914	3,172
Transportation, communication, and other utilities	694	361	337	5	19	333	33,570	28,731	14,709	13,125	215	1,369	14,022	15,971
Hotels, rooming houses, camps, and other lodging places	49	27	26	0	1	22	2,988	2,537	1,191	1,116	0	75	1,346	1,359
Personal services	45	28	23	0	5	17	5,743	4,384	3,702	3,293	0	409	682	5,221
Automotive repair, services, and garages	55	21	20	0	1	34	1,927	1,511	732	680	0	52	779	728
Motion pictures	12	7	6	0	1	5	429	292	114	103	0	11	178	190
Amusement and recreation services (except motion pictures)	45	24	23	0	1	21	1,648	1,362	730	691	12	27	632	682
Health services	517	333	274	11	48	184	51,234	43,254	24,080	20,670	328	3,082	19,174	31,419
Educational services	45	33	21	1	11	12	2,184	1,874	1,190	779	10	401	684	1,475
Membership organizations	48	29	24	0	5	19	1,511	1,253	602	492	0	110	651	754
Business services	239	141	92	12	37	98	12,257	9,749	5,668	3,771	370	1,527	4,081	6,661

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1999

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL–CIO unions	Other national unions	Other local 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	AFL-CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
Maine	2	1	1	0	0	1	42	39	19	17	2	0	20	33
New Hampshire	2	0	0	0	0	2	15	12	1	0	0	1	11	0
Vermont	1	1	1	0	0	0	318	284	160	160	0	0	124	318
Massachusetts	2	1	1	0	0	1	23	22	9	9	0	0	13	16
Rhode Island	2	0	0	0	0	2	14	14	1	1	0	0	13	0
Connecticut	10	1	0	0	1	9	282	254	76	48	0	28	178	43
New England	19	4	3	0	1	15	694	625	266	235	2	29	359	410
New York	32	9	4	0	5	23	1,158	939	455	183	6	266	484	569
New Jersey	17	3	1	0	2	14	594	521	202	158	0	44	319	143
Pennsylvania	21	9	6	0	3	12	868	791	469	284	0	185	322	574
Middle Atlantic	70	21	11	0	10	49	2,620	2,251	1,126	625	6	495	1,125	1,286
Ohio	30	10	10	0	0	20	617	558	202	202	0	0	356	199
Indiana	25	6	6	0	0	19	1,145	1,026	443	443	0	0	583	630
Illinois	49	13	12	0	1	36	1,773	1,538	665	586	0	79	873	558
Michigan	24	12	11	1	0	12	1,201	1,020	437	413	24	0	583	684
Wisconsin	22	9	8	0	1	13	994	890	444	409	0	35	446	499
East North Central	150	50	47	1	2	100	5,730	5,032	2,191	2,053	24	114	2,841	2,570
Iowa	8	2	2	0	0	6	247	231	118	118	0	0	113	155
Minnesota	18	9	7	0	2	9	967	743	417	382	0	35	326	701
Missouri	14	2	2	0	0	12	551	480	172	172	0	0	308	71
North Dakota	1	0	0	0	0	1	3	3	0	0	0	0	3	0

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1999—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	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	3	1	1	0	0	2	238	220	105	105	0	0	115	172
Kansas	4	1	1	0	0	3	101	92	28	28	0	0	64	24
West North Central	48	15	13	0	2	33	2,107	1,769	840	805	0	35	929	1,123
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	7	3	2	0	1	4	437	354	179	135	0	44	175	167
District of Columbia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia	5	2	2	0	0	3	141	125	57	39	0	18	68	25
West Virginia	4	0	0	0	0	4	233	195	60	60	0	0	135	0
North Carolina	7	3	3	0	0	4	715	674	357	336	0	21	317	448
South Carolina	1	0	0	0	0	1	48	48	15	15	0	0	33	0
Georgia	9	5	5	0	0	4	1,257	1,133	537	537	0	0	596	528
Florida	4	1	1	0	0	3	121	118	28	28	0	0	90	28
South Atlantic	37	14	13	0	1	23	2,952	2,647	1,233	1,150	0	83	1,414	1,196
Kentucky	4	1	0	1	0	3	249	242	128	63	65	0	114	96
Tennessee	2	1	1	0	0	1	94	83	57	57	0	0	26	84
Alabama	1	0	0	0	0	1	12	12	0	0	0	0	12	0
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0	0
East South Central	7	2	1	1	0	5	355	337	185	120	65	0	152	180
Arkansas	1	1	1	0	0	0	26	22	16	16	0	0	6	26
Louisiana	1	0	0	0	0	1	57	46	22	22	0	0	24	0
Oklahoma	6	4	4	0	0	2	140	134	68	68	0	0	66	102
Texas	4	0	0	0	0	4	309	196	76	76	0	0	120	0
West South Central	12	5	5	0	0	7	532	398	182	182	0	0	216	128
Montana	2	0	0	0	0	2	36	34	6	6	0	0	28	0
Idaho	2	1	1	0	0	1	172	142	117	117	0	0	25	165
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	3	2	2	0	0	1	94	90	48	48	0	0	42	71

Table 15C.–Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1999—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		
New Mexico	1	0	0	0	0	1	39	34	14	14	0	0	20	0
Arizona	4	2	2	0	0	2	72	54	28	28	0	0	26	59
Utah	1	0	0	0	0	1	114	114	33	33	0	0	81	0
Nevada	2	0	0	0	0	2	34	33	14	14	0	0	19	0
Mountain	15	5	5	0	0	10	561	501	260	260	0	0	241	295
Washington	17	3	3	0	0	14	956	807	372	372	0	0	435	220
Oregon	6	2	2	0	0	4	120	106	48	48	0	0	58	72
California	33	13	11	0	2	20	1,662	1,347	692	570	0	122	655	757
Alaska	3	0	0	0	0	3	165	114	34	34	0	0	80	0
Hawaii	6	1	1	0	0	5	430	359	114	107	0	7	245	9
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	65	19	17	0	2	46	3,333	2,733	1,260	1,131	0	129	1,473	1,058
Perto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Island	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	423	135	115	2	18	288	18,884	16,293	7,543	6,561	97	885	8,750	8,246

[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 1999

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		
Food and kindred products ……………………………...	134	49	49	0	0	85	10,582	9,217	4,708	4,421	211	76	4,509	5,083
Tobacco manufacturers ………………………….…...	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Textile mill products ……………………………………	6	3	3	0	0	3	492	464	237	237	0	0	227	234
Apparel and other finished products made from fabric and similar materials ………………………………….	9	5	4	0	1	4	1,412	1,184	512	338	0	174	672	522
Lumber and wood products (except furniture) …………	52	22	19	1	2	30	5,226	4,812	2,227	2,035	181	11	2,585	2,232
Furniture and fixtures …………………………………..	23	5	5	0	0	18	2,080	1,965	635	635	0	0	1,330	158
Paper and allied products ……………………………….	32	15	11	0	4	17	2,950	2,768	1,296	1,033	0	263	1,472	1,263
Printing, publishing, and allied products ……………….	48	16	13	0	3	32	3,629	3,301	1,390	1,333	0	57	1,911	810
Chemicals and allied products ………………………….	73	26	24	0	2	47	5,261	4,758	1,853	1,644	53	156	2,905	1,024
Petroleum refining and related industries ………………	8	5	5	0	0	3	158	149	77	77	0	0	72	91
Rubber and miscellaneous plastic products …………….	37	12	10	2	0	25	4,400	4,034	1,701	1,543	158	0	2,333	1,483
Leather and leather products ……………………………	1	0	0	0	0	1	147	146	37	37	0	0	109	0
Stone, clay, glass, and concrete products ……………….	74	23	22	1	0	51	5,579	5,115	2,394	2,265	106	23	2,721	1,186
Primary metal industries ………………………………..	89	31	28	1	2	58	8,959	8,414	3,843	3,377	65	401	4,571	2,868
Fabricated metal products (except machinery and transportation equipment) ………………………	93	35	34	1	0	58	9,424	8,862	4,239	4,084	155	0	4,623	4,823
Machinery (except electrical) …………………………..	75	33	33	0	0	42	9,291	8,591	4,060	3,476	122	462	4,531	3,380
Electrical and electronic machinery, equipment, and supplies ………………….…………………………….	34	15	14	0	1	19	3,138	2,769	1,266	1,236	0	30	1,503	1,145
Aircraft and parts ……………………………………….	72	32	29	0	3	40	10,637	9,713	4,904	4,341	7	556	4,809	5,119
Ship and boat building and repairing …………………...	3	0	0	0	0	3	211	103	12	12	0	0	91	0
Automotive and other transportation equipment ……….	4	1	1	0	0	3	360	320	115	115	0	0	205	14
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks …………………………………………….	19	9	7	0	2	10	774	673	338	280	0	58	335	236
Miscellaneous manufacturing industries ………………..	33	8	7	0	1	25	2,986	2,779	1,069	917	129	23	1,710	270
Manufacturing …..……………………………….	919	345	318	6	21	574	87,696	80,137	36,913	33,436	1,187	2,290	43,224	31,941

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999–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		
Metal mining	2	1	1	0	0	1	1,481	1,231	499	499	0	0	732	22
Coal mining	4	2	0	2	0	2	127	120	79	11	68	0	41	67
Oil and gas extraction	7	2	2	0	0	5	362	347	159	157	0	2	188	30
Mining and quarrying of nonmetallic minerals (except fuels)	12	7	6	1	0	5	246	230	103	60	43	0	127	148
Mining	25	12	9	3	0	13	2,216	1,928	840	727	111	2	1,088	267
Construction	298	140	133	3	4	158	7,582	6,440	3,256	3,159	57	40	3,184	3,134
Wholesale trade	189	85	81	1	3	104	11,425	10,581	4,185	4,053	45	87	6,396	2,432
Retail trade	213	102	94	1	7	111	9,468	7,815	3,715	3,277	43	395	4,100	4,080
Finance, insurance, and real estate	45	29	27	0	2	16	1,417	1,273	611	530	0	81	662	490
U.S. Postal Service	4	3	2	0	1	1	321	257	144	90	0	54	113	198
Local and suburban transit and interurban highway passenger transportation	124	71	64	1	6	53	8,670	6,779	3,639	3,140	76	423	3,140	4,834
Motor freight transportation and warehousing	270	128	121	3	4	142	10,604	9,308	4,677	4,468	89	120	4,631	4,881
Water transportation	19	9	8	0	1	10	691	606	325	249	24	52	281	268
Other transportation	62	34	28	0	6	28	3,129	2,625	1,369	946	0	423	1,256	1,391
Communication	82	41	41	0	0	41	3,709	3,359	1,559	1,546	0	13	1,800	1,425
Electric, gas, and sanitary services	137	78	75	1	2	59	6,767	6,054	3,140	2,776	26	338	2,914	3,172
Transportation, communication, and other utilities	694	361	337	5	19	333	33,570	28,731	14,709	13,125	215	1,369	14,022	15,971
Hotels, rooming houses, camps, and other lodging places	49	27	26	0	1	22	2,988	2,537	1,191	1,116	0	75	1,346	1,359
Personal services	45	28	23	0	5	17	5,743	4,384	3,702	3,293	0	409	682	5,221
Automotive repair, services, and garages	55	21	20	0	1	34	1,927	1,511	732	680	0	52	779	728
Motion pictures	12	7	6	0	1	5	429	292	114	103	0	11	178	190
Amusement and recreation services (except motion pictures)	45	24	23	0	1	21	1,648	1,362	730	691	12	27	632	682
Health services	517	333	274	11	48	184	51,234	43,254	24,080	20,670	328	3,082	19,174	31,419
Educational services	45	33	21	1	11	12	2,184	1,874	1,190	779	10	401	684	1,475
Membership organizations	48	29	24	0	5	19	1,511	1,253	602	492	0	110	651	754
Business services	239	141	92	12	37	98	12,257	9,749	5,668	3,771	370	1,527	4,081	6,661

Table 16.–Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1999–Continued

Division and State[1]	Total elec-tions	Number of elections in which representation rights were won by unions				Number of elec-tions in which no rep-resenta-tive was chosen	Number of em-ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ-ees in units choos-ing rep-resenta-tion
		Total	AFL–CIO unions	Other na-tional unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Miscellaneous repair services …………………………..	13	4	4	0	0	9	1,104	1,041	378	295	83	0	663	68
Museums, art galleries, botanical and zoological gardens	2	1	1	0	0	1	22	15	10	10	0	0	5	14
Legal services …………………………………………..	4	4	3	0	1	0	118	94	84	70	0	14	10	118
Social services …………………………………………..	74	53	50	0	3	21	5,255	4,214	2,729	2,667	0	62	1,485	3,974
Miscellaneous services ………………………………….	23	12	12	0	0	11	490	427	203	203	0	0	224	243
Services …………………………………….	1,171	717	579	24	114	454	86,910	72,007	41,413	34,840	803	5,770	30,594	52,906
Public administration ………………………	27	17	12	0	5	10	1,518	1,218	743	458	80	205	475	872
Total, all industrial groups …………………	3,585	1,811	1,592	43	176	1,774	242,123	210,387	106,529	93,695	2,541	10,293	103,858	112,291

[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 1999[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumu-lative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	223,239	3,162	100.0	----	1,477	100.0	41	100.0	158	100.0	1,486	100.0
Under 10	3,685	645	20.4	20.4	366	24.9	4	9.8	39	24.8	236	15.9
10 to 19	8,059	571	18.1	38.5	293	19.8	10	24.5	28	17.8	240	16.2
20 to 29	9,238	382	12.1	50.6	173	11.7	5	12.2	19	12.0	185	12.4
30 to 39	8,899	262	8.3	58.9	129	8.7	4	9.8	13	8.2	116	7.8
40 to 49	8,062	182	5.8	64.7	71	4.8	5	12.2	7	4.4	99	6.7
50 to 59	8,802	163	5.2	69.9	70	4.7	1	2.4	6	3.8	86	5.8
60 to 69	8,057	125	4.0	73.9	59	4.0	2	4.9	6	3.8	58	3.9
70 to 79	7,158	97	3.1	77.0	41	2.8	1	2.4	4	2.5	51	3.4
80 to 89	6,771	80	2.5	79.5	34	2.3	2	4.9	6	3.8	38	2.6
90 to 99	6,685	71	2.2	81.7	25	1.7	1	2.4	2	1.3	43	2.9
100 to 109	6,253	60	1.9	83.6	27	1.8	1	2.4	2	1.3	30	2.0
110 to 119	6,517	57	1.8	85.4	18	1.2	2	4.9	1	0.6	36	2.4
120 to 129	7,069	57	1.8	87.2	25	1.7	0	----	3	1.9	29	2.0
130 to 139	4,845	36	1.1	88.3	16	1.1	1	2.4	1	0.6	18	1.2
140 to 149	4,642	32	1.0	89.3	11	0.7	0	----	1	0.6	20	1.3
150 to 159	3,079	20	0.6	89.9	6	0.4	0	----	1	0.6	13	0.9
160 to 169	3,794	23	0.7	90.6	7	0.5	1	2.4	2	1.3	13	0.9
170 to 179	3,991	23	0.7	91.3	4	0.3	0	----	1	0.6	18	1.2
180 to 189	2,591	14	0.4	91.7	7	0.5	0	----	0	----	7	0.5
190 to 199	2,342	12	0.4	92.1	8	0.5	0	----	0	----	4	0.3
200 to 299	28,021	118	3.7	95.8	36	2.4	1	2.4	8	5.1	73	4.9
300 to 399	16,120	47	1.5	97.3	16	1.1	0	----	4	2.5	27	1.8
400 to 499	13,270	30	0.9	98.2	10	0.7	0	----	3	1.9	17	1.1
500 to 599	10,724	20	0.7	98.9	10	0.7	0	----	1	0.6	9	0.6
600 to 799	8,552	12	0.5	99.4	3	0.2	0	----	0	----	9	0.6
800 to 999	9,003	11	0.3	99.7	6	0.4	0	----	0	----	5	0.3
1,000 to 1,999	14,208	11	0.3	100.0	5	0.3	0	----	0	----	6	0.4
2,000 to 2,999	2,802	1	0.0	100.0	1	0.1	0	----	0	----	0	----

Table 17.–Size of Units in Representation Elections in Cases Closed, Fiscal Year 1999[1]–Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumu-lative percent of total	Elections in which representation rights were won by: AFL-CIO unions		Other national unions		Other local unions		Elections in which no representative was chosen	
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
	B. Decertification elections (RD)											
Total RD elections ………..……...	18,884	423	100.0	----	115	100.0	2	100.0	18	100.0	288	100.0
Under 10 ………………………………………	503	88	20.8	20.8	12	10.4	0	----	0	----	76	26.4
10 to 19 ………………………………………..	1,208	83	19.6	40.4	19	16.6	0	----	0	----	64	22.2
20 to 29 ………………………………………..	1,359	56	13.2	53.6	19	16.6	0	----	3	16.7	34	11.8
30 to 39 ………………………………………..	1,297	38	9.0	62.6	9	7.8	0	----	2	11.0	27	9.4
40 to 49 ………………………………………..	1,730	39	9.2	71.8	9	7.8	1	50.0	2	11.0	27	9.4
50 to 59 ………………………………………..	1,050	19	4.5	76.3	6	5.2	0	----	0	----	13	4.5
60 to 69 ………………………………………..	1,421	22	5.2	81.5	8	7.0	0	----	3	16.7	11	3.8
70 to 79 ………………………………………..	822	11	2.6	84.1	4	3.5	0	----	4	22.2	3	1.1
80 to 89 ………………………………………..	927	11	2.6	86.7	9	7.8	0	----	0	----	2	0.7
90 to 99 ………………………………………..	944	10	2.4	89.1	3	2.6	1	50.0	1	5.6	5	1.7
100 to 109 ……………………………………..	936	9	2.1	91.2	2	1.7	0	----	1	5.6	6	2.1
110 to 119 ……………………………………..	338	3	0.7	91.9	0	----	0	----	0	----	3	1.1
120 to 129 ……………………………………..	380	3	0.7	92.6	1	0.9	0	----	1	5.6	1	0.3
130 to 139 ……………………………………..	398	3	0.7	93.3	0	----	0	----	0	----	3	1.1
140 to 149 ……………………………………..	724	5	1.2	94.5	3	2.6	0	----	0	----	2	0.7
150 to 159 ……………………………………..	159	1	0.2	94.7	0	----	0	----	0	----	1	0.3
160 to 169 ……………………………………..	656	4	0.9	95.6	3	2.6	0	----	0	----	1	0.3
170 to 199 ……………………………………..	1,581	9	2.1	97.7	3	2.6	0	----	1	5.6	5	1.7
200 to 299 ……………………………………..	1,323	6	1.6	99.3	3	2.6	0	----	0	----	3	1.1
300 to 499 ……………………………………..	1,128	3	0.7	100.0	2	1.7	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 1999[1]

Size of establishment (number of employes)	Total number of situ-ations	Total		Type of situations																	
		Percent of all situa-tions	Cumu-lative percent of all situa-tions	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class
Totals ……..	25,227	100.0	-----	19,160	100.0	4,917	100.0	392	100.0	137	100.0	34	100.0	39	100.0	73	100.0	449	100.0	26	100.0
Under 10 ………..	2,414	9.6	9.6	1,755	9.2	448	9.1	102	26.0	32	23.4	22	64.7	1	2.6	19	26.0	31	6.9	4	15.4
10-19 ……………	2,266	9.0	18.6	1,817	9.5	343	7.0	47	12.0	22	16.1	1	2.9	0	0.0	11	15.1	23	5.1	2	7.7
20-29 ……………	1,700	6.7	25.3	1,350	7.0	258	5.2	43	11.0	15	10.9	2	5.9	0	0.0	11	15.1	18	4.0	3	11.5
30-39…………….	1,128	4.5	29.8	911	4.8	167	3.4	20	5.1	10	7.3	1	2.9	0	0.0	4	5.5	13	2.9	2	7.7
40-49 ……………	917	3.6	33.4	765	4.0	123	2.5	13	3.3	5	3.6	0	0.0	0	0.0	1	1.4	9	2.0	1	3.8
50-59 ……………	1,441	5.7	39.1	1,100	5.7	261	5.3	33	8.4	17	12.4	3	8.8	1	2.6	4	5.5	20	4.5	2	7.7
60-69 ……………	709	2.8	41.9	567	3.0	109	2.2	9	2.3	4	2.9	0	0.0	0	0.0	1	1.4	18	4.0	1	3.8
70-79 ……………	713	2.8	44.7	581	3.0	106	2.2	12	3.1	2	1.5	1	2.9	1	2.6	1	1.4	7	1.6	2	7.7
80-89 ……………	491	1.9	46.7	419	2.2	61	1.2	4	1.0	0	0.0	0	0.0	0	0.0	0	0.0	7	1.6	0	0.0
90-99 ……………	335	1.3	48.0	286	1.5	42	0.9	3	0.8	0	0.0	0	0.0	0	0.0	0	0.0	4	0.9	0	0.0
100-109 …………	1,992	7.9	55.9	1,435	7.5	475	9.7	20	5.1	9	6.6	0	0.0	8	20.5	3	4.1	40	8.9	2	7.7
110-119 …………	180	0.7	56.6	154	0.8	18	0.4	7	1.8	0	0.0	0	0.0	0	0.0	1	1.4	0	0.0	0	0.0
120-129 …………	452	1.8	58.4	360	1.9	78	1.6	4	1.0	1	0.7	0	0.0	3	7.7	0	0.0	5	1.1	1	3.8
130-139 …………	247	1.0	59.4	209	1.1	32	0.7	2	0.5	0	0.0	0	0.0	0	0.0	1	1.4	3	0.7	0	0.0
140-149 …………	207	0.8	60.2	173	0.9	29	0.6	0	0.0	0	0.0	0	0.0	2	5.1	1	1.4	2	0.4	0	0.0
150-159 …………	684	2.7	62.9	523	2.7	134	2.7	6	1.5	5	3.6	0	0.0	1	2.6	2	2.7	10	2.2	3	11.5
160-169 …………	193	0.8	63.7	160	0.8	27	0.5	0	0.0	0	0.0	0	0.0	0	0.0	1	1.4	5	1.1	0	0.0
170-179………….	176	0.7	64.4	145	0.8	28	0.6	1	0.3	0	0.0	0	0.0	0	0.0	1	1.4	1	0.2	0	0.0
180-189 …………	154	0.6	65.0	120	0.6	29	0.6	3	0.8	0	0.0	0	0.0	1	2.6	0	0.0	1	0.2	0	0.0
190-199 …………	55	0.2	65.2	49	0.3	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.2	0	0.0
200-299 …………	1,908	7.6	72.8	1,445	7.5	388	7.9	17	4.3	4	2.9	0	0.0	6	15.4	5	6.8	41	9.1	2	7.7
300-399 …………	1,131	4.5	77.3	795	4.1	285	5.8	13	3.3	2	1.5	0	0.0	3	7.7	2	2.7	31	6.9	0	0.0
400-499 …………	697	2.8	80.0	528	2.8	142	2.9	4	1.0	1	0.7	0	0.0	0	0.0	1	1.4	21	4.7	0	0.0
500-599 …………	826	3.3	83.3	580	3.0	224	4.6	5	1.3	0	0.0	0	0.0	0	0.0	1	1.4	16	3.6	0	0.0
600-699 …………	371	1.5	84.8	289	1.5	71	1.4	0	0.0	1	0.7	0	0.0	0	0.0	0	0.0	9	2.0	1	3.8
700-799 …………	281	1.1	85.9	217	1.1	54	1.1	1	0.3	0	0.0	3	8.8	2	5.1	0	0.0	4	0.9	0	0.0
800-899 …………	252	1.0	86.9	175	0.9	72	1.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5	1.1	0	0.0
900-999 …………	158	0.6	87.5	123	0.6	33	0.7	1	0.3	1	0.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1,000-1,999 ……..	1,422	5.6	93.2	985	5.1	376	7.6	8	2.0	0	0.0	0	0.0	4	10.3	0	0.0	49	10.9	0	0.0
2,000-2,999 ……..	535	2.1	95.3	339	1.8	168	3.4	1	0.3	4	2.9	0	0.0	3	7.7	1	1.4	19	4.2	0	0.0
3,000-3,999 ……..	267	1.1	96.3	163	0.9	92	1.9	1	0.3	1	0.7	1	2.9	0	0.0	0	0.0	9	2.0	0	0.0
4,000-4,999 ……..	109	0.4	96.8	68	0.4	34	0.7	0	0.0	0	0.0	0	0.0	3	7.7	0	0.0	4	0.9	0	0.0
5,000-9,999 ……..	441	1.7	98.5	300	1.6	122	2.5	10	2.6	0	0.0	0	0.0	0	0.0	0	0.0	9	2.0	0	0.0
Over 9,999 ……..	375	1.5	100.0	274	1.4	83	1.7	2	0.5	1	0.7	0	0.0	0	0.0	1	1.4	14	3.1	0	0.0

[1] See Glossary of terms for definitions.

Table 19.–Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1999; and Cumulative Totals, Fiscal Years 1936 through 1999

	Fiscal Year 1999									July 5, 1935–Sept. 30, 1999	
	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	165	155	10	0	1	----	----	----	----	----	----
On petitions for review and/or enforcement	132	126	6	0	0	100.0	100.0	0.0	100.0	11,369	100.0
Board orders affirmed in full	92	87	5	0	0	69.0	83.3	0.0	0.0	7,497	65.9
Board orders affirmed with modification	16	16	0	0	0	12.7	0.0	0.0	0.0	1,521	13.4
Remanded to Board	4	4	0	0	0	3.2	0.0	0.0	0.0	563	4.9
Board orders partially affirmed and partially remanded	3	3	0	0	0	2.4	0.0	0.0	0.0	247	2.2
Board orders set aside	17	16	1	0	1	12.7	16.7	0.0	100.0	1,541	13.6
On petitions for contempt	11	10	1	0	0	----	----	----	----	----	----
Total Court Orders	19	16	3	0	0	100.0	100.0	----	----	----	----
Compliance after filing of petition, before court order	10	8	2	0	0	50.0	66.7	----	----	----	----
Court orders holding respondent in contempt	5	4	1	0	0	25.0	33.3	----	----	----	----
Court orders denying petition	0	0	0	0	0	0.0	0.0	----	----	----	----
Court orders directing compliance without contempt adjudication	4	4	0	0	0	25.0	0.0	----	----	----	----
Proceedings decided by U.S. Supreme Court	0	0	0	0	----	----	----	----	---	257	100.0
Board orders affirmed in full	0	0	0	0	----	----	----	----	----	155	60.3
Board orders affirmed with modification	0	0	0	0	----	----	----	----	----	18	7.0
Board orders set aside	0	0	0	0	----	----	----	----	----	45	17.5
Remanded to Board	0	0	0	0	----	----	----	----	----	20	7.8
Remanded to court of appeals	0	0	0	0	----	----	----	----	----	16	6.2
Board's request for remand or modification of enforcement order denied	0	0	0	0	----	----	----	----	----	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	----	----	----	----	----	1	0.4
Contempt cases enforced	0	0	0	0	----	----	----	----	----	1	0.4

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

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

Table 19A.–Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1999, Compared With 5-Year Cumulative Totals, 1994 Through 1998[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1999	Total fiscal years 1994-1998	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 1999		Cumulative fiscal years 1994-1998		Fiscal Year 1999		Cumulative fiscal years 1994-1998		Fiscal Year 1999		Cumulative fiscal years 1994-1998		Fiscal Year 1999		Cumulative fiscal years 1994-1998		Fiscal Year 1999		Cumulative fiscal years 1994-1998	
			Num ber	Per- cent	Numb er	Per- cent	Numb er	Per- cent	Numb er	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent	Num ber	Per- cent
Total all circuits	132	579	92	69.7	381	65.8	16	12.1	58	10.0	4	3.0	30	5.2	3	2.3	34	5.9	17	12.9	76	13.1
1. Boston, MA	5	22	4	80.0	19	86.5	0	0.0	1	4.5	0	0.0	0	0.0	0	0.0	1	4.5	1	20.0	1	4.5
2. New York, NY	7	52	5	71.4	36	69.2	1	14.3	6	11.5	0	0.0	3	5.8	0	0.0	2	3.9	1	14.3	5	9.6
3. Philadelphia, PA	11	43	9	81.8	34	79.1	0	0.0	3	7.0	0	0.0	1	2.3	0	0.0	3	7.0	2	18.2	2	4.6
4. Richmond, VA	13	46	5	38.5	25	54.4	5	38.5	4	8.7	0	0.0	1	2.2	0	0.0	6	13.0	3	23.0	10	21.7
5. New Orleans, LA	3	26	2	66.7	18	69.3	0	0.0	1	3.8	0	0.0	2	7.7	0	0.0	1	3.8	1	33.3	4	15.4
6. Cincinnati, OH	26	107	17	65.4	64	59.8	3	11.6	15	14.0	1	3.8	5	4.7	1	3.8	4	3.7	4	15.4	19	17.8
7. Chicago, IL	9	39	6	66.7	26	66.7	1	11.1	4	10.3	0	0.0	2	5.1	1	11.1	1	2.5	1	11.1	6	15.4
8. St. Louis, MO	8	23	6	75.0	14	60.9	2	25.0	2	8.7	0	0.0	2	8.7	0	0.0	1	4.3	0	0.0	4	17
9. San Francisco, CA	10	74	8	80.0	61	82.4	1	10.0	4	5.4	0	0.0	2	2.7	1	10.0	1	1.4	0	0.0	6	8.1
10. Denver, CO.	4	14	4	100.0	8	57.2	0	0.0	1	7.1	0	0.0	0	0.0	0	0.0	4	28.6	0	0.0	1	7.1
11. Atlanta, GA	13	14	10	76.9	13	92.9	1	7.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	15.4	1	7.1
Washington, DC	23	119	16	69.6	63	52.9	2	8.7	17	14.3	3	13.0	12	10.1	0	0.0	10	8.4	2	8.7	17	14.3

[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 1999

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in appellate court Sept. 30, 1999
		Pending in appellate court Oct. 1, 1998	Filed in appellate court fiscal year 1999		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total ………………….	2	0	2	2	0	1	2	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1999
		Pending in district court Oct. 1, 1998	Filed in district court fiscal year 1999		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(j) total …………………..	32	4	28	25	14	5	6	0	0	0	7
8(a)(1) …………………………….	1	0	1	1	0	1	0	0	0	0	0
8(a)(1)(2)(3)………………………	2	0	2	2	1	1	0	0	0	0	0
8(a)(1)(3)…………….……………	6	0	6	5	4	0	1	0	0	0	1
8(a)(1)(3)(4)………………………	1	0	1	0	0	0	0	0	0	0	1
8(a)(1)(3)(4)(5) ...…………………	2	1	1	1	1	0	0	0	0	0	1
8(a)(1)(3)(5)………………………	7	2	5	5	2	2	1	0	0	0	2
8(a)(1)(5)………………………….	11	1	10	9	5	0	4	0	0	0	2
8(a)(1)(2)(3)(4) 8(b)(1)(A)..………	1	0	1	1	0	1	0	0	0	0	0
8(b)(1)(A)...……..…………………	1	0	1	1	1	0	0	0	0	0	0
Under Sec. 10(l) total …………………..	12	2	10	9	3	3	2	1	0	0	3
8(b)(4)(B)…………………………	4	0	4	3	2	0	1	0	0	0	1
8(b)(4)(D) …...…..………………..	2	0	2	2	0	1	0	1	0	0	0
8(b)(4)(B 8(b)(4(A)…………….	1	0	1	1	0	1	0	0	0	0	0
8(b)(4)(D 8(b)(4)(B)…………….	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B) 8(b)(7)(C …………….	1	1	0	0	0	0	0	0	0	0	0
8(b)(7)(A) ………………………...	3	1	2	2	1	1	0	0	0	0	1

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Table 21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 1999

Type of Litigation	Number of Proceedings														
	Total -- all courts			In courts of appeals			In district courts			In bankruptcy courts			In State courts		
	Num ber de- cided	Court Determination: Up- hold -ing Bd. posi- tion	Court Determination: Con- trary to Bd. posi- tion	Num- ber de- cided	Court Determination: Up- hold- ing Bd. posi- tion	Court Determination: Con- trary to Bd. posi- tion	Num- ber de- cided	Court Determination: Up- hold -ing Bd. posi- tion	Court Determination: Con- trary to Bd. posi- tion	Num- ber de- cided	Court Determination: Up- hold -ing Bd. posi- tion	Court Determination: Con- trary to Bd. posi- tion	Num- ber de- cided	Court Determination: Up- hold -ing Bd. posi- tion	Court Determination: Con- trary to Bd. posi- tion
Totals -- all types	24	19	5	13	9	4	8	7	1	2	2	0	1	1	0
NLRB-initiated actions or interventions	4	2	2	2	1	1	1	0	1	0	0	0	1	1	0
To quash district court subpoena	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To enforce subpoena or contempt of subpoena	2	1	1	2	1	1	0	0	0	0	0	0	0	0	0
To enjoin local ordinance as preempted	1	0	1	0	0	0	1	0	1	0	0	0	0	0	0
To sanction failure to respond to discovery	1	1	0	0	0	0	0	0	0	0	0	0	1	1	0
Action by other parties	20	17	3	11	8	3	7	7	0	2	2	0	0	0	0
To review:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Prosecutorial discretion	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nonfinal/representation order	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from:	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Enforcing Board subpoenas	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Proceeding in R case	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Proceeding in unfair labor practice case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To compel NLRB to:	14	12	2	8	6	2	6	6	0	0	0	0	0	0	0
Issue complaint	8	8	0	5	5	0	3	3	0	0	0	0	0	0	0
Take action in R case	2	2	0	1	1	0	1	1	0	0	0	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To issue decision or take specific action	4	2	2	2	0	2	2	2	0	0	0	0	0	0	0

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

Table 21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 1999-Continued

Type of Litigation	Number of Proceedings														
	Total -- all courts			In courts of appeals			In district courts			In bankruptcy courts			In State courts		
	Number decided	Court Determination: Upholding Bd. position	Court Determination: Contrary to Bd. position	Number decided	Court Determination: Upholding Bd. position	Court Determination: Contrary to Bd. position	Number decided	Court Determination: Upholding Bd. position	Court Determination: Contrary to Bd. position	Number decided	Court Determination: Upholding Bd. position	Court Determination: Contrary to Bd. position	Number decided	Court Determination: Upholding Bd. position	Court Determination: Contrary to Bd. position
Other	5	4	1	3	2	1	0	0	0	2	2	0	0	0	0
Objection to Board's proof of claim	2	2	0	0	0	0	0	0	0	2	2	0	0	0	0
Intervention in §301 suit	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EAJA	3	2	1	3	2	1	0	0	0	0	0	0	0	0	0
Denying attorney's fees in FOIA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Denying stay in FOIA case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 22.–Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1999[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 1998	0	0	0	0	0
Received fiscal 1999	0	0	0	0	0
On docket fiscal 1999	0	0	0	0	0
Closed fiscal 1999	0	0	0	0	0
Pending September 30, 1999	0	0	0	0	0

[1] See Glossary for definitions of terms.

Table 22A.–Disposition of Advisory Opinion Cases, Fiscal Year 1999[1]

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

[1] See Glossary for definitions of terms.

Table 23.–Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1999; And Age of Cases Pending Decision, September 30, 1999

Stage	Media days
I. Unfair labor practice cases:	
A. Major stages completed-	
1. Filling of charge to issuance of complaint	89
2. Complaint to close of hearing	168
3. Close of hearing to administrative law judge's decision	97
4. Receipt of briefs or submissions to issuance of administrative law judge's decision	48
5. Administrative law judge's decision to issuance of Board decision	461
6. Originating document to Board decision	173
7. Assignment to Board's decision	121
8. Filing of charge to issuance of Board decision	747
B. Age of cases pending administrative law judge's decision, September 30, 1999.	
1. From filing of charge	494
2. From close of hearing	81
C. Age of cases pending Board decision, September 30, 1999.	
1. From filing of charge	1,011
2. From originating document	431
3. From assignment	359
II. Representation cases:	
A. Major stages completed-	
1. Filing of petition of notice of hearing issued	1
2. Notice of hearing to close of hearing	13
3. Close of hearing to Regional Director's decision issued	19
4. Close of preelection hearing to Board's decision issued	420
5. Close of post-election hearing to Board's decision issued	118
6. Filing of petition to-	
a. Board decision issued	328
b. Regional Director's decision issued	38
7. Originating document to Board decision	125
8. Assignment to Board's decision	101
B. Age of cases pending Board decision, September 30, 1999.	
1. From filing of petition	456
2. From originating document	268
3. From assignment	253
C. Age of cases pending Regional Director's decision, September 30, 1999	133

Table 24.–NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1999

I. Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
A. Number of applications filed	2
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	0
Denying fees	6
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$82,575.81
Recovered	$0.00
II. Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	1
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	$0.00
III. Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
A. Awards granting fees (includes settlements)	5
B. Awards denying fees	1
C. Amount of fees and expenses recovered	$40,689.75
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	$0.00