SIXTY-EIGHTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2003

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NATIONAL LABOR RELATIONS BOARD

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Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Began service on December 17, 2002.
[2] Began service on December 17, 2002.
[3] Began service on December 17, 2002. Preceded by Michael J. Bartlett whose recess appointment expired November 22, 2002.
[4] Began service on December 17, 2002. Resignation effective August 21, 2003. Preceded by William B. Cowen whose recess appointment expired on November 22, 2002.
[5] Also served as Acting Chief Counsel for Member Cowen.
[6] Also served as Acting Chief Counsel for Member Bartlett.
[7] Named Deputy Executive Secretary on September 7, 2003.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. April 20, 2004

SIR: I submit the Sixty-Eighth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2003.

Respectfully submitted,
ROBERT J. BATTISTA, *Chairman*

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

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Operations In Fiscal Year 2003

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 2003, 33,715 cases were received by the Board.

The public filed 28,781 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected employees. The NLRB during the year also received 4761 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 173 amendment to certification and unit clarification cases.

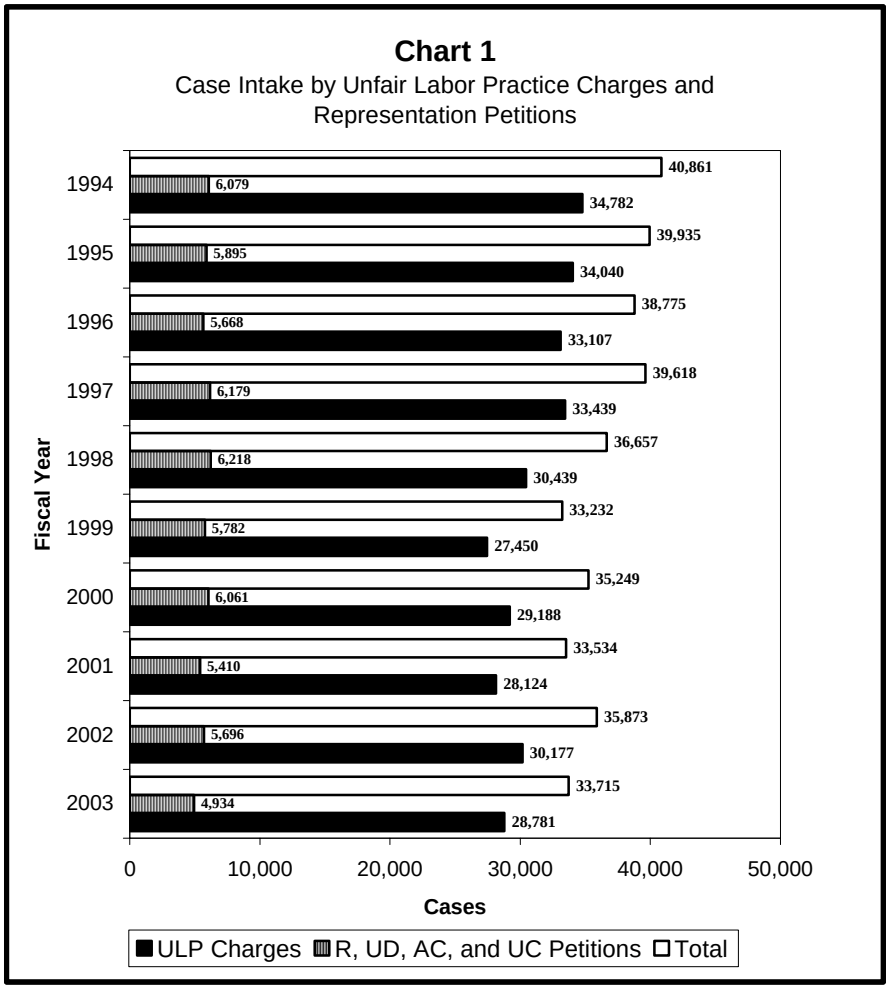
After the initial influx of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved in NLRB's national network field offices by dismissals, withdrawals, agreements, and settlements.

During fiscal year 2003, the five-member Board was composed of Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, Dennis P. Walsh, and R. Alexander Acosta. Arthur F. Rosenfeld served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2003 include:

- The NLRB conducted 2937 conclusive representation elections among some 166,809 employee voters, with workers choosing labor unions as their bargaining agents in 53.8 percent of the elections.
- Although the Agency closed 35,766 cases, 22,631 cases were pending in all stages of processing at the end of the fiscal year. The closings included 30,618 cases involving unfair labor practice charges and 4849 cases affecting employee representation and 384 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,923.

- The amount of $91,287,634 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 2393 offers of job reinstatements, with 1838 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 2067 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 388 decisions.



NLRB Administration

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

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

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

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

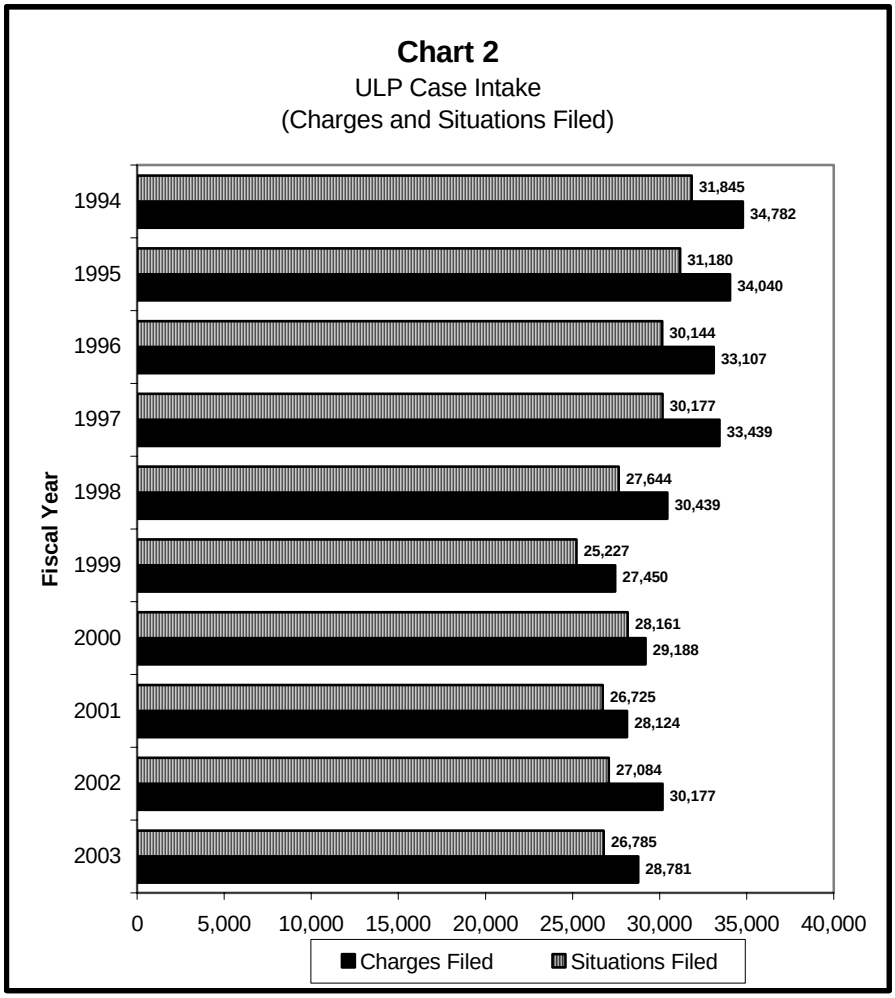
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 2003.

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

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

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

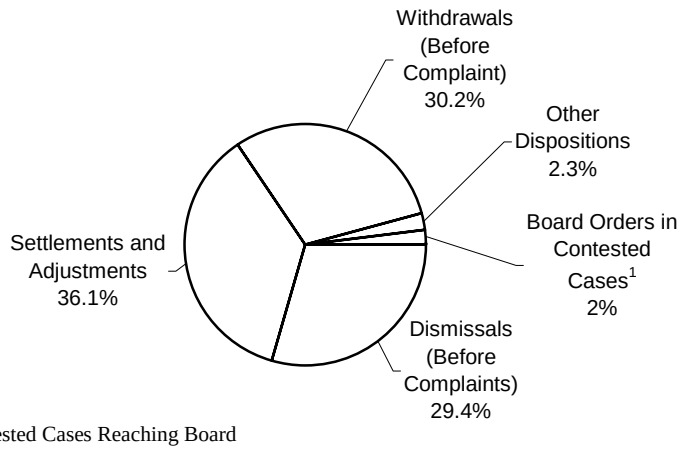
NLRB authority is divided by law and by delegation. The five-member Board primarily acts as a quasi-judicial body in deciding cases on formal records. The General Counsel, who, like each Member of the Board, is appointed by the President, is responsible for the issuance and prosecution of formal complaints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



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

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

Chart 3
Disposition Pattern for Unfair Labor Practice Cases
(Based on Cases Closed)
Fiscal Year 2003



[1] Contested Cases Reaching Board Members For Decisions

B. Operational Highlights

1. Unfair Labor Practices

Charges that business firms, labor organizations, or both have committed unfair labor practices are filed with the National Labor

Relations Board at its field offices nationwide by employees, unions, and employers. These cases provide a major segment of the NLRB workload.

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

In fiscal year 2003, 28,781 unfair labor practice charges were filed with the NLRB, a decrease of 5 percent from the 30,177 filed in fiscal year 2002. In situations in which related charges are counted as a single unit, there was a decrease of 1 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 21,765 cases, a decrease of 5 percent from the 23,036 of 2002. Charges against unions decreased about 2 percent to 6989 from 7107 in 2002.

There were 38 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 10,132 such charges in 50 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,081 charges, in about 50 percent of the total charges. (Table 2.)

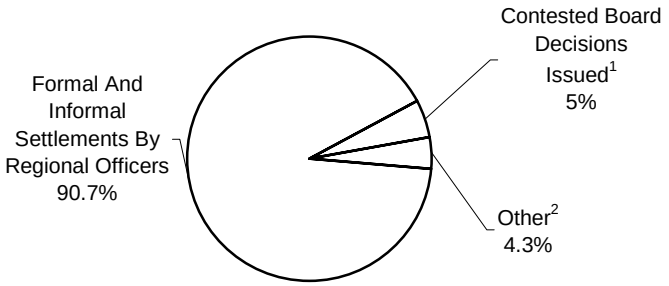
Of charges against unions, the majority (5771) alleged illegal restraint and coercion of employees, about 81 percent. There were 687 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of about 3 percent from the 712 of 2002.

There were 575 charges (about 8 percent) of illegal union discrimination against employees, an increase of about 5 percent from the 549 of 2002. There were 106 charges that unions picketed illegally for recognition or for organizational purposes, compared with 124 charges in 2002. (Table 2.)

In charges filed against employers, unions led with about 75 percent of the total. Unions filed 16,293 charges and individuals filed 5418.

Chart 3A

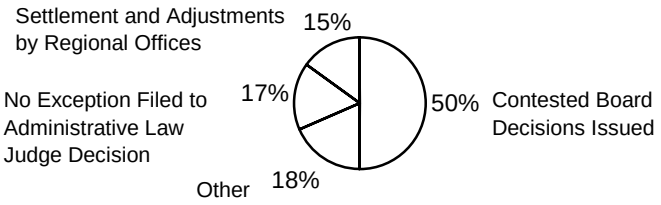
Disposition Pattern for Meritorious Unfair Labor Practices Cases
(Based on Cases Closed)
Fiscal Year 2003



[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
(Bases on Cases Closed) Fiscal Year 2003



[1] Following Administrative Law Judge Decision, Stipulated Record or Summary Judgment Ruling
[2] Dismissals, Withdrawals and Other Dispositions

Concerning charges against unions, 5511 were filed by individuals, or about 79 percent of the total of 6986. Employers filed 1361 and other unions filed the 114 remaining charges.

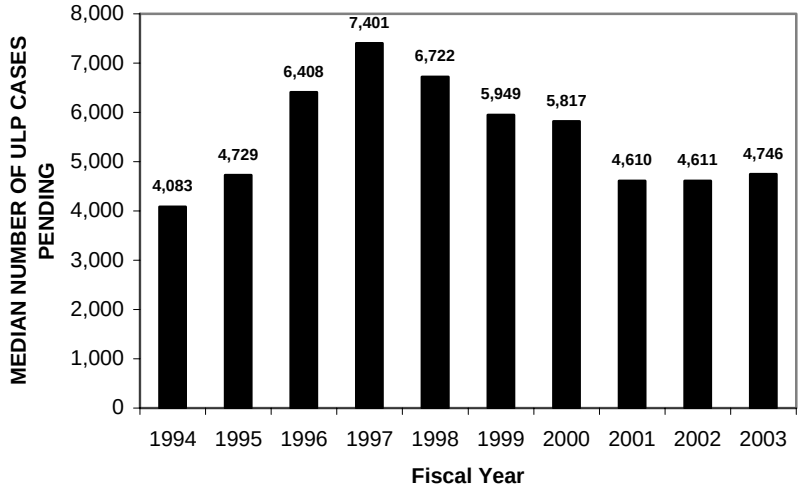
In fiscal year 2003, 30,618 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, about the same as the previous year. During the fiscal year, 36.1 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.2 percent were withdrawn before complaint, and 29.4 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 2003, 37.1 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 2003, precomplaint settlements and adjustments were achieved in 8597 cases, or 29.9 percent of the charges. In 2002, the percentage was 27.7. (Chart 5.)

Chart 4

Number of Unfair Labor Practice Cases
Pending Under Preliminary Investigation

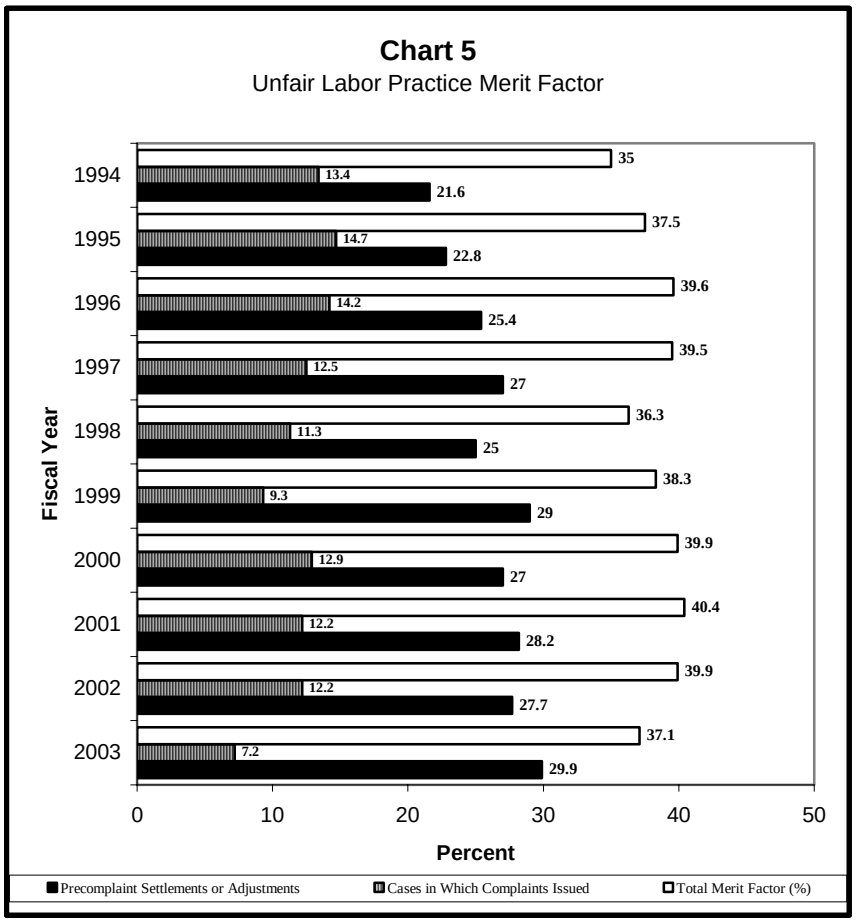


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2003, 2067 complaints were issued, compared with 2284 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 87.9 percent were against employers and 11.1 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 90 days. The 90 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 388 decisions in 840 cases during 2003. They conducted 354 initial hearings, and 30 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

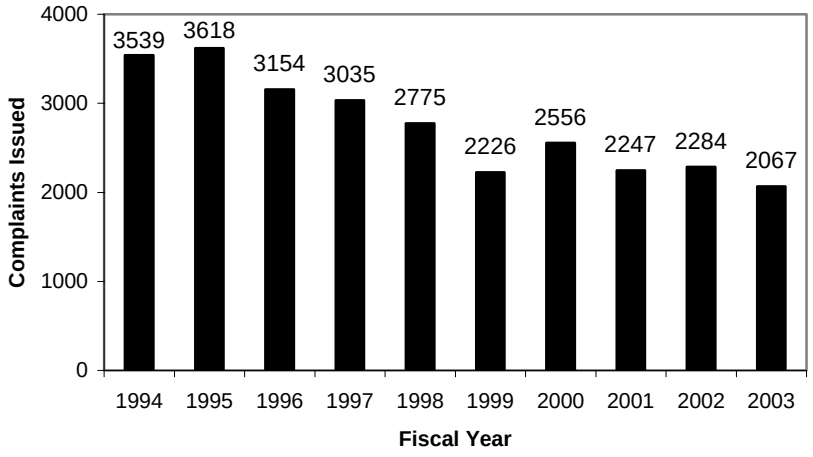


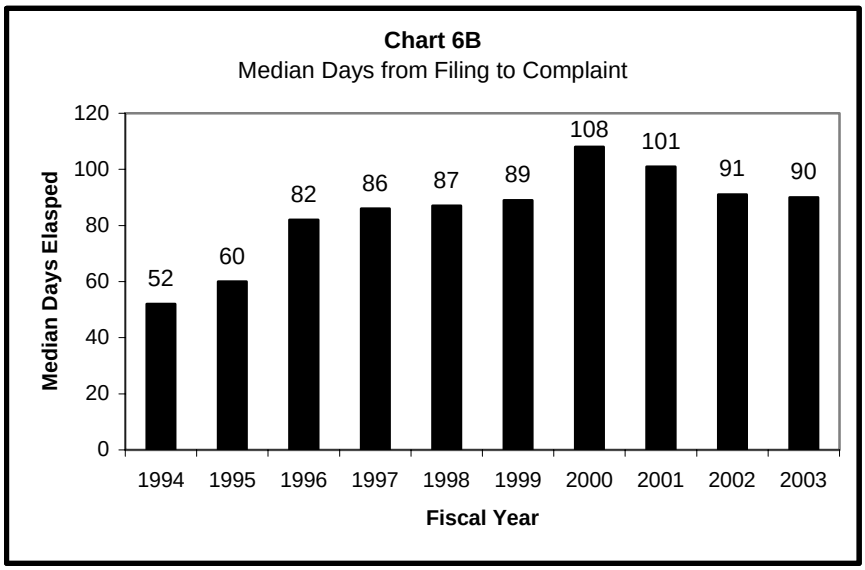
By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2003, the Board issued 384 decisions in unfair labor practice cases contested as to the law or the facts—336 initial decisions, 11 backpay decisions, 16 determinations in jurisdictional work dispute cases, and 21 decisions on supplemental matters. Of the 336 initial decision cases, 306 involved charges filed against employers and 30 had union respondent.

Chart 6A

Complaints Issued in Unfair Labor Practice Proceedings





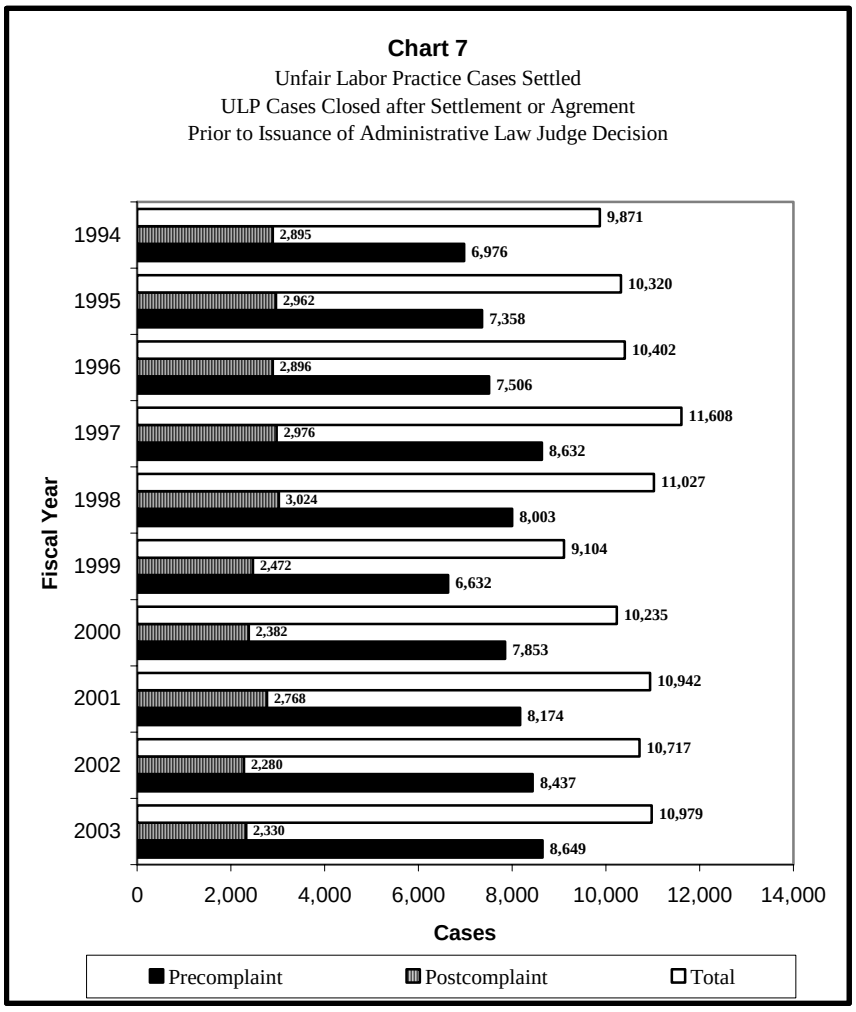
For the year, the NLRB awarded backpay of $91.4 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another $874.898. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 1838 employees were offered reinstatement, and about 77 percent accepted.

At the end of fiscal 2003, there were 20,936 unfair labor practice cases being processed at all stages by the NLRB, compared to 22,773 cases pending at the beginning of the year.

2. Representation Cases

The NLRB received 4934 representation and related case petitions in fiscal 2003, compared to 5696 such petitions a year earlier.

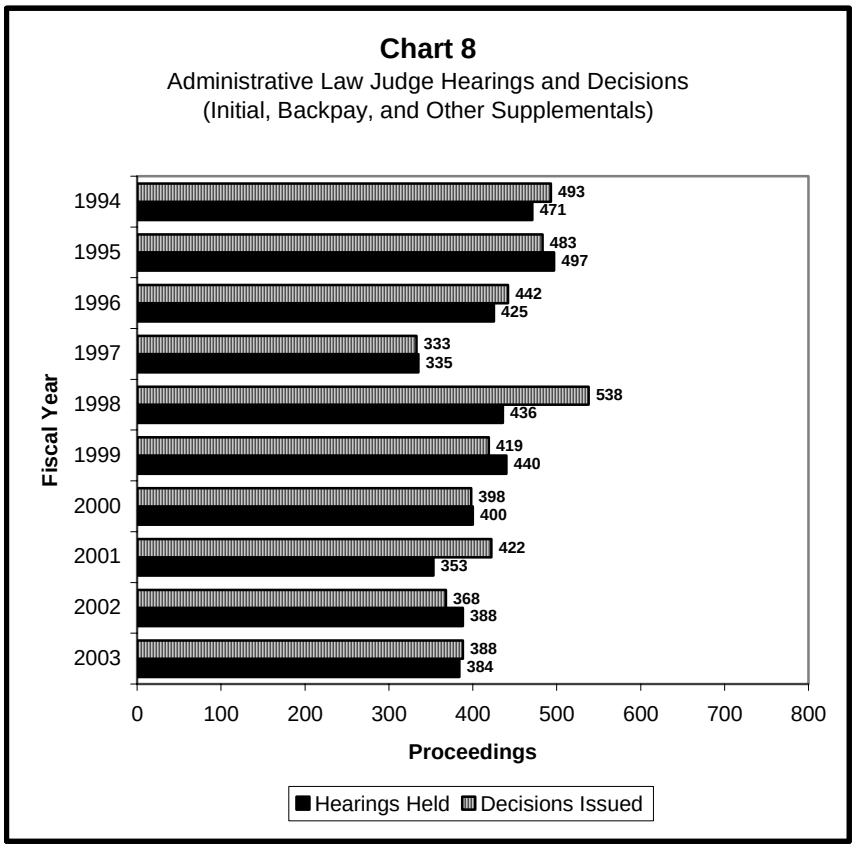
The 2003 total consisted of 3851 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 803 petitions to decertify existing bargaining agents; 107 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 162 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 11 amendments of certification petitions were filed.



During the year, 5148 representation and related cases were closed, compared to 5611 in fiscal 2002. Cases closed included 4003 collective-bargaining election petitions; 816 decertification election petitions; 103 requests for deauthorization polls; and 196 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 10.9 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 143 cases where the Board directed an election after transfer of a case from the Regional

Office. (Table 10.) There were 2 cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

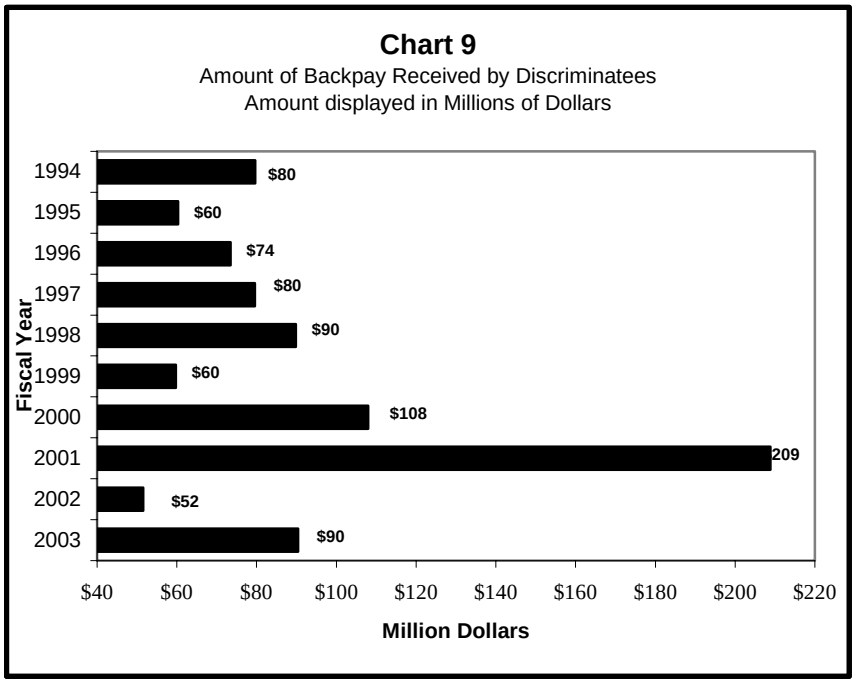


3. Elections

The NLRB conducted 2937 conclusive representation elections in cases closed in fiscal 2003, compared to the 3043 such elections a year earlier. Of 196,557 employees eligible to vote, 166,809 cast ballots, virtually 8 of every 10 eligible.

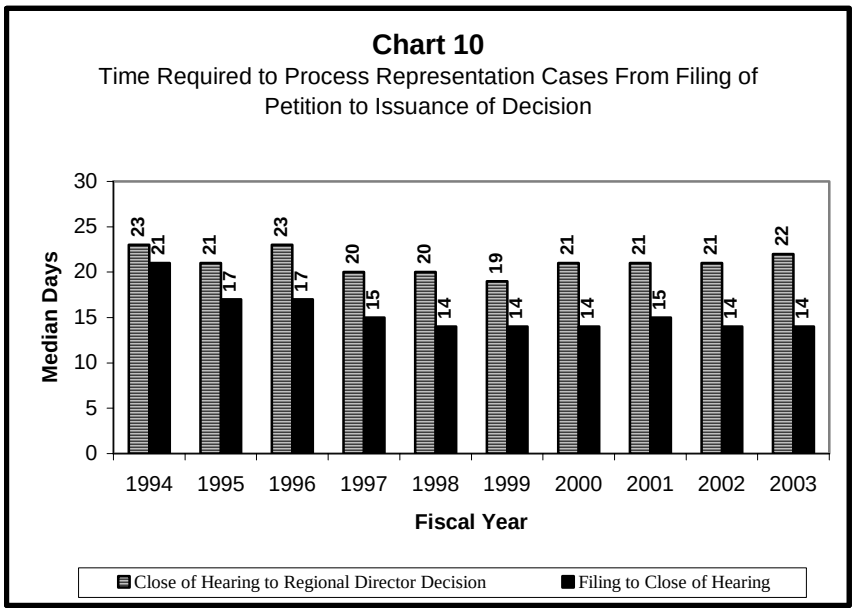
Unions won 1579 representation elections, or 53.8 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 87,499 workers. The employee vote over the course of the year was 85,737 for union representation and 81,072 against.

The representation elections were in two categories—the 2516 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 421 decertification elections determining whether incumbent unions would continue to represent employees.



There were 2797 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1458, or 52.1 percent. In these elections, 76,179 workers voted to have unions as their agents, while 79,694 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 74,649 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 140 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 121 elections, or 86.4 percent.

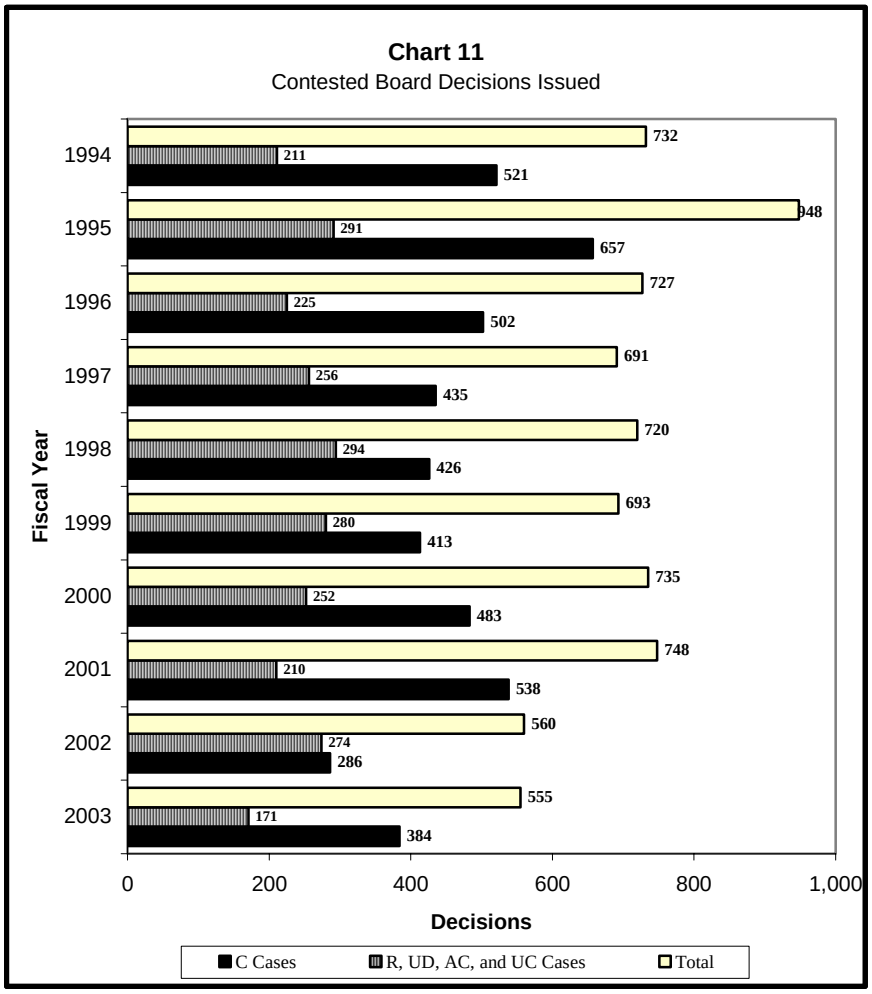


As in previous years, labor organization results brought continued representation by unions in 151 elections, or 35.9 percent, covering 11,410 employees. Unions lost representation rights for 17,308 employees in 270 elections, or 64.1 percent. Unions won in bargaining units averaging 76 employees, and lost in units averaging 64 employees. (Table 13.)

Besides the conclusive elections, there were 165 inconclusive representation elections during fiscal year 2003 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 20 referendums, or 38.5 percent, while they maintained the right in the other 32 polls which covered 2271 employees. (Table 12.)

For all types of elections in 2003, the average number of employees voting, per establishment, was 57, compared to 55 in 2002. About 72 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 865 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 926 decisions rendered during fiscal year 2002.

A breakdown of Board decisions follows:

Total Board decisions		**865**
Contested decisions		**555**
Unfair labor practice decisions	384	
Initial (includes those based on stipulated record)	336	
Supplemental	21	
Backpay	11	
Determinations in jurisdictional disputes	16	
Representation decisions	168	
After transfer by Regional Directors for initial decision	2	
After review of Regional Director decisions	32	
On objections and/or challenges	134	
Other decisions	3	
Clarification of bargaining unit	1	
Amendment to certification	0	
Union-deauthorization	2	
Noncontested decisions		**310**
Unfair labor practice	171	
Representation	136	
Other	3	

The majority (64 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 2003, about 5.0 percent of all meritorious charges and about 50.0 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.

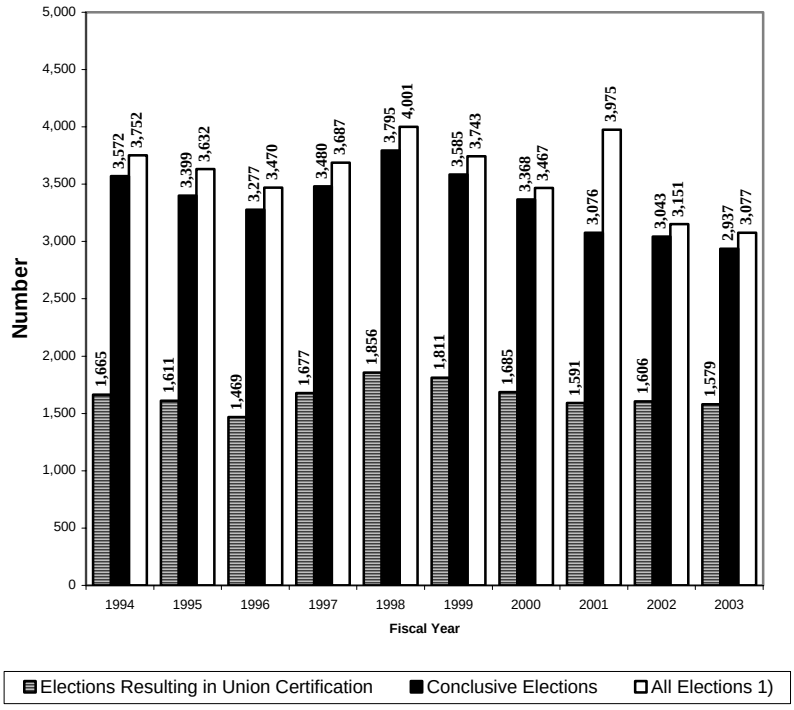
b. Regional Directors

NLRB Regional Directors issued 802 decisions in fiscal 200, compared to 939 in 2002. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

Administrative law judges issued 388 decisions and conducted 384 hearings. (Chart 8 and Table 3A.)

Chart 12
Representation Elections Conducted
(Based on Cases Closed During Year)



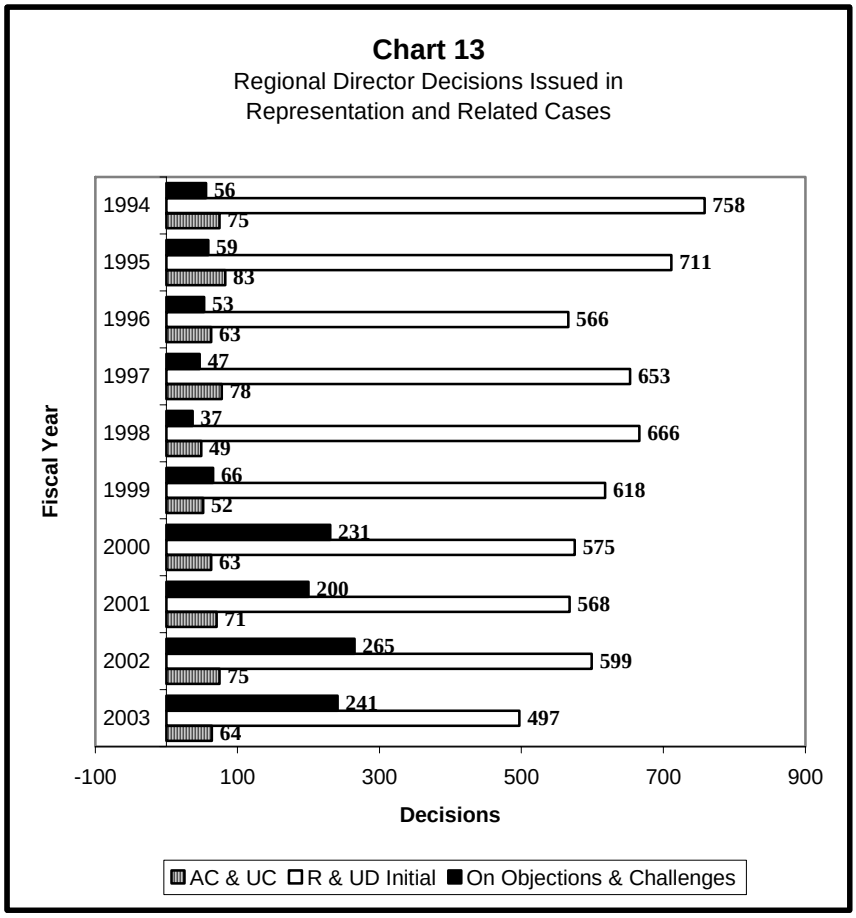
[1] All Elections Include Those Resulting In Certification, Those Resulting In A Rerun Or Runoff Election, And Those In Which A Petition Was Withdrawn Or Dismissed Before Certification

5. Court Litigation

a. Appellate Courts

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

In fiscal year 2003, 120 cases involving the NLRB were decided by the United States courts of appeals compared to 105 in fiscal year 2002. Of these, 85.8 percent were won by NLRB in whole or in part compared to 71.4 percent in fiscal year 2002; 7.5 percent were remanded entirely compared to 6.7 percent in fiscal year 2002; and 6.7 percent were entire losses compared to 21.9 percent in fiscal year 2002.



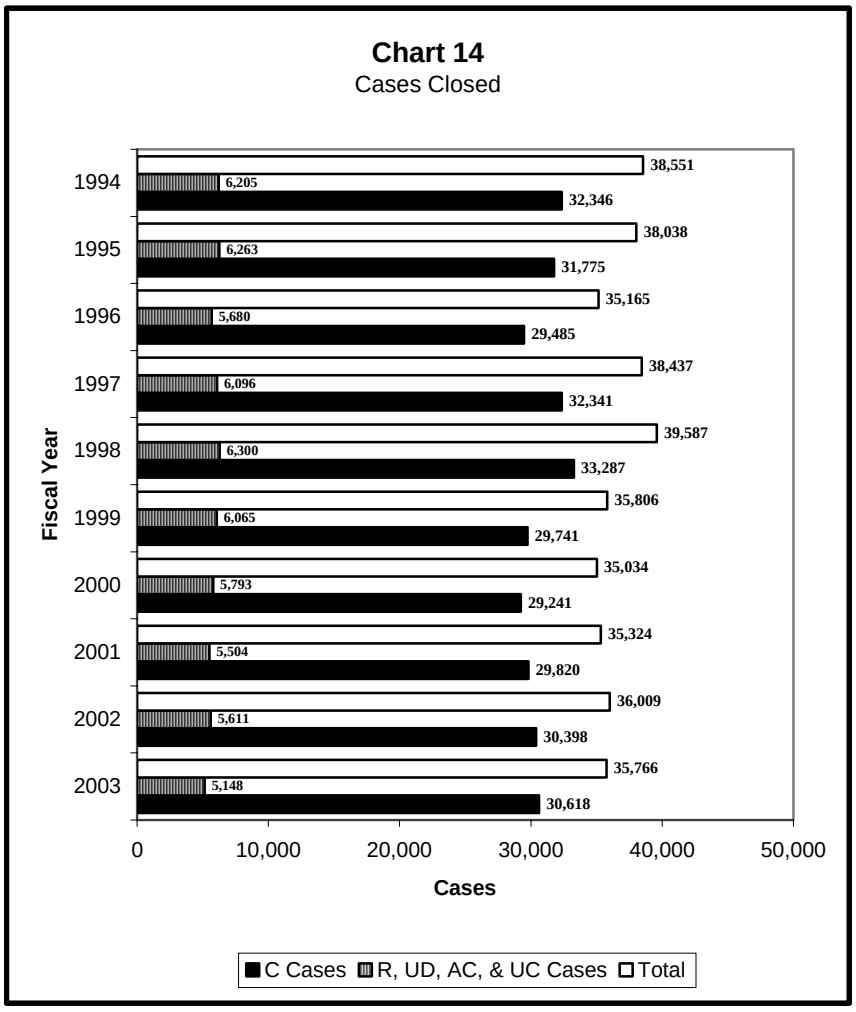
b. The Supreme Court

In fiscal 2003, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2003.

c. Contempt Actions

In fiscal 2003, 123 cases were referred to the Contempt Litigation and Compliance Branch for consideration of contempt or other compliance actions. Nine civil contempt or equivalent proceedings were instituted and nine ancillary proceedings were instituted in Federal District Courts or Bankruptcy Courts. Twelve civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year. The Branch also obtained three protective restraining orders and seven

other substantive orders in ancillary proceedings. There were 6 cases in which the court directed compliance without adjudication; and there were seven cases in which the courts either denied the Board's petition or the proceedings were discontinued at the CLCB's request.



d. Miscellaneous Litigation

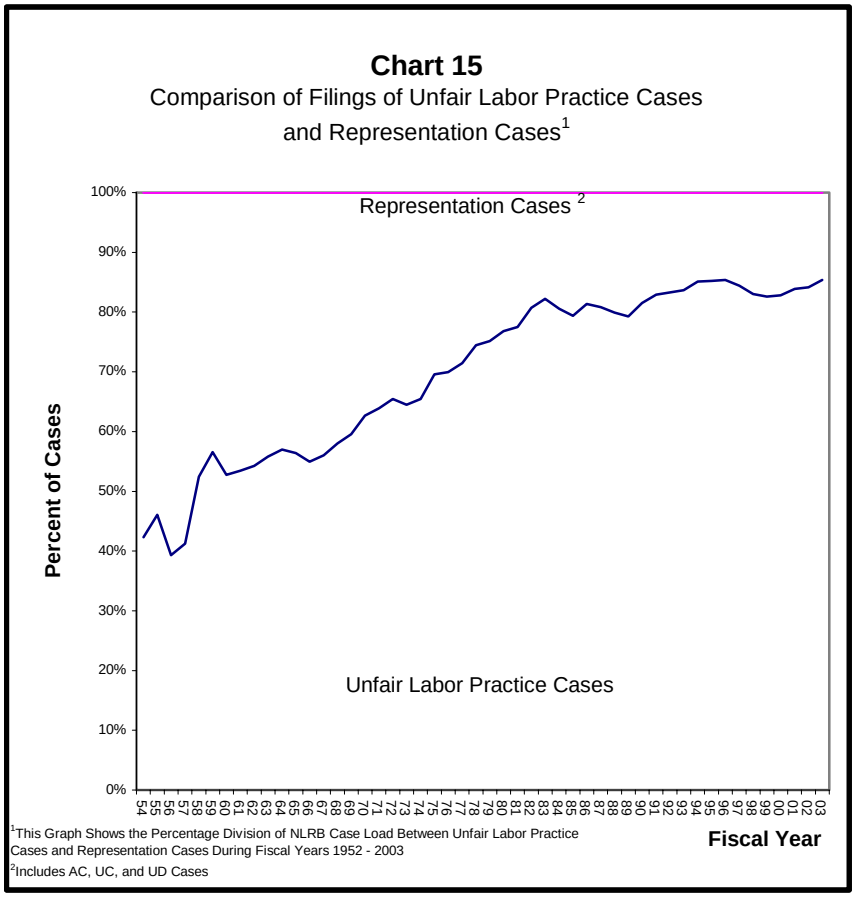
There were 9 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in all 9 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 20 petitions filed with the U.S. district courts, compared to 18 in fiscal year 2002. (Table 20.) Injunctions were granted in 12, or 67 percent, of the 18 cases litigated to final order.

NLRB injunction activity in district courts in 2003:

Granted	12
Denied	6
Withdrawn	4
Settled or placed on court's inactive lists	3
Awaiting action at end of fiscal year	3



C. Decisional Highlights

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

1. Ballot with Question Mark

In *Daimler-Chrysler Corporation*,[1] the Board majority counted an irregularly marked ballot which contained an "X" in the "Yes" square, but also included a handwritten question mark "?" immediately adjacent to the "Yes" square, as a valid vote in a representation election. The majority was guided by three principles in reaching the decision to count the ballot: (1) by casting a ballot, a voter evinces an intent to participate in the election process and to register a preference; (2) a voter's preference must be given effect whenever possible; and (3) speculation or inference regarding the meaning of atypical "X"s, stray marks or physical alterations should be avoided.

Applying these principles, while acknowledging that the voter's motive for including the question mark on the ballot was unclear, the majority stated:

> The voter marked the "YES" square with an "X" precisely in line with [the ballot] instructions. The voter did not erase or obliterate the "X". . . [n]or did the voter spoil the ballot and then ask . . . for a new ballot. Instead, the voter chose to cast this ballot as an expression of this preference, and did not leave the polling place without casting a ballot at all. While it is certainly possible that the question mark signifies that the voter had doubts regarding the wisdom of his or her choice . . . that possibility is not sufficient for the Board to trump what is otherwise a clear expression of voter intent.

[1] 338 NLRB No. 148 (Members Liebman, Walsh, and Acosta; Chairman Battista and Member Schaumber dissenting).

The majority concluded that, "[w]hatever reason the voter may have had for placing the question mark, the voter deliberately decided to express a preference by placing an "X" in the "YES" square—and, absent a clear negation of this preference, the Board should honor that expression."[2]

Chairman Battista and Member Schaumber dissented on the basis that the question mark on the ballot raises a reasonable doubt as to the voter's preference, and thus the ballot should be voided. According to the dissent, the test of whether a ballot is to be counted or not is whether the ballot, considered as a whole, *clearly* expresses the voter's intent.

2. Protected Activity

In *International Protective Services*,[3] the Board held that a strike by the employer's security guards was not protected by the Act. The employer provided security guard services for United States Government buildings in Anchorage, Alaska.

The Board articulated the test for determining whether the strike by the security guards lost the protection of the Act. It "is not whether the [u]nion gave the [r]espondent adequate notice of its strike, because such notice is not required under the NLRA. Nor is the test whether the [u]nion's strike resulted in actual injury. Rather, the test of whether the strike by the security guards here lost the protection of the NLRA is whether they failed to take reasonable precautions to protect the employer's operations from such imminent danger as foreseeably would result from their sudden cessation of work."[4]

Applying this test, the Board found that the union failed to take reasonable precautions to protect the employer's operations from foreseeable imminent danger, and indeed recklessly intended to place the Federal buildings and their occupants at risk. First, the union evinced "total disregard" concerning the respondent's attempt to plan for security considerations at the Federal buildings in the event of a strike, and thus showed that it "was not the least concerned about the Federal buildings or their occupants." Second, the union president failed to instruct the security guards not to walk out on strike if their posts were left unguarded, and angrily chastised guards who expressed concern that the security of the Federal buildings would be compromised. Finally, the credited testimony showed that the union president called the strike at "the most inopportune time" for the respondent when it would be difficult to assemble qualified replacement guards. The Board further

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[2] Id., slip op. at 2–3.
[3] 339 NLRB No. 75 (Members Schaumber and Walsh; Chairman Battista dissenting in part).
[4] 339 NLRB No. 75, slip op. at 2 (footnotes omitted).

observed that the respondent's security guards were entrusted with critical responsibilities for the protection of persons and property at the Alaska Federal buildings. In these circumstances, the Board held that the union's strike was not protected by the Act, and that the respondent thus lawfully terminated the employees who participated in the unprotected strike.

3. Access to Employer's Property

In *Postal Service*,[5] the Board majority found that the respondent did not violate Section 8(a)(1) of the Act by denying its subcontractor's employee, Will Hardy, access to the respondent's property to engage in union solicitation.

Hardy was an off-duty employee of Mail Contractors of America (MCOA), a company that provides mail hauling services for the respondent. In order to solicit other MCOA employees to sign union authorization cards, Hardy sought access to an area of the respondent's premises called the "contract drivers' lounge." During the course of their duties, MCOA drivers visit the contract drivers' lounge regularly to pick up and drop off paperwork and to wait while their paperwork is processed or their trucks loaded. However, MCOA has its own terminal about one-half mile away from the respondent's premises, where MCOA drivers begin and end their driving routes.

The majority found that Hardy's access to the respondent's contract drivers' lounge was governed by the Supreme Court's decisions in *Lechmere, Inc. v. NLRB*[6] and *NLRB v. Babcock & Wilcox Co.*,[7] in which the Court held that an employer's refusal to allow nonemployee organizers access to its property for union solicitation will not violate Section 8(a)(1), absent certain circumstances not present here. The majority recognized a "limited exception" to *Lechmere* and *Babcock & Wilcox*: employees of a property owner's subcontractor enjoy the same access rights as the owner's employees if they work "regularly and exclusively" on the owner's property. However, the majority found that while Hardy worked on the respondent's premises "regularly," he did not do so "exclusively." The majority emphasized that Hardy's employer, MCOA, has its own terminal, and that MCOA drivers begin and end their driving routes at that terminal. Therefore, the majority held that Hardy's access rights were governed by *Lechmere* and *Babcock & Wilcox*. Accordingly, the respondent did not violate Section 8(a)(1) by denying Hardy access to the contract drivers' lounge.

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[5] 339 NLRB No. 151 (Chairman Battista and Member Acosta; Member Walsh dissenting in part).
[6] 502 U.S. 527, 533–534 (1992).
[7] 351 U.S. 105, 112–113 (1956).

Member Walsh, dissenting, found that Hardy should not be treated as a nonemployee under *Lechmere* and *Babcock & Wilcox*. In response to the majority's finding that Hardy did not work "exclusively" on the respondent's property, Member Walsh noted that a truckdriver, by definition, spends a substantial amount of worktime on the road, and thus does not work "exclusively" on the physical premises of any employer. Member Walsh emphasized that Hardy's employer, MCOA, provides mail hauling services exclusively for the respondent, and that Hardy's employment required him to be on the respondent's premises and in the contract drivers' lounge on a regular basis. Thus, in Member Walsh's view, Hardy fit within the rationale of the line of decisions holding that a subcontractor's employees who work "regularly and exclusively" on the premises of a property owner enjoy the same access rights as the owner's employees.

4. *Weingarten* Rights

In *Electrical Workers Local 236*,[8] the Board held that employees, when invoking their right to coworker representation in predisciplinary investigations under *Epilepsy Foundation of Northeast Ohio*,[9] must request assistance from actual "coworkers," not from another statutory employer's employees. Here, Frederick Nirsberger, an employee of respondent Local 236, demanded to be represented during a predisciplinary interview by Jerry Comer, an employee of the International Union, not of Local 236. When the respondent declined that request, Nirsberger refused to continue with the disciplinary investigation, and was terminated shortly thereafter.

The Board concluded that Nirsberger's request for Comer's representation was unprotected. The Board explained that because Nirsberger had no coworker relationship with Comer, his request for Comer's representation was merely one for private assistance, not for mutual aid and protection under Section 7 of the Act. Thus, unlike in a traditional *Weingarten* or *Epilepsy Foundation* request, the respondent's consent was not compelled by Section 7, and its termination of Nirsberger was lawful.

Notably, the Board recognized that the respondent would have violated the Act if Nirsberger had been terminated merely for requesting representation. The Board concluded, however, that the record established that Nirsberger was terminated not merely for requesting representation, but for insisting on the presence of Comer as his chosen

[8] 339 NLRB No. 156 (Chairman Battista and Members Walsh and Acosta).
[9] 331 NLRB 676 (2000), enfd. in relevant part 268 F.3d 1095 (D.C. Cir. 2001).

representative, to the point of refusing to further participate in the meeting.

5. Successor Employer's Withdrawal of Recognition

In *Torch Operating Co.*,[10] the Board found that union steward Timothy Munoz' statement to a company official that there was not "a whole lot of support for the [u]nion" among employees, coupled with statements of 15 other employees opposing union representation, constituted sufficient objective evidence to support the respondent's reasonable good-faith uncertainty of the union's majority status in the 36-employee bargaining unit. Accordingly, the Board found that the respondent, a successor employer, did not violate Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the union, which had represented the predecessor employer's employees.

The Board reconsidered its earlier decision in this case[11] following the Supreme Court's issuance of *Allentown Mack Sales & Service v. NLRB.*[12] In that case, the Court held that the Board's "good-faith doubt" standard must be interpreted to permit an employer to withdraw union recognition when the employer has "reasonable uncertainty" of the union's majority status. The Court also held, contrary to the Board, that evidence supporting good-faith doubt or uncertainty could include employees' unverified statements about other employees' antiunion sentiments.

On reconsideration of its earlier decision in light of *Allentown Mack*, supra, the Board gave credence to steward Munoz' statement that there was not "a whole lot of support for the [u]nion" among employees. The Board reasoned that, as a steward, Munoz likely had contact with employees concerning union matters and would have reason to know about employee sentiment concerning the union. Additionally, the Board found that it was unlikely that a steward would tell a company official that his union had little support if the steward did not believe it to be true. Accordingly, the Board found that steward Munoz' statement, together with statements of 15 other employees opposing continued union representation, were sufficient to support the respondent's reasonable good-faith uncertainty regarding majority support for the union.

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[10] 338 NLRB No. 143 (Members Schaumber, Walsh, and Acosta).
[11] 322 NLRB 939 (1997).
[12] 522 U.S. 359 (1998).

6. Failure to Provide 8(g) Notices

In *Alexandria Clinic, P.A.*,[13] the Board majority reversed precedent and held that when a union provides 10-day advance notice of the date and time of its intent to strike pursuant to Section 8(g), it may not, thereafter, unilaterally extend the commencement time of its strike; rather, in accord with the last sentence of Section 8(g), the extension must be "by the written agreement of both parties."

Here, the union, in accordance with Section 8(g), notified the respondent in a timely fashion that it would strike at 8 a.m. on September 10, 1999. However, on September 7, the union decided to postpone the start time of the strike until noon on September 10. The respondent was not notified on this postponement. On the day of the strike, the respondent asked the union for an explanation for the 4-hour delay of the strike's start. The union's response was deemed legally inadequate by the respondent and the strikers were terminated for violating the notice provisions of Section 8(g).

The Board majority found that the language of Section 8(g) does not permit unilateral extensions of strike notices. In agreement with the D.C. Circuit's decision in *Beverly Health & Rehabilitation Services v. NLRB*,[14] the majority found that "Section 8(g)'s third sentence clearly and unambiguously mandates that a written agreement of both parties is the 'sole statutory exception' to the requirement that a strike commence at the time and date set forth in the 10-day notice."[15] In light of this clear statutory language, the majority found that there was no warrant to consider 8(g)'s legislative history, as the Board had done in *Greater New Orleans*,[16] to conclude, contrary to 8(g)'s explicit language, that strike notices could be unilaterally extended. Accordingly, the majority overruled *Greater New Orleans*, found that the union's unilateral 4-hour extension of their strike's start time violated Section 8(g), and concluded that the respondent did not violate Section 8(a)(3) and (1) by discharging the strikers.

Member Acosta concurred. Members Liebman and Walsh, dissenting, found that "the relevant statutory language is ambiguous with

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[13] 339 NLRB No. 162 (Chairman Battista and Member Schaumber; Member Acosta concurring; Members Liebman and Walsh dissenting).
[14] 317 F.3d 316 (2003).
[15] 339 NLRB No. 162, slip op. at 4.
[16] 240 NLRB 432 (1979) (Board held that Section 8(g) was not to be "rigidly applied" in accordance with its statutory language, which provides for extensions of strike commencement times by "written agreement of both parties;" rather, Board determined from a review of 8(g)'s legislative history that Congress approved a union's unilateral extension of its 10-day notice of a strike's commencement, so long as the delay did not exceed 72 hours and the union furnished 12 hours supplemental notice of the strike's new start time).

respect to the situation presented here,"[17] and that reliance on 8(g)'s legislative history, as the Board did in *Greater New Orleans*, was necessary. In their view, "Congress envisioned a rule of reason: Did the union strike within a reasonable time after the time specified in its notice to the health care institution? If so, then the union was not required to secure the employer's extension of the original notice or to provide a new notice."[18] Applying a rule of reason, the dissent found that the noontime strike started within a reasonable time of the 8 a.m. time specified in the union's strike notice, that the union did not violate Section 8(g), and that accordingly the Respondent violated Section 8(a)(3) and (1) by discharging the strikers.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2003, are as follows:

Personnel compensation	$149,386,535
Personnel benefits	32,102,804
Benefits for former personnel	18,500
Travel and transportation of persons	2,614,107
Transportation of things	255,612
Rent, communications, and utilities	28,600,456
Printing and reproduction	450,396
Other services	18,265,920
Supplies and materials	1,662,539
Equipment	3,711,084
Insurance claims and indemnities	163,303
Total obligations	$237,231,256

[17] 339 NLRB No. 162, slip op. at 8.
[18] 339 NLRB No. 162, slip op. at 10.

II
Board Procedure

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

A. Citation of Supplemental Authorities

In *Reliant Energy*,[1] the Board decided to adopt a new procedure in pending unfair labor practice and representation cases for bringing to the Board's attention "pertinent and significant authorities that come to a party's attention after the party's brief has been filed." Prior to its decision, the Board generally denied requests to file supplemental briefs based on intervening court decisions but took notice of the cases. In *Reliant*, the Board decided to adopt a modification of Rule 28(j) of the Federal Rules of Appellate Procedure. Specifically, the Board now allows a party that wishes to bring a pertinent or significant authority to the Board's attention to file a statement of no more than 350 words explaining the reasons the Board should note the authority, giving the citation of the authority, and stating where it should be inserted in the party's previously filed brief. The statement must be served on all parties who may file a similarly limited response within 14 days in unfair labor practice cases and within 7 days in representation cases. Finally, the Board noted that, notwithstanding this new procedure, it retained the discretion in appropriate circumstances to allow supplemental briefs.

B. Witness Statements

In *Wal-Mart Stores*,[2] the Board decided that an administrative law judge did not have the discretion to allow the respondent's representative to retain witness statements beyond the close of the hearing. Wal-Mart's representative asked for permission to keep them to use in any appeal following the Board decision. Although acknowledging that the disclosure of witness statements under the *Jencks* Rule (Section

[1] 339 NLRB No. 13 (Chairman Battista and Members Liebman and Schaumber).
[2] 339 NLRB No. 10 (Chairman Battista and Members Liebman and Walsh).

102.118(b) of the Board's Rules and Regulations) is for the purpose of cross-examination, the judge did not read the rule to limit disclosure to that purpose. He found that on balance the respondent's need for continued access to preserve and prosecute its case outweighed the conjecture that the statements could be used for untoward purposes.

The Board agreed with the General Counsel and reversed the judge. It held that Section 102.118 prohibited the release of witness statements and other contents of the General Counsel's files without permission. The release of witness statements for cross-examination pursuant to *Jencks* is an exception, but after that limited purpose has been served, the exception no longer applies and the prohibition of the Rule is restored. Section 102.118(b) limits disclosure for the purpose of cross-examination, and no other purpose is stated or implied. If the Board had intended for additional uses, the Board said, it would have stated those uses in the Rule or provided for them in subsequent decisions.

C. Finding a Violation Absent a Complaint Allegation

In *Champion International Corp.*,[3] the Board unanimously found that the respondent violated Section 8(a)(5) and (1) of the Act by failing to accord the unions an opportunity to engage in meaningful effects bargaining in light of its unilateral implementation of preconditions for receipt of severance pay. A Board majority held, however, that a separate finding of unlawful direct dealing based on the same facts was not appropriate in the absence of that specific allegation in the consolidated complaint.

The Board majority, Chairman Battista and Member Schaumber, explained that a separate violation based on the unlawful direct dealing theory was neither alleged in the consolidated complaint, nor did the General Counsel subsequently amend the complaint to include this allegation. The majority further observed that there was no full and fair litigation of the direct dealing theory, because the respondent was not made aware that the facts relevant to the unilateral change allegation were intended to prove a separate direct dealing violation. "It is axiomatic that a respondent cannot fully and fairly litigate a matter unless it knows what the accusation is."[4] The majority accordingly concluded that the respondent was not placed on notice of the direct dealing violation, and did not find that violation.

Member Walsh, dissenting, stated that he would find that the respondent violated Section 8(a)(5) and (1) of the Act by dealing directly with bargaining unit employees, even though the complaint did not

[3] 339 NLRB No. 80 (Chairman Battista and Member Schaumber; Member Walsh dissenting in part).
[4] 339 NLRB No. 80, slip op. at 2.

separately allege that violation. Member Walsh observed that the direct dealing conduct was "closely connected" to the subject matter of the complaint (the unilateral change allegation). Thus, the respondent had clear notice of the "acts forming the basis" of the direct dealing unfair labor practice, and a fair and full opportunity to litigate the matter and present a defense. Member Walsh noted that the respondent did not state how it would have presented its case differently had the complaint contained a separate direct dealing allegation. Member Walsh concluded that a finding of unlawful direct dealing does not violate the respondent's right to due process where it was at all times on notice of the acts which formed the basis of the additional unfair labor practice, and the matter was fully litigated.

D. Setting Aside of Settlement Agreement

In *Nations Rent, Inc.*,[5] the Board majority reversed the administrative law judge's finding that the respondent complied with a settlement agreement approved by the Regional Director. The majority found that the respondent's continued maintenance of a no-solicitation/no-distribution rule, and its failure to send a written expunction letter to an employee were violations of the settlement agreement that warranted setting it aside for noncompliance and reinstating the complaint. The case was remanded to the judge for determination on the merits of the presettlement unfair labor practice allegations.

On November 14, 2001, the Regional Director approved an informal settlement agreement in which the respondent agreed, inter alia, that it would not engage in the following conduct: promulgate, maintain, or enforce its written no-solicitation/no-distribution rule in the employee handbook; issue disciplinary action reports because employees engaged in union activities; and discharge or discriminate against employees because of their union activities. The respondent also agreed to offer employee Jerry Bickel reinstatement to his former job and make him whole by payment to him in the amount of $2000. The respondent further agreed to rescind the disciplinary action report issued to Bickel; expunge from its files any references to Bickel's disciplinary action report and discharges; and notify Bickel in writing that the documents were removed from its files and would not be used against him in any way.

In December 2001, Bickel returned to work following the settlement agreement. At that time, he and another new employee received employee handbooks that still contained the no-solicitation/no-distribution rule that was addressed in the settlement agreement. The

[5] 339 NLRB No. 101 (Chairman Battista and Member Walsh; Member Schaumber dissenting).

respondent also removed from its files any references to Bickel's disciplinary action report and the discharges. Although the respondent orally informed Bickel of its actions, the respondent failed to provide Bickel with the written notice required by the settlement agreement.

Contrary to the judge's finding, the Board majority held that the respondent's posting of the settlement agreement notice was not sufficient to clearly convey to the employees that the no-solicitation/no-distribution rule had been rescinded. Rather, the majority found that the distribution of the unrevised handbook and the notice posting created an ambiguity as to whether the rule was still in effect. In the majority's view, as long as the rule still appeared in the handbook being distributed to the employees, they could reasonably believe that the rule was in full force and effect. The majority concluded that since the settlement agreement implicitly required that the respondent delete the rule from its handbook, its failure to do so constituted a continued maintenance of the rule in violation of the agreement.

In contrast to the judge, the Board majority also found that the respondent breached the settlement agreement by failing to provide written notification to Bickel that it had expunged from its file any reference to his discipline. The majority noted that "[i]n cases that involve unlawful discipline and/or discharge, the Board requires an employer to remove any references to its discriminatory action from its files, and notify the employee in writing that this has been done and that the expunged matter will not be used against the employee in any way."[6] The majority also held that "a written expungement letter provides an acceptable and uniform method of proving that the charged party has taken the appropriate affirmative remedial action as set forth in a settlement agreement or order," and that "[it] serves [a] substantial remedial purpose[ ] [that] is not to be whittled down or taken lightly."

The majority further determined that the written expungement notice is not an onerous or ambiguous requirement, and that parties who agree to provide the written notice or are ordered to do so shall provide it. The majority concluded that since oral notification is not an adequate substitute for the written notification requirement, the respondent's conduct constituted a breach of the settlement agreement that warranted that it be set aside for noncompliance.

Dissenting, Member Schaumber stated that in light of the significant remedial measures the respondent took to comply with the settlement agreement, together with the absence of any renewed unfair labor practice, he would not set it aside. Member Schaumber found that while

[6] See *Fort Wayne Foundry Corp.*, 296 NLRB 127 (1989); *Sterling Sugars*, 261 NLRB 472 (1982).

it would have been preferable for the respondent to have crossed out the offending no-solicitation/no-distribution rule in its handbook, since the handbook was distributed "almost contemporaneously" with the respondent's posting of the Board's settlement notice stating that the rule would no longer be given effect, he would not set aside the settlement agreement for this reason. He would, however, set aside the agreement if the respondent would continue to use the unaltered handbook or without an attached notice expressly deleting the contested no-solicitation/no-distribution rule.

III

Representation Proceedings

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

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

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

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

A. Unit Issues

1. Employees Jointly Employed by Supplier and User Employers

In *Laneco Construction Systems*,[1] the Board affirmed the hearing officer's finding that the parties' Stipulated Election Agreement, which

[1] 339 NLRB No. 132 (Members Liebman, Schaumber, and Acosta).

included "All Journeyman and Helper Carpenters employed by the Employer," did not cover jointly-employed, *Sturgis*-type[2] carpenters and helpers supplied to the employer by a supplier-employer.

The employer was engaged in the construction industry and employed a variety of skilled craftsmen, including carpenters and helpers. In October 2000, the petitioner, Carpenters Local 1098, began an organizing drive among the carpenters and helpers. The parties entered into a Stipulated Election Agreement (Stipulation), which included "All Journeyman and Helper Carpenters employed by the Employer." The Stipulation expressly excluded certain categories of employees, such as "professional employees, guards, and supervisors," but there was no mention of jointly-employed employees.

Following execution of the Stipulation, it became apparent that some of the employer's carpenters and helpers were actually employed by an outside supplier of labor, Lang Drywall Company (Lang), though the evidence established that the Lang-supplied carpenters and helpers also had an employment relationship with the employer. The petitioner challenged the ballots cast by the Lang-supplied workers, arguing that the phrase "employed by the Employer" plainly limited the Stipulation to employees solely-employed by the employer.

The employer argued that the same phrase, combined with the absence of an explicit exclusion of jointly-employed workers, unambiguously extended the Stipulation to cover any carpenter or helper in its employ, notwithstanding that he might have another employer as well. In support, the employer cited the Board's recent decision in *Sturgis*, which made it possible for employees who are jointly employed by a user employer (here the employer) and a supplier employer (here Lang) to be included in a unit with the user employer's solely-employed workers without the employers' consent.

The Board decided the dispute by applying the three-prong analysis for analyzing stipulations it had recently adopted in *Caesar's Tahoe*.[3] Under the analysis, the Board first determines whether the stipulation is ambiguous. If the objective intent of the parties is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement. If, however, the stipulation is ambiguous, the Board seeks to determine the parties' intent through normal methods of contract interpretation, including examination of extrinsic evidence. If the parties' intent still cannot be discerned, then the Board determines the bargaining unit by employing its normal community-of-interest test.

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[2] *M.B. Sturgis, Inc*., 331 NLRB 1298 (2000).
[3] 337 NLRB 1096 (2002).

In *Laneco*, the Board found that the Stipulation was ambiguous as to the inclusion or exclusion of the Lang-supplied carpenters and helpers. The Board acknowledged that *Sturgis* made it possible for the carpenters and helpers to be included in a unit with the employer's solely-employed workers, but the Board found that the parties failed to make clear their intentions because they neither expressly included nor expressly excluded the Lang-supplied workers. Also, even though the Stipulation covered "All" carpenters and helpers employed by the employer, the Board found that this term did not clearly and unambiguously speak to the inclusion of the Lang-supplied carpenters and helpers. The Board observed that the parties entered the Stipulation less than 2 months after *Sturgis* issued and that, prior to the change in the law occasioned by *Sturgis*, the Board would not have read the word "All" as extending beyond the employer's solely-employed carpenters and helpers without the express agreement of the supplier-employer.[4] These circumstances made it unlikely that the parties intended the word "All" to cover jointly-employed workers.

Thus, having found the Stipulation ambiguous, the Board proceeded with the *Caesars Tahoe* analysis. Ultimately, the Board reached the third prong of the analysis and, applying its traditional community-of-interest principles, held that a unit limited to the employer's solely-employed carpenters and helpers was at least *an* appropriate unit. Additionally, the Board noted that the two groups of employees were subject to different hiring and firing criteria, and different wage rates and benefits, were on different payrolls, and had different payment dates. Accordingly, the Board sustained the petitioner's challenges to the ballots cast by the Lang-supplied carpenters and helpers.

2. Single-Facility Presumption

In *Trane*,[5] the Board held that a satellite facility must be included in a unit covering its parent facility because the employer successfully rebutted the single facility presumption through strong evidence of centralized control, common supervision, lack of local autonomy, and identical skills and terms and conditions of employment.

The union petitioned for a unit of the employer's HVAC technicians working out of its Fenton, Missouri facility, excluding HVAC technicians working from the employer's Cape Girardeau facility. The Cape Girardeau facility operated as a satellite office of the Fenton facility to better service customers in southern Missouri. The Cape Girardeau facility had no separate supervisors or leadmen responsible for

[4] See *Lee Hospital*, 300 NLRB 947 (1990).
[5] 339 NLRB No. 106 (Chairman Battista and Members Walsh and Acosta).

its operations, shared administrative functions such as payroll and human resources with Fenton, shared a common dispatcher with Fenton, employed technicians with similar skills under similar working conditions as Fenton, and occasionally interchanged employees with Fenton. In finding the single-facility presumption unrebutted, the Regional Director found these similarities outweighed by the 108-mile distance between Fenton and Cape Girardeau and the lack of specific evidence of employee interchange.

The Board disagreed. In so doing, the Board noted that the "complete absence of any separate supervision or other oversight" necessarily leads to the conclusion that the excluded-satellite facility did not retain a measure of local autonomy such that it could be properly excluded from a unit covering the parent facility. The Board also noted that the 108-mile distance between the facilities was mitigated by the fact that the employees are often dispatched directly from their homes and only occasionally are required to go to the office.

B. Irregularly Marked Ballots

1. Ballot with Question Mark

In *Daimler-Chrysler Corp.*,[6] the Board majority counted an irregularly marked ballot which contained an "X" in the "Yes" square, but also included a handwritten question mark ("?") immediately adjacent to the "Yes" square, as a valid vote in a representation election. Members Liebman, Walsh, and Acosta were guided by three principles in reaching the decision to count the ballot: (1) By casting a ballot, a voter evinces an intent to participate in the election process and to register a preference. *Horton Automatics;* (2) A voter's preference must be given effect whenever possible. *Hydro Conduit Cor.;*[7] and (3) Speculation or inference regarding the meaning of atypical "X"s, stray marks, or physical alterations should be avoided. *Kaufman's Bakery*.[8]

Applying the foregoing principles, while acknowledging that the voter's motive for including the question mark on the ballot is unclear, the Board stated:

> What we know, without speculation, is this: The printed instructions on the ballot state: "Mark an 'X'in the square of your choice." The voter marked the "YES" square with an "X" precisely in line with these instructions. The voter did not erase or obliterate the "X" . . . [n]or did the voter spoil the ballot and then ask . . . for

[6] 338 NLRB No. 148 (Members Liebman, Walsh, and Acosta; Chairman Battista and Member Schaumber dissenting).
[7] 260 NLRB 1352 (1982).
[8] 264 NLRB 225 (1982).

> a new ballot. Instead, the voter chose to cast this ballot as an expression of this preference, and did not leave the polling place without casting a ballot at all. While it is certainly possible that the question mark signifies that the voter had doubts regarding the wisdom of his or her choice . . . that possibility is not sufficient for the Board to trump what is otherwise a clear expression of voter intent.

Consistent with the three enunciated principles, the majority noted that ballots on which neither the "YES" or "NO" box have been marked will be voided, because the Board cannot determine the clear intent of the voter without speculation. Likewise, when a voter marks both boxes and neither an erasure or attempted obliteration of the second marking, nor other marking, on the ballot makes the voter's choice clear, the ballot will be void.

The majority concluded that, here, "[w]hatever reason the voter may have had for placing the question mark, the voter deliberately decided to express a preference by placing an "X" in the "YES" square—and, absent a clear negation of this preference, the Board should honor that expression."[9]

Chairman Battista and Member Schaumber dissented on the basis that the question mark on the ballot raises a reasonable doubt as to the voter's preference, and thus the ballot should be voided.[10] According to the dissent, the test of whether a ballot is to be counted or not is whether the ballot, considered as a whole, *clearly* expresses the voter's intent. Accordingly, if a ballot clearly expresses voter intent it should be counted; if there is doubt as to voter intent, the ballot should not be counted.[11] In the dissent's view, the voter's use of the question mark, the very symbol in the language for uncertainty, casts reasonable doubt as to the voter's intent.

2. Vote Cast on Sample Ballot

In *Aesthetic Designs, LLC*,[12] the Board majority adopted a hearing officer's recommendation that a "yes" vote cast on the sample ballot provided with the official election kit, rather than on an official ballot, should be counted.

In a mail ballot election, one of the voters cast a "YES" vote for the union on a sample ballot. The hearing officer recommended that the

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[9] Id., slip op. at 2–3.
[10] Id., slip op. at 3.
[11] Id.
[12] 339 NLRB No. 55 (Members Liebman and Acosta; Member Schaumber dissenting).

sample ballot be counted. The employer filed exceptions to the hearing officer's report.

Citing the established principles guiding the Board's treatment of irregularly marked ballots, recently reaffirmed in *Daimler-Chrysler*,[13] the majority counted the vote cast on the sample ballot because "[c]ounting the ballot will give effect to the voter's exercise of his or her right to choose whether to be represented by a union. The voter clearly evinced an intention to participate in the election, by casting a vote and registering a preference. Further, because the sample ballot clearly shows the voter's intent and preference, the Board need not engage in any speculation regarding the voter's intent. Giving effect to that intent avoids unnecessary disenfranchisement."[14] [Footnote omitted.]

The majority rejected the argument, made by the employer and the dissent, that the sample-ballot vote should not be counted because the Board has refused to count votes cast on something other than an official ballot in the past. "Here, unlike *Knapp-Sherrill* and *McCormick Lumber*,[15] the vote at issue was submitted on an official Board form—a sample ballot—not a blank sheet of paper. Because the sample ballot is a replica of the official ballot, the intent of the voter can be readily discerned, without speculation, from the voter's markings on the sample ballot. The same arguably cannot be said of a vote submitted on a blank piece of paper."[16] [Citations added.]

In addition, the majority rejected the dissent's contention that the sample ballot should not be counted because it could be used to identify the voter. "We think that, in the absence of evidence indicating that a sample ballot was used to identify a voter, it is inappropriate to void the ballot and thereby disenfranchise the voter. Whatever prophylactic benefit may result would be greatly outweighed by the harm done to the election process by frustrating the voter's clearly expressed preference."[17]

Further, the Board's majority rejected the dissent's argument that the sample ballot should be voided based on state electoral law prohibitions against the counting of sample ballots, noting that state prohibitions on voting with sample ballots result, in large part, from concerns about ballot-box stuffing,[18] whereas ballot-box stuffing is not an issue in Board

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[13] 338 NLRB No. 148.
[14] 339 NLRB No. 55, slip op. at 1.
[15] *Knapp-Sherrill Co.*, 171 NLRB 1547, 1548 (1968); *McCormick Lumber Co.*, 206 NLRB 314, 314 (1973).
[16] 339 NLRB No. 55, slip op. at 1.
[17] Id. slip op. at 2.
[18] Id. slip op. at 2, citing *Sparks v. State Election Board*., 392 P.2d 711, 713 (Okla. 1964) (holding the state's statutory prohibition on the use of sample ballots "was undoubtedly adopted for the purpose of preventing the 'stuffing' of ballot boxes with unauthorized ballots").

mail ballot elections because the Board's use of yellow return envelopes bearing the key numbers of the addressee-voters prevents repeated voting.[19] The majority also pointed out that in state election law, as in Board representation election law, the policy preference for official ballots has been balanced against avoidance of unnecessary disenfranchisement.[20]

In his dissenting opinion, Member Schaumber wrote that his colleagues' reliance on Daimler-Chrysler is misplaced because in Daimler-Chrysler the issue was whether the voter's intent expressed on an official ballot was clear or ambiguous. Member Schaumber noted that the rule applicable in this case—invalidating votes cast on something other than the official ballot—is not concerned with whether or not the ballot reflects the voter's intent but only on whether the vote was cast on an official ballot. Citing numerous cases, Member Schaumber held that election rules require the voter to use the official ballot and that the sample ballot used in this case, while part of a larger Board form, was not an official ballot and should not be counted. He further found consistent with the Board's longstanding policy, the Casehandling Manual does not regard the sample ballot from the notice of election as an acceptable substitute for the official ballot.

C. Election Objections

In *Builders Insulation Inc.*,[21] the Board held that when an election is postponed for administrative reasons, it would be preferable for Regional Offices to include in any notice of rescheduled election a statement that the election has been rescheduled for administrative reasons beyond the control of the employer or the union, in order to dispel any erroneous impression among employees that either the employer or the union was responsible for the election's re-scheduling.

The Board agreed with the Regional Director that the employer's Objection #1 did not warrant setting aside the election based on its allegation that employees in the bargaining unit blamed the employer for the failure to conduct the election on November 20, 2002, as originally scheduled and announced.

The election was scheduled to be conducted from 7–7:30 a.m. When no Board Agent had shown up by 8:15 a.m., the employer called the

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[19] Id. slip op. at 2, citing NLRB Casehandling Manual, Part Two (Representation Proceedings), Sec. 11336.2(c).

[20] Id. slip op. at 2, citing *Sparks*, 392 P.2d at 714 (counting votes cast on sample ballots that were distributed after officials ran out of official ballots, because the "right to vote outweighs the form of the ballot."); *DeSantis v. Pedone*, 61 A.D.2d 1136 (N.Y.A.D. 1978) (counting a facsimile sample ballot which was furnished to a voter after the voting machine broke down).

[21] 338 NLRB No. 108 (Members Liebman, Schaumber, and Walsh).

Regional Office. A Regional Office representative returned the employer's call about 8:20 a.m. The call was put on the speaker phone so the union's representative could hear the conversation directly. The only explanation provided was that an internal miscommunication had occurred.

After a series of telephone calls, the election was rescheduled for November 26, with no change in the voting period or location. Copies of a new Notice of Election, bearing the word "rescheduled" in capital letters at the top of the notice, were hand delivered to the employer's facility late in the afternoon of November 20. The employer's branch manager highlighted the date and voting time to distinguish it from the original election notice and posted the new notices. He also held an employee meeting on November 21, to relate what little he knew about the postponement of the election.

The employer's objection alleged that the Board Agent's failure to appear at the originally scheduled election upset employees, resulted in anti-employer rumors, and directly led to anti-employer prejudice that affected the outcome of the election. Further, the employer argued that the necessary laboratory conditions for the conduct of elections was destroyed because the Regional Office did not adequately explain its failure to conduct the election on November 20, and did not make clear to the parties and the employees that the originally scheduled election's cancellation was not the employer's fault. The employer provided affidavit testimony from its branch manager and five employees.

The Board noted that it was undisputed that the Regional Office, not the employer, was responsible for the election's postponement. The Board agreed with the Regional Director that the employer had failed to make a prima face showing of any objectionable conduct that may have affected the outcome of the election. Thus, the election was quickly rescheduled and was conducted 6 days later. Further, the employer's evidence showed only that employees speculated about why the November 20 election was not held and about whether the employer was somehow responsible. The employer had ample opportunity to respond, and it did so expressly when it called a meeting of the employees on November 21. All but one eligible employee voted on November 26. The tally was 15 for the petitioner, 5 against, with no challenged ballots.

The Board affirmed the Regional Director's findings that the circumstances surrounding the postponement did not warrant setting aside the results of the November 26 election. However, as this was the second case in recent months in which an election had been postponed

for administrative reasons,[22] and in order to avoid objections similar to the one the employer raised here, the Board announced that it would be preferable for Regional Offices to include in any notice of rescheduled election, a statement that the election has been rescheduled for administrative reasons beyond the control of the employer or the union.

[22] See *Superior of Missouri, Inc.*, 338 NLRB No. 69 (Members Liebman, Cowen, and Bartlett).

IV

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal year 2003 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

1. Protected Activity

In *Abell Engineering & Mfg.*,[1] the Board found that employee Richard Gist had engaged in unprotected conduct when he attempted to induce employee David Bautista to quit the respondent and take a job with another employer.

Gist was a union organizer for Sheet Metal Workers Local 20. During his employment with the respondent, Gist unsuccessfully attempted to organize the other two employees in the respondent's welder/fabricator unit, one of whom was Bautista. Although unwilling to sign a union card, Bautista expressed some interest in union benefits. As instructed by his union organizer supervisor, Gist told Bautista about an available job with an employer that had a union-shop contract. Gist urged Bautista to take this job, telling him that it paid better and was located closer to Bautista's home. Bautista replied that he was not interested, but Gist raised the subject again a few minutes later, repeating that the higher-paying job was available for Bautista. Bautista asked Gist

[1] 338 NLRB No. 42 (Members Liebman, Cowen, and Bartlett).

why he did not take the job for himself. Gist answered that he already had something else "set up." Bautista told the respondent's owner about Gist's efforts to get Bautista to quit, and Gist was discharged that same day, which was a Friday. The following Monday, Gist started work with another employer, confirming that he had indeed "set up" another job for himself.

In finding that Gist's conduct had exceeded the protections of the Act, the Board observed that Gist's efforts to organize the respondent's employees had ceased. Thus, Gist's statements to Bautista "were unrelated to organizing the [r]espondent's employees or improving their conditions of employment with the [r]espondent." The Board also noted that had Gist persuaded Bautista to quit, the respondent would have been deeply injured. Given that Gist had also arranged to take another job, the respondent's three-man unit would have been reduced to a single employee. The Board found the facts of this case most closely analogous to *Clinton Corn Processing*,[2] and distinguishable from several other cases where it had found that the Act's protections had not been lost. In finding Gist's conduct unprotected, the Board emphasized the particular facts before it, noting that it was not deciding whether similar conduct would be unprotected in some other factual context. However, two Members (Cowen and Bartlett) expressed "strong doubts" that conduct like Gist's would be protected under any factual circumstances.

In *USF Red Star, Inc.*,[3] the Board found the respondent's prohibition on the wearing of a union button and discipline imposed for violation of that prohibition violated Section 8(a)(1) and (3), respectively.

Respondent USF Red Star, a trucking company, directed its employees not to participate in activities related to the ongoing dispute between Overnite Transportation and the Teamsters "while on duty, while in the service of the company, while on company property or while using company equipment." Pursuant to this directive, two employees at the respondent's Richmond, Virginia terminal—one a driver, the other a combination driver and dock worker—were ordered to remove a button reading: "Overnite Contract in '99 / Shut Overnite Management Down / or 100,000 Teamsters will." These orders were alleged to violate Section 8(a)(1). One of the two employees was issued a written warning for refusing to comply. This warning was alleged to violate Section 8(a)(3).

In its defense, the respondent contended that special circumstances justified its conduct because the button at issue, worn by employees while making deliveries away from the terminal, could offend customers and lead to business losses.

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[2] 194 NLRB 184 (1971).

[3] 339 NLRB No. 54 (Members Schaumber, Walsh, and Acosta).

The Board reiterated that employees have a protected right under Section 7 to wear union insignia while working, and that this right extends to the wearing of union insignia in order to make common cause with employees of another employer. At the same time, however, employers also have a right to maintain discipline in their establishments. In adjusting these mutually limiting rights, the Board applies the rule that a ban on wearing union insignia violates the Act unless it is justified by special circumstances. Customer displeasure without more does not constitute special circumstances, but harm to the employer's business does.

In this case, the Board found it unnecessary to decide whether special circumstances might have existed away from the terminal that might have justified an away-from-the-terminal ban. Under the circumstances, it was apparent that the respondent's conduct was directed against the wearing of the Overnite button at the Richmond terminal, and there was no evidence of special circumstances justifying an at-the-terminal ban.

In *Cibao Meat Products*,[4] the Board reaffirmed its continued adherence to several well-established principles regarding the scope of employees' Section 7 right to engage in concerted activity for "mutual aid and protection." As the Board recognized, this right encompasses not only the mass action of a group of employees, but also includes efforts by an individual employee to enlist the support of coworkers.

The respondent suspended employee Mario Mendez for 1 day for insubordination because he spoke up at an employee meeting called by respondent to inform the assembled employees that they were required to help open the plant gate in the morning before they started work. When the respondent's supervisor delivered the directive, Mendez responded that it was not his job to open the gate, it was security's job, and that "we are the workers, the employees, after you open the factory." The supervisor did not interrupt Mendez or ask him to stop speaking. The meeting took place after the gate was opened for the day by an employee and there was no evidence introduced that either Mendez or any other employee failed or refused to open the gate after having been directed to do so by the respondent.

The Board concluded that Mendez' actions represented a call to action to the assembled group of employees, rather than unprotected insubordination as the respondent claimed. In rejecting respondent's claim that Mendez' actions were not concerted, because he was only pursuing individual goals, the Board stated that the activity of a single employee in enlisting the support of his fellow employees for their

[4] 338 NLRB No. 134 (Members Schaumber, Walsh, and Acosta).

mutual aid and protection is as much "concerted activity" as is ordinary group activity, as long as it is "engaged in with the object of initiating or inducing . . . group action . . . ."[5] Thus, an employee, like Mendez, who protests, in the presence of other employees, a change in an employment term affecting all employees just announced by the employer at an employee meeting, is engaged in the "initiation of group action as contemplated by the *Mushroom Transportation* line of cases . . . ."[6]

The Board also rejected the respondent's contention that Mendez' protest was unprotected insubordination because the respondent had not solicited Mendez' views. Recognizing that an employee's right to engage in concerted activity must be balanced against the employer's right to maintain order and respect, the Board observed that there was no indication that Mendez' statement was intemperate, disruptive, or otherwise so egregious or offensive as to forfeit the protections of the Act. Under these circumstances, the Board sustained his right to make it.

The Board also found that the respondent violated Section 8(a)(1) by discharging three employees the day after the suspension of Mendez, based on evidence that the respondent took the action because it believed they would be "troublemakers" like Mendez. It rejected the judge's sua sponte conclusion that these discharges placed an intolerable burden on Mendez, resulting in his constructive discharge. Without passing on whether the constructive discharge finding was accurate on the merits, the Board found that the issue had not been fully and fairly litigated because it was not included in the complaint, and the General Counsel not only failed to place the respondent on notice at the hearing but at least implicitly disclaimed the intent to proceed on a constructive discharge theory.

In *American Steel Erectors, Inc.*,[7] the Board majority held that a union employee's concerted activity loses the Act's protection when, through the use of "vivid imagery," the employee portrays an employer as having a callous indifference to the safety of its employees.

The employee in question—David Paquette—was a union apprentice coordinator and instructor. Paquette attended several meetings of the New Hampshire Apprenticeship Council to voice his objection to the employer's request for certification of its apprenticeship program. At one meeting, Paquette told the Council that "putting ironworkers up on the steel is like throwing babies into the Merrimack River if they worked

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[5] *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d. Cir. 1964).

[6] Id. Accord: *Meyers Industries*, 268 NLRB 493, 497 (1984) (*Meyers I)*, remanded sub nom. *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), reaffd. 281 NLRB 882 (1986) *(Meyers II)*, enfd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988).

[7] 339 NLRB No. 152 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

for [the employer.]" Paquette later applied for employment with the employer. The employer, citing Paquette's behavior at the Council meetings, refused to hire Paquette.

The majority held that the refusal to consider Paquette for hire was lawful. They found that "even assuming that Paquette was initially engaged in protected activity when he opposed the respondent's application for certification of its apprenticeship program" using the four-factor test set forth in *Atlantic Steel Co.*,[8] they found that the nature of Paquette's outburst rendered his activity unprotected. The majority noted that Paquette's comments were not made in the heat of the moment and were not a response to unlawful or provocative behavior on the part of the employer. The majority further explained that the relevant inquiry was whether Paquette's comments rendered him unfit for employment with the employer. Answering this question in the affirmative, they found that Paquette's "use of deliberate and outrageous exaggerations [to accuse] the respondent of unsafe practices," cost him the Act's protection; accordingly, the employer's decision not to consider Paquette for hire was proper.

Dissenting Member Liebman pointed out that Paquette was a paid advocate, seeking to persuade a State agency, and that his statement should be assessed in that context. She noted that Paquette was not an employee of the respondent when he made his statement, that he owed the respondent no duty of loyalty then, and that the issue is not whether the respondent was privileged to discipline or discharge a current employee, but whether it was free to refuse to consider Paquette for employment after he left his union position. Member Liebman found that Paquette's language was not so extreme that it made him categorically unfit for future service with the respondent. She concluded that the result of the majority decision "will be to chill union advocates," adding that "they must now watch their words carefully when they criticize an employer from whom they may one day seek a job."

In *International Protective Services*,[9] the Board held that the strike by the employer's security guards was not protected by the National Labor Relations Act (NLRA).

The employer provided security guard services for United States Government buildings in Anchorage, Alaska. These buildings house the Federal courts, and offices for the Federal Bureau of Investigation, U.S. Attorney, Environmental Protection Agency, Internal Revenue Service, and other Federal agencies. The respondent's security guards were

[8] 245 NLRB 814, 816 (1979).
[9] 339 NLRB No. 75 (Members Schaumber and Walsh; Chairman Battista dissenting in part on other grounds).

stationed at the entrances to these buildings, carried firearms, and screened entrants to the Federal buildings. Several of these Federal agencies housed in the Alaska Federal buildings were the targets of security threats from time to time, and heightened security measures had been instituted following the bombing of the Federal building in Oklahoma City, Oklahoma. On March 10, 1999, the union announced that a strike was "imminent within the next few weeks" and that the strike "will occur at the most opportune time" for the union. The union commenced a strike on April 21, 1999.

The Board articulated the test for determining whether the strike by the security guards lost the protection of the NLRA. It "is not whether the [u]nion gave the [r]espondent adequate notice of its strike, because such notice is not required under the NLRA. Nor is the test whether the [u]nion's strike resulted in actual injury. Rather, the test of whether the strike by the security guards here lost the protection of the NLRA is whether they failed to take reasonable precautions to protect the employer's operations from such imminent danger as foreseeably would result from their sudden cessation of work." [Footnotes omitted.][10]

Applying this test, the Board found that the union failed to take reasonable precautions to protect the employer's operations from foreseeable imminent danger, and indeed recklessly intended to place the Federal buildings and their occupants at risk. First, the union evinced "total disregard" concerning the respondent's attempt to plan for security considerations at the Federal buildings in the event of a strike, and by this conduct showed that it "was not the least concerned about the Federal buildings or their occupants." Second, the union president failed to instruct the security guards not to walk out on strike if their posts were left unguarded, and angrily chastised guards who expressed concern that the security of the Federal buildings would be compromised. Finally, the credited testimony showed that the union president called the strike at "the most inopportune time" for the respondent when it would be difficult to assemble qualified replacement guards. The Board further observed that the respondent's security guards were entrusted with critical responsibilities for the protection of persons and property at the Alaska Federal buildings. In these circumstances, the Board held that the union's strike was not protected by the NLRA, and that the respondent thus did not violate the NLRA by terminating the employees who participated in the unprotected strike.[11]

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[10] 339 NLRB No. 75, slip op. at 2.

[11] Contrary to Members Schaumber and Walsh, Chairman Battista found that the respondent did not unlawfully fail to provide the union with requested information.

2. Access to Employer's Property

In *Postal Service*,[12] the Board majority found that the respondent did not violate Section 8(a)(1) of the Act by denying its subcontractor's employee, Will Hardy, access to the respondent's property to engage in union solicitation. Member Walsh, in dissent, found that the respondent did violate Section 8(a)(1) by denying access to Hardy.[13]

Hardy was an off-duty employee of Mail Contractors of America (MCOA), a company that provides mail hauling services for the respondent. In order to solicit other MCOA employees to sign union authorization cards, Hardy sought access to an area of the respondent's premises called the "contract drivers' lounge." During the course of their duties, MCOA drivers visit the contract drivers' lounge regularly to pick up and drop off paperwork and to wait while their paperwork is processed or their trucks loaded. However, MCOA has its own terminal about one-half mile away from the respondent's premises, and it is at the MCOA terminal that MCOA drivers begin and end their driving routes. MCOA's terminal includes an employee breakroom.

The majority found that Hardy's access to the respondent's contract drivers' lounge was governed by the Supreme Court's decisions in *Lechmere, Inc. v. NLRB*[14] and *NLRB v. Babcock & Wilcox Co.*[15] In those cases, the Court recognized a distinction "of substance" between the access rights of a property owner's employees—who are not strangers to the employer's property, but are rightfully present pursuant to their employment relationship—and the rights of nonemployees. The Court held that an employer's refusal to allow nonemployee organizers access to its property for union solicitation will not violate Section 8(a)(1), absent certain circumstances not present here.

The majority recognized a "limited exception" to *Lechmere* and *Babcock & Wilcox*: employees of a property owner's subcontractor enjoy the same access rights as the owner's employees if they work "regularly and exclusively" on the owner's property. See, e.g., *New York New York Hotel & Casino*.[16] However, the majority assumed that Hardy, like other MCOA drivers, worked on the respondent's premises "regularly," but that he did not do so "exclusively." The majority

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[12] 339 NLRB No. 151 (Chairman Battista and Member Acosta; Member Walsh dissenting in part).
[13] In addition to Hardy, the respondent denied access to two other individuals: Joe Johnson, an off-duty employee of the respondent, and Lyle Grimes, a nonemployee union organizer. The Board unanimously found that the respondent violated Sec. 8(a)(1) by denying access to Johnson, but did not violate Sec. 8(a)(1) by denying access to Grimes.
[14] 502 U.S. 527, 533–534 (1992).
[15] 351 U.S. 105, 112–113 (1956).
[16] 334 NLRB 762 (2001). The majority noted that the District of Columbia Circuit has remanded *New York New York* to the Board, but the majority found that it could decide the present case without passing on the issues raised by the remand. See 339 NLRB No. 151, slip op. at 3 fn. 9.

emphasized that Hardy's employer, MCOA, has its own terminal, and that MCOA drivers begin and end their driving routes at that terminal. Therefore, the majority held that Hardy's access rights were governed by *Lechmere* and *Babcock & Wilcox*. Accordingly, the respondent did not violate Section 8(a)(1) by denying Hardy access to the contract drivers' lounge.

In dissent, Member Walsh found that Hardy should not be treated as a nonemployee under *Lechmere* and *Babcock & Wilcox*. Instead, under the rationale of *New York New York*, Hardy should enjoy the same access rights as the respondent's own employees. In response to the majority's finding that Hardy did not work "exclusively" on the respondent's property, Member Walsh noted that "a truckdriver, by definition, spends a substantial amount of his or her working time on the road, and thus does not work 'exclusively' on the physical premises of any employer." Member Walsh emphasized that Hardy's employer, MCOA, provides mail hauling services exclusively for the respondent. Hardy's employment required him to be on the respondent's premises and in the contract drivers' lounge on a regular basis. Therefore, in Member Walsh's view, Hardy fit within the rationale of the *New York New York* line of decisions holding that subcontractor's employees who work "regularly and exclusively" on the premises of a property owner enjoy the same access rights as the owner's employees. Member Walsh, therefore, found that the respondent violated Section 8(a)(1) by denying Hardy access to the contract drivers' lounge.

In *Swardson Painting Co.*,[17] the Board adopted the administrative law judge's finding that the respondent violated Section 8(a)(1) of the Act by instructing a union representative to leave his jobsite. However, with respect to the respondent's instruction to the union representative, the Board based its finding of a violation on a different rationale than that applied by the judge. In this regard, the Board found that the instruction was unlawful because the respondent had no exclusionary property interest in the jobsite he ordered the union representative to leave.

The respondent is an individual doing business as Swardson Painting Co. In 2000,[18] the union began organizing the respondent's employees. On June 22, when union representative, Mark Wolfe, visited the respondent's jobsite at a funeral home, the respondent said, "Mark, I thought I told you not to come on my f— job and bother my men. If you want to picket me, picket me, [I need the advertisement]; but get off my f— job."

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[17] 340 NLRB No. 24 (Chairman Battista and Member Schaumber; Member Walsh dissenting in part on other grounds).

[18] All dates herein are in 2000, unless otherwise noted.

As discussed above, the Board, in finding that the respondent violated Section 8(a)(1) by issuing union representative Wolfe an instruction to leave his jobsite, applied a different rationale than the judge. The judge reasoned that the instruction to Wolfe "tended to restrain and coerce employees as an overly broad restraint on union activity." The Board, however, found the violation on the basis of the respondent's lack of an exclusionary property interest in the jobsite.

In this respect, the Board noted that, under Board law, "an employer who denies nonemployee union representatives access to private property for purposes related to the exercise of employees' Section 7 rights bears the threshold burden of establishing that, at the time it denied access, it had a property interest that entitled it to exclude individuals from the property."[19]

Under this authority, the Board reasoned that the respondent, by virtue of being an outside contractor working on a client's property, did not meet this burden because he did not own the property on which his employees were working and he, therefore, had no right to order the union representative to leave the property. In doing so, the Board analogized this case to *Ambrose Electric*,[20] in which the Board held that a contractor failed to establish an exclusionary property interest and that it, therefore, violated Section 8(a)(1) by insisting that union representatives stay entirely off its jobsites. In that case, the Board found that, absent such an interest, the employer was only entitled to insist that union representatives not touch or interfere with its equipment and not approach employees while they were working.[21] Thus, it concluded that the employer went too far in insisting that union representatives stay entirely off its jobsites, and away from employees, even during their break and lunch periods.[22]

Following this precedent, the Board found that, in this case, as in *Ambrose,* supra, the respondent did not have an exclusionary property interest in the jobsite where his employees were working. That being the case, the Board reasoned that, although the respondent had the right to insist that union representative Wolfe not talk to employees while they were working, he did not have the right to insist that Wolfe stay away from the jobsite entirely, even during employees' break and lunch periods. Accordingly, the Board concluded that the respondent violated Section 8(a)(1) by instructing Wolfe to leave the jobsite.

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[19] Citing *Indio Grocery Outlet*, 323 NLRB 1138. 1141–1142 (1997), enfd. 187 F.3d 1080 (9th Cir. 1999), cert. denied 529 U.S. 1098 (2000).
[20] 330 NLRB 78 (1999).
[21] Id. at 79.
[22] Id. at 79–80.

3. Quit Versus Discharge

In *Lance Investigation Service*,[23] the Board majority, reversing the administrative law judge, found that the respondent had not discharged employee Robert Smith in violation of Section 8(a)(1) for pursuing his collective bargaining right to vacation pay, but that Smith had abandoned his employment. The majority found that, at most, the respondent took Smith off the work schedule at his worksite and wanted to discuss the matter with him, and Smith was responsible for any ambiguity in his employment status because he refused two respondent invitations to clarify it.

Smith was entitled to vacation pay under the collective-bargaining agreement governing his employment. He sought vacation pay on several occasions to no avail, and finally left a message for Keith Johnson, a vice president of the respondent, stating: "What do I have to do to get my vacation pay, get a lawyer?" Johnson then returned Smith's call, told him that his vacation pay was in the office, and stated, "[Y]ou're that wise guy who threatened me with a lawyer," and "we'll see how long you're working for me at that site, wise guy." When Smith went to the office, Johnson gave him the vacation pay and asked him to wait in his office while Johnson attended to other business. When Johnson did not return after a few minutes, Smith left.

The next day, after Smith began work, he was called to the office by his supervisor, Roy Headen, who told him to punch out and go home, he was "off the schedule." When Smith asked why, Headen responded that Johnson had taken Smith off the schedule. Smith then asked Headen what Headen would do if he were Smith. Headen responded, "If I was you, I'd go see . . . Johnson." Smith never did so and never returned to work.

The majority found that the respondent's conduct would not logically lead a reasonable person to conclude that he had been discharged. See *North American Dismantling Corp.*[24] Even when viewed from the employee's perspective, Johnson's statement on the telephone was at most a threat to remove Smith from the particular site where he worked, not a threat of discharge. Likewise, when Johnson talked to Smith at the office, Johnson did not mention discharge or discipline. Further, Smith's removal from the schedule was consistent with discipline short of discharge because the respondent's custom was that employees receiving discipline less than discharge were removed from the schedule and were

[23] 338 NLRB No. 171 (Chairman Battista and Member Schaumber; Member Walsh dissenting).
[24] 331 NLRB 1557 (2000), enfd. in part 35 Fed.Appx. 132 (6th Cir. 2002).

expected to meet with Johnson to discuss their discipline before being returned to the schedule.

In addition, the majority found that both Johnson and Headen offered Smith the opportunity to clarify his employment status, but Smith refused to do so. Thus, any ambiguity in Smith's employment status was attributable to Smith's failure to act on the employer's invitations. Relying on *Pink Supply Corp.*,[25] the majority stated, "[W]e see no basis in the credited evidence for charging the [r]espondent with any heavier responsibility for the uncertainty than is attributable to the [employee] himself." The majority distinguished cases in which an employer had created the ambiguity in employees' status, see *Flat Dog Productions, Inc.*,[26] and in which employers rather than employees had an opportunity to clarify an ambiguity but failed to do so. See *Hale Mfg. Co.*[27] and *TPA, Inc.*[28] Accordingly, the majority found that the General Counsel had not met his burden of proving that the respondent terminated Smith's employment in violation of Section 8(a)(1).

In dissent, Member Walsh stated that the respondent's words and conduct—threatening Smith with loss of employment, removing him from the schedule, telling him to go home, and failing to clarify his status when provided the opportunity—would have reasonably led Smith to believe that he had been terminated for protected activity.[29] Member Walsh also noted that the respondent did not provide Smith any written disciplinary notice, despite evidence showing that employees receiving discipline less severe than discharge customarily received a written disciplinary notice when they were removed from the schedule. Finally, Member Walsh stated that it was not Smith's burden, but the respondent's burden, to clarify any ambiguity caused by its actions that would have reasonably caused Smith to believe that his employment status was questionable. Yet, instead, the respondent's conduct and words had only added to the climate of "ambiguity and confusion."[30]

4. *Weingarten* Rights

In *Electrical Workers Local 236*,[31] the Board held that employees, when invoking their right to coworker representation in predisciplinary investigations under *Epilepsy Foundation of Northeast Ohio*,[32] must request assistance from actual "coworkers," not from another statutory

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[25] 249 NLRB 674 (1980).
[26] 331 NLRB 1571 (2000), enfd. 34 Fed. Appx. 548 (9th Cir. 2002).
[27] 228 NLRB 10, 11–13 (1977), enfd. 570 F.2d 705 (8th Cir. 1978).
[28] 337 NLRB 282, 283 fn. 6 (2001).
[29] See *Hale Mfg. Co.*, supra.
[30] See *Flat Dog Productions*, supra.
[31] 339 NLRB No. 156 (Chairman Battista and Members Walsh and Acosta).
[32] 331 NLRB 676 (2000), enfd. in relevant part 268 F.3d 1095 (D.C. Cir. 2001).

employer's employees. Here, Frederick Nirsberger, the employee subject to discipline, was employed by respondent Local 236 as an assistant business manager. After a dispute arose regarding his performance, Nirsberger invoked his *Weingarten* rights during a predisciplinary interview. In doing so, he demanded representation from Jerry Comer, an employee of the International Union, not of Local 236. Nirsberger requested Comer's representation precisely "because Comer worked for the International (the parent of, but separate entity from, the Local)" and "would be better able to mediate the conflict."[33] When the local declined that request, Nirsberger refused to continue with the disciplinary investigation, and was terminated shortly thereafter.

On these facts, the Board concluded that Nirsberger's request for Comer's representation was unprotected. As the Board explained, because Comer had no coworker relationship with Nirsberger, his request for Comer's representation was merely one for private assistance, not for mutual aid and protection under Section 7. Unlike a traditional *Weingarten* or *Epilepsy Foundation* request, then, the local's consent "was not compelled by Section 7."[34] The Board thus concluded that Local 236's termination of Nirsberger was proper.

Notably, however, the Board did recognize that Local 236 would have violated the Act if "Nirsberger had been terminated *merely for requesting* coworker representation" (emphasis added), from either his coworkers or the statutory employees of another employer.[35] As the Board explained: "Section 7 protects an employee's 'right to simply ask for the presence of a fellow employee' at an investigatory interview."[36]

B. Employer Assistance to Labor Organization

In *Duane Reade, Inc.* and *UNITE Local 340*,[37] the respondent (the company) recognized Allied Trades Council (ATC) as the exclusive bargaining representative of its employees at certain stores and recognized respondent Local 340 (UNITE), as the bargaining representative of its employees at other stores. Both UNITE and ATC were attempting to organize the seven new stores at issue in this case.

The Board found that the company unlawfully assisted UNITE in violation of Section 8(a)(2) and (1) of the Act when it: (1) invited UNITE representatives to meet with its employees despite its no-solicitation policy prohibiting such visits; (2) directed its employees to meet with UNITE representatives on store premises during paid

[33] 339 NLRB No. 156, slip op. at 2.
[34] Id.
[35] Id. at 2 & fn.12.
[36] Id. at 2 fn.13 (quoting *E. I. du Pont & Co.*, 289 NLRB 627, 630 fn.15 (1988)).
[37] 338 NLRB No. 140 (Members Schaumber, Walsh, and Acosta).

worktime, in most instances with store managers present, for the purpose of signing authorization cards; (3) at one store, a company supervisor confiscated and tore up an ATC authorization card in the presence of employees; (4) in at least two stores, UNITE submitted written demands for recognition based on a claimed majority even before it had signed up any employees, demonstrating prerecognition communication and collusion between the company and UNITE; (5) at one store, the company prepared a letter to an arbitrator requesting a card count verification to determine majority status the day before UNITE first met with employees at the store; (6) concealed from ATC representatives the company's intended ownership of two stores in which UNITE obtained recognition; and (7) denied ATC equal access to its employees at all seven stores and ordered ATC representatives to leave three stores under threat of arrest.

The Board found that these acts of assistance, in combination, reasonably tended to coerce employees in the exercise of their free choice in selecting a bargaining representative. In so holding, the Board found the acts of assistance to be distinguishable from those present in *Teamsters Local 436 (Tecumseh Corrugated Box Co.)*,[38] a case relied upon by the respondents, in which the Board found no 8(a)(2) unlawful assistance violation. The Board stated that "[u]nlike the employer in *Tecumseh*, the [c]ompany here did more than simply provide meeting space to UNITE on company time and voluntarily grant UNITE immediate recognition."

C. Employer Bargaining Obligation

1. Implementation of New Work Rules

In *King Sooper's Inc.*,[39] the Board majority held that the respondent violated Section 8(a)(5) of the Act by unilaterally implementing a policy regarding the use of new technology by employees in the respondent's pharmacies. Member Schaumber agreed that the implementation of the original policy was unlawful, but found that the respondent's unilateral implementation of a revised policy did not violate the Act.

In May 2000, the respondent installed in its pharmacies prescription accuracy scanners, which are used by pharmacists to prevent errors in filling prescriptions. Shortly after installing the scanners, the respondent issued a policy requiring that its employees use the scanners on all prescriptions filled. The policy was a "zero tolerance policy" which provided that the failure to comply would result in "discipline up to and

[38] 333 NLRB 1 (2001).
[39] 340 NLRB No. 75 (Members Liebman and Walsh; Member Schaumber concurring in part and dissenting in part).

including termination." In December 2000, the respondent implemented a revised version of the policy that required the use of the scanners by all employees, but eliminated specific references to "zero tolerance" and discipline. Despite the removal of the disciplinary language, employees were subject to discipline for failure to comply with the revised policy. The respondent did not bargain with the union before implementing either policy.

Relying on established Board law that "work rules that can be grounds for discipline are mandatory subjects of bargaining"[40] the majority found that the respondent was obligated to bargain with the union over both the original and revised policies, and that the respondent's refusal to bargain was therefore unlawful. Regardless whether the respondent was required to bargain over the decision to install the scanners,[41] the majority held that it was required to bargain over work rules that implemented that decision.

The majority rejected the respondent's argument that a different result was required under *Peerless Publications.*[42] The majority found that *Peerless Publications* was "decided within the unique context of the newspaper industry, and is of limited applicability outside of the narrow factual situation presented in that case."

Member Schaumber disagreed with the majority that the policies should be treated as work rules. Rather, he found that the policies "are among that class of managerial decisions that lie at the core of entrepreneurial control." Although Member Schaumber agreed that the unilateral implementation of the original policy was unlawful, the basis for his finding was that the "zero tolerance" language of the policy significantly deviated from the respondent's progressive disciplinary system. Because the revised policy comported with the respondent's disciplinary system, Member Schaumber found that the respondent was not obligated to bargain over its implementation.

2. Successor Employer's Withdrawal of Recognition

In *Torch Operating Co.*,[43] the Board found that union steward Timothy Munoz' statement to a company official that there was not "a whole lot of support for the [u]nion" among employees, coupled with statements of 15 other employees opposing union representation, was sufficient objective evidence to support the respondent's reasonable

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[40] See *Praxair Inc.*, 317 NLRB 435, 436 (1995); *Womac Industries*, 238 NLRB 43 (1978); *Murphy Diesel Co.*, 184 NLRB 757, 762 (1970), enfd. 454 F.2d 303 (7th Cir. 1971).

[41] The question of whether the respondent was obligated to bargain over the installation of the scanners was not before the Board.

[42] 283 NLRB 334 (1987).

[43] 338 NLRB No. 143 (Members Schaumber, Walsh, and Acosta).

good-faith uncertainty whether the union had majority support in the 36-employee bargaining unit. Consequently, the Board found that the respondent, a successor employer, did not violate Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the union, which had represented the predecessor employer's employees.

The administrative law judge had found that statements of 15 employees—3 less than 50 percent of the unit—showed opposition to union representation. The judge found that steward Munoz' statement, as well as other employee statements cited by the respondent, did not indicate opposition to union representation. Thus, the judge found that the respondent lacked good-faith doubt of the union's majority support. The respondent's refusal to recognize and bargain with the union, therefore, violated the Act, according to the judge.

The Board issued a decision agreeing with the judge[44] but decided to reconsider its decision following the Supreme Court's issuance of *Allentown Mack Sales & Service v. NLRB*.[45] In that case, the Court held that the Board's "good-faith doubt" standard must be interpreted to permit an employer to withdraw recognition from a union when the employer has "reasonable uncertainty" of the union's majority status. The Court also held that evidence supporting good-faith doubt or uncertainty could include employees' unverified statements about other employees' antiunion sentiments.

On reconsideration of its decision in light of *Allentown Mack*, supra, the Board gave credence to steward Munoz' statement that there was not "a whole lot of support for the [u]nion" among employees. The Board reasoned that, as a steward, Munoz likely had contact with employees concerning union matters and would have reason to know about employee sentiment concerning the union. Additionally, the Board found that it was unlikely that a steward would tell a company official that his union had little support if the steward did not believe it to be true. Accordingly, the Board found that steward Munoz' statement, together with statements of 15 other employees opposing continued union representation, was sufficient to support the respondent's reasonable good-faith uncertainty regarding majority support for the union. Thus, the Board found that the respondent's refusal to recognize or bargain with the union did not violate the Act.

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[44] 322 NLRB 939 (1997).
[45] 522 U.S. 359 (1998).

3. New Bargaining Unit

In *F.H.E. Services, Inc.*,[46] the Board found that when the respondent merged the separate bargaining units that were represented by two different local unions, the result was the formation of a new operation and the creation of a new bargaining unit. The Board adopted the administrative law judge's finding that the new bargaining unit is primarily engaged in the building and construction industry and that as a result, the respondent was entitled, pursuant to Section 8(f) of the Act, to recognize any labor organization, even absent a showing of majority status.

In finding that the merging of the separate bargaining units resulted in the formation of a new operation and the creation of a new bargaining unit, the Board relied on *National Carloading Corp.*[47] In that case, the respondent had merged two separate bargaining units that were previously represented by two different local unions into one work force. Noting that the employees worked side by side, had similar job classifications, used the same equipment, and performed similar functions, the Board determined that the consolidation resulted in a totally new operation. Therefore, the Board concluded, an election was necessary to resolve the conflicting representational claims, particularly since neither group of affected employees was sufficiently predominant to remove any real question as to the overall choice of representative.

The Board explained that in the instant matter, the employees now work at the same facility, share equipment, engage in the identical tasks of elevator construction, modernization, service, and repair, and operate under the control of a unified management structure. As such, the Board determined, the consolidation, like that in *National Carloading*,[48] created a new operation and a new unit.

The Board adopted the judge's finding that the new bargaining unit is primarily engaged in the building and construction industry for the reasons given by the judge. In making his finding, the judge relied on *Carpenters (Rowley-Schlimgen)*[49] and *C.I.M. Mechanical Co.*,[50] and the definitions of construction contained therein. The judge explained that the respondent projected that new construction work for the year 2001 would gross $14 million, modernization work would gross $7 million, and repair work would gross $7 million. Given the projection of new construction and modernization work, the judge explained, the

[46] 338 NLRB No. 168 (Chairman Battista and Members Liebman and Acosta).
[47] 167 NLRB 801 (1967).
[48] Id.
[49] 318 NLRB 714, 715–716 (1995).
[50] 275 NLRB 685, 691 (1985).

respondent was primarily engaged in the building and construction industry within the meaning of Section 8(f) of the Act and as a result, the respondent was entitled, pursuant to Section 8(f) of the Act, to recognize any labor organization, even absent a showing of majority status.

4. Employer's Declaration of Impasse

In *Jano Graphics, Inc.*,[51] without deciding whether the parties had in fact reached impasse when the employer initially declared impasse, the Board found that the employer violated Section 8(a)(5) and (1) of the Act by making unilateral changes in employees' terms and conditions of employment and withdrawing recognition from the union. Even assuming the existence of an impasse at that time, the impasse was broken days later when the union informed the employer that it had new proposals to make. Moreover, any such impasse was tainted by the employer's conditioning further bargaining on a nonmandatory subject of bargaining—submission of the employer's final offer to unit employees for a ratification vote. The Board found that, taken together, these unfair labor practices thereafter precluded the employer from lawfully implementing its final offer. It also found unlawful the employer's withdrawal of recognition from the union based on an employee petition filed 1 day after the employer announced that it had implemented the unilateral changes.

5. Direct Dealing

In *Armored Transport, Inc.*,[52] the Board unanimously found that the respondent violated Section 8(a)(5) of the Act by bypassing the union and dealing directly with its employees, and that it violated Section 8(a)(1) by soliciting decertification of the union. A Board majority, Members Liebman and Walsh, found the respondent also violated Section 8(a)(1) by interfering with the union's established internal processes.

The respondent sent a series of letters to its employees entitled, "Don't Blame Us." The letters voiced the respondent's frustration over the fact that 17 months had passed without a signed collective-bargaining agreement and pointed out that some employees had gone 3–4 years without a pay increase. Attached to the letters was a copy of a new collective-bargaining proposal that was also being forwarded to the union. The letters suggested five courses of action the employees could take to help the company move forward: (1) demand that the union sign the attached proposal; (2) demand that the union allow the employees to

[51] 339 NLRB No. 38 (Chairman Battista and Members Liebman and Acosta).
[52] 339 NLRB No. 50 (Members Liebman and Walsh; Chairman Battista dissenting in part).

vote on the proposal; (3) go to the NLRB and request a new election because the employees no longer desired to be represented by this union; (4) go to the NLRB and demand a new election because the union mislead the employees; and (5) establish in some credible fashion to the company that the union does not represent a majority of the employees.

The Board found that by providing unit employees with the letters and attached collective-bargaining proposal before affording the union either an opportunity to consider the proposal or to bargain, the respondent breached its duty to bargain with the union in violation of Section 8(a)(5). The Board rejected the respondent's argument that a simultaneous presentation of its proposals to employees and the union is privileged, noting that the letters disparaged the union and encouraged employees to reject the union.

The Board further found that the respondent solicited the union's decertification and interfered in its internal processes. By directing employees as to the decertification process by suggesting that they go to the Board to request a new election, and by requesting that they file a decertification petition and present the respondent with sufficient evidence to withdraw recognition, the respondent did much more than merely provide information or ministerial assistance to its employees. Rather, the letters, especially in the context of direct dealing, unlawfully undermined the union and influenced employees to reject the union as their bargaining representative.

Finally, the majority found that in the context of the direct dealing, a further effect of the "Don't Blame Us" package was to undermine the union by urging that the employees insist that the union sign the contract and that employees be permitted to vote on the matter. They found that by this conduct the respondent interjected itself into an internal union matter in violation of Section 8(a)(1). Chairman Battista stated that he would not find the alleged intrusion into the union's internal affairs to be a separate violation, because in his view that conduct was adequately addressed by the other Section 8(a)(5) and (1) violations found and remedied.

6. Duty to Bargain Over the Effects of Managerial Decisions

In *Fresno Bee*,[53] the Board focused on the distinction between preelection managerial decisions concerning the scope of an employer's business—which are not subject to the Act's bargaining requirements—and the postelection "effects" of those decisions on terms and conditions of employment, which are bargainable. In essence, the Board reaffirmed that an employer is required to bargain over a material and substantial

[53] 339 NLRB No. 158 (Members Schaumber and Acosta; Member Liebman dissenting in part).

change in a term of employment, even where the change results directly from a nonbargainable managerial decision concerning the scope of the employer's business, unless the employer can show that the specific change at issue was inevitable. The Board found that some of the Fresno's unilateral changes were bargainable effects, while others were de minimis.

Before the election, the employer had decided to adopt a new printing system (TPF) at its newspaper facility in Fresno, California, and a computerized benefits system (PeopleSoft) at all of its facilities. Implementation resulted in a number of changes in terms of employment. The Board found that the employer was not obligated to bargain over the implementation of TPF and PeopleSoft, even though this occurred postelection, because the decisions to implement were made preelection.[54] However, the employer was required to bargain over the resulting changes in employees' lunch period and shift schedules, because these changes were postelection, discretionary effects on terms of employment.

An employer is normally required to bargain over a change in a term of employment, even where that change results directly from a nonbargainable managerial decision concerning the scope of its business.[55] This is so, the Board observed, because in most such situations "[t]here are alternatives that an employer and a union can explore to avoid or reduce the scope of the change at issue without calling into question the employer's underlying decision."[56] The employer has the burden of showing that a particular change was inevitable from a scope-of-business decision and consequently not subject to a bargaining requirement. "[F]or that purpose," the Board stated, "the employer must show not only that the change resulted directly from that decision, but also that there was no possibility of an alternative . . . that would have warranted bargaining."[57]

While some change in lunch period and shift schedules was shown to be inevitable from the implementation of TPF, the employer did not show why there were no particular alternatives; nor did it show that it could not have given the union advance notice, or that either change conformed to past practice. Accordingly, both changes were mandatory subjects of bargaining. However, the majority found, the respondent did not have to bargain over a change in payroll period resulting from

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[54] The Board consequently did not reach the issue of whether either decision would otherwise have been subject to bargaining.

[55] E.g., *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 677 fn. 15 (1981); *Bridon Cordage, Inc.*, 329 NLRB 258, 259 (1999).

[56] Quoting *Bridon Cordage*, 329 NLRB at 259.

[57] *Holly Farms Corp. v. NLRB*, 48 F.3d 1360, 1368 (4th Cir. 1995), affd. 517 U.S. 392 (1996).

implementation of PeopleSoft, or over a reduction in assignment of overtime, because these changes were shown to be de minimis, not material and substantial.

In partial dissent, Member Liebman found that the changes in payroll period and assignment of overtime were shown to be material and substantial and consequently also subject to the Act's bargaining requirements.

7. Permissive Subject of Bargaining

The Board majority in *Pieper Electric, Inc.*,[58] found that the respondent's refusal to furnish the union with requested information pertaining to its employee stock purchase plan did not violate Section 8(a)(5) because the plan constituted a permissive subject of bargaining.

The respondent, Pieper Electric (Pieper), is a wholly owned subsidiary of PPC Holdings, Inc. (PPC) and a member of the National Electrical Contractors Association of Milwaukee (NECA Milwaukee), a multiemployer association consisting of roughly 100 employers. NECA Milwaukee and International Brotherhood of Electrical Workers Local 494 (Local 494) are parties to a collective-bargaining agreement. Section 12.05 of that agreement states, in relevant part: "No employer shall allow an employee to hold and no employee shall hold stock in any shop or company employing employees covered by this agreement."

On January 1, 2001, PPC launched its employee stock purchase plan (ESPP). The purpose of the ESPP was to vest majority ownership of PPC in its subsidiaries' employees. Under the terms of the ESPP, only current employees may own voting shares: shares must be sold back to PPC when the employee quits, is discharged, or dies. (Retirees may retain their stock, but it converts at retirement into nonvoting shares.) Shares are sold at book value, computed annually by outside auditors. Neither PPC nor Pieper makes matching contributions or in any other way furnishes employees with financial assistance in purchasing shares.

Shortly after the ESPP went into effect, and pursuant to section 12.05 of the collective-bargaining agreement, Local 494 made two separate information requests. The first, sent to Pieper Electric, requested a list of all Local 494 members participating in the ESPP. The second sent in March to the chairman of Pieper and PPC, asked Pieper for the names of all Local 494 members who were participating or had been solicited to participate in the ESPP. Pieper refused both requests, and these refusals were alleged to violate Section 8(a)(5). The Board dismissed the allegation. Stating the rule that there is no duty to furnish information concerning a nonmandatory subject of bargaining, the Board found that

[58] 339 NLRB No. 160 (Members Schaumber and Acosta; Member Walsh dissenting).

neither section 12.05 nor the ESPP constitutes a mandatory bargaining subject.

As to section 12.05, the Board noted that the provision prohibits employees from owning stock in any of the roughly 100 companies that are signatory to the collective-bargaining agreement between NECA Milwaukee and Local 494. Even if employee ownership of stock in the employee's own employer is a mandatory subject of bargaining, the Board found that section 12.05's prohibition on employee ownership of stock in other companies neither settles nor vitally affects any aspect of the relationship between signatory employers and their own employees.

As to the ESPP, the Board acknowledged that employee stock purchase plans were held to be mandatory bargaining subjects in *Richfield Oil Corp.*,[59] and *Foodway*,[60] but it found these cases distinguishable. In *Richfield Oil*, the employee stock purchase plan at issue constituted "wages" because the employer made matching contributions. The *Richfield* plan also constituted "other conditions of employment" because employees did not receive stock until retirement, and therefore the stock purchase plan functioned as a pension plan by emphasizing "long term accumulation of stock for future needs rather than . . . stock ownership as such." In *Foodway*, employees were offered options to purchase company stock at a discount from fair market value. In this case, by contrast, the respondent makes no matching contributions, employees buy shares at fair market value, and the ESPP emphasizes precisely "stock ownership as such" because its purpose is to vest majority ownership in the employees. The Board also relied on *Harrah's Lake Tahoe Resort*,[61] in which the Board found that an employee stock ownership plan (ESOP) proposal that would have made employees 50-percent shareholders advanced employees' interests not as employees, but rather as entrepreneurs, owners, and managers. Accordingly, the Board found that the ESPP "does not come within the scope of those subjects of bargaining made mandatory by Section 8(d) of the Act: wages, hours, or other terms and conditions of employment."

Dissenting, Member Walsh would have found the ESPP to be an employee benefit and a term and condition of employment. In his view, the ESPP furnished employees with substantial benefits by providing a guaranteed, continuously available market for employees to sell their shares at book value, without incurring the brokerage or transaction fees that accompany stock transactions in publicly traded companies. Accordingly, Member Walsh would have found the ESPP to constitute a

[59] 110 NLRB 356 (1954).
[60] 234 NLRB 72 (1978).
[61] 307 NLRB 182 (1992).

term and condition of employment and a mandatory subject of bargaining, and the respondent's refusal to furnish the requested information a violation of Section 8(a)(5).

8. Duty to Arbitrate Grievances

In *Exxon Chemical Co.*,[62] the Board majority held that the respondent, Exxon Chemical Company (Exxon), violated Section 8(a)(5) of the Act by refusing to designate an arbitrator and refusing to arbitrate three grievances that arose the day before plant operations were taken over by a new company formed by a joint venture.

Exxon and Teamsters Local 877 (the union) had a longstanding bargaining relationship and a collective-bargaining agreement effective from March 1996 through June 1999. The agreement contained a grievance-arbitration provision. Around July 1996, Exxon announced that it planned to form a joint venture with another oil company. Between July 1996 and October 1998, the parties filed numerous grievances and unfair labor practice charges arising out of the formation of the joint venture and entered into a settlement agreement resolving these disputes in November 1998.

Infineum, the entity formed by the joint venture, ultimately became operational on January 1, 1999. It became known to the union, when the employees received their last paychecks, on December 31, 1998, that Exxon had failed to provide a 6-month notice of layoff, had failed to pay a contribution to the employee's thrift plan based on employees' severance pay, and had unilaterally decided to transfer the Exxon thrift fund to a new Infineum thrift fund. The parties' collective-bargaining agreement contained separate provisions covering these three subjects. The union timely filed three grievances over these matters on January 30, 1999.

Upon filing the grievances, the union immediately solicited Exxon to respond to the grievances and/or begin the arbitrator-selecting process. Exxon did not respond to the grievances until April 29, 1999, at which time it claimed, without explanation, that the grievances were "untimely," in violation of the settlement agreement, and thus, that the union had waived its right to grieve. By letter dated May 12, 1999, the union requested Exxon that the parties proceed to arbitration and make arrangements to select arbitrators. Exxon again failed to respond and had no further direct contact with the union. In June 1999, the union submitted the grievances to the American Arbitration Association (AAA). In its response to AAA, Exxon denied that the grievances were

[62] 340 NLRB No. 51 (Members Liebman and Walsh; Chairman Battista dissenting in part).

arbitrable and AAA later decided it lacked authority to administer arbitrations between the parties.

The majority stated that an employer's refusal to designate an arbitrator and arbitrate grievances violates the Act when the conduct amounts to a unilateral modification or wholesale repudiation of the collective-bargaining agreement. They found that the bargaining agreement was in effect on December 31, 1998, the last day of Exxon's operations and the day that the grievances arose. In addition, the majority found that the grievances were covered under the collective-bargaining agreement. They reasoned, "Thus, the [r]espondent was under an obligation to submit these grievances to arbitration. It failed to satisfy its obligation. Under these circumstances, by refusing to arbitrate *any* of the grievances that had arisen during the life of the bargaining agreement, the [r]espondent unilaterally abandoned or repudiated the contractual . . . arbitration procedure, thereby refusing to bargain with the [u]nion in violation of Section 8(a)(5)."

The majority distinguished their decision from *Velan Valve Corp.*[63] and similar cases, where the Board found no violation. They explained that in those cases, the employer's refusal to arbitrate was limited to a particular grievance or "narrow class" of grievances whereas, here, Exxon "refused to arbitrate three grievances, each concerning different provisions of the collective-bargaining agreement and together representing the universe of bargaining issues still pending between parties at the end of their relationship." Additionally, the majority emphasized that Exxon had repeatedly ignored the union's requests to respond, exemplifying little commitment to its collective-bargaining agreement and to good-faith dealing with the union.

Dissenting in part, Chairman Battista found that Exxon's refusal to designate an arbitrator and proceed to arbitration on three specific grievances did not violate Section 8(a)(5) of the Act. He noted that Section 8(a)(5) and (d) of the Act proscribe an untimely "termination or modification" of a contract, but not a mere breach of contract. While not passing on whether Exxon might have breached the contract by claiming that the grievances were not arbitrable, Chairman Battista found that such conduct was not a repudiation of the contract. He further added that these "are contract interpretation issues for a court to resolve under Section 301, and/or for an arbitrator. They are not matters for the Board under Section 8(a)(5)."

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[63] 316 NLRB 1273 (1995).

D. Failure to Provide 8(g) Notices

In *Alexandria Clinic, P.A.,*[64] the Board overruled precedent and held that when a union provides 10-day advance notice of the date and time of its intent to strike, it may not, thereafter, unilaterally extend the commencement time of its strike; rather, in accord with the last sentence of Section 8(g), the extension must be "by the written agreement of both parties." In this case, the Board found that the union's failure to comply with Section 8(g) privileged the respondent to discharge its striking nurses.

The respondent operated a health clinic in Alexandria, Minnesota. The union represented the clinic's licensed practical nurses and medical assistant employees (the nurses). After the parties failed to reach agreement on an initial contract, the union, in accordance with 8(g)'s requirement of 10 days written notice of the date and time of an intended strike, notified the respondent in timely fashion that it would strike at 8 a.m. on September 10, 1999. However, on September 7 the nurses decided to postpone the start time of the strike until noon on September 10. The respondent was not notified of this postponement.

On the morning of September 10, strike replacement nurses arrived at the clinic expecting to begin work at 8 a.m. When the respondent realized that the strike was not going to begin then, it moved the replacement nurses to a lounge inside the clinic. The strike began at noon and the replacement nurses stepped in to work the shifts of the strikers.

The respondent requested from the union an explanation for the 4-hour delay of the strike's start. The union's response that it had given the proper notice and gone out on strike within the allowable time was deemed by the respondent as legally inadequate and the strikers were informed that they were terminated for "violation of the notice provisions of Section 8(g)."

Relying on the Board's 1979 decision in *Greater New Orleans Artificial Kidney Center*,[65] the administrative law judge found that the discharges violated Section 8(a)(3) and (1). In that case the Board held that Section 8(g) was not to be "rigidly applied" in accordance with its statutory language which provides for extensions of strike commencement times by "written agreement of both parties." The Board determined from a review of 8(g)'s legislative history that Congress approved a union's unilateral extension of its 10-day notice of a strike's commencement, so long as the delay did not exceed 72 hours and the

[64] 339 NLRB No. 162 (Chairman Battista and Member Schaumber; Member Acosta concurring; Members Liebman and Walsh dissenting).
[65] 240 NLRB 432 (1979).

union furnished 12 hours supplemental notice of the strike's new start time. The Board found that the union met this standard and concluded that because it was in "substantial compliance" with Section 8(g), the respondent was not privileged to discharge its striking employees and by doing so it violated Section 8(a)(3).

Applying the holding of *Greater New Orleans*, supra, to the case at bar, the judge found that despite the union's failure to supply 12 hours supplemental notice that the strike would begin at noon rather than 8 a.m., no supplemental notice was necessary because the "strike and picketing began within a reasonable time after the scheduled time [and] . . . the Union was in substantial compliance with Section 8(g)." The judge, therefore, found that discharging the strikers was unlawful.

The Board majority reversed and found that the language of Section 8(g) does not permit unilateral extensions of strike notices. In agreement with the D.C. Circuit's decision in *Beverly Health & Rehabilitation Services v. NLRB*,[66] the Board majority found that "Section 8(g)'s third sentence clearly and unambiguously mandates that a written agreement of both parties is the 'sole statutory exception' to the requirement that a strike commence at the time and date set forth in the 10-day notice."[67] In light of this clear statutory language, the Board majority found that there was no warrant to consider 8(g)'s legislative history, as the Board did in *Greater New Orleans*, supra, to conclude, contrary to 8(g)'s explicit language, that strike notices could be unilaterally extended. Accordingly, the Board majority overruled *Greater New Orleans*, found that the nurses' unilateral 4-hour extension of their strike's start time violated Section 8(g), and concluded that the respondent did not violate Section 8(a)(3) and (1) by discharging them. Member Acosta concurred.

Members Liebman and Walsh dissented. They found that "the relevant statutory language is ambiguous with respect to the situation presented here,"[68] and that reliance on 8(g)'s legislative history, as the Board did in *Greater New Orleans*, was necessary. They pointed out that "Congress envisioned a rule of reason: Did the union strike within a reasonable time after the time specified in its notice to the health care institution? If so, then the union was not required to secure the employer's extension of the original notice or to provide a new notice."[69] Applying a rule of reason, the dissent found that the noontime strike started within a reasonable time of the 8 a.m. time specified in the

[66] 317 F.3d 316.
[67] 339 NLRB No. 162, slip op. at 4.
[68] 339 NLRB No. 162, slip op. at 8.
[69] 339 NLRB No. 162, slip op. at 10.

nurses' strike notice, that the nurses did not violate Section 8(g), and that the Respondent violated Section 8(a)(3) and (1) by discharging them.

E. Union Interference with Employee Rights

1. Operation of Hiring Hall

In *Teamsters Local 391 (U.S. Pipeline, Inc.),*[70] the Board affirmed the administrative law judge's dismissal of the complaint which alleged that the respondent unions violated Section 8(b)(1)(A) and (2) by refusing to refer three union members of a sister local to a highway construction project pursuant to an exclusive hiring hall arrangement.

The employer is engaged in the pipeline construction industry. It was signatory to the National Pipeline Agreement (NPA), as was the Teamsters International with which the respondent locals were affiliated. The NPA was binding on local unions in locations where pipeline work is done.

In August 2000, the employer commenced a pipeline project in Concord, North Carolina, within the jurisdictions of respondent unions. No collective-bargaining agreement was reached by the parties for this project. In accord with the NPA, however, a prejob conference was held to resolve issues like wages, safety requirements, and hiring of the work force.

The charging parties were members of a Teamsters local from North Dakota. They contacted business agents of the respondents seeking referrals to the pipeline job. They were told that members of the respondent unions would receive priority in referrals and that "out-of-staters" would be placed on a referral "B list."

The General Counsel contended that an exclusive hiring hall arrangement was established at the prejob conference pursuant to an agreement in which the employer would hire 50 percent of the work force, and the respondents would be the sole source of referrals for the remaining half of the work force to be hired. Accordingly, the General Counsel argued that by operating an exclusive hiring hall in a discriminatory manner which favored its own members for job referrals, the respondents violated Section 8(b)(1)(A) and (2).

The Board disagreed. It acknowledged Board precedent that an exclusive hiring hall can be established pursuant to an agreement that half of a jobsite's work force is to be referred from a union's hiring hall, *Carpenters Local 608 (Various Employers),*[71] but concluded that the evidence did not support the finding that such an agreement was reached here. The Board found that "the record, including the testimony of the

[70] 339 NLRB No. 46 (Chairman Battista and Members Liebman and Walsh).
[71] 279 NLRB 747 (1986).

only two witnesses who attended the pre-job conference . . . fails to establish that the parties agreed that the [r]espondents would be the sole source of any specific percentage of referrals." Further, the Board noted that the "evidence indicates that, of the 52 employees hired for the project, 28 were hired directly by the [e]mployer, and only 24 were referred by the [r]espondents."

The Board also rejected the General Counsel's alternative complaint theory that even if the respondents operated only a nonexclusive hiring hall, they still violated the Act by refusing to refer the three sister union members because it was in retaliation for one of them filing a grievance against the sister union while previously employed in North Dakota. The Board found that the evidence failed to support this allegation and concluded that "[t]o the extent that there was a hiring hall arrangement between the parties, it was nonexclusive [and] . . . under such arrangement, it was not unlawful for the [r]espondents to prefer their members for referral over the alleged discriminatees who were members of a different Teamsters local."

2. Union Agent's Conduct During Impending Strike

In *SEIU District 1199 (Staten Island University Hospital)*,[72] the Board majority held that a union organizer violated Section 8(b)(1)(A) by harassing the employer's supervisors, security guards, and managers. The majority held that these actions, even though not targeted at unit employees, sent a message to employees that they would be subjected to like abuse if they failed to fully support the union.

On several dates in 1998, when collective-bargaining negotiations were at a critical point and the union had conducted a strike vote, its organizer and agent, Fabienne Josephs, walked through areas of the hospital that had been clearly and lawfully placed off limits to her and provoked confrontations with the employer's security guards when they tried to restrain her. On two occasions, Josephs attempted to physically push past the guards. The confrontations included shouted racial and sexual epithets, as well as Josephs' repeated claims that she could go where she wanted and could not be stopped.

The majority concluded that Josephs' conduct violated Section 8(b)(1)(A). Noting that the conduct took place in a hospital setting, when a strike was impending, and that it was deliberate, unprovoked, and sustained, the majority concluded that it sent a "clear message to employees that they would be subjected to the same kind of harassment, and perhaps even reprisal, if they failed to support the planned strike, and that, like the [h]ospital, they would be powerless to protect themselves."

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[72] 339 NLRB No. 135 (Members Schaumber and Acosta; Member Liebman dissenting in part).

In the majority's view, employees who witnessed or learned of the conduct would thereby reasonably be restrained or coerced in the exercise of their rights to choose for themselves whether to support a union or refrain from supporting one.

Josephs also confronted the employer's executive vice president and chief operating officer and security services supervisor in the hospital cafeteria. She shouted that they could be "replaced," and also directed sexual epithets at the security supervisor. Reversing the judge's finding that the statement that they could be replaced was an unlawful threat to cause their discharge, the majority found that it "was a lawful response to the [h]ospital's widely circulated memoranda discussing the possibility of using replacement employees, and could not reasonably be viewed by employees as a threat to accomplish the ouster of management officials."

Member Liebman, dissenting in part, agreed that the statement about replacement was not unlawful. She also found that no violation was made out by the remaining verbal abuse that Josephs directed at the hospital's managers and security guards. Instead, Member Liebman concluded that "[w]hat we have here is a union organizer running half-dressed through the [h]ospital corridors, chanting childish slogans, shouting scatological and racial insults at guards, and humiliating managers without any overt motive." Member Liebman found it dubious that employees would interpret Josephs' actions as sending them any message at all, and concluded that the record did not establish the required 'unmistakable nexus' between Josephs' conduct and the Section 7 rights of employees.

F. Union Bargaining Obligation

In *Steelworkers Local 7912* (*U.S. Tsubaki, Inc.*),[73] the Board considered whether the union violated the Act by refusing to bargain on behalf of a group of relocated employees after the Board issued a unit clarification finding that the relocated employees constituted a separate unit. The Board majority found that the union violated Section 8(b)(3) by refusing to bargain on behalf of those employees because the impact of a Board's unit clarification decision was to nullify an existing collective-bargaining agreement covering those employees in their original bargaining unit.

The underlying facts of the case arose in 1996, when the employer relocated a group of employees who had been previously represented by the union as part of a larger bargaining unit. The employer filed a unit clarification petition and, in 1997, the Regional Director found that the relocated employees did not constitute a separate unit. In reliance on that

[73] 338 NLRB No. 5 (Members Cowen and Bartlett; Member Liebman dissenting).

decision, the parties executed a collective-bargaining agreement (effective from October 1, 1997, to September 30, 2001) including both the original unit and the relocated employees as a single unit. Before executing the agreement, counsel for the employer notified the union of its intention to appeal the Regional Director's unit clarification finding.

Thereafter, the Board reversed the Regional Director's decision, finding instead that the relocated employees did constitute a separate unit.[74] In reliance on that decision, the employer renewed its requests to bargain as to the relocated employees. The union refused, asserting that it had no obligation to bargain for a separate contract until the 1997–2001 contract expired. In affirming the judge's decision that the union violated Section 8(b)(3) by refusing to bargain for the new unit, the Board stated:

> We hold that when the Board finds a group of relocated employees to be a separate appropriate unit, an existing collective-bargaining agreement covering those employees in their original bargaining unit does not apply, absent explicit agreement by the employer and union that it should continue to apply.[75]

The Board acknowledged that this is an issue of first impression, but noted that this decision is consistent with dicta in other Board decisions, *Gitano Distribution Center*,[76] and *Armco Steel Co*.[77] Moreover, the Board analogized this case to one in a decertification context—i.e., where parties are negotiating for a collective-bargaining agreement and a rival union files a representation petition, the employer is required to continue bargaining with the incumbent union pending the outcome of the election but any contract executed would become null and void in the event that the incumbent union is displaced.

The majority found that the employer's decision to bargain with the original unit while pursuing its request for review by the Board was the most beneficial course of action to promote industrial relations. Moreover, Section 9 of the Act, requiring the parties in a bargaining relationship to bargain in an appropriate unit, further supports the Board's decision. The majority rejected the union's argument that the employer should have insisted on a provision in the collective-bargaining agreement preserving a right to reopen the contract in the event the Board found the unit to be inappropriate. The parties had the option of including in the contract a provision expressly agreeing to continue its

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[74] See *U.S. Tsubaki, Inc.*, 331 NLRB 327 (2000).
[75] 338 NLRB No. 5, id. slip op. at 1.
[76] 308 NLRB 1172, 1175 at fn. 21 (1992).
[77] 312 NLRB 257 (1993).

coverage for the two-plant unit even if the Board found that a separate unit was appropriate. They not only failed to do so, but the employer clearly also communicated that it would seek bargaining in the separate unit if the Board ultimately found a separate unit appropriate.

Member Liebman, in dissent, would find that the union did not violate the Act by refusing to bargain with the newly clarified unit while the old agreement was still in effect. She asserted that industrial relations are best promoted by giving effect to the parties' agreement. In her view, nullifying the agreement at the employer's request, and over the union's objection, is a dubious way to promote employees' Section 7 rights. The employees delegated the union the authority to negotiate on their behalf, and to agree to a bargaining unit that may not conform to the scope of the initial unit. The Board's unit clarification decision did not state that the separate unit could not be part of a larger, agreed upon unit, at least for the duration of the pending agreement.

G. Equal Access to Justice Act

In *Fantasia Fresh Juice Co.*,[78] a Board majority adopted the administrative law judge's recommendation of an award of attorneys' fees and expenses under the Equal Access to Justice Act (EAJA).[79] These fees and expenses were incurred by the respondent in defending against exceptions filed by the General Counsel to the judge's decision in the unfair labor practice proceeding. The Board majority in that proceeding adopted the judge's dismissal of a complaint alleging that the respondent committed numerous violations of the Act.[80]

In its EAJA decision, the majority found that the General Counsel was not substantially justified within the meaning of EAJA in filing exceptions to the judge's dismissal of the alleged complaint violations, because the "large majority of these exceptions either directly contested the judge's credibility findings or were premised solely on the reversal of those findings, which were the basis for dismissing virtually all of the complaint allegations."[81] In light of the nature of the judge's credibility findings—"witnesses could agree on almost nothing" and the testimony of certain of the General Counsel's witnesses was "thoroughly unreliable"—the panel majority found that the General Counsel was not substantially justified in filing exceptions, especially in the face of the Board's "high standard" against overruling credibility findings of a judge. Id., citing *Standard Drywall Products.*[82]

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[78] 339 NLRB No. 112 (Chairman Battista and Member Liebman; Member Walsh dissenting).
[79] 5 U.S.C. § 504 (1980).
[80] 335 NLRB 754 (2001).
[81] 339 NLRB No. 112, slip op. at 1.
[82] 91 NLRB 544 (1950).

The majority acknowledged that a "few" of the General Counsel's exceptions did not contest the judge's credibility findings. However, the majority declined to "credit the General Counsel with these few justified exceptions, which were unsubstantial when compared with the exceptions that were wholly credibility-based."[83] Citing *Commissioner, INS v. Jean,*[84] and *C. Factotum, Inc.*,[85] the majority concluded that, because EAJA fee determinations are based on treating a case as an "inclusive whole," and because the General Counsel's "overall position in the case" was not substantially justified, the respondent was entitled to an EAJA award for legal fees it incurred in defending against the exceptions.[86]

Member Walsh dissented. He found that had the General Counsel "filed nonmeritorious credibility exceptions alone" an EAJA award would be appropriate.[87] He concluded, however, that where, as here, "the credibility exceptions were intertwined with meritorious legal exceptions," an EAJA award should be denied.[88]

H. Remedial Order Provisions

1. *Gissel* Bargaining Order

In *Desert Aggregates,*[89] the Board majority adopted the judge's conclusion that a *Gissel*[90] bargaining order was not warranted.

The Board adopted the judge's finding that, during an organizing campaign initiated by employee Mark Gregg, the respondent unlawfully solicited employee grievances and promised to remedy them in violation of 8(a)(1). Reversing the judge, the Board also found that the respondent unlawfully laid off Gregg and employee Wendy Miller, because of their union activities, in violation of Section 8(a)(3). Reversing the judge, the majority found that the respondent did not violate the Act by allegedly threatening to replace employees.

The majority concluded that the 8(a)(1) and (3) violations found were serious and noted, particularly, that the unlawful layoffs of Gregg and Miller constituted hallmark violations.[91] They nonetheless concluded

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[83] 339 NLRB No. 112, slip op. at 2.
[84] 496 U.S. 154, 161–162 (1990)
[85] 337 NLRB 1 (2001).
[86] Id.
[87] 339 NLRB No. 112, slip op at 3.
[88] Id.
[89] 340 NLRB No. 38 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).
[90] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).
[91] It is well established that discriminatory discharge and certain other unlawful labor practices, deemed "hallmark" violations, are highly coercive and "will support the issuance of a bargaining order unless some significant mitigating circumstance exists." *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212–213 (2d Cir. 1980).

that a *Gissel* bargaining order was not warranted. Noting that not all hallmark violations create an atmosphere in which free and fair elections cannot be held, the majority found that the respondent's unfair labor practices "were not so numerous or severe as to warrant a bargaining order, even in a small bargaining unit." They noted that the effect of the layoffs was somewhat mitigated by the fact that the decline in the business offered a colorable explanation to other employees for the layoffs and that the respondent attempted to recall Gregg and Miller once business improved.

In her partial dissent, Member Liebman stated that she would find a *Gissel* order warranted because the respondent had, in her view, committed multiple hallmark violations, not only unlawfully laying off the foremost union supporters in an 11-employee unit, but also threatening to replace employees if the union was elected. Moreover, Member Liebman found that the recall of Gregg and Miller could not mitigate the effect of their unlawful layoff on their coworkers because neither Gregg nor Miller returned to work, and there was no evidence that other employees knew of their recall.

2. Appropriateness of Special Remedies

In *Federated Logistics & Operations*,[92] the Board adopted the administrative law judge's finding of numerous violations of Section 8(a)(1) and (3) of the Act, sustained objections concerning the same unlawful activity, and, in addition to traditional remedies and a second election, ordered extraordinary remedies.

Specifically, the Board found that the employer had maintained an unlawful no-solicitation/no-distribution rule and disparately enforced it against union supporters, unlawfully interrogated employees, issued threats of futility, created the impression of surveillance, solicited an employee to attend a meeting and report back what occurred, solicited grievances, promised unspecified benefits, threatened a loss of benefits, threatened that bargaining would start at zero, that the union would strike, work would be moved and employees would be replaced, threatened that wages would be frozen, withheld a wage increase, and issued final warnings and suspensions to employees because they had engaged in union activities.

In addition to traditional cease-and-desist and affirmative remedies, the Board agreed with the judge that several extraordinary remedies were necessary in order to "dissipate fully the coercive effects of the unfair labor practices."[93] The Board imposed such additional remedies

[92] 340 NLRB No. 36 (Members Liebman and Walsh; Chairman Battista dissenting in part).
[93] *Fieldcrest Cannon, Inc.*, 318 NLRB 470, 473 (1995).

because: (1) in response to the union's campaign, the employer had responded with "extensive and serious unfair labor practices;"[94] (2) some of the unlawful conduct pervaded the unit, especially the threats, the unlawful no-solicitation/no-distribution rule, and telling the employees there would be no wage increase because of the upcoming election; (3) some of the unfair labor practices "tended to have a long-term coercive impact on the unit;"[95] and (4) the presence of high-level management officials in the commission of some of the unfair labor practices, which had a pervasive and chilling effect.

Based on these factors, the Board imposed a broad cease-and-desist order, ordered the employer to supply the union every 6 months for 2 years, or until a certification, with the names and addresses of current unit employees, ordered a public reading of the notice, and ordered the posting and public reading of the notice in English, Spanish, and Haitian Creole.

Chairman Battista, dissenting in part, would not have found 8(a)(1) threat violations based on statements made by two vice presidents and a manager. Further, even had he agreed with the majority on all the violations found, the Chairman stated that he would not have found extraordinary remedies to be warranted, other than the notice posting in English, Spanish, and Haitian Creole. In his view these additional remedies are "extraordinary" and "the Board must demonstrate, as a precondition for granting these remedies, why traditional remedies will not sufficiently ameliorate the effect of the unfair labor practices found." In his view, it had not been established that the violations were impervious to traditional Board remedies, or that the union needed the updated names and addresses to communicate with unit employees, the public reading would be punitive, and the lack of any prior violations weighed against a broad order.

3. Appropriateness of Reinstatement Remedy

In *Campbell Electric Co.*,[96] the Board majority reversed the administrative law judge's conclusion that an employee's decision to resign was sufficiently definitive at the time of the employee's unlawful termination to toll the employee's backpay and deny him reinstatement. In doing so, the majority highlighted two applicable statutory principles: (1) that the remedy should restore the status that it would have obtained if the respondent had committed no unfair labor practice; and (2) that any ambiguity regarding the status that would have existed without the

[94] 340 NLRB 36, slip op. at 3.
[95] Id.
[96] 340 NLRB No. 93 (Member Liebman and Walsh; Chairman Battista dissenting in part).

unlawful conduct must be resolved against the respondent, the wrongdoer.[97] In applying these principles, the majority emphasized that the employee's plan to resign was still tentative when he was unlawfully discharged, and that his plan to resign was formed in a coercive context.

On January 22, 2000, Matthew Petruska signed a union authorization card and also signed up to take the placement test for the union's apprenticeship program. Petruska was told by the union organizer that his employment opportunities with a union contractor would depend on his test performance. On February 2, Petruska took the placement test. On February 7, the Respondent's vice president, Tim Gray, told Petruska that he had heard that Petruska had been thinking about going union. Petruska admitted that he was thinking about doing so. On further questioning, Petruska stated that he would probably give a 2-week notice in a couple of weeks. Gray immediately terminated Petruska. Petruska testified that he was waiting for his test results before making a decision regarding whether to leave the respondent's employ. After his termination he learned that his test results were satisfactory.

The majority reversed the judge's finding that Petruska would have given notice of his resignation after receiving the results of the test, and, therefore, also reversed the tolling of Petruska's backpay and the denial of reinstatement. The majority based its reversals on two grounds.

First, Petruska's plans were uncertain at the time of his unlawful discharge. He was waiting for his test results and had not secured another job.

Second, Petruska's intentions about possibly resigning were formed in a coercive context. Two employees had been unlawfully terminated, and the respondent's president had suggested that if employees were involved with the union they and the respondent would go separate ways. Petruska, himself, had been subjected to unfair labor practices, including an unlawful interrogation by the superintendent, Gene Boodt, who also suggested that Petruska look for another job. Also, Petruska was responding to an unlawful interrogation when he admitted that he was thinking of resigning. The majority found that the respondent failed to meet "the burden of negating the reasonable inference that its misconduct affected" Petruska's decision.

In dissent, Chairman Battista concluded that Petruska had a definite intention to resign his employment if he received, as he did, a satisfactory score on the apprenticeship test. Chairman Battista stated that as the respondent proved that Petruska would have quit his job, absent the discharge, the burden shifted to the General Counsel to show

[97] Citing *United Aircraft Corp.*, 204 NLRB 1068, 1069 (1973).

that the decision to quit was caused by the respondent's unlawful conduct. Chairman Battista observed that here, there is no evidence that the respondent's unlawful conduct contributed to Petruska's decision to leave the respondent, and concluded that the more compelling inference is that Petruska's decision was driven by a desire for a larger salary. Accordingly, Chairman Battista concluded that Petruska's backpay should be tolled and there should be no reinstatement.

4. Districtwide Notice Posting

In *Postal Service,*[98] the Board held that a districtwide posting of the notice and a broad remedial Order were appropriate, in light of the respondent's repeated violations of Section 8(a)(5) within its Houston district.

The case involves multiple refusals to provide requested information in violation of Section 8(a)(5). The administrative law judge found that the employer violated Section 8(a)(5) by refusing to provide requested relevant information to the union on 26 occasions in late 2002 and early 2003. The judge ordered a notice posting at the facility where the violations occurred. The General Counsel excepted, requesting that the notice be posted at all of the employer's facilities within the Houston district, and that the notice be read aloud to employees in the presence of a Board agent. The Board held that because of the respondent's past violations of this type at facilities within its Houston district, coupled with the violations found in this case, although reading the notice aloud was not an appropriate remedy, a districtwide posting of the notice was warranted. When there is a "clear pattern or practice of unlawful conduct," the Board may require a broader posting of a notice, even where the violations in a case are not particularly egregious.[99] The employer had a history of failing to provide requested relevant information at locations across the country, and specifically had refused to provide information on several past occasions at its locations in the Houston district. The Board found that because of the employer's failure to change its behavior, additional remedies were warranted. The Board further found that broad injunctive language was necessary in the Order, because of the employer's widespread history of misconduct.

[98] 339 NLRB No. 150 (Members Liebman, Walsh, and Acosta).
[99] *John J. Hudson, Inc.*, 275 NLRB 874 fn. 2 (1985).

V

Supreme Court Litigation

During fiscal year 2003, the Supreme Court decided, on the merits, no cases involving the Board as a party. The Board did not participate as amicus in any cases before the Court. The Court denied nine private party petitions for certiorari in Board cases, and granted none.

VI

Enforcement Litigation

A. Access to Private Property

In *Lechmere, Inc. v. NLRB*,[1] the Supreme Court clarified that only rarely will nonemployees be permitted access to private property to engage in activity protected by Section 7 of the Act. Though that decision is now 11 years old, there remain many unresolved questions as to its application. In several cases decided during the past year, the courts were presented with the question of who, exactly, is a "nonemployee," and, therefore, may under *Lechmere* generally be prohibited by the property owner from engaging in union activity on the premises.

At issue in *First Healthcare Corp. v. NLRB*[2] was whether an employer/property owner must permit its employees access to outside nonworking areas at its other facilities to engage in organizational solicitation and distribution. The Board had analyzed the issue in depth in response to a recent decision of the D.C. Circuit criticizing the Board for failing to sufficiently analyze offsite employee access rights.[3]

The Sixth Circuit upheld as reasonable and consistent with *Lechmere* the Board's conclusion that such "offsite" employees exercise a Section 7 right fundamentally different—and more substantial—than that asserted by the nonemployee union organizers in *Lechmere*. Finding that the Board's decision was responsive to the concerns raised by the D.C. Circuit, the court explained that the Board reasonably determined that the right asserted by the offsite employees is not, as in *Lechmere*, the derivative right of onsite employees to hear about the benefits of unionization, but the offsite employees' own "nonderivative and substantial right" to take concerted action in their own collective interest.[4]

In support of that conclusion, the court accepted the Board's determination that "when an offsite employee seeks to encourage the

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[1] 502 U.S. 527 (1992).
[2] 344 F.3d 523 (6th Cir.).
[3] *See ITT Industries v. NLRB*, 251 F.3d 995 (D.C. Cir. 2001) (Discussed in *First Healthcare*, 344 F.3d at 529–532).
[4] *First Healthcare*, 344 F.3d at 539.

organization of similarly situated employees of another employer facility, the employee seeks to further his own welfare," and that "precisely because they work for the same employer, even at different workplaces, employees will often have common interests and concerns related to wages, benefits, and other workplace issues that may be addressed by concerted action."[5]

Having, thus, agreed with the Board that the offsite employees had a nonderivative right of access under Section 7, the court went on to find that the Board had properly balanced that right against the employer's property rights in requiring the employer to permit the offsite employees' solicitation and distribution in nonworking outdoor areas at its other worksites.[6] In particular, the court noted that the offsite employees did not enter the interior of the company's facilities, and that they wore company badges or were identified by other employees. Accordingly, the court found that the company failed to support its claim that denying access was necessary to secure nursing home residents' welfare, peace, and tranquility, or that identifying employees would be burdensome.[7] Moreover, the court found significance in the Board's statement that it would decide on a case by case basis whether an employer could deny access if faced with security or traffic concerns or other difficulties.[8]

Two cases this year presented the mirror image of *First Healthcare*—circumstances where a property owner sought to prohibit concerted activity by employees who worked regularly and exclusively on the property owner's premises, but whose only employment relationship was with a subcontractor, and not with the property owner itself. In *NLRB v. PNEU Electric*,[9] and *New York New York Hotel & Casino v. NLRB*,[10] the Board had found that such individuals should be permitted to engage in union activities during nonworking time on the property where they worked. The reviewing courts, however, found that the Board had failed to provide a reasoned explanation for that position, and remanded the cases to the Board for further consideration.

In *PNEU*, supra, which involved a rule prohibiting all solicitation on the worksite, including union-related solicitation, the Fifth Circuit emphasized that the category of workers at issue was one not previously addressed in Supreme Court precedent. The court opined that *Republic Aviation*,[11] the lead case setting forth the standards applicable to

[5] Id. (quoting the underlying Board decision).
[6] Id. at 540–541.
[7] Id.
[8] Id. at 541.
[9] 309 F.3d 843 (5th Cir.).
[10] 313 F.3d 585 (D.C. Cir.).
[11] *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945).

employee solicitation and distribution in the workplace "may well be the correct standard to employ as against the contracting employer," but held that "the Board must first determine, considering *Lechmere*, explicitly whether the term 'employee' encompasses this relationship between an employer and a contractor-invitee for the purposes of the Act. That will determine the appropriate locus of accommodation."[12]

Although the Board had based its decision on two earlier precedents, the court found that neither provided the necessary explanation for the Board's determination. The court explained that *Southern Services, Inc., v. NLRB*,[13] while addressing earlier Supreme Court precedents in finding a significant distinction between trespassers and nontrespassers, failed to address the then-recent *Lechmere* decision, "with its greater emphasis on the difference in access rights between employees and nonemployees."[14] And while the other case relied upon by the Board, *Gayfer's Department Store*,[15] mentioned *Lechmere*, the Board's holding there, which drew largely from *Southern Services and* pre-*Lechmere* cases, did not in the court's view "provide a detailed analysis . . . 'to establish the *locus* of accommodation.'"[16]

New York New York, supra, involved employees of an independent restaurant company that operated food service facilities within a casino. The Board found that the casino violated the Act by preventing the restaurant employees from engaging in consumer leafleting at different locations within the casino's property. The District of Columbia Circuit remanded, finding that the Board provided no rationale to explain why, in areas within the casino complex but outside the restaurant's leasehold, the restaurant employees should enjoy the same Section 7 rights as the casino's employees.[17]

As in *PNEU*, the Board had relied on *Southern Services* and *Gayfer's*. The court, in express agreement with the Fifth Circuit, found that those decisions failed to provide adequate justification for the Board's determination, explaining that neither decision "takes account of the principle reaffirmed in *Lechmere* that the scope of § 7 rights depends on one's status as an employee or nonemployee."[18]

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[12] *PNEU*, 309 F.3d at 855.
[13] 954 F.2d 700 (11th Cir. 1992).
[14] *PNEU*, 309 F.3d at 854.
[15] 324 NLRB 1246 (1997).
[16] *PNEU*, 309 F.3d at 855 (quoting *Lechmere*, 502 U.S. at 538) (emphasis supplied by the *PNEU* court).
[17] *New York New York*, 313 F.3d at 588.
[18] Id. The D.C. Circuit went further than the Fifth Circuit with respect to *Southern Services*, finding that the court's reasoning in *Southern Services* is contrary to *Lechmere* in several respects. Id. at 589.

Stating that no Supreme Court case decides the issue, the court directed the Board on remand to address the specific questions presented by the facts of the case, "not only by applying whatever principles it can derive from the Supreme Court's decisions, but also by considering the policy implications of any accommodation between the § 7 rights of the [restaurant's] employees and the rights of [the casino] to control the use of its premises, and to manage its business and property."[19]

Wolgast Corp. v. NLRB[20] also involved a subcontracting relationship, but at issue there were the access rights of a *nonemployee* union representative of the subcontractor's *represented* employees. The representative had sought access to the jobsite to investigate a safety complaint, as he was authorized to do under the subcontractor's collective-bargaining agreement with the union. Relying on its decision in *CDK Contracting Co.*,[21] the Board found that the general contractor violated the Act by denying access to the union representative. Specifically, the Board held that a general contractor, by soliciting subcontractors to perform work, invites them onto the jobsite, and thereby subjects its property rights to the union's contractual access rights with those subcontractors.[22]

Enforcing the Board's order, the *Wolgast* court agreed with the Board that the rule announced in *CDK Contracting* was not contrary to *Lechmere.* The court explained that neither *Lechmere* nor any of the circuit court cases relied upon by the employer addressed union access for representational purposes, and emphasized that a union official seeking access pursuant to a collective-bargaining agreement acts as the "direct representative" of the subcontracting employees, rather than exercising only "derivative" rights, as was the case in *Lechmere.*[23] The court went on to find that the rule adopted by the Board in *CDK Contracting* struck an appropriate balance between the property interests of a construction contractor and the interests of the employees of its unionized subcontractors to benefit from their collective-bargaining agreement.[24]

B. Refusal to Hire Union Applicants

In *NLRB v. Town & Country Electric*,[25] the Supreme Court approved the Board's interpretation of the statutory term "employee" and held that

[19] Id.
[20] 349 F.3d 250 (6th Cir.).
[21] 308 NLRB 1117 (1992).
[22] Id.
[23] *Wolgast*, 349 F.3d at 256.
[24] Id. at 257.
[25] 516 U.S. 85, 93–95 (1995).

paid union organizers, known as "salts," who seek employment to organize an employer's workforce are employees entitled to the Act's protection. Subsequently, the Board, in *FES*,[26] clarified the legal elements for determining whether an employer's refusal to hire or refusal to consider for hire job applicants who are salts was unlawfully motivated. In *FES*, the Board held that to prove an unlawful refusal to hire, and thereby obtain an employment and backpay remedy, the Board's General Counsel must prove that (1) the employer was hiring, or had concrete plans to hire, employees when it refused to hire the applicants at issue; (2) the rejected applicants met the employer's publicly announced or generally known objective criteria for the positions for which they applied, or that the employer had not uniformly adhered to such criteria, or that the criteria were pretextual or had been pretextually applied; and (3) union animus contributed to the decision not to hire the applicants.[27] Once those facts are shown, the employer must prove that it would not have hired the applicants even in the absence of their union activity or affiliation.[28]

In *Fluor Daniel, Inc. v. NLRB*,[29] the Sixth Circuit, enforcing the Board's refusal-to-hire findings, held that the Board's *FES* refusal-to-hire standard fully addressed concerns the court had articulated in its prior decision in *NLRB v. Fluor Daniel, Inc.*,[30] by requiring specific findings "that jobs were available at the time of the alleged discrimination and that discriminatees were qualified for the jobs."[31] The case involved 119 paid and unpaid union organizers who applied for advertised jobs at two separate construction projects. The employer denied employment to each applicant who identified himself as a "voluntary union organizer" or otherwise made apparent his affiliation with a construction trade union. The court agreed with the Board that the employer was hiring during the time that the salts applied; that the salts were well qualified and were available to work over the life of the project; and that the employer had to resort to drastic action to fill its staffing needs at the two sites.[32] The court also agreed with the Board that union animus was shown by the employer's (1) advertised corporate policy of operating nonunion on construction projects; (2) extraordinary nationwide efforts to locate and hire only applicants it knew or believed

[26] 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002).
[27] 331 NLRB at 12.
[28] Id.
[29] 332 F.3d 961 (6th Cir.).
[30] 161 F.3d 953 (6th Cir. 1998).
[31] 332 F.3d at 968. In *Masiongale Electric-Mechanical, Inc. v. NLRB*, 323 F.3d 546 (7th Cir.), the Seventh Circuit also approved the Board's *FES* test.
[32] 332 F.3d at 969.

to be nonunion; and, (3) hiring, in many cases, nonunion applicants with obviously inferior qualifications or experience.

In *Casino Ready Mix, Inc. v. NLRB*,[33] the District of Columbia Circuit found that substantial evidence supported the Board's finding that the employer's refusal to hire two union organizers was unlawfully motivated. The court, as did the Board, rejected the employer's defense that the salts' status as union organizers presented a "disabling conflict" justifying the employer's refusal to hire the salts. In considering the employer's disabling conflict argument, the court cited the Board's decision in *Sunland Construction Co.*, [34] where the Board held that an employer was not required during a strike to hire a paid organizer "whose role is inherently and unmistakably inconsistent with employment behind a picket line," as well as other Board decisions indicating that salting may be unprotected "if the purported organizational activity is a subterfuge used to further purposes unrelated to organizing, undertaken in bad faith, designed to result in sabotage, or designed to drive the employer . . . out of business."[35] The court held that evidence proffered by the employer—including evidence that several years earlier, one salt had engaged in an economic and unfair labor practice strike at another employer and had attempted to convince an employee of the company to work for a union contractor, and that 30 applicants appeared at the company's office when two salts applied—did not show an economic strike situation or any other potentially disabling conflict.[36]

C. Mandatory Subject of Bargaining

It has long been established that matters that are both "plainly germane to the 'working environment' and not among those 'management decisions, which lie at the core of entrepreneurial control'" are mandatory subjects of collective bargaining under Section 8(a)(5) of the Act.[37] In *National Steel Corp. v. NLRB*,[38] the Seventh Circuit upheld the Board's determination, set out in *Colgate-Palmolive Co.*,[39] that the use of cameras in the workplace is a mandatory subject of bargaining. The court accepted as reasonable the Board's determination that the installation and use of such cameras was analogous to other mandatory

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[33] 321 F.3d 1190 (D.C. Cir.).
[34] 309 NLRB 1224, 1230 (1992).
[35] 321 F.3d at 1198, citing *M.J. Mechanical Services*, 324 NLRB 812, 813–814 (1997); and *Braun Electric. Co.*, 324 NLRB 1, 3 fn. 3 (1997).
[36] 321 F.3d at 1199.
[37] *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979) (quoting *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 222–223 (1964) (Stewart, J., concurring)).
[38] 324 F.3d 928 (7th Cir.).
[39] 323 NLRB 515 (1997).

subjects such as physical examinations, drug/alcohol testing requirements, and polygraph testing.[40] The court also concurred in the Board's conclusion that "hidden cameras are focused primarily on the 'working environment' that employees experience on a daily basis" and are used to expose employee misconduct, and that changes in an employer's methods have "serious implications for its employees' job security."[41] The court further observed that the Board's policy is sensitive to employers' need for secrecy in the effective use of hidden cameras, requiring negotiation over the installation and use of surveillance cameras.[42] The court rejected the employer's argument that the collective-bargaining process is so cumbersome that requiring such bargaining is equivalent to prohibiting any meaningful use of such cameras.[43]

The court further held that "because the installation and use of hidden cameras is a mandatory subject of collective bargaining, it necessarily follows that the information regarding hidden cameras is relevant to the union's discharge of its statutory duties . . . ." While recognizing that the employer had legitimate confidentiality interests in the information about hidden cameras, the court concluded that those concerns "are susceptible to accommodation" and the Board properly required the employer to bargain collectively with the union "for a mutually satisfactory confidentiality agreement, protective order or other procedure."[44]

D. Employer Checkoff of Union Dues

Employer checkoff of union dues, and other similar moneys, from employee wages is governed by the Labor Management Relations Act (the LMRA). Generally, Section 302(a) of the LMRA (29 U.S.C. § 186(a)) establishes that it is "unlawful for any employer . . . to pay, lend, or deliver . . . any money . . . to any labor organization." The legislative purpose of that prohibition, in relevant part, was to prevent "corruption of collective bargaining through bribery of employee representatives by employers" and, conversely, "extortion [of employers] by employee representatives." *Arroyo v. U.S.*[45] However, consistent with that purpose, Section 302(c) of the LMRA (29 U.S.C. § 186(c)) contains several specific exceptions for legitimate payments. Among those is Section 302(c)(4) (29 U.S.C. § 186(c)(4)), which provides that the criminal prohibition of Section 302(a) shall not be applicable "with

[40] 324 F.3d at 932.
[41] Id., quoting 323 NLRB at 515–516.
[42] 324 F.3d at 932–933.
[43] Id. at 933.
[44] Id. at 935.
[45] 359 U.S. 419, 425–426 (1959).

respect to money deducted from the wages of employees in payment of membership dues in a labor organization," provided that "the employer has received from each employee, on whose account such deductions are made, a written assignment" authorizing the payroll deduction.

The Board, the courts, and the Justice Department—the agency responsible for enforcement of the criminal provisions of Section 302—have all broadly interpreted Section 302(c)(4)'s term "membership dues" to include other legitimate deductions that relate to either union membership or union representation. For example, "membership dues" has been held to include periodic dues and initiation fees,[46] special assessments and taxes,[47] and agency fees paid by nonmembers in lieu of membership dues.[48]

In *NLRB v. Oklahoma Fixture Co.*,[49] the Tenth Circuit, sitting en banc, upheld the Board's interpretation of the term "membership dues" to encompass the union's "permit fees" paid by probationary employees who were not yet union members. The court held that the Board's interpretation was reasonable and consistent with those cases broadly interpreting the "membership dues" exception. The court explained that, like agency fees, "the permit fees compensate the union for its representation of the probationary employees," who are "a legitimate subject of union security because they are members of the bargaining unit, are covered by the CBA, and are owed a duty of fair representation like other members of the bargaining unit."[50] Although the court recognized that the Board is not itself responsible for enforcing the criminal provisions of Section 302, it accorded the Board's interpretation "some" deference, recognizing that "there is a need for a uniform national understanding of the meaning of the statute in question from a labor law standpoint, and the Board has special expertise regarding the labor law implications of the statute."[51]

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[46] *NLRB v. Food Fair Stores*, 307 F.2d 3, 12 (3d Cir. 1962) (periodic dues); *William Wolf Bakery, Inc.*, 122 NLRB 630, 631 (1958) ("dues, initiation fees, etc."); Department of Justice Advice Memorandum from T. Vincent Quinn, Assistant Attorney General, to George T. Washington, Assistant Solicitor General, 22 LRRM 46 (1948) (dues, initiation fees, and assessments).
[47] *Schwartz v. Musicians Local 802*, 340 F.2d 228, 234 (2d Cir. 1964) (1.5-percent "tax" on member salaries); *International Union of Mine, Mill & Smelter Workers Local 515 v. American Zinc, Lead & Smelting Co.*, 311 F.2d 656, 659 (9th Cir. 1963) (special strike assessment); Memorandum, 22 LRRM 46 (1948) (dues, initiation fees, and assessments).
[48] *Grajczyk v. Douglas Aircraft Co.*, 210 F. Supp. 702, 705–706 (S.D. Cal. 1962) (agency fees).
[49] 332 F.3d 1284.
[50] Id. at 1290–1291.
[51] Id. at 1287.

E. Duty of Fair Representation

In *Jacoby v. NLRB* (*Jacoby II*),[52] the D.C. Circuit addressed the issue of whether a union's inadvertent error in a referral from the hiring hall violated the union's duty of fair representation. It is well established that a union breaches its duty of fair representation when its actions are "arbitrary, discriminatory, or in bad faith."[53] A union that breaches the duty of fair representation unjustifiably restrains employees in the exercise of their Section 7 rights and thereby violates Section 8(b)(1)(A) of the Act.[54] Similarly, where a union's breach of the duty of fair representation causes an employer to discriminate against an employee in violation of Section 8(a)(3), the union thereby violates Section 8(b)(2).[55]

A union must uphold its duty of fair representation where it provides "exclusive hiring hall arrangements, under which workers can obtain jobs only through union referrals."[56] The Board had long held that inadvertent mistakes or errors in hiring hall operations did not violate the duty of fair representation, because such errors did not indicate an intent to harm employees or implicate concerns about favoritism or hostility towards targeted employees that underlie the duty of fair representation.[57] Subsequently, however, a few Board decisions held that hiring hall errors did violate the duty of fair representation.[58]

In 1999, the Board issued *Steamfitters Local 342 (Contra Costa Electric)*,[59] seeking to clarify those conflicting lines of cases. In *Steamfitters*, the union inadvertently failed to refer a member in the proper order from its hiring hall, but, upon realizing the error, promptly dispatched him for work. Overruling its later cases, the Board endorsed its long held view that simple mistakes do not violate the duty of fair representation. The Board also found that the union's error did not violate Section 8(b)(2) because there was no precedent for finding that an inadvertent error inherently encourages union membership.

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[52] 325 F.3d 301, 308–09 (D.C. Cir.).
[53] *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).
[54] *Miranda Fuel Co.*, 140 NLRB 181, 185 (1962), enf. denied 326 F.2d 172 (2d Cir. 1963).
[55] Id. at 186.
[56] *Boilermakers Local 374 v. NLRB*, 852 F.2d 1353, 1358 (D.C. Cir. 1988). Accord: *Breininger v. Sheet Metal Workers Local 6*, 493 U.S. 67, 87–88 and fn. 11 (1989).
[57] *Operating Engineers Local 18 (Ohio Pipe Line)*, 144 NLRB 1365, 1367–1368 (1963); *Plumbers Local 40 (Mechanical Contractor Assns of Washington)*, 242 NLRB 1157, 1163 (1979), enfd. mem. 642 F.2d 456 (9th Cir. 1981). See also *Pipe Fitters Local 392 v. NLRB*, 712 F.2d 225, 229 (6th Cir. 1983).
[58] See *Iron Workers Local 118 (California Erectors)*, 309 NLRB 808, 808 (1992); *Operating Engineers Local 406 (Ford Construction)*, 262 NLRB 50, 51 (1982), enfd. 701 F.2d 504 (5th Cir. 1983).
[59] 329 NLRB 688 (1999).

On review, in *Jacoby v. NLRB* (*Jacoby I*),[60] the D.C. Circuit denied enforcement and remanded the case to the Board. The court distinguished the hiring hall context from other areas of contract administration in which a union owes employees a duty of fair representation. It held that, under *Breininger v. Sheet Metal Workers Local 6*[61] and *Plumbers Local 32 v. NLRB*,[62] the union's duty of fair representation in operating a hiring hall is "heightened" because it takes on the role of employer in referring employees for work.[63] The court remanded the case for the Board to consider the issue under the heightened duty standard and without relying on two Supreme Court cases—*Air Line Pilots Assn. v. O'Neill*[64] and *Steelworkers v. Rawson*[65]—which the Board had cited, because those decisions, holding that union negligence does not breach the duty of fair representation, did not arise in a hiring hall context.

On remand, the Board found that, even under the court's heightened standard, the union's negligence did not constitute a breach of the duty of fair representation.[66] The Board reaffirmed its initial view that an inadvertent error in the operation of a hiring hall was not a breach of the duty of fair representation, emphasizing that other duty of fair representation cases in the hiring hall context focus on arbitrary, discriminatory, or hostile conduct. The Board also again concluded that Section 8(b)(2) did not apply to this situation, where the union's departure from the rules was undisputedly unintentional and isolated, and where applicants would have no reason to think that currying favor with the union would minimize the likelihood of a similar mistake.[67]

In *Jacoby II*, supra, the D.C. Circuit agreed with the Board's decision on remand. The court explained that while a union must operate its hiring hall with objective, consistent standards and without discrimination, the heightened duty standard applicable to hiring halls does not mean that a "single, unintentional error" breaches the duty of fair representation.[68] The court noted that while gross negligence may breach the duty of fair representation, the heightened duty standard does not render a union strictly liable for inadvertent errors where it otherwise operates the hiring hall pursuant to its objective criteria.[69]

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[60] 233 F.3d 611 (2000).
[61] 493 U.S. 67, 89 (1989).
[62] 50 F.3d 29, 32–33 (D.C. Cir. 1995).
[63] 233 F.3d at 617.
[64] 499 U.S. 65 (1991).
[65] 495 U.S. 362 (1990).
[66] 336 NLRB 549, 551–552 (2001).
[67] Id. at 552–553.
[68] 325 F.3d at 308–309.
[69] Id. at 309.

VII
Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding. Section 10(j) proceedings can be initiated after issuance of an unfair labor practice complaint under Section 10(b) of the Act against any employer or labor organization.[1] Any injunction issued under Section 10(j) lasts until final disposition of the unfair labor practice case by the Board.

In Fiscal 2003, the Board filed in district courts a total of 15 petitions for temporary injunctive relief under Section 10(j). Of these petitions, 13 were filed against employers, and two petitions were filed against an employer and a labor organization. Seven cases authorized in the prior fiscal year were also pending in district courts at the beginning of this fiscal year. Of these 22 cases, 2 were settled or adjusted prior to court action, and 4 cases were withdrawn prior to a court decision due to changed circumstances. District courts granted injunctions in 11 cases and denied them in 3 cases. Two cases remained pending in district court at the end of the fiscal year.

Four of the cases litigated in district courts involved employer interference with nascent union organizational campaigns, including one case where the violations precluded a fair election and warranted a *Gissel* bargaining order.[2] Another three cases involved either improper employer withdrawals of recognition from an incumbent union or an attempt by an employer to undermine the status of an incumbent union. Two cases involved successor employers which refused to recognize and bargain with the incumbent unions that had represented the employees of the predecessor employer.[3] Two of the cases involved situations where

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[1] See, e.g., *Bloedorn v. Francisco Foods, Inc*., 276 F.3d 270 (7th Cir. 2001); *Scott v. Stephen Dunn & Associates*, 241 F.3d 652 (9th Cir. 2001); *Sharp v. Webco Industries, Inc*., 225 F.3d 1130 (10th Cir. 2000). The decision in *Stephen Dunn & Associates* was discussed in the 2001 Annual Report. The decision in *Webco Industries, Inc.* was discussed in the 2000 Annual Report.

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

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

an employer extended recognition to and entered into a labor agreement with a minority union that did not represent an uncoerced majority of the unit employees.[4] Finally, one case involved seeking a sequestration of assets injunction to protect the ultimate Board backpay remedy from being dissipated by employers during Board administrative litigation.[5]

One case decided during the reporting period involved employer interference with a union's organizational campaign where the violations were serious enough to warrant the imposition of an interim *Gissel* bargaining order based upon a union's card majority. In *Hoffman v. Ambassador Wheelchair Services, Inc.*,[6] the court found reasonable cause to believe that the employer had suspended and discharged union organizers, threatened union supporters with reprisals, granted wage increases in an attempt to influence votes, and withheld wage increases in retaliation for the filing of an unfair labor practice charge in a 38-person unit. In addition to ordering the interim reinstatement of several discharged employees, the court also granted an interim bargaining order remedy based upon the union's having obtained a card majority during the campaign. The court concluded that the possibility of erasing the effects of the violations and ensuring a fair election or rerun election by the use of traditional Board remedies was slight. The court also determined that the record did not reflect the presence of mitigating factors that weighed against the issuance of an interim bargaining order.

Two other cases involved employer interference with a union's organizational campaign where the union had not achieved majority status. In *Kentov v. Point Blank Body Armor, Inc.*,[7] the court found reasonable cause to believe that the employer had discharged three union supporters, treated unfair labor practice strikers as economic strikers, threatened employees with the loss of their jobs, and granted better working conditions to employees in an attempt to influence votes in a unit of over 400 employees. The court ordered the employer to reinstate the terminated employees on an interim basis, and to reinstate any unfair labor practice strikers who make unconditional offers to return. In addition, prior to issuing its injunction, the court denied the employer's motion to dismiss the petition on the grounds that it was filed at a time when the Board did not have a quorum.[8] In denying that motion, the court held that the Board lawfully had delegated its authority to seek Section 10(j) relief to the General Counsel.

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[4] See generally *ILGWU v. NLRB (Bernhard-Altmann Texas Corp.)*, 366 U.S. 731 (1961).
[5] See generally *Jensen v. Chamtech Services Center*, 155 LRRM 2058 (C.D. Ca. 1997).
[6] Case No. 3:02CV2198 (RNC) (D. Conn.).
[7] 2003 WL 253063, No. 02-61716-CV (S.D. Fla.).
[8] *Kentov v. Point Blank Body Armor, Inc.*, 258 F.Supp. 2d 1325 (S.D. Fla. 2002).

In a similar factual setting, the court in *McDermott v. St. Mary Medical Center*,[9] concluded that the Regional Director had established probable success on the merits in proving that the employer had violated the Act by discharging two employees in a 500 to 600-person unit, issuing written warnings, threatening employees with a loss of benefits and unspecified reprisals if they continued to support the union, and engaging in surveillance. The court found that the employer's actions had chilled the union's organizing activities in 8 of the 29 hospital departments, in which about half of the proposed unit employees were employed. The court concluded that injunctive relief may revive the union's organizing efforts, and ordered the interim reinstatement of the two discharged employees.

Two cases decided during the fiscal year involved the undermining of incumbent collective-bargaining representatives. The court in *Reichard v. Champion Enterprises, Inc.*,[10] found that there was a likelihood that the employer had violated the Act by temporarily shutting down its facility and laying off a majority of the 167 unit employees without notifying the union, by soliciting employees to report to it regarding the union activities of their fellow employees, by denying relevant information requests, and by disparately enforcing rules regarding the posting of literature. The court further concluded that there was a likelihood that an anti-union petition relied on by the employer to withdraw recognition from the union 8 days after the expiration of the certification year resulted from employee disaffection caused by those unfair labor practices.[11] In order to prevent irreparable harm, the court ordered the employer to, inter alia, recognize and bargain with the union.

The second union undermining case, *Mattina v. Chinatown Carting Corp.*,[12] involved an employer's refusal to bargain with a union that had represented its employees for several years. The court found reasonable cause to believe that the employer unlawfully terminated 4 of the 10 unit employees; threatened employees with termination, layoffs, and the closure of the business; and refused to be bound by a successor collective-bargaining agreement, contrary to its prior written commitment. The court noted that an employer representative had called employees at home to coercively interrogate and threaten them. Accordingly, the court concluded that interim injunctive relief requiring the employer to recognize the union, comply with the collective-

[9] Case No. EDCV 03-00351-VAP (SGLX) (C.D. Cal.).
[10] No. CV-F-03-5987 (E.D. Cal.).
[11] The court relied on *Lee Lumber*, 322 NLRB 175 (1996), and *Master Slack Corp.*, 271 NLRB 78 (1984).
[12] 2003 WL 22251213 (S.D. N.Y.).

bargaining agreement, and reinstate the terminated employees, was just and proper, particularly considering the adverse impact of the terminations on the remaining employees.

Two cases this year presented situations where successor employers took over employing enterprises, hired the predecessor employer's workforce, and then failed and refused to recognize and bargain with the incumbent union that represented the predecessor's employees. Indeed, in both cases the employers extended recognition to a rival union on the asserted grounds that the acquired operation was an accretion to another bargaining unit. In *Kendellen v. Inter-Regional Disposal & Recycling, Inc.*[13] and *Lightner v. North Hills Office Services and National Organization of Industrial Trade Unions*,[14] the courts found reasonable cause to believe that the employer employers were *Burns*[15] successors. The employers had continued the employing enterprises, the historical units remained appropriate bargaining units, and the employers did not carry their burdens of proof that the units had been properly accreted to another union's bargaining unit. The courts found that interim bargaining orders in favor of the incumbent unions and orders to cease recognizing the rival unions were just and proper. The court in *Inter-Regional Disposal & Recycling* also ordered the interim reinstatement of several discharged employees who had struck to protest the employer's refusal to recognize the incumbent union. The court in *North Hills Office Services* also enjoined the rival union from accepting recognition from the employer and from giving effect to the parties' collective-bargaining agreement at a time when the union did not represent an uncoerced majority of the affected employees in the appropriate unit.

Also during the fiscal year, two district courts ordered employers to withdraw recognition from unions that did not enjoy the majority support of their employees, thereby permitting the Board to conduct representation elections. In *McDermott v. Dura Art Stone, Inc.*,[16] the court found that the Board had a likelihood of success in proving that the employer and an incumbent union unlawfully executed a collective-bargaining agreement almost a month after receiving a petition signed by 48 of its 60 employees stating that they no longer wished to be represented by that union. A rival union had filed a petition for an election and a waiver, similar to those described in *Carlson Furniture*,[17] pursuant to which that union agreed not to file objections based on the

[13] Civil No. 03-1442 (WHW) (D. N.J.).
[14] Civil No. 03-CV-2320 (JAG) (D. N.J.), appeal pending Docket No. 03-3523 (3d Cir.).
[15] *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).
[16] No. EDCV 03-752 RT (SGLX) (C.D. Cal.). See also *Dura Art Stone, Inc.*, 340 NLRB No. 113 (Oct. 31, 2003) (Order Denying Review of Decision and Direction of Election).
[17] 157 NLRB 851 (1966).

pre-injunction violations if the Board were to conduct an election following issuance of the injunction. The court applied the presumption that irreparable injury would result if the unfair labor practices were not enjoined, and concluded that the balance of harms tipped in the Board's favor and that the public interest in protecting the employees' right to choose their representative would be served by issuing an injunction requiring the employer and the incumbent union to cease and desist from giving effect to their contract, pending the issuance of the Board's order in the administrative case.

In the second similar case, *Moran v. LaFarge North America, Inc.*,[18] the court found a likelihood of success in proving that the employer unlawfully recognized a union and executed a collective-bargaining agreement with it before the employer had hired any employees. The employer required the newly hired employees to sign authorization cards, and about 9 of 13 did so. Almost all of the employees then signed authorization cards for a different union shortly after the employer applied the contract. In finding that there was a high likelihood of success on the merits, the court relied in part on the administrative law judge's decision favorable to the General Counsel. The court concluded that the harm flowing from the employees' inability to be represented by a collective-bargaining representative of their own choosing, pending the issuance of a Board decision, as well as their inability to exercise their right to strike due to a no-strike clause in the existing agreement, would be irreparable. In addition, the court noted that the longer the rival union remained barred from representing the employees, the less likely it would be that the employees' preferred union could organize and represent them effectively if and when the employer commenced bargaining pursuant to a Board order. Accordingly, the court ordered the employer to cease and desist from recognizing the first union and from maintaining a collective-bargaining agreement with it, pending the resolution of the unfair labor practice litigation.

One case during the fiscal year involved a sequestration of assets to protect the Board's ultimate backpay remedy from possible dissipation by the respondents. In *Aguayo v. South Coast Refuse Corp.*,[19] the district court found that the Regional Director would likely prove before the Board that certain individual owners of a defunct respondent corporation, as well as an alter ego company, were derivatively liable for the Board backpay obligation of the defunct respondent company. These derivative respondents had been named in a supplemental backpay specification as

[18] 2003 WL 22330331 (N.D. Ind.). See also *LaFarge North America, Inc.*, Case 13–RC–20721 (Oct. 10, 2003) (Decision and Direction of Election).
[19] CV 02-6258 AHM (JTLX) (C.D. Ca.).

liable for the backpay arising under two Board decisions.[20] There was also substantial evidence that the derivative respondents were transferring and hiding assets in an effort to evade their backpay obligations under the Board decisions. In these circumstances the district court issued an injunction against all the named respondents proscribing the dissipation of assets. The court also ordered the individual respondents to affirmatively escrow funds or obtain a surety bond in the amount of $1.1 million dollars to protect the Board's backpay remedy. The court subsequently found the individual respondents in civil contempt of the injunction when they failed to fully fund the escrow or surety bond provision of the 10(j) decree. After further proceedings in the district court involving Board requests for writs of body attachment against the individual respondents, a global settlement was reached between the Board and the respondents, which included the payment of some $850,000 to the Board to settle the backpay claims of employees and the payment to the district court of some $40,250 in civil contempt compliance fines.

B. Injunction Litigation Under Section 10(1)

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."[24] In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section

[20] During the prior administrative litigation against the employer corporation, the Board was successful in obtaining both a Section 10(j) injunction as well as a civil contempt adjudication. See *Aguayo v. South Coast Refuse Corp*., 161 LRRM 2867 (C.D. Ca. 1999) and *Aguayo v. South Coast Refuse Corp*., 2000 WL 1280915, 140 Lab. Cas. Para. 10,688 (C.D. Ca. 2000). These cases were discussed in the 1999 and 2000 Annual Reports.

[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] See generally *Pye v. Teamsters Local* 122, 61 F.3d 1013 (1st Cir. 1995); *Kinney v. Operating Engineers Local* 150, 994 F.2d 1271 (7th Cir. 1993).

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.[25] 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 labor organization, 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 5 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with 1 case pending at the beginning of the period, 1 case was settled, no cases withdrawn, and 1 was pending court action at the close of the report year. During this period, 4 petitions went to final order, the courts granting an injunction in 1 case and denying them in 3 cases. Injunctions were issued on 2 cases involving secondary boycott action proscribed by Section 8(b)(4)(B), and in 1 case involving jurisdictional disputes in violation of Section 8(b)(4)(C). There were no injunctions issued in cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

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

VIII

Contempt Litigation and Compliance Branch

During fiscal year 2003, the Contempt Litigation and Compliance Branch (CLCB) continued its evolution into a full-service office, with contempt litigation being an alternative, but not the only, method to achieve compliance, and with compliance advice and assistance becoming an increasingly important component of our work. A total of 367 cases were referred to the CLCB during the fiscal year for consideration of contempt proceedings, for advice and/or assistance, or for other appropriate action to achieve compliance with the Act. Of this total, 123 cases were formal submissions respecting contempt or other compliance actions; in 244 other cases, advice and/or assistance was given to the Regions or other Agency personnel and the cases returned for further administrative processing.

Of the 123 contempt or other formal submissions, voluntary compliance was achieved in 23 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 18 other cases settled after the filing of a formal pleading in court but before trial. In 48 others, it was determined that contempt was not warranted. In cases deemed to have merit, nine civil contempt or equivalent proceedings were instituted, including one in which body attachment was sought. A number of ancillary compliance proceedings were also instituted by the CLCB during 2003, including three requests for writs of pre or postjudgment garnishment under the Federal Debt Collection Procedures Act (FDCPA) and two motions for disposition orders for funds previously garnished. Seven proceedings in bankruptcy courts were initiated, including four actions to declare debts obtained by the Board nondischargeable; two arguing against approving free and clear sales without protections for the Board's interests; and one attacking a fraudulent effort to avoid an agreed-upon reorganization plan.

The CLCB continued to assist and train Regional and Agency personnel and the labor bar in other ways during the fiscal year. The CLCB conducted 202 asset/entity database investigations to assist Regions in their compliance efforts, a task which is over and above the 367 referrals to the CLCB outlined above. Representatives of the CLCB also spoke at a compliance workshop at the Regional Director’s

Conference in Washington, D.C.; organized compliance programs for several Regional Offices; sponsored and conducted CLE programs; and addressed meetings held by members of the private sector bar on contempt and compliance issues. A total of 379 hours were spent in such endeavors during the fiscal year.

With respect to litigated cases, 12 civil contempt or equivalent adjudications were awarded in favor of the Board during the fiscal year, including 3 writs of body attachment. During FY 2003, the Branch also successfully obtained three protective restraining orders and/or injunctions; one order declaring backpay debts nondischargeable; one postjudgment writ of garnishment; one prejudgment writ of garnishment; two turnover orders for garnished funds; and two subpoena enforcement orders.

During the fiscal year, the CLCB collected $46,250 in fines and $13,585,418 in backpay,[1] while recouping $18,153 in court costs and attorneys' fees incurred in contempt litigation.

Several noteworthy cases arose during the fiscal year. In *South Coast Refuse Corp.*, the CLCB, in conjunction with Region 21, initiated and obtained an injunction from the United States District Court for the Central District of California which required South Coast and its owners to deposit or post a bond in the amount of $1.1 million, pending the Board's adjudication in compliance proceedings of moneys owed to employees who had been unlawfully discharged, union trust funds, and other monetary relief. After a petition for civil contempt was filed against Respondents for noncompliance with the injunction, the owners pled poverty, claiming that South Coast was financially unable to comply with the injunction. However, through the course of litigation, it was discovered that the owners had fraudulently confiscated and hid $1.9 million of South Coast's proceeds from the sale of a portion of its business to another employer. In excess of $1 million of these funds were found through subpoenas on financial institutions. After the district court issued provisional writs of body attachment against each of the owners, a settlement was reached which included payment of $850,000 in backpay and $40,250 in contempt fines.

In *Alaska Pulp,* the CLCB, in conjunction with Region 19, resolved a complex backpay case after years of litigation and sporadic settlement negotiations. The backpay liability had been created when, in 1989, APC was found to have violated the Act by, among other things, failing and refusing, at the end of an economic strike in 1987, to offer qualified

[1] This included more than $850,000 in backpay in *South Coast Refuse* and more than $12 million in *Alaska Pulp*. In both cases, the Branch worked in close consultation with the Regions to litigate and/or settle the cases. These cases are discussed below.

strikers reinstatement to their appropriate prestrike positions. In 1995, the CLCB obtained a setoff of U.S. Forest Service Funds owed to APC to cover potential backpay claimants. From that time on, there were alternate periods of heavy litigation and settlement discussions, with no resolution. Finally, in FY 2003 the CLCB and Region 19, after marathon negotiations, reached a complex settlement with APC providing for the distribution of in excess of $11 million in backpay, and restoration of full pension and 401(k) plan benefits to approximately 100 discriminatees

In *Montauk Bus Co.*, the CLCB, in conjunction with Region 29, initiated ultimately successful proceedings in the bankruptcy court to attack fraudulent transactions entered into by the debtor. Montauk had filed for Chapter 11 Bankruptcy and, as part of the Chapter 11 plan, agreed to make 40 monthly installment payments to the Board to cover backpay. After making about one-half of the payments, the debtor advised Region 29 that it had gone out of business and could no longer make payments. However, a subsequent investigation revealed that over the course of the installment period, the debtor had begun siphoning assets piece by piece to an alter ego, and that the alter ego was about to sell these assets to a bona fide purchaser. The CLCB sought a protective restraining order under Section 105 of the Bankruptcy Code to require Montauk and its alter ego to deposit into the registry of the court the proceeds of the sale, up to $83,000, to protect the Board's backpay claims, and coordinated with Region 29 and Special Litigation in filing an adversary complaint seeking to hold the alter ego liable to pay the backpay. The Respondent ultimately agreed to an interim order which set aside sufficient monies to protect the Board's claims pending litigation of the adversary compliant.

Finally, in *Eckert Trucking*, a long and arduous journey through the court system was completed when the respondent owner was located and civilly arrested by order of the district court in Montana. After being brought into court in belly chains and given a stern lecture by the district court judge, Respondent's owner complied with the judgment by offering reinstatement, posting a notice and paying our attorneys' fees. Respondent also agreed to, and paid, nearly $14,000 in back wages which had not yet been liquidated.

IX

Special Litigation

A. Litigation Concerning the Board's Subpoena Power

In *NLRB v. Chapa De Indian Health Program, Inc.*,[1] the Ninth Circuit affirmed the district court's enforcement of several Board administrative subpoenas that were issued to Chapa De in connection with an unfair labor practice proceeding. Chapa De is a "tribal organization" under the Indian Self-Determination Act, 25 U.S.C. § 450b(*l*), and is authorized by a federally-recognized Native American tribe to provide free health services to Native Americans in certain parts of northern California. Chapa De refused to comply with the Board's subpoenas, on the ground that the Board lacked jurisdiction over it. The district court enforced the subpoenas, finding that, under the Ninth Circuit standard for judicial enforcement of an agency's subpoenas, the Board's jurisdiction was not "plainly lacking." On appeal, Chapa De argued that it was not required to comply because (1) the Act is not a statute of general applicability and therefore does not apply to Native American tribes, and (2) even if the Act were a statute of general applicability, it does not apply to Native American tribes or their tribal organizations because the Act does not expressly state that it does.

Regarding the first argument, the Ninth Circuit held that the NLRA is a statute of general applicability, as it is not materially different from other federal statutes found to be generally applicable, such as the Occupational Safety and Health Act and the Employee Retirement Income Security Act. As for the second argument, the court found controlling circuit precedent stating that statutes of general applicability that are silent as to their applicability to Native American tribes nonetheless apply to them unless: (1) the law affects rights of self-governance in purely intramural tribal matters, (2) the law abrogates rights guaranteed by Native American treaties, or (3) the legislative history of the law indicates Congress' intention that the law not apply to tribes.[2] Chapa De invoked the first and third exceptions. The court concluded that Chapa De did not meet the first exception because Chapa

[1] 316 F.3d 995 (9th Cir.).
[2] *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985).

De receives and relies on tribal as well as non-tribal funding, operates facilities on non-tribal land, treats non-Native Americans as well as Native Americans, and employs non-professional employees who are not Native American—factors that refute Chapa De's claim that its activities concern rights of self-governance on purely intramural matters. The court also found that Chapa De failed to satisfy the third exception. The court noted that there is no pertinent legislative history in the Act or the Indian Self-Determination Act, and rejected Chapa De's reliance on the Act's Section 2(2) exemption for federal employers, noting that this issue is an open one but does not show that Board jurisdiction is "plainly lacking." Accordingly, the Ninth Circuit affirmed the district court's enforcement of the Board's subpoenas.

B. Litigation Concerning Board Jurisdiction

In *Numark Security, Inc. v. U.S. Department of Commerce*,[3] the United States District Court for the Northern District of Indiana granted the Board's motions to intervene and dismiss state law claims made by a union official's former employer against the official in his personal capacity. The claims alleged that the union official defamed and slandered the employer, and tortiously interfered with the employer's contract with the Department of Commerce. The union official previously had filed unfair labor practice charges against the employer, alleging that the employer disciplined and then terminated him because of his union activities. The Board upheld an ALJ's findings that the employer violated the Act, and the Seventh Circuit enforced the Board's order. In the meantime, the employer filed the district court action. The Board sought to intervene in the district court proceeding, and asserted in a motion to dismiss that the employer was collaterally estopped by the Board proceedings from asserting the claims against the union official.

The district court granted the Board's motion to intervene. Although the case had been pending for 20 months, the court found that the Board's intervention was timely, as there was no prejudice to Numark and the Board acted reasonably diligent under the circumstances. The court also found that without the Board's intervention, the disposition of the case might impair the Board's interest in implementing and enforcing the Act, and that the Board's interest was not adequately represented by the existing private parties. The court further granted the Board's motion to dismiss, agreeing that the employer was collaterally estopped from asserting its state law defamation, slander, and tortious interference with contract claims. The court held that the complaint raised the same issues of fact as were before the agency. Thus, the complaint raised issues of

[3] No. 2:01-CV-286, 2003 WL 1238868 (N.D. Ind.) (not reported in F.Supp.2d).

whether the union official made certain false statements concerning Numark, which statements the ALJ had previously found to be factual, reasonable, and protected by the Act. The court further found the employer had an adequate opportunity to litigate these issues before the Board, even though the employer's counsel could not be present on the second day of the hearing before the ALJ. The court noted that the hearing had been continued once before pursuant to the employer's request, and that the employer was permitted to call witnesses out of turn on the first day of the hearing. Therefore, the court agreed that the employer had ample opportunity to litigate its claims, and accordingly, dismissed the state law claims.

In *Provident Nursing Home*,[4] the United States Bankruptcy Court for the Southern District of Florida denied a motion filed by Hillard Development Corporation (HDC) seeking to compel the Board to vacate election results and decertify a union as representative of a collective-bargaining unit. The dispute arose after the Board certified an SEIU local union as the exclusive bargaining representative of a unit of nurses, nursing assistants, and other employees. HDC refused to bargain with the union and to provide it with information, contending that certain nurses were statutory supervisors and should have been excluded from the unit. The Board rejected this contention in unfair labor practice proceedings, and the U.S. Court of Appeals for the First Circuit enforced the Board's order. Subsequent to both the issuance of the First Circuit's judgment and the parties' negotiations for a collective-bargaining agreement, the Supreme Court decided *NLRB v. Kentucky River Community Care*,[5] a case which, according to HDC, raised questions regarding the validity of the Board's underlying bargaining unit determination and the inclusion of certain nurses in the unit.

In its motion to the bankruptcy court to vacate the election results, HDC relied on Section 105 of the Bankruptcy Code, 11 U.S.C. § 105, as its basis for bankruptcy court jurisdiction. The bankruptcy court denied the motion, agreeing with the Board that Section 105 does not grant the court authority to compel the Board to take action in a closed representation case contrary to a First Circuit final judgment. The court noted that HDC was not foreclosed from obtaining relief in administrative proceedings, including in an unfair labor practice proceeding before the Board, or in a representation proceeding upon HDC's filing of a unit clarification petition under Section 9 of the Act. The bankruptcy court accordingly denied HDC's motion.

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[4] No. 98-25061-BKC-AJC (Bankr. S.D. Fla.) (unpublished).
[5] 532 U.S. 706 (2001).

C. Litigation Alleging Agency Misconduct

In *Gilgallon v. NLRB*,[6] the United States District Court for the District of New Jersey granted the Board's motion to dismiss a complaint arising out of a civil contempt order and writs of body attachment against the plaintiffs. Those orders were obtained by the Board in an effort to obtain compliance with a temporary injunction issued by the district court pursuant to Section 10(j) of the Act, 29 U.S.C. § 160(j).[7] The plaintiffs, who were not represented by counsel, alleged in their complaint, among other things, that the Board engaged in a fraudulent and unlawful course of conduct in the contempt and body attachment proceedings before the district court. The plaintiffs claimed that the Board inflated the amount of damages plaintiffs owed under the Section 10(j) order, falsified evidence to support those amounts, and conspired to inflict personal and financial damages on plaintiffs.

The district court granted the Board's motion to dismiss, finding that the complaint was barred by both claim preclusion and issue preclusion. In concluding that claim preclusion applied, the district court found that the facts giving rise to the complaint were essentially similar to those at issue in the earlier litigation, and thus rejected plaintiffs' attempt to assert allegations regarding the propriety of the damages calculations as a new claim rather than as a defense in the prior proceedings. The court further concluded that even if plaintiffs could not have asserted their allegation as a claim in the earlier action, issue preclusion barred the complaint because there was little question that the damages issue asserted by plaintiffs was both actually litigated and essential to the court's earlier judgment.

In *Patrick v. Carpenters*,[8] the United States District Court for the District of Nevada granted the Board and union defendants' motions to dismiss allegations of illegal conspiracy and collusion made by an individual charging party arising from the Board's postponement of an unfair labor practice hearing pending settlement consideration. As a threshold issue, the court rejected the plaintiff's motion to recuse the presiding judge, holding that the judge's issuance of a ruling in a prior proceeding, which was adverse to the plaintiff, is not a valid basis for removal. The court then held that the plaintiff failed to allege the elements necessary to assert violations of certain criminal statutes (18 U.S.C. § 241 (conspiracy against rights), § 242 (deprivation of rights under color of law), and § 246 (deprivation of relief benefits)). The court further held that these criminal statutes do not provide a private right of

[6] No. 02-4870 (D.N.J.) (unpublished).
[7] *Pascarell v. Consec Security*, No. 97-1509 (D.N.J. April 17, 1997) (unpublished).
[8] No. CV-S-03-0055-KJD (RJJ) (D. Nev.) (unpublished).

action in any event. The court also rejected the plaintiff's allegation under 42 U.S.C. § 1983 on the basis that the Board acts under color of federal, not state, law. Plaintiff's claim under *Bivens v. Six Unknown Agents*,[9] for violations of his constitutional rights, was also dismissed on grounds that Bivens actions provide no right of redress against private individuals or entities such as the union defendants, and may not be maintained against federal agencies. The court also rejected the Bivens action against two Board attorneys named in their individual capacities, finding that such individuals were entitled to absolute immunity because their actions were prosecutorial, and that they were entitled to qualified immunity because their actions were authorized by clearly-established law. Finally, the court held that it lacked jurisdiction over state tort causes of action for fraud and conspiracy because several union defendants' residency in Nevada defeated diversity jurisdiction, and the court determined not to maintain supplemental jurisdiction of the remaining state law claims.

[9] 403 U.S. 388 (1971).

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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 initiated by the filing of a petition by a union, an employer, or a group of employees.

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

Editor's Note: The NLRB is continuing to improve its techniques for tracking and collecting case activity data. Since the deployment of a new case-tracking database in 1999, the Agency has made considerable progress in its efforts to ensure the information is accurate. Notes have been inserted in some of the tables where there may be minor inconsistencies between the tables. Data fields on "AFL–CIO" elections in the FY 2002 and FY 2003 Annual Reports inadvertently include elections involving the Carpenters Union, which disaffiliated from the AFL–CIO in March 2001. Questions or comments about the report should be sent to the NLRB Division of Information, Washington, D.C. 20570.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2003[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2002	*24,682	15,620	737	782	6555	988
Received fiscal 2003	33,715	18,420	864	978	11,853	1,600
On docket fiscal 2003	58,397	34,040	1,601	1,760	18,408	2,588
Closed fiscal 2003	35,766	20,056	948	1,014	12,054	1,694
Pending September 30, 2003	22,631	13,984	653	746	6,354	894
	Unfair labor practice cases[2]					
Pending October 1, 2002	22,773	14,335	690	704	6,169	875
Received fiscal 2003	28,781	14,990	685	742	10,937	1,427
On docket fiscal 2003	51,554	29,325	1,375	1,446	17,106	2,302
Closed fiscal 2003	30,618	16,438	760	793	11,127	1,500
Pending September 30, 2003	20,936	12,887	615	653	5,979	802
	Representation cases[3]					
Pending October 1, 2002	1,717	1,202	46	70	320	79
Received fiscal 2003	4,654	3,325	171	222	805	131
On docket fiscal 2003	6,371	4,527	217	292	1,125	210
Closed fiscal 2003	4,849	3,494	180	206	819	150
Pending September 30, 2003	1,522	1,033	37	86	306	60
	Union-shop deauthorization cases					
Pending October 1, 2002	60	--	--	--	60	--
Received fiscal 2003	107	--	--	--	107	--
On docket fiscal 2003	167	--	--	--	167	--
Closed fiscal 2003	103	--	--	--	103	--
Pending September 30, 2003	64	--	--	--	64	--
	Amendment of certification cases					
Pending October 1, 2002	6	6	0	0	0	0
Received fiscal 2003	11	9	1	1	0	0
On docket fiscal 2003	17	15	1	1	0	0
Closed fiscal 2003	10	8	1	1	0	0
Pending September 30, 2003	7	7	0	0	0	0
	Unit clarification cases					
Pending October 1, 2002	126	77	1	8	6	34
Received fiscal 2003	162	96	7	13	4	42
On docket fiscal 2003	288	173	8	21	10	76
Closed fiscal 2003	186	116	7	14	5	44
Pending September 30, 2003	102	57	1	7	5	32

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1B for totals by types of cases.
[3] See Table 1A for totals by types of cases.
[*] Totals for cases pending Oct. 1, 2002, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2003[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	CA cases					
Pending October 1, 2002	*19,749	14,278	684	684	4,033	70
Received fiscal 2003	21,757	14,903	678	712	5,418	46
On docket fiscal 2003	41,506	29,181	1,362	1,396	9,451	116
Closed fiscal 2003	23,622	16,361	754	762	5,694	51
Pending September 30, 2003	17,884	12,820	608	634	3,757	65
	CB Cases					
Pending October 1, 2002	2,623	39	5	19	2,118	442
Received fiscal 2003	6,213	51	7	15	5,477	663
On docket fiscal 2003	8,836	90	12	34	7,595	1,105
Closed fiscal 2003	6,166	41	6	19	5,387	713
Pending September 30, 2003	2,670	49	6	15	2,208	392
	CC Cases					
Pending October 1, 2002	251	4	0	0	10	237
Received fiscal 2003	464	11	0	4	17	432
On docket fiscal 2003	715	15	0	4	27	669
Closed fiscal 2003	488	10	0	4	22	452
Pending September 30, 2003	227	5	0	0	5	217
	CD Cases					
Pending October 1, 2002	81	11	0	1	2	67
Received fiscal 2003	186	19	0	6	8	153
On docket fiscal 2003	267	30	0	7	10	220
Closed fiscal 2003	197	20	0	6	8	163
Pending September 30, 2003	70	10	0	1	2	57
	CE Cases					
Pending October 1, 2002	23	1	0	0	1	21
Received fiscal 2003	38	6	0	4	8	20
On docket fiscal 2003	61	7	0	4	9	41
Closed fiscal 2003	36	5	0	1	5	25
Pending September 30, 2003	25	2	0	3	4	16
	CG Cases					
Pending October 1, 2002	13	0	0	0	3	10
Received fiscal 2003	23	0	0	0	2	21
On docket fiscal 2003	36	0	0	0	5	31
Closed fiscal 2003	22	0	0	0	2	20
Pending September 30, 2003	14	0	0	0	3	11
	CP Cases					
Pending October 1, 2002	33	2	1	0	2	28
Received fiscal 2003	100	0	0	1	7	92
On docket fiscal 2003	133	2	1	1	9	120
Closed fiscal 2003	87	1	0	1	9	76
Pending September 30, 2003	46	1	1	0	0	44

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2002, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 2003[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	RC Cases					
Pending October 1, 2002	*1,316	1,199	46	70	1	--
Received fiscal 2003	3,720	3,324	171	221	4	--
On docket fiscal 2003	5,036	4,523	217	291	5	--
Closed fiscal 2003	3,883	3,493	180	206	4	--
Pending September 30, 2003	1,153	1,030	37	85	1	--
	RM Cases					
Pending October 1, 2002	79	--	--	--	--	79
Received fiscal 2003	131	--	--	--	--	131
On docket fiscal 2003	210	--	--	--	--	210
Closed fiscal 2003	150	--	--	--	--	150
Pending September 30, 2003	60	--	--	--	--	60
	RD Cases					
Pending October 1, 2002	322	3	0	0	319	--
Received fiscal 2003	803	1	0	1	801	--
On docket fiscal 2003	1,125	4	0	1	1,120	--
Closed fiscal 2003	816	1	0	0	815	--
Pending September 30, 2003	309	3	0	1	305	--

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2002, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2003

	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	21,765	100.0
8(a)(1)	3,204	14.7
8(a)(1)(2)	186	0.9
8(a)(1)(3)	7,473	34.3
8(a)(1)(4)	164	0.8
8(a)(1)(5)	7,987	36.7
8(a)(1)(2)(3)	152	0.7
8(a)(1)(2)(4)	2	0
8(a)(1)(2)(5)	64	0.3
8(a)(1)(3)(4)	494	2.3
8(a)(1)(3)(5)	1,794	8.2
8(a)(1)(4)(5)	25	0.1
8(a)(1)(2)(3)(4)	9	0
8(a)(1)(2)(3)(5)	80	0.4
8(a)(1)(2)(4)(5)	1	0
8(a)(1)(3)(4)(5)	127	0.6
8(a)(1)(2)(3)(4)(5)	3	0
Recapitulation[1]		
8(a)(1)	21,765	100.0
8(a)(2)	497	2.3
8(a)(3)	10,132	46.6
8(a)(4)	825	3.8
8(a)(5)	10,081	46.3
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	6,966	100.0
8(b)(1)	5,175	74.3
8(b)(2)	60	0.9
8(b)(3)	377	5.4
8(b)(4)	650	9.3
8(b)(5)	1	0
8(b)(6)	6	0.1
8(b)(7)	100	1.4
8(b)(1)(2)	491	7.0

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2003—Continued

8(b)(1)(3)	78	1.1
8(b)(1)(5)	3	0
8(b)(1)(6)	1	0
8(b)(2)(3)	1	0
8(b)(1)(2)(3)	17	0.2
8(b)(1)(2)(5)	5	0.1
8(b)(1)(2)(3)(6)	1	0
Recapitulation[1]		
8(b)(1)	5,771	82.8
8(b)(2)	575	8.3
8(b)(3)	474	6.8
8(b)(4)	687	9.9
8(b)(5)	9	0.1
8(b)(6)	8	0.1
8(b)(7)	106	1.5
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	650	100.0
8(b)(4)(A)	35	5.4
8(b)(4)(B)	379	58.3
8(b)(4)(C)	17	2.6
8(b)(4)(D)	186	28.6
8(b)(4)(A)(B)	29	4.5
8(b)(4)(A)(B)(C)	4	0.6
Recapitulation[1]		
8(b)(4)(A)	68	10.5
8(b)(4)(B)	412	63.4
8(b)(4)(C)	21	3.2
8(b)(4)(D)	186	28.6

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2003—Continued

B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	100	100.0
8(b)(7)(A)	33	33.0
8(b)(7)(B)	10	10.0
8(b)(7)(C)	51	51.0
8(b)(7)(A)(B)	3	3.0
8(b)(7)(A)(C)	2	2.0
8(b)(7)(B)(C)	1	1.0
Recapitulation[1]		
8(b)(7)(A)	38	38.0
8(b)(7)(B)	14	14.0
8(b)(7)(C)	54	54.0
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	38	100.0
Against unions alone	27	71.1
Against employers alone	5	13.2
Against both	6	15.8
D. Charges filed Sec. 8(g)		
Total cases 8(g)	23	100.0

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

Table 3A.-Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 2003[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	35	32	--	--	--	32	--	--	--	--	--	--	--
Complaints issued	3,320	2,067	1,767	162	38	--	3	1	3	7	20	50	16
Backpay specifications issued	106	63	59	4	0	--	0	0	0	0	0	0	0
Hearings completed, total	868	384	318	23	4	0	1	1	0	0	7	26	4
Initial ULP hearings	798	354	290	21	4	0	1	1	0	0	7	26	4
Backpay hearings	15	9	8	1	0	0	0	0	0	0	0	0	0
Other hearings	55	21	20	1	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total	840	388	331	19	4	0	1	1	0	0	6	22	4
Initial ULP decisions	756	352	298	16	4	0	1	1	0	0	6	22	4
Backpay decisions	16	8	7	1	0	0	0	0	0	0	0	0	0
Supplemental decisions	68	28	26	2	0	0	0	0	0	0	0	0	0
Decisions and orders by the Board, total	924	555	461	38	9	16	1	0	0	1	4	22	3
Upon consent of parties:													
Initial decisions	70	34	22	5	3	0	0	0	0	1	0	1	2
Supplemental decisions	22	11	9	1	1	0	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	212	119	104	8	1	0	0	0	0	0	1	4	1
Backpay decisions	9	4	4	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	3	3	3	0	0	0	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	528	350	289	24	2	16	1	0	0	0	3	15	0
Decisions based on stipulated record	6	2	2	0	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	41	21	17	0	2	0	0	0	0	0	0	2	0
Backpay decisions	33	11	11	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 2003[1]

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken[2]	Total formal actions taken[3]	RC	RM	RD	UD
Hearings completed, total	721	688	593	14	81	4
Initial hearing	541	518	446	12	60	1
Hearing on objections and/or challenges	180	170	147	2	21	3
Decisions issued, total	526	518	442	18	58	13
By Regional Director	489	484	417	12	55	13
Elections directed	420	406	353	8	45	13
Dismissals on record	69	78	64	4	10	0
By Board	37	34	25	6	3	0
Transferred by Regional Directors for initial decision.	2	2	2	0	0	0
Elections directed	1	0	0	0	0	0
Dismissals on record	2	2	2	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	264	249	193	16	40	0
Withdrawn before request ruled upon	38	35	28	1	6	0
Board action on request ruled upon, total	252	238	183	20	35	0
Granted	72	71	60	8	3	0
Denied	155	146	110	7	29	0
Remanded	25	21	13	5	3	0
Withdrawn after request granted, before Board review	12	12	9	1	2	0
Board decision after review, total	35	32	23	6	3	0
Regional Directors' decisions:						
Affirmed	9	9	5	2	2	0
Modified	1	1	1	0	0	0
Reversed	25	22	17	4	1	0
Outcome:						
Election directed	32	29	22	5	2	0
Dismissals on record	3	3	1	1	1	0
Decisions on Objections and/or Challenges, total	547	514	444	5	65	10
By Regional Directors	258	236	202	2	32	5
By Admininstrative Law Judges……	8	8	8	0	0	0
By Board	281	270	234	3	33	5
In stipulated elections	245	236	206	2	28	4
No Exceptions to Regional Directors' reports	142	136	114	0	22	3
Exceptions to Regional Directors' reports	103	100	92	2	6	1
In directed elections (after transfer by Regional Director)	30	29	24	1	4	1
Review of Regional Directors' supplemental decisions:						
Request for review received	35	33	25	1	7	1
Withdrawn before request ruled upon	1	1	0	0	1	0

Table 3B.-Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2003[1]—Continued

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken[2]	Total formal actions taken[3]	RC	RM	RD	UD
Board action on request ruled upon, total	44	41	33	1	7	0
Granted	20	18	18	0	0	0
Denied	19	19	12	1	6	0
Remanded	5	4	3	0	1	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	6	5	4	0	1	0
Regional Directors' decisions:						
Affirmed	2	2	1	0	1	0
Modified	1	1	1	0	0	0
Reversed	3	2	2	0	0	0

[1] See Glossary of terms for definitions.
[2] Total includes petitions consolidated into one decision.
[3] Case counts for UD not included.

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 2003[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case[2]	
		AC	UC
Hearings completed	55	0	40
Decisions issued after hearing			
By Regional Directors	80	3	61
By Board	1	0	1
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	25	0	19
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	39	1	30
Granted	8	0	7
Denied	29	1	21
Remanded	2	0	2
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	1	0	1
Regional Directors' decisions:			
Affirmed	1	0	1
Modified	0	0	0
Reversed	0	0	0

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

Table 4.-Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2003[1]

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved...	[2]11,916	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted ……..	1,924	1,667	1,408	5	57	80	117	257	223	4	8	16	6
Recognition or other assistance withdrawn …...	5	5	4	0	0	1	0	--	--	--	--	--	--
Employer–dominated union disestablished ……..	1	1	1	0	0	0	0	--	--	--	--	--	--
Employees offered reinstate-ment ……..….	1,334	1,334	1,211	0	23	40	60	--	--	--	--	--	--
Employees placed on prefe-rential hiring list ……..…..	50	50	46	0	2	1	1	--	--	--	--	--	--
Hiring hall rights restored.....	23	--	--	--	--	--	--	23	21	0	0	2	0
Objections to employment withdrawn.....	5	--	--	--	--	--	--	5	4	0	0	1	0
Picketing ended.....	113	--	--	--	--	--	--	113	112	0	0	1	0
Work stoppage ended.....	16	--	--	--	--	--	--	16	15	0	0	0	1
Collective bargaining begun....	3,029	2,882	2,772	4	17	36	53	147	145	0	0	1	1
Backpay distributed.....	2,109	2,049	1,868	2	37	62	80	60	45	0	1	10	4
Reimbursement of fees, dues, and fines.....	108	43	38	0	1	1	3	65	63	0	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

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2003[1]—Continued

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
B. By number of employees affected:													
Employees offered reinstatement, total	2,393	2,393	1,577	0	59	290	467	--	--	--	--	--	--
Accepted	1,838	1,838	1,251	0	30	241	316	--	--	--	--	--	--
Declined	555	555	326	0	29	49	151	--	--	--	--	--	--
Employees placed on preferential hiring list	364	364	320	0	19	24	1	--	--	--	--	--	--
Hiring hall rights restored	87	--	--	--	--	--	--	87	85	0	0	2	0
Objections to employment withdrawn	6	--	--	--	--	--	--	6	5	0	0	1	0
Employees receiving backpay:													
From either employer or union	23,320	23,144	19,132	14	779	1,638	1,581	176	141	0	2	13	20
From both employer and union	23	19	11	0	0	2	6	4	3	0	0	1	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	632	286	151	0	4	100	31	346	337	0	0	9	0
From both employer and union	114	82	80	0	0	0	2	32	32	0	0	0	0

Table 4. —Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2003[1]—Continued

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
C. By amounts of monetary recovery, total	91,287,634	89,880,440	49,976,950	29,993	1,686,843	15,830,852	22,355,802	1,407,194	196,525	0	275,689	91,784	843,196
Backpay (includes all monetary payments except fees, dues, and fines)	90,412,736	89,061,165	49,741,412	29,993	1,682,918	15,822,817	21,784,025	1,351,571	145,183	0	275,689	87,503	843,196
Reimbursement of fees, dues,and fines	874,898	819,275	235,538	0	3,925	8,035	571,777	55,623	51,342	0	0	4,281	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 2003 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 2003[1]

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Crop Production	42	38	30	7	1	0	0	0	0	4	3	0	1	0	0	0
Animal Production	34	27	26	1	0	0	0	0	0	6	3	0	3	0	0	1
Forestry and Logging	5	5	2	3	0	0	0	0	0	0	0	0	0	0	0	0
Fishing, Hunting and Trapping	2	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry	13	10	7	3	0	0	0	0	0	3	3	0	0	0	0	0
Agriculture, Forestry, Fishing, and Hunting	96	82	65	16	1	0	0	0	0	13	9	0	4	0	0	1
Oil and Gas Extraction	29	20	19	1	0	0	0	0	0	7	3	0	4	0	0	2
Mining (except Oil and Gas)	214	190	170	19	0	1	0	0	0	23	19	0	4	0	0	1
Support Activities for Mining	29	21	17	4	0	0	0	0	0	8	8	0	0	0	0	0
Mining	272	231	206	24	0	1	0	0	0	38	30	0	8	0	0	3
Utilities	631	523	411	107	2	0	2	0	1	99	85	2	12	0	0	9
Building, Developing and General Contracting	549	476	263	85	76	34	2	1	15	73	68	1	4	0	0	0
Heavy Construction	438	397	250	70	39	26	1	0	11	40	37	1	2	1	0	0
Special Trade Contractors	3,215	2,654	1,922	469	145	81	6	1	30	550	463	26	61	5	1	5
Construction	4,202	3,527	2,435	624	260	141	9	2	56	663	568	28	67	6	1	5
Food Manufacturing	1,051	906	723	176	6	1	0	0	0	135	114	4	17	4	1	5
Beverage and Tobacco Product Manufacturing	305	252	169	69	12	0	2	0	0	49	35	1	13	4	0	0
Textile Mills	65	58	51	7	0	0	0	0	0	6	5	0	1	1	0	0
Textile Product Mills	34	30	27	3	0	0	0	0	0	4	2	0	2	0	0	0
Apparel Manufacturing	76	68	55	13	0	0	0	0	0	8	6	0	2	0	0	0
Leather and Allied Product Manufacturing	27	24	16	8	0	0	0	0	0	3	2	0	1	0	0	0
31-Manufacturing	1,558	1,338	1,041	276	18	1	2	0	0	205	164	5	36	9	1	5
Wood Product Manufacturing	153	122	104	16	0	0	2	0	0	30	23	1	6	0	0	1
Paper Manufacturing	465	412	298	112	1	1	0	0	0	50	39	0	11	3	0	0
Printing and Related Support Activities	193	174	151	23	0	0	0	0	0	18	11	1	6	0	0	1
Petroleum and Coal Products Manufacturing	136	111	92	13	3	1	1	0	1	24	20	0	4	0	0	1
Chemical Manufacturing	346	302	263	36	3	0	0	0	0	43	33	1	9	1	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Plastics and Rubber Products Manufacturing	316	270	224	43	1	1	0	0	1	46	33	0	13	0	0	0
Nonmetallic Mineral Product Manufacturing	352	295	237	50	6	2	0	0	0	51	33	2	16	5	0	1
32-Manufacturing	1,961	1,686	1,369	293	14	5	3	0	2	262	192	5	65	9	0	4
Primary Metal Manufacturing	638	585	433	149	2	0	1	0	0	51	33	3	15	1	0	1
Fabricated Metal Product Manufacturing	553	485	390	93	2	0	0	0	0	63	46	1	16	3	0	2
Machinery Manufacturing	476	432	317	107	4	1	1	0	2	43	30	2	11	0	0	1
Computer and Electronic Product Manufacturing	127	114	81	32	0	1	0	0	0	10	8	0	2	0	0	3
Electrical Equipment, Appliance and Component Manufacturing	327	310	218	87	2	2	0	0	1	15	9	0	6	1	0	1
Transportation Equipment Manufacturing	1,366	1,248	798	442	6	0	2	0	0	106	84	2	20	7	0	5
Furniture and Related Product Manufacturing	136	113	89	22	2	0	0	0	0	23	19	0	4	0	0	0
Miscellaneous Manufacturing	672	584	436	140	5	3	0	0	0	84	63	5	16	1	0	3
33-Manufacturing	4,295	3,871	2,762	1,072	23	7	4	0	3	395	292	13	90	13	0	16
Wholesale Trade, Durable Goods	283	219	181	35	1	1	0	0	1	62	47	4	11	0	0	2
Wholesale Trade, Nondurable Goods	558	461	363	90	4	2	0	0	2	92	67	6	19	1	0	4
Wholesale Trade	841	680	544	125	5	3	0	0	3	154	114	10	30	1	0	6
Motor Vehicle and Parts Dealers	367	259	222	24	9	2	1	0	1	107	87	6	14	1	0	0
Furniture and Home Furnishings Stores	54	41	34	7	0	0	0	0	0	12	6	1	5	1	0	0
Electronics and Appliance Stores	19	15	14	1	0	0	0	0	0	4	4	0	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers	49	34	29	4	1	0	0	0	0	14	9	1	4	1	0	0
Food and Beverage Stores	837	712	544	167	1	0	0	0	0	123	103	1	19	0	0	2
Health and Personal Care Stores	78	60	49	11	0	0	0	0	0	18	16	0	2	0	0	0
Gasoline Stations	21	13	10	3	0	0	0	0	0	7	5	0	2	0	0	1
Clothing and Clothing Accessories Stores	48	44	32	12	0	0	0	0	0	4	3	0	1	0	0	0
44-Retail Trade	1,473	1,178	934	229	11	2	1	0	1	289	233	9	47	3	0	3
Sporting Goods, Hobby, Book and Music Stores	32	24	21	3	0	0	0	0	0	7	5	0	2	1	0	0
General Merchandise Stores	259	228	198	28	1	1	0	0	0	30	23	0	7	0	0	1

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Miscellaneous Store Retailers	69	59	53	5	1	0	0	0	0	10	6	2	2	0	0	0
Nonstore Retailers	48	39	31	8	0	0	0	0	0	9	8	1	0	0	0	0
45-Retail Trade	408	350	303	44	2	1	0	0	0	56	42	3	11	1	0	1
Air Transportation	51	39	26	13	0	0	0	0	0	12	12	0	0	0	0	0
Rail Transportation	37	33	29	4	0	0	0	0	0	4	3	0	1	0	0	0
Water Transportation	197	181	84	70	25	1	0	0	1	16	14	0	2	0	0	0
Truck Transportation	801	664	495	146	17	2	1	0	3	132	97	3	32	3	1	1
Transit and Ground Passenger Transportation	811	659	486	172	1	0	0	0	0	144	105	1	38	6	0	2
Pipeline Transportation	17	11	10	1	0	0	0	0	0	6	5	1	0	0	0	0
Scenic and Sightseeing Transportation	15	12	8	3	1	0	0	0	0	3	3	0	0	0	0	0
Support Activities for Transportation	472	404	258	136	5	3	0	0	2	62	49	2	11	2	1	3
48-Transportation	2,401	2,003	1,396	545	49	6	1	0	6	379	288	7	84	11	2	6
Postal Service	2,715	2,712	2,006	706	0	0	0	0	0	2	1	0	1	0	0	1
Couriers and Messengers	254	232	154	76	2	0	0	0	0	22	17	0	5	0	0	0
Warehousing and Storage Facilities	467	362	293	59	7	1	1	0	1	104	89	0	15	0	0	1
49-Transportation	3,436	3,306	2,453	841	9	1	1	0	1	128	107	0	21	0	0	2
Publishing Industries	318	274	235	37	2	0	0	0	0	40	32	1	7	0	1	3
Motion Picture and Sound Recording Industries	54	43	26	12	2	2	1	0	0	11	10	0	1	0	0	0
Broadcasting and Telecommunications	1,230	1,073	862	209	0	0	2	0	0	145	95	6	44	7	0	5
Information Services and Data Processing Services	100	83	69	14	0	0	0	0	0	15	11	0	4	0	1	1
Information	1,702	1,473	1,192	272	4	2	3	0	0	211	148	7	56	7	2	9
Monetary Authorities - Central Bank	25	20	14	3	2	1	0	0	0	5	4	0	1	0	0	0
Credit Intermediation and Related Activities	41	32	29	3	0	0	0	0	0	4	4	0	0	2	1	2
Securities, Commodity Contracts and Other Intermediation and Related Activities	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Insurance Carriers and Related Activities	49	42	31	11	0	0	0	0	0	5	5	0	0	0	0	2
Funds, Trusts and Other Financial Vehicles (U.S. Only)	17	16	11	5	0	0	0	0	0	1	1	0	0	0	0	0
Finance and Insurance	137	115	90	22	2	1	0	0	0	15	14	0	1	2	1	4
Real Estate	166	135	88	39	5	0	3	0	0	27	19	3	5	0	0	4
Rental and Leasing Services	222	177	152	22	3	0	0	0	0	44	32	1	11	0	0	1
Owners and Lessors of Other Non-Financial Assets	16	12	7	5	0	0	0	0	0	4	3	1	0	0	0	0
Real Estate and Rental and Leasing	404	324	247	66	8	0	3	0	0	75	54	5	16	0	0	5
Professional, Scientific and Technical Services	342	259	209	37	6	3	1	0	3	78	60	2	16	2	2	1
Management of Companies and Enterprises	51	41	24	14	3	0	0	0	0	9	7	0	2	0	0	1
Administrative and Support Services	1,682	1,430	1,004	401	15	4	1	0	5	242	214	2	26	7	0	3
Waste Management and Remediation Services	584	445	378	57	7	0	0	0	3	131	110	3	18	5	1	2
Administrative and Support, Waste Management and Remediation Services	2,266	1,875	1,382	458	22	4	1	0	8	373	324	5	44	12	1	5
Educational Services	458	337	276	55	2	1	2	0	1	110	95	5	10	3	1	7
Ambulatory Health Care Services	357	295	256	34	1	0	0	4	0	57	47	1	9	1	0	4
Hospitals	1,508	1,242	983	248	2	0	0	9	0	235	200	1	34	5	0	26
Nursing and Residential Care Facilities	1,489	1,193	1,051	135	0	0	0	7	0	273	217	9	47	10	0	13
Social Assistance	351	274	246	26	1	0	0	1	0	69	56	1	12	1	0	7
Health Care and Social Assistance	3,705	3,004	2,536	443	4	0	0	21	0	634	520	12	102	17	0	50
Performing Arts, Spectator Sports and Related Industries	216	177	115	55	1	3	2	0	1	36	33	0	3	1	0	2
Museums, Historical Sites and Similar Institutions	23	19	17	2	0	0	0	0	0	3	3	0	0	0	0	1
Amusement, Gambling and Recreation Industries	267	219	152	64	0	2	1	0	0	46	35	0	11	2	0	0
Arts, Entertainment and Recreation	506	415	284	121	1	5	3	0	1	85	71	0	14	3	0	3

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
	584	All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
						0										
Accommodation		519	361	146	9		1	0	2	64	57	1	6	1	0	0
Foodservices and Drinking Places	450	382	303	67	5	0	0	0	7	62	35	3	24	5	0	1
Accommodation and Foodservices	1,034	901	664	213	14	0	1	0	9	126	92	4	30	6	0	1
Repair and Maintenance	276	202	163	35	0	1	0	0	3	71	54	1	16	0	0	3
Personal and Laundry Services	366	306	268	34	1	1	0	0	2	57	47	3	7	0	0	3
Religious, Grantmaking, Civic, and Professional and Similar Organizations	370	335	195	137	2	0	1	0	0	30	25	0	5	1	0	4
Private Households	5	4	4	0	0	0	0	0	0	0	0	0	0	0	0	1
Other Services (except Public Administration)	1,017	847	630	206	3	2	1	0	5	158	126	4	28	1	0	11
Executive, Legislative, Public Finance and General Government	15	14	9	5	0	0	0	0	0	1	1	0	0	0	0	0
Justice, Public Order, and Safety	96	75	64	11	0	0	0	0	0	20	18	0	2	0	0	1
Administration of Human Resource Programs	16	15	13	2	0	0	0	0	0	1	1	0	0	0	0	0
Administration of Environmental Quality Programs	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development	4	2	2	0	0	0	0	0	0	1	1	0	0	0	0	1
Administration of Economic Programs	14	11	10	1	0	0	0	0	0	3	1	1	1	0	0	0
Space Research and Technology	2	1	1	0	0	0	0	0	0	1	1	0	0	0	0	0
National Security and International Affairs	17	13	13	0	0	0	0	0	0	4	4	0	0	0	0	0
Public Administration	165	131	112	19	0	0	0	0	0	32	28	1	3	0	0	2
Unclassified Establishments	328	267	182	84	1	0	0	0	0	58	49	3	6	1	0	2
Total, all industrial groups	33,689	28,764	21,747	6,206	464	186	38	23	100	4,645	3,712	130	803	107	11	162

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

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2003[1]

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Illinois	2,135	1,751	1,158	434	90	44	4	0	21	372	297	22	53	9	0	3
Indiana	774	682	524	144	7	4	1	0	2	90	62	4	24	1	0	1
Michigan	2,009	1,710	1,195	493	12	2	5	0	3	275	213	9	53	15	2	7
Ohio	1,876	1,645	1,252	362	17	3	2	1	8	206	156	8	42	5	5	15
Wisconsin	650	563	413	136	8	3	1	1	1	83	62	0	21	1	0	3
East North Central	7,444	6,351	4,542	1,569	134	56	13	2	35	1,026	790	43	193	31	7	29
Alabama	472	420	364	55	1	0	0	0	0	52	45	1	6	0	0	0
Kentucky	553	462	368	73	10	8	1	1	1	90	72	2	16	1	0	0
Mississippi	141	120	93	27	0	0	0	0	0	20	14	0	6	0	0	1
Tennessee	499	463	364	99	0	0	0	0	0	35	25	0	10	0	0	1
East South Central	1,665	1,465	1,189	254	11	8	1	1	1	197	156	3	38	1	0	2
New Jersey	1,377	1,136	827	251	35	18	2	0	3	225	189	5	31	9	1	6
New York	3,670	3,167	2,115	904	76	35	7	7	23	478	415	12	51	6	0	19
Pennsylvania	1,877	1,571	1,258	260	25	21	0	4	3	282	222	5	55	10	1	13
Middle Atlantic	6,924	5,874	4,200	1,415	136	74	9	11	29	985	826	22	137	25	2	38
Arizona	405	3,73	324	42	6	0	0	0	1	31	23	3	5	0	0	1
Colorado	468	417	350	65	1	0	0	0	1	50	39	1	10	0	0	1
Idaho	79	58	50	8	0	0	0	0	0	20	20	0	0	0	0	1
Montana	99	77	66	11	0	0	0	0	0	22	13	1	8	0	0	0
New Mexico	186	155	135	20	0	0	0	0	0	30	26	0	4	1	0	0
Nevada	666	589	438	144	1	3	1	1	1	71	60	2	9	1	0	5
Utah	93	76	67	9	0	0	0	0	0	16	14	0	2	0	0	1
Wyoming	28	23	19	4	0	0	0	0	0	5	4	0	1	0	0	0
Mountain	2,024	1,768	1,449	303	8	3	1	1	3	245	199	7	39	2	0	9
Connecticut	534	462	388	68	4	1	0	0	1	68	60	2	6	2	0	2
Massachusetts	923	817	633	158	21	4	1	0	0	94	74	2	18	5	0	7
Maine	115	105	86	18	0	1	0	0	0	9	5	2	2	0	0	1
New Hampshire	93	79	57	12	5	5	0	0	0	11	10	0	1	1	0	2
Rhode Island	153	126	110	15	1	0	0	0	0	24	19	0	5	0	0	3
Vermont	57	47	44	3	0	0	0	0	0	9	7	0	2	0	0	1
New England	1,875	1,636	1,318	274	31	11	1	0	1	215	175	6	34	8	0	16

Table 6A. —Geographic Distribution of Cases Received, Fiscal Year 2003[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
Puerto Rico	424	353	296	56	0	0	0	0	1	65	59	2	4	1	0	5
Virgin Islands	23	15	14	1	0	0	0	0	0	6	5	0	1	1	0	1
Outlying Areas	447	368	310	57	0	0	0	0	1	71	64	2	5	2	0	6
Alaska	111	79	69	10	0	0	0	0	0	30	26	0	4	1	0	1
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	3,954	3,326	2,413	803	71	18	6	0	15	596	494	8	94	16	0	16
Federated States of Micronesia	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Guam	2	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	322	277	213	62	1	0	0	0	1	43	27	2	14	1	1	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	4	4	4	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	464	390	328	55	0	3	2	1	1	69	51	4	14	3	0	2
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	884	724	590	127	6	0	0	0	1	145	100	7	38	5	1	9
Pacific	5,742	4,802	3,618	1,058	78	21	8	1	18	884	699	21	164	26	2	28
District Of Columbia	166	135	84	47	0	0	0	0	4	29	27	1	1	0	0	2
Delaware	110	87	62	14	7	1	1	1	1	22	18	0	4	1	0	0
Florida	1,296	1,138	952	176	8	0	0	0	2	150	125	5	20	1	0	7
Georgia	471	407	290	116	1	0	0	0	0	63	50	2	11	1	0	0
Maryland	550	466	380	78	8	0	0	0	0	83	78	0	5	1	0	0
North Carolina	379	344	275	68	0	0	1	0	0	35	26	2	7	0	0	0
South Carolina	123	112	81	23	8	0	0	0	0	11	9	0	2	0	0	0
Virginia	368	322	274	42	5	0	0	1	0	45	37	1	7	0	0	1
West Virginia	387	328	271	54	3	0	0	0	0	58	44	1	13	1	0	0
South Atlantic	3,850	3,339	2,669	618	40	1	2	2	7	496	414	12	70	5	0	10

Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Division and State[2]	All cases 230	Unfair labor practice cases								Representation cases				Union deauthorization cases UD	Amendment of certification cases AC	Unit clarification cases UC
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
Iowa	230	190	160	29	1	0	0	0	0	39	27	3	9	1	0	0
Kansas	223	182	137	43	1	0	0	0	1	39	31	1	7	1	0	1
Minnesota	458	324	257	64	0	0	0	2	1	125	101	3	21	0	0	9
Missouri	817	700	505	153	21	12	3	3	3	111	71	4	36	4	0	2
North Dakota	31	21	19	2	0	0	0	0	0	8	5	1	2	0	0	2
Nebraska	81	63	56	7	0	0	0	0	0	18	14	0	4	0	0	0
South Dakota	24	22	20	2	0	0	0	0	0	2	1	0	1	0	0	0
West North Central	1,864	1,502	1,154	300	23	12	3	5	5	342	250	12	80	6	0	14
Arkansas	155	135	107	28	0	0	0	0	0	19	11	1	7	0	0	1
Louisiana	296	264	198	66	0	0	0	0	0	31	26	0	5	1	0	0
Oklahoma	195	165	119	45	1	0	0	0	0	29	19	0	10	0	0	1
Texas	1,195	1,091	869	222	0	0	0	0	0	99	79	1	19	0	0	5
West South Central	1,841	1,655	1,293	361	1	0	0	0	0	178	135	2	41	1	0	7
Total, all States and areas	33,676	28,760	21,742	6,209	462	186	38	23	100	4,639	3,708	130	801	107	11	159

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

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2003[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	534	462	388	68	4	1	0	0	1	68	60	2	6	2	0	2
Massachusetts	923	817	633	158	21	4	1	0	0	94	74	2	18	5	0	7
Maine	115	105	86	18	0	1	0	0	0	9	5	2	2	0	0	1
New Hampshire	93	79	57	12	5	5	0	0	0	11	10	0	1	1	0	2
Rhode Island	153	126	110	15	1	0	0	0	0	24	19	0	5	0	0	3
Vermont	57	47	44	3	0	0	0	0	0	9	7	0	2	0	0	1
Region I	1,875	1,636	1,318	274	31	11	1	0	1	215	175	6	34	8	0	16
Delaware	110	87	62	14	7	1	1	1	1	22	18	0	4	1	0	0
New Jersey	1,377	1,136	827	251	35	18	2	0	3	225	189	5	31	9	1	6
New York	3,670	3,167	2,115	904	76	35	7	7	23	478	415	12	51	6	0	19
Puerto Rico	424	353	296	56	0	0	0	0	1	65	59	2	4	1	0	5
Virgin Islands	23	15	14	1	0	0	0	0	0	6	5	0	1	1	0	1
Region II	5,604	4,758	3,314	1,226	118	54	10	8	28	796	686	19	91	18	1	31
District Of Columbia	166	135	84	47	0	0	0	0	4	29	27	1	1	0	0	2
Maryland	550	466	380	78	8	0	0	0	0	83	78	0	5	1	0	0
Pennsylvania	1,877	1,571	1,258	260	25	21	0	4	3	282	222	5	55	10	1	13
Virginia	368	322	274	42	5	0	0	1	0	45	37	1	7	0	0	1
West Virginia	387	328	271	54	3	0	0	0	0	58	44	1	13	1	0	0
Region III	3,348	2,822	2,267	481	41	21	0	5	7	497	408	8	81	12	1	16
Alabama	472	420	364	55	1	0	0	0	0	52	45	1	6	0	0	0
Florida	1,296	1,138	952	176	8	0	0	0	2	150	125	5	20	1	0	7
Georgia	471	407	290	116	1	0	0	0	0	63	50	2	11	1	0	0
Kentucky	553	462	368	73	10	8	1	1	1	90	72	2	16	1	0	0
Mississippi	141	120	93	27	0	0	0	0	0	20	14	0	6	0	0	1
North Carolina	379	344	275	68	0	0	1	0	0	35	26	2	7	0	0	0
South Carolina	123	112	81	23	8	0	0	0	0	11	9	0	2	0	0	0
Tennessee	499	463	364	99	0	0	0	0	0	35	25	0	10	0	0	1
Region IV	3,934	3,466	2,787	637	28	8	2	1	3	456	366	12	78	3	0	9
Illinois	2,135	1,751	1,158	434	90	44	4	0	21	372	297	22	53	9	0	3
Indiana	774	682	524	144	7	4	1	0	2	90	62	4	24	1	0	1
Michigan	2,009	1,710	1,195	493	12	2	5	0	3	275	213	9	53	15	2	7
Minnesota	458	324	257	64	0	0	0	2	1	125	101	3	21	0	0	9
Ohio	1,876	1,645	1,252	362	17	3	2	1	8	206	156	8	42	5	5	15
Wisconsin	650	563	413	136	8	3	1	1	1	83	62	0	21	1	0	3
Region V	7,902	6,675	4,799	1,633	134	56	13	4	36	1,151	891	46	214	31	7	38
Arkansas	155	135	107	28	0	0	0	0	0	19	11	1	7	0	0	1
Louisiana	296	264	198	66	0	0	0	0	0	31	26	0	5	1	0	0

Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2003[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
New Mexico	186	155	135	20	0	0	0	0	0	30	26	0	4	1	0	0
Oklahoma	195	165	119	45	1	0	0	0	0	29	19	0	10	0	0	1
Texas	1,195	1,091	869	222	0	0	0	0	0	99	79	1	19	0	0	5
Region VI	2,027	1,810	1,428	381	1	0	0	0	0	208	161	2	45	2	0	7
Iowa	230	190	160	29	1	0	0	0	0	39	27	3	9	1	0	0
Kansas	223	182	137	43	1	0	0	0	1	39	31	1	7	1	0	1
Missouri	817	700	505	153	21	12	3	3	3	111	71	4	36	4	0	2
Nebraska	81	63	56	7	0	0	0	0	0	18	14	0	4	0	0	0
Region VII	1,351	1,135	858	232	23	12	3	3	4	207	143	8	56	6	0	3
Colorado	468	417	350	65	1	0	0	0	1	50	39	1	10	0	0	1
Montana	99	77	66	11	0	0	0	0	0	22	13	1	8	0	0	0
North Dakota	31	21	19	2	0	0	0	0	0	8	5	1	2	0	0	2
South Dakota	24	22	20	2	0	0	0	0	0	2	1	0	1	0	0	0
Utah	93	76	67	9	0	0	0	0	0	16	14	0	2	0	0	1
Wyoming	28	23	19	4	0	0	0	0	0	5	4	0	1	0	0	0
Region VIII	743	636	541	93	1	0	0	0	1	103	76	3	24	0	0	4
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	405	373	324	42	6	0	0	0	1	31	23	3	5	0	0	1
California	3,954	3,326	2,413	803	71	18	6	0	15	596	494	8	94	16	0	16
Federated States of Micronesia	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Guam	2	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	322	277	213	62	1	0	0	0	1	43	27	2	14	1	1	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	4	4	4	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	666	589	438	144	1	3	1	1	1	71	60	2	9	1	0	5
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX	5,354	4,571	3,393	1,052	79	21	7	1	18	742	605	15	122	18	1	22
Alaska	111	79	69	10	0	0	0	0	0	30	26	0	4	1	0	1
Idaho	79	58	50	8	0	0	0	0	0	20	20	0	0	0	0	1
Oregon	464	390	328	55	0	3	2	1	1	69	51	4	14	3	0	2
Washington	884	724	590	127	6	0	0	0	1	145	100	7	38	5	1	9
Region X	1,538	1,251	1,037	200	6	3	2	1	2	264	197	11	56	9	1	13
Total, all States and areas	33,676	28,760	21,742	6,209	462	186	38	23	100	4639	3,708	130	801	107	11	159

[1] See Glossary of terms for definitions.

[2] The States are grouped according to the 10 Standard Federal Administrative Regions.

Table 7.-Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2003[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	30,390	100.0	--	23,444	100.0	6,133	100.0	480	100.0	190	100.0	36	100.0	22	100.0	85	100.0
Agreement of the parties	10,923	35.9	100.0	9,582	40.9	1,070	17.4	204	42.5	25	13.2	6	16.7	9	40.9	27	31.8
Informal settlement	10,908	35.9	99.9	9,581	40.9	1,059	17.3	201	41.9	25	13.2	6	16.7	9	40.9	27	31.8
Before issuance of complaint	8,593	28.3	78.7	7,484	31.9	900	14.7	155	32.3	21	11.1	5	13.9	5	22.7	23	27.1
After issuance of complaint, before opening of hearing	2,132	7.0	19.5	1,920	8.2	155	2.5	46	9.6	2	1.1	1	2.8	4	18.2	4	4.7
After hearing opened, before issuance of administrative law judge's decision	183	0.6	1.7	177	0.8	4	0.1	0	0.0	2	1.1	0	0.0	0	0.0	0	0.0
Formal settlement	15	0.0	0.1	1	0.0	11	0.2	3	0.6	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	15	0.0	0.1	1	0.0	11	0.2	3	0.6	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	4	0.0	0.0	0	0.0	1	0.0	3	0.6	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	11	0.0	0.1	1	0.0	10	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	716	2.4	100.0	643	2.7	45	0.7	20	4.2	2	1.1	5	13.9	0	0.0	1	1.2
Administrative law judge's decision	6	0.0	0.8	6	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	340	1.1	47.5	301	1.3	29	0.5	5	1.0	2	1.1	3	8.3	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	151	0.5	21.1	134	0.6	11	0.2	5	1.0	0	0.0	1	2.8	0	0.0	0	0.0
Contested	189	0.6	26.4	167	0.7	18	0.3	0	0.0	2	1.1	2	5.6	0	0.0	0	0.0
Circuit court of appeals decree	369	1.2	51.5	335	1.4	16	0.3	15	3.1	0	0.0	2	5.6	0	0.0	1	1.2
Supreme Court action	1	0.0	0.1	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Withdrawal	9,342	30.7	100.0	7,244	30.9	1,874	30.6	155	32.3	15	7.9	14	38.9	7	31.8	33	38.8

Table 7.-Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2003[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Before issuance of complaint	9,111	30.0	97.5	7,025	30.0	1,864	30.4	153	31.9	15	7.9	14	38.9	7	31.8	33	38.8
After issuance of complaint, before opening of hearing	170	0.6	1.8	159	0.7	9	0.1	2	0.4	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	14	0.0	0.1	14	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision	35	0.1	0.4	35	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	12	0.0	0.1	11	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	9,109	30.0	100.0	5,826	24.9	3,137	51.1	98	20.4	8	4.2	10	27.8	6	27.3	24	28.2
Before issuance of complaint	8,927	29.4	98.0	5,673	24.2	3,113	50.8	94	19.6	8	4.2	10	27.8	6	27.3	23	27.1
After issuance of complaint, before opening of hearing	95	0.3	1.0	79	0.3	13	0.2	2	0.4	0	0.0	0	0.0	0	0.0	1	1.2
After hearing opened, before administrative law judge's decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	5	0.0	0.1	5	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	75	0.2	0.8	63	0.3	10	0.2	2	0.4	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	49	0.2	0.5	41	0.2	8	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	26	0.1	0.3	22	0.1	2	0.0	2	0.4	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree	7	0.0	0.1	6	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	138	0.5	--	0	0.0	0	0.0	0	0.0	138	72.6	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	162	0.5	--	149	0.6	7	0.1	3	0.6	2	1.1	1	2.8	0	0.0	0	0.0

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

Table 7A—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior toUnfair Labor Practice Proceedings, Fiscal Year 2003[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	138	100.0
Agreement of the parties-informal settlement	53	38.4
Before 10(k) notice	39	28.3
After 10(k) notice, before opening of 10(k) hearing	13	9.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.7
After Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	3	2.2
Withdrawal	55	39.9
Before 10(k) notice	53	38.4
After 10(k) notice, before opening of 10(k) hearing	2	1.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
After Board decision and determination of dispute	0	0.0
Dismissal	27	19.6
Before 10(k) notice	20	14.5
After 10(k) notice, before opening of 10(k) hearing	7	5.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
By Board decision and determination of dispute	0	0.0

[1] See Glossary of Terms for definition.

Table 7A—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior toUnfair Labor Practice Proceedings, Fiscal Year 2003[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	138	100.0
Agreement of the parties-informal settlement	53	38.4
Before 10(k) notice	39	28.3
After 10(k) notice, before opening of 10(k) hearing	13	9.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.7
After Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	3	2.2
Withdrawal	55	39.9
Before 10(k) notice	53	38.4
After 10(k) notice, before opening of 10(k) hearing	2	1.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
After Board decision and determination of dispute	0	0.0
Dismissal	27	19.6
Before 10(k) notice	20	14.5
After 10(k) notice, before opening of 10(k) hearing	7	5.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
By Board decision and determination of dispute	0	0.0

[1] See Glossary of Terms for definition.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2003[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	30,610	100.0	23,620	100.0	6,161	100.0	488	100.0	197	100.0	36	100.0	22	100.0	86	100.0
Before issuance of complaint	26,763	87.4	20,190	85.5	5,887	95.6	403	82.6	157	79.7	29	80.6	18	81.8	79	91.9
After issuance of complaint, before opening of hearing	2,531	8.3	2,260	9.6	186	3.0	50	10.2	25	12.7	1	2.8	4	18.2	5	5.8
After hearing opened, before issuance of administrative law judge's decision	251	0.8	233	1.0	11	0.2	0	0.0	7	3.6	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	49	0.2	48	0.2	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions	251	0.8	212	0.9	21	0.3	10	2.0	5	2.5	2	5.6	0	0.0	1	1.2
After Board decision, before circuit court decree	283	0.9	255	1.1	21	0.3	2	0.4	3	1.5	2	5.6	0	0.0	0	0.0
After circuit court decree, before Supreme Court action	481	1.6	421	1.8	34	0.6	23	4.7	0	0.0	2	5.6	0	0.0	1	1.2
After Supreme Court action	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2003[1]

Stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed	Number of cases	Percent of cases closed
Total number of cases closed	4,843	100.0	3,878	100.0	149	100.0	816	100.0	103	100.0
Before issuance of notice of hearing	620	12.8	382	9.9	40	26.8	198	24.3	53	51.5
After issuance of notice, before close of hearing	3,511	72.5	2,909	75.0	84	56.4	518	63.5	31	30.1
After hearing closed, before issuance of decision	60	1.2	49	1.3	4	2.7	7	0.9	0	0.0
After issuance of Regional Director's decision	467	9.6	383	9.9	14	9.4	70	8.6	18	17.5
After issuance of Board decision[2]	185	3.8	155	4.0	7	4.7	23	2.8	1	1.0

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

Table 10 – Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2003[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	4,786	100.0	3,838	100.0	146	100.0	802	100.0	93	100.0
Certification issued, total	2,866	59.9	2,400	62.5	56	38.4	410	51.1	44	47.3
After:										
Consent election	3	0.1	3	0.1	0	0.0	0	0.0	0	0.0
Before notice of hearing	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After notice of hearing, before hearing closed	3	0.1	3	0.1	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	2,411	50.4	2,021	52.7	45	30.8	345	43.0	32	34.4
Before notice of hearing	309	6.5	218	5.7	9	6.2	82	10.2	14	15.1
After notice of hearing, before hearing closed	2,082	43.5	1,788	46.6	35	24.0	259	32.3	18	19.4
After hearing closed, before decision	20	0.4	15	0.4	1	0.7	4	0.5	0	0.0
Expedited election	2	0.0	0	0.0	2	1.4	0	0.0	0	0.0
Regional Director-directed election	307	6.4	251	6.5	8	5.5	48	6.0	11	11.8
Board-directed election	143	3.0	125	3.3	1	0.7	17	2.1	1	1.1
By withdrawal, total	1,690	35.3	1,346	35.1	61	41.8	283	35.3	41	44.1
Before notice of hearing	259	5.4	154	4.0	26	17.8	79	9.9	31	33.3
After notice of hearing, before hearing closed	1,276	26.7	1,048	27.3	33	22.6	195	24.3	10	10.8
After hearing closed, before decision	34	0.7	31	0.8	1	0.7	2	0.2	0	0.0
After Regional Director's decision and direction of election	97	2.0	92	2.4	0	0.0	5	0.6	0	0.0
After Board decision and direction of election	24	0.5	21	0.5	1	0.7	2	0.2	0	0.0
By dismissal, total	230	4.8	92	2.4	29	19.9	109	13.6	8	8.6
Before notice of hearing	51	1.1	9	0.2	5	3.4	37	4.6	7	7.5
After notice of hearing, before hearing closed	90	1.9	25	0.7	14	9.6	51	6.4	0	0.0
After hearing closed, before decision	1	0.0	0	0.0	0	0.0	1	0.1	0	0.0
By Regional Director's decision	70	1.5	49	1.3	5	3.4	16	2.0	1	1.1
By Board decision	18	0.4	9	0.2	5	3.4	4	0.5	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 2003[1]

	AC	UC
Total, all	10	186
Certification amended or unit clarified	2	18
Before hearing	2	4
By Regional Director's decision	2	4
By Board decision	0	0
After hearing	0	14
By Regional Director's decision	0	14
By Board decision	0	0
Dismissed	0	56
Before hearing	0	31
By Regional Director's decision	0	29
By Board decision	0	2
After hearing	0	25
By Regional Director's decision	0	23
By Board decision	0	2
Withdrawn	7	112
Before hearing	7	109
After hearing	0	3

[1] See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2003[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed[2]	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	[3]2,962	4	2,492	0	464	2
Eligible voters	198,556	267	152,393	0	45,876	20
Valid votes	167,659	220	131,023	0	36,400	16
RC cases:						
Elections	2,435	4	2,053	0	378	0
Eligible voters	164,291	267	128,953	0	35,071	0
Valid votes	139,669	220	111,197	0	28,252	0
RM cases:						
Elections	59	0	48	0	9	2
Eligible voters	2,345	0	1,965	0	360	20
Valid votes	2,027	0	1,702	0	309	16
RD cases:						
Elections	421	0	356	0	65	0
Eligible voters	28,470	0	19,704	0	8,766	0
Valid votes	23,621	0	16,898	0	6,723	0
UD cases:						
Elections	47	0	35	0	12	--
Eligible voters	3,450	0	1,771	0	1,679	--
Valid votes	2,342	0	1,226	0	1,116	--

[1] See Glossary of terms for definitions.
[2] Cases where election is held pursuant to a decision and direction by the Board.
[3] Due to technical difficulties, data discrepancies exceed 1 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2003

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All representation elections	3,077	91	74	2,912	2,583	86	65	2,432	60	1	0	59	434	4	9	421
Rerun required	--	--	68	--	--	--	59	--	--	--	0	--	--	--	9	--
Runoff required	--	--	6	--	--	--	6	--	--	--	0	--	--	--	0	--
Consent elections	4	0	0	4	4	0	0	4	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--
Stipulated elections	2,562	59	48	2,455	2,150	57	42	2,051	49	1	0	48	363	1	6	356
Rerun required	--	--	46	--	--	--	40	--	--	--	0	--	--	--	6	--
Runoff required	--	--	2	--	--	--	2	--	--	--	0	--	--	--	0	--
Regional Director–directed	509	32	26	451	429	29	23	377	9	0	0	9	71	3	3	65
Rerun required	--	--	22	--	--	--	19	--	--	--	0	--	--	--	3	--
Runoff required	--	--	4	--	--	--	4	--	--	--	0	--	--	--	0	--
Board–directed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Expedited–Sec. 8(b)(7)(C)	2	0	0	2	0	0	0	0	2	0	0	2	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--
Runoff required	--	--	0	--	--	--	--	--	--	--	0	--	--	--	--	--

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed Fiscal Year 2003

Type of election/case	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	3,085	143	4.6	34	1.1	9	0.3	152	4.9	43	1.4
By type of cases:											
In RC cases	2,591	120	4.6	30	1.2	8	0.3	128	4.9	38	1.5
In RM cases	60	2	3.3	1	1.7	0	0.0	2	3.3	1	1.7
In RD cases	434	21	4.8	3	0.7	1	0.2	22	5.1	4	0.9
By type of election:											
Consent elections	4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	2,568	46	1.8	17	0.7	3	0.1	49	1.9	20	0.8
Expedited elections	2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	511	97	19.0	17	3.3	6	1.2	103	20.2	23	4.5
Board-directed elections	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing Fiscal Year 2003[1]

Type of election/case	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	271	100.0	97	35.8	167	61.6	6	2.2
By type of case:								
RC cases	239	100.0	93	38.9	141	59.0	4	1.7
RM cases	3	100.0	0	0.0	3	100.0	0	0.0
RD cases	29	100.0	4	13.8	23	79.3	2	6.9
By type of election:								
Consent elections	1	100.0	0	0.0	1	100.0	0	0.0
Stipulated elections	143	100.0	36	25.2	104	72.7	3	2.1
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	127	100.0	61	48.0	62	48.8	3	2.4
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 2003[1]

Type of election/case	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	271	119	152	138	90.8	14	9.2
By type of case:							
RC cases	239	111	128	117	91.4	11	8.6
RM cases	3	1	2	2	100.0	0	0.0
RD cases	29	7	22	19	86.4	3	13.6
By type of election:							
Consent elections	1	1	0	0	0.0	0	0.0
Stipulated elections	143	94	49	44	89.8	5	10.2
Expedited elections	0	0	0	0	0.0	0	0.0
Regional Director-directed elections	127	24	103	94	91.3	9	8.7
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 2003[1]

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	36	100.0	13	36.1	23	63.9	10	27.8
By type of case:								
RC cases	30	100.0	9	30.0	21	70.0	9	30.0
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	6	100.0	4	66.7	2	33.3	1	16.7
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	26	100.0	8	30.8	18	69.2	6	23.1
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	10	100.0	5	50.0	5	50.0	4	40.0
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

[1] Includes only final rerun elections, i.e., those resulting in certification. See Glossary of terms for definitions.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 2003[1]

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	52	20	38.5	32	61.5	4,089	1,818	44.5	2,271	55.5	2,707	66.2	1,166	28.5
AFL-CIO unions	51	19	37.3	32	62.7	3,857	1,586	41.1	2,271	58.9	2,579	66.9	1,038	26.9
Other national unions	1	1	100.0	0	0.0	232	232	100.0	0	0.0	128	55.2	128	55.2
Other local unions	0	0.0	0.0	0	0.0	0	0	0.0	0	0.0	0	0.0	0	0.0

[1] Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a manority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2003[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO	2,583	51.3	1,324	1,315	9	--	1,259	165,920	66,910	66,595	315	--	99,010
Other local unions	121	62.8	76	--	1	75	45	9,485	5,015	--	653	4,362	4,470
Other national unions	93	62.4	58	--	58	--	35	6,091	2,724	--	2,724	--	3,367
1-union elections	2,797	52.1	1,458	1,315	68	75	1,339	181,496	74,649	66,595	3,692	4,362	106,847
AFL-CIO v. AFL-CIO	66	78.8	52	52	--	--	14	5,384	3,935	3,935	--	--	1,449
AFL-CIO v. Local	34	88.2	30	18	1	11	4	6,205	5,626	1,778	16	3,832	579
AFL-CIO v. National	9	88.9	8	6	2	--	1	530	347	194	153	--	183
Local v. Local	9	100.0	9	--	--	9	0	1,963	1,963	--	--	1,963	0
National v. Local	5	100.0	5	--	1	4	0	342	342	--	97	245	0
National v. National	14	100.0	14	--	14	--	0	481	481	--	481	--	0
2-union elections	137	86.1	118	76	18	24	19	14,905	12,694	5,907	747	6,040	2,211
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1	--	--	0	14	14	14	--	--	0
AFL-CIO v. AFL-CIO v. National	1	100.0	1	1	0	--	0	116	116	116	0	--	0
National v. Local v. Local	1	100.0	1	--	0	1	0	26	26	--	0	26	0
3 (or more)-union elections	3	100.0	3	2	0	1	0	156	156	130	0	26	0
Total representation elections	2,937	53.8	1,579	1,393	86	100	1,358	196,557	87,499	72,632	4,439	10,428	109,058

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2003[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	In units won by Other national unions	In units won by Other local unions	
B. Elections in RC cases													
AFL-CIO	2,135	54.8	1,169	1,164	5	--	966	136,888	55,627	55,551	76	--	81,261
Other local unions	112	63.4	71	--	1	70	41	8,932	4,528	--	653	3,875	4,404
Other national unions	80	63.8	51	--	51	--	29	5,532	2,302	--	2,302	--	3,230
1-union elections	2,327	55.5	1,291	1,164	57	70	1,036	151,352	62,457	55,551	3,031	3,875	88,895
National v. Local	5	100.0	5	--	1	4	0	342	342	--	97	245	0
Local v. Local	8	100.0	8	--	--	8	0	1,921	1,921	--	--	1,921	0
AFL-CIO v. AFL-CIO	59	81.4	48	48	--	--	11	4,848	3,641	3,641	--	--	1,207
AFL-CIO v. Local	32	90.6	29	17	1	11	3	5,832	5,483	1,635	16	3,832	349
AFL-CIO v. National	9	88.9	8	6	2	--	1	530	347	194	153	--	183
National v. National	14	100.0	14	--	14	--	0	481	481	--	481	--	0
2-union elections	127	88.2	112	71	18	23	15	13,954	12,215	5,470	747	5,998	1,739
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1	--	--	0	14	14	14	--	--	0
AFL-CIO v. AFL-CIO v. National	1	100.0	1	1	0	--	0	116	116	116	0	--	0
National v. Local v. Local	1	100.0	1	--	0	1	0	26	26	--	0	26	0
3 (or more)-union elections	3	100.0	3	2	0	1	0	156	156	130	0	26	0
Total RC elections	2,457	57.2	1,406	1,237	75	94	1,051	165,462	74,828	61,151	3,778	9,899	90,634

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2003[1]—Continued

C. Elections in RM cases													
Other national unions	1	100.0	1	--	1	--	0	10	10	--	10	--	0
Other local unions	2	100.0	2	--	--	2	0	383	383	--	--	383	0
AFL-CIO	53	32.1	17	16	1	--	36	1,827	781	704	77	--	1,046
1-union elections	56	35.7	20	16	2	2	36	2,220	1,174	704	87	383	1,046
AFL-CIO v. AFL-CIO	2	50.0	1	1	--	--	1	115	45	45	--	--	70
Local v. Local	1	100.0	1	--	--	1	0	42	42	--	--	42	0
2-union elections	3	66.7	2	1	0	1	1	157	87	45	0	42	70
Total RM elections	59	37.3	22	17	2	3	37	2,377	1,261	749	87	425	1,116
D. Elections in RD cases													
Other local unions	7	42.9	3	--	--	3	4	170	104	--	--	104	66
Other national unions	12	50.0	6	--	6	--	6	549	412	--	412	--	137
AFL-CIO	395	34.9	138	135	3	--	257	27,205	10,502	10,340	162	--	16,703
1-union elections	414	35.5	147	135	9	3	267	27,924	11,018	10,340	574	104	16,906
AFL-CIO v. AFL-CIO	5	60.0	3	3	--	--	2	421	249	249	--	--	172
AFL-CIO v. Local	2	50.0	1	1	--	0	1	373	143	143	--	0	230
2-union elections	7	57.1	4	4	0	0	3	794	392	392	0	0	402
Total RD elections	421	35.9	151	139	9	3	270	28,718	11,410	10,732	574	104	17,308

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

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2003[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	143,394	38,977	38,977	--	--	16,907	30,810	30,810	--	--	56,700
Other local unions	7,349	2,626	--	--	2,626	843	1,287	--	--	1,287	2,593
Other national unions	5,130	1,504	--	1,504	--	647	975	--	975	--	2,004
1-union elections	155,873	43,107	38,977	1,504	2,626	18,397	33,072	30,810	975	1,287	61,297
AFL-CIO v. AFL-CIO	4,228	2,448	2,448	--	--	219	807	807	--	--	754
AFL-CIO v. Local	4,142	3,543	1,812	--	1,731	149	366	77	--	289	84
AFL-CIO v. National	414	262	116	146	--	22	58	57	1	--	72
Local v. Local	1,384	1,355	--	--	1,355	29	0	--	--	0	0
National v. Local	277	276	--	117	159	1	0	--	0	0	0
National v. National	367	348	--	348	--	19	0	--	0	--	0
2-union elections	10,812	8,232	4,376	611	3,245	439	1,231	941	1	289	910
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	20	20	20	--	--	0	0	0	--	--	0
AFL-CIO v. AFL-CIO v. National	93	64	62	2	--	29	0	0	0	--	0
National v. Local v. Local	11	11	--	0	11	0	0	--	0	0	0
3 (or more)-union elections	124	95	82	2	11	29	0	0	0	0	0
Total representation elections	166,809	51,434	43,435	2,117	5,882	18,865	34,303	31,751	976	1,576	62,207
B. Elections in RC cases											
AFL-CIO	119,049	32,699	32,699	--	--	13,814	25,705	25,705	--	--	46,831
Other local unions	6,849	2,314	--	--	2,314	707	1,274	--	--	1,274	2,554
Other national unions	4,640	1,285	--	1,285	--	496	923	--	923	--	1,936
1-union elections	130,538	36,298	32,699	1,285	2,314	15,017	27,902	25,705	923	1,274	51,321

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2003[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
National v. Local	277	276	0	117	159	1	0	--	--	--	--
Local v. Local	1,342	1,314	0	0	1,314	28	0	--	--	--	--
AFL-CIO v. AFL-CIO	3,816	2,301	2,301	--	--	170	732	732	--	--	613
AFL-CIO v. Local	3,856	3,432	1,745	--	1,687	141	207	76	--	131	76
AFL-CIO v. National	414	262	116	146	--	22	58	57	1	--	72
National v. National	367	348	0	348	0	19	0	--	--	--	--
2-union elections	10,072	7,933	4,162	611	3,160	381	997	865	1	131	761
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	20	20	20	0	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO v. National	93	64	62	2	0	29	0	--	--	--	--
National v. Local v. Local	11	11	0	0	11	0	0	--	--	--	--
3 (or more)-union elections	124	95	82	2	11	29	0	0	0	0	0
Total RC elections	140,734	44,326	36,943	1,898	5,485	15,427	28,899	26,570	924	1,405	52,082
C. Elections in RM cases											
Other national unions	10	10	0	10	0	0	0	--	--	--	--
Other local unions	348	240	0	0	240	108	0	--	--	--	--
AFL-CIO	1,494	426	426	--	--	187	253	253	--	--	628
1-union elections	1,852	676	426	10	240	295	253	253	0	0	628
AFL-CIO v. AFL-CIO	100	41	41	--	--	0	59	59	--	--	0
Local v. Local	42	41	0	0	41	1	0	--	--	--	--
2-union elections	142	82	41	0	41	1	59	59	0	0	0
Total RM elections	1,994	758	467	10	281	296	312	312	0	0	628

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2003[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											
Other local unions	152	72	--	--	72	28	13	--	--	13	39
Other national unions	480	209	--	209	--	151	52	--	52	--	68
AFL-CIO	22,851	5,852	5,852	--	--	2,906	4,852	4,852	--	--	9,241
1-union elections	23,483	6,133	5,852	209	72	3,085	4,917	4,852	52	13	9,348
AFL-CIO v. AFL-CIO	312	106	106	--	--	49	16	16	--	--	141
AFL-CIO v. Local	286	111	67	--	44	8	159	1	--	158	8
2-union elections	598	217	173	0	44	57	175	17	0	158	149
Total RD elections	24,081	6,350	6,025	209	116	3,142	5,092	4,869	52	171	9,497

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	221	108	100	7	1	113	10,010	8,670	4,165	3,970	106	89	4,505	3580
Indiana	70	31	31	0	0	39	4,431	3,971	1,742	1,698	0	44	2,229	1516
Michigan	155	79	73	4	2	76	7,390	6,288	3,474	3,175	177	122	2,814	4578
Ohio	169	81	80	1	0	88	10,739	9,898	4,713	4,573	83	57	5,185	4081
Wisconsin	75	38	36	0	2	37	3,807	3,282	1,544	1,458	0	86	1,738	1542
East North Central	690	337	320	12	5	353	36,377	32,109	15,638	14,874	366	398	16,471	15297
Alabama	27	7	7	0	0	20	2,057	1,851	738	660	0	78	1,113	186
Kentucky	42	17	13	3	1	25	4,089	3,776	1,401	1,352	26	23	2,375	734
Mississippi	15	9	9	0	0	6	1,719	1,569	696	696	0	0	873	510
Tennessee	25	11	8	1	2	14	2,534	2,269	1,121	1,045	30	46	1,148	1079
East South Central	109	44	37	4	3	65	10,399	9,465	3,956	3,753	56	147	5,509	2509
New Jersey	144	72	63	4	5	72	8,321	7,079	3,939	3,318	358	263	3,140	4487
New York	270	174	150	8	16	96	27,034	20,346	12,179	10,258	342	1,579	8,167	15073
Pennsylvania	185	107	97	6	4	78	10,043	8,894	4,334	4,108	107	119	4,560	4097
Middle Atlantic	599	353	310	18	25	246	45,398	36,319	20,452	17,684	807	1,961	15,867	23657
Arizona	22	16	13	3	0	6	1,191	1,005	541	472	69	0	464	613
Colorado	34	17	16	1	0	17	1,922	1,636	925	904	21	0	711	1025
Idaho	7	6	5	1	0	1	512	445	323	284	39	0	122	508
Montana	16	10	10	0	0	6	336	266	138	138	0	0	128	192
Nevada	39	22	20	1	1	17	2,329	2,032	1,046	633	0	413	986	808
New Mexico	22	13	10	3	0	9	536	469	213	181	30	2	256	178
Utah	10	5	5	0	0	5	371	387	180	180	0	0	207	45
Wyoming	4	2	2	0	0	2	51	49	21	21	0	0	28	26
Mountain	154	91	81	9	1	63	7,248	6,289	3,387	2,813	159	415	2,902	3395

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Connecticut	51	25	23	2	0	26	3,463	2,984	1,179	1,145	34	0	1,805	755
Maine	5	1	0	0	1	4	130	121	39	35	0	4	82	7
Massachusetts	75	39	31	2	6	36	3,805	3,435	1,847	1,681	60	106	1,588	1,671
New Hampshire	6	5	5	0	0	1	698	501	449	449	0	0	52	633
Rhode Island	14	9	6	0	3	5	865	757	554	372	0	182	203	619
Vermont	8	4	3	1	0	4	2,286	2,115	1,072	1,027	45	0	1,043	1,408
New England	159	83	68	5	10	76	11,247	9,913	5,140	4,709	139	292	4,773	5,093
Puerto Rico	55	34	17	0	17	21	2,693	2,339	1,183	506	0	677	1,156	1,354
Virgin Islands	4	4	2	0	2	0	55	43	31	14	0	17	12	55
Outlying Areas	59	38	19	0	19	21	2,748	2,382	1,214	520	0	694	1,168	1,409
Alaska	23	7	6	1	0	16	790	668	278	238	40	0	390	251
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	304	168	146	8	14	136	28,809	23,626	12,676	11,132	249	1,295	10,950	12,396
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	30	16	11	5	0	14	1,235	1,012	512	424	88	0	500	702
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	49	31	27	3	1	18	2,334	2,139	923	675	58	190	1,216	559
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	108	70	64	5	1	38	4,101	3,379	2,005	1,868	113	24	1,374	2,696
Pacific	514	292	254	22	16	222	37,269	30,824	16,394	14,337	548	1,509	14,430	16,604

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	16	7	6	1	0	9	912	829	402	346	39	17	427	480
District Of Columbia	18	13	8	1	4	5	2,283	1,638	1,351	367	47	937	287	2,070
Florida	91	58	52	4	2	33	5,920	5,242	2,578	2,336	88	154	2,664	3,257
Georgia	39	21	19	2	0	18	5,437	4,796	2,216	2,077	139	0	2,580	1,458
Maryland	65	40	34	1	5	25	3,673	3,007	1,713	1,469	6	238	1,294	2,093
North Carolina	28	13	11	0	2	15	2,224	2,059	903	842	1	60	1,156	563
South Carolina	7	2	2	0	0	5	754	729	312	312	0	0	417	6
Virginia	20	12	11	1	0	8	1,120	965	494	484	10	0	471	493
West Virginia	48	27	24	2	1	21	3,330	2,911	1,372	1,346	0	26	1,539	1,360
South Atlantic	332	193	167	12	14	139	25,653	22,176	11,341	9,579	330	1,432	10,835	11,780
Iowa	20	9	9	0	0	11	884	726	503	503	0	0	223	653
Kansas	26	13	10	2	1	13	1,536	1,386	543	468	73	2	843	399
Minnesota	73	39	30	8	1	34	3,815	2,812	1,412	1,310	76	26	1,400	1,901
Missouri	78	28	28	0	0	50	3,982	3,614	1,442	1,274	168	0	2,172	624
Nebraska	18	7	7	0	0	11	909	858	441	441	0	0	417	414
North Dakota	7	3	3	0	0	4	88	74	34	34	0	0	40	29
South Dakota	2	0	0	0	0	2	36	36	15	15	0	0	21	0
West North Central	224	99	87	10	2	125	11,250	9,506	4,390	4,045	317	28	5,116	4,020
Arkansas	12	3	2	0	1	9	1,457	1,342	553	500	0	53	789	315
Louisiana	26	13	12	0	1	13	1,873	1,390	751	615	0	136	639	1,093
Oklahoma	18	7	6	1	0	11	1,270	1,078	332	304	28	0	746	285
Texas	64	35	28	4	3	29	5,287	4,989	2,721	1,895	433	393	2,268	2,428
West South Central	120	58	48	5	5	62	9,887	8,799	4,357	3,314	461	582	4,442	4,121
Total, all States and areas	2,960	1,588	1,391	97	100	1,372	197,476	167,782	86,269	75,628	3,183	7,458	81,513	87,885

[1] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2003

Division and State[2]	Total elections[3]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	195	101	95	5	1	94	8,518	7,503	3,656	3,481	87	88	3,847	2,796
Indiana	53	25	25	0	0	28	3,374	3,134	1,375	1,375	0	0	1,759	1,064
Michigan	126	73	67	4	2	53	5,704	4,823	2,726	2,465	139	122	2,097	3,590
Ohio	146	71	70	1	0	75	9,269	8,553	4,029	3,889	83	57	4,524	3,173
Wisconsin	58	31	29	0	2	27	3,345	2,890	1,392	1,306	0	86	1,498	1,343
East North Central	578	301	286	10	5	277	30,210	26,903	13,178	12,516	309	353	13,725	11,966
Alabama	22	5	5	0	0	17	1,974	1,770	720	642	0	78	1,050	159
Kentucky	33	13	10	2	1	20	3,661	3,401	1,252	1,203	26	23	2,149	589
Mississippi	11	7	7	0	0	4	1,557	1,427	624	624	0	0	803	390
Tennessee	18	9	6	1	2	9	1,596	1,438	742	677	19	46	696	708
East South Central	84	34	28	3	3	50	8,788	8,036	3,338	3,146	45	147	4,698	1,846
New Jersey	130	66	57	4	5	64	7,130	6,072	3,310	2,690	357	263	2,762	3,742
New York	255	169	146	7	16	86	26,230	19,652	11,791	9,913	299	1,579	7,861	14,462
Pennsylvania	165	99	91	5	3	66	8,877	7,830	3,823	3,620	107	96	4,007	3,739
Middle Atlantic	550	334	294	16	24	216	42,237	33,554	18,924	16,223	763	1,938	14,630	21,943
Arizona	20	14	12	2	0	6	1,037	877	484	415	69	0	393	459
Colorado	28	13	12	1	0	15	1,509	1,287	677	656	21	0	610	642
Idaho	7	6	5	1	0	1	512	445	323	284	39	0	122	508
Montana	11	6	6	0	0	5	230	167	72	72	0	0	95	97
Nevada	36	22	20	1	1	14	2,264	1,967	1,029	616	0	413	938	808
New Mexico	22	13	10	3	0	9	536	469	213	181	30	2	256	178
Utah	9	5	5	0	0	4	157	185	115	115	0	0	70	45

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[2]	Total elections[3]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Wyoming	3	2	2	0	0	1	40	38	21	21	0	0	17	26
Mountain	136	81	72	8	1	55	6,285	5,435	2,934	2,360	159	415	2,501	2,763
Connecticut	46	24	22	2	0	22	3,241	2,780	1,106	1,072	34	0	1,674	717
Maine	4	1	0	0	1	3	95	89	31	27	0	4	58	7
Massachusetts	67	35	28	1	6	32	3,375	3,064	1,613	1,472	35	106	1,451	1,360
New Hampshire	6	5	5	0	0	1	698	501	449	449	0	0	52	633
Rhode Island	11	7	4	0	3	4	700	626	475	293	0	182	151	487
Vermont	7	3	3	0	0	4	2,192	2,029	1,027	1,027	0	0	1,002	1,314
New England	141	75	62	3	10	66	10,301	9,089	4,701	4,340	69	292	4,388	4,518
Puerto Rico	52	32	15	0	17	20	2,572	2,225	1,111	436	0	675	1,114	1,240
Virgin Islands	4	4	2	0	2	0	55	43	31	14	0	17	12	55
Outlying Areas	56	36	17	0	19	20	2,627	2,268	1,142	450	0	692	1,126	1,295
Alaska	21	6	5	1	0	15	686	582	234	194	40	0	348	190
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	265	157	135	8	14	108	21,621	18,239	10,166	8,780	249	1,137	8,073	10,731
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	24	14	9	5	0	10	892	748	407	321	86	0	341	542
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	44	29	25	3	1	15	2,281	2,090	898	659	58	181	1,192	544
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	93	61	55	5	1	32	3,318	2,734	1,668	1,531	113	24	1,066	2,288
Pacific	447	267	229	22	16	180	28,798	24,393	13,373	11,485	546	1,342	11,020	14,295

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[2]	Total elections[3]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Delaware	11	4	4	0	0	7	534	491	228	211	0	17	263	144
District Of Columbia	17	13	8	1	4	4	2,268	1,629	1,350	367	47	936	279	2,070
Florida	80	56	50	4	2	24	5,546	4,907	2,476	2,234	88	154	2,431	3,193
Georgia	33	20	18	2	0	13	4,834	4,277	1,990	1,851	139	0	2,287	1,284
Maryland	62	38	32	1	5	24	3,616	2,952	1,684	1,440	6	238	1,268	2,064
North Carolina	25	12	10	0	2	13	1,963	1,820	758	697	1	60	1,062	337
South Carolina	6	2	2	0	0	4	424	430	184	184	0	0	246	6
Virginia	18	11	10	1	0	7	790	672	353	343	10	0	319	376
West Virginia	41	24	22	2	0	17	3,079	2,669	1,262	1,262	0	0	1,407	1,232
South Atlantic	293	180	156	11	13	113	23,054	19,847	10,285	8,589	291	1,405	9,562	10,706
Iowa	14	5	5	0	0	9	694	603	410	410	0	0	193	470
Kansas	19	13	10	2	1	6	726	614	326	251	73	2	288	399
Minnesota	50	31	23	7	1	19	2,888	1,957	944	880	38	26	1,013	1,384
Missouri	57	26	26	0	0	31	3,258	2,966	1,254	1,086	168	0	1,712	579
Nebraska	13	3	3	0	0	10	667	621	293	293	0	0	328	186
North Dakota	5	2	2	0	0	3	55	42	18	18	0	0	24	15
South Dakota	1	0	0	0	0	1	30	30	13	13	0	0	17	0
West North Central	159	80	69	9	2	79	8,318	6,833	3,258	2,951	279	28	3,575	3,033
Arkansas	5	1	0	0	1	4	991	921	351	298	0	53	570	118
Louisiana	22	11	11	0	0	11	1,704	1,263	679	566	0	113	584	955
Oklahoma	11	6	5	1	0	5	1,080	901	267	239	28	0	634	250
Texas	55	31	24	4	3	24	4,366	4,146	2,342	1,516	433	393	1,804	2,296
West South Central	93	49	40	5	4	44	8,141	7,231	3,639	2,619	461	559	3,592	3,619
Total, all States and areas	2,537	1,437	1,253	87	97	1,100	168,759	143,589	74,772	64,679	2,922	7,171	68,817	75,984

[1] Does not include decertification (RD) elections.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce.
[3] Due to technical difficulties, data discrepancies exceed 1 percent but are less than 3 percent in case totals for Tables 11, 15B, 15C, and 16.

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2003

Division and State[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	26	7	5	2	0	19	1,492	1,167	509	489	19	1	658	784
Indiana	17	6	6	0	0	11	1,057	837	367	323	0	44	470	452
Michigan	29	6	6	0	0	23	1,686	1,465	748	710	38	0	717	988
Ohio	23	10	10	0	0	13	1,470	1,345	684	684	0	0	661	908
Wisconsin	17	7	7	0	0	10	462	392	152	152	0	0	240	199
East North Central	112	36	34	2	0	76	6,167	5,206	2,460	2,358	57	45	2,746	3,331
Alabama	5	2	2	0	0	3	83	81	18	18	0	0	63	27
Kentucky	9	4	3	1	0	5	428	375	149	149	0	0	226	145
Mississippi	4	2	2	0	0	2	162	142	72	72	0	0	70	120
Tennessee	7	2	2	0	0	5	938	831	379	368	11	0	452	371
East South Central	25	10	9	1	0	15	1,611	1,429	618	607	11	0	811	663
New Jersey	14	6	6	0	0	8	1,191	1,007	629	628	1	0	378	745
New York	15	5	4	1	0	10	804	694	388	345	43	0	306	611
Pennsylvania	20	8	6	1	1	12	1,166	1,064	511	488	0	23	553	358
Middle Atlantic	49	19	16	2	1	30	3,161	2,765	1,528	1,461	44	23	1,237	1,714
Arizona	2	2	1	1	0	0	154	128	57	57	0	0	71	154
Colorado	6	4	4	0	0	2	413	349	248	248	0	0	101	383
Idaho	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Montana	5	4	4	0	0	1	106	99	66	66	0	0	33	95
Nevada	3	0	0	0	0	3	65	65	17	17	0	0	48	0
New Mexico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Utah	1	0	0	0	0	1	214	202	65	65	0	0	137	0
Wyoming	1	0	0	0	0	1	11	11	0	0	0	0	11	0
Mountain	18	10	9	1	0	8	963	854	453	453	0	0	401	632
Connecticut	5	1	1	0	0	4	222	204	73	73	0	0	131	38
Maine	1	0	0	0	0	1	35	32	8	8	0	0	24	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Massachusetts	8	4	3	1	0	4	430	371	234	209	25	0	137	311
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rhode Island	3	2	2	0	0	1	165	131	79	79	0	0	52	132
Vermont	1	1	0	1	0	0	94	86	45	0	45	0	41	94
New England	18	8	6	2	0	10	946	824	439	369	70	0	385	575
Puerto Rico	3	2	2	0	0	1	121	114	72	70	0	2	42	114
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	3	2	2	0	0	1	121	114	72	70	0	2	42	114
Alaska	2	1	1	0	0	1	104	86	44	44	0	0	42	61
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	39	11	11	0	0	28	7,188	5,387	2,510	2,352	0	158	2,877	1,665
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	6	2	2	0	0	4	343	264	105	103	2	0	159	160
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	5	2	2	0	0	3	53	49	25	16	0	9	24	15
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	15	9	9	0	0	6	783	645	337	337	0	0	308	408
Pacific	67	25	25	0	0	42	8,471	6,431	3,021	2,852	2	167	3,410	2,309
Delaware	5	3	2	1	0	2	378	338	174	135	39	0	164	336
District Of Columbia	1	0	0	0	0	1	15	9	1	0	0	1	8	0
Florida	11	2	2	0	0	9	374	335	102	102	0	0	233	64
Georgia	6	1	1	0	0	5	603	519	226	226	0	0	293	174
Maryland	3	2	2	0	0	1	57	55	29	29	0	0	26	29
North Carolina	3	1	1	0	0	2	261	239	145	145	0	0	94	226

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2003—Continued

Division and State[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
South Carolina	1	0	0	0	0	1	330	299	128	128	0	0	171	0
Virginia	2	1	1	0	0	1	330	293	141	141	0	0	152	117
West Virginia	7	3	2	0	1	4	251	242	110	84	0	26	132	128
South Atlantic	39	13	11	1	1	26	2,599	2,329	1,056	990	39	27	1,273	1,074
Iowa	6	4	4	0	0	2	190	123	93	93	0	0	30	183
Kansas	7	0	0	0	0	7	810	772	217	217	0	0	555	0
Minnesota	23	8	7	1	0	15	927	855	468	430	38	0	387	517
Missouri	21	2	2	0	0	19	724	648	188	188	0	0	460	45
Nebraska	5	4	4	0	0	1	242	237	148	148	0	0	89	228
North Dakota	2	1	1	0	0	1	33	32	16	16	0	0	16	14
South Dakota	1	0	0	0	0	1	6	6	2	2	0	0	4	0
West North Central	65	19	18	1	0	46	2,932	2,673	1,132	1,094	38	0	1,541	987
Arkansas	7	2	2	0	0	5	466	421	202	202	0	0	219	197
Louisiana	4	2	1	0	1	2	169	127	72	49	0	23	55	138
Oklahoma	7	1	1	0	0	6	190	177	65	65	0	0	112	35
Texas	9	4	4	0	0	5	921	843	379	379	0	0	464	132
West South Central	27	9	8	0	1	18	1,746	1,568	718	695	0	23	850	502
Total, all States and areas	423	151	138	10	3	272	28,717	24,193	11,497	10,949	261	287	12,696	11,901

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

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Crop Production	1	0	0	0	0	1	14	14	3	3	0	0	11	0
Animal Production	3	2	1	0	1	1	664	606	143	131	0	12	463	24
Support Activities for Agriculture and Forestry	2	0	0	0	0	2	151	128	59	59	0	0	69	0
Agriculture, Forestry, Fishing, and Hunting	6	2	1	0	1	4	829	748	205	193	0	12	543	24
Oil and Gas Extraction	6	4	4	0	0	2	89	82	47	47	0	0	35	60
Mining (except Oil and Gas)	17	4	3	0	1	13	1,425	1,343	594	585	0	9	749	159
Support Activities for Mining	5	4	2	1	1	1	300	268	188	28	107	53	80	265
Mining	28	12	9	1	2	16	1,814	1,693	829	660	107	62	864	484
Utilities	65	37	33	3	1	28	4,064	3,570	1,766	1,642	101	23	1,804	1,449
Building, Developing and General Contracting	28	19	18	1	0	9	553	433	267	262	5	0	166	414
Heavy Construction	29	14	13	1	0	15	727	649	314	285	29	0	335	259
Special Trade Contractors	291	166	163	3	0	125	7,138	5,571	3,448	3,327	26	95	2,123	4,262
Construction	348	199	194	5	0	149	8,418	6,653	4,029	3,874	60	95	2,624	4,935
Food Manufacturing	103	45	42	1	2	58	10,016	9,046	3,899	3,774	23	102	5,147	2,385
Beverage and Tobacco Product Manufacturing	35	13	13	0	0	22	2,111	1,876	899	899	0	0	977	825
Textile Mills	2	2	2	0	0	0	32	29	21	21	0	0	8	32
Textile Product Mills	2	1	1	0	0	1	338	318	183	183	0	0	135	247
Apparel Manufacturing	4	0	0	0	0	4	1,206	1,067	274	274	0	0	793	7
Leather and Allied Product Manufacturing	2	1	1	0	0	1	66	65	24	24	0	0	41	13
31-Manufacturing	148	62	59	1	2	86	13,769	12,401	5,300	5,175	23	102	7,101	3,509

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Wood Product Manufacturing	19	9	9	0	0	10	1,504	1,370	604	604	0	0	766	567
Paper Manufacturing	39	17	15	1	1	22	3,784	2,901	1,414	1,381	0	33	1,487	1,778
Printing and Related Support Activities	11	5	5	0	0	6	819	764	344	344	0	0	420	145
Petroleum and Coal Products Manufacturing	21	10	10	0	0	11	571	528	268	237	31	0	260	136
Chemical Manufacturing	33	11	9	0	2	22	3,245	3,228	1,324	1,019	0	305	1,904	780
Plastics and Rubber Products Manufacturing	27	13	12	1	0	14	5,815	5,375	2,315	2,182	75	58	3,060	1,549
Nonmetallic Mineral Product Manufacturing	28	11	11	0	0	17	1,771	1,638	733	716	0	17	905	664
32-Manufacturing	178	76	71	2	3	102	17,509	15,804	7,002	6,483	106	413	8,802	5,619
Primary Metal Manufacturing	44	18	16	1	1	26	3,661	3,345	1,539	1,370	0	169	1,806	1,415
Fabricated Metal Product Manufacturing	54	25	21	2	2	29	4,682	4,578	2,448	2,339	13	96	2,130	1,754
Machinery Manufacturing	28	7	7	0	0	21	2,178	2,068	872	846	0	26	1,196	319
Computer and Electronic Product Manufacturing	3	2	2	0	0	1	492	422	193	154	0	39	229	256
Electrical Equipment, Appliance and Component Manufacturing	22	8	8	0	0	14	3557	3,135	1,289	1,248	41	0	1,846	815
Transportation Equipment Manufacturing	65	32	31	1	0	33	1,1701	9,733	4,836	4,698	0	138	4,897	3,918
Furniture and Related Product Manufacturing	8	2	2	0	0	6	492	441	195	180	15	0	246	125
Miscellaneous Manufacturing	54	19	19	0	0	35	3,271	3,076	1,400	1,371	29	0	1,676	897
33-Manufacturing	278	113	106	4	3	165	30,034	26,798	12,772	12,206	98	468	14,026	9,499
Wholesale Trade, Durable Goods	41	20	19	1	0	21	1,149	1,045	477	468	0	9	568	318
Wholesale Trade, Nondurable Goods	62	21	21	0	0	41	3,228	3,075	1,303	1,289	14	0	1,772	692
Wholesale Trade	103	41	40	1	0	62	4,377	4,120	1,780	1,757	14	9	2,340	1,010

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Motor Vehicle and Parts Dealers	70	39	37	2	0	31	1,211	1,113	580	580	0	0	533	546
Furniture and Home Furnishings Stores	5	3	3	0	0	2	220	172	69	69	0	0	103	46
Electronics and Appliance Stores	3	1	1	0	0	2	80	67	16	16	0	0	51	3
Building Material and Garden Equipment and Supplies Dealers	9	6	5	0	1	3	319	293	114	105	0	9	179	67
Food and Beverage Stores	64	33	33	0	0	31	2,257	2,300	942	866	1	75	1,358	738
Health and Personal Care Stores	10	4	4	0	0	6	173	161	67	67	0	0	94	54
Gasoline Stations	4	3	3	0	0	1	50	41	30	30	0	0	11	28
Clothing and Clothing Accessories Stores	2	1	1	0	0	1	32	26	14	14	0	0	12	6
44-Retail Trade	167	90	87	2	1	77	4,342	4,173	1,832	1,747	1	84	2,341	1,488
Sporting Goods, Hobby, Book and Music Stores	3	2	2	0	0	1	59	50	25	25	0	0	25	25
General Merchandise Stores	15	8	6	0	2	7	4,360	2,839	1,944	1,147	0	797	895	2,857
Miscellaneous Store Retailers	4	3	0	1	2	1	228	198	86	73	0	13	112	17
Nonstore Retailers	3	2	2	0	0	1	45	43	27	27	0	0	16	37
45-Retail Trade	25	15	10	1	4	10	4,692	3,130	2,082	1,272	0	810	1,048	2,936
Air Transportation	6	6	6	0	0	0	307	247	165	165	0	0	82	307
Rail Transportation	2	1	1	0	0	1	44	33	20	20	0	0	13	44
Water Transportation	6	2	1	0	1	4	283	207	156	58	0	98	51	221
Truck Transportation	97	35	35	0	0	62	4,893	4,227	1,567	1,550	17	0	2,660	1,157
Transit and Ground Passenger Transportation	93	53	53	0	0	40	8,853	7,272	3,889	3,747	17	125	3,383	3,996
Pipeline Transportation	3	2	2	0	0	1	80	74	15	15	0	0	59	5
Scenic and Sightseeing Transportation	3	3	3	0	0	0	264	179	142	142	0	0	37	264
Support Activities for Transportation	41	22	21	0	1	19	998	868	392	385	0	7	476	361
48-Transportation	251	124	122	0	2	127	15,722	13,107	6,346	6,082	34	230	6,761	6,355
Couriers and Messengers	9	3	3	0	0	6	178	146	62	47	0	15	84	64
Warehousing and Storage Facilities	67	28	27	1	0	39	4,042	3,426	1,609	1,606	0	3	1,817	1,376
49-Transportation	76	31	30	1	0	45	4,220	3,572	1,671	1,653	0	18	1,901	1,440

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Publishing Industries	23	10	8	2	0	13	804	743	291	278	13	0	452	202
Motion Picture and Sound Recording Industries	5	3	2	0	1	2	110	79	38	25	11	2	41	37
Broadcasting and Telecommunications	80	32	30	1	1	48	3,209	2,984	1,284	1,220	10	54	1,700	1,051
Information Services and Data Processing Services	6	4	4	0	0	2	92	86	48	48	0	0	38	42
Information	114	49	44	3	2	65	4,215	3,892	1,661	1,571	34	56	2,231	1,332
Monetary Authorities - Central Bank	3	1	1	0	0	2	65	53	19	19	0	0	34	18
Credit Intermediation and Related Activities	4	2	0	0	2	2	137	122	51	17	0	34	71	47
Securities, Commodity Contracts and Other Intermediation and Related Activities	1	0	0	0	0	1	274	266	104	104	0	0	162	0
Insurance Carriers and Related Activities	4	1	1	0	0	3	810	788	239	239	0	0	549	8
Funds, Trusts and Other Financial Vehicles (U.S. Only)	1	1	1	0	0	0	13	13	8	8	0	0	5	13
Finance and Insurance	13	5	3	0	2	8	1,299	1,242	421	387	0	34	821	86
Real Estate	17	8	3	0	5	9	162	150	87	49	0	38	63	81
Rental and Leasing Services	45	20	18	2	0	25	1,710	1,584	687	649	7	31	897	601
Owners and Lessors of Other Non-Financial Assets	1	1	1	0	0	0	4	4	4	4	0	0	0	4
Real Estate and Rental and Leasing	63	29	22	2	5	34	1,876	1,738	778	702	7	69	960	686
Professional, Scientific and Technical Services	44	28	22	1	5	16	1,319	1,089	670	562	0	108	419	921
Management of Companies and Enterprises	3	3	3	0	0	0	21	18	15	15	0	0	3	21

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Administrative and Support Services	139	100	42	39	19	39	5,758	4,524	3,145	1,035	1,207	903	1,379	4,610
Waste Management and Remediation Services	101	45	42	2	1	56	4,762	4,249	1,984	1,847	31	106	2,265	1,825
Administrative and Support, Waste Management and Remediation Services	240	145	84	41	20	95	10,520	8,773	5,129	2,882	1,238	1,009	3,644	6,435
Educational Services	71	54	44	4	6	17	6,555	5,585	2,931	2,532	78	321	2,654	2,921
Ambulatory Health Care Services	39	19	19	0	0	20	3,622	2,701	1,571	1,556	0	15	1,130	2,371
Hospitals	178	125	93	9	23	53	26,456	21,640	12,865	9,409	779	2,677	8,775	15,123
Nursing and Residential Care Facilities	194	138	128	7	3	56	14,290	11,573	7,137	6,943	143	51	4,436	9,381
Social Assistance	59	34	30	2	2	25	4,407	2,741	1,659	1,578	0	81	1,082	3,250
Health Care and Social Assistance	470	316	270	18	28	154	48,775	38,655	23,232	19,486	922	2,824	15,423	30,125
Performing Arts, Spectator Sports and Related Industries	20	12	12	0	0	8	1,122	730	470	464	0	6	260	823
Museums, Historical Sites and Similar Institutions	3	3	2	0	1	0	140	119	68	65	0	3	51	140
Amusement, Gambling and Recreation Industries	19	6	6	0	0	13	1,595	1,250	575	418	140	17	675	771
Arts, Entertainment and Recreation	42	21	20	0	1	21	2,857	2,099	1,113	947	140	26	986	1,734
Accommodation	40	14	14	0	0	26	3,238	2,737	1,066	668	0	398	1,671	520
Foodservices and Drinking Places	33	20	19	1	0	13	1,355	1,184	673	565	108	0	511	724
Accommodation and Foodservices	73	34	33	1	0	39	4,593	3,921	1,739	1,233	108	398	2,182	1,244
Repair and Maintenance	32	24	24	0	0	8	873	804	529	527	0	2	275	767
Personal and Laundry Services	44	20	18	0	2	24	2,029	1,828	854	785	7	62	974	723
Religious, Grantmaking, Civic, and Professional and Similar Organizations	27	22	21	0	1	5	1,026	924	654	647	0	7	270	924
Other Services (except Public Administration)	103	66	63	0	3	37	3,928	3,556	2,037	1,959	7	71	1,519	2,414

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2003—Continued

Industrial Group[1]	Total elections[2]	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Executive, Legislative, Public Finance and General Government	2	1	1	0	0	1	17	17	17	17	0	0	0	17
Justice, Public Order, and Safety	10	9	3	3	3	1	629	445	344	169	78	97	101	564
Administration of Human Resource Programs	4	2	1	0	1	2	71	49	35	28	0	7	14	68
Administration of Housing Programs, Urban Planning, and Community Development	1	1	1	0	0	0	43	39	37	37	0	0	2	43
National Security and International Affairs	3	3	0	2	1	0	61	48	48	0	8	40	0	61
Public Administration	20	16	6	5	5	4	821	598	481	251	86	144	117	753
Unclassified Establishments	34	22	17	1	4	12	1,016	924	492	401	19	72	432	522
Total, all industrial groups	2,963	1,590	1,393	97	100	1,373	19,7585	167,859	86,313	75,672	3,183	7,458	81,546	87,942

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

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

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2003[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	167,458	2,512	100.0	--	1,226	100.0	96	100.0	96	100.0	1,094	100.0
Under 10	3,668	530	21.1	21.1	329	26.8	14	14.6	22	22.9	165	15.1
10 to 19	8,096	518	20.6	41.7	268	21.9	23	24.0	13	13.5	214	19.6
20 to 29	7,941	315	12.5	54.3	153	12.5	15	15.6	7	7.3	140	12.8
30 to 39	6,440	189	7.5	61.8	82	6.7	6	6.3	11	11.5	90	8.2
40 to 49	6,545	138	5.5	67.3	73	6.0	3	3.1	4	4.2	58	5.3
50 to 59	7,067	127	5.1	72.3	53	4.3	4	4.2	6	6.3	64	5.9
60 to 69	5,569	87	3.5	75.8	37	3.0	3	3.1	3	3.1	44	4.0
70 to 79	5,676	75	3.0	78.8	31	2.5	7	7.3	1	1.0	36	3.3
80 to 89	6,190	73	2.9	81.7	30	2.4	3	3.1	4	4.2	36	3.3
90 to 99	4,858	50	2.0	83.7	21	1.7	5	5.2	2	2.1	22	2.0
100 to 109	6,466	63	2.5	86.2	23	1.9	1	1.0	2	2.1	37	3.4
110 to 119	2,811	25	1.0	87.2	12	1.0	0	0.0	0	0.0	13	1.2
120 to 129	4,893	37	1.5	88.7	16	1.3	3	3.1	2	2.1	16	1.5
130 to 139	4,199	31	1.2	89.9	9	0.7	1	1.0	1	1.0	20	1.8
140 to 149	2,672	18	0.7	90.6	6	0.5	3	3.1	0	0.0	9	0.8
150 to 159	3,639	22	0.9	91.5	11	0.9	1	1.0	2	2.1	8	0.7
160 to 169	2,704	17	0.7	92.2	3	0.2	2	2.1	1	1.0	11	1.0
170 to 179	2,825	16	0.6	92.8	7	0.6	0	0.0	1	1.0	8	0.7
180 to 189	3,616	18	0.7	93.5	5	0.4	0	0.0	2	2.1	11	1.0
190 to 199	1,663	8	0.3	93.8	3	0.2	0	0.0	0	0.0	5	0.5
200 to 299	15,095	61	2.4	96.3	23	1.9	0	0.0	5	5.2	33	3.0
300 to 399	9,003	28	1.1	97.4	10	0.8	0	0.0	1	1.0	17	1.6
400 to 499	7,683	18	0.7	98.1	6	0.5	0	0.0	2	2.1	10	0.9
500 to 599	3,412	8	0.3	98.4	3	0.2	0	0.0	1	1.0	4	0.4
600 to 799	10,852	18	0.7	99.1	6	0.5	2	2.1	1	1.0	9	0.8
800 to 999	3,084	4	0.2	99.3	1	0.1	0	0.0	0	0.0	3	0.3
1,000 to 1,999	15,802	13	0.5	99.8	3	0.2	0	0.0	1	1.0	9	0.8

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2003[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
2,000 to 2,999	4,989	5	0.2	100.0	2	0.2	0	0.0	1	1.0	2	0.2
3,000 to 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Over 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
	B. Decertification elections (RD)											
Total RD elections	28,673	422	100.0	--	138	100.0	10	100.0	3	100.0	271	100.0
Under 10	485	65	15.4	15.4	13	9.4	0	0.0	0	0.0	52	19.2
10 to 19	1,282	88	20.9	36.3	18	13.0	2	20.0	0	0.0	68	25.1
20 to 29	1,334	55	13.0	49.3	21	15.2	0	0.0	1	33.3	33	12.2
30 to 39	1,284	38	9.0	58.3	11	8.0	1	10.0	1	33.3	25	9.2
40 to 49	1,009	23	5.5	63.7	9	6.5	2	20.0	1	33.3	11	4.1
50 to 59	1,465	27	6.4	70.1	10	7.2	2	20.0	0	0.0	15	5.5
60 to 69	977	15	3.6	73.7	10	7.2	0	0.0	0	0.0	5	1.8
70 to 79	1,422	20	4.7	78.4	8	5.8	0	0.0	0	0.0	12	4.4
80 to 89	669	8	1.9	80.3	1	0.7	0	0.0	0	0.0	7	2.6
90 to 99	538	6	1.4	81.8	1	0.7	2	20.0	0	0.0	3	1.1
100 to 109	921	9	2.1	83.9	4	2.9	0	0.0	0	0.0	5	1.8
110 to 119	1,008	9	2.1	86.0	4	2.9	0	0.0	0	0.0	5	1.8
120 to 129	1,211	10	2.4	88.4	5	3.6	0	0.0	0	0.0	5	1.8
130 to 139	681	5	1.2	89.6	3	2.2	0	0.0	0	0.0	2	0.7
140 to 149	492	4	0.9	90.5	2	1.4	1	10.0	0	0.0	1	0.4
150 to 159	859	6	1.4	91.9	4	2.9	0	0.0	0	0.0	2	0.7
160 to 169	454	3	0.7	92.7	2	1.4	0	0.0	0	0.0	1	0.4
170 to 199	1,514	8	1.9	94.5	3	2.2	0	0.0	0	0.0	5	1.8
200 to 299	2,039	9	2.1	96.7	3	2.2	0	0.0	0	0.0	6	2.2
300 to 499	2,583	8	1.9	98.6	4	2.9	0	0.0	0	0.0	4	1.5
500 to 799	2,319	5	1.2	99.8	2	1.4	0	0.0	0	0.0	3	1.1
800 and Over	4,127	1	0.2	100.0	0	0.0	0	0.0	0	0.0	1	0.4

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2003[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	26,785	100.0	--	19,893	100.0	5,640	100.0	354	100.0	156	100.0	35	100.0	17	100.0	84	100.0	518	100.0	88	100.0
Under 10	1,803	6.7	6.7	1,302	6.5	356	6.3	55	15.5	30	19.2	9	25.7	0	0.0	17	20.2	24	4.6	10	11.4
10-19	2,298	8.6	15.3	1,778	8.9	357	6.3	65	18.4	30	19.2	3	8.6	1	5.9	18	21.4	36	6.9	10	11.4
20-29	2,196	8.2	23.5	1,673	8.4	385	6.8	43	12.1	33	21.2	5	14.3	0	0.0	12	14.3	30	5.8	15	17.0
30-39	1,108	4.1	27.6	854	4.3	199	3.5	14	4.0	4	2.6	2	5.7	0	0.0	8	9.5	22	4.2	5	5.7
40-49	867	3.2	30.9	701	3.5	129	2.3	8	2.3	7	4.5	1	2.9	0	0.0	3	3.6	16	3.1	2	2.3
50-59	1,923	7.2	38.1	1,379	6.9	420	7.4	42	11.9	11	7.1	5	14.3	1	5.9	5	6.0	48	9.3	12	13.6
60-69	759	2.8	40.9	589	3.0	147	2.6	6	1.7	2	1.3	0	0.0	1	5.9	2	2.4	9	1.7	3	3.4
70-79	707	2.6	43.5	570	2.9	110	2.0	7	2.0	1	0.6	0	0.0	0	0.0	2	2.4	16	3.1	1	1.1
80-89	553	2.1	45.6	448	2.3	87	1.5	5	1.4	3	1.9	0	0.0	1	5.9	3	3.6	6	1.2	0	0.0
90-99	340	1.3	46.9	285	1.4	45	0.8	4	1.1	0	0.0	0	0.0	0	0.0	2	2.4	3	0.6	1	1.1
100-109	2,344	8.8	55.6	1,596	8.0	641	11.4	22	6.2	13	8.3	3	8.6	0	0.0	1	1.2	58	11.2	10	11.4
110-119	187	0.7	56.3	156	0.8	23	0.4	1	0.3	1	0.6	0	0.0	0	0.0	1	1.2	4	0.8	1	1.1
120-129	446	1.7	58.0	365	1.8	67	1.2	2	0.6	1	0.6	0	0.0	1	5.9	2	2.4	7	1.4	1	1.1
130-139	208	0.8	58.8	171	0.9	34	0.6	1	0.3	1	0.6	0	0.0	0	0.0	0	0.0	1	0.2	0	0.0
140-149	158	0.6	59.4	137	0.7	17	0.3	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	3	0.6	0	0.0
150-159	680	2.5	61.9	501	2.5	135	2.4	24	6.8	1	0.6	0	0.0	1	5.9	2	2.4	14	2.7	2	2.3
160-169	146	0.5	62.4	117	0.6	28	0.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	1.1
170-179	159	0.6	63.0	131	0.7	22	0.4	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	5	1.0	0	0.0
180-189	122	0.5	63.5	102	0.5	20	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
190-199	53	0.2	63.7	41	0.2	12	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299	1,968	7.3	71.0	1,463	7.4	447	7.9	16	4.5	2	1.3	0	0.0	2	11.8	1	1.2	34	6.6	3	3.4
300-399	1,187	4.4	75.5	859	4.3	278	4.9	11	3.1	7	4.5	0	0.0	0	0.0	2	2.4	29	5.6	1	1.1
400-499	724	2.7	78.2	578	2.9	127	2.3	1	0.3	2	1.3	0	0.0	2	11.8	0	0.0	13	2.5	1	1.1
500-599	994	3.7	81.9	709	3.6	253	4.5	11	3.1	1	0.6	0	0.0	2	11.8	1	1.2	15	2.9	2	2.3
600-699	379	1.4	83.3	277	1.4	93	1.6	1	0.3	0	0.0	0	0.0	0	0.0	0	0.0	8	1.5	0	0.0
700-799	376	1.4	84.7	315	1.6	59	1.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.4	0	0.0
800-899	245	0.9	85.6	177	0.9	60	1.1	1	0.3	0	0.0	1	2.9	0	0.0	0	0.0	6	1.2	0	0.0
900-999	109	0.4	86.0	74	0.4	32	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.4	1	1.1
1,000-1,999	1,745	6.5	92.5	1,147	5.8	529	9.4	8	2.3	2	1.3	4	11.4	4	23.5	2	2.4	46	8.9	3	3.4
2,000-2,999	630	2.4	94.9	423	2.1	181	3.2	2	0.6	2	1.3	0	0.0	0	0.0	0	0.0	21	4.1	1	1.1
3,000-3,999	293	1.1	96.0	185	0.9	98	1.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	9	1.7	1	1.1
4,000-4,999	170	0.6	96.6	111	0.6	50	0.9	0	0.0	0	0.0	0	0.0	1	5.9	0	0.0	8	1.5	0	0.0
5,000-9,999	345	1.3	97.9	244	1.2	86	1.5	1	0.3	1	0.6	1	2.9	0	0.0	0	0.0	11	2.1	1	1.1
Over 9,999	563	2.1	100.0	435	2.2	113	2.0	1	0.3	1	0.6	1	2.9	0	0.0	0	0.0	12	2.3	0	0.0

[1] See Glossary of terms for definitions.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2003; and Cumulative Totals, Fiscal Years 1936 through 2003

	Fiscal Year 2003									July 5, 1936 Sept. 30, 2003	
	Number of proceedings[1]					Percentages					
	Total	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	Number	Percent
Proceedings decided by U.S. courts of appeals and other courts	125	116	7	2	0	--	--	--	--	--	--
On proceedings for review and/or enforcement	120	112	6	2	0	100.0	100.0	100.0	--	11,692	100.0
Board orders affirmed in full	90	83	5	2	0	74.1	83.3	100.0	--	7,723	66.1
Board orders affirmed with modification	6	6	0	0	0	5.4	0.0	0.0	--	1,542	13.2
Remanded to the Board	9	9	0	0	0	8.0	0.0	0.0	--	585	5.0
Board orders partially affirmed and partially remanded	7	7	0	0	0	6.2	0.0	0.0	--	262	2.2
Board orders set aside	8	7	1	0	0	6.2	16.7	0.0	--	1,580	13.5
On petitions for contempt	5	4	1	0	0	--	--	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy	16	16	0	0	0	--	--	--	--	--	--
Total Court Orders	37	36	1	0	0	100.0	100.0	--	--	--	--
Compliance after filing of petition, before court order	18	18	0	0	0	50.0	0.0	--	--	--	--
Court orders holding respondent in contempt	6	6	0	0	0	16.7	0.0	--	--	--	--
Court orders denying petition and or discontinuing proceedings at CLCB request	7	7	0	0	0	19.4	0.0	--	--	--	--
Court orders directing compliance without contempt adjudication	6	5	1	0	0	13.9	100.0	--	--	--	--
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	0	--	--	--	--	259	100.0
Board orders affirmed in full	0	0	0	0	0	--	--	--	--	155	59.8
Board orders affirmed with modification	0	0	0	0	0	--	--	--	--	18	6.9
Board orders set aside	0	0	0	0	0	--	--	--	--	46	17.8
Remanded to the Board	0	0	0	0	0	--	--	--	--	20	7.7
Remanded to court of appeals	0	0	0	0	0	--	--	--	--	17	6.6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases enforced	0	0	0	0	0	--	--	--	--	1	0.4

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

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

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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2003, Compared With 5-Year Cumulative Totals, 1998 Through 2002[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2003	Total fiscal years 1998-2002	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2003		Cumulative fiscal years 1998–2002		Fiscal Year 2003		Cumulative fiscal years 1998–2002		Fiscal Year 2003		Cumulative fiscal years 1998–2002		Fiscal Year 2003		Cumulative fiscal years 1998–2002		Fiscal Year 2003		Cumulative fiscal years 1998–2002	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	120	469	90	75.0	310	66.1	6	5.0	40	8.5	9	7.5	33	7.0	7	5.8	27	5.8	8	6.7	59	12.6
Boston, MA	0	15	0	0.0	11	73.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	6.7	0	0.0	3	20.0
New York, NY	5	31	5	100.0	24	77.4	0	0.0	0	0.0	0	0.0	2	6.5	0	0.0	2	6.5	0	0.0	3	9.6
Philadelphia, PA	8	33	8	100.0	25	75.7	0	0.0	4	12.1	0	0.0	0	0.0	0	0.0	2	6.1	0	0.0	2	6.1
Richmond, VA	7	42	5	71.4	22	52.4	0	0.0	6	14.3	1	14.3	2	4.8	1	14.3	3	7.1	0	0.0	9	21.4
New Orleans, LA	11	7	8	72.7	3	42.8	2	18.2	2	28.6	0	0.0	0	0.0	0	0.0	1	14.3	1	9.1	1	14.3
Cincinnati, OH	19	89	16	84.2	62	69.7	0	0.0	10	11.2	1	5.3	0	0.0	2	10.5	5	5.6	0	0.0	12	13.5
Chicago, IL	10	36	8	80.0	24	66.6	0	0.0	2	5.6	0	0.0	1	2.8	2	20.0	2	5.6	0	0.0	7	19.4
St. Louis, MO	6	21	6	100.0	14	66.7	0	0.0	2	9.5	0	0.0	2	9.5	0	0.0	1	4.8	0	0.0	2	9.5
San Francisco, CA	7	24	4	57.1	19	79.1	0	0.0	1	4.2	1	14.3	1	4.2	0	0.0	3	12.5	2	28.6	0	0.0
Denver, CO.	3	16	2	66.7	10	62.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	25.0	1	33.3	2	12.5
Atlanta, GA	3	28	3	100.0	21	75.0	0	0.0	1	3.6	0	0.0	1	3.6	0	0.0	0	0.0	0	0.0	5	17.8
Washington, DC	41	127	25	61.0	75	59.1	4	9.8	12	9.4	6	14.6	24	18.9	2	4.9	3	2.4	4	9.8	13	10.2

[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 2003

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				
		Pending in appellate Oct. 01, 2002	Filed in appellate fiscal year 2003		Granted	Denied	Settled	Withdrawn	Pending in appellate Sept. 30, 2003
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				
		Pending in district court Oct. 01, 2002[1]	Filed in district court fiscal year 2003		Granted	Denied	Settled	Withdrawn	Pending in district court Sept. 30, 2003
Under Sec. 10(j) total	22	7	15	20	11	3	2	4	2
8(a)(1)(2)(3)	1	0	1	1	1	0	0	0	0
8(a)(1)(2)(3)(5)	1	0	1	1	1	0	0	0	0
8(a)(1)(2)(3) 8(b)(1)(A)	1	1	0	1	0	0	0	1	0
8(a)(1)(2)(3) 8(b)(1)(A)(2)	1	0	1	1	1	0	0	0	0
8(a)(1)(2)(5) 8(b)(1)(A)	1	0	1	1	1	0	0	0	0
8(a)(1)(3)	4	1	3	4	2	1	1	0	0
8(a)(1)(3)(4)(5)	3	0	3	3	2	0	0	1	0
8(a)(1)(3)(5)	5	3	2	5	1	2	1	1	0
8(a)(1)(5)	5	2	3	3	2	0	0	1	2
Under Sec. 10(l) total	6	1	5	5	1	3	1	0	1
8(b)(4)(A)	2	0	2	2	0	2	0	0	0
8(b)(4)(B)	2	1	2	2	1	1	0	0	1
8(b)(4)(C)	1	0	1	1	0	0	1	0	0

[1] Totals for cases identified in this table as pending on October 1, 2002, differ from the FY 2002 Annual Report due to postreport adjustments to last year's "on docket" and/or "closed figures."

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2003

Type of Litigation	Number of Proceedings														
	Total – all courts			In courts of appeals			In district courts			In bankruptcy courts			In state courts		
		Court Determination			Court Determination			Court Determination			Court Determination			Court Determination	
	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position
Totals—all types	9	9	0	3	3	0	4	4	0	2	2	0	0	0	0
NLRB—initiated actions or interventions	2	2	0	1	1	0	0	0	0	1	1	0	0	0	0
Motion to file Bd's late proof of claim	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0
To enforce subpoena or contempt of subpoena	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
To lift stay in subpoena enforcement action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To enjoin local ordinance as preempted	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	7	7	0	2	2	0	4	4	0	1	1	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:	0	0	0	0	0	0	0	0	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	0	0	0	0	0	0	0	0	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:	3	3	0	2	2	0	0	0	0	1	1	0	0	0	0
Issue complaint	2	2	0	2	2	0	0	0	0	0	0	0	0	0	0
Take action in R case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vacate election/Decertify Rep	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0
To issue decision or take specific action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions issued in Fiscal Year 2003—Continued

Type of Litigation	Number of Proceedings														
	Total – all courts			In courts of appeals			In district courts			In bankruptcy courts			In state courts		
		Court Determination			Court Determination			Court Determination			Court Determination			Court Determination	
	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position	Number decided	Upholding Board position	Contrary to Board position
Other …….....	4	4	0	0	0	0	4	4	0	0	0	0	0	0	0
Objection to Board's proof of claim .....…….....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Intervention to argue Collateral Estoppal of Prior Bd decision……	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Suit alleging fraudulent and corrupt conduct by Bd aents	2	2	0	0	0	0	2	2	0	0	0	0	0	0	0
Bivens action against Bd employees…..……....	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
Suit for violation of constitutional rights……..	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal Tort Claims Act……	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
State claims preempted by §§ 8(b)(4) & 303	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2003[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2002	0	0	0	0	0
Received fiscal 2003	1	1	0	0	0
On docket fiscal 2003	1	1	0	0	0
Closed fiscal 2003	1	1	0	0	0
Pending September 30, 2003	0	0	0	0	0

[1] See Glossary for definitions of terms.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2003[1]

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

[1] See Glossary for definitions of terms.

Table 23–Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2003; and Age of Cases Pending Decision, September 30, 2003

	Stage	Median days
I.	Unfair Labor Practice Cases:	
	A. Major Stages Completed—	
	1. Filing of charge to issuance of complaint	90
	2. Complaint to close of hearing	113
	3. Close of hearing to administrative law judge's decision	82
	4. Receipt of briefs or submissions to issuance of administrative law judge's decision	33
	5. Administrative law judge's decision to issuance of Board decision	420
	6. Originating document to Board decision	291
	7. Assignment to Board decision	246
	8. Filing of charge to issuance of Board decision	647
	B. Age of cases pending administrative law judge's decision, September 30, 2002	
	1. From filing of charge	236
	2. From close of hearing	67
	C. Age of cases pending Board decision, September 30, 2002	
	1. From filing of charge	1030
	2. From originating document	455
	3. From assignment	386
II.	Representation cases:	
	A. Major stages completed—	
	1. Filing of petition to notice of hearing issued	1
	2. Notice of hearing to close of hearing	13
	3. Close of hearing to Regional Director's decision issued	22
	4. Close of pre-election hearing to Board's decision issued	145
	5. Close of post-election hearing to Board's decision issued	245
	6. Filing of petition to—	
	a. Board decision issued	265
	b. Regional Director's decision issued	40
	7. Originating document to Board decision	105
	8. Assignment to Board's decision	93
	B. Age of cases pending Board decision, September 30, 2002	
	1. From filing of petition	473
	2. From originating document	319
	3. From assignment	278
	C. Age of cases pending Regional Director's decision, September 30, 2002	155

Table 24.—NLRB Activity Under the Equal Access to Justice Act, FY 2003[1]

	Action taken	Cases/ Amount
I.	Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
	A. Number of applications filed	1
	B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
	Granting fees	1
	Denying fees	0
	C. Amount of fees and expenses in cases listed in B, above:	
	Claimed	$108,883.63
	Recovered	$ 12,399.55
II.	Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
	A. Awards granting fees (includes settlements)	0
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	0
III.	Applications for fees and expenses before the circuit courts of appeals under 28 U.S.C. § 2412[2]	
	A. Awards granting fees (includes settlements)	1
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	$ 29,446.40
IV.	Applications for fees and expenses before the district courts under 28 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements)	0
	B. Awards denying fees	0
	C. Amount of fees and expenses recovered	0

[1] Table 24 data is incorrect in the published bound report, but correct in this online version.
[2] Annual Reports FY 1992–2002 contained incorrect statutory citations for secs. III and IV in this table.