FORTY-SIXTH

ANNUAL REPORT

OF THE

# NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

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# NATIONAL LABOR RELATIONS BOARD

## Members of the Board

JOHN R. VAN DE WATER, *Chairman* [1]
JOHN H. FANNING — HOWARD JENKINS, JR.
DON A. ZIMMERMAN — ROBERT P. HUNTER [2]

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JOHN C. MILLER
WILLIAM C BAISINGER — HARRY M LEET
DAVID DUNN — FREDERICK J. CALATRELLO

JOHN C. TRUESDALE, *Executive Secretary* [3]
WILLIE LEE CLARK, JR., *Solicitor*
MELVIN J. WELLES, *Chief Administrative Law Judge* [4]
THOMAS W. MILLER, JR., *Director of Information*

## Office of the General Counsel

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JOHN E. HIGGINS, JR , *Deputy General Counsel*

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*Division of Operations Management*

*Associate General Counsel*
*Division of Enforcement Litigation*

HAROLD J. DATZ
*Associate General Counsel*
*Division of Advice*

ERNEST RUSSELL
*Director of Administration*

[1] Appointment effective August 18, 1981
[2] Appointment effective August 14, 1981
[3] Appointment effective January 27, 1981
[4] Appointment effective January 15, 1981

# LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
*Washington, D.C., December 9, 1982*

SIR: As provided in section 3(c) of the Labor Management Relations Act, 1947, I submit herewith the Forty-Sixth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1981.

Respectfully submitted.

JOHN R. VAN DE WATER, *Chairman.*

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

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# I

# Operations In Fiscal Year 1981

## A. Summary

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only upon those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—men and women workers, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 1981, 55,897 cases were received by the Board.

The public filed 43,321 charges alleging that business firms or labor organizations, or both, committed unfair labor practices, prohibited by the statute, which adversely affected hundreds of thousands of employees. The NLRB during the year also received 12,064 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 512 amendment to certification and unit clarification cases.

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

At the end of fiscal year 1981, the five-member Board was composed of Chairman John R. Van de Water and Members John H. Fanning, Howard Jenkins, Jr., Don A. Zimmerman, and Robert P. Hunter. William A. Lubbers was the General Counsel. John A. Penello and John C. Truesdale also served as Board Members during portions of the fiscal year.

Statistical highlights of NLRB's casehandling activities in fiscal 1981 include:

- The NLRB conducted 7,512 conclusive representation elections among some 392,157 employee voters, with workers choosing labor unions as their bargaining agents in 43.1 percent of the elections.

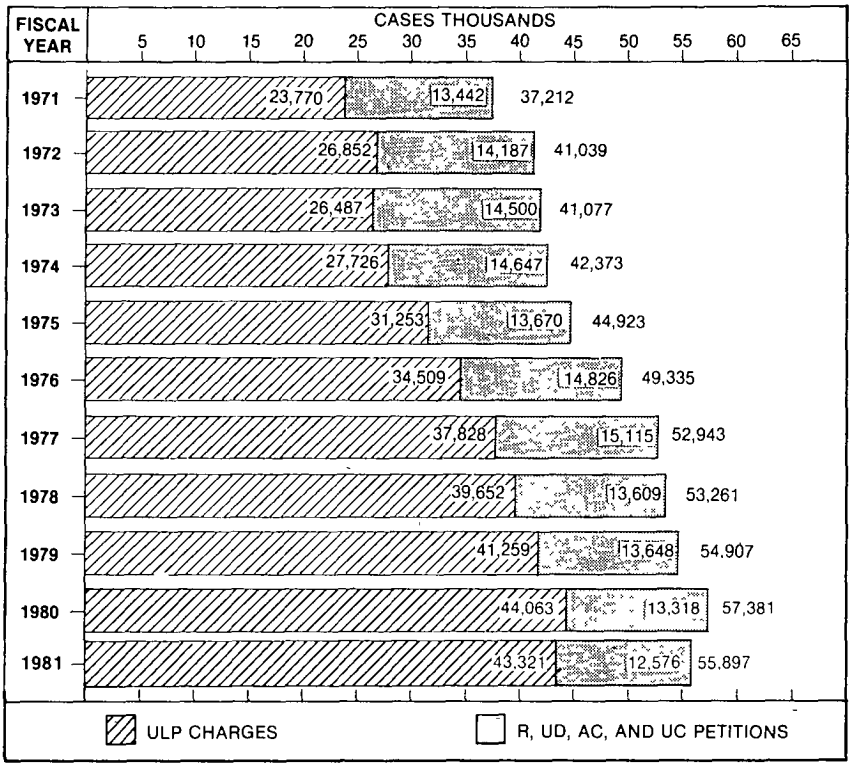
• Although the Agency closed 52,804 cases, 25,211 cases were pending in all stages of processing at the end of the fiscal year. The closings included 41,020 cases involving unfair practice charges and 11,784 cases affecting employee representation.

• Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,881. Only on two previous occasions has this total been exceeded.

• An all-time high of $37,617,144 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 6,463 offers of job reinstatements, with 5,025 acceptances.

• Acting upon 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 5,711 complaints, setting the cases for hearing.

**CHART NO. 1**
**CASE INTAKE BY UNFAIR LABOR PRACTICE CHARGES AND REPRESENTATION PETITIONS**



• NLRB's corps of administrative law judges, below the authorized number of positions due to retirements, deaths, and recruitment difficulties, issued 1,255 decisions. Despite the output, proceedings pending hearing at the end of the fiscal year rose to 3,109, the highest level in the Agency's 46-year history.

## 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 has been 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 protection 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.

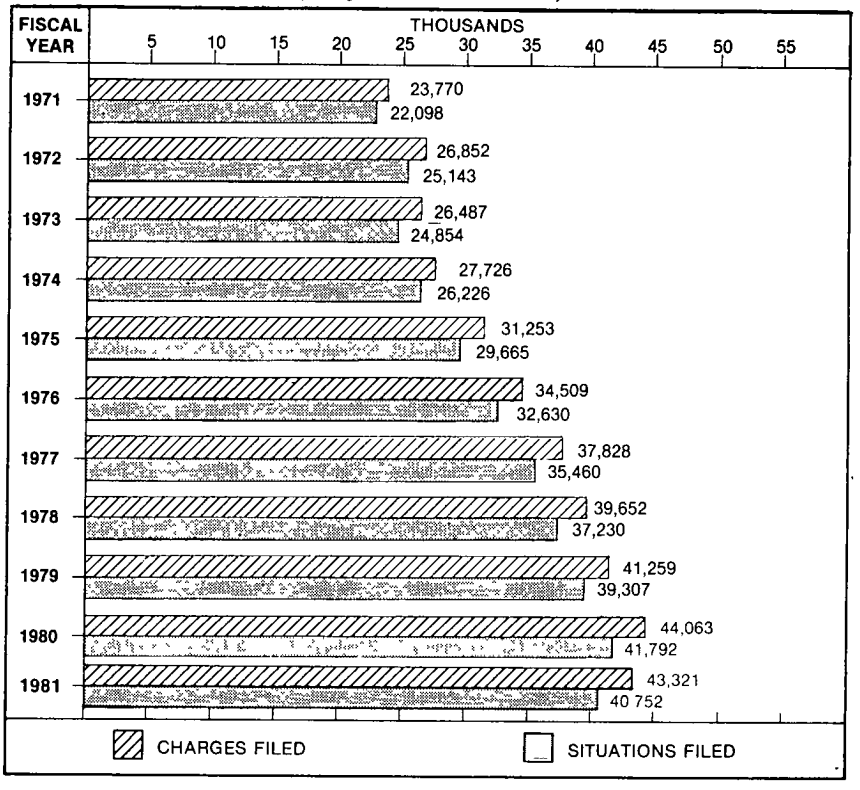
In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union, and (2) to prevent 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 51 during fiscal year 1981.

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 practice cases and election petitions, the

CHART NO. 2
ULP CASE INTAKE
*(Charges and Situations Filed)*




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 decisions. He has general supervision of the NLRB's nationwide network of field offices.

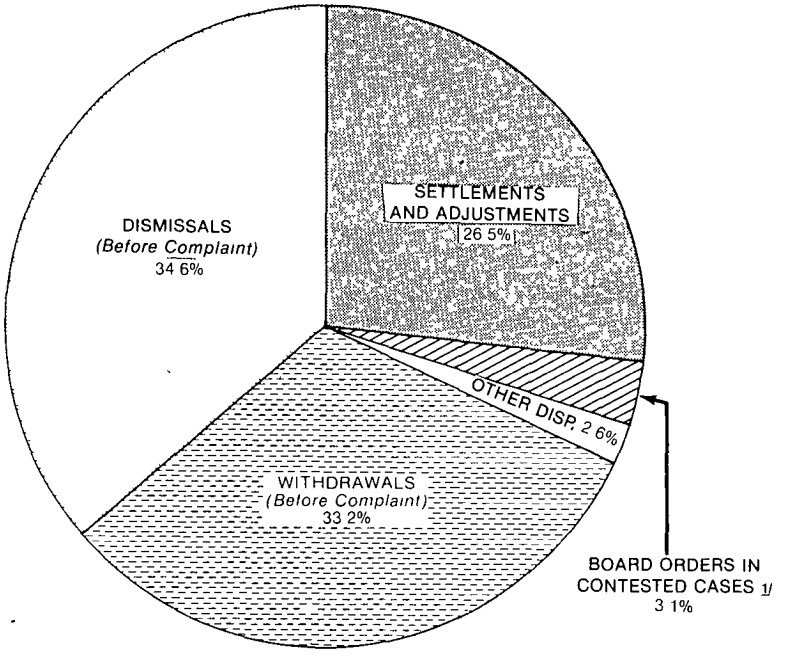
For the conduct of its formal hearings in unfair labor practice cases, the NLRB employs administrative law judges who hear and decide cases. Administrative law judges' decisions may be appealed to the Board by the filing of exceptions. If no exceptions are taken, the administrative law judges' orders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

unfair labor practice proceedings, the need for additional administrative law judges remained an acute operational problem during fiscal year 1981.

As noted, 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 NO. 3**
**DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES**
***(Based on Cases Closed)***

FISCAL YEAR 1981




CONTESTED CASES REACHING BOARD MEMBERS FOR DECISIONS

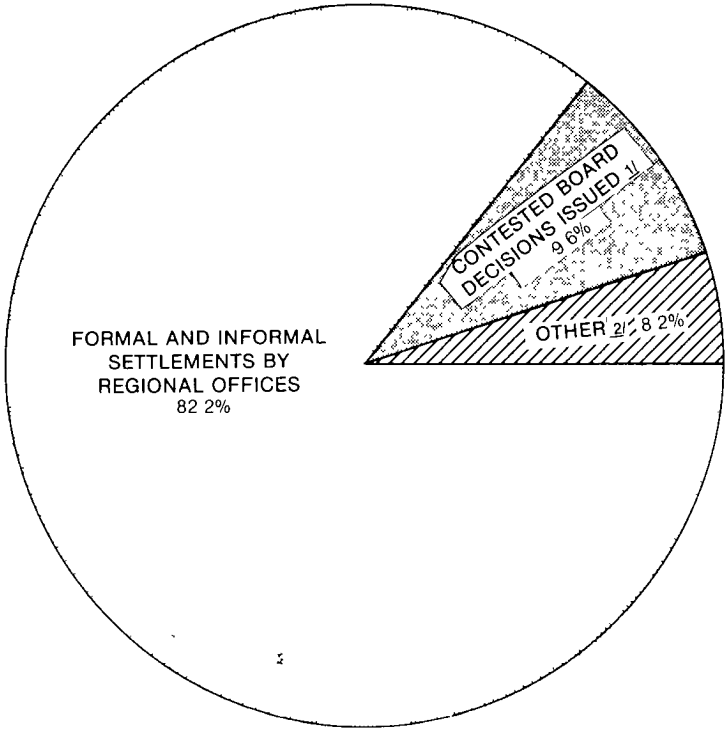
# B. Operational Highlights

## 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.

**CHART NO. 3A**
**DISPOSITION PATTERN FOR MERITORIOUS UNFAIR LABOR PRACTICE CASES**
***(Based on Cases Closed)***

FISCAL YEAR 1981




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

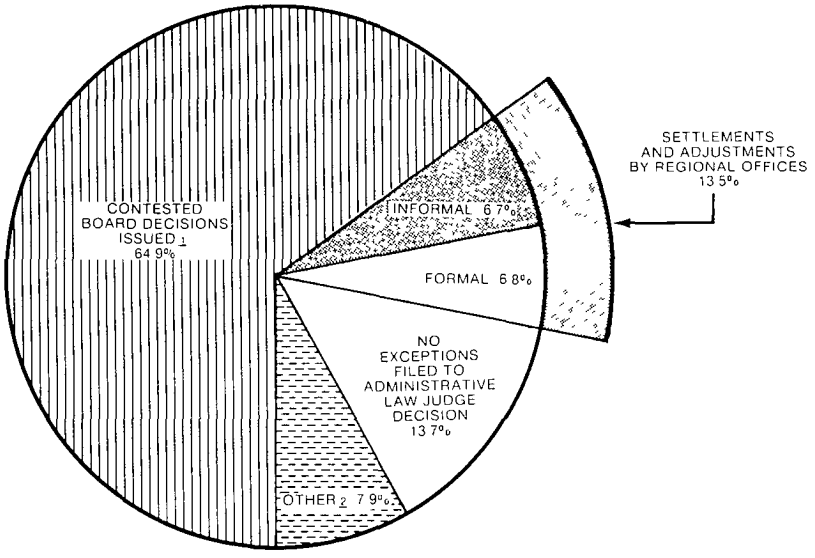
Following their filing, charges are investigated by the regional professional staff to determine whether there is reasonable cause to believe the Act has been violated. If such cause is not found, the regional director dismisses the charge or it is withdrawn by the charging party. If the charge has merit, 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.

Of major importance is that more than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 40 days without the necessity of formal litigation before the Board. Only about 3 percent of the cases go through to Board decision.

CHART NO 3B

DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
*(Based on Cases Closed)*

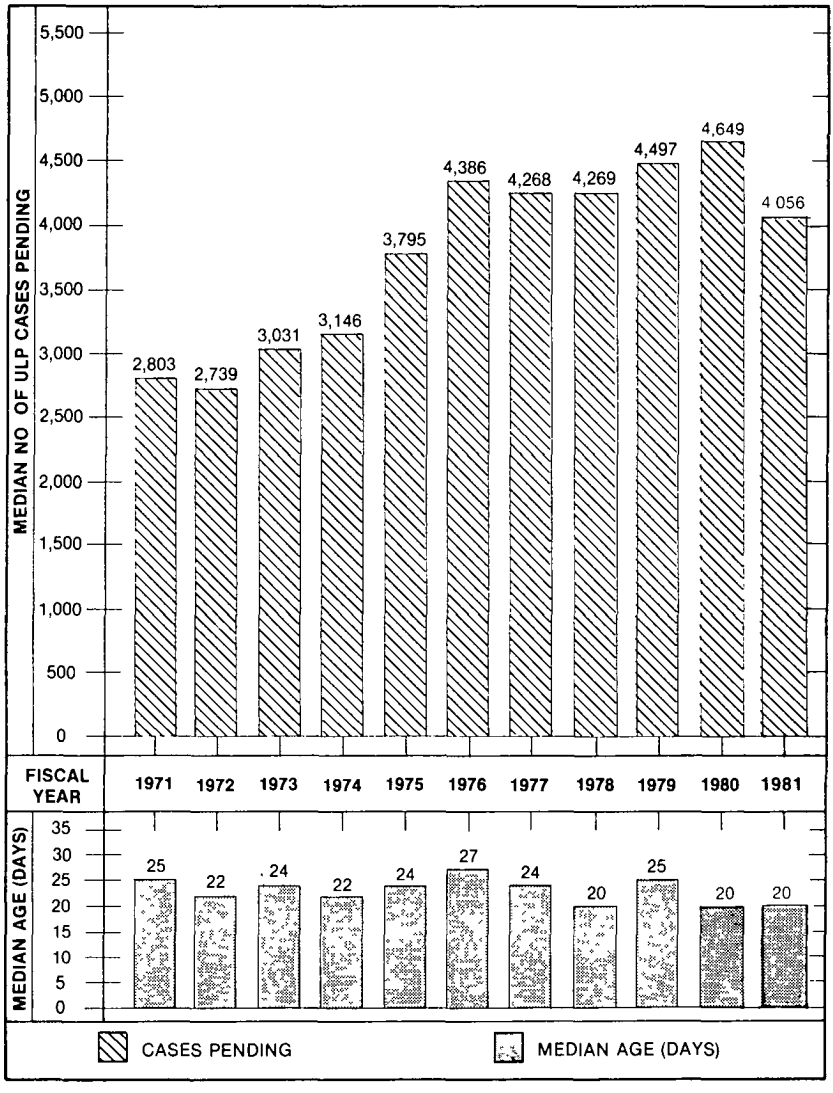
FISCAL YEAR 1981




1 Following Administrative Law Judge Decision stipulated record or summary judgment ruling

2/ Dismissals withdrawals and other dispositions

CHART NO. 4
NUMBER AND AGE OF UNFAIR LABOR PRACTICE CASES PENDING
UNDER PRELIMINARY INVESTIGATION, MONTH TO MONTH




In fiscal 1981, 43,321 unfair labor practice charges were filed with the NLRB, a decrease of 2 percent from the 44,063 filed in fiscal 1980. In situations in which related charges are counted as a single unit, there was a 3-percent decrease from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 31,273 cases, about the same as the 31,281 of 1980. Charges against unions decreased 6 percent to 11,917 from 12,628 in 1980.

There were 131 charges of violation of section 8(e) of the Act, which bans hot-cargo agreements; 130 against unions and 1 against an employer. (Tables 1A and 2.)

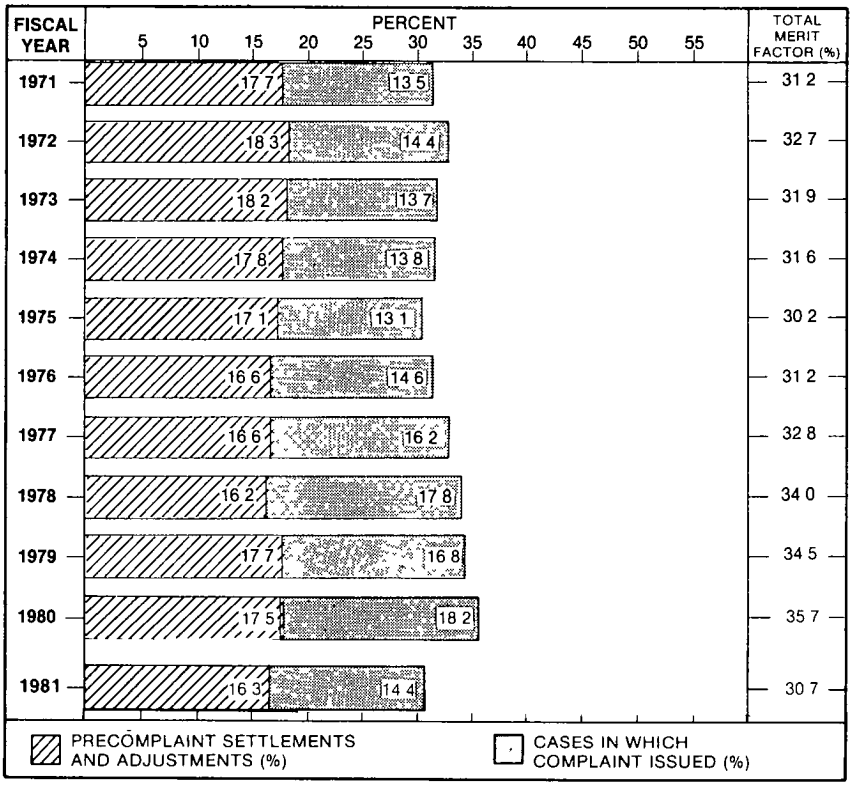
The overwhelming majority of all charges against employers alleges illegal discharge or other discrimination against employees. There were 17,571 such charges, or 56 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 9,815 charges, or about 31 percent of the total charges. (Table 2.)

Of charges against unions, there were 8,382 alleging illegal restraint and coercion of employees, about 71 percent, up from the 65 percent in 1980. There were 2,392 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 20 percent from the 2,987 of 1980.

There were 1,513 charges of illegal union discrimination against employees, down from 1,690 in 1980. There were 454 charges that unions picketed illegally for recognition or for organizational purposes, compared with 600 charges in 1980. (Table 2.)

**CHART NO. 5**
**UNFAIR LABOR PRACTICE MERIT FACTOR**



In charges filed against employers, unions led with 56 percent of the total. Unions filed 17,596 charges, individuals filed 13,633, and employers filed 44 charges against other employers.

As to charges against unions, 7,436 were filed by individuals, or 62 percent of the total of 11,917. Employers filed 4,105, and other unions filed the 376 remaining charges.

In fiscal 1981, 41,020 unfair labor practice charges were closed. Some 94 percent were closed by NLRB regional offices, unchanged from 1980. During the fiscal year, 26.5 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 33.2 percent by withdrawal before complaint, and 34.6 percent by administrative dismissal.

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. Some 31 percent of the unfair labor practice cases were found to have merit. The merit factor in charges against employers was 33 percent, against unions 24 percent.

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 1981, precomplaint settlements and adjustments were achieved in 6,537 cases, or 16.3 percent of the charges. In 1980 the percentage was 17.5.

Cases of merit not settled by the regional offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1981, 5,711 complaints were issued, compared with 6,230 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 83.5 percent were against employers, 14.7 percent against unions, and 1.8 percent against both employers and unions.

NLRB regional offices processed cases from filing of charges to issuance of complaints in a median of 44 days, compared with 46 days in 1980. The 44 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resort to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. Even so, their hearing and decisional workload is heavy. The judges issued 1,255 decisions in 1,340 cases during 1981. They conducted 1,182 initial hearings, and 39 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

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

**CHART NO. 6**
**COMPLAINTS ISSUED IN UNFAIR LABOR PRACTICE PROCEEDINGS AND MEDIAN DAYS FROM FILING TO COMPLAINT**

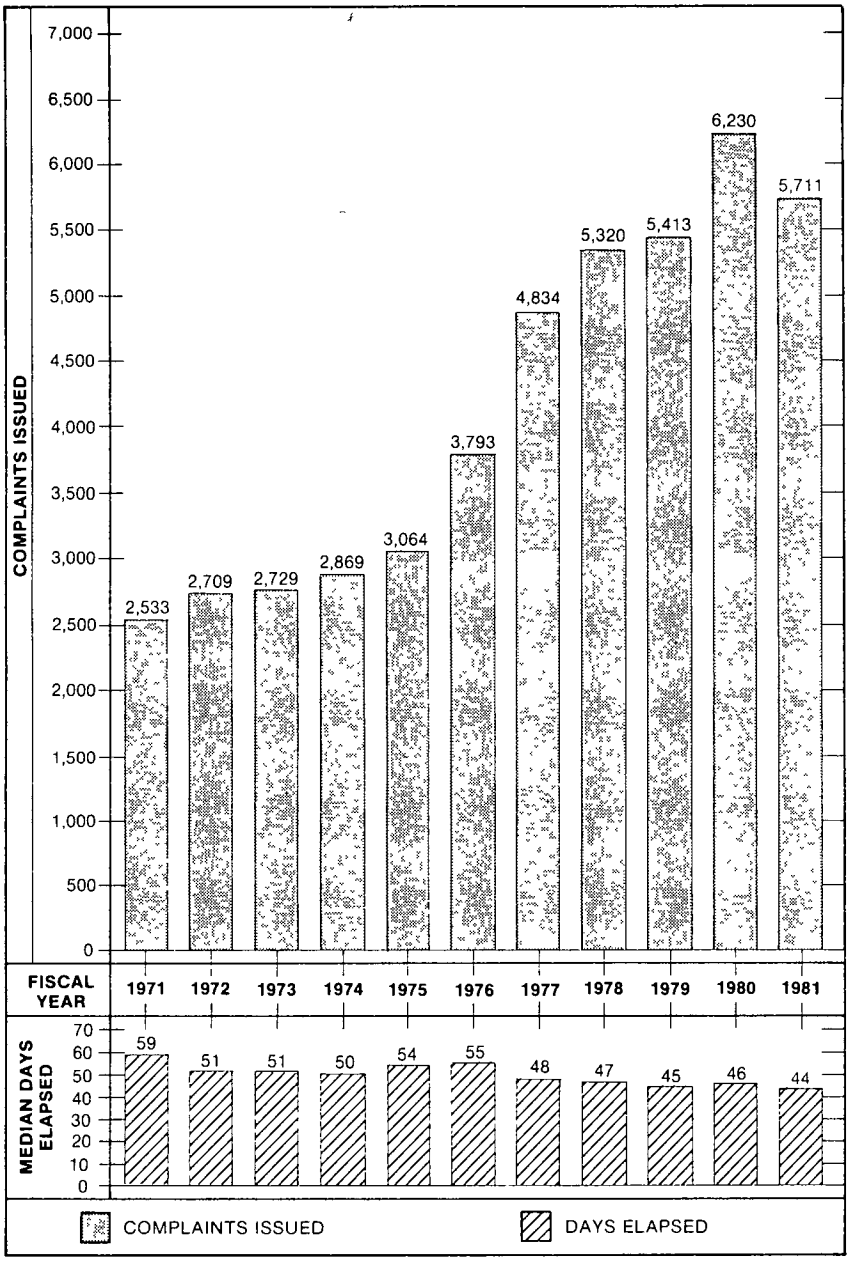
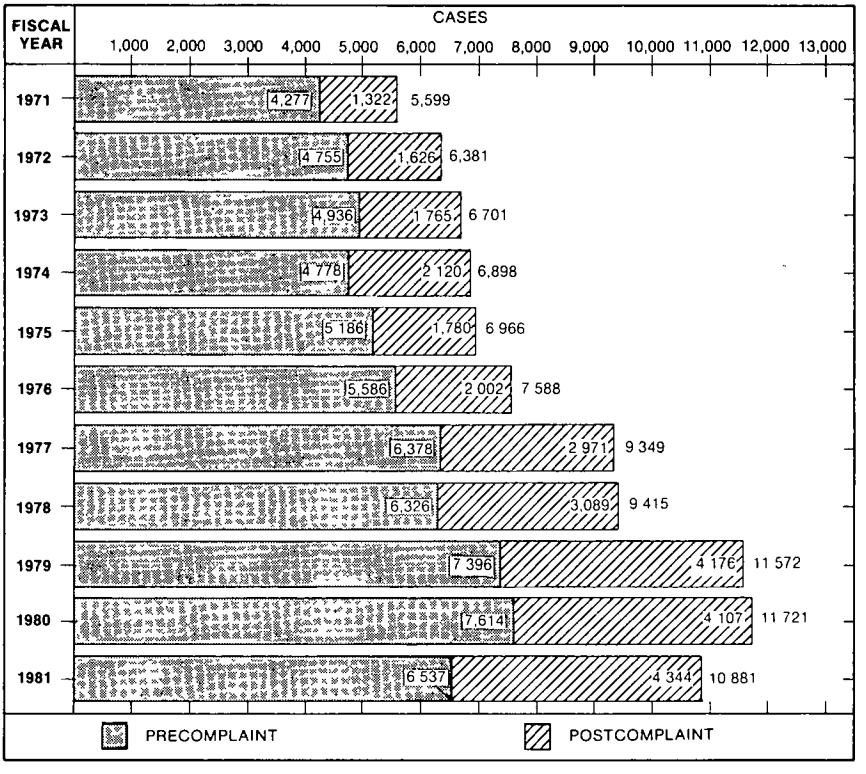


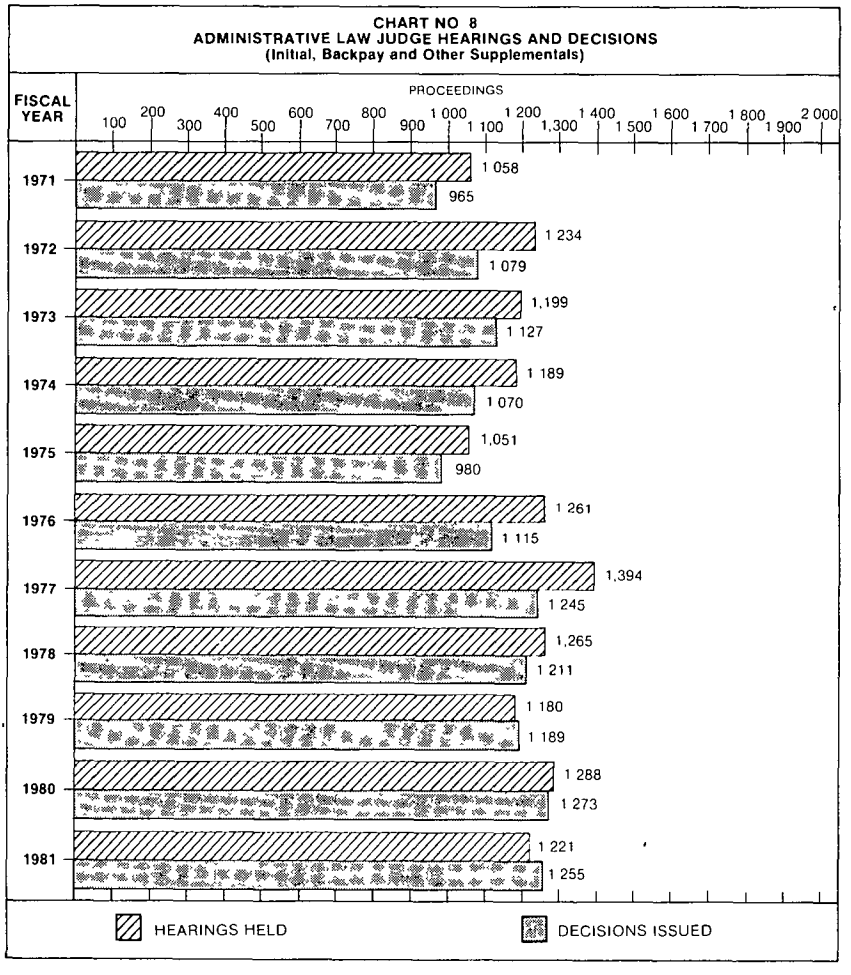
**CHART NO 7**
**UNFAIR LABOR PRACTICE CASES SETTLED**
**ULP Cases Closed After Settlement or Adjustment Prior to Issuance of Administrative Law Judge Decision**




In fiscal 1981, the Board issued 1,028 decisions in unfair labor practice cases contested as to the law or the facts—934 initial decisions, 40 backpay decisions, 52 determinations in jurisdictional work dispute cases, and 2 decisions on supplemental matters. Of the 934 initial decision cases, 842 involved charges filed against employers, 85 had union respondents, and 7 contained charges against both employers and unions. The Board held that employers violated the statute in 758 cases, while dismissing in their entirety the complaints in the other 84 proceedings. Of the 85 decisions involving charges against unions, the Board found violations in 68 cases, and dismissed the complaints in the other 17. Violations were found by the Board in 6 of the 7 cases against both employers and unions.

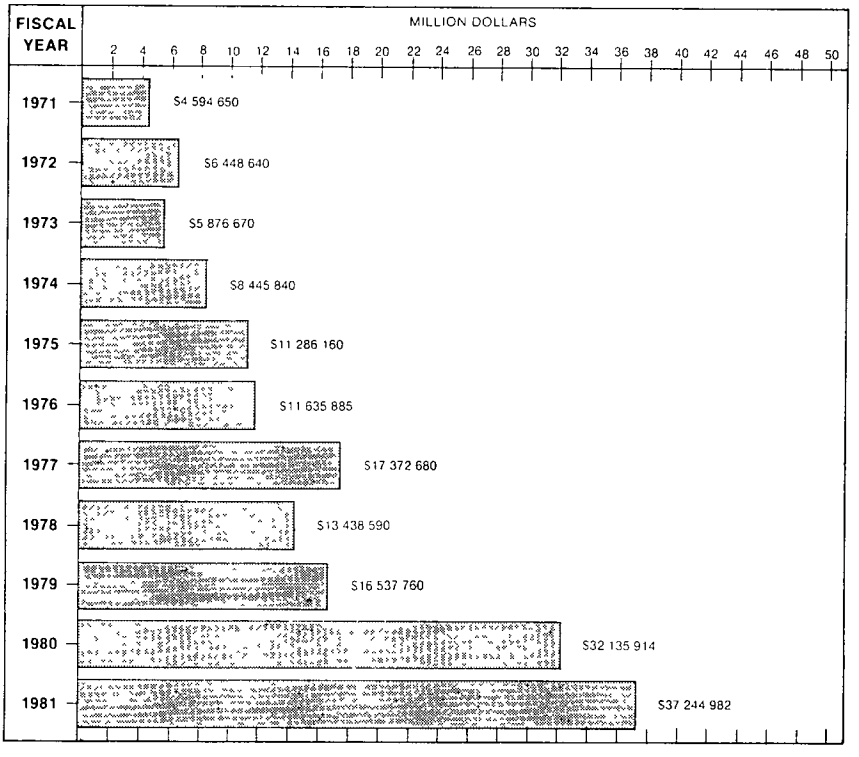
For the year, the NLRB awarded backpay to 26,091 workers amounting to $37.2 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $0.4 million. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. Some 6,463 employees were offered reinstatement, and 78 percent accepted.

Work stoppages ended in 205 of the cases closed in fiscal 1981. Collective bargaining was begun in 2,028 cases. (Table 4.)



At the end of fiscal 1981, there were 20,974 unfair labor practice cases being processed at all stages by the NLRB, compared with 18,673 cases pending at the beginning of the year.

CHART NO 9
AMOUNT OF BACKPAY RECEIVED BY DISCRIMINATEES

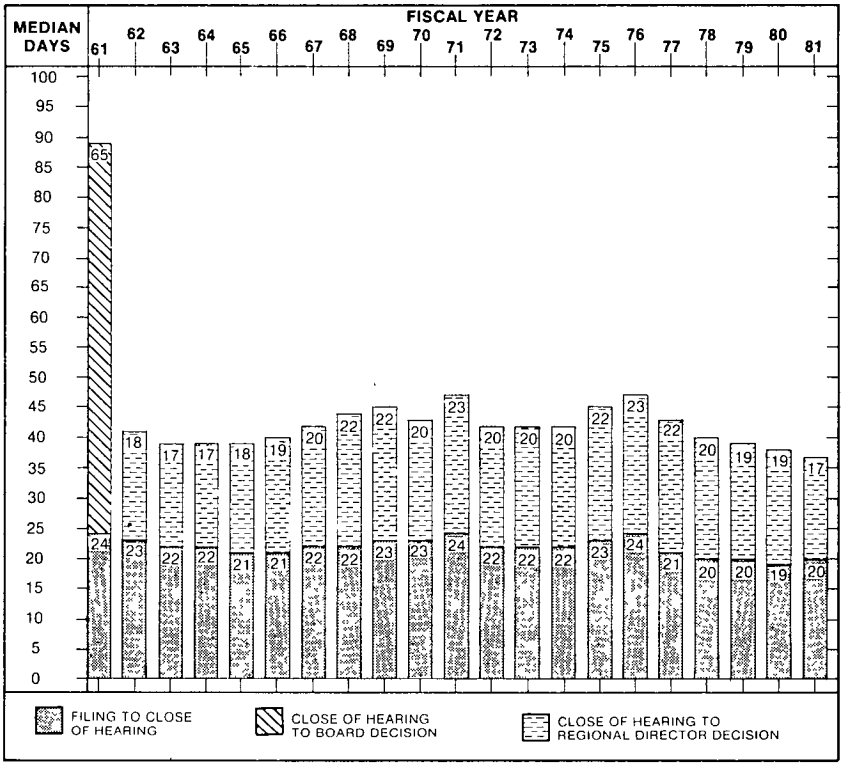



## 2. Representation Cases

The NLRB received 12,576 representation and related case petitions in fiscal 1981. This compared with 13,318 such petitions a year earlier.

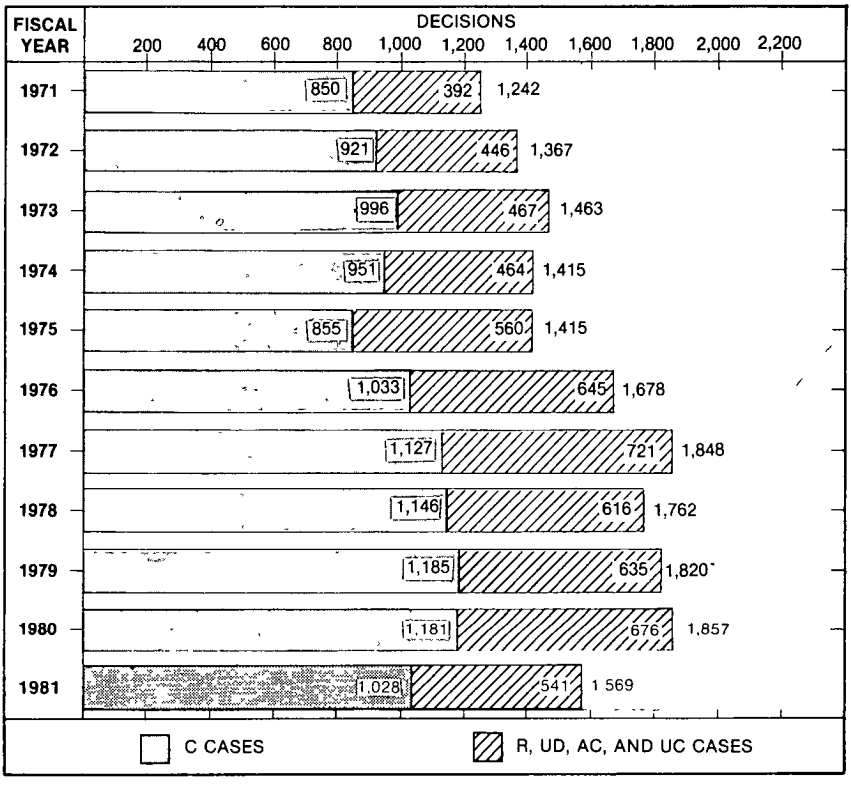
The 1981 total consisted of 10,059 petitions that the NLRB conduct secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1,731 petitions to decertify existing bargaining agents; 274 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 469 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 43 amendment of certification petitions were filed.

CHART NO 10
TIME REQUIRED TO PROCESS REPRESENTATION CASES FROM FILING OF PETITION TO ISSUANCE OF DECISION



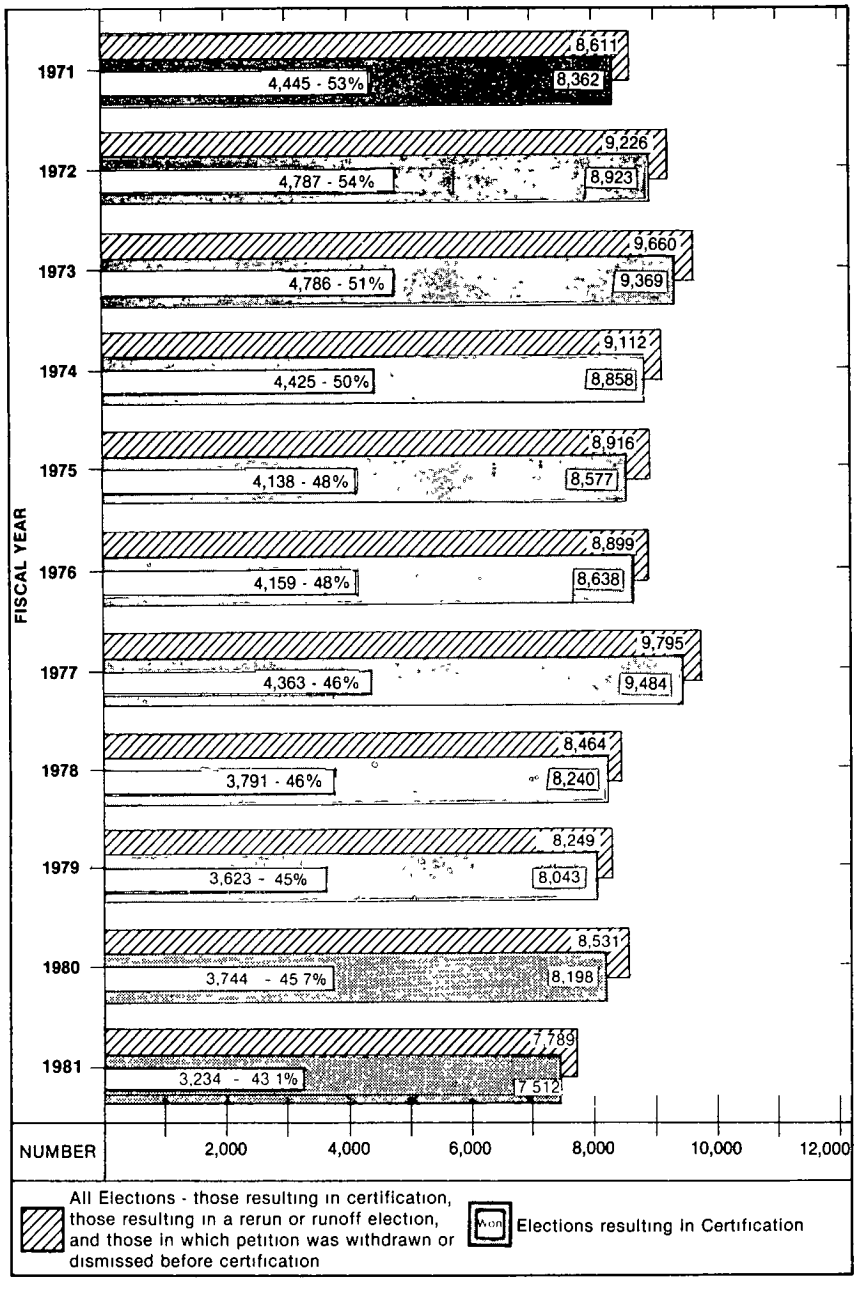

During the year, 11,784 representation and related cases were closed, compared with 13,540 in fiscal 1980. Cases closed included 9,510 collective-bargaining election petitions; 1,604 decertification election petitions; 257 requests for deauthorization polls; and 413 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

**CHART NO. 11**
**CONTESTED BOARD DECISIONS ISSUED**




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 19.2 percent of representation cases closed by elections, balloting was ordered by NLRB regional directors following hearings on points in issue. In 25 cases, elections were directed by the Board after appeals or transfers of cases from regional offices. (Table 10.) There were 18 cases which resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

**CHART NO. 12**
**REPRESENTATION ELECTIONS CONDUCTED**
***(Based on Cases Closed During the Year)***



## 3. Elections

The NLRB conducted 7,512 conclusive representation elections in cases closed in fiscal 1981, compared with the 8,198 such elections a year earlier. Of 449,243 employees eligible to vote, 392,157 cast ballots, virtually 9 of every 10 eligible.

Unions won 3,234 representation elections, or 43.1 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 165,232 workers. The employee vote over the course of the year was 184,933 for union representation and 207,224 against.

The representation elections were in two categories—the 6,656 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 856 decertification elections determining whether incumbent unions would continue to represent employees.

There were 7,144 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 2,953, or 41.3 percent. In these elections, 151,184 workers voted to have unions as their agents, while 196,553 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 125,264 workers. In NLRB elections, the majority decides the representational status for the entire unit.

There were 368 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 281 elections, or 76.4 percent.

As in previous years, labor organizations lost decertification elections by a substantial percentage. The filing of a petition to decertify the bargaining representative is wholly indicative of some measure of discontent. The decertification results brought continued representation by unions in 215 elections, or 25 percent, covering 17,879 employees. Unions lost representation rights for 27,527 employees in 641 elections, or 75 percent. Unions won in bargaining units averaging 83 employees, and lost in units averaging 43 employees. (Table 13.)

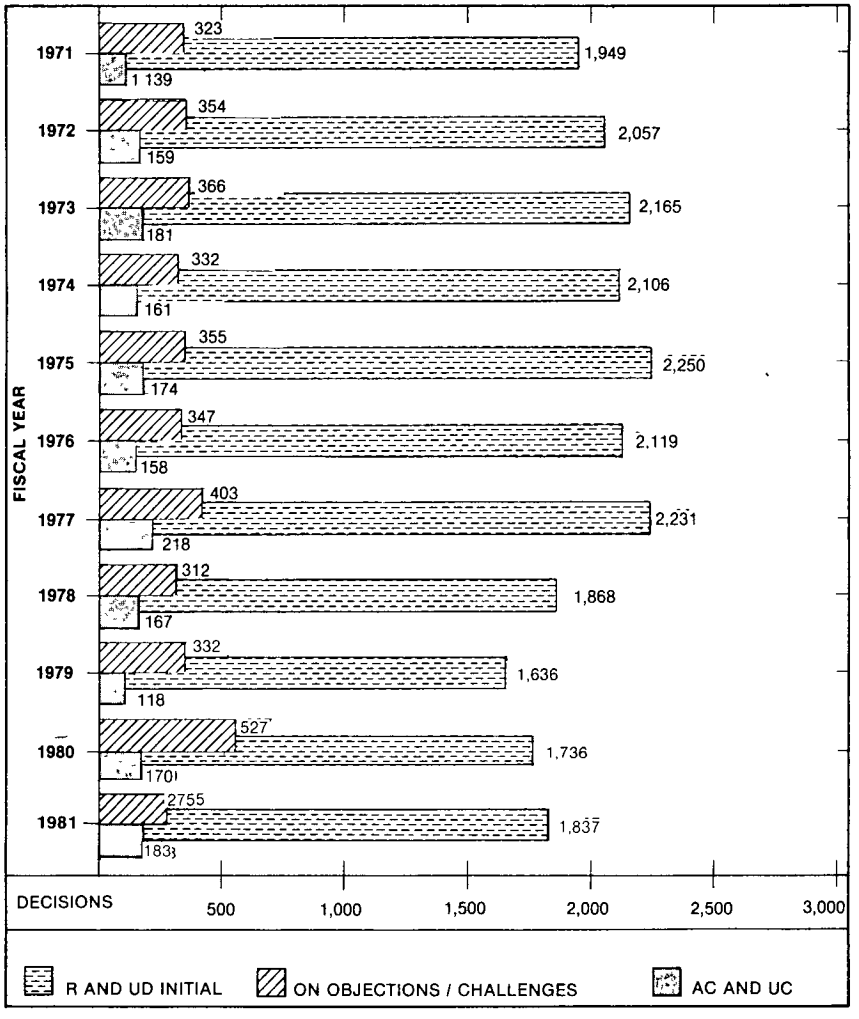
Besides the conclusive elections, there were 277 inconclusive representation elections during fiscal 1981 which resulted in withdrawal or dismissal of petitions before certification, or required a rerun or runoff election.

In deauthorization polls, labor organizations lost the right to make union-shop agreements in 98 referendums, or 67 percent, while they maintained the right in the other 49 polls which covered 3,314 employees. (Table 12.)

For all types of elections in 1981, the average number of employees voting, per establishment, was 52 compared with 56 in 1980. About

three-quarters of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)

CHART NO. 13
REGIONAL DIRECTOR DECISIONS ISSUED IN REPRESENTATION AND RELATED CASES




## 4. Decisions Issued

### a. Five-Member 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 2,606 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared with the 3,081 decisions rendered during fiscal 1980.

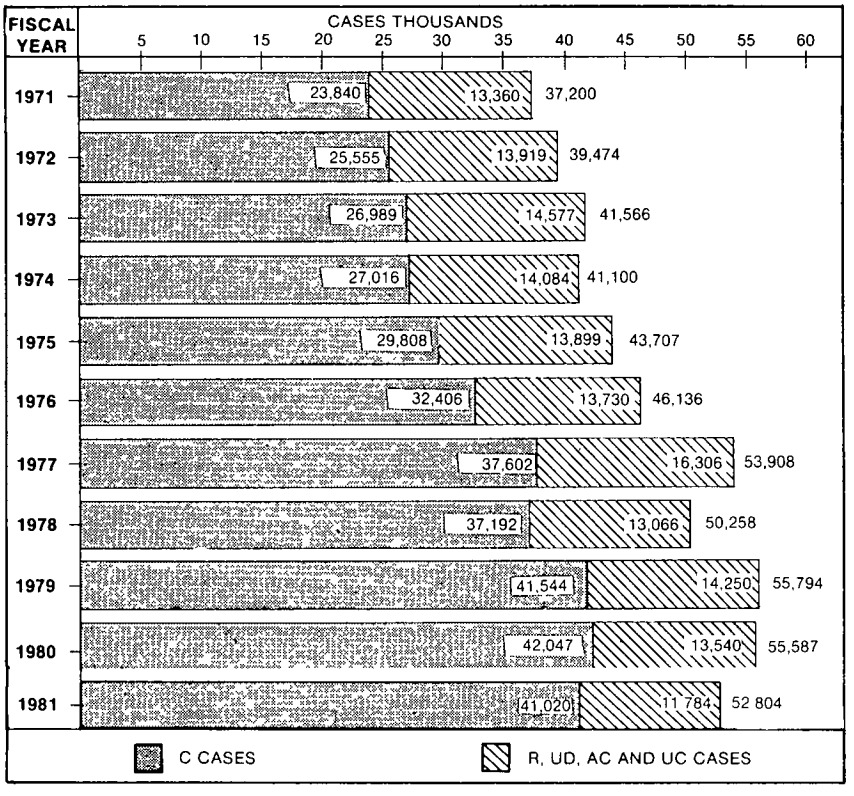
A breakdown of Board decisions follows:

| | | | |
|---|---|---|---|
| Total Board decisions | | | 2,606 |
| Contested decisions | | | 1,569 |
| Unfair labor practice decisions | | 1,028 | |
| Initial (includes those based on stipulated record) | 934 | | |
| Supplemental | 2 | | |
| Backpay | 40 | | |
| Determinations in jurisdictional disputes | 52 | | |
| Representation decisions | | 533 | |
| After transfer by regional directors for initial decision | 29 | | |
| After review of regional director decisions | 76 | | |
| On objections and/or challenges | 428 | | |
| Other decisions | | 8 | |
| Clarification of bargaining unit | 7 | | |
| Amendment to certification | 0 | | |
| Union-deauthorization | 1 | | |
| Noncontested decisions | | | 1,037 |
| Unfair labor practice | 568 | | |
| Representation | 461 | | |
| Other | 8 | | |

Thus, it is apparent that the great majority, 60 percent, of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

Emphasizing the steadily mounting unfair labor practice caseload facing the Board was the fact that in fiscal 1981 approximately 10 percent of all meritorious charges and 65 percent of all cases in which a hearing was conducted reached the five-member Board for decision. (Charts 3A and 3B.) These high proportions are even more significant considering that unfair labor practice cases in general require about 2½ times more processing effort than do representation cases.

**CHART NO. 14**
**CASES CLOSED**



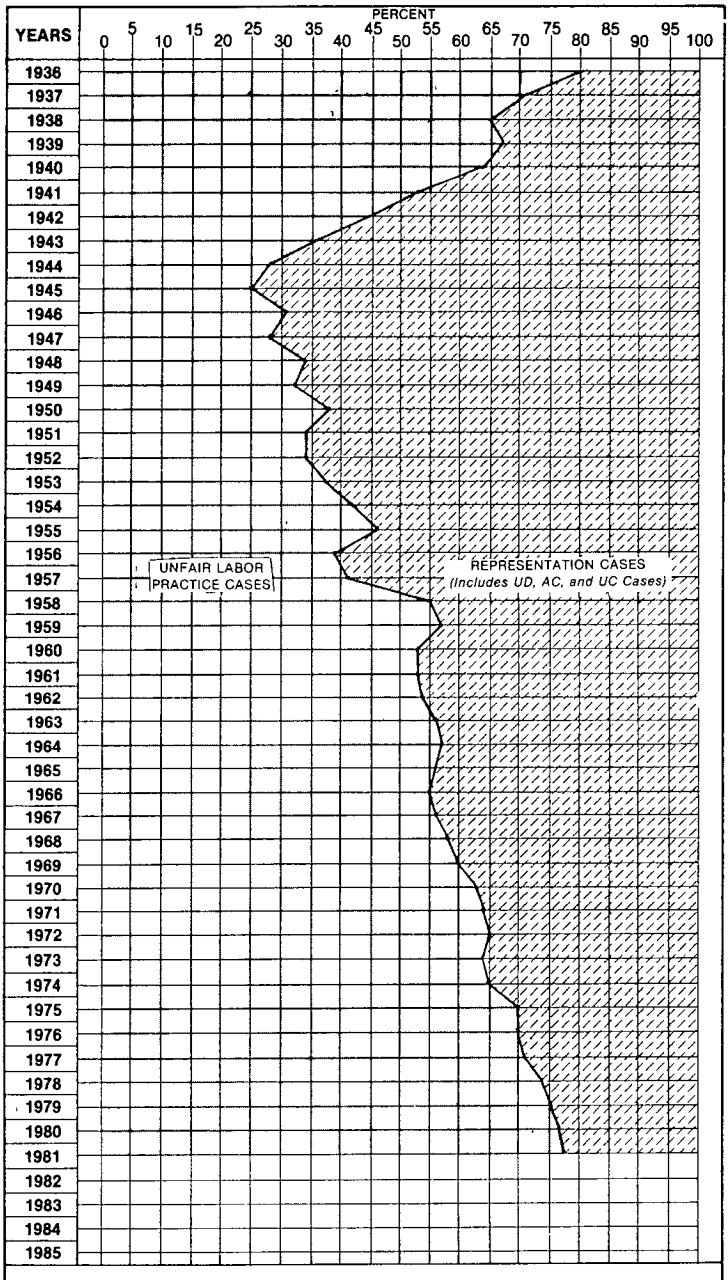

### b. Regional Directors

Meeting the challenge of a heavy workload, NLRB regional directors issued 2,295 decisions in fiscal 1981, compared with 2,433 in 1980. (Chart 13 and Tables 3B and 3C.)

### c. Administrative Law Judges

Reflecting the continued rise in case filings alleging commission of unfair labor practices, the administrative law judges issued 1,255 decisions and conducted 1,221 hearings. (Chart 8 and Table 3A.)

**CHART NO. 15**
**COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES**




THIS GRAPH SHOWS THE PERCENTAGE DIVISION OF NLRB CASELOAD BETWEEN UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES DURING THE FISCAL YEARS 1936 - 1981

## 5. Court Litigation

### a. Appellate Court Activity

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 1981, the Appellate Court Branch was responsible for handling 363 cases referred by the Regions for court enforcement and 252 cases wherein petitions for review were filed by other parties for a total intake of 615 cases. By filing briefs in 476 cases and securing compliance in another 148 cases for a total of 624, dispositions exceeded the intake. Oral arguments were presented in a record 485 cases compared with 445 in fiscal 1980. The median time for filing applications for enforcement was 53 days, a rise from 30 days in previous years, which was occasioned by a new procedure in which applications are not filed until briefs can ordinarily be expected to be completed without obtaining extensions of time. Notwithstanding the increase at this initial stage of filing, the median time to disposition (from the receipt of cases to the filing of briefs) remained constant at the fiscal 1980 figure of 149 days.

In fiscal 1981, 479 cases involving NLRB were decided by the United States courts of appeals compared with 449 in fiscal 1980. Of these, 80.2 percent were won by NLRB in whole or in part compared to 76.2 percent in fiscal 1980; 6.1 percent were remanded entirely compared with 6.2 percent in fiscal 1980; and 13.8 percent were entire losses compared to 17.6 percent in fiscal 1980.

### b. Supreme Court Activity

In fiscal 1981, the Supreme Court decided two Board cases; the Board won one case and lost one. In fiscal 1980, the Supreme Court decided three Board cases and the Board won one case, lost one case, and one case was remanded to the Board. In addition, in fiscal 1981, the Board participated as *amicus* in one case, as it did in fiscal 1980. However, in fiscal 1981, the number of private party petitions for certiorari more than doubled; thus the Court denied 72 private party petitions for certiorari compared to 34 private party petitions denied in fiscal 1980. In addition, in fiscal 1981, the Court granted two Board petitions for certiorari and denied one—the same number as in fiscal 1980.

### c. Contempt Activity

In fiscal 1981, 118 cases were referred to the contempt section for consideration of contempt action, about twice the number of referrals in

fiscal 1980. During fiscal 1981, 38 contempt proceedings were instituted, 37 for civil contempt and 1 for civil and criminal contempt. There were 16 contempt adjudications awarded in favor of the Board; 11 other cases were consummated by settlement orders requiring compliance; while 5 cases were discontinued upon full compliance. In two cases, contempt petitions were withdrawn without compliance; and in two cases the Board's petitions were denied on the merits.

### d. Miscellaneous Litigation Activity

The miscellaneous litigation section closed 47 cases in this fiscal year. In addition, it filed 117 briefs in district court and 36 in appellate court.

### e. Injunction Activity

The NLRB sought injunctions pursuant to section 10(j) and 10(l) in 182 petitions filed with the U.S. district courts, compared with 245 in fiscal 1980. (Table 20.) Injunctions were granted in 80, or 87 percent, of the 92 cases litigated to final order.

NLRB injunction activity in district courts in 1981:

| | |
|---|---|
| Granted | 80 |
| Denied | 12 |
| Withdrawn | 9 |
| Dismissed | 11 |
| Settled or placed on courts' inactive lists | 78 |
| Awaiting action at end of fiscal year | 26 |

## 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 "Jurisdiction of the Board," Chapter III on "Effect of Concurrent Arbitration Proceedings," Chapter IV on "Board Procedure," Chapter V on "Representation Proceedings," and Chapter VI on "Unfair Labor Practices" discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly two of the decisions establishing or reexamining basic principles in significant areas.

The applicability of the boycott provisions of section 8(b)(4) to interruptions of the business of American entities caused by the Longshoremen's Union refusal to handle Russian goods to protest the Russian invasion of Afghanistan was considered by the Board in the *ILA* case.[1] The Board concluded that purely secondary activity by a union, which is directed immediately against domestic employers who are "in commerce," is not beyond the Board's jurisdiction simply because that conduct is undertaken in support of a primary dispute that is not "in commerce." The union had refused to furnish crews to a stevedoring company to unload Russian goods imported on American ships by a domestic importer. As the union's boycott actions were purely secondary activity directed against employers subject to the Board's jurisdiction, the Board distinguished this case from those that have involved the domestic secondary effects of primary activity over which the Board lacked jurisdiction, and concluded that it could assert jurisdiction without interfering in foreign maritime operations, principles of comity, or international trade.

Finding that the union's dispute was solely with the Soviet Union, and that the domestic persons foreseeably directly affected by the Union's boycott action had nothing to do with the dispute, the Board concluded that the object of the activity was "tactically calculated to satisfy union objectives elsewhere," because its foreseeable and necessary result was to force the entities involved to cease business operations among themselves and to cease handling goods of the USSR. The Board also found that since the immediate means utilized to further the union's objectives were so clearly secondary and prohibited, the fact that the ultimate dispute was with a foreign entity, or that the actions sought a political rather than an economic result, did not preclude the Board from finding a violation.

In another case,[2] the Board strengthened the remedies provided when a union unlawfully causes an employer to discharge an employee for alleged failure to comply with the union-security provisions of the contract, and there is no culpability on the part of the employer for the harm caused the employee. The Board directed that not only would the union be obligated to notify the employer and the employee that it had no objection to the discharged employee's reinstatement, but the union would also be required to affirmatively request the employee's reinstatement, and be required to make the employee whole for any loss of wages and benefits suffered.

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[1] *Intl Longshoremen's Assn AFL-CIO & Local 799, ILA (Allied Intl )*, 257 NLRB 1075, *infra* at 88

[2] *Sheet Metal Wkrs Union Local 355, Sheet Metal Wkrs Intl Assn , AFL-CIO (Zinsco Electrical Products)*, 254 NLRB 773, *infra*, at 96

## D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1981, are as follows:

| | |
|---|---|
| Personnel compensation | $ 80,952,408 |
| Personnel benefits | 8,184,280 |
| Travel and transportation of persons | 5,403,694 |
| Transportation of things | 247,903 |
| Rent, communications, and utilities | 14,285,323 |
| Printing and reproduction | 821,456 |
| Other services | 5,045,793 |
| Supplies and materials | 1,446,319 |
| Equipment | 1,122,870 |
| Insurance claims and indemnities | 26,718 |
| Total obligations and expenditures | $117,536,764 |

# II

# Board Procedure

## A. Unfair Labor Practice Procedure

During the report year, a Board majority, in *Lincoln Technical Institute*,[1] held that an alleged discriminatee who does not file an unfair labor practice charge, who does not seek to intervene at any stage of the proceeding, and who does not participate in any manner as a party to the proceeding, may not file exceptions to the decision of an administrative law judge in the absence of exceptions from any party. The majority noted that section 102.46(a) of the Board's Rules and Regulations [2] provides for the filing of exceptions by parties only; that section 10(c) of the Act does not directly specify who may file exceptions; and that the statutory language concerning exceptions appears in the same sentence as that which requires an administrative law judge's decision to be served on the parties to the proceeding. The majority therefore held that it would be anomalous to allow discriminatees to file exceptions to a decision of which they are not entitled to receive notice. It also stated that since there is no requirement of notice to alleged discriminatees, enforcement of the strict time limits for filing exceptions imposed by the statute would be virtually impossible. The majority further noted that since alleged discriminatees who desire to participate in unfair labor practice proceedings have every right to do so by filing their own charges or by intervention, discriminatees who choose not to do so should not be heard to complain of their dissatisfaction with the representation provided by the General Counsel or others. Finally, in response to their dissenting colleague, the majority found *Unga Painting Corp.*[3] inapposite on the grounds that the issue in that case involved the status of a discriminatee as a witness at a hearing, not his rights as a party to the proceeding.

Member Jenkins, dissenting, stated he would not accord discriminatees all rights of a full party to a proceeding but would grant them the limited right to contest the complete dismissal of their case prior to the Board's final order. He asserted that the majority's literal construction of the Board's rules ignores the special status granted by the Board in *Unga Painting* to alleged discriminatees who, although not formally charging parties, are accorded many of the rights granted such parties because

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[1] 256 NLRB 176 (Chairman Fanning and Member Zimmerman, Member Jenkins dissenting)

[2] Sec 102 46(a) provides in relevant part that "any party may (in accordance with Section 10(c) of the act ) file with the Board in Washington, D C , exceptions to the administrative law judge's decision or to any other part of the record or proceedings "

[3] 237 NLRB 1306 (1978) See 43 NLRB Ann Rep 50–52 (1978)

their section 7 rights are being safeguarded. Accordingly, Member Jenkins was of the view that since section 10(c) of the Act does not specifically indicate who may file exceptions, as a real party in interest, a discriminatee should not be precluded from appealing an adverse intermediate decision. He also asserted that the majority's view was inconsistent with section 10(f) of the Act, which allows "any person aggrieved" by a final order of the Board, including alleged discriminatees who are not charging parties, to obtain review in a United States court of appeals. Finally, Member Jenkins was of the opinion that granting all discriminatees the right to file exceptions would be neither administratively burdensome nor inequitable.

## B. Representation Procedure

In *Alleghany Warehouse Co. & Star Warehouse Corp.*, [4] a Board majority upheld the regional director's denial of the employer's motion to dismiss the union's objections for failure to comply with section 102.69(a) of the Board's Rules and Regulations,[5] which requires immediate service of objections on parties to the proceeding. The union mailed its objections to the regional director by express mail and simultaneously mailed copies of its objections by regular mail to the employer and employer's counsel. In denying the employer's motion to dismiss for failure to comply with section 102.69(a), the regional director found that the union had mailed its objections simultaneously to the regional director and to each of the parties, albeit by different methods of service; that a statement of service accompanied the objections filed with the regional director; and that the employer in fact received a copy of the objection 7 days after receipt by the regional director. He concluded that here, unlike in *Auto Chevrolet*[6] and *Platt Brothers*,[7] cited by the employer, the union showed "an honest attempt to substantially comply with the requirements of the Rules." [8] Accordingly, he denied the motion to dismiss.

The Board majority noted that the union's service of its objections on the employer by regular mail was technically not in compliance with the requirement of section 102.112 of the Board's Rules and Regulations that "service on all parties shall be made in the same manner as that utilized in filing the paper with the Board." It also noted that in *Auto Chevrolet* the

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[4] 256 NLRB 44 (Chairman Fanning and Member Zimmerman, Member Jenkins dissenting)

[5] Sec 102 69(a) provides in relevant part

Within 5 days after the tally of ballots has been furnished, any party may file with the regional director an original and three copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election Copies of such objections shall immediately be served on the other parties by the party filing them, and a statement of service shall be made

[6] 249 NLRB 529 (1980)

[7] 250 NLRB 325 (1980)

[8] *Alfred Nickles Bakery, Inc* , 209 NLRB 1058, 1059 (1974)

Board reaffirmed the principle enunciated in *Alfred Nickles* that the objecting party must show "an honest attempt to substantially comply" with the rules on service of objections in order to support a variance or deviation from the clear requirements of the rules. In contrast to the Board's decision in *High Standard*,[9] where the employer never received a copy of the objections and the union did not indicate in a contemporaneously issued document that copies had been mailed to the parties, the majority found that here the union made actual service and provided contemporaneous evidence of that service. Accordingly, the majority concluded that the particular facts of the case supported the union's departure from strict adherence to the Board's rules, and that dismissal of the objection would require a "slavish adherence to form rather than substance" [10] not intended by the Board's decisions in *Auto Chevrolet* and *Alfred Nickles*.

In dissenting, Member Jenkins concluded that a statement of service by regular mail accompanied the objections and that the employer received a copy of the objections a week after the filing date were insufficient to distinguish this case from *High Standard*. Finding misplaced the majority's reliance on *Nestle Co.*,[11] where the Board found the objecting party complied with the service requirements as soon as possible under the circumstances, Member Jenkins noted not only that the union in this case chose an unauthorized method of service, but also that its statement of service on the petitioner, on whom timed service was also undisputedly required, was postmarked more than 2 weeks after the filing date. Accordingly, he concluded that, as the union had neither substantially complied with the service requirements nor adequately shown that the deficiencies were excusable, he would dismiss the objections.

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[9] 252 NLRB 403 (1980)
[10] *Nestle Co* , 240 NLRB 1310, 1311 (1979)
[11] *Ibid*

# 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 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, or other conditions of employment. The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents who have been previously certified, or who 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 representatives were adapted to novel situations or reexamined in the light of changed circumstances.

## A. Existence of Question Concerning Representation

In its ruling on administrative appeal in *U.S. Postal Service*,[1] the Board concluded that the acting Regional Director's administrative dismissal of the employer's petition was "proper and required." The employer sought an election in a single national unit of "all employees at facilities engaged in mail processing and delivery," consisting of approximately 600,000 employees. In support of its petition, the employer stated that its current contract would expire in approximately 3 months and that it was confronted with demands for fragmented bargaining by

[1] 256 NLRB 502 (Chairman Fanning and Member Zimmerman, Member Jenkins concurring)

four unions representing units which were inappropriate for separate bargaining as they did not conform to the Board's criteria for appropriate units generally or as contemplated by the Postal Reorganization Act of 1970 (PRA). The unions filed motions to dismiss the petition arguing, *inter alia*, that it failed to raise a question concerning representation. The acting Regional Director had concluded that, the petition failed to raise a question concerning representation as no contention was made by the employer that any of the currently recognized labor organizations had lost its majority status in the postal craft units in which it was respectively recognized, and as there was no evidence or contention that any labor organization claimed to represent the employees in the petitioned-for unit.

After reviewing the bargaining history between the unions and the employer, the Board majority, in agreement with the acting regional director, concluded that under current Board precedent there were no grounds for "granting the [employer's] request for an election in a single, national unit," in the absence of reasonable cause to believe that a question concerning representation existed and that claims or demands for recognition be made by a labor organization. In particular, an employer's petition is appropriate when the employer (1) is faced with organizational or recognitional picketing without a petition having been filed; (2) is confronted with a demand for exclusive recognition or faced with conflicting representation demands in the unit alleged as appropriate; or (3) has a good-faith doubt as to the union's continued majority support within the unit it already represents. The Board majority concluded that, as none of the above circumstances was present in the case and, absent a claim by any union for recognition in the 600,000 employee unit which the employer contended was appropriate, there was no "reasonable cause to believe that a question of representation" existed in that unit, and therefore there was no basis to proceed with its investigation under section 9(c)(1) of the Act.

Rejecting the employer's argument that the existing employer units have never been appropriate because they did not constitute traditional crafts, the majority pointed out that it had never held that merely because an existing recognized unit might be inappropriate for certification, an employer could force a labor organization to an election in a larger unit alleged to be appropriate. They also distinguished the cases cited by the employer where elections were directed in the unit requested by the employer, on the grounds that, in those cases, (1) the employers had transferred employees from separate bargaining units to new departments or merged facilities; (2) the different unions involved had competing claims of representation; and (3) only an all-employee unit could be appropriate. In the instant case, on the other hand, it was undisputed that the four postal unions merely sought to continue to represent the crafts or groups that they traditionally represented, and that there had

been no recent merger of units or substantial change in the employer's operations, nor on-going disputes as to which labor organizations represented the employees within the traditional units. The employer conceded that it sought by its petition to obtain a Board determination of "a structure for postal bargaining which had some hope of success and some reasonable likelihood of serving both the end of maintaining an efficient Postal Service . . . and that of stable labor-management relations," and, accordingly, it proposed as a solution the establishment of a single unit of all mail processing and delivery employees. Thus, the employer alleged that the history of bargaining by the four unions, in essence, constituted *"de facto"* one unit, and that fragmentation of bargaining proposed now by the unions exposed the inappropriateness of the actual units. However, the Board majority concluded that the employer, through its petition, sought a solution to which it was not entitled under either the NLRA or the PRA, and noted further that there was no evidence "beyond the employer's assertion," that "separate bargaining is unworkable." They also rejected the employer's argument that section 1202 of the PRA required the Board to conduct elections in appropriate units, concluding that that section was intended to permit postal unions to compete for recognition and did not mandate the Board to make such a determination before representation petitions are filed which require determination of the unit appropriate for bargaining in the postal service.

Member Jenkins concurred for the reasons expressed by the acting regional director in his dismissal letter. He would have denied review "without further comment, as is our usual course in such cases."

In *Albuquerque Insulation Contractors*,[2] the regional director directed an election upon the employer's petition, concluding that the union requested recognition as representative of the employees in the unit and that the employer was therefore entitled to an election under section 9(c)(1)(B) of the Act. The employer, a building and construction industry contractor, on the union's request, had signed a collective-bargaining agreement although the union did not claim to represent a majority of the employees. The contract expired shortly thereafter and there was no evidence that the terms of that agreement were applied to the employer or its employees. Several months later, the union contacted the employer proposing that it sign a recently negotiated agreement between the union and a contractors association, and requesting individual negotiations with the employer. The employer declined the proposal and the request at that time and again a few months later. Then, after receiving notification from the owner of a jobsite where the employer was working that the union intended to engage in informational picketing of the employer, the employer filed the instant petition for an election.

In its Decision on Review, the Board dismissed the petition on the basis

[2] 256 NLRB 61 (Chairman Fanning and Members Jenkins and Zimmerman)

that the union's request that the employer sign what was undisputedly an agreement, permitted by section 8(f) of the Act, did not constitute a request for recognition as the majority representative of the unit employees as provided in section 9 of the Act. Contrary to the regional director's finding that any claim to represent employees may trigger such a representation election, the Board held that "Section 9(c)(1)(B) of the Act permits representation elections on the petition of an employer *only* when that employer has been presented with a claim of *majority* status by one or more individuals or labor organizations." It reasoned that section 9(c)(1) provides that the Board, in appropriate circumstances, "shall direct an election by secret ballot and shall certify the results thereof" where, *inter alia*, an election petition is filed "by an employer alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as a representative defined in Section 9(a)." But section 9(a), in turn, states that "representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representative of all the employees in such unit." Thus, the Board concluded, absent a claim by someone for recognition as the majority-supported representative of the employees, an employer is not entitled to an election under section 9(c)(1)(B).

The Board also pointed out that, prior to the addition of section 9(c)(1)(B) to the Act in 1947, there was no provision for lawful recognition of a union as representative of employees, absent majority status, and that the Board had not asserted jurisdiction over the construction industry until after the passage of the 1947 amendments. Congress consequently did not address the question of whether a request for recognition without a claim of majority status could trigger an employer-initiated election, since all requests for recognition were, *a fortiori*, claims of majority status. While the addition of section 8(f) to the Act in 1959 carved out in the construction industry an exception to the general rule requiring majority status as a prerequisite to recognition, the Board reasoned that this "extra-Section 9" recognition, limited to voluntary arrangements and terminable at will by the employer, is by its very nature not based on a claim of current majority status. Thus, a union receiving such recognition is consequently not a "representative as defined in Section 9(a)" unless it later achieves majority status. Since a request for recognition under section 8(f) is not, *per se*, a request to be recognized as a representative as defined in section 9(a), section 9(c)(1)(B), according to the plain language of the Act, does not apply to such requests. In addition, the Board further concluded that the legislative history of the 1959 amendments gave no indication that section 8(f) in any way altered the operation of section 9 or that the Congress intended that the Board should hold elections based on "Section 8(f)" requests.

An employer faced with an 8(f) recognitional request or a signatory to

an 8(f) agreement may seek an election to force the union into saying yea or nay with respect to whether it claims to be the majority representative. Thus, if the union claims majority status, an election will be directed, but, if the union, as here, does not claim majority status, the petition will be dismissed. The Board was of the view that the 9(c)(1)(B) requirement—that an employer might secure an election *only* when faced with a claim by a party to be the majority representative—was placed in the statute to prevent an employer from precipitating a premature vote before a union has the opportunity to organize. Thus, the Board concluded that the Act contemplates that a union which is not presently a majority representative may decide when or whether to test its strength in an election by its decision as to when or whether to request recognition or itself petition for an election and, until that time, an employer may not attempt to short-circuit the process or immunize itself from recognitional picketing by obtaining premature elections. As the union did not here request recognition as the majority representative, the Board decided that its conduct was not "tantamount" to a claim of majority status and that no question concerning representation under section 9 existed. Accordingly, it dismissed the employer's petition.

## B. Qualification as "Labor Organization"

In *United Truck & Bus Service*,[3] the Board granted an employer's motion to dismiss the petition on the grounds that Local 1033, Laborers' International Union of North America, AFL–CIO, was not a labor organization. The motion alleged that the president of the local union had sworn at another Board hearing that it was not a labor organization as defined in the Act, that it had no members defined as employees under the Act, and that people employed by private employers were not eligible for membership. In considering the record in the further hearing directed to resolve the issues raised by the employer's motion, the Board noted first that the local union conceded that the testimony of its president was "accurate and true." The Board then set forth the criteria under section 2 (5) of the Act which an organization must meet in order to constitute a labor organization; i.e., (1) the organization must be one "in which employees participate"; and (2) the organization must exist "for the purpose in whole or in part, of dealing with employers." Since under its charter eligibility for membership in the local union was expressly limited to public employees, i.e., those employed by public employers who were therefore not "employers" as defined in section 2(2) of the Act, the Board found that the local was not an organization in which employees, as defined in section 2(3) of the Act, participate and that the local did not exist for the purpose of dealing in any manner with employers as defined

[3] 257 NLRB 343 (Chairman Fanning and Members Jenkins and Zimmerman)

in section 2(3) of the Act. Accordingly, it concluded that the local was not a labor organization as defined in section 2(5) of the Act.

In *Visiting Nurses Assn.*,[4] the Board further examined the area of potential conflict of interest in a case involving a state nurses association as petitioner. The petitioner sought a unit of all professional employees, including registered nurses employed by the employer, a licensed home health care agency, which was engaged, *inter alia*, in providing part-time skilled nursing and personal care to homes, sending registered nurses and home health aides to patients' homes to provide such services and sending registered nurses to hospitals to engage in discharge planning for patients. The employer asserted that a conflict of interest existed in that the petitioner was engaged in competition with the employer through the nurses' professional registry of Alameda County Nursing Association (ACNA).

The Board found that the petitioner, through the registry, competed with the employer in providing home care nursing services. In so finding, it noted that the ACNA was 1 of the 10 regional associations comprising the petitioner, and that petitioner exercised considerable control over the regional associations by, *inter alia*, authorizing their formation and setting their geographical boundaries, reviewing their bylaws to see that they conformed with those of the petitioner, and by its power to dissolve a regional association. Members' dues, paid directly to petitioner, were remitted to the regional association on a per capita basis, and the regional association was responsible for implementing the petitioner's policies on a regional level. The registry directly employed health care practitioners whom it placed as temporary employees in hospitals, and also acted as a placement agency for private duty practitioners. The registry's trustees had established a policy of trying to get the petitioner to include a clause in its collective-bargaining agreement with employers, requiring employers to use petitioner's registries before resorting to others. Contrary to the petitioner's contention that it was not in competition with the employer because its home placement service comprised only a minute portion of the registry's business, the Board found that the registry home placement service was not a minimal part of the registry's business. Since the registry was a creature of the ACNA which in turn was a regional arm of the petitioner, the Board concluded that the petitioner was in substantial competition with the employer and was therefore precluded from representing the employees. Accordingly, the Board dismissed the petition.

In *Bally's Park Place*,[5] the Board reconsidered a question of ballot eligibility of a union which was not certifiable under the Act. The petitioner, a security officers' union, petitioned for a unit of all security

[4] 254 NLRB 49 (Chairman Fanning and Members Jenkins, Penello, and Zimmerman)

[5] 257 NLRB 777 (Chairman Fanning and Members Jenkins and Zimmerman)

officers employed by the employer and another security officers' union intervened. The Board rejected the employer's argument that the petition should be dismissed because the petitioner was uncertifiable under section 9(b)(3) of the Act because it is or had been affiliated with two nonguard unions.[6] Noting that in *Wells Fargo Guard Services, Div. of Baker Protective Services*,[7] it had concluded that assistance, rendered only during the formative stages, did not constitute affiliation within the meaning of section 9(b)(3), the Board found that, here, there was no present or past affiliation that would disqualify the petitioner from certification.

The employer also contended that the intervenor was uncertifiable because of its affiliation with a Building Trades Council that admitted nonguard employees to membership. The Board noted that pertinent portions of proceedings in two other Board cases were incorporated by reference in the instant proceeding, and that in those cases it agreed with the regional director who had found that the intervenor herein was affiliated "directly or indirectly" with the Council within the meaning of section 9(b)(3). As there was evidence indicating the intervenor and the Council publicly manifested a continuing relationship, and since the intervenor had failed to demonstrate that this relationship with the Council had changed significantly since the earlier two cases, the Board concluded that the intervenor was uncertifiable under section 9(b)(3) of the Act.

However, although the intervenor was uncertifiable, the Board reversing the holding in *Wackenhut Corp.*[8] held that the intervenor's name should appear on the ballot. In *Wackenhut*, a majority of the Board had held that the purpose of section 9(b)(3) was not served by allowing a nonqualified union to intervene and appear on the ballot with a qualified labor organization in an election among guards. The Board stated that it was overruling *Wackenhut* to the extent inconsistent and was returning to the principles and practice set forth in cases such as *Burns Intl. Detective Agency*.[9]

Member Zimmerman specifically found that the relevant legislative history also supports the proposition that the intervenor was disqualified by section 9(b)(3) from Board certification, but nevertheless concluded that it should appear on the ballot and, if it won the election, the arithmetic results should be so certified. In his view, citing Congressional reaction to the Supreme Court's decision in *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*,[10] the language of section 9(b)(3) is, in part, contrary to the

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[6] Sec. 9(b)(3) provides in pertinent part that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

[7] 236 NLRB 1196 (1978)

[8] 223 NLRB 83 (1976) Chairman Fanning and Member Jenkins, who had dissented in *Wackenhut*, specifically pointed out that, in ruling on this case, they were adhering to and applying the views set forth in their earlier dissent

[9] 138 NLRB 449 (1962)

[10] 331 U S 416 (1947)

intent of Congress as expressed in its own legislative history. Member Zimmerman also stated that, if the Board were to be consistent with the language of the statute, it might draw a distinction between the treatment to be accorded contract guard units, such as those involved in *Wackenhut*, and on-premises guard units such as presented in the instant case. However, he concluded that the language of section 9(b)(3) itself does not permit such construction, regardless of the congressional intent. Further, given the incongruity between section 9(b)(3)'s language and its purpose, he felt compelled to read its language narrowly. Accordingly, Member Zimmerman concluded that nothing in the terms of section 9(b)(3) prohibits the Board from its pre-*Wackenhut* practice of permitting nonguard unions to participate in representation elections conducted among guard employees and of certifying the arithmetic election results when such unions are victorious.

## C. Bars to Conduct of Election

In certain circumstances the Board, in the interest of promoting the stability of labor relations, will find that circumstances appropriately precluded the raising of a question concerning representation.

One such circumstance occurs under the Board's contract-bar rules. Under these rules, a present election among employees currently covered by a valid collective-bargaining agreement may, with certain exceptions, be barred by an outstanding contract. Generally, these rules require that, to operate as a bar, the contract must be in writing, properly executed, and binding on the parties; it must be of definite duration and in effect for no more than 3 years; and it must also contain substantive terms and conditions of employment which in turn must be consistent with the policies of the Act.

In *Giordano Constr. Co.*,[11] the Board found, contrary to a regional director, that a contract entered into by the parties pursuant to section 8(f) of the Act had not turned into a "full-fledged collective bargaining agreement" and that said contract, therefore, could not act as a bar to a petition for an election filed by the employer. In this case, the employer, a construction contractor, and the union had become signatories to a memorandum agreement dated June 1978, which bound them to the terms of a 1977–80 Southern California Master Labor Agreement. The master contract provided that, absent written notice of termination prior to the expiration, it would be renewed on a year-to-year basis; and, as no such notice of termination was submitted, the agreement, which contained a lawful union-security clause, requiring employees to become union members after 8 days of employment was renewed effective until July 1981.

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[11] 256 NLRB 47 (Chairman Fanning and Members Jenkins and Zimmerman)

The Board agreed with the regional director that the June 1978 memorandum agreement could not act as a bar as it was entered into pursuant to section 8(f) of the Act and as there was no showing that the union represented a majority of the employer's employees on the date it was signed. However, the Board disagreed with the regional director's finding that the master contract was a bar and that the union had achieved majority support among a permanent work force during the term of the contract and thereby had established its status as the exclusive representative of the employer's employees within the meaning of section 9(a) of the Act.

Recognizing that there are two ways in which a union, originally afforded recognition under section 8(f), could achieve 9(a) status,[12] the Board nevertheless concluded that the union failed to demonstrate majority status under either of these two criteria. First, it noted that, since April 1980, the employer had not employed employees on a jobsite and therefore the jobsite-by-jobsite basis was unavailable since "it is obvious that a union cannot demonstrate majority status at a time when the employer has no employees." Further, finding a lack of stability and continuity to the employer's work force, the Board concluded that, "in the absence of a permanent and stable work force, 'the mere fact that the Union might indeed have represented a majority of the employees at previous jobsites is of no consequence inasmuch as the Union must demonstrate its majority at each new jobsite' [13] in order to establish its representational status under Section 9(a) and thereby convert its contract with the employer to one that possesses bar qualities." Since the union had failed to demonstrate that it had achieved representational status under section 9(a), the panel concluded that the existing contract remained an 8(f) contract which could not bar the employer's election petition.

In *Apex Tankers Co.*,[14] the Board held that a petition filed by the union seeking to represent two radio officers was not barred by an existing collective-bargaining agreement between the employer and the intervenor union covering licensed officers, including the two radio officers. In so doing, it agreed with the acting regional director's finding that the intervenor was disqualified from representing the employer's employees because of a clear and present danger of a conflict of interest arising from the crucial role supervisors play in the internal affairs of the intervenor. It noted that the very agreement, alleged as a bar, was negotiated and executed on behalf of the intervenor by two of the employer's highest

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[12] The Board panel noted that a union can achieve 9(a) status by demonstrating that it has achieved majority status "among employees who make up a permanent and stable work force of the employer." Where there is no permanent or stable work force, 9(a) status can be attained only by demonstrating majority status of the employees employed at a particular jobsite

[13] Citing *Dee Cee Floor Covering*, 232 NLRB 421 at 422 (1977)

[14] 257 NLRB 699 (Chairman Fanning and Members Jenkins and Zimmerman)

ranking supervisors. Accordingly, the Board held that, in view of the intervenor's inability to represent the employees in question, it would be anomalous to hold that its collective-bargaining agreement bars an attempt by another qualified labor organization to represent these employees. Finally, the Board analogized the instant case to cases involving unions found to be defunct, noting that the contract of a union found to be defunct cannot serve as a bar and reasoning that, since the intervenor's disabling conflict of interest renders it as legally incapable of serving as bargaining representative as a union found to be defunct, its contract cannot serve as a bar to the petition filed by the union.

A Board majority in *Burns Intl. Security Service*,[15] held, contrary to the regional director, that the union's petitions for units of a single employer's employees at two different locations were not barred by a long history of multiemployer bargaining between a rival union and an association to which the employer belongs, since the history did not demonstrate that the benefits and stability to be achieved through associationwide bargaining have inured to employees whom the union seeks to represent. The majority noted that bargaining on crucial terms and conditions of employment had been relegated to individual employers and that, as a result thereof, the Board's policy reasons for preserving multiemployer bargaining had been diminished by the association's own practices. Consequently, the majority found that the bargaining history was not controlling as to the employees employed by the employer at the two facilities in question and did not bar the union's representation petitions.

Chairman Fanning dissented, stating that he could not join his colleagues in ignoring 25 years of bargaining history on a multiemployer basis which is ordinarily determinative of the scope of the appropriate unit. In his view, the majority had misapplied existing law and further had relied on a 36-year-old decision which he considered to be clearly inapplicable.[16] Contrary to the majority, Chairman Fanning found that there is no basis for assuming that the employees in question have not received "effective" representation through multiemployer bargaining and that there was also no evidence that the contract provisions applicable to these employees have not been abided by or enforced. In his view, the fact that the multiemployer agreement provided different benefits for employees in different locations tended, at most, to establish that bargaining has been conducted for two distinct multiemployer units. It did not, however, support the proposition that, given such a bargaining history, single-location units sought herein were appropriate nor did it establish that bargaining of crucial terms and conditions of employment

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[15] 257 NLRB 387 (Members Jenkins and Zimmerman, Chairman Fanning dissenting)

[16] Chairman Fanning finds the facts of *Lamson Bros* , 59 NLRB 1561 (1945), which is cited by the majority in its decision, clearly distinguishable from those in the instant case and, therefore, not controlling

had been "relegated" to individual employers. Accordingly, Chairman Fanning, like the regional director, would have found the single units sought herein inappropriate in the face of such a 25-year bargaining history.

## D. Status as "Employees"

In *Kleinberg, Kaplan, Wolff, Cohen & Burrows, P. C.*,[17] the Board reexamined its criteria for exclusion of "confidential" employees from bargaining units, and affirmed its traditional labor relations standard for determining confidential status; i.e., excluding from bargaining units those employees with a "labor nexus."

The employer, a law firm, contended that the clerical unit sought by petitioner was inappropriate because all of its employees were "confidential," under the broad definition of that term which it alleged the Supreme Court mandated in *N.L.R.B.* v. *Bell Aerospace Co., Div. of Textron*.[18] In support of its argument, it relied on the Seventh Circuit's decision in *Henricks County Rural Electric Membership Corp.* v. *N.L.R.B.*,[19] where the Court was of the opinion that the "labor nexus" test applied by the Board "was exposed to serious question" by *Bell Aerospace*, and asserted that *Bell Aerospace's* interpretation of the legislative history "requires the conclusion that all confidential secretaries are excluded."

The Board disagreed. It first examined the Supreme Court's holding in *Bell Aerospace* that managerial employees are excluded from the coverage of the Act. It concluded that nothing therein undermined the Board's labor relations standard and that the policies favoring a managerial exclusion did not dictate similar treatment of confidential employees. Accordingly, the Board concluded that *Bell Aerospace* does not require abandonment of the Board's traditional labor relations standard for determining confidential status. Further, it noted that, from the earliest days of the Act through the pre-Taft-Hartley years, it had excluded from rank-and-file bargaining units those confidential employees with a "labor nexus"; i.e., those who worked in a confidential capacity for managers in the field of labor relations while, at the same time, it had consciously and consistently refused to expand the definition to exclude employees with access to confidential business information unrelated to labor relations matters. The Board then made an extensive analysis of the legislative history of the 1947 Taft-Hartley amendments, including the House and Senate proposals and the House conference report and, based on such analysis, it expressed the belief that "when Congress stated that it did not intend to alter [the prevailing Board practice with respect to con-

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[17] 253 NLRB 450 (Chairman Fanning and Members Jenkins, Penello, Truesdale, and Zimmerman)
[18] 416 U S 267 (1974)
[19] 603 F 2d 25, 28 (7th Cir 1979)

fidential secretaries] in any respect, it knowingly endorsed the standard enunciated in this lengthy line of cases." Accordingly, the Board stated that it adhered to that standard, "which embraces only those employees who 'assist and act in a confidential capacity to persons who formulate, determine, *and* effectuate management policies in the field of labor relations.' " Further, it observed that discarding the Board's consistently applied definition of "confidential employees" and redefining it to include those individuals who have access to secret information would result in vitiating collective organization by large numbers of organized employees (many of whom, in the normal course of their duties, have access to such information) and in depriving them of rights under the Act. In the Board's view, if Congress intended a result so revolutionary, it would have said so expressly.

Finally, in carefully considering and rejecting the argument that, even under the Board's restricted definition, all the clerical and support staff were confidential employees, because the employer's advice to employer-clients on labor matters involved deciding and effectuating labor relations policies of those employers, the Board, citing *Dun & Bradstreet*,[20] stated that it had "resolved to reiterate, in the context of law firms as employers, that confidential status requires 'that such persons work in a confidential capacity with someone who formulates, determines, and effectuates labor relations policies for their own employer, not some other employer.' " Accordingly, the Board concluded that the employees sought in the petition were not confidential employees and that they constituted an appropriate unit.

In *Rediehs Interstate*,[21] the Board considered the question of whether truckdrivers were employees or independent contractors. The employer, a motor carrier engaged primarily in hauling steel, was subject to regulations of Federal and state agencies. It owned no tractors or trailers, but leased tractor-trailer units primarily from owner-operators who drove their own units or from single unit owners who designated another person as the driver. The petitioner sought a unit of owner-operators and drivers of the leased trucks contending that they were "employees" within the meaning of section 2(3) of the Act, while the employer asserted that they were independent contractors, not its employees.

The Board observed initially that the relationship between the employer and the drivers "is determined, to a large extent, by rules promulgated by state and Federal agencies, which the Employer is under a legal duty to enforce." Thus, the employer must also enforce detailed Federal regulations which, *inter alia*, require the drivers to complete a vigorous qualification process and which govern the manner in which the drivers

[20] 240 NLRB 162 (1979)

[21] 255 NLRB 1073 (Chairman Fanning and Members Jenkins and Zimmerman)

operate the trucks. These rules were enforced through daily time logs which the drivers submitted.

The Board also noted that the relationship between the employer and the drivers was also defined by a "contractor's [owner's] agreement," which the employer drafted to meet certain requirements established by Federal regulations and which was not subject to negotiation by the drivers. The term of the agreement was essentially indefinite and was terminable on 30 days' notice. Under the agreement the contractor (owner) leased his equipment exclusively to the employer and agreed either to drive himself or to provide a driver who, under the agreement, is considered an employee of the contractor. The contractor also agreed to comply with all laws and regulations regarding qualifications of drivers and their driving of vehicles, to pay all fines, taxes, and costs of maintenance and operation, and to furnish all licenses and permits. While the agreement permitted a driver to trip lease (i.e., lease the truck for one trip only to another authorized carrier), it gave the employer the right to control trip leasing and to benefit financially therefrom. It was the parties' intent, as stated in the agreement, to create an independent contractor relationship between the employer and the leasing owners, rather than an employer-employee relationship. In practice, the relationship between the employer and its contractors might differ from that set forth in the contractor's agreement; for example, the employer, on occasion, paid permit fees and fines due to the failure to obtain the proper permits, and assumed the risk of nonpayment by the shipper. However, the employer did not provide its drivers with bonuses, profit sharing, pension, unemployment compensation premiums, or vacation or holiday pay; nor did it pay for meals or lodging, or withhold any taxes or social security. The contractors purchased their tractor-trailer units with no assistance from the employer, and their permission was required by the employer to sublease the equipment.

The Board pointed out that it is well established that the Board and the courts should apply common law agency principles in determining whether individuals are employees or independent contractors under the Act, citing *N.L.R.B.* v. *United Insurance Co. of America*.[22] Under the common law right-to-control test, individuals are deemed employees when the employer reserves not only the right to control the ends to be achieved, but also the means to be used in achieving those ends. However, where the right to control is merely limited to the result to be accomplished, an independent-contractor relationship exists. In making its determination, the Board noted that there was no shorthand formula that can be applied to find the answer, but all of the incidents of the relationship must be assessed, with no one factor being decisive. The

[22] 390 U S 254 (1968)

Restatement Agency 2d, §220(2) (1958) sets forth a number of factors which should be considered.[23]

Accordingly, after carefully reviewing the entire record, the Board concluded that the owner-operators and drivers were employees based on evidence of the employer's right to and its actual control of the "manner and means" by which the drivers transported goods for the employer, as well as evidence relating to other indicia set forth in the Restatement. It stated that through its enforcement of Federal and state regulations, the employer controlled many details of the drivers' conduct while they were driving even though the employer could not supervise the drivers on the basis of personal observation, but did so through the rules enforcement mechanisms. The Board also observed that the fact that the employer's control of the drivers' performance is required by government regulations did not diminish the validity of its findings and is a factor to be weighed.[24]

Further, it was clear to the Board that the employer either controlled or retained the right to control the drivers to an extent beyond that required by the Federal regulations as, for example, by insisting that drivers report all accidents rather than only serious ones as required by regulations. In its determination, it also relied on other less direct Restatement indicia, such as the fact that the employer's only business was the hauling of goods in interstate commerce and that the only work the drivers performed for the employer was to haul those goods. Thus, both were engaged in an identical, rather than a distinct, occupation, which was the business of the employer. Further, the Board pointed out that the term of employment was essentially indefinite or "at will," lasting only as long as both parties agreed to continue it.

Finally, the Board noted that there were some factors which arguably might support a finding that the owner-operators were independent contractors. Thus, the owner-operators, *inter alia*, did have a degree of entrepreneurial risk in and control over their work; they bought their trucks and paid their operating expenses; they were paid by the job and

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[23] Certain of these factors are

(a) the extent of control which, by the agreement, the master may exercise over the details of the work,

(b) whether or not the one employed is engaged in a distinct occupation or business,

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision,

(d) the skill required in the particular occupation,

(e) whether the employer or the [worker] supplies the instrumentalities, tools, and the place of work for the person doing the work,

(f) the length of time for which the person is employed,

(g) the method of payment, whether by the time or by the job,

(h) whether or not the work is part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant, and

(j) whether the principal is or is not in business

[24] Although in certain earlier decisions it had held that because Federal regulations were imposed on the parties by governmental fiat they were insufficient by themselves to establish employee status, the Board in *Mitchell Bros Truck Lines*, 249 NLRB 476 (1980), stated that those earlier cases were implicitly overruled by the Board in *Robbins Motor Transportation*, 225 NLRB 761 (1976)

had no taxes or social security deducted; and they decided when to haul and, within limits, how many hours to drive. The Board concluded that such factors did not compel a finding that the drivers were independent contractors since they must buy and maintain their trucks according to standards enforced by the employer, their job rate was set unilaterally by the employer, the employer assumed the risk of nonpayment, and the drivers' entrepreneurial risk was limited considerably by the rules enforced by the employer. Accordingly, the Board concluded that the owner-operators and drivers sought by the petitioner are employees of the employer.[25]

## E. Unit Appropriate for Bargaining

In several cases decided during the reporting year, the Board addressed the question of the appropriateness of units limited to registered nurses in health care institutions, following its decision in *Newton-Wellesley Hospital*.[26]

In the first of these, *Mt. Airy Psychiatric Center*,[27] the employer operated an 80-bed psychiatric hospital employing 100 employees, approximately half of whom were registered nurses (RNs) and whom the petitioner sought to represent in a separate unit, including charge nurses, but excluding, *inter alia*, all other professional employees. The employer contended that the only appropriate unit must include all professional employees and that the unit sought was inappropriate because it excluded other professional employees who were not RNs, but who performed the same duties as RNs.

The hospital was functionally and administratively divided into four programs or sections with nursing services provided in each section on a 24-hour basis. Aside from overall responsibility of the director of nursing services and the nursing supervisors, such services were supervised separately within each of the four sections, two of which were supervised by RNs and two by a program coordinator or director neither of whom was an RN. Some of the team leaders were not RNs but had a master's degree in psychology or a related field and were clearly professional employees within the meaning of the Act. All of the team leaders, whether or not they were registered nurses, performed virtually the same duties because most of the patients' needs were psychological rather than physical. In addition to the professional team leaders who were not RNs, there were nine other professional employees working at the hospital.[28]

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[25] In so concluding, the Board referred to some courts of appeals which disagreed with its findings of employee status because of the disagreement as to the weight to be given Federal regulations in determining an employer's right to control its drivers. However, it also pointed out that the finding herein was made not only on the basis of the Federal regulations, but also in the light of the additional controls retained by the employer and the other factors noted in the Restatement

[26] 250 NLRB 409 (1980), and see 45 Ann. Rep. 67 (1980)

[27] *Mt. Airy Foundation d/b/a Mt. Airy Psychiatric Center*, 253 NLRB 1003 (Chairman Fanning and Members Penello and Truesdale)

[28] There were two pharmacists, two occupational therapists, four social workers, and one special education teacher

The Board noted that it had recently, in *Newton-Wellesley*, *supra*, reexamined the considerations to be applied in determining the appropriateness of a separate unit of RNs. In so doing, it had specifically concluded that: "an irrebuttable presumption of the appropriateness of registered nurses units in all cases, without regard to particular circumstances, should be disavowed" and that "such a *per se* approach to unit determinations is inconsistent with the Board's Section 9(b) responsibility to decide 'in each case' whether the requested unit is appropriate." With this in mind, the Board, after careful consideration, found that the separate unit of RNs, including only the team leaders who were RNs, sought by the petitioner was not by itself an appropriate unit because it could not be said that the RN team leaders had a community of interest separate and distinct from the other non-RN team leaders who performed virtually the same daily tasks, substituted for each other, received the same benefits, and were subject to the same supervision. In concluding that, in these particular circumstances, excluding the non-RN team leaders from the unit sought was improper, the Board noted that such a conclusion was consistent with the Board's decision in *Kaiser Foundation Health Plan of Colorado & Permanente Services of Colorado*.[29] Accordingly, it found that an appropriate unit must include the nonnurse team leaders, and that, therefore, the unit sought by the petitioner was, by itself, inappropriate.

The question remained whether the nine other nonnurse professionals must also be included in the unit. While those nine did not have as strong a community of interest with the registered nurses as did the non-RN team leaders, the Board noted that these professionals did not exhibit an overall community of interest among themselves. Faced with the choice of creating a residual unit of only nine nonnurse professionals, or of including them in a unit with the registered nurses and the team leaders, the Board found the latter was more consistent with the purposes of the Act. Further, while not suggesting that it would not, in other circumstances, find appropriate a unit composed of registered nurses and some, but not all, of the nonnurse professionals, the Board concluded that where, as here, a substantial portion of nonnurse professionals (team leaders) must be included in the unit which comprised the vast majority of the employer's professionals, it was appropriate that the small remainder of disparate residual professionals also be included in the appropriate all-professional unit.[30]

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[29] 230 NLRB 438 (1977)

[30] The Board rejected the employer's contention that the charge nurses and the nonnurse charge persons were supervisors under the Act, noting the long-recognized distinction in the health care industry between individuals who "supervise others as a representative of management," and those who "give direction to other employees and perform their tasks in the exercise of their professional judgment, incidental to their treatment of patients." As the charge nurses and charge persons, in this case, clearly fell into the latter category, they were not supervisors and should be included in the unit with the other professional employees

In *Frederick Memorial Hospital*,[31] the Board, in the context of a motion for summary judgment, found appropriate a unit, sought by the union, limited to only the registered nurses (RNs). The employer contended that the unit was inappropriate because it would result in undue proliferation and that any appropriate unit would have to include all professional employees at its hospital facility. The Board first noted that the regional director had issued his decision in the underlying representation case without the benefit of its recent decision in *Newton-Wellesley*, where it had indicated abandonment of any rule that indicated a registered nurses unit was "an irrebuttably presumptive appropriate unit." However, the Board also pointed out that all parties at the representation hearing encouraged the taking of testimony concerning the appropriateness of a registered nurses unit and adduced all evidence they deemed relevant, so that the regional director's conclusion that the requested unit was appropriate was based on this evidence.

Accordingly, after examining this conclusion in light of *Newton-Wellesley*, the Board affirmed the Regional Director's decision. In so doing, it noted that, although RNs and professionals shared some common personnel policies and employee benefits, there were substantial differences between their working conditions. The RNs were "primarily responsible for the maintenance of patient care," and were also the only professional employees to see every patient every day. The nursing department promulgated its own work policies and procedures, and was the only department having three shifts, staffed 24 hours a day. The RNs did not have extensive contact with other professionals, except for physicians and the contact they did have usually took place because of the RNs overall responsibility for the patient. In addition, the Board observed that the vast majority of RNs were administratively separated in a nursing division; they worked in close and continuous contact with one another, in juxtaposition to their minimal daily interaction with other professionals; and other specialized professionals did not share with RNs in the nursing division the problems inherent in ever-changing assignments and rotating shifts. Finally, it pointed out that the responsibility of the RN as "the one individual in the hospital primarily responsible for the maintenance of patient care is unique when compared to other professionals who have limited contact with patients." As for those RNs employed outside the nursing division, the Board found that they should also be included in the unit because they had the same license, utilized similar educational background, and almost all were supervised by the same official who supervised the RNs in the nursing division. Some spent most of their time on patient floors in close contact with the other RNs while some, particularly those in the operating and recovery rooms,

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[31] 254 NLRB 36 (Members Jenkins, Penello, and Truesdale)

shared similar problems in working conditions, such as rotating shifts.[32] Accordingly, the Board agreed in full with the regional director that an all-RN unit here was appropriate.

In three subsequent cases discussed below, the Board, in the light of its reexamination of registered nurses units in *Newton-Wellesley*, *supra*, found the requested RN unit to be appropriate.

In *Ralph K. Davies Medical Center*,[33] the petitioner sought a unit of registered nurses within the department of nursing, while the employer contended that the appropriate unit must also include nonnurse professionals, as well as RNs outside the department of nursing.[34]

The Board pointed out that, because of the highly specialized training of different professionals, there was no permanent interchange between RNs and other professionals, with the only significant functional interchange in the realm of rehabilitative care where the RN must be generally aware of a patient's therapy program in order not to undermine it. The Board found significant that, despite overall centralization and uniformity of general personnel practices concerning the professionals, certain exceptions were made for RNs. Thus, the personnel department had a special nurse recruiter, RNs were evaluated on a somewhat different schedule, and were paid prorata for vacation leave accrued after 6 months, rather than the 1-year eligibility for other employees. It also noted that the employer was unable to bill separately for nursing services, although it did provide separate bills for the services of some other professionals. Further, due to its unique size and considerably varied activities and functions, the nursing department alone was divided into subunits for budgetary purposes.

In finding appropriate the RN unit sought, the Board noted that, since its reexamination of this area in *Newton-Wellesley*, it has found RN units appropriate on similar facts, but has not hesitated to find otherwise when the facts require such a result. Despite aspects of the employer's operation such as centralized personnel policies and similarity of background and working conditions supporting a broad professional unit, the RNs here had a community of interest so distinct that it permitted their placement in a separate unit. The Board pointed out that, while the pivotal role of the RNs in monitoring, on a 24-hour-a-day basis, each patient's overall care might afford them some contact with other professionals, it also distinguished them, in a crucial way, from those professionals whose patient contacts were less frequent and more specialized. This central role of the RNs coupled with their separate supervision and their distinct budgetary treatment indicated to the Board that the RNs

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[32] Member Jenkins noted that he had, in appropriate cases, excluded from a nurses unit those RNs not engaged in patient care, however, in deference to the decision of the panel which decided the representation case which was sought to be relitigated, he joined in the decision

[33] 256 NLRB 1113 (Chairman Fanning and Members Jenkins and Zimmerman)

[34] Of the 500 employees under the director of nursing, only 200 were RNs

here were much like those in *Newton-Wellesley*, where a separate RN unit was found appropriate. Additionally, the Board noted that the RNs here were by far the largest group of professionals and that, while unit size alone is not a determinative factor, it is one to be considered in light of the congressional concern with proliferation of units. Thus, as in *Newton-Wellesley*, since Board precedent would not afford separate representation to any group of professionals in the circumstances herein, granting a separate unit to the RNs would result in a maximum of two units of professionals, both of substantial size.

In *Long Island College Hospital*,[35] the regional director, prior to the issuance of *Newton-Wellesley*, had held that RNs "are entitled to be represented for the purpose of collective bargaining in a separate unit," eschewing any discussion of whether the employer's holistic approach and/or other factors required a single overall unit of all professional employees. Accordingly, the Board considered the appropriateness of the RN unit herein in the light of *Newton-Wellesley* where it had disavowed "an irrebuttable presumption" of appropriateness of RN units in all cases but at the same time, however, had reaffirmed its position that, "giving full and due regard" to the legislative admonition against proliferation of bargaining units, RNs can possess such a community of interest as to make their separate representation appropriate.

The Board noted that 80 percent of the RNs were administratively separated into a department of nursing which was overseen and supervised by RNs, and that no other group of professionals functioned within a structure equivalent in size or scope. Nor was any other professional group subject to a comparable intraprofessional hierarchy of supervisors. The RNs had similar education and training, whereas the educational and licensing requirements for other professionals varied substantially. Furthermore, RNs shared "unique functional responsibilities" and were assigned the prime responsibility for overall patient care, which required them to remain in close and continuous proximity to patients and utilize a wide variety of patient care skills. In the Board's view, it was this unique function that most clearly separated RNs from the other professionals. Additionally, RNs were transferred throughout various inpatient units, and had separate promotional opportunities.

The Board was also of the opinion that the holistic approach to patient care, as applied by the employer, had not resulted in any significant modification of the distinct and unique patient care role assigned to RNs, or had affected in any significant respect "the factors establishing a separate community of interest among RNs."

In addition to the RNs in the department of nursing, there were smaller groups of nonnursing department RNs who, since *Newton-Wellesley*, were generally included within a single RN unit because,

[35] 256 NLRB 202 (Chairman Fanning and Members Jenkins and Zimmerman)

while they might have separate interests from the other RNs, their background, training, and duties nonetheless usually gave them a closer community of interest to other RNs than to nonnurse professionals. Accordingly, these nonnursing department RNs were included in the RN unit found appropriate.[36]

In *Milwaukee Children's Hospital*,[37] the Board first noted it had recently affirmed its position that, "giving full and due regard" to the legislative admonition against proliferation of health care industry bargaining units, registered nurses "can possess such a community of interest as makes their separate representation appropriate," citing *Newton-Wellesley*, *supra*. In considering whether the RN unit sought herein was appropriate, the Board pointed out that the separate and distinct interests of the RNs was manifest in the operations of the nursing department, which constituted a unique aggregation of approximately four-fifths of the RNs. No other professional group functioned within a single homogeneous administrative structure equivalent in size or scope. No other professional group could trace an exclusively intraprofessional line of supervisory authority. Further, not even all the other professionals closely approximated the numerical size of the RN complement. The Board deemed the RNs in the nursing department as sharing "unique functional responsibilities," and playing "the linchpin role in the delivery of comprehensive in-patient care." The continuity of nurse-patient contacts and diversity of skills contrasted sharply with the patient care duties of all other professionals. As the RNs shared common separate organization and supervision, common education and licensing requirements, and a uniquely broad range of generalized patient care skills, they had a high degree of job interchangeability and daily functional interaction.

In rejecting the employer's contention that a high degree of functional interaction among all of its professionals outweighed the significance of the indicia of a separate community of interest among RNs, the Board noted there had been no permanent transfers between RN positions and other professional jobs in recent years, many professionals had little or no contact with RNs, and daily communications between RNs and some other professionals were usually perfunctory exchanges of information, or were merely periodic contacts not evincing either significant functional interdependence or a close and continuous interprofessional relationship. Accordingly, the Board concluded that the petitioned-for unit was appropriate.

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[36] The parties had stipulated that certain residual groups should be excluded from an RN unit because of their separate community of interest Since the record accorded with the stipulation, and there was no inconsistency with any statutory provision or established Board policy, and since acceptance of the stipulation would not necessarily conflict with the congressional admonition against proliferation of units because the residuals excluded by the stipulation could be grouped with other professionals, the stipulation was accepted

[37] 255 NLRB 1009 (Chairman Fanning and Members Jenkins and Zimmerman)

## F. Objections to Conduct Affecting an Election

An election will be set aside and a new election directed if the election campaign was accompanied by conduct which the Board finds created an atmosphere of confusion or fear of reprisals, or which interfered with the employees' exercise of their freedom of choice of a representative as guaranteed by the Act. In evaluating the interference resulting from specific conduct, the Board does not attempt to assess its actual effect on the employees, but rather concerns itself with whether it is reasonable to conclude that the conduct tended to prevent the free expression of the employees' choice. In making this evaluation the Board treats each case on its facts, taking an *ad hoc* rather than a *per se* approach to resolution of the issues.

### Investigation of Objections

In *Burns Intl. Security Services*,[38] the Board addressed, *inter alia*, the question of a regional director's obligation to consider additional, untimely filed objections. The employer timely objected to the election. Much later, it filed untimely "Supplementary Objections," and still later it filed untimely "Supplementary Objections," and still later it filed "Second Supplementary Objections." The acting regional director accepted the employer's supplementary and second supplementary objections, although late-filed, because he interpreted *American Safety Equipment Corp.*[39] as establishing that the failure to file the objections within the initial time provided by the Board's Rules and Regulations can no longer serve as a basis for refusing to consider them.

Disagreeing with this interpretation, the Board pointed out that, in *American Safety*, the regional director had discovered unalleged misconduct in the course of his investigation of timely filed objections, and, *sua sponte*, he properly set the election aside. The Board held in that case that it was within the regional director's discretion to determine the scope of the investigation but, "if he receives or discovers evidence during his investigation that shows that the election has been tainted, he has no discretion to ignore such evidence and it is reversible error if he fails to set aside the election." In this case, the Board noted, the acting regional director did not exercise his discretion to accept the late-filed objections, but, rather, felt constrained by the above-quoted language to consider them.

The Board explained that this is not what was intended in *American Safety*. Contrary to properly setting an election aside on the basis of misconduct discovered in the course of an investigation of timely objec-

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[38] 256 NLRB 959 (Chairman Fanning and Members Jenkins and Zimmerman)
[39] 234 NLRB 501 (1978)

tions, the entertainment of a whole new set of objections would vitiate the Board's requirement that parties file timely objections. It pointed out that, inundated with successive sets of objections, the regional director, if he had to investigate each new allegation, could be prevented from, or unduly delayed in concluding his investigation. The scheme of the Board's objections procedure allows the losing party five working days after the tally of ballots to discover the possibility of serious misconduct. The objecting party is given a further, limited time to complete its private investigation of that alleged misconduct and promptly turn the results over to the regional director who then investigates and takes appropriate action as expeditiously as thoroughness allows. This investigation is neither to be perfunctory nor, ordinarily, protracted. Where material facts are in dispute, the investigation is suspended and the dispute is resolved through a hearing. But the scope of the investigation, as the Board made clear in *American Safety*, is within the informed discretion of the regional director; and the period during which the investigation proceeds was never intended to provide more time for the objecting party to extend its own investigation in the hope of finding some basis for objection that lies beyond the matters covered in the regional director's investigation. Accordingly, the Board dismissed, as untimely, the late-filed objections which did not contain evidence bearing on the timely filed objections.

In *Rolligon Corp.*[40] the petitioning union, in order to insure that a large number of employees attended the Board representation hearing, distributed Board subpenas to approximately half of the 40-unit employees. The subpenas were defective because they were not accompanied by witness and mileage fees as required by the Board's Rules and Regulations. When a number of employees presented the subpenas to the employer to seek time off, it informed them that, in its opinion, the subpenas were invalid because they were not accompanied by witness and mileage fees, and that the employees were free to dishonor them. The employer also told the employees, however, that they were free to honor the subpenas, and that no discipline would be taken if they decided to do so. It also assisted the employees in arranging a schedule to permit all interested employees to attend the hearing. Thereafter, the employer filed objections to the election, contending that the issuance of subpenas to half the unit employees was an abuse of the Board's process, and caused employees to believe that the Board favored the union.

In the consolidated representation and unfair labor practice proceeding, the Board reversed the administrative law judge's finding that the employer had interfered with the section 7 rights of employees by telling them they did not have to comply with the subpenas. Unlike the subpenas

[40] 254 NLRB 22 (Members Jenkins, Penello, and Truesdale)

in issue in the cases relied on by the administrative law judge, the subpenas in issue here were defective on their face and, therefore, the employer's comments were an accurate description of the employees' privilege not to comply with them. Additionally, the employer had clearly informed the employees that they were free to honor the subpenas and that no action would be taken against any employee who chose to do so.

The administrative law judge also found that the union issued the subpenas in order to create the illusion that the union was strong and that the Board favored it, and that such conduct was objectionable. Accordingly, he recommended that the election be set aside. The Board, on the particular facts of the case, disagreed. At the outset, the Board condemned the use by any party of mass subpenas as a device merely to generate employee enthusiasm or interest, or to cause mass employee attendance at Board proceedings since that had the clear potential to disrupt an employer's production schedule and is not the purpose for which the Board's subpenas were intended. If it were persuaded that the union's use of subpenas in this case had confused employees or created the appearance of Board partisanship or otherwise affected the exercise of free choice by employees, the Board stated it would not hesitate to set aside the election. However, examination of the record revealed no support for the conclusion that the union's "ill-considered decision to subpena employees enmasse could reasonably have created an impression that the Board favored the Union or was in league with it." First, nothing in the record supported a finding that when the union distributed the subpenas it engaged in conduct that could have led employees into believing that the Board favored the union. Secondly, the distribution of subpenas took place almost 2 months before the election, and the employer had full knowledge of it. If the employer feared confusion on the employees' part, it had sufficient time to set the record straight or it could have brought the matter to the attention of the regional director and requested appropriate relief. The issue in the Board's view was not whether the union acted in an undesirable manner—clearly it did—but, rather, whether that conduct interfered with the laboratory conditions of the election. As the Board was satisfied that it did not, it declined to set the election aside.

# 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 section 8) affecting commerce. In general, section 8 prohibits an employer or a union or their agents from engaging in certain specified types of activity which 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 1981 which involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

## A. Employer Interference With Employee Rights

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

### 1. Forms of Employee Activities Protected

The forms that protected concerted activity may take are numerous. The following cases decided by the Board during the past year provide a representative sample of the types of activities found by the Board to be protected.

In *Tyler Business Services*,[2] the Board majority held that the employer violated section 8(a)(1) when it discharged a full-time employee for

[1] Violations of these types are discussed in subsequent sections of this chapter

[2] 256 NLRB 567 (Chairman Fanning and Member Jenkins, Member Zimmerman dissenting)

complaining, during a social conversation with an official of an important customer of the employer, about company benefits for part-time employees. During the same conversation, the employee asked the official if she had heard about an affair between two of his employer's officers. Previously, the employee had contacted a union about organizing the company's employees and had spoken to several employees about unionizing to improve working conditions.

The administrative law judge found the discharge lawful because the employee was venting his frustrations in making statements which were not made in an organizing context or with an intention to help other employees. Reversing the implicit conclusion that the statements were neither concerted nor protected, the majority found that the statement about unfair treatment of employees was protected because it was directly concerned with employees' working conditions and was concerted because it was not purely personal. They also concluded that the remark about the rumored affair did not constitute conduct so outrageous as to render the otherwise protected activity unprotected. Further, the majority found that the employee's expression of concern for the working conditions of other employees, even if inaccurate, was not expressed in such a way as to render it unprotected. Accordingly, they concluded that the communication to a customer of personally embarrassing information about the employer's officers, made in a context without deliberate intent to impugn the company itself, was not sufficient to deprive the employee of his statutory rights.

Member Zimmerman dissented. He agreed with the administrative law judge, noting that the organizing campaign begun by the employee was secret and that the complaint about other employees' working conditions and the remark about the rumor concerning the employer's officers were obviously not made in furtherance of that campaign, but were personal views not intended to further any employee cause. Accordingly, Member Zimmerman concluded that the remarks did not constitute protected concerted activities and, therefore, the discharge for having made them was not unlawful.

In *Ralston Purina Co.*,[3] the Board adopted, with some augmentation of his analysis, an administrative law judge's finding that the employer violated section 8(a)(1) by issuing letters of reprimand to two employees for preparing, circulating, and delivering to management a petition critical of their foreman. The petition was grounded, at least in part, on a confrontation between the foreman and one of the two employees and on the large number of grievances filed against the foreman within a few weeks' period. The employees were reprimanded the day following delivery of the petition. One employee was cited for the confrontation 4 days

[3] 257 NLRB 601 (Chairman Fanning and Members Jenkins and Zimmerman)

earlier and the other for leaving his work area without permission and being "grossly insubordinate."

The Board held that the petition was protected activity because it was prepared and circulated with full union support and was catalyzed, at least in part, by the actions of a supervisor arguably acting in derogation of a collective-bargaining agreement. Further, it noted that, as in *Dreis & Krump Mfg. Co.* v. *N.L.R.B.*,[4] the petition complemented the contractual grievance procedure. The employees had an apparently intractable dispute with their supervisor and, seemingly frustrated in their efforts to resolve it, chose to use the petition to bring their problem to management's attention. In addition, the petition activity in no way interfered with any ongoing work in the facility.

The Board agreed that the first employee was disciplined for his participation in the petition effort rather than for the conduct cited in the reprimand, which was minimal misconduct for which the employer had not previously issued disciplinary letters. As to the second employee, the letter was unlawful on its face as it was based on conduct protected by the Act. The conduct was characterized as insubordination and leaving the work area when in fact it consisted of asserting a contractual right to refuse an overtime assignment and summoning a steward to assist him. In these circumstances, the Board found it unnecessary to rely on the administrative law judge's finding that the reprimand was a pretext for punishing the employee for his part in the petition.

In *Illinois Bell Telephone Co.*,[5] the employer issued disciplinary warnings to two employees for protesting its overtime policy. The employer imposed a new policy of mandatory overtime following a snow storm which resulted in an increased workload with fewer employees reporting to work. As the collective-bargaining agreement did not specifically cover this type of emergency situation, two employees, both union officials, prepared signs for posting on the bulletin boards, and a leaflet telling employees that overtime was voluntary, and could be refused, and that, if ordered to work overtime, they should ask for a union representative to be present. The leaflet basically protested the employer's alleged change in overtime policy as contrary to past practice and the collective-bargaining agreement.

The Board agreed with the administrative law judge's finding that the activity of the two employees was both protected and concerted and that the employer violated Section 8(a)(1) by imposing discipline. In response to the employer's argument that the employees' activity lost the protection of the Act because they advocated an unprotected partial strike, the Board noted that while the Act's protection may be lost when employees are induced to engage in a work stoppage that is part of a plan or pattern

[4] 544 F 2d 320 (7th Cir 1976), enfg 221 NLRB 309 (1975)

[5] 255 NLRB 380 (Chairman Fanning and Members Jenkins and Zimmerman)

of intermittent action which is inconsistent with a genuine strike, in this case, such an interference was not warranted. It also noted that even though the leaflet stated at one point that its authors believed that those employees who refused the mandatory overtime were "right," any implication that they thereby were encouraging employees to refuse such overtime was dispelled by the unequivocal statement in each notice and in the leaflet that employees who are ordered to work overtime should demand to see their union representatives. Further, the record contained no evidence of any refusals to work overtime and the single statement in the leaflet to the effect that certain employees were right in refusing overtime could not reasonably be expanded as "sounding a clarion call" for future recurrent partial work stoppages.

In *Tamara Foods*,[6] a Board panel, noting that the Act protects the rights of employees to strike over an honest belief that unsafe and unhealthy working conditions exist, reversed the administrative law judge and found that the employer violated section 8(a)(1) by unlawfully threatening to discharge and then discharging 11 employees for striking over such working conditions.

To deal with occasional ammonia leaks from the refrigeration system in its frozen food plant, the employer unilaterally imposed a rule which permitted employees to leave their work station and remain in the lunchroom, on full pay, until the condition was corrected. However, clocking out before the end of the shift was a dischargeable offense. On the day in question, the employees vacated their work area three times when the fumes became unbearable. Each time management assured them that the problem had been corrected and each time the employees obeyed the order to return to the production area. However, when the fumes continued to persist, all employees went again to the designated plant locations and, when many of the employees began to clock out, all employees were threatened with discharge if they left work and those who did so were discharged.

The panel found the walkout to be not only clearly concerted activity, but also protected. The walkout was caused by a concern, made known to the employer, about the health effects of the fumes. Rejecting the administrative law judge's apparent view that the walkout was unprotected because it was in derogation of a plant rule which also provided an adequate procedure, going to the lunchroom, to deal with the problem, the panel concluded that the unilateral promulgation of a rule, particularly in the absence of a labor oranization representing the employees or a collective-bargaining agreement containing a "no-strike" clause, was insufficient to deprive employees of a statutory right. Further, it found that employees may not be penalized for exercising their statutory rights

[6] 258 NLRB 1307 (Members Fanning, Jenkins, and Zimmerman)

no matter how reasonable an alternative is provided them by their employer.

Finally, the panel rejected the administrative law judge's conclusion that the walkout was unprotected because the plant had not been found in violation of any Occupational Safety and Health Administration regulations. Rights guaranteed to employees under the National Labor Relations Act are distinct from and not subordinate to the Occupational Safety and Health Act. Any contrary holding would not only seriously diminish employee rights under the Act, but would constitute an abdication of the Board's responsibilities assigned by Congress.

In *City Disposal Systems*,[7] the Board adopted the adminstrative law judge's finding that the employer violated section 8(a)(1) by discharging a driver for refusing to drive a vehicle which he honestly believed to be unsafe. The administrative law judge concluded that the refusal constituted concerted protected activity, relying on *Roadway Express*,[8] in which the Board found that a driver who refused to drive what he believed to be an unsafe vehicle, where the collective-bargaining agreement included safety provisions, was engaged in concerted protected activity because he was attempting to compel adherence to the contract and, therefore, was acting in the interest of all employees covered by the contract. Here, the employee asserted a right under the contract which stated that it would not be a violation of that contract if an employee refused to operate unsafe equipment, unless such refusal is unjustified. The administrative law judge found, citing *United Parcel Service*,[9] that the employee's belief in the truck's unsafe condition was honestly held as it was based on his personal observations 2 days prior to the refusal to drive. The Board specifically agreed with the administrative law judge's conclusion that the employee's refusal was concerted protected activity and respectfully declined to follow the Sixth Circuit's opinion in *Aro* v. *N.L.R.B.*,[10] in which the court disagreed with the Board in similar circumstances.

In *Pacemaker Yacht Co., a Div. of Mission Marine*,[11] a Board panel majority held that the employer's termination of 126 employees who struck to protest the failure of the union's health and welfare fund to fulfill its obligations under the contractual medical insurance program, as well as the employer's refusal to reinstate 26 of the strikers on the ground that they were strike instigators, was not encompassed within, and therefore not protected by the broad no-strike clause of the collective-bargaining agreement.

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[7] 256 NLRB 451 (Chairman Fanning and Members Jenkins and Zimmerman)

[8] 217 NLRB 278 (1975), enfd 532 F 2d 751 (4th Cir 1976)

[9] 241 NLRB 1074 (1979)

[10] 596 F 2d 713 (1979), denying enforcement in 227 NLRB 243 (1976)

[11] 253 NLRB 828 (Chairman Fanning and Member Jenkins, Member Penello dissenting) See also *Pacemaker Yacht Co* v *N L R B* , enforcement denied 663 F 2d 455 (3d Cir 1981)

Pursuant to the collective-bargaining agreement, the employer was obligated to make contributions on behalf of its employees into the union's health and welfare fund which contracted with an independent insurance carrier to pay employee medical benefits. For some unknown reason, the fund stopped paying premiums to the insurance underwriter which thereupon suspended benefits payments to covered employees. It was employee dissatisfaction over this matter which led to the strike.

The majority held that the no-strike pledge of the collective-bargaining agreement, relied on by the employer, did not constitute a clear and unequivocal waiver of the employees' protected right to strike over the actions of a third party, such as the fund, which affect the terms and conditions of employment. They stated that the Board and the courts have, on numerous occasions, reiterated the longstanding principle that a waiver of the basic statutory right to strike over a particular subject matter will not be readily inferred merely from a broad, general no-strike clause in a collective-bargaining agreement. Such a waiver must be shown to be clear and unmistakable by explicit language and, absent explicit waiver language, must be shown by probative extrinsic evidence. The majority cited *Union of Operating Engineers, Local Union 18 (Davis-McKee)*,[12] where the Board held that to effect a waiver the parties must have discussed the question and such discussion must amount to "unequivocal bargaining history evidencing an intent to waive the right."

Here, the majority held that the union could not have made a clear and unmistakable waiver of the employees' right to strike to put pressure on the fund since the parties never foresaw the possibility of a strike over terms and conditions of employment under the control of a third party.

Member Penello's dissent relied on his separate position in *Davis-McKee* in which he stated that unrestricted no-strike clauses, such as that involved here, should be read to forbid sympathy strikes as well as direct strikes, unless extrinsic evidence indicated that the parties to the contract intended otherwise. Accordingly, he would find that the clause in this case should be read to prohibit the strike engaged in by the company's employees, noting that there was no extrinsic evidence to show that the parties intended the no-strike clause to mean anything other than what it said.

### 2. Representation by Stewards at Interviews

Section 9(a) of the Act, which provides for exclusive representation of employees in an appropriate bargaining unit, contains the following proviso: "*Provided*, That any individual employee or a group of employees

[12] 238 NLRB 652 (1978)

shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment."

In two cases during the 1975 report year — *Weingarten* and *Quality* [13] — the Supreme Court upheld the Board's determination that section 7 of the Act gives an employee the right to insist on the presence of his union representative at an investigatory interview which he reasonably believes will result in disciplinary action. The Court concluded that the Board's holding "is a permissible construction of 'concerted activities . . . for mutual aid or protection' by the agency charged by Congress with enforcement of the Act . . . ."[14]

During the report year, the Board had occasion to apply the principles set forth in *Weingarten* and *Quality* in a number of cases.

In *Pacific Gas & Electric Co.*,[15] a Board panel considered whether an employee, in exercising his section 7 right to a representative at an investigatory interview, may refuse the assistance of a union representative already on the premises and insist on the presence of someone else who is not readily available and who does not normally represent employees at that location. The employee who was employed at the onsite facility, requested representation at an investigatory interview with two supervisors. Following the established practice that onsite stewards handled grievances of onsite employees, the supervisors brought in the other onsite steward at the location. Objecting to that steward because he was friendly with one of the two supervisors and was under consideration for a promotion within the bargaining unit, the employee insisted on the presence of an offsite steward, who worked at a separate location, which was 20 minutes away from the site. When the employee refused to answer questions without the second steward, he was suspended.

The panel majority, relying on *Coca-Cola Bottling Co. of Los Angeles*,[16] held that the employer did not violate the Act by refusing to grant the employee's request that a specific union representative be present and by suspending the employee for refusing to answer questions without the presence of that representative. In its view, the focus of

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[13] *N L R B* v *Weingarten*, 420 U S 251, *Intl Ladies' Garment Workers' Union, Upper South Dept , AFL-CIO* v *Quality Mfg Co* , 420 U S 276

[14] *Weingarten, supra* at 260 In that case, the Supreme Court found that the right to union representation inheres in the sec 7 right to act in concert for mutual aid and protection, arises only in situations where the employee requests representation, applies only to situations where the employee reasonably believes the investigation will result in disciplinary action, may not be exercised in a manner which interferes with legitimate employer prerogatives and the employer need not justify its refusal, but may present the employee with a choice between having the interview without representation or having no interview, and imposes no duty upon the employer to bargain with any union representative attending the investigatory interview

[15] 253 NLRB 1143 (Members Penello and Truesdale, Member Jenkins dissenting)

[16] 227 NLRB 1276 (1977), 42 NLRB Ann Rep 80–81 (1977)

*Weingarten* is on the employee's right to the presence of a union representative designated by the union to represent all employees, and not on the presence of a specific individual sought by the employee. The majority found that due to the distant offsite location, the second steward was not as equally available as the onsite steward. Since the union's assignment of stewards at both locations reflected its concern that representation be available at both work sites, the majority further concluded that supporting the employee's action would in effect nullify the union's choice as to who would be a shop steward and thus complicate the already complex scheme of *Weingarten* rights.

Members Jenkins, dissenting, concluded that, for the reasons stated in Member Fanning's and his dissent in *Coca-Cola*, the employee was privileged to refuse to participate in the interview without the presence of the second steward he requested and would have found that the employer violated section 8(a)(1) of the Act by forcing the employee to attend the interview either without representation or accompanied by a steward who, for good reasons, he did not want. The dissenter found that the employee had understandable concern about the first steward's willingness to represent him fully and vigorously since the latter was a friend of one of the supervisors involved and had told the employee several days earlier that he "did not want to get involved in a controversial issue" because he was under consideration for a promotion. Member Jenkins also pointed out that the union's business representative had told the employee that the second steward was the representative selected for him by the union, and that obtaining the second steward from the offsite location would not have burdened the employer. In his view, the majority's decision sanctioned an attempt by the employer to control who would represent the employee at the disciplinary interview. Accordingly, Member Jenkins would have found that the employer violated section 8(a)(1) of the Act by disciplining the employee for refusing to answer questions at the interview.

In *U.S. Postal Service*,[17] a superintendent requested a steward to get another employee and meet him in the front office. When the steward refused to go without being told the reason for the meeting, the superintendent ordered him, under threat of suspension, to attend and to represent the employee. The steward then attended the meeting, which was for the purpose of presenting an employee with a notice of suspension pursuant to an agreement between the employee and the union.

A Board panel found the superintendent's threat violated section 8(a)(1) of the Act, holding that, although a union has a statutory obligation to represent all employees fairly and may be liable under section 8(b) if it fails to fulfill this duty, an employer cannot dictate the manner in which a

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[17] 258 NLRB 1414 (Members Fanning, Jenkins, and Zimmerman)

union carries out its duty. The panel found that ordering the steward to represent the employee interfered with the steward's section 7 rights to engage or not engage in union activity. The panel also noted that the collective-bargaining agreement did not obligate the steward to represent an employee at the employer's request at a meeting such as was planned in this case, and that since the steward was asked to attend the meeting in that capacity, there was no issue raised as to the right of an employer to order an employee to attend a meeting as an employee.

### 3. Discipline of Union Stewards

In *Miller Brewing Co.*[18] the administrative law judge, relying on the Board's decisions in *Precision Castings*,[19] *Gould*,[20] and *Indiana & Michigan Electric*,[21] found that the employer violated section 8(a)(1) and (3) of the Act by discharging two union stewards who had participated in a walkout in violation of a contractual no-strike clause, while other employees who walked out were issued letters of reprimand and 3-day suspensions. In affirming the administrative law judge's findings, the majority of a Board panel found no merit in the employer's exceptions based on the Seventh Circuit's refusal to enforce the Board's order in *Indiana & Michigan Electric* as it did not read the court's decision as placing absolute liability on union stewards and further found that the instant case was factually distinguishable. The majority noted that the court held that the employer acted lawfully in disciplining five union officials who joined a walkout in violation of a contractual no-strike clause more severely than the other strikers, reasoning that union officials have a higher responsibility than other employees not to engage in conduct which violates their duties as employees and repudiates their responsibilities as union officials. Therefore, the court concluded that the employer was "entitled to take into account the union official's greater responsibility and hence greater fault."[22] The majority found that, by contrast, here the stewards involved attempted to restore order, to persuade the employees to remain on the job, to seek assistance from others in the union, and to apprise the employer truthfully about what was happening. Thus, the leadership the stewards exercised was not in causing the walkout, but in a futile attempt to quell the rising tide favoring the walkout. Based on these findings, the majority concluded that the Seventh Circuit's characterization of a steward's "great responsibility and hence greater fault" was inapplicable.

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[18] 254 NLRB 266 (Chairman Fanning; Member Jenkins, concurring, Member Penello, dissenting)

[19] *Precision Castings Co , Div of Aurora Corp , a wholly owned Subsidiary of Allied Products Corp* , 233 NLRB 183 (1977), see 43 NLRB Ann Rep 96 (1978)

[20] *Gould Corp* , 237 NLRB 881 (1978), enforcement denied 612 F 2d 728 (3d Cir 1979)

[21] *Indiana & Michigan Electric Co* , 237 NLRB 226 (1978), enforcement denied 599 F 2d 227 (7th Cir 1979)

[22] 599 F 2d at 232

In his dissent, Member Penello reiterated the view expressed in his dissent in *Gould* and concurring opinion in *Midwest Precision* [23] that an employer does not violate the Act by disciplining union officials more severely than other employees for breaching their duty to enforce the contract by participating in a strike in violation of a contractual no-strike provision. He also found unconvincing the majority's attempts to distinguish the facts in this case from those in *Indiana & Michigan Electric*. In Member Penello's view, although the stewards here took some steps to prevent the walkout and to end it after they were unsuccessful in forestalling it, when they ultimately walked out with the striking employees, and participated in the illegal strike, they effectively demonstrated their tacit approval of the employees' strike, undermining the union's contractual no-strike commitment. Finally, he stated that, consistent with the position set forth in his dissent in *Metropolitan Edison Co.*,[24] he would find that, regardless of the actions taken to end the strike, the stewards nevertheless breached their primary responsibility as union officials to enforce the contract by participating in a strike which violated the no-strike clause of the contract. Therefore he would find the employer lawfully could hold the stewards to a higher standard of conduct and discipline them more harshly than the other employees.

In *South Central Bell Telephone Co.*,[25] the employer suspended five union stewards who participated in an unprotected sickout in violation of a contractual no-strike clause for longer periods than other employees who also participated. The majority of a Board panel found that this action violated section 8(a)(1) and (3) of the Act since the additional discipline was based soley on the steward's status as union representatives. The stewards had joined the great majority of the other employees in a 2-day sickout. There was, however, no evidence that they urged support of, or sought to induce the employees to participate in, the work stoppage. In finding the employer acted unlawfully, the majority reaffirmed the Board's prior holdings in *Bethlehem*,[26] *Gould*, and *Precision Castings* that, where a steward has not instigated or led an unprotected work stoppage, but merely participated along with other employees, he cannot be disciplined for lack of action as a steward in failing to take steps to terminate the work stoppage.

Member Penello, dissenting, adhered to the analysis of the law expressed in his dissent in *Gould* and concurring opinion in *Midwest Precision* and concluded that an employer may lawfully hold a union official to a higher standard of conduct than other employees because of the official's responsibilities under the contract. He noted that there was no evidence

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[23] *Midwest Precision Castings Company*, 244 NLRB 597 (1979)

[24] 252 NLRB 1030 (1980)

[25] 254 NLRB 315 (Chairman Fanning and Member Jenkins, Member Penello dissenting)

[26] *Bethlehem Steel Corp* , 252 NLRB 982 (1980)

the stewards here ever made any attempt to end the work stoppage.

In *Cook Paint & Varnish Co.*,[27] the Board, on remand from the Circuit Court of the District of Columbia,[28] held that the employer violated section 8(a)(1) of the Act when, under threat of discipline, it questioned a steward concerning a grievance involving the discharge of an employee in which the steward was directly involved in a representation capacity and which was then pending arbitration and, in addition, requested the steward to submit written notes relating to the grievance. The steward ultimately agreed to answer questions under protest, but refused to produce the notes because they were a part of his union notebook. However, he did send the notes to the arbitrator.

In the Board's view the employer's interview of the steward, in the circumstances of the case, constituted an unwarranted infringement on protected union activity in violation of section 8(a)(5). It found that the steward became involved in the matter solely as a result of his status as a steward and continued to act in a representational capacity throughout the grievance process. The Board further found that the employer's attorney sought to probe into the substance of conversations between the steward and the employee, and the scope of the probing was highlighted by the order to turn over notes which had been taken in his capacity as steward. The Board held such consultation between an employee potentially subject to discipline and his union steward constitutes protected activity "in one of its purest forms" and that allowing an employer to compel disclosure of this type of information under threat of discipline restrains employees in their willingness to candidly discuss matters with their chosen statutory representatives, inhibits stewards in obtaining needed information, and casts a chilling effect on all employees and stewards who seek to candidly communicate over matters involving potential or actual discipline. Finally, the Board emphasized that its ruling did not mean that all discussions between stewards and employees are confidential and protected by the Act, or that stewards are, in all instances, insulated from employer interrogation. Rather it found here that, because of the stewards' representational status, the scope of the employer's questioning, and the impingement on protected activities, the employer's interview of the steward was unlawful.

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[27] 258 NLRB 1230 (Members Fanning, Jenkins, and Zimmerman)

[28] The majority of a Board panel originally adopted the administrative law judge's finding that the employer violated sec 8(a)(1) by threatening a union steward with discipline for refusing to submit to questioning by the employer and to turn over written material concerning an incident involving another employee as to which arbitration had been invoked (246 NLRB 646 (1979) ) The panel also found that, as the steward was entitled to protection of the Act as an employee, it was unnecessary to pass on whether his role as a union steward entitled him to additional protection (246 NLRB 646 at fn 2 ) The court, noting that very different considerations may be relevant in considering the legality of an interview of a union steward that are not present in the case of employees generally, remanded the case to the Board for consideration of the question of whether the employer's interview of the steward constituted a lawful investigatory interview or an unlawful prying into protected union activities

### 4. Limitations on Activities on Company Property

In *T.R.W. Bearings Div., a Div. of T.R.W.*,[29] the Board reconsidered the presumptive validity or invalidity of rules prohibiting employees from soliciting during "working hours" and during "work time" or "working time." The Board affirmed an administrative law judge's decision that the employer violated section 8(a)(1) by prohibiting solicitation or the distribution of literature during "working hours." He relied on the general proposition, announced in *Essex Intl.*,[30] that the rule was presumptively invalid as it was susceptible to the interpretation that such activity is prohibited during all business hours, including employees' nonworking mealtimes and breaktimes, rejecting, however, the employer's contention that it had rebutted the presumptive invalidity of the rule by its prior and subsequent publications of a rule, presumptively valid under *Essex*, prohibiting solicitations during "working time" so that it was clear to employees that the "working hours" prohibition did not preclude them from soliciting and distributing when not actually engaged in work.

While agreeing with the administrative law judge that the employer had not successfully rebuted the presumptive invalidity of the "working hours" rule in question, the Board did so, not on the particular circumstances outlined by the administrative law judge, but on its "rejection of the principle espoused in *Essex International*, that prohibits against solicitation and distribution during 'working time' or 'work time' are presumptively valid."

The majority in *Essex* had seen a "clear distinction" between the terms "working hours" and "working time." The former "connoted the period of time from the beginning to the end of a workshift, including breaktime and mealtime," whereas the latter "connoted only the period of time that is spent in the performance of actual job duties, thereby, excluding breaktime and mealtime from its scope." While agreeing to the *Essex* dissent of Members Fanning and Jenkins, the Board however, saw no "inherent meaningful distinction between the terms 'working hours' and 'working time' when used in no-solicitation rules," noting that both terms are, without more, ambiguous, and the risk of such ambiguity must be borne by the promulgator of the rule. As pointed out in the *Essex* dissent, "an employer who does not intend that its employees misinterpret rules against solicitation during 'working time' or 'working hours' . . . need only incorporate in the rule itself a clear statement that the restriction on organizational activity contained in the rule does not apply during break periods and mealtimes, or other specified periods during the workday when employees are properly not engaged in performing their work tasks." Accordingly, the Board concluded that rules prohibiting solicita-

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[29] 257 NLRB 442 (Chairman Fanning and Members Jenkins and Zimmerman)
[30] 211 NLRB 749 (1974)

tion during "work time" or "working time," without further clarification, are, like rules prohibiting such activity during "working hours," presumptively invalid. To the extent *Essex* and subsequent cases relying on it have held that rules prohibiting solicitation or distribution during "work time" or "working time" are presumptively valid, those cases were overruled.

During the past report year, the Board considered the validity of no-solicitation and no-distribution rules in health care institutions in three cases reported below.

In *Eastern Maine Medical Center*,[31] the Board, in agreement with the administrative law judge, found the employer's no-solicitation rule to be overly broad on its face, and therefore presumptively invalid, as it was not confined to immediate patient care areas as required by the Board standard set forth in *St. John's Hospital & School of Nursing*,[32] and approved by the Supreme Court in *Beth Israel Hospital* v. *N.L.R.B.*[33] Further, since the employer failed to establish that union solicitation in working areas of the hospital, which are not immediate patient care areas, would either disrupt patient care or disturb patients, the Board affirmed the administrative law judge's finding that the rule, as promulgated, violated section 8(a)(1). It reached this conclusion after reviewing the record in light of the above cases and the Supreme Court's opinion in *N.L.R.B.* v. *Baptist Hospital*,[34] where the Supreme Court "cautioned the Board to take into account the medical practices and methods of treatment incident to the delivery of patient care services in a modern hospital . . . and suggested that, in reviewing the scope and application of its presumption, the Board bear in mind that patient care areas may vary depending upon the circumstances of the particular institution involved."

In addition, the Board affirmed the administrative law judge's finding that the employer violated section 8(a)(1) by applying its no-solicitation rule to its second floor waiting lobby from which it expelled two off-duty nurses who were soliciting other employees to sign union membership cards. The lobby was open to the general public and was used by persons on breaks from adjacent conference rooms, by nurses waiting to begin their shifts, persons waiting for outpatients, people who transported patients to the hopsital, and persons awaiting news about patients undergoing surgery. The Board found no justification for a ban on solicitation in that lobby, contrary to the employer's contention that it was necessary to avoid disruption of health care operations or disturbance of patients. The employer also asserted that members of a patient's family anxiously awaiting surgery results are deserving of greater protection than the general public. After a review of the record in light of *Beth*

[31] 253 NLRB 224 (Chairman Fanning and Members Jenkins and Penello)
[32] 222 NLRB 1150 (1976)
[33] 437 U S 483 (1978)
[34] 442 U S 773 (1979)

*Israel*, *Baylor University*,[35] and *Baptist Hospital*, the Board concluded, contrary to the employer, that the Supreme Court's special concern for patient welfare, a concern shared by the Board, did not compel that a similar protection from organizational soliciting be afforded members of the public, not themselves patients, and that solicitation there would not adversely affect patient care or disturb patients.

*Central Solano County Hospital Foundation, d/b/a Intercommunity Hospital*,[36] the Board considered, in the context of a representation case, the issue of whether a presumptively valid no-solicitation rule, tracking the Board language of its general standard set forth in *St. John's Hospital*, may lawfully be applied to certain areas of a moderately small, acute care hospital and whether the rule was otherwise unlawfully applied. Almost all areas of the hospital were exposed to the presence of patients or their visitors at various times, and the employer's rule prohibited solicitation or distribution of literature at any time for any purpose in immediate patient care areas "such as patient rooms, operating rooms, and places where patients receive treatment, such as x-ray and therapy areas." In considering whether the employer lawfully applied its rule to the halls and corridors, the lobby and waiting room, and the nurses stations, the Board, guided by the Supreme Court's opinion in *Baptist Hospital*, concluded that the employer was justified in banning solicitation in the specific areas in question because, as in *Beth Israel*, it had been shown that solicitation would tend to directly affect patient care by disturbing patients or disrupting health services.

With respect to the halls and corridors adjacent to patient rooms, operating rooms, and x-ray rooms, the Board considered them extensions of immediate patient care areas and therefore validly covered by the ban because they accommodated occasional patient overflow, were used to store vital medical equipment, and were regularly used by patients for various therapy procedures and by outpatients as waiting areas. On the other hand, the Board did not extend the presumption of the validity of the ban on solicitation to the central corridor linking the halls adjacent to patient rooms with the corridors adjacent to the operating and x-ray rooms since it was not adjacent to immediate patient care areas and was not in that sense an extension of such areas. However, the Board found that the employer justified the extension of the ban on solicitation in the central corridor since patients were regularly moved on stretchers through that corridor en route to treatment, diagnostic evaluation, and operations and en route from postoperative recovery rooms back to patient rooms. Additionally, patients regularly used the central corridor for physical therapy.

With respect to the main entrance lobby and the waiting room used by

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[35] *Baylor University Medical Center* v *N L R B*, 439 U S 9 (1978)

[36] 255 NLRB 468 (Chairman Fanning and Members Jenkins and Zimmerman)

patients waiting for admission or for treatment and by visitors, the Board concluded that, although the lobby and waiting room were not sufficiently related to patient care, the employer justified the ban on solicitation as necessary to avoid disruption of health care operations or disturbance of patients. These areas, unlike the lobby in *Eastern Maine Medical Center, supra*, but like the small sitting rooms in *Baptist Hospital, supra*, were used by the staff to take medical histories and for conferring with the family and friends of patients.

Because nurses stations vary in their physical layouts from hospital to hospital, it is inappropriate to find bans on solicitations in these areas to be presumptively valid. In concluding that the ban on solicitation was justified herein, the Board found it significant that the nurses stations were unenclosed so any loud conversations could be heard by patients in their rooms and that some employees were always on duty and would be subject to distraction if solicitation were permitted.

In light of these findings and the fact that the employer did not have an employee cafeteria or other large area for employees, the Board found that the only areas in which employee solicitation must be permitted were the relatively small breakrooms, at least one of which was centrally located and was used by employees throughout the hospital. It concluded that those rooms presented a viable, albeit limited, channel of communication by employees for organizational purposes.[37]

In *Presbyterian/St. Luke's Medical Center*,[38] a Board panel adopted an administrative law judge's findings that each of the employer's three no-solicitation rules, promulgated and enforced sequentially, violated section 8(a)(1). The first rule prohibited, *inter alia*, solicitation in patient care and public areas, including the "reception area, hallways, stairways, the coffee shop and the like." While a hospital may lawfully prohibit solicitation in immediate patient care areas, employer prohibition against solicitation in other areas is presumptively invalid, absent a showing by the hospital that patient care would be disrupted. Because the employer here offered no justification for prohibiting solicitation in the "coffee shop and the like," the administrative law judge concluded that the presumptively invalid rule, as maintained and enforced, was fatally overbroad.

The employer's second rule limited such employee solicitation to areas to which patients did not have access, banning such areas as "hallways, stairs, waiting rooms, elevators, and patients' and visitors' lounges," but specifically allowed solicitation in the cafeteria or coffeeshop. In support for the broader prohibited area which extended beyond immediate patient care areas where a presumption of validity only would apply, the employer contended that employee organizational solicitation disrupts

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[37] The Board found objectionable a supervisor's telling two off-duty employees to leave the breakroom where one of them had been discussing the union

[38] 258 NLRB 93 (Members Fanning, Jenkins, and Zimmerman)

care of patients who are likely to be stressed through associating union activity with strikes and thus with abandonment by the staff. The administrative law judge found this argument sufficient to justify a ban on solicitation in areas used by patients in their capacity as patients; namely, the hallways, elevators, and stairways utilized for the movement of patients and emergency equipment. However, as to those areas open to the public and also used by ambulatory patients, he found that the employer did not introduce evidence to overcome the presumption of illegality attaching to a ban on solicitation outside immediate patient care areas and therefore concluded that the second rule was overbroad and violative of section 8(a)(1) as applied to areas such as the main entrances, lounges, stairs, and corridors not dedicated to patient care.

The employer's third rule stated in part that "Naturally *any* activity which is disruptive to the care of the patient or atmosphere of patient care will not be tolerated." The administrative law judge held that this rule violated section 8(a)(1) because it contained ambiguous language which may be misinterpreted by the employees in such a way as to cause them to refrain from exercising their section 7 rights, even if the rule were interpreted lawfully by the employer in practice.

In *Montgomery Ward & Co.*,[39] the Board agreed with the administrative law judge that the employer had violated section 8(a)(1) by discriminatorily enforcing its no-solicitation rule against nonemployee union organizers in the public cafeteria within its department store. However, it went further and decided that even a nondiscriminatory no-solicitation rule is unlawfully broad if applied in a manner to prohibit nonemployee union organizers from meeting with off-duty employees in a department store public cafeteria, so long as they conduct themselves in a manner consistent with the purpose of the restaurant. The administrative law judge had declined to make this determination, finding the issue to be theoretical only. Contrary to the administrative law judge and in agreement with the General Counsel, the Board decided the issue because the question was not theoretical, and because a statutory right was involved.

In making its determination, the Board noted that solicitation by nonemployee union organizers is allowed in public restaurants as long as they do not move from table to table, try to distribute literature, speak to on-duty employees, solicit restaurant employees, or in any other way create a disturbance. Since the employer's rule herein was an absolute prohibition of all solicitation in all areas of the store and therefore failed to take into account the distinction between a public restaurant and other sales areas, recognized earlier in *Montgomery Ward & Co.*,[40] the Board concluded that the rule in this case was impermissibly broad and violated section 8(a)(1) of the Act.

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[39] 256 NLRB 800 (Chairman Fanning and Members Jenkins and Zimmerman)

[40] 162 NLRB 369 (1966)

## 5. Questioning of Employees by Attorneys

In the 1964 case *Johnnie's Poultry Co. & John Bishop Poultry Co., Successor*,[41] the Board held that an employer may interrogate employees on matters concerning their section 7 rights for the purpose of either verifying a union's claim of majority status or to prepare a defense for use in an unfair labor practice trial. In balancing this employer privilege against the "inherent danger" to employees of coercion, the Board requires that:

> [T]he employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. [146 NLRB at 775.]

During the past year the Board addressed the applicability of the *Johnnie's Poultry* safeguards in two cases. In *W. W. Grainger*,[42] the complaint alleged, *inter alia*, that an employee had been discharged in violation of section 8(a)(3). Before the hearing, the employer's attorney and a management official showed up unannounced and uninvited at the employee's apartment, and, after identifying themselves, the attorney asked if he could question the employee about his union activities. The employee refused although the attorney persisted in his efforts, pointing out that most witnesses were willing to talk to him. But, upon the employee's continued refusal to answer, the attorney and the management official left. Neither visitor told the employee that he had no obligation to talk to them nor that there would be no reprisals if he refused to answer questions.

In dismissing the 8(a)(1) interrogation allegation, the administrative law judge, while noting that a discharged employee seeking reinstatement in a Board proceeding is a potential employee of his ex-employer, reasoned that an employer's coercive power over an alleged discriminatee is considerably less than that available for use against present employees or applicants for employment. The Board majority, in finding an 8(a)(1) violation, disagreed with the administrative law judge's holding that, given this difference, "the full panoply of the *Johnnie's Poultry* requirements ought not to apply" to the interrogation of an alleged 8(a)(3) discriminatee. They recognized that an employer's power to coerce through discharge, threat of discharge, or refusal to hire is clearly more

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[41] 146 NLRB 770 (1964)

[42] 255 NLRB 1106 (Chairman Fanning and Member Jenkins, Member Zimmerman dissenting)

imminent for a current employee or an applicant than it is for a discharged employee who *may* be reinstated. The majority, however, did not view this distinction as justifying any diminution in the *Johnnie's Poultry* safeguards. They pointed out that while the questions asked of the employee were on a permissible subject, the circumstances of the questioning, despite the absence of threats or promises, might reasonably be said to have a tendency to coerce an individual in the free exercise of his section 7 rights. Further, the majority rejected the administrative law judge's apparent intention to excuse the employer's failure to extend the *Johnnie's Poultry* safeguards to the employee because the purpose of the questioning was self-evident and no threats or promises were made. Instead they held that the employer here had an affirmative duty, under *Johnnie's Poultry*, to inform the employee that it was preparing an unfair labor practice defense and that no reprisals would be forthcoming.

Member Zimmerman dissented. He found no justification or statutory authority for an extension of the *Johnnie's Poultry* protections to cover employees who are no longer employed by the employer and whose discharge has been found to be lawful. He found that the majority's premise that an employer retains coercive power over a discharged alleged discriminatee who might be reinstated pursuant to a future Board order to be too speculative to support an 8(a)(1) finding. However, he pointed out that if the employer had violated the Act by discharging the employee who would then be entitled to reinstatement, a different question might arise.

In *Mineola Ford Sales, Ltd.*,[43] a Board panel considered another case in which an employer's attorney failed to extend the *Johnnie's Poultry* safeguards during the questioning of an alleged discriminatorily discharged employee. The attorney sent a letter requesting detailed information concerning the discharged employee's efforts to obtain interim employment and stating that the failure to comply with the request would be brought to the administrative law judge's attention. The employee did not respond. The administrative law judge concluded that the employer had violated the Act because the attorney did not advise the former employee that his participation was voluntary, did not assure him that no reprisals would be taken, and did not make the inquiry in a context free of employer hostility to union organization. Accordingly, he found an 8(a)(1) violation.

The panel adopted the administrative law judge's finding that the employee's discharge was not unlawful, but found, contrary to the administrative law judge, that the request for information did not constitute a violation of section 8(a)(1). It pointed out that the inquiry was not about union or other protected concerted activities, but rather about

[43] 258 NLRB 406 (Members Fanning, Jenkins, and Zimmerman)

matters of legitimate concern to the employer in connection with its possible backpay liability. The panel distinguished this case from *W. W. Grainger*, discussed above, where the interrogation of an alleged discriminatee clearly related to the former employee's union activity while working for the company. Since in this case the alleged unlawful interrogation did not pertain to the employee's involvement in conduct protected by Section 7 of the Act, the panel dismissed the 8(a)(1) allegation. Member Zimmerman concurred in this result for the reasons stated in his *Grainger* dissent.

## B. Employer Discrimination in Conditions of Employment

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

In *Giddings & Lewis*,[44] the Board found, contrary to the administrative law judge, that an employer who promulgated seniority rules which favored laid-off striker-replacement employees over unreinstated strikers had violated section 8(a)(3) and (1) of the Act. In finding that no violation had occurred, the administrative law judge concluded that the Board's decision in *Laidlaw Corp.*[45] was not applicable and relied instead on the Board's decision in *Bancroft Cap Co.*[46] which he interpreted to hold that unreinstated strikers do not have a statutory right to recall ahead of laid-off replacements who have a reasonable expectation of recall. The Board, however, found, contrary to the administrative law judge, that the facts in *Bancroft* were distinguishable from those in the instant case and that the Board's decision in *Bancroft* did not permit an employer to escape its *Laidlaw* obligation by merely stating that laid-off employees have a reasonable expectation of recall. Instead, the Board found that the facts in the instant case more closely resembled those in *Transport Co. of Tex.*,[47] where an employer laid off recalled economic strikers, while retaining the replacements and nonstrikers and where the employer was found to have violated the Act because the selection of strikers for layoff placed them in a subordinate status solely because they had engaged in a strike.

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[44] 255 NLRB 742 (Chairman Fanning and Members Jenkins and Zimmerman)
[45] 171 NLRB 1366 (1968), enfd 414 F 2d 99 (7th Cir 1969), cert denied 397 U S 920 (1970)
[46] 245 NLRB 547 (1979)
[47] 177 NLRB 180 (1969)

Thus, the Board found no real difference between the employer's treatment of unreinstated strikers in the instant case and the employer's treatment of the former strikers chosen for layoff in *Transport Co. of Tex*. Both actions amounted to a grant of superseniority to replacements as prohibited by *Erie Resistor*,[48] or treating strikers as new employees as the employer did in *Laidlaw*. Here, the Board noted that, in instituting its policy, the employer had, in effect, set up two unequal classes of employees with respect to recall rights, separated only on the basis of whether or not they participated in a strike and that such seniority policy was inherently discriminatory.[49] As the employer had not advanced a legitimate and substantial business justification in support of its policy, said policy constituted an unlawful grant of superseniority to laid-off nonstrikers and replacements, giving them unlawful preference over unreinstated strikers in the filling of job vacancies in violation of section 8(a)(1) and (3) of the Act.

In *Empire Pacific Industries*,[50] the issue before the Board panel was whether an employer violated section 8(a)(3) and (1) of the Act by granting all of its employees, except those represented by the union, a cost-of-living wage increase. The administrative law judge had found such an implementation of the cost-of-living wage increase for all employees except those represented by the union was inherently destructive of employee rights and thus violated section 8(a)(3) and (1) of the Act. The panel, however, found otherwise. With respect to the alleged violation of section 8(a)(1), the panel, while noting it was unlawful for an employer to implement such a benefit for unrepresented employees while refusing to bargain with the union over the benefit, found that the evidence in this case clearly established that the employer had bargained with the union over the implementation of the benefit for employees that the union represented. Accordingly, it found that the employer did not violate section 8(a)(1).

With respect to the 8(a)(3) allegation, the panel pointed out that, under Board precedent, the withholding of a change in wages, hours, or working conditions from represented employees that is provided to unrepresented employees is not violative of section 8(a)(3) of the Act, absent proof of discriminatory motive. In this regard, it noted that (1) the parties had stipulated that witnesses for the employer would testify that the exclusion of unit employees from the cost-of-living wage increase was not designed to encourage those employees to reject the union or support decertification of the union; (2) there was no evidence to refute this stipulated testimony; and (3) no independent evidence was offered to

[48] *N L R B* v *Erie Resistor Corp*, 373 U S 221 (1963)

[49] The Board panel pointed out that it was not holding that the employer was required to give preference to strikers or to place nonstrikers and replacements in a subordinate position with respect to recall rights

[50] 257 NLRB 1425 (Members Fanning, Jenkins, and Zimmerman)

prove that the employer's motive in implementing the cost-of-living wage increase was discriminatory. As the evidence failed to establish that the employer's conduct was discriminatorily motivated, there was no violation of section 8(a)(3) of the Act. Accordingly, the complaint was dismissed in its entirety.

In *Scandia Log Homes*,[51] a Board panel majority found, on the basis of stipulated facts, that the employer did not violate section 8(a)(5) and (1) and section 8(d) of the Act by refusing the union's demand of November 21, 1978, that it discharge three employees who had, for religious reasons, refused to pay any union dues as required under the terms of a union-security agreement but who had offered to pay the equivalent of their dues to a nonprofit, religious charity. The majority found that section 19 of the Act, as amended on December 24, 1980,[52] was intended to cover and control the instant situation and therefore these three employees, because of their religious beliefs, could not be made to pay any union dues as a condition of their continued employment. They further found the exception of section 19, as amended, to be inapplicable to the instant facts since there was no evidence that the parties' collective-bargaining agreement contained a provision such as was specified in the exception. Accordingly, the panel majority dismissed the complaint in its entirety.

While concurring with the panel majority's decision to dismiss the complaint in its entirety, Member Zimmerman found that the majority erroneously considered the employer's conduct in November 1978 in terms of present law, as amended in December 1980, rather than considering said conduct with regard to the statute extant at the time the employer refused to discharge the three employees. Although of the view that the employer's unilateral refusal to apply the valid union-security clause to the three employees constituted a modification of the contract and a *prima facie* violation of sections 8(a)(5) and (d), he was also of the view that the employer's defense that the discharge of the three employees would violate Title VII of the Civil Rights Act of 1964 was without merit since Congress never intended the religious accommodation requirements of Title VII to apply to the enforcement of otherwise valid union-security agreements. However, because Member Zimmerman concluded that, by the recent amendment to section 19, Congress had

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[51] 258 NLRB 716 (Members Fanning and Jenkins, Member Zimmerman concurring)

[52] Sec 19 of the Act, which was amended by P L 96–593 subsequent to the Board's acceptance of the parties' stipulation and their submission of statements, provides that

> Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any organization as a condition of employment, except that such employee may be required . [in a contract between such employees' employer and a labor organization] in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious [,nonlabor organization] charitable fund exempt from taxation under section 501(c)(3) [of title 26] of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in [such] contract [or if the contract] fails to designate such funds, then to any such fund chosen by the employee

rendered any finding of a violation of its Act moot, he found that no remedy existed for the employer's violation and that, therefore, the complaint should be dismissed as moot.

## C. Employer Bargaining Obligation

### 1. Obligation To Recognize

In *Burlington Industries, Kernersville Finishing Plant*,[53] the Board found, contrary to the administrative law judge, that cards designating AFL–CIO as the bargaining representative supported an order to bargain with the Amalgamated Clothing and Textile Workers Union (ACTWU). An organizer for the AFL–CIO distributed cards to the employees which stated, "I desire to be represented by a Union which is a part of the AFL–CIO and I hereby designate the AFL–CIO and/or its appropriate affiliates as my Bargaining Agent." The employees were told that the ACTWU or the Rubber Workers would represent them. A letter was sent to the employer stating, "the AFL–CIO and/or its appropriate affiliate represented a majority of the employees and demanded bargaining." The employer received this demand but never responded; instead it engaged in unfair labor practices designed to negate the union's majority status. Soon thereafter the employees were told that the ACTWU had been chosen to represent them and the representation petition filed by the AFL–CIO was amended accordingly. At no time after the designation of the ACTWU as their representative did any employee seek to revoke previously signed authorization cards. The ACTWU lost the election. In finding that a bargaining order in favor of the ACTWU was proper and necessary to remedy the employer's pervasive unfair labor practices, which impeded the possibility of a fair election, the Board held that the desire of the employees to be represented was clearly expressed in the plain wording of the authorization cards which were not revoked after the ACTWU was formally designated as their representative.

In *Baldor Electric Co.*,[54] a Board panel, reversing the administrative law judge, found that the employer did not violate section 8(a)(5) and (1) of the Act by refusing to bargain with the Charging Party, Teamsters Local 688, after a majority of the unit employees voted to replace the incumbent labor organization, Independent Union of Electrical Motor Workers, Local 57, with Local 688, and by continuing to recognize and honor dues-checkoff authorizations for Local 57. The employer's employees divided into two factions: the majority group voted to disband Local

[53] 257 NLRB 712 (Chairman Fanning and Members Jenkins and Zimmerman)
[54] 258 NLRB 1325 (Members Fanning, Jenkins, and Zimmerman)

57 and affiliate with Local 688 and the minority group supported the incumbent Local 57. Both groups demanded representative status from the employer. This occurred during the unexpired term of a collective-bargaining agreement between the employer and the incumbent Local 57.

While noting that ordinarily an employer is required to continue to recognize a union with which it has a collective-bargaining agreement so long as that contract bars a representation petition, and that the duty to bargain is not affected by the union's loss of majority support during the term of the contract, the panel also observed that the principles of free choice and stability of bargaining relations require an employer to bargain with a successor union as a result of affiliation, merger, etc. In finding a violation, the administrative law judge relied on *Quemetco*,[55] where the Board required the employer to bargain with the successor union, the unanimous choice of all the employees. The panel, however, distinguished *Quemetco*, in large part, because of the absence of two competing groups of employees claiming separate labor organizations as their respective bargaining agents. In dismissing the complaint, it relied instead on *Universal Tool & Stamping Co.*,[56] where, as here, the Board found no violation in the refusal to recognize the newly affiliated union, as those employees who had retained their allegiance to the old union had also demanded recognition.

In *Hageman Underground Construction*,[57] the Board considered the obligation of an employer to recognize and bargain with the union for the duration of an 8(f) prehire agreement. On September 2, 1977, respondent joint employers, found to be a single employer, pursuant to section 8(f), entered into a collective-bargaining agreement in which it agreed to recognize the union as the bargaining representative of its employees who performed the type of work falling within the union's jurisdiction; namely, the operation of heavy equipment. Among the employer's work force, only the backhoe operators were covered by the multisite contract which was effective until June 15, 1980. At the time the contract was signed in September 1977, the employer employed six employees, three of whom were backhoe operators. At all times during the period from October 1977 to April 1978, the three backhoe operators were union members. During this same period the employer briefly employed two other backhoe operators who were union members. These employees were transferred around among the employer's various jobsites. On March 5, 1979, the employer withdrew recognition from the union and refused to abide by the terms of the contract. In May 1979, 2 months later, the employer employed at least 11 employees, and, in November

[55] 226 NLRB 1398 (1976)
[56] 182 NLRB 254 (1970)
[57] 253 NLRB 60 (Chairman Fanning and Members Jenkins and Penello)

1979, employed 22 employees, but no evidence was presented as to which of these employees were part of a permanent work force or were employed as backhoe operators.

Upon this evidence the administrative law judge found that in March 1979 the employer was free to withdraw recognition from the union and to repudiate the collective-bargaining agreement covering the backhoe operators because the General Counsel had failed to show that the union ever acquired the necessary majority status at all sites. He rejected the argument that, between October 1977 and April 1978, the union achieved majority status among a stable complement of backhoe operators and that thereafter the employer had a statutory duty to recognize and bargain with the union at all jobsites. He reasoned that, even if majority were established soon after the contract was signed, there had to be a showing of majority status at the time the contract was repudiated and that the evidence was too ambiguous to conclude that the employer employed a permanent and stable work force.

In reversing the administrative law judge, the panel stated that, where an employer employs a permanent and stable work force to work on a multisite basis, and the union, initially recognized under section 8(f), at any time during the contract achieves majority status in that stable work force, the union enjoys an irrebuttable presumption of majority status for the duration of the contract and the employer is then under a statutory duty to recognize and bargain with the union at all projects without requiring the union to demonstrate majority status at each one. It also stated that inquiring into the union's majority status at the time of the contract's repudiation would be both irrelevant and improper. Applying these principles, the panel, contrary to the administrative law judge, further found that the union had achieved majority status in a permanent and stable unit of backhoe operators between October 1977 and April 1978 and, from that time forward, the union became their bargaining representative at all projects and was entitled to an irrebuttable presumption of majority status for the duration of the collective-bargaining agreement. Accordingly, the panel found that the employer was not free to withdraw recognition or repudiate the collective-bargaining agreement and that by doing so it violated section 8(a)(5) and (1) of the Act.

## 2. Subjects for Bargaining

The Board had occasion during the past report year to determine whether or not certain matters constituted mandatory subjects of bargaining about which parties are obligated to bargain.

In *Capital Parcel Delivery Co.*,[58] the Board was presented with such

[58] 256 NLRB 302 (Chairman Fanning and Members Jenkins and Zimmerman)

an issue involving subcontracting of unit work. The employer had contracts with various retail stores to perform retail furniture and appliance delivery and installation. The reservation-of-rights clause of its bargaining agreement with the union permitted it to subcontract unit work. After advising the union that it was seriously contemplating subcontracting the work out, the employer laid off the unit employees and took the unit work from the bargaining unit employees and gave it to nonunion owner-operators with whom it signed subhauler agreements. The employer offered to bargain about the effects of its action, but argued that it had no obligation to bargain about the decision to subcontract because the union had, by contract, waived its right to bargain over the subcontracting of unit work which had been lawfully transferred to independent contractors. The Board, however, reversing the administrative law judge, found that the owner-operators were no independent contractors but were employees under the common law "right to control" test. It then concluded that the employer had a duty to observe the terms and conditions of its then current collective-bargaining agreement with the union and that, by discharging the unit employees and withdrawing recognition from the union, the employer effectively repudiated its collective-bargaining agreement, thereby unilaterally terminating its contractual relationship with the union in violation of Section 8(a)(5) and (1) of the Act.

In *Otis Elevator Co., a Wholly Owned Subsidiary of United Technologies*,[59] the Board considered whether the employer was required to bargain with the incumbent union over its decision to relocate certain of its work and operations. The employer transferred 17 unit employees to a new research and development facility that it was building to combine its research and development function from several divisions in one location and to update its operation. The employer argued that these changes involved such a substantial shift in its assets and operations that bargaining about the decision to transfer the 17 unit employees would be a significant abridgment of the employer's freedom to invest its capital and manage its business. The Board disagreed and affirmed the administrative law judge, holding that bargaining with the union concerning the transfer of the 17 unit employees would not have been a significant abridgment of the employer's prerogative to carry on its business activities. While the employer spent a fairly large sum of money to build its research facility, the Board, citing its precedent in *Intl. Harvester Co.*,[60] noted that this capital investment was not the type of shift of assets which the Board had found outside the scope of mandatory subjects of bargaining, it did not signal any change in direction of the employer's activities or in the character of its enterprise, and it did not

[59] 255 NLRB 235 (Chairman Fanning and Members Jenkins and Zimmerman)
[60] 236 NLRB 712 (1978)

constitute a basic capital reorganization whereby the employer conveyed any portion of its assets or operations to some other entity, terminated any of its activities, or liquidated any of its holdings. Accordingly, the Board found that the employer was obligated to bargain with the union concerning its decision to transfer the unit employees.

### 3. Conduct of Negotiations

In *University of Vt./Vt. Educational Television*,[61] the Board panel had to decide whether the employer's conduct during negotiations on wage increases constituted a lack of good faith or was merely hard bargaining. The employer, whose funding derives from the state and Federal Governments and from private donations, took the position during the course of negotiations that it had no currently uncommitted funds and would therefore breach its fiduciary duty by making any commitments for a wage increase before the state legislature took action on its appropriation for the next fiscal year. The panel majority noted that an employer's refusal to bargain about any matter such as wages which is a mandatory subject of bargaining under section 8(d) constitutes a *per se* violation of section 8(a)(5) of the Act regardless of the employer's overall subjective good faith. They pointed out, however, that section 8(d) also provides that the duty to bargain "does not compel either party to agree to a proposal or require the making of a concession. . . ." Thus, the Board has held that, where an employer engages in bargaining, but remains unwilling to make an offer to increase wages or otherwise raise its economic costs, this fact alone does not establish a violation of section 8(a)(5), without other evidence of the employer's bad faith. The majority concluded that the employer exhibited overall good faith in bargaining and did not actually refuse to discuss wages at that time, but rather engaged in hard bargaining by merely making an initial offer of no wage increase and claiming that it was both unable and unwilling to offer a wage increase until the legislature acted on its new appropriation.

Member Jenkins, dissenting, would find that the employer steadfastly refused to bargain over wages until a future date selected to suit only its convenience, substantially disrupting the process of negotiations without lawful justification. He found that the union never contested the employer's claim that it currently had no unexpended income and that it indicated that it was willing to wait until the start of the new fiscal year for any wage increases to be applied retroactively. Member Jenkins reasoned that the employer's conduct was inconsistent with its position in that it agreed to several of the union's proposals which clearly increased its costs and thus presumably committed funds it did not currently have

[61] 258 NLRB 247 (Members Fanning and Zimmerman, Member Jenkins dissenting)

available. Further, he noted that state funds constituted only 40 percent of the employer's budget and that, since the maximum suggested wage increase would have amounted to less than 1.5 percent of the budget, the employer's professed fear of overspending its income was not sufficient justification to warrant its total refusal to discuss wages, particularly as the employer's requested delay would not have resolved the uncertainty of Federal and private funding which represents approximately 60 percent of the budget.

A Board panel faced a unique situation involving "interest arbitration" in *Sea Bay Manor Home for Adults*.[62] After extensive negotiations, the parties were unable to agree upon a contract. They signed an interest arbitration agreement, submitting all issues regarding wages, hours, and working conditions of the bargaining unit employees to final and binding arbitration. Shortly thereafter the employer repudiated the agreement and implemented its last wage proposal. The administrative law judge concluded that the employer's breach of the interest arbitration agreement was not a violation of section 8(a)(5) of the Act because an interest arbitration clause is a permissive rather than a mandatory subject of collective bargaining. He further reasoned that the remedy for a unilateral midterm modification of a permissive term lies in an action for breach of contract, not in an unfair labor practice proceeding and concluded that the employer's unilateral implementation of its last wage proposal was not unlawful. Contrary to the administrative law judge, the panel found that this situation was different from the usual case involving one party's insistence to impasse on the inclusion of an interest arbitration clause in the contract then under negotiation to be applied in a subsequent contract. Here, the parties voluntarily entered into an agreement to resolve their differences by submitting them to binding arbitration. The agreement expressly was designed to establish all terms and conditions of employment for the contract then under negotiation. The Board panel found that, in these circumstances, the parties' agreement was so intertwined with and inseparable from the mandatory terms and conditions for the contract currently being negotiated as to take on the characteristics of the mandatory subjects themselves and that the agreement was tantamount to a collective-bargaining agreement between the parties. Accordingly, the panel concluded that the employer's midterm breach of the interest arbitration agreement and its unilateral implementation of its last wage offer constituted a violation of section 8(a)(5) of the Act.

## D. Union Interference With Employee Rights

Even as section 8(a) of the Act imposes certain restrictions on employers, section 8(b) limits the activities of labor organizations and their

[62] 253 NLRB 739 (Chairman Fanning and Members Jenkins and Penello)

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

### 1. Duty of Fair Representation

A union's duty of fair representation requires it to serve the interests of all the employees it represents fairly and in good faith and without hostile discrimination based on unfair, arbitrary, irrelevant, or invidious distinctions.[63] In the performance of this duty, however, the effective administration of a contract requires that a union be afforded broad discretion in deciding what grievances to pursue and the manner in which they should be handled.[64] Mere negligence or poor judgment is insufficient to establish a breach of the duty of fair representation.[65]

During the past fiscal year, the Board considered several cases involving the principle that a labor organization has a duty to represent fairly all employees in a bargaining unit for which it is the statutory representative.

In *U. S. Postal Service*,[66] a Board panel agreed with the administrative law judge that the union violated its duty of fair representation and, therefore, section 8(b)(1)(A) and (2) of the Act by its unlawful use of the superseniority and appointment-of-stewards provisions of its collective-bargaining contract to protect junior employees with less seniority from involuntary transfers. The union president had learned that several employees in the bargaining unit would likely be "excessed" and involuntarily transferred to another location. Without telling the employees of the expected "excessing" the president offered them, in order of their seniority, the opportunity to become stewards. All declined and the president then appointed himself and three other junior employees as stewards. Thereafter, the president and two of the newly appointed stewards, as the three least senior employees in the bargaining unit, received notice from the employer that they were to be involuntarily transferred to a new facility. However, as a result of the superseniority gained by becoming stewards, they were not transferred while the two

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[63] *Vaca* v *Sipes*, 386 U S 171 (1967), *Glass Bottle Blowers Assn of the U S & Canada, AFL–CIO, Local 106 (Owens-Illinois)*, 240 NLRB 324 (1979).

[64] *Vaca* v *Sipes, supra* at 191–192, *Ford Motor Co* v *Huffman*, 345 U S 330, 338 (1953), *Truckdrivers, Oil Drivers & Filling Station & Platform Wkrs , Local 705, Teamsters (Associated Transport)*, 209 NLRB 292 (1974)

[65] *Local 195, United Assn of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of the U S & Canada, AFL–CIO (Stone & Webster Engineering Corp )* 240 NLRB 504, 508 (1979)

[66] 254 NLRB 74 (Chairman Fanning and Members Jenkins and Penello)

charging parties, although having more seniority, were transferred. The administrative law judge found that the union's reasons for its action were critical to the determination of whether an unfair labor practice had been committed and that in this case it was clear that the appointment of the stewards was solely for the purpose of protecting low seniority employees from involuntary transfer and thus belied any legitimate union purpose to be served. In affirming the administrative law judge, the panel noted that the unlawful nature of the union president's conduct derived solely from the arbitrary and invidious manner in which he applied concededly lawful contractual clauses thereby failing to fairly represent his fellow unit employees.

In *Three Hundred South Grand Co.*,[67] a Board panel, agreeing with the administrative law judge's result but not his rationale, found that the union processed an employee's grievance in bad faith and thereby breached its duty of fair representation in violation of section 8(b)(1)(A). The employer managed an office building and the union represented clerical employees and stationary engineers in the building. The building manager, who was also chief engineer, was a statutory supervisor, as well as president of the union and chairman of its executive board. The supervisor's secretary filed a grievance because she had not been paid the full contractual wage rate for the first 30 days of her employment. The panel found that the supervisor's dual role as supervisor and high-ranking union official inherently tainted the union's processing of the grievance since the permeating effect of his duel role was clearly demonstrated by his denial of the grievance at the first stage, his hostile comments about the grievance at a union meeting in the presence of others who would later vote on the executive board, and his immediate supervision and harassment of the steward who was responsible for processing the grievance. It found that, in these circumstances, a fair and impartial processing of the grievance was subverted, even though the union attempted to maintain an appearance of fairness by the supervisor's nonparticipation in the actual vote before the executive board. The panel found further evidence of bad faith in the fact that, in refusing to take the grievance through all steps of the contractual grievance procedure, the union relied on the alleged untimeliness of the grievance, despite the absence of a contractual time limit and the fact that the employer had not raised the issue of timeliness.

In *Kaiser Foundation Hospitals*,[68] a Board panel discussed a union's right to demand, under a union-security provision, the payment of dues and to request the discharge of employees who refused to do so. The

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[67] *Central States, Southeast & Southwest Areas Pension Fund d/b/a Three Hundred South Grand Co*, 257 NLRB 1397 (Members Fanning, Jenkins, and Zimmerman)

[68] *Kaiser Foundation Hospital, & Kaiser Foundation Health Plan of Oregon*, 258 NLRB 29 (Members Fanning, Jenkins, and Zimmerman)

employer and the union were parties to a series of union-security contracts. The 1976–79 contract was effective through July 1, 1979. The 1979–81 contract was executed on August 21, 1979, effective retroactively from July 1, 1979, to July 1, 1981. Both contracts contained a union-security clause providing that employees who were not members of the union on the execution date of the contract must become members in good standing within 31 days. On February 7, 1979, the Regional Director clarified the contractual bargaining unit to include courier employees. Thereafter, at various times, the union sent letters to four of the employees explaining that they became obligated to pay union dues beginning March 12 and informing them that, if they did not do so, the union would request their discharge. When they refused to pay, the union sought their discharge but the employer refused to discharge them. Contrary to the administrative law judge who found that the employer violated section 8(a)(5) and (1) of the Act, the Board panel reversed, stating that, if alleged, it would have found that the union violated section 8(b)(1)(A) and (2) of the Act by attempting to cause the discharge of the four employees under the union-security provisions of the 1979–81 contract after having failed to notify them of the precise and accurate amount of dues which they were obligated to pay. It stated the principle that a union seeking to enforce a union-security clause against an employee has a fiduciary duty to inform the employee of his or her obligations, to furnish a statement of the precise amount of dues owed, as well as an explanation of the methods used to compute the amount, and to provide a reasonable opportunity to make payment. It further noted that the amount claimed as dues arrearages must be consistent with the employee's actual obligation under the union-security clause and that the only obligation an employee has, under the compulsion of the proviso to section 8(a)(3) of the Act, is to pay dues for the period of employment with the employer who is a party to the contract and *during the term of the contract*. Finally, it pointed out that, where a subsequent contract is made retroactive, a union cannot use a union-security clause to cause the discharge of an employee for failure to pay dues during a period when the union-security agreement was not actually in effect. Applying these principles, the panel found that the union did not satisfy the fiduciary obligations it owed to the four employees in that it sought (1) to charge the employees back dues for the hiatus period between the expiration of the old contract of July 1, 1979, and 31 days after the new contract was executed on August 21, 1979; and (2) to use the 1979–81 contract to enforce unpaid obligations under the expired 1976–79 contract from March 12 to July 1, 1979. Since the Board panel would have found, if alleged, that the union violated section 8(b)(1)(A) and (2) by requesting the discharge of the four employees, it dismissed the 8(a)(5) complaint against the employer because it would be contrary to the purposes of the Act to find that the employer violated the Act by refusing to comply with the request.

### 2. Other Forms of Interference

In *Chrysler Corp.*,[69] the Board found that the union violated section 8(b)(1)(A) of the Act by removing a member from his position as chairman of its fair employment practices committee because he filed a charge against the union with the Board. It rejected the union's contention that, since his removal did not affect his employment status or cause him to suffer any loss of seniority, money, or union membership, the removal was an internal union affair left unregulated by the proviso of section 8(b)(1)(A). The Board stated that while losses of seniority, money, or membership may be relevant to the inquiry into whether or not the discipline was indeed "coercive," the absence of such factors does not negate a finding that the discipline here was coercive. Noting the policy imbedded in Federal labor law that people be kept completely free from coercion against making complaints to the Board, it found that the union's conduct was clearly coercive.

## E. Union Causation of Employer Discrimination

Section 8(b)(2) of the Act prohibits labor organizations from causing or attempting to cause employers to discriminate against employees in violation of section 8(a)(3), or to discriminate against one to whom membership has been denied or terminated for reasons other than failure to tender their dues and initiation fees. Section 8(a)(3) outlaws discrimination in employment which encourages or discourages union membership, except insofar as it permits the making of union-security agreements under specified conditions. By virtue of section 8(f), union-security agreements covering employees "in the building and construction industry" are permitted under lesser restrictions.

In *Pittsburgh Des Moines Steel Co.*[70] the Board reiterated its rule that a union member who has become delinquent in dues under a contract covering one bargaining unit cannot be denied employment under a contract covering a separate bargaining unit without affording him the statutory grace period in the separate bargaining unit in which to become current in his or her dues.[71] The union refused hiring hall referral for a delinquent union member to a project which constituted a unit separate from that in which the union member worked when he became delinquent and which was covered by a union-security contract different from that

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[69] *Local 212, Intl Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Chrysler Corp )*, 257 NLRB 637 (Chairman Fanning and Members Jenkins and Zimmerman)

[70] *Iron Workers Local 118, Intl Assn of Bridge & Structural Ironworkers, AFL-CIO (Pittsburgh Des Moines Steel Co )*, 257 NLRB 564 (Chairman Fanning and Members Jenkins and Zimmerman)

[71] *Millwright & Machinery Erectors Local 740, District Council of N Y City & Vicinity of the United Brotherhood of Carpenters & Joiners of America, AFL-CIO (Tallman Constructors)*, 238 NLRB 159 (1979), *William Blackwell, d/b/a Carolina Drywall Co* , 204 NLRB 1091 (1973)

which covered the work he performed at the first project. The Board found that, by its refusal to refer, because of the employee's delinquency at the first project, the union violated section 8(b)(1)(A) and (2) of the Act.

## F. Union Bargaining Obligations

A labor organization no less than an employer has a duty imposed by the Act to bargain in good faith about wages, hours, and other terms and conditions of employment. A labor organization or an employer respectively violates section 8(b)(3) or 8(a)(5) if it does not fulfill its bargaining obligation.

In *Crescent, Div. of Halle Bros.*,[72] a panel majority found that the union violated section 8(b)(3) by unilaterally implementing a vision care program. The collective-bargaining agreements between the union and the charging employers required the employers to make payments into fringe benefit plans administered by the Inland Empire Teamsters Trust. Each agreement provided that contributions be made for a dental care plan, a health and welfare plan, and a prescription drug plan. During the contract negotiations, the establishment of a vision care plan was proposed and rejected. Thereafter, the trustees of the trust voted to create a vision care plan for the employees of all employers participating in the trust and to fund the plan initially with a portion of unallocated reserves built up in the trust. In finding the violation, the majority concluded that the employer's acceptance of the trust agreement did not authorize the trustees to establish new benefits not provided for in existing collective-bargaining agreements and that the union instigated and caused the creation of the new plan and then claimed credit for it. The majority reasoned that, if such unilateral changes can be made after specific rejection in collective bargaining, then bargaining is undermined.

Chairman Fanning, dissenting, found that the trustees had the authority to create the vision care plan. He pointed out that the acceptance of trust provided that the employer agrees that the trustees "are and shall be his or its representatives and consent to be bound by the acts of said trustees" and that the "Purpose of Trust" clause provided that "The Trustees shall, in their sole discretion, determine which benefits shall be provided." Noting that a majority of the employer trustees as well as the union trustees agreed to the plan, Chairman Fanning found that the implementation of the vision care plan was attributable solely to the proper exercise of independent judgment by the trustees as a group, especially since the benefit entailed no additional employer expenditure

[72] *Warehousemen's Union Local 334, a/k/a Driver Salesmen, Salesmen, Warehousemen, Food Handlers, Clerical & Industrial Production Teamsters Union, Local 582, a/w Intl Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Crescent, Div of Halle Bros.)*, 253 NLRB 1090 (Members Jenkins and Penello, Chairman Fanning dissenting)

during the existing contract and was subject to revocation by individual employers at the next round of contract negotiations.

## G. Prohibited Strikes and Boycotts

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

In *Metromedia*,[73] the Board, contrary to the administrative law judge, held that a union's filing grievances against the employer, alleging that the latter had violated its collective-bargaining agreement by assigning certain videotape camera work to employees represented by another union (IATSE) rather than to employees represented by it and its initiation of section 301 court proceedings to compel arbitration, did not violate section 8(b)(4)(ii)(D) of the Act.

Earlier the Board, in a section 10(k) proceeding involving the same parties, had issued a Decision and Determination of Dispute awarding certain work to employees represented by IATSE.[74] Thereafter, the administrative law judge in the instant case concluded that the union's filing of grievances and of a section 301 suit to compel arbitration demonstrated a refusal to abide by the Board's prior 10(k) award and constituted restraint or coercion within the meaning of Section 8(b)(4)(ii)(D) of the Act.

In disagreeing with the administrative law judge, the Board noted that the interpretation of the prior 10(k) award was open to reasonable doubt by the parties affected by it because of its ambiguity and because of changed circumstances resulting from the passage of time. It further found relevant the fact that the union filed the grievances under a contract executed almost 2 years after the 10(k) award, that the grievances were colorable under the contract, and that the contract itself did not represent any attempt by either the union or the employer to circumvent the 10(k) award to the detriment of employees represented by IATSE. The Board also noted that the contract appeared to accommodate the prior award of the disputed videotaping to employees represented by

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[73] *Natl Assn of Broadcast Employees & Technicians, AFL-CIO, CLC (Metromedia)*, 255 NLRB 372 (Chairman Fanning and Members Jenkins and Zimmerman)

[74] *Intl Alliance of Theatrical Stage Employees & Moving Picture Machine Operators of the U S and Canada (Metromedia)*, 225 NLRB 785 (1976)

IATSE. Concluding, therefore, that in filing its grievances and initiating court proceedings against the employer, the union was pursuing its legal remedies for an arguably meritorious claim under a properly negotiated collective-bargaining agreement and that the record failed to disclose extrinsic evidence of threats, restraint, or coercion of the employer, the Board found that the union had not done more than its status as employee representative authorized.[75] Accordingly, the complaint was dismissed in its entirety.

In another significant case decided during the past fiscal year, the Board, in *Allied Intl.*,[76] was faced with the question of whether it could assert jurisdiction over the allegedly unlawful secondary effects of a primary dispute between American unions and a foreign nation. The issue in this case arose out of the unions' refusal to handle cargo destined for or originating in the USSR because of their political dispute with the USSR's policy in Afghanistan. As a result of this boycott, which brought pressure directly to bear on neutral parties in support of the primary political dispute with the USSR, the charging party, an importer of wood from the USSR, was unable to transport Russian wood directly to the United States. The administrative law judge dismissed the complaint for want of jurisdiction, and found applicable a series of Supreme Court cases [77] which had "defined the statutory term 'commerce' so as to limit the Board's jurisdiction in situations where the disputed primary conduct involved and inescapably interfered with the maritime operations of foreign vessels."

In finding that the Board had jurisdiction in this case and that the unions had violated section 8(b)(4)(ii)(B) of the Act, the panel majority noted its disagreement with the administrative law judge's analysis of the Supreme Court cases and his interpretation of the Board's commerce jurisdiction over activity related to, but not directly involving, foreign nations. They recognized that the Board, pursuant to the Supreme Court decisions, is deprived of jurisdiction over a primary labor dispute between an American union and a foreign entity on the grounds that such assertion of jurisdiction would inescapably interfere with foreign labor relations, foreign trade, and comity among nations, and is similarly deprived of jurisdiction over secondary effects resulting from primary conduct engaged in by an American union in furtherance of the primary

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[75] The Board stated that it certainly did not suggest that filing a grievance and a section 301 suit can never constitute an unfair labor practice, and that, under circumstances not present herein, it has so held, citing *Brothd of Teamsters, & Auto Truck Drivers Local No 85, Intl Brothd of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Pacific Maritime Assn )*, 224 NLRB 801 (1976)

[76] *Intl Longshoremen's Assn , AFL-CIO, & Local 799, Intl Longshoremen's Assn AFL-CIO (Allied Intl )*, 257 NLRB 1075 (Members Fanning and Zimmerman, Member Jenkins dissenting)

[77] *Benz* v *Compania Naviero Hidalgo, S A* , 353 U S 138 (1957), *McCulloch* v *Sociedad Nacional de Marineros de Honduras [United Fruit Co ]*, 372 U S 10 (1963), *Incres Steam Ship Co* v *Intl Maritime Wkrs Union*, 372 U S 24 (1963), *International Longshoremen's Local 1416, AFL-CIO* v *Ariadne Shipping Ltd* , 397 U S 195 (1970), *Windward Shipping (London) Limited* v *American Radio Assn AFL-CIO* v *Mobile Steamship Assn* , 419 U S 215 (1974)

dispute with a foreign entity. However, the majority noted that the Court had never held that the Board was necessarily deprived of jurisdiction over *all* secondary conduct engaged in to further a primary dispute which itself is beyond the Board's jurisdiction, merely because that dispute is with a foreign entity. Rather, they pointed out that the Supreme Court has expressly approved the Board's assertion of jurisdiction through section 8(b)(4) over domestic secondary activity undertaken in furtherance of a primary dispute with a foreign primary employer. The majority then concluded that the instant case involved just such domestic secondary conduct directed at U.S. employers in an attempt to bring pressure on a foreign primary disputant, and that it was, therefore, squarely within the jurisdictional parameters set out by the Supreme Court. Thus, no bar existed to the Board's assertion of jurisdiction over the conduct alleged as unlawful herein.

In reaching the question of the legality of the unions' boycott under the Act, the Board majority noted that the unions had engaged in conduct classically subject to regulation under section 8(b)(4). This conduct, they noted, involved actions by American employees working for American employers and caused serious injury to neutral parties. Assertion of jurisdiction over this purely domestic secondary conduct does not, the majority found, involve the Board "in regulation of the primary dispute between the [unions] and the USSR; it poses no interference with foreign maritime operations; it furthers the legislative purpose in enacting Section 8(b)(4); and is consistent with the Supreme Court's teachings."

The majority, applying the Supreme Court's analysis in *Safeco Title Insurance Co.*,[78] found that the unions "must be held accountable for the foreseeable consequences of their conduct, and, regardless of their stated intent [to demonstrate their disapproval of Soviet foreign policy], must be held to have induced the boycott with an object of forcing the business entities involved to cease business operations among themselves and to cease handling goods of the USSR." By the same reasoning, the unions must be found to have coerced and restrained these neutral parties with an object of causing them to cease doing business with each other as well as with the USSR. This result, the majority noted, was particularly required here, where the unions' conduct was exclusively secondary and none of it was undertaken directly against the USSR with whom they had a primary dispute. Instead, the unions attempted to pressure the USSR through those neutral parties doing business with them—the very tactic section 8(b)(4) was enacted to prohibit. Consequently, the Board majority concluded that the unions here had engaged in exclusively secondary conduct in violation of section 8(b)(4)(i) and (ii)(B) of the Act.

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[78] *N L R B v Retail Store Employees Union, Local 1001, Retail Clerks Intl Assn , AFL-CIO (Safeco Title Insurance Co )*, 447 U S 607 (1980)

Member Jenkins, disagreeing with the majority decision, found that the administrative law judge's analysis of the cases involved was careful, scholarly, and accurate and that his dismissal of the complaint was correct. Accordingly, and for the reasons stated by the administrative law judge, he would affirm the administrative law judge's findings.

In *American Commercial Barge Line Co.*,[79] a Board panel adopted, without comment, an administrative law judge's finding that the union, which had a primary labor dispute with the employer and its affiliates, had violated section 8(b)(4)(i) and (ii)(B) of the Act by picketing an area where cranes, used by two other companies in transferring goods from barges to merchant ships, were located, because the object of the picketing was to force these companies and their customers to cease using the employer's barges or to otherwise cease doing business with the employer and its affiliates. In so finding, the administrative law judge noted that the unions had picketed at times when no employees of the employer or its affiliates were working near the crane area or near the merchant ships that were being loaded by employees of the other two companies. Further, he noted that the union did not picket the plainly marked office of the employer nor attempt to picket the tow boats that were being operated by the employer's affiliates. Under these circumstances, the administrative law judge found, and the Board panel agreed, that the union's conduct was violative of section 8(b)(4)(i) and (ii)(B) of the Act, as alleged.

## H. Recognitional Picketing

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

Two significant cases decided by the Board during this past fiscal year raised the question of whether under the particular circumstances picketing unions violated section 8(b)(7)(C) of the Act.

In *Tri-City Excavating*,[80] the Board, on the basis of stipulated facts,

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[79] *Seafarers Intl Union of North America, Atlantic, Gulf, Lakes and Inland Water Dist (American Commercial Barge Line Co.)*, 253 NLRB 337 (Chairman Fanning and Members Jenkins and Penello)

[80] *Intl Union of Operating Engineers, Local 150, AFL-CIO (Tri-City Excavating)*, 255 NLRB 597 (Chairman Fanning and Members Jenkins and Zimmerman)

found that, while the union picketed the employer for more than 30 days at a time when it did not enjoy the support of a majority of the employer's employees, the union did not violate section 8(b)(7)(C) of the Act since the sole purpose of the picketing was to pressure the employer into making fringe benefit contributions on behalf of an employee which were past due under the terms of an 8(f) contract. In so doing, the Board found nothing to indicate that an object of the picketing was to secure recognition of the union as current bargaining representative or to require current application of the recognition provision or other terms of the 8(f) agreement previously entered into.

The Board also found its decision to be consistent with the concept that relationships protected by section 8(f) must be voluntary, pointing out that the union's picketing was limited to requiring the employer to meet its obligations which allegedly had accrued under an 8(f) contract and was not directed at forcing continuation of the 8(f) relationship. It further concluded, contrary to contentions of the General Counsel and the Charging Party, that its decision was not in conflict with the Supreme Court's decision in *Higdon* [81] which presented a different factual situation and involved picketing for a different purpose. Thus, the Board noted that the Court's statement that "picketing to enforce the Sec. 8(f) contract was the legal equivalent of picketing to require recognition as the exclusive agent" must be read in connection with the fact that the "enforcement" there sought by picketing was current application of the 8(f) contract unlike the situation in the instant case where the "enforcement" sought by the union's picketing was payment of an alleged past obligation under the 8(f) contract and did not require current application of the contract.

In *R & F Grocers*,[82] a Board panel majority adopted, without comment, an administrative law judge's finding that a union may not raise as a defense to an 8(b)(7)(C) complaint the possibility that the picketed employer is a joint employer with a successor to, or the alter ego of, a second employer with whom the union has had a longstanding relationship, where previous charges filed by the union against these two employers on the same theory have been dismissed.[83] The administrative law judge had found that, while "only a meritorious refusal to bargain charge exempts a picketing labor organization from the requirement that it file a representation petition before engaging in prolonged picketing . . . if such a charge has been filed, but dismissed by the General Counsel, the matter may not be raised as a defense to an alleged violation of subdivision (C) of Section 8(b)(7) of the Act."[84] Further, since he found that all of

[81] *N L R B v Local 103, Intl Assn of Bridge, Structural & Ornamental Ironworkers, AFL-CIO (Higdon Contracting Co )*, 434 U S 335 (1978)

[82] *United Food & Commercial Workers Intl Union, Local 576, AFL-CIO (R & F Grocers)*, 252 NLRB 1110 (Members Jenkins and Penello, Chairman Fanning dissenting)

[83] The charge, alleging that the employers had violated sec 8(a)(1), (3) and (5) of the Act, was dismissed by the acting regional director and that dismissal was subsequently affirmed on appeal by the General Counsel

[84] 252 NLRB at 1113

the contentions raised by the union in the instant case had been considered in the previous charge filed by it against the employers which the General Counsel found to be insufficient to warrant issuance of a complaint, the administrative law judge concluded that to permit the union to relitigate its contentions under the guise of a defense in this matter would be to "create the undesirable situation of the Board's acting in practice as a forum for considering the content of charges which the General Counsel, for reasons satisfactory to himself, has thought it proper to dismiss."[85]

Chairman Fanning, dissenting, was of the view that since the union's defense, if found to be meritorious, would remove the union's picketing from the proscription of section 8(b)(7)(C) of the Act, it would be imperative that evidence in support of that defense should be permitted. The mere fact that the evidence sought to be introduced had been the subject of earlier charges which had been dismissed by the General Counsel was, in his opinion, insufficient to preclude the introduction of such evidence. Further, relying on his dissent in *Children's Rehabilitation Center*,[86] Chairman Fanning noted that consideration of such evidence would not constitute an encroachment of the General Counsel's powers under section 3(d) of the Act to investigate charges and issue complaints since such an inquiry merely permits the Board to determine whether the union was the bargaining representative of the employees as claimed, and, in the event it was not, there would be a *prima facie* 8(b)(7)(C) violation. Accordingly, he would have remanded the case to the administrative law judge to take evidence on respondent's defense that its picketing did not contravene section 8(b)(7)(C) of the Act because the employer was under an obligation to recognize it.[87]

## I. Unit Work Preservation Issues

Section 8(e) makes it an unfair labor practice for an employer and a union to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any products of any other employer or to cease doing business with any other person. It also provides that any contract "entered into heretofore or hereafter containing such an agreement shall be to such extent unen-

[85] Citing *Times Square Stores Corp*, 79 NLRB 361, 365 (1948)

[86] *Service Employees' Intl Union, Local 227, AFL-CIO (Children's Rehabilitation Center)*, 211 NLRB 982 (1974)

[87] Chairman Fanning further noted that the administrative law judge had misinterpreted his statement in *Intl Hod Carriers Bldg & Common Laborers Union of America, Local 840, AFL-CIO (Charles A Blinne, d/b/a C A Blinne Constr Co)* 135 NLRB 1153 at 1173 (1962) to the effect that "in future cases only a 'meritorious' charge under Section 8(a)(5) should excuse a failure to file a timely petition" The fact that the General Counsel has not issued a complaint does not, in Chairman Fanning's view, constitute a finding binding on the Board that there can be no validity to the union's claim. Rather, in his view, the union should be permitted to present evidence on this issue in defense of the 8(b)(7)(C) charge

forceable and void." Exempted by its proviso, however, are agreements between unions and employers in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work," and certain agreements in the "apparel and clothing industry."

During the past fiscal year the Board had occasion to determine whether various contract clauses came within the purview of section 8(e). The proper standard for evaluation of such clauses had earlier been set forth by the Supreme Court in *Natl. Woodwork Manufacturers Assn.* v. *N.L.R.B.*, 386 U.S. 612 (1967), where the Court held that section 8(e) does not prohibit agreements made between an employee representative and the primary employer to preserve for the employees work traditionally done by them and that in assessing the legality of a challenged clause "[t]he touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees." (386 U.S. at 645.)

During the past fiscal year, the Board, on the stipulated record in *Chronicle Broadcasting Co., KRON-TV*,[88] held that the "entering into" requirement of section 8(e) of the Act was not satisfied where an employer association, not a party to the proceeding, but a party to a contract purportedly containing an unlawful provision, took action during the period covered by the charge to implement the contract. In that case, the Charging Party had engaged a general contractor to perform some remodeling work at its premises. However, as a result of a labor dispute, it was struck by three different labor organizations. The Charging Party established a reserved gate for all neutral employees, but there were no pickets at that gate. However, shortly thereafter, the employer association which had the collective-bargaining agreement in question with the respondent union, advised the Charging Party that the employees of its member employer, an electrical subcontractor, could not perform his project work because his employees were privileged to withhold their services by virtue of certain provisions in the collective-bargaining agreement. During the pendency of the strike, the subcontractor's electrician employees did not report for work.

In dismissing the complaint in its entirety and finding no violation of section 8(e), the panel disagreed with the General Counsel's contention that the employer association's action satisfied the "entering into" requirement, where, as here, the association was not a respondent, and the only respondent, the union, had taken no action to enforce or reaffirm the contract within the 10(b) period. Instead, it found that the facts in the instant case were not materially different from those in *Freeto Construc-*

[88] *Intl Brothd of Electrical Wkrs, Local 6, AFL-CIO (Chronicle Broadcasting Co, KRON-TV)*, 257 NLRB 573 (Chairman Fanning and Members Jenkins and Zimmerman)

*tion Co.*,[89] where the Board adopted an administrative law judge's finding that a respondent union's failure to protest an employer's refusal to send its employees to a jobsite, which was picketed by other unions, was not sufficient activity to constitute an "entering into" within the 6-month period. Further, the panel noted that here the parties had stipulated that there was no evidence that respondent union induced or encouraged its member employees of the electrical subcontractor to engage in a work stoppage, other than its entering into the agreement with the employer association. It further noted that the respondent union had never "expressly avowed or disavowed its intent to maintain, enforce or give effect to the contract provisions" within the 6-month period. Accordingly, as in *Freeto Construction, supra*, the panel dismissed the complaint in its entirety.

In *Robert E. McKee*,[90] certain grievances were filed by the respondent union against the Charging Party concerning the making of deliveries to the jobsite by employees of the Charging Party's subcontractors which, under its contract with the Charging Party, the union asserted must be performed by members of the union. The Board panel majority found that, although a subcontracting clause in the contract[91] would otherwise have been lawful under the construction industry proviso to section 8(e) of the Act, nevertheless, it was unlawful because the contract contained economic self-help provisions which removed the clause from the proviso's protection.[92]

The majority first reasoned that the subcontracting clause in the contract went beyond the protection of traditional bargaining unit work for bargaining unit employees and was a union signatory clause of the type the Board has consistently found to be secondary in nature because it is not concerned with the labor relations of the contracting employer—the Charging Party here—*vis-a-vis* its employees, but with the labor relations of other employers or firms with whom the Charging Party might do business.[93] Thus, they concluded that unless the subcontracting clause fell

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[89] *Truck Drivers Local 696, affiliated with the Intl Brothd of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Freeto Construction Co.)*, 149 NLRB 23 (1964)

[90] *General Drivers, Warehousemen & Helpers of America, Local 89, affiliated with Intl Brothd of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Robert E McKee)*, 254 NLRB 783 (Members Jenkins and Truesdale, Chairman Fanning concurring in part and dissenting in part)

[91] The subcontracting clause of the contract, known as art 1 6(A), states that "The Employer agrees not to subcontract any work on the jobsite, which is the jurisdiction of the Union, unless the contractor to whom the work is subcontracted, has signed agreement or agrees to sign the agreement before starting the job"

[92] Art 4 2 of the contract, herein called the self-help article, provided, *inter alia*, that "Without first going through the grievance procedure there shall be no stoppage of work on account of any and all disputes which may arise between the parties hereto" except that "When the Joint Arbitration Committee or impartial Arbitrator renders a grievance award under this Article the losing party shall have the right to contest such award but, if the losing party does not do so then the *Union shall have the right to enforce* the Award by resort to economic recourse against the non-complying Employer" (Emphasis supplied)

[93] Citing *Carpenters Local 944, United Brothd of Carpenters & Joiners of America, AFL-CIO (Woelke & Romero Framing)*, 239 NLRB 241 (1978), enforcement denied in relevant part 609 F 2d 1341 (9th Cir 1980) Subsequently, the court, sitting *en banc*, enforced the Board's Order in 654 F 2d 1301 (9th Cir 1981) and, thereafter, on October 5, 1981, the Supreme Court granted the company's petition for certiorari.

within the construction industry proviso to section 8(e), it would be unlawful as constituting a union signatory clause.

The panel majority then noted that the construction industry proviso to section 8(e) permits union signatory subcontracting clauses which, as here, are in the context of a collective-bargaining relationship and relate only to construction work performed on the jobsite. In this regard, they further noted that the delivery of materials to a construction site does not constitute "onsite" work and that a subcontracting clause which purports to include the delivery of materials to the jobsite enjoys no protection under the proviso. However, because the majority found the subcontracting clause to be ambiguous, they could not find that the contract unlawfully extended the prohibitions against subcontracting beyond the jobsite work. The panel majority then turned to the self-enforcement issue pointing out that, although the proviso to section 8(e) makes lawful certain secondary clauses in the construction industry, a contract cannot provide that such clauses be enforced by resort to economic self-help. In this regard, the majority noted that the self-help article explicitly conferred on the union the right to resort to economic recourse against a noncomplying employer to enforce an arbitration award and that the article clearly constituted a self-help provision which served to remove the subcontracting clause from the protection it would otherwise have enjoyed under the construction industry proviso of section 8(e). Consequently, the majority concluded that the self-help article of the contract violated section 8(e) of the Act insofar as it applied to the subcontracting clause of the contract.

Chairman Fanning, concurring and dissenting in part, agreed with the majority that the subcontracting clause was a union-signatory clause. However, contrary to the majority, he found the subcontracting clause to be clear and unambiguous since, in his view, it did not extend the prohibitions against subcontracting beyond jobsite work, but rather limited subcontracting to the jobsite. Accordingly, he found that the subcontracting clause enjoyed the protection of the proviso to section 8(e) of the Act. Further, and contrary to the majority, Chairman Fanning found no basis for concluding that the union's filing of grievances amounted to a violation of section 8(e) since he reasoned that the union's conduct, at most, amounted to an attempt to extend the clause's coverage to off-site work and to compel the Charging Party to enter into a new and different broadened version of the clause. He was of the view that the union's conduct might be characterized as a proposed modification of the contract but, in the absence of agreement or acquiescence by the Charging Party, there was no "entering into" within the meaning of section 8(e).

Finally, Chairman Fanning further disagreed with the majority's view that the mere existence of a self-enforcement provision in a contract makes the construction industry proviso inapplicable to the contract, citing his dissenting opinion in *Greater Muskegon General Contractors*

*Assn.*,[94] to which he still adhered. Relying on his dissenting opinion in that case, Chairman Fanning would not find the instant subcontracting clause was outside the protection of the 8(e) proviso merely because of the existence of the self-help article, even assuming that the article was a self-enforcement provision as found by the majority. Accordingly, he would find that the union had not violated the Act as charged and would dismiss the complaint in its entirety.

## J. Remedial Order Provisions

### 1. Backpay Period for Union-Caused Discrimination

In *Zinsco Electrical Products*,[95] the administrative law judge found that the union had violated section 8(b)(1)(A) and (2) of the Act by unlawfully causing the employer's discharge of an employee, and following precedent, tolled the union's backpay liability 5 days after the union notified both the employer and employee that it no longer objected to the employee's reinstatement. Noting that, under the remedy which was established in *Pen & Pencil*,[96] if a wrongfully discharged employee is refused reinstatement or cannot secure substantially equivalent employment within 5 days after the union's withdrawal of its objection to the employee's reinstatement, he is forced to personally sustain any and all remaining damages stemming from the unlawful discharge, the Board concluded that further adherence to this remedy was inconsistent with the proper and effective realization of statutory policy which requires that a transgressor bear the consequences stemming from its illegal acts. Accordingly, the Board overruled *Pen & Pencil*, and related cases to the extent inconsistent, and announced that henceforth in cases where a union unlawfully causes an employer to discharge an employee for not complying with the union-security provisions of their collective-bargaining agreement in violation of section 8(b)(1)(A) and (2) of the Act, and there is no culpability on the part of the employer, it would apply the remedy of requiring the union to make the employee whole for all losses of wages and benefits suffered as a result of the union's discrimination until the employee is either reinstated by the employer to his or her former or substantially equivalent position or until the employee achieves substantially equivalent employment elsewhere.[97]

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[94] *Muskegon Bricklayers Union #5, Bricklayers, Masons & Plasterers Intl Union of America, AFL–CIO (Greater Muskegon General Contractors Assn.)*, 152 NLRB 360 (1963)

[95] *Sheet Metal Wkrs' Union Local 355, Sheet Metal Wkrs' Intl Assn., AFL–CIO (Zinsco Electrical Products)*, 254 NLRB 773 (Chairman Fanning and Members Jenkins, Truesdale, and Zimmerman)

[96] *Pen & Pencil Wkrs Union Local 19598, AFL (Parker Pen Co.)*, 91 NLRB 883 (1950), see 16 NLRB Ann Rep 243 (1951)

[97] As part of the newly announced remedy, the union must notify the employer and employee that it no longer objects to the employee's reinstatement with the employer and it must affirmatively request the employer to reinstate the employee

## 2. Restoration of *Status Quo Ante*

In *Mead Corp.*[98] the administrative law judge found, *inter alia*, that the employer violated section 8(a)(5) and (1) of the Act by withdrawing a contract proposal at a time when it knew that acceptance by the union was imminent and he recommended the issuance of the standard bargaining order requiring the employer to bargain upon request. However, the Board disagreed with the administrative law judge's remedy and concluded that restoration of the *status quo ante* herein could best be achieved by requiring the employer to reinstate the unlawfully withdrawn proposal for 20 days, a reasonable amount of time which was necessary to afford the union the opportunity to assemble the necessary information concerning the withdrawn wage proposal and to secure appropriate action from the membership. It found that requiring restoration of the proposal did not impose an undue burden on the employer as the burden imposed would be no more onerous than that applied in analogous cases where the Board has required an employer to execute an agreed-upon collective-bargaining contract or to sign a contract which includes all provisions to which the parties previously agreed. This remedy does not compel agreement or the making of a concession within the meaning of section 8(d) of the Act and does not offend statutory limitations on the Board's remedial authority, since the employer had formulated and voluntarily offered the proposal and the remedy merely requires the employer to do what it had previously agreed to do. Accordingly, the Board found this case distinguishable from *H. K. Porter Co., Disston Div.-Danville Works* v. *N.L.R.B.*,[99] where the Supreme Court struck down a Board order forcing an employer to accept a proposal not offered by it and consistently opposed by it.

In *Joseph Magnin Co.*,[100] the Board affirmed the administrative law judge's finding that the employer violated section 8(a)(3) and (1) of the Act by prohibiting the transfer of hourly employees from stores at which they were represented by the union pursuant to a collective-bargaining agreement, to its new store in order to prevent the union from gaining majority status at the new store. Because the traditional redress recommended by the administrative law judge did not remedy all the unfair labor practices committed by the employer, and did not restore the *status quo ante*, the Board concluded that the employer must be required to reconstruct the first day of operation of the new store as it would have occurred, absent its unlawful conduct. It, therefore, ordered the employer immediately to transfer to the new store all employees who applied for transfer and were rejected because of their union affiliation, as

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[98] 256 NLRB 686 (Chairman Fanning and Members Jenkins and Zimmerman)
[99] 397 U S 99 (1970), see 35 NLRB Ann Rep 72 (1970)
[100] 257 NLRB 656 (Chairman Fanning and Members Jenkins and Zimmerman)

well as all employees discouraged from applying for transfer because of their union affiliation, terminating, if necessary, employees presently employed at the new store to provide jobs for the transferees. The Board further ordered that the backpay due the transferees be computed on the basis of the contractual wages and benefit structure that would have been in effect had the employer not prevented the union from gaining a majority in the new store. In so doing, the Board noted that, although the contract between the employer and the union contained an after-acquired store clause, designating the union as the exclusive collective-bargaining agent for the employees in all of the employer's San Francisco stores, under normal circumstances the employer would be required to recognize the union and apply the current contract to the new store only if the union presented it with concrete evidence of majority support by the new employees. However, here the employer deliberately embarked on a course of conduct designed to forestall union presence at the new facility and thereby avoid application of the agreed-upon wage and benefit structure of the contract. In particular, the Board noted that since the employer refused to transfer union members and required members of the bargaining unit to quit their jobs before even applying for jobs at the new store, it was not possible at this point to determine how many employees would otherwise have sought transfer.[101]

In *General Electric Co.*,[102] the Board directed a new election and affirmed the administrative law judge's findings that the employer violated section 8(a)(3) and (1) of the Act by, *inter alia*, implementing and subsequently discontinuing its "Sounding Board" program, which provided a formal mechanism for including employees in the identification and resolution of employment related issues of common concern. Contrary to the administrative law judge, the Board concluded that the proper remedy required that the sounding board not be reinstituted. It noted that the case presented a conflict between remedying the employer's graphic demonstration of its power to arbitrarily give and take away benefits or remedying the employer's attempt to undermine and co-opt the union's ability to represent employees in dealing with management. In concluding that the latter consideration carried greater weight, the Board found that the employer's implementation of the program occurred within the context of unlawful threats, surveillance, and interrogation calculated to make difficult employee support for the union, while making the program a very attractive alternative to representation by a labor organization, and that the withdrawal of the program in retaliation for the employees' continued support of the union only served to highlight the employer's intention to use it as a wedge between the union and the

[101] In fashioning such a retrospective remedy, the Board expressly rejected the General Counsel's and the union's argument that a nonmajority bargaining order was an appropriate remedy and refused to order the employer to apply the contract *in futuro*

[102] 255 NLRB 673 (Chairman Fanning and Members Jenkins and Zimmerman)

employees. It also found that, although section 7 of the Act does not protect labor organizations, a coercive undermining of an employee's section 7 right to "form, join or assist labor organizations" can manifest itself as an attempt to erode the purpose of the labor organization itself, rather than an attack directed at individual, or groups of, employees. Finally, the Board concluded that ordering both a new election and the reinstatement of the program largely responsible for destroying the laboratory conditions at the time of the first election would serve no useful purpose. Accordingly, the Board ordered a new election, but not the resumption of the sounding board program.

### 3. Bargaining Order Where Majority Not Established

In *United Dairy Farmers Cooperative Assn.*,[103] on remand from a United States Court of Appeals, the Board concluded that it was appropriate under the facts of this case to issue a *Gissel* [104] bargaining order in remedying the employer's unfair labor practices, despite the fact that the union had at no time been able to obtain authorization cards from a majority of the employees.

In its original decision, a majority of the full Board had declined to issue a bargaining order in favor of the nonmajority union.[105] Noting that the third vote against issuance of a bargaining order was supplied by a Board Member whose decision was based on his conclusion that the Board lacked authority to issue such a nonmajority bargaining order and relying on *Gissel*, the Court held that the Board does possess the authority to issue a nonmajority bargaining order in "exceptional" cases marked by "outrageous" and "pervasive" unfair labor practices which have eliminated any reasonable possibility of holding a free and uncoerced election. Noting that the conduct involved herein was "egregious to the extreme," [106] the Court remanded the case to the Board for a determination as to whether the facts of his case embodied the critical elements that would justify the issuance of a *Gissel* bargaining order.

Accepting the Court's remand, the Board [107] concluded the facts of the case met the Court's standard for issuance of a bargaining order in the

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[103] 257 NLRB 772 (Chairman Fanning and Members Jenkins and Zimmerman)

[104] *United Dairy Farmers Cooperative Assn* v *N L R B* , 633 F 2d 1054 (3d Cir 1980), enfg in part 242 NLRB 1026 (1979), 44 NLRB Ann Rep 173–176 (1979)

[105] Members Truesdale and Murphy stated that, while the Board may have the authority to issue a bargaining order without a card majority, the facts of this case did not warrant such a remedy Member Penello, concurring and dissenting, concluded the Board had no authority to issue a bargaining order where, as here, the union lost the election and had never secured a card majority Accordingly, he expressed no view on whether he would support the issuance of a bargaining order if the Board has such authority Chairman Fanning and Member Jenkins, concurring and dissenting, concluded the Board has such authority and that a bargaining order should issue

[106] 663 F 2d at 1069

[107] Chairman Fanning and Member Jenkins adhered to their prior position that the Board possesses the authority to issue a nonmajority bargaining order Member Zimmerman recognized the Court's decision as binding on the Board for the purpose of deciding this case and therefore found it unnecessary to determine whether the Board has such authority

absence of a card majority. In so doing, it balanced all considerations herein and found that the traditional remedies would be ineffectual in dissipating the coercive effects of the employer's unfair labor practices, and that, by its conduct, the employer had completely foreclosed the possibility of a fair election. The Board further found that the gravity, extent, timing, and constant repetition of the employer's violations against a background of prior serious misconduct set this case apart from less extraordinary cases in which only a majority bargaining order may issue. Thus, the Board noted that the employer reacted to the union activity by immediately beginning to commit a series of violations of section 8(a)(3) and (1) which continued until well after the election, including discharges, threats of closure, interrogation, payment of an unprecedented Christmas bonus, and attempted conversion of employees into independent contractors. It found that the impact of this misconduct was exacerbated by the fact that it was directed toward a relatively small unit of approximately 30 employees in which a coercive message could be readily disseminated. The employer's discharges of one of the principal union activists and of six employees who resisted the employer's unlawful attempt to deprive them of the protections of the Act by converting them into independent contractors, as well as its persistent threats to close the plant, were particularly coercive and likely to have a lasting effect. The Board also noted that the employer previously resorted to unlawful tactics in order to thwart union activity among employees in its retail stores [108] and concluded this history of recidivism revealed the employer's continuing antipathy to its employees' statutory rights and suggested futility of proceeding to a second election since the employer would again flout the Act in order to avoid a union victory.[109] Finally, the Board noted that since the union lost the election by a margin of only 14-to-12, in spite of the employer's extensive and egregious unfair labor practices, there was a reasonable basis for concluding that the union would have enjoyed majority support in the absence of the unfair labor practices and that, therefore, the risk of imposing a minority unit on the employees was greatly decreased.[110]

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[108] *United Dairy Farmers Cooperative Assn.*, 194 NLRB 1094 (1972), enfd *per curiam* 465 F 2d 1401 (3d Cir 1972)

[109] The Board pointed out that, although recidivism is an important element to be weighed, it is not a prerequisite to the issuance of a bargaining order

[110] The Board also noted that, although the closeness of the election is a factor to be considered, it would not require a close election as a condition of a bargaining order

# V

# Supreme Court Litigation

During the fiscal year 1981, the Supreme Court decided two cases in which the Board was a party.

## A. Status Under the Act of Management-Trustees of Section 302(c)(5) Trust Funds

*Amax* [1] involved the question of whether management-appointed trustees of a multiemployer pension fund established under section 302(c)(5) of the Labor Management Relations Act are employer representatives for collective-bargaining purposes within the meaning of section 8(b)(1)(B) of the Act. The court of appeals, reversing the Board, held that the management trustees act as both fiduciaries of the employee beneficiaries and as agents of the appointing employers, and that thus the union violated section 8(b)(1)(B) by striking to induce Amax to participate in a section 302(c)(5) trust fund whose management trustees had already been selected. The Supreme Court [2] reversed.

The Court noted that, under common law trust principles, a trustee has an unwavering duty of complete loyalty to the beneficiary of a trust, to the exclusion of the interests of all other parties. It found that both the language and legislative history of section 302(c)(5) indicate that Congress intended to reinforce, not to alter, the long-established duties of a trustee, and thereby to negate any suggestion that a trustee may administer a trust fund in the interest of the party that appointed him. It further found that, in enacting the Employee Retirement Income Security Act of 1947 (ERISA), Congress codified the strict fiduciary standards that a section 302(c)(5) trustee must meet, and confirmed its intention to prevent such a trustee from being put in a position where he has a dual loyalty.

In addition, the Court held that a union's power to strike or bargain to impasse to induce an employer to contribute to a multiemployer fund does not pose the danger Congress sought to prevent in enacting section 8(b)(1)(B). For, union pressure to force an employer to contribute to an established trust fund does not amount to dictating to an employer who shall represent him in collective bargaining and the adjustment of griev-

[1] *N L R B* v *Amax Coal Co , a Div of Amax*, 453 U S 322, reversing 614 F 2d 872 (3d Cir 1980), denying enforcement in part of 238 NLRB 1583 (1978)

[2] Justice Stewart delivered the opinion of the Court, Justice Stevens dissented

ances, because the trustees of a section 302(c)(5) trust fund simply do not, as such, engage in these activities.

Justice Stevens, in dissent, asserted that, irrespective of the trustees' fiduciary obligations, an employer's right to select its own trustees is a matter of "management prerogative over which the union has no right to strike."

## B. Obligation of Employer To Bargain Over Economically Motivated Decision To Close Part of an Enterprise

In *First Natl. Maintenance Corp.*,[3] the Supreme Court [4] held that an employer has no obligation to bargain about an economically motivated decision to shut down part of a business. In that case, the employer, a provider of housekeeping and maintenance services to commercial customers, terminated a contract at a nursing home after a dispute over the size of its management fee. The court of appeals agreed with the Board that the employer violated section 8(a)(5) and (1) of the Act by refusing to bargain over the decision to terminate the contract.

In reversing the court of appeals, the Supreme Court started with the premise that, "in view of an employer's need for unencumbered decision-making, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of business." (452 U.S. at 679.) Balancing the respective interests involved, the Court noted that, although a "union's interest in participating in the decision to close a particular facility or part of an employer's operations springs from its legitimate concern over job security," its interest is substantially protected by the employer's obligation under section 8(a)(5) to bargain over the effects of its decision "in a meaningful manner and at a meaningful time," and by the prohibition in section 8(a)(3) against "partial closings motivated by antiunion animus, when done to gain an unfair advantage." (452 U.S. at 682.) On the other hand, the Court stated, the publicity incident to the normal process of bargaining about the decision "may injure the possibility of a successful transition or increase the economic damage to the business." (452 U.S. at 683.) Moreover, "[l]abeling this type of decision mandatory could afford a union a powerful tool for achieving delay, a power that might be used to thwart management's intentions in a manner unrelated to any feasible solution the union might

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[3] *First Natl Maintenance Corp* v *N L R B*, 452 U S 666, reversing 627 F 2d 596 (2d Cir 1980), enfg 242 NLRB 462 (1979)

[4] Justice Blackmun delivered the opinion of the Court Justice Brennan, joined by Justice Marshall, dissented

propose." (*Id.*) Accordingly, the Court concluded that "the harm likely to be done to an employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision," and that thus "the decision itself is *not* part of §8(d)'s 'terms and conditions' . . . over which Congress has mandated bargaining." (452 U.S. at 686.) [5]

Justice Brennan, in dissent, disagreed with the Court's test "because it takes into account only the interests of *management*; it fails to consider the legitimate employment interests of the workers and their union." (452 U.S. at 689.) Moreover, in his view, the Court had ignored the principle that the "primary responsibility to determine the scope of the statutory duty to bargain has been entrusted to the NLRB, which should not be reversed by the courts merely because they might prefer another view of the statute." (452 U.S. at 691.)

[5] The Court cautioned that its opinion "intimate[d] no view as to other types of management decisions, such as plant relocations, sales, other kinds of subcontracting, automation, etc., which are to be considered on their particular facts" (452 U S at 686, fn 22)

# VI

# Enforcement Litigation

## A. Board and Court Procedure

### 1. Board Deferral to Arbitration

In *Suburban Motor Freight*,[1] the Board announced that it would not "honor the results of an arbitration proceeding under *Spielberg*[2] unless the unfair labor practice issue before the Board was both presented to and considered by the arbitrator." In *Ad Art*,[3] the Ninth Circuit sustained the Board's refusal to defer to a prior arbitration award because it found "substantial evidence to support the Board's conclusion that the arbitrator was not clearly presented with and did not clearly decide the unfair labor practice issue." In that case, the employer discharged an employee who had been a union activist and had filed numerous grievances under the collective-bargaining agreement. The discharge occurred the day after the employee had interrupted a meeting to ask the company president to sign his denial of a particular grievance, stating that he "thought we were going to work these things out." In its termination letter, the employer interpreted the employee's remark as "just another example" of the employee's poor attitude and mentioned several other grievances, some of which had long been settled. The arbitrator found that the employer had "just cause" to dismiss the employee and that, under the collective-bargaining agreement, the employer had the authority to direct the work force and to discharge employees for "just and lawful cause." The court found that the Board's refusal to defer was "proper and certainly not an abuse of discretion." While noting that it was not necessary for the arbitrator "expressly to review the statutory issue in a written memorandum," the court observed that here, "[n]o mention [was] made in the proceedings of the statutory protections provided by section 7 of the act," and concluded that "the Board properly found that the arbitral award does not reflect any analysis of the statutory protections."

By contrast, in *Liquor Salesmen's Union Local 2*,[4] the Second Circuit found that the Board abused its discretion in not deferring to a prior arbitration award on the ground that the award "did not dispose of the

[1] 247 NLRB 146 (1980)

[2] *Spielberg Mfg Co*, 112 NLRB 1080 (1955)

[3] *Ad Art* v *N L R B*, 645 F 2d 669

[4] *Liquor Salesmen's Union Local 2 of the State of N Y, Distillery, Rectifying, Wine & Allied Wkrs' Intl Union, AFL-CIO [Charmer Industries]* v *N L R B*, 664 F 2d 318

unfair labor practice allegations of the complaint." The court accepted the *Suburban Motor Freight* rule that the unfair labor practice must have been considered by the arbitrator for deference to be appropriate but found that the arbitrator did consider the same underlying facts in resolving the arbitration as was necessary to resolution of the unfair labor practice issue. In *Liquor Salesmen's Union* the companies, wholesalers of alcoholic beverages, had eliminated the c.o.d. payment collection duties of their drivers and promulgated new payment collection procedures which the union contended unlawfully transferred these duties to their salesmen. While the salesmen, who worked on a commission basis, were not required to collect c.o.d. payments from their customers, any salesman unwilling to do so would have lost his c.o.d. customers to another salesman who was willing to provide this service. As a result, collection by salesmen became the established method of payment. The arbitrator, reasoning that it was the individual salesman who ultimately decided whether or not to assure payment collection responsibilities, found no violation of the agreement's direct wording, and no violation of "any meaningful concept of past practice." The court found that, although the arbitrator "did not, in so many words find that the Companies had not refused to bargain over a unilateral change in working conditions, in violation of section 8(a)(1) and 8(a)(5)," the arbitrator's finding "as a matter of contract interpretation and in light of an examination of past practice," was necessarily dispositive of the statutory issues. The court further noted that while the *Spielberg* criteria for deference would still not be satisfied if the result reached by the arbitrator were found to be "clearly repugnant" to the Act, the Board made no such determination here.

### 2. Proof of Discriminatory Motive

Last year, in *Wright Line*,[5] the Board announced that it would henceforth examine causality in 8(a)(3) cases through an analysis akin to that used by the Supreme Court in *Mt. Healthy*,[6] a case involving first amendment rights. The Board's rule first requires "that the General Counsel make a *prima facie* showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden [shifts] to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct."

This year, the First Circuit enforced the Board's order in *Wright Line*,[7] but disagreed with the Board as to the nature of the burden which shifts to the employer after the General Counsel has made the requisite *prima*

[5] *Wright Line, a Div of Wright Line*, 251 NLRB 1083 (1980).
[6] *Mt Healthy City School Dist Bd of Education* v *Doyle*, 429 U S 274 (1977)
[7] 662 F 2d 899

*facie* showing. The court said that, in its view, the only "burden which may acceptably be placed on the employer" is a "burden of production" — that is, a burden of coming forward with credible evidence demonstrating that "the same action would have taken place even in the absence of the protected conduct." The court added that the employer's burden is only to meet, not overcome the General Counsel's *prima facie* showing, and that the General Counsel must ultimately prove by a preponderance of the evidence that an unfair labor practice has been committed. However, in conclusion, the court noted that as a practical matter this labeling of burdens will generally be of little importance, for the final determination will turn on a weighing of all the evidence. By contrast, the Fifth,[8] Sixth,[9] Seventh,[10] and Ninth [11] Circuits adopted and applied the Board's *Wright Line* rule without modification.[12]

### 3. Venue in Court of Appeals

Where more than one petition for review is filed with respect to a single agency order, 28 U.S.C. § 2112(a) provides that the agency shall file the record in the circuit where the first such petition was filed and directs other courts of appeals to transfer to that court any later-filed petitions. The court of first filing may then either hear the cases or transfer them to another court of appeals "for the convenience of the parties in the interest of justice." In two cases [13] the District of Columbia Circuit had occasion to comment on the operative considerations in making that choice — that is, whether to retain the cases for decision on the merits or transfer them. The court noted that the decision to transfer is "entirely discretionary" with the court of first filing and that in exercising that discretion courts have considered "the location of counsel, location of the parties, whether the impact of the litigation is local to one region, whether one circuit is more familiar with the same parties and issues . . . the caseloads of the respective courts, and whether there is but one truly aggrieved party." With respect to the last ground, the court noted that courts are loath to examine the merits of the case in deciding aggrievement or to compare relative aggrievement where all parties are substantially aggrieved. Where it is apparent from the pleadings, however, that the aggrievement of the first filing party is insubstantial and hence that the petition was

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[8] *N L R B* v *Robin American Corp* , 654 F 2d 1022, 1025

[9] *N L R B* v *Lloyd A Fry Roofing Co* , 651 F 2d 442, 446

[10] *Peavey Co* v *N L R B* , 648 F 2d 460, 461

[11] *N L R B* v *Nevis Industries*, 647 F 2d 905, 909

[12] See also *N L R B* v *Chas Batchelder Co* , 646 F 2d 33, 38–39 (2d Cir ), *Herman Bros* v *N L R B* , 658 F 2d 201 (3d Cir ), and *N L R B* v *Burns Motor Freight*, 635 F 2d 312, 315 (4th Cir ), where the courts noted the Board's *Wright Line* rule, but found that such burden-shifting was inconsequential in the particular case

[13] *Liquor Salesmen's Union Local 2 of the State of N Y , Distillery, Rectifying, Wine & Allied Wkrs ' Intl Union [Charmer Industries]* v *N L R B* , *Amalgamated Transit Union, AFL-CIO, Local Div 1309* v *N L R B [Bayshore Transit Management, d/b/a Natl City Transit]*, 664 F 2d 1200

filed largely to secure a forum believed favorable, the factor of first filing will be disregarded. Applying these criteria the court transferred both cases to the circuit in which the unfair labor practice occurred. In one case the union had received all the affirmative relief sought from the Board but argued that the Board had failed to rule specifically on the union's motion for summary judgment as distinguished from the General Counsel's motion. In the other the union had prevailed in all respects in obtaining an order against the employers except as to award of attorney's fees requested by the union. Finding the alleged aggrievement to be "gossamer" in the first case and "marginally" more substantial in the second, the court determined that the other relevant factors dictated transfer. In conclusion the court observed that while it may be naive to hope that "the bar would view the courts of appeals, and their judges as fungible," courts "need not and should not cater to the disingenuous reasons lawyers and parties give in seeking out one tribunal over another."

## B. Representation Issues

### 1. Health Care Units

In three cases the Tenth Circuit refused to approve Board-certified units limited to registered nurses, excluding all other professionals. In *Presbyterian/St. Luke's Medical Center* v. *N.L.R.B.*,[14] the first of three decisions, the Tenth Circuit concluded that the Board had erred in treating a unit of registered nurses as presumptively appropriate. The court held that requiring health care industry employers to bear the burden of producing evidence that "limited bargaining units are more appropriate than broader bargaining units runs contrary to Congress' admonition" to the Board to avoid undue proliferation in the health care industry. Rather, the court held, the Board must focus on the "disparity of interests" between employee groups which would prohibit or inhibit fair representation of employee interests and must specify the manner in which its unit determination in the particular case implements or reflects the congressional admonition. The court remanded the case to the Board, suggesting that the proper approach is to begin with a broad proposed unit and then exclude employees with disparate interests, rather than to start with a narrow unit, such as registered nurses, and then add professionals with similar interests.

In *Beth Israel Hospital & Geriatric Center* v. *N.L.R.B.*[15] and *St. Anthony Hospital System* v. *N.L.R.B.*,[16] the same panel again relied on its decision in *Presbyterian/St. Luke's* with respect to an RN-only unit.

[14] 653 F 2d 450
[15] 677 F 2d 1343
[16] 655 F 2d 1028

### 2. Objections to Election

In a case [17] involving both a novel and a recurring election objection, the Fifth Circuit agreed with the Board in one instance but not in the other. The first arose from the union's insistence from its first organizational meeting that the campaign would not proceed unless a majority of the unit employees paid $40, representing an initiation fee and 1 month's dues. The union's representative explained that in a campaign 3 years before a large percentage of the drivers signed authorization cards and then voted against the union. The court, in agreement with the Board, rejected the employer's argument that the requirement fell afoul of the Supreme Court's holding in *Savair*.[18] In *Savair*, the Court invalidated an election because the union waived its $10 initiation fee for those who signed authorization cards before the election but not for those who signed them thereafter. The Fifth Circuit here recognized that in both instances the moment of decision is advanced to a point before the election, diminishing the employer's opportunity to change the employees' views. The court further noted, however, that here there was no vote buying and the choice of putting up the "sincere money" was a free one, adding: "We know of no rule or doctrine disqualifying persons from participation in organizing campaigns or elections on the basis of their degree or timing of commitment."

The other objection concerned threats, attributable to the union, that, in the event of a strike, persons crossing the picket line would be met with violence — for example, "anyone pulling a load would find themselves in a gully." In the Board's view, such threats do not constitute election interference, because they are likely to repel the voters, who need only vote against the union to avoid the consequences. In the court's view such threats go beyond their immediate context of picket line violence, because employees "assess what kind of folk they are dealing with and how those folk are likely to react if crossed."

## C. Unfair Labor Practices

### 1. Employer Interference with Employee Rights

#### a. Discharge for Concerted Activity

In *F. W. Woolworth Co.* v. *N.L.R.B.*,[19] the Eighth Circuit agreed with the Board that an employee was engaged in concerted activity when he

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[17] *Hickory Springs Mfg Co* v *N L R B*, 645 F 2d 506
[18] *N L R B* v *Savair Mfg Co*, 414 U S 270 (1973)
[19] 655 F 2d 151

attempted to ask questions at a "captive audience meeting" convened by management on the subject of unionization. The court distinguished its previous decision in *Prescott Industrial Products Co.*[20] in determining whether the employee's concerted activity was entitled to the protection of the Act. The court noted that the employee in *Prescott* intentionally disrupted the meeting when refused permission to ask questions whereas the employer here was able to finish the meeting.

In determining whether employee conduct was to be characterized as concerted, three decisions discussed the Board's decisions in *Interboro Contractors* [21] and *Alleluia Cushion Co.*[22] In *Krispy Kreme*,[23] the Fourth Circuit denied enforcement of a Board decision finding that an employee had engaged in concerted activity by filing a workers' compensation claim over conditions in the working environment. The court noted that there was no evidence that the employee intended his workers' compensation claim to induce group action or that he was filing it on behalf of other employees. Rejecting *Alleluia*, the court refused to infer or presume that the employee's activity was for the benefit of other employees. In *Ontario Knife Co.* v. *N.L.R.B.*,[24] the Second Circuit denied enforcement of a Board decision that an employer had discharged an employee for engaging in concerted activities. In this case, two employees had complained for some time about undesirable work assignments. When their supervisor advised them that they would have to accept whatever work was assigned them, one of the two employees walked off the job and was subsequently terminated. The court agreed with the Board that the two employees were engaged in concerted activity when protesting the work assignments. The court disagreed, however, with the Board's conclusion that the one employee engaged in concerted activity by walking off the job in furtherance of the protest, noting there was no evidence that other employees participated in or approved the walkout. In *Frank Briscoe* v. *N.L.R.B.*,[25] five employees who filed discrimination charges with the Equal Employment Opportunity Commission were found to be engaged in concerted activity. The court noted the evidence showed that the discriminatees had acted together in filing their complaints and that their complaints were intended to benefit workers other than themselves. Moreover, the evidence showed that the employer had lumped the charges together and viewed the black employees as a group with respect to those charges.

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[20] 500 F 2d 6 (8th Cir 1974)
[21] 157 NLRB 1295 (1966), enfd 388 F 2d 495 (2d Cir 1967)
[22] 221 NLRB 999 (1975)
[23] *Krispy Kreme Doughnut Corp* v *N L R B* , 635 F 2d 304
[24] 637 F 2d 840
[25] 637 F 2d 946 (3d Cir )

## b. Hospital No-Solicitation Rules

The general principle applied by the Board in solicitation cases, approved in *Republic Aviation Corp.* v. *N.L.R.B.*,[26] is that a rule against employee solicitation during worktime is presumptively valid, while a rule restricting employee solicitation during nonworktime is presumptively invalid. Nonworktime restrictions may be upheld only when the employer demonstrates "special circumstances" making the rule necessary to maintain production or discipline. The Board has modified this general approach with regard to hospitals to accommodate the special need of patients for a tranquil environment. The Board's rule as to hospitals, first announced in *St. John's* [27] allows employer restriction of nonworktime solicitation in "immediate" patient-care areas but maintains the presumption against nonworktime restrictions in other areas, such as cafeterias and lounges, even though they may be accessible to patients. The Supreme Court in *Beth Israel* and in *Baptist Hospital*,[28] rejected attacks on the validity of the hospital presumption, although finding in *Baptist Hospital* that the employer had overcome the presumption with respect to corridors and sitting rooms on patient floors.

In two cases applying these principles, the courts agreed with Board that the hospital's no-solicitation rule was overbroad. In one case,[29] the rule initially permitted union solicitation in "break areas," a limitation which was later changed to "nonwork areas." The court agreed that such a rule invoked to bar nonworktime solicitation by off-duty nurses in the second floor lobby was overbroad and unlawful. The lobby is a large waiting area, open to the general public, immediately adjoining the employer's public cafeteria. It is used by people on breaks from conferences in nearby conference rooms, by those passing to and from the medical library, and by nurses who wait there at shift changes to punch the timeclock located off the lobby. Lobby users sit, talk, smoke, and sometimes eat there. There is a separate waiting room for the use of persons awaiting the results of surgery. These persons use the lobby when the special surgery waiting room is filled to capacity, but even on those occasions physicians confer about serious problems with waiting family and friends in the relative privacy of the surgery waiting room. There was testimony that some persons waiting for outpatient services used the second floor lobby "rather than wait downstairs" but this was the only reference to patient use of the area. On this record the court agreed with the Board's finding that the hospital has failed to justify its ban on solicitation in that second-floor lobby "as necessary to avoid

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[26] 437 U S 483 (1978)

[27] *St John's Hospital & School of Nursing*, 222 NLRB 1150 (1976), enforcement granted in part and denied in part 557 F 2d 1386 (10th Cir 1977)

[28] *N L R B* v *Beth Israel Hospital*, 437 U S 483 (1978), *N L R B* v *Baptist Hospital*, 442 U S 773 (1979)

[29] *Eastern Maine Medical Center* v *N L R B*, 658 F 2d 1 (1st Cir )

disruption of healthcare operations or disturbance of patients." [30]

In the other case,[31] the area in question was a room adjoining the operating room and the doctors' and the nurses' dressing rooms. The court agreed with the Board that the area was a "lounge," never entered by patients, where doctors and nurses regularly ate lunch, drank cokes and coffee, and engaged in social conversation. Accordingly, the court rejected the employer's testimony that the room was part of the operating room and hence a patient care area.

### c. Limitations on Picketing and Distribution

The protected status of picketing or other information distribution was at issue in several cases decided by the courts of appeals. Two cases focused on the location of these activities. In *Seattle-First Natl. Bank*,[32] the Ninth Circuit affirmed the Board's finding that pickets stationed outside the entrance to a restaurant on the 46th floor of an office building were protected by the Act. The common area or foyer on the 46th floor was used not only by employees and patrons of the restaurant, which was the target of an economic strike, and of a stock brokerage firm located on the same floor, but also by all those traveling to the next four floors of the building. The pickets, never more than two in number, carried no placards but distributed leaflets, talked to potential customers, and sometimes held leaflets in front of them like placards. Many of the restaurant's lunchtime patrons came from within the building and could not have been identified or confronted by pickets outside the building. The court held that the balance between the Bank's property rights and the pickets' right to engage in economic strike activity [33] supported the Board's finding of protection. The court emphasized the pickets' objective of reaching restaurant customers, the obvious difficulties and inefficiencies of achieving their objective in another location, the highly protected status of economic strike activity, and the limited number and unobstructive conduct of the pickets. However, because the court read the Board's remedial order to permit a broader range of activity on the 46th floor than that shown by the facts of the case, the Board's order was remanded for revision "to ensure that the number of persons on the floor and their behavior there is properly restricted."

In *Giant Food Markets*,[34] the Sixth Circuit considered the question of the proper accommodation of protected "area standards" picketing activity with the property interests of the owners and lessors of a two-store

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[30] *Beth Israel Hospital, supra*, 437 U S at 507, *Baptist Hospital, supra*, 442 U S at 781

[31] *N L R B* v *Los Angeles New Hospital*, 640 F 2d 1017 (9th Cir )

[32] *Seattle-First Natl Bank* v *N L R B* , 651 F 2d 1272

[33] Applying *Hudgens* v *N L R B* , 424 U S 507, 522–523 (1976), on remand 230 NLRB 414 (1977)

[34] *Giant Food Markets* v *N L R B* , 633 F 2d 18 (6th Cir )

shopping center. In that case a single building housed two adjacent stores; the parking lot separating the stores from the public road serviced both stores. When the new lessor of the grocery store component of this complex was discovered to be offering wages and benefits inferior to those provided by the old lessor and by one other chain in the area, the union that had represented employees of the old lessor began picketing and leafleting in front of the store. The Board, finding that picketing at the nearest available public location (the entrance to the parking lot) would both dilute the union's message and enmesh the "neutral" store in the union's dispute with the grocery store, concluded that the union's onsite picketing was protected by section 7. The court agreed with the Board's application of a balancing approach [35] to area standards picketing on private property and held that "area standards pickets must be allowed a reasonable means of communicating with consumers." Acknowledging the commonsense difficulties of alternate methods of reaching the consumers who were the sole "intended audience" of the union's activities, the court nevertheless found that the record contained insufficient evidence to support the Board's conclusion that picketing at the entrance to the stores' parking lots was not a satisfactory alternative to picketing closer to the stores and remanded for the taking of additional evidence on this point.

Two other cases decided this year focused on the content of the information distributed by employees. In *Greyhound Lines*,[36] the Eighth Circuit agreed with the Board that two employees who had issued a press release announcing strict adherence to the 55-mile-per-hour speed limit over the Labor Day weekend were protected by the Act. The press release stated that "on rare occasions" drivers will slip over the 55-mile-per-hour limit to accommodate their passengers after "unexpected delays," predicted that adherence to the speed limits would "result in some connecting departure delays" and also stated that one driver declined to comment when asked if the "Slowdown" had anything to do with a recent attempt to work regular-run drivers 7 days a week without overtime, the dismissal of 36 drivers 3 weeks ago in Salt Lake City who were protesting alleged contract violations, or with employer's numerous runs that are impossible to operate within the 55-mile-per-hour speed limit. Relying on this latter segment of the press release and on evidence of underlying employee grievances, the court rejected the employer's argument that the press release was not related to an ongoing labor dispute and concluded that the press release fell short of unprotected public disparagement of the employer's product or reputation. Finally, the court found substantial evidence to support the Board's finding that the press release was not maliciously motivated. Although the company had not in fact

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[35] Applying *N L R B* v *Babcock & Wilcox Co*, 351 U S 105 (1955)

[36] *N L R B* v *Greyhound Lines*, 660 F 2d 354

discharged 36 drivers in Salt Lake City as the press release implied, the court emphasized that the employees had attempted to confirm the erroneous information on which they acted.

In a case arising in a quite different posture,[37] the District of Columbia Circuit agreed with the Board's conclusion that a leaflet endorsing candidates for public office was unprotected under the Act. The leaflet, which employees had sought to distribute on company premises the day before election day, prominently featured the names and photographs of candidates for state and national office. The leaflet briefly discussed some issues on which such officeholders can have an impact on workers and working conditions, stated that the union had endorsed the candidates whose pictures were shown, and urged the reader to vote for the endorsed candidates. The court, applying the Supreme Court's decision in *Eastex*,[38] stated the question before it was whether or not the leaflet bore "a sufficiently close relationship to employees' interests as to come within [section 7]." The court agreed with the Board's finding that the focus of the leaflet was the endorsement of candidates, not the elucidation of issues. Discerning a spectrum of protected and unprotected political communication, the court found that the leaflet here fell "securely at the unprotected end of the spectrum."

### d. Other Issues

In *United Credit Bureau*,[39] the Fourth Circuit agreed with the Board that a state court fraud action against an employee constituted an impermissible act of retaliation which the Board could properly interdict. The employer's lawsuit sought substantial damages on the theory that an employee had abused the Board's proceses by precipitating her own discharge with the intention of receiving an undeserved cash settlement once Board charges were filed. The evidence presented during the discharge hearing, however, showed only that the employee had engaged in protected activities, not that she had perpetrated a fraud. At the reopened hearing, moreover, the employer presented no evidence to establish a reasonable basis for its lawsuit, insisting instead that it had an absolute right to develop its fraud theory in the state court forum. Disagreeing, the court found that since the lawsuit had "the potential for direct collision with the policies of Section 8(a)(4)," it was for the Board to determine in the first instance whether the lawsuit had been instituted for a retaliatory purpose.

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[37] *Local 174, Intl Union, United Automobile, Aerospace & Agricultural Implement Wkrs of America (UAW) [Firestone Steel Products Co.]* v *N L R B*, 645 F 2d 1151

[38] *Eastex* v *N L R B*, 437 U S 556 (1978)

[39] *United Credit Bureau of America* v *N L R B*, 643 F 2d 1017

## 2. Employer Discrimination Against Employees

### a. Discipline of Union Stewards

In two cases the courts sustained the Board's conclusion that singling out a union official for discipline because of his mere participation in an illegal strike violated the Act. In *Hammermill Paper Co.*,[40] the Third Circuit enforced the Board's finding that the company's imposition on a union steward of greater discipline than it had imposed on rank-and-file employees for participation in an illegal strike, solely because of his status as a union official, was unlawful. Consistent with its prior decision in *Gould*,[41] the court conditioned the finding of a violation on its additional finding that the steward had not breached any contractually imposed obligation to take affirmative steps to end the strike. The court here relied on an arbitrator's finding that there was no contractual basis for singling out the steward for disciplinary action.

In *C. H. Heist Corp.*,[42] the Seventh Circuit sustained the Board's finding that the company's discharge of a union steward following an illegal strike solely because of his status as a union official was inherently destructive of the right to hold union office. The court pointed out that the steward had opposed his fellow employees' plans to strike and had repeatedly urged them to end the strike. His participation in the strike was confined to honoring the picket line. "In the absence of a clear contractual provision requiring Mitchell to cross the picket line," the court held that "his efforts were sufficient, if not the most effective possible, to satisfy his obligation to see that the no strike clause was complied with." The court narrowly construed its prior holding in *Indiana & Michigan Electric Co.*[43] that union officials, by virtue of their status, have a "higher responsibility" than the rank-and-file which justifies more severe discipline for participation in unprotected activity, and held that Mitchell's "higher responsibilities" were satisfied by his affirmative steps to end the strike and did not require him to end his participation by crossing the picket line.

In a third case decided in this area, the Eighth Circuit denied enforcement of the Board's order. The court in *Armour-Dial* [44] expressed its agreement with the principles enunciated in *Indiana & Michigan Electric Co.* and rejected the Board's basis for distinguishing that case and *Gould*.[45] The Board had determined that the union officials here had not participated in or induced the work stoppage, while the officials found to

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[40] *Hammermill Paper Co* v *N L R B* , 658 F 2d 155
[41] *Gould* v *N L R B* , 612 F 2d 728 (3d Cir 1979)
[42] *C H Heist Corp* v *N L R B* , 657 F 2d 178
[43] *Indiana & Michigan Electric Co* v *N L R B* , 599 F 2d 227 (1979)
[44] *N L R B* v *Armour-Dial*, 638 F 2d 51
[45] *Gould* v *N L R B* , 612 F 2d 728 (3d Cir 1979)

have been lawfully disciplined by the courts in *Indiana & Michigan Electric Co.* and *Gould* had participated in — but not induced — the unprotected activity. The court concluded that the level of involvement here by the union executive committee members — namely, their silent presence during meetings which the union president unlawfully threatened work stoppage — amounted to "participation in and inducement of the work stoppage which followed."

### b. Waiver of the Right To Strike

The right to engage in a lawful primary strike or to engage in sympathetic activity in support of such a strike is a fundamental right derived from the Act. A union may relinquish this right under the provisions of a bargaining agreement, but such relinquishment must be by clear and unmistakable waiver. Such a waiver may be shown by express contract language or through extrinsic evidence explaining ambiguous contract language. In *Caterpillar Tractor*,[46] the Seventh Circuit examined the language of the collective-bargaining agreement and determined that, contrary to the Board's conclusion, the employees had waived their right to strike over the employer's unilateral changes. The changes had been made in the voluntary demotion procedure — a procedure which was not in the collective-bargaining agreement but which had become a term of employment by custom and usage and which derived from the transfer provision in the collective-bargaining agreement. The agreement provided that the union would not strike until all enumerated "peaceable means" of reaching a mutually satisfactory decision had been tried. The court construed the provision to mean that the employees waived the right to strike as long as the employer and union were attempting to resolve the underlying dispute through contractual grievance machinery. Since the dispute was in the grievance process when the employees struck, the court found that the strike violated the contract. The court also noted that the strike was not called by the union, ratified by the union, or actually opposed by the union. The court also stated that only strikes in protest of serious unfair labor practices should be held immune from general no-strike clauses, citing *Mastro Plastics*,[47] and that the employer's unilateral changes, which were not unlawfully motivated, were not "serious" within this definition and thus not protected activity.

In *N.L.R.B.* v. *Gould, Switchgear Div.*,[48] the Tenth Circuit upheld the Board's determination that employees had not waived their right to engage in sympathy picketing. The court agreed with the Board's posi-

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[46] *Caterpillar Tractor Co* v *N L R B* , 638 F 2d 140

[47] *Mastro Plastics Corp* v *N L R B* , 350 U S 270 (1956)

[48] 638 F 2d 159, cert denied *sub nom Brown Boveri Electric*, 107 LRRM 2631

tion that a no-strike obligation is *quid pro quo* for submission of the dispute to grievance machinery. Absent explicit expression of another intent, the agreement to arbitrate and the duty not to strike are coterminous. In *Gould*, the no-strike pledge in the contract was given in "view of the procedure for the orderly settlement of grievances provided by the Agreement." Since the underlying dispute — the informational picketing by another unit of employees against a nonunion subcontractor at the plant — was not a matter subject to the grievance/arbitration machinery of the sympathy strikers' contract, the court found that the union had not waived the employees' right to engage in activity in support of their fellow employees.

In *Amcar Div., ACR Industries* v. *N.L.R.B.*,[49] the Eighth Circuit found that the general broad no-strike clause was insufficient, in and of itself, to constitute a waiver of the right to engage in sympathy strikes. The court studied the language and structure of the contract, the bargaining history, and other relevant conduct to determine the parties' understanding of the no-strike clause and concluded that while none of the evidence alone showed waiver, together the evidence demonstrated that the union unmistakably waived the employees' right to engage in a sympathy strike and that the employer was therefore entitled to take disciplinary action against the strikers in accordance with the collective-bargaining agreement's absence control program. The court noted that the union's unsuccessful attempt to give the employees the right to refuse to cross lawful picket lines implied that the union had waived this right. The court disagreed with the Board's suggestion that the union was merely trying to clarify an unwritten understanding permitting sympathy picketing, since the parties had earlier discussed the picket line proposal and were aware that it included sympathy strikes when the company opposed it. The court found the following to be further evidence of waiver: union officials' urging employees not to cross lawful picket line in a similar controversy several years earlier; union's decision to decline to arbitrate issue at that time; union's agreement to the absence control program which did not refer to sympathy strikes as one of the few excused categories; union's failure to grieve arbitrator's decision that only the listed categories were valid as excuses for absences; union's failure to attempt to amend the absence control program or no-strike clause in most recent contract negotiations to include sympathy strikes; and union negotiator's and union counsel's concurrence in language of notice to employees that sympathy picketing would violate the contract.

[49] 641 F 2d 561

## 3. The Bargaining Obligation

### a. Coordinated Bargaining

Coordinated bargaining is a negotiating technique whereby a union coordinates its bargaining with respect to other bargaining units by including on its own negotiating panels representatives of such units. Two cases presented the issue whether employer efforts to resist coordinated bargaining were violative of the Act. In one such case,[50] the Fourth Circuit upheld the Board's conclusion that the employer's efforts were violative of section 8(a)(5) and (1) and section 8(a)(3) and (1) of the Act. There, each of four independent unions sought to coordinate bargaining at four employer plants by including members of the other three unions on its bargaining committee. The employer responded initially by informing the unions that, if outsiders attended, it would abandon its established practices of permitting bargaining sessions to be held on its premises and of compensating unit employees for worktime lost while attending bargaining sessions. When the four unions reluctantly accepted these changes, the employer responded by denying employee requests for union leave without pay or for vacation leave when it suspected that the leave would be used by outsiders to attend another plant's bargaining sessions. The employer also rejected union suggestions that bargaining sessions be held on evenings or weekends so that outsiders could attend without taking leave. Further, when employees, whose requests for leave had been denied, attended bargaining sessions at other plants, the employer suspended them for unauthorized absences. The final employer effort to resist coordinated bargaining was its refusal to sign agreed-upon labor contracts at two plants because such contracts had been signed by all the members of these unions' bargaining committees, including the outsiders. At the outset, the court observed that section 7 of the Act guaranteed employers the right to bargain collectively through representatives of their own choosing and, accordingly, absent a showing of extraordinary circumstances, an employer may not refuse to bargain with the negotiating committee selected by employees. The court further observed that mere inclusion of persons outside the negotiating unit does not constitute such circumstances.

In a second case,[51] the court considered whether the employer discriminatorily denied requests for union leave without pay to local union members at its 21 plants where the members were to attend an international union conference to discuss the feasibility of coordinating bargaining among the local unions. The Board had found that the employer's conduct was violative because the employer's consistent past practice

[50] *Proctor & Gamble Mfg Co* v *N L R B* , 658 F 2d 968 (6th Cir )
[51] *Grief Bros Corp* v *N L R B* , 635 F 2d 531

was to routinely grant union leave to employees to attend union functions, including conventions at the international local. The court, however, disagreed with the Board and concluded that no violation had occurred, holding that the employer's granting individual requests for union leave in the past did not deprive it of the right to deny an unprecedented request for simultaneous leaves for employees of all 21 plants to attend a meeting to prepare for future negotiations.

### b. Subjects of Bargaining

In *Associated General Contractors*,[52] the Eighth Circuit enforced a Board decision that the inclusion of a clause in a contract between a multiemployer bargaining association and a union — affecting the terms and conditions under which employees could work for employers who were not in the association — was not a mandatory subject of bargaining. The contractual clause, which was known as a "no conflicting agreements" clause, had customarily been part of the bargaining agreements between the multiemployer association and local union. The clause purported to prevent the unions from entering into agreements with any other employer that "differ in any way" from the terms of the agreement with the association. The court noted that the clause did not directly affect the terms of employment between employees and the association; rather, it regulated the terms of bargaining between the employees and employers who were not members of the association. Therefore, the court stated, the association's insistence to impasse on the clause represented an unlawful attempt to bargain for parties who were not in the association's bargaining unit.

The Tenth Circuit enforced a Board decision that an employer's insistence to impasse on the presence of a court reporter during collective-bargaining sessions to transcribe negotiations was unlawful, because that subject was not a mandatory subject of bargaining.[53] Stressing that "considerable difference" should be extended to Board decisions in this area, the court agreed with the Board that the question of a court reporter's presence was a threshold procedural issue that was not significantly related to terms of employment. Although the court acknowledged that recording bargaining sessions does have some positive value, it found that value diminished when it is done over a party's objection, citing the possibility that negotiations could degenerate into posturing for the record and become stultified. The court noted that the Board had previously applied a good-faith standard in determining whether insistence on a court reporter at bargaining sessions violated the Act. The

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[52] *Associated General Contractors of North Dakota* v *N L R B* , 637 F 2d 556

[53] *N L R B* v *Bartlett-Collins Co* , 639 F 2d 652

court stated, however, that the Board could change its position if it reasonably concluded that change was warranted and fully explained its reasons, as it did in the instant case.

### c. Duty to Furnish Information

In *Associated General Contractors*,[54] the Ninth Circuit affirmed the Board's finding that a multiemployer bargaining agent had to furnish two unions with a list of its members whose employees were *not* represented by the unions. In recent years the unions had seen an increase in open-shop or nonunion contractors in the California construction industry in which the unions represented employees and a corresponding decrease in the unions' membership rolls and related trust fund receipts. The unions also noted recent Associated General Contractor seminars advocating open-shop operations and an increasing number of double-breasted operations — that is, related firms with one operating union and the other nonunion. The unions argued that these circumstances suggested the possibility that employers were evading their contract obligations and hence the information was necessary to police the contracts. The Associated General Contractors argued in response, however, that actual contract violations must be shown before disclosure can be required; that the membership lists would not directly aid the unions in investigating double-breasted operations; and that the unions wanted the rosters for organizational purposes. The Ninth Circuit, in affirming the Board's order, noted that, although such data was not presumptively relevant to the bargaining representative's duties, the unions had met their initial burden of showing relevancy by showing that the information sought was relevant to contract violation investigations. The court then, in applying the liberal, discovery-type standard set forth in *Acme Industrial Co.*,[55] rejected all of the Associated Contractor's further arguments.

In *Press Democrat Publishing Co.*,[56] the Ninth Circuit again reviewed an employer's duty to furnish nonunit information. Here, the Board ordered the publishing company to disclose to the union amounts paid to nonunit independent correspondents for their editorial product. The Board found that such nonunit wage information was relevant to compare wages for unit employees and to obtain a larger share of the editorial budget in future collective bargaining. The court, in rejecting the employer's argument that a stricter standard of relevance should apply to nonunit information than that set forth in *Acme Industrial Co.*,[57]

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[54] *N L R B* v *Associated General Contractors of Calif*, 633 F 2d 766

[55] *N L R B* v *Acme Industrial Co*, 385 U S 432, 435–436 (1967)

[56] *Press Democrat Publishing Co, Times Herald, Amphlett Printing Co & Brown Newspaper Publishing Co* v *N L R B*, 629 F 2d 1320

[57] *N L R B* v *Acme Industrial Co*, *supra*

affirmed the Board's disclosure order. The court held that since the request concerned wages for identical work performed by both nonunit and unit employees there was no reason to disturb the Board's conclusion that relevance was established. The court then remanded the case to the Board for clarification of the Board's remedial order, which prohibited the disclosure of all the information sought by the union because of the Board's concern with protecting individual nonunit correspondent confidentiality.

In two cases decided on the same day, the District of Columbia Circuit reviewed an employer's obligation to furnish race and sex data to unions seeking to combat discrimination among unit employees. In *Westinghouse Electric Corp.*,[58] the unions sought data on distribution and advancement of women and minorities, copies of discrimination complaints filed by union-represented employees, work force analyses, and affirmative action plans from Westinghouse Corporation and General Motors Corporation. The court, in affirming Board disclosure orders for data on distribution and advancement and acknowledging that the elimination of such discrimination is a mandatory object of bargaining, noted the the present collective-bargaining agreements contained longstanding provisions aimed at the elimination of sex and race discrimination and that such information would aid the unions in the duty of determining whether such clauses were violated. The court rejected the employers' arguments that the unions should not receive the data because it might be used in union-sponsored litigation against them. The court also affirmed the Board's findings that most of the employer's work force analyses had to be disclosed but that entire affirmative action plans did not because the relevance of the remainder of those plans to the collective-bargaining process had not been demonstrated. Finally, the court modified the Board's order requiring disclosure of discrimination complaints holding that the employer need only provide a compilation of the dates and bases of such complaints. Thus, the court held that the filing of complaints would be inhibited if employees knew copies were to be disclosed and that such disclosure would be contrary to the congressional intent establishing confidential complaint procedures as set forth in Title VII of the Civil Rights Act of 1964.[59]

In *White Farms Equipment Co.*,[60] the District of Columbia Circuit addressed the issue whether information relating to the sex and race of employment applicants were relevant to the union's duty to combat discrimination affecting unit employees. The court upheld the Board in

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[58] *Intl Union of Electrical, Radio & Machine Wkrs , AFL-CIO [Westinghouse Electric Corp ] v N L R B* , 648 F 2d 18

[59] 42 U S C § 2000e-8(e)

[60] *N L R B v Intl Union of Electrical, Radio & Machine Wkrs , AFL-CIO [White Farm Equipment Co ]*, 650 F 2d 334

finding that such data was relevant to the union's proper performance of its duties. The court also upheld the Board's finding that the employer master insurance agreements had to be disclosed to aid in policing and administering the collective-bargaining agreement.

### d. Other Issues

In *Pepsi-Cola*,[61] the Eighth Circuit decided the novel issue of whether in collective-bargaining negotiations an unconditional offer remains open to acceptance after the other party has rejected the offer or submitted a counterproposal. The employer offered a complete contract proposal to the union, which the union rejected after submitting it to a membership vote. Further negotiating sessions were held and the union submitted a counterproposal to the employer. Two weeks after the union rejected the employer's original proposal, the union notified the employer that it accepted the employer's original offer. The employer told the union that its offer had been withdrawn when the union rejected the offer. The court affirmed the Board's finding that the employer violated section 8(a)(5) of the Act by failing to execute the contract after agreement had been reached. The court observed that the common law contract rule that rejection of an offer or a counterproposal terminates an offer has little relevance in the collective-bargaining setting, and in fact runs counter to Federal labor policy, which encourages the formation of collective-bargaining agreements. Thus, the court ruled that in contract negotiations an offer once made will remain on the table unless explicitly withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer had been withdrawn.

Section 8(d) of the Act provides that no party to an existing collective-bargaining contract "shall terminate or modify such contract, unless the party desiring such termination or modification (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the . . . modification," and "(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after . . . notice [of the party's wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later . . ." In *KCW Furniture* v. *N.L.R.B.*,[62] the Ninth Circuit was called on to determine whether the "duration and renewal" provision in the parties' contract satisfied the requirements of section 8(d)(4) of the Act. The "duration and renewal" section in the contract provided for automatic year-to-year renewal of the collective-bargaining agreement, but provided that either party may open the contract for the purpose of modifying terms thereof

[61] *Pepsi-Cola Bottling Co of Mason City, Iowa* v *N L R B*, 659 F 2d 87
[62] 634 F 2d 436

by giving written "Notice of Opening" no later than 60 days prior to the expiration of the then current contract. The contract stated that the notice of opening did not operate to terminate the contract or forestall automatic renewal. The contract also reserved to the parties "the right to economic recourse in negotiations; except during the interval between the Notice of Opening and the expiration date." Prior to the expiration of the contract the union sent "notice of opening" to the employer. The court affirmed the Board in finding that the "duration and renewal" provision in the parties' collective-bargaining agreement, which allowed the contract to be both renewed and negotiable, was permissible under the Supreme Court's decision in *Lion Oil*.[63] In *Lion Oil* the Supreme Court recognized that a contract could be both renewed and negotiable, without violating section 8(d)(4) of the Act, and that that section does not prohibit strikes after giving the statutorily required 60-day notice when the contract allows an agreement to be opened for modification. The court in *KCW* concluded that the "duration and renewal" provision in the parties' contract expressly authorized what the Supreme Court sanctioned in *Lion Oil* — that is, the right to negotiate during the term of an automatically renewed contract when the contract so provides, and the right to strike in support of the proposed modifications upon giving of a 60-day "Notice of Opening" to modify the contract.

### 4. Union Interference With Employee Rights

A case [64] decided by the District of Columbia Circuit addressed the right of a dissident member to post materials critical of the union on a bulletin board provided to the union under the collective-bargaining agreement. Although the agreement stated that the board was to be used for official union business, the union had permitted the posting of for-sale notices, announcements of church revivals, political campaign materials, and Playboy centerfolds. Initially the union steward removed the critical materials which the employee had put on the union bulletin board, which was in the drivers' breakroom. Later the union bulletin board as well as the employer's locked, glass-covered board were removed when the breakroom was painted. After the painting, the employer and the union's bulletin boards were returned and both were now locked and glass-covered. The employee sought permission to post materials on the union's board but his requests were denied. The union continued, however, to allow employees to use the board for nonunion business and for personal notices. At the hearing, the union's business agent testified that the employee's material was removed because it "was derogatory, it was

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[63] *N L R B* v *Lion Oil*, 352 U S 281 (1957)

[64] *Charles E Helton* v *N L R B* , 656 F 2d 883

adverse toward a local union and the Teamsters" and because "it created controversy among the members . . . ." In finding that the union did not violate the Act by removing the employee's materials, the Board held that the employee's activities on behalf of a dissident group were protected by the Act and recognized that an employer would violate section 8(a)(1) by prohibiting employees from posting union materials on a bulletin board when it allows them access to that board for other purposes. The Board concluded, however, that while section 8(a)(1) prohibits an employer to "interfere with, restrain, or coerce" employees in their rights under the Act, section 8(b)(1)(A) makes it unlawful for a union "to restrain or coerce."

In reversing the Board, the court found that the union's action by removing the materials amounted to restraint and coercion within the meaning of section 8(b)(1)(A). Essentially the disagreement between the court and the Board lay in the interpretation of the legislative history and Supreme Court decisions with respect to the scope of section 8(b)(1)(A) and its proviso. After reviewing Supreme Court decisions in which "restrain or coerce" was given a narrower [65] and a broader [66] meaning, the court centered on *Scofield*.[67] In that case the Supreme Court held that the proviso to section 8(b)(1)(A), which preserves the union's right to prescribe "its own rules with respect to the acquisition or retention of membership," leaves a union free to enforce "a properly adopted rule," if the rule (1) "reflects a legitimate union interest," (2) "impairs no policy Congress has imbedded in the labor laws," and (3) "is reasonably enforced against union members who are free to leave the union and escape the rule." (394 U.S. at 430.) In the court's view, the union's conduct here did not pass this test. First the court noted the absence of either a general rule or prior notice to the employee, and added that, in any event, the union's desire to prevent controversy or to suppress criticism of union leadership does not constitute a legitimate union interest. Second, the court found that the union's conduct impaired policies imbedded in the labor laws — namely, the provisions in the "Bill of Rights" for union members [68] concerning the right "to express any views, arguments, or opinions . . . ." Finally, the court found it unlikely that the employee could have avoided the restriction on posting by resigning from the union.

In another case [69] the Fifth Circuit rejected the Board's finding that the union had violated the stricture against "causing or attempting to cause an employer to discriminate against an employee . . . ." The union representative had been asked by the employer, which was about to

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[65] *N L R B* v *Drivers, Chauffeurs & Helpers Local Union No 639, IBT* [*Curtis Bros* ], 362 U S 274 (1960), *N L R B* v *Allis-Chalmers Mfg Co* , 388 U S 175 (1967)

[66] *Intl Ladies' Garment Wkrs ' Union, AFL–CIO* [*Bernhard-Altmann Texas Corp* ] v *N L R B* , 366 U S 731 (1961)

[67] *Scofield (Wis Motor Corp )* v *N L R B* , 394 U S 423 (1969)

[68] Labor-Management Reporting and Disclosure Act of 1959, 29 U S.C § 411 (1976)

[69] *Dallas Stage Employees Local Union 127* [*Mulberry Square Productions*] v *N L R B* , 633 F 2d 1195

mount a production, to approve a list of prospective employees. The union representative responded that the employer could hire anyone it wanted, but one of the listed employees did not have a membership card from the sound local. When the employer's representative asked what the consequences of hiring such a person might be, the union representative replied that the International's trademark seal — the "bug" — might be withheld and that, if the picture were distributed without the "bug," projectionists might refuse to run the film, or run it improperly. The court noted that the International had a right to protect the integrity of the "bug" and issue it only when all of the production crew were union members and that the local has the right — if not the duty — to bring to the International's attention situations in which it feels that the "bug" should not be issued. The court concluded that threatening to take a legal action could not violate the Act, distinguishing *Michael Levee* [70] as a case in which under similar circumstances the union official threatened not withholding the "bug," but some unspecified action.

In *Actor's Equity Assn.*[71] the Second Circuit enforced a Board order requiring the union to cease applying a nonuniform dues structure that discriminates against nonresident alien employees in violation of section 8(b)(1)(A) and (2) and ordering repayment of the improperly assessed, excess dues. Under union security agreements with the employer's organization, the union imposed a separate dues schedule on nonresident aliens. Under the schedule for resident and citizen members, citizens of the United States and Canada, and resident aliens who intend to make the United States or Canada their permanent residence, pay dues according to a sliding scale ranging from $42 per year for an actor earning no more than $2,500 per year to a maximum of $400 for an actor earning more than $30,000. Once the citizen or resident member earns more than $1,400 per year, his dues will not exceed 3 percent of gross income and are subject to the $400 ceiling. Nonresident aliens who perform in the United States, on the other hand, must pay 5 percent of their stage income as dues, with no ceiling. Yul Brynner, the intervenor in the court proceeding, is a Swiss citizen and resident of France. During the first year of the revival production of *The King and I*, he would have paid $400 had he been a U.S. citizen or resident; under the separate dues schedule for nonresident aliens he was required to pay $45,000. Citing *Kaiser Steel Corp.* and *Electric Auto-Lite Co.*,[72] the court agreed with the Board that the separate dues structure unlawfully discriminated against aliens by violating "the union's duty to charge uniform dues or to demonstrate a reasonable justification for the non-uniformity." The court rejected the

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[70] *Motion Picture Studio Mechanics, Local 52, Intl Alliance of Theatrical Stage Employees & Moving Picture Machine Operators [Michael Levee Productions]* v *N L R B*, 593 F 2d 197 (2d Cir 1979)

[71] *N L R B* v *Actors' Equity Assn [King of Siam Co.]*, 644 F 2d 939

[72] *N L R B* v *Kaiser Steel Corp*, 506 F 2d 1057 (9th Cir 1974), and *Electric Auto-Lite Co*, 92 NLRB 1073 (1950), enfd 196 F 2d 500 (6th Cir 1952)

union's claim that aliens have no rights under the Act, noting that the definition of "employee" in section 2(3) does not impose any limits based on citizenship or residence. Agreeing with the Board, the court also rejected the union's claims that the dues schedule preserved work for American actors or counterbalanced British Equity's dues schedule or its influence over alien actor's admission to England; the record showed that the 5-percent dues' rate was instituted "primarily as a revenue-producing measure."

### 5. Secondary Boycotts – Consumer Publicity

Under the "publicity" provision to section 8(b)(4)(B), a union may engage in consumer publicity, other than picketing, even though it has the effect of persuading customers of a neutral employer to stop all trading with him. Under the Supreme Court's holdings in *Tree Fruits* and *Safeco*,[73] a union may also engage in consumer picketing of a neutral employer so long as the picketing seeks only to persuade customers not to buy the "struck product" and so long as the picketing can not reasonably be expected to threaten the neutral party with ruin or substantial loss. When consumer picketing can reasonably be expected to cause customers not to trade at all with the neutral employer, the proviso will provide no protection and a violation of section 8(b)(4)(ii)(B) will be established. In *Soft Drink Workers*,[74] the District of Columbia Circuit agreed with the Board's application of *Tree Fruits* principles and the Board's finding that the union's consumer picketing constituted a violation of section 8(b)(4)(ii)(B). In *Soft Drink Workers*, the union represented employees of firms that bottle, can, and distribute soda in New York City and surrounding suburban counties. From an areawide survey, the union learned that local soda manufacturers were suffering a loss of business because local retail outlets were buying an increasing portion of their soda from manufacturers outside the union's jurisdiction. To counteract this situation, the union picketed and distributed handbills in front of the employer, a local retailer which, the union had discovered, purchased most of its soda from nonlocal manufacturers. The handbills distributed to people entering and passing in front of the store stated in part, "We urge you to save our jobs — your neighbors — by buying soft drinks manufactured and distributed locally." While noting that the union had no conventional labor dispute with any of the nonlocal manufacturers, the court agreed with the Board that it was not necessary to identify a "primary labor dispute" to find a violation of section 8(b)(4)(ii)(B). Citing its decision in *Delta Steamship Lines*,[75] the court explained that the

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[73] *N L R B* v *Fruit & Vegetable Packers & Warehousemen, Local 760 [Tree Fruits]*, 377 U S 58 (1964), *N L R B* v *Retail Store Employees Union, Local 1001 [Safeco]*, 447 U S 607 (1980)

[74] *Soft Drink Wkrs Union Local 812, I B T [Monarch Long Beach Corp ]* v *N L R B* , 657 F 2d 1252

[75] *Natl Maritime Union of America* v *N L R B* , 346 F 2d 411 (1965), cert denied 382 U S 840

intent of Congress was to proscribe a broad range of union tactics the common denominator of which is "the characteristic that they do not arise out of any dispute between an employer and employees who engage in the activities, or in most cases, between the employer and any of his employees." The court observed that in this case the union's picketing did not directly concern the employer's employees but was aimed at enhancing the job opportunities of union members at local manufacturing plants. Accordingly, the court held that the employer was a neutral employer meriting the Act's protection. The court also agreed with the Board's holding that the union's activity could not qualify for protection under *Tree Fruits* because the picket signs had failed to help the consumer identify the struck product by distinguishing the local from the nonlocal soda with sufficient clarity. If the appeal is not so confined, the court explained, it may cause consumers to boycott products to which the union is indifferent or even those which the union favors and thus may subject the neutral to economic pressure and harm which exceed the scope of the union's legitimate campaign.

In another case [76] the Sixth Circuit disagreed with the Board's conclusion that union consumer picketing of a neutral retail outlet was protected under *Tree Fruits* from a finding of a violation of section 8(b)(4)(ii)(B). The union, engaged in a strike against Duro Bag Manufacturing Company, picketed with signs reading, in part, "Consumer Boycott of Duro Paper Bag . . . . Bring Your Own Bag." Handbills were also distributed asking customers to bring their own bags or ask for a box when shopping at Kroger. The handbills complained that Duro was unfair to union members, requested the customers not to use bags manufactured by Duro and explained "we have no dispute with any other Employer." Of more than 4,000 customers who patronized Kroger's stores during the picketing, 150 requested boxes in which to transport groceries and only 100 of those could be accommodated. The court, while agreeing with the Board that the union's placards were carefully drafted to refer only to the struck products, found that substantial evidence did not support the Board's conclusion that Kroger would have been able to supply all customers with some alternative to Duro's bags. Noting evidence that only 2.5 percent of Kroger's customers could have been supplied with boxes as an alternative to Duro bags during the picketing, the court concluded that the vast majority of customers would have received their first notice of the pickets' demands upon arriving at the store, and that to comply with the boycott they would either have to find an alternative to bags or shop at another store. Relying on its decision upholding the Board's finding of an 8(b)(4)(ii)(B) violation in *American Bread Co.*,[77] the court concluded that this case came within the *Tree Fruits* exception "for struck products that

[76] *Kroger Co* v *N L R B* , 647 F 2d 634

[77] *American Bread Co* v *N L R B* , 411 F 2d 147 (1969)

are so merged with the secondary employer's total offering to the public that, for all practical purposes, a boycott of the struck product is not separable from a boycott of the secondary employer."

In a third consumer appeal case,[78] the union sought to further its economic strike against Hussman by calling for a boycott not only of Hussman's products but also of all products of Pet, Hussman's parent corporation. The union's conduct included statements at a press conference plus newspaper advertisements and handbilling. It involved no picketing or patrolling near any Pet establishment. Before the Board and the court it was argued that Pet was a separate person from its subsidiary and thus was entitled to protection under section 8(b)(4)(ii)(B) from Hussman's labor dispute. It was further contended that the union's publicity was not protected by the publicity proviso because the producer-distributor relationship described in the proviso did not exist between Hussman on one hand and Pet and Pet's other subsidiaries on the other. The Board found that, assuming without deciding, that the union's conduct falls within the proscription of section 8(b)(4)(ii)(B) of the Act, such conduct was nevertheless lawful because it was protected by the publicity proviso. The Board reasoned that since Hussman contributed capital, enterprise, and service to Pet and its subsidiaries, Hussman qualified as a producer of all Pet products under the principles set out in the *Lohman* and *Servette* decisions.[79] The Board explained that diversified corporations like Pet are composed of operations which provide support for and contribute to each other. The Hussman division contributed good will and profits which enhanced the value of the overall Pet enterprise and fostered its economic viability and consequently was a producer of all Pet enterprise products. Having reached this conclusion, the Board found that the union's nonpicketing publicity was immunized by the publicity proviso from statutory proscription. A divided panel of the Court of Appeals disagreed. Adopting a literal approach to the interpretation of the proviso's language, the majority rejected the Board's reading of the word "produced," describing it as unreasonable and at odds with any "normal interpretation" of the word. The majority acknowledged that the *Servette* and *Lohman* decisions supported a broad reading of the proviso. Indeed it quoted the Supreme Court's observation that "there is nothing in the legislative history which suggests that the protection of the proviso was intended to be any narrower in coverage than the prohibition to which it is an exception, and we see no basis for attributing such an incongruous purpose to Congress." The majority, however, distinguished *Sevette* and *Lohman* on their facts, noting that the primary employers there worked on specific products, while here

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[78] *Pet* v *N L R B*, 641 F 2d 545 (8th Cir)

[79] *Intl Brotherhood of Teamsters, Local 537 (Lohman Sales Co)*, 132 NLRB 901 (1961), *N L R B* v *Servette, Inc*, 377 U S 46 (1964)

Hussman did not work on the products of any other Pet division. The court thus concluded that Hussman was not a producer and the union could not be protected by the proviso. It remanded the case to the Board to determine whether the union's conduct was coercive and, in the absence of the proviso's immunity, whether it was secondary activity proscribed by section 8(b)(4)(ii)(B).

## 6. Unit Work Preservation Issues

Section 8(e) makes it an unfair labor practice for any labor organization and any employer to enter into an agreement whereby the employer agrees to cease doing business with any other person. The section contains a proviso that specifically excludes agreements in the "construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work."

Two courts of appeals had occasion to determine whether certain construction industry contracting or subcontracting agreements — restricting a signatory's right to subcontract only to union firms — were valid under the construction industry proviso in light of the Supreme Court decision in *Connell Constr. Co.*,[80] where the Supreme Court held that a union signatory subcontracting provision in a construction agreement where the parties did not have a collective-bargaining relationship was properly the subject of a Federal antitrust suit. The Court rejected the defense interposed by the union that the subcontracting agreement was privileged by the construction industry proviso to section 8(e) of the Act. On this issue, the Court stated the scope of the proviso "extends only to agreements in the context of collective bargaining relationships and . . . possibly to common-situs relationships on particular jobsites as well."

In *Pacific Northwest Chapter*,[81] the Ninth Circuit, *en banc*, reviewed the legality of subcontracting restrictions contained in an existing collective-bargaining agreement between the Associated General Contractors and the Operating Engineers. In addition, the court reviewed the legality of picketing to obtain subcontracting restrictions sought to be included as part of a renewed collective-bargaining agreement between Woelke & Romero Framing, a framing subcontractor, and the Carpenters.

The subcontracting provisions contained in both collective-bargaining agreements provided, in substance, that neither a signatory contractor nor any of its subcontractors would subcontract work to be done at the

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[80] *Connell Constr Co* v *Plumbers & Steamfitters Local Union 100*, 421 U S 616 (1975)

[81] *Pacific Northwest Chapter, Associated Bldrs & Contractors [Woelke & Romero Framing]* v *N L R B* , 654 F 2d 130

site of construction except to a party to a current labor agreement with particular unions. In addition, the AGC collective-bargaining agreement contained provisions authorizing the unions to take "such action as they deem necessary" to enforce decisions reached pursuant to the terms of the contractual grievance and arbitration procedures — including disputes submitted to arbitration under the subcontracting clause.

Recognizing that the scope of the construction industry proviso is subject "to any modifications or corrections that may be compelled by a fair reading of *Connell*" the court determined that the effect of *Connell* "is best analyzed after a review of the state of the industry and the legislative and administrative history of the proviso governing it." On the basis of that review, the court concluded that — prior to enactment of the 1959 Landrum-Griffin amendments adding section 8(e) to the Act — union signatory subcontracting clauses had developed as part of the pattern of collective bargaining in the construction industry, and they were designed to maintain wage and benefit standards in an industry characterized by constantly changing employment conditions. The court further concluded that the legislative history underlying the proviso revealed a congressional intent to preserve the legality of such agreements in the construction industry in order to accommodate the special concerns prevalent in that industry.

Interpreting *Connell* against this background, the court concluded that the proviso protected broad subcontracting clauses — otherwise within its literal wording — which arise in the context of a collective-bargaining relationship. The court rejected the contention that, under the *Connell* rationale, the proviso protection extends only to those subcontracting agreements which are designed to avoid shoulder-to-shoulder friction — that is, agreements narrowly drawn to apply at those times when the employer or his subcontractor has employees who are members of the signatory union at work at the same time at the jobsite at which the employer wishes to engage a nonunion subcontractor. The court found support for its view in the *Connell* court's discussion of the primary purpose underlying the proviso "to allow agreements pertaining to certain secondary activities on the construction site because of the close community of interests there." The court noted that the proviso was intended to serve the broader purpose of preserving the pattern of bargaining in the construction industry. Moreover it noted that in sharp contrast to the "stranger" situation in *Connell*, where a subcontracting clause was sought outside the context of a collective-bargaining relationship, seeking subcontracting agreements in the context of a collective-bargaining relationship, did not present the danger that they could be used as an "unlimited top down organizing" weapon, the evil the Supreme Court sought to avoid in *Connell*.

Having found that the subcontracting restrictions were privileged by the construction industry proviso, the court concluded that picketing to

obtain such an agreement did not violate section 8(b)(4)(A) prohibiting coercion of any person "to enter into any agreement which is prohibited by 8(e)."

Finally, considering the grievance-arbitration provisions of the AGC contract, the court found that the contract authorized the unions to strike to enforce arbitration awards based on violations of the subcontracting provisions. Since the contract thus authorized the unions to enforce secondary subcontracting provisions by coercive means which would violate section 8(b)(4)(B), the court concluded that the provisions lost the protection of the proviso and violated section 8(e).

In *Donald Schriver*,[82] the District of Columbia Circuit reviewed the legality of union signatory subcontracting clauses sought by the unions as part of a "prehire agreement" authorized by section 8(f) of the Act. The facts indicated that Donald Schriver, a developer and general contractor in the construction industry, and Topaz Contracting & Developing Co., a framing subcontractor, employed nonunion carpenters to perform work at separate construction sites within the geographical jurisdiction of locals of the Carpenters. The facts also revealed that the unions pressed the contractors to agree to the terms and conditions set forth in the Carpenter's master labor agreement. Neither union had been designated the collective-bargaining representative by a majority of either contractor's employees.

Schriver was a party to a collective-bargaining agreement with the Carpenters which provided for automatic yearly renewals absent notice of cancellation. Schriver had never effected notice of cancellation. The unions threatened to picket the construction site if Schriver refused to sign a current contract. Topaz had never been a party to a collective-bargaining agreement. The unions picketed the construction site operated by Topaz for the purpose of compelling that contractor to sign the master labor agreement for the first time.

The collective-bargaining agreements that the unions sought to have executed by both Schriver and Topaz included subcontracting clauses prohibiting the subcontracting of jobsite work to contractors who were not signatories to current agreements with the unions having jurisdiction over the work. The agreements also contained provisions permitting the unions to take "any" action if the employer failed to comply with any settlement or decision reached pursuant to the terms of the contractual grievance and arbitration procedure — including disputes subject to arbitration under the subcontracting clauses.

Analyzing the scope of the construction industry proviso against the restrictions on secondary activity imposed by sections 8(b)(4) and (7) and the *Connell* decision, the court concluded that the proviso protected broad subcontracting clauses — otherwise within its literal wording —

[82] *Donald Schriver, et al* v *N L R B* , 635 F 2d 859 (D C Cir )

which arise in the context of a collective-bargaining relationship.

In so concluding, the court observed that picketing to secure the "stranger" subcontracting agreement which was involved in *Connell* — if validated by the proviso — would have given rise to a technical loophole in the Act's prohibitions "top-down organizing" in section 8(b)(4) and (7) and would have permitted unlimited picketing to force signature of such an agreement. Finding that the prohibitions of section 8(b)(4) and (7) remain fully applicable to subcontracting agreements sought in the context of a collective-bargaining relationship, the court concluded that the cases before it bore no resemblance to the extreme situation which existed in *Connell.*

Turning to the question whether a collective-bargaining relationship authorized by section 8(f) is sufficient to invoke applications of the 8(e) proviso protection for subcontracting agreements, the court endorsed the Board's view that the *Connell* rationale is inapplicable whenever a union seeks a complete contractual relationship with an employer establishing wages, hours, and other terms and conditions of employment. In so concluding, the court observed that 8(f) "pre-hire agreements" — authorizing a union and employer in the construction industry to enter into a collective-bargaining agreement before any employees have been hired — provided the very means by which unions and employers typically initiate a bargaining relationship in the construction industry. The court further observed that such prehire agreements were responsive to the same needs to stabilize employment conditions in the industry which prompted subcontracting agreements. Noting that Congress added sections 8(f) and 8(e) to the Act at the same time, the court found nothing in the legislative history to suggest that prehire collective-bargaining agreements are limited to certain terms and conditions of employment and may not include others. Rather, the court found it more consistent with the statutory framework and legislative history to conclude that Congress intended to protect subcontractor restrictions sought as part of those collective-bargaining agreements which represent "the most common and possibly only effective means by which subcontracting agreements may be obtained." The court held, "therefore, that a subcontracting agreement sought in the context of an 8(f) prehire agreement does not violate Section 8(e)."

The court further rejected the contention that, under the *Connell* rationale, the 8(e) proviso protection extends only to those subcontracting agreements which alleviate shoulder-to-shoulder frictions — that is, to those agreements narrowly drawn to apply at those times when the employer or his subcontractor has employees who are members of the signatory union at work at the same time at the jobsite at which the employer wishes to engage a nonunion subcontractor. The court observed that the proviso itself contains no such limitation; that legislative history underlying the proviso revealed congressional intent to preserve

the pattern of collective bargaining as it existed in the industry prior to 1959; that broad subcontractor clauses constituted part of the pattern of bargaining which existed in 1959; and that such subcontracting agreements made possible constant and consistent terms and conditions of employment in the construction industry. In addition, the court observed that the agreement in *Connell* was not part of the pattern of collective bargaining in the industry but was a relatively novel organizational tactic and one which, if allowed, would have created technical loopholes in the prohibitions against "top down" organizing contained in section 8(b)(4) and (7). In these circumstances, the court concluded that "it is not the province of this court to ignore the literal wording of the statute and impose a significant limitation that is not expressly included in the statute."

Finally, reviewing the grievance-arbitration provisions of the master labor agreement, the court found that the contract permitted the unions to strike to enforce arbitration awards based on violations of the subcontracting provisions. The court concluded that these contract provisions — authorizing the unions to enforce secondary subcontracting restrictions by strikes (normally proscribed by section 8(b)(4) — violated section 8(e).

## D. Remedial Orders

### 1. Bargaining Orders Without Majority Status

In *Gissel*,[83] the Supreme Court set out three categories of employer unfair labor practices. Category three included conduct which was not serious enough to warrant a bargaining order rather than a rerun election; category two included conduct tending "to undermine majority strength and impede the election process" and warranted a bargaining order where the union had achieved a showing of majority support through authorization cards. Category one included conduct so "outrageous" and "pervasive" that a fair election would be impossible. The Court suggested that a bargaining order could be appropriate in a category one case even if the union had never achieved majority support. After *Gissel*, the Board continued its practice of withholding a bargaining order in a category one case absent a card majority, although the Board invoked other extraordinary remedies in an effort to eliminate the impact of the employer's conduct. In *United Dairy* [84] this issue sharply divided the Board, with two members dissenting because a bargaining order was withheld. Two of the members who declined to issue a bargaining order in that case recognized that the Board "may" have authority to issue a

[83] *N L R B* v *Gissel Packing Co* , 395 U S 575 (1969)
[84] *United Dairy Farmers Cooperative Assn* , 242 NLRB 1026 (1979)

bargaining order, although the union was never selected or designated by a majority of the employees, but concluded that a bargaining order was not warranted in that case. The third member who declined to issue a bargaining order believed that the Board lacked authority to issue a bargaining order absent a card majority, because the majority rule principle was so deeply imbedded in the Act. In *United Dairy*,[85] the Third Circuit, after reviewing the rationale of *Gissel*, determined that the Board has the power to issue a bargaining order in the absence of a card majority where the employer has committed "outrageous" and "pervasive" unfair labor practice which clearly foreclose the option of an uncoerced rerun election. Accordingly, the court remanded *United Dairy* to the Board to decide whether in light of the court's decision it wishes to issue a bargaining order in that case. In *Haddon House*,[86] a companion case, the District of Columbia Circuit declined to follow this course. Noting its reservation as to whether a bargaining order is a proper remedy for a minority union, it found it unnecessary that issue in the case before it, because it found the other remedies provided by the Board to be sufficient to dissipate the effects of the unfair labor practices and permit a fair election.

### 2. Justification for Bargaining Order

On several occasions courts addressed the issue of whether the Board had adequately articulated its reasons for the issuance of a *Gissel* bargaining order, *supra*.[87] In *Red Oaks Nursing Home* v. *N.L.R.B.*,[88] the Seventh Circuit denied enforcement of a bargaining order on the ground that the Board had failed to explain how the employer's misconduct precluded the likelihood of a fair rerun election, the preferred remedy. The court emphasized the importance of "the Board's obligation to give 'a detailed analysis' of the 'possibility of holding a fair election in terms of any continuing effect of misconduct, the likelihood of recurring misconduct, and the potential effectiveness of ordinary remedies' . . . ." Similarly, the Second Circuit in *N.L.R.B.* v. *Jamaica Towing* [89] also denied enforcement of a bargaining order on the ground that the Board had failed to articulate an adequate justification for the bargaining order remedy. Utilizing the classificatory scheme outlined in *Gissel*, the court formulated a set of criteria for the issuance of bargaining orders generally. Thus, the court held that, where an employer engages in highly coercive "hallmark" violations — threats of plant closure or loss of employment,

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[85] *United Dairy Farmers Cooperative Assn* v *N L R B* , 633 F 2d 1054

[86] *Teamsters Local 115, a/w Intl Brothd of Teamsters, etc [Haddon House Food Products]* v *N L R B* , 641 F 2d 984 (D C Cir ), enfg 242 NLRB 1057

[87] 395 U S at 610

[88] 633 F 2d 503

[89] 632 F 2d 208

the actual closure of a plant, the grant of benefits, or discriminatory action against union adherents — the Board may issue a bargaining order without "extensive explication," because such conduct is likely to have a lasting inhibitive effect on a substantial percentage of the work force. However, in instances where less serious misconduct occurs, the court admonished the Board to investigate the impact of the employer's conduct and not to presume that these "non-hallmark" violations had any long-term adverse effect on the employees' free choice. To support the issuance of a bargaining order, the court indicated that "non-hallmark" violations "must either be numerous or be coupled with some other factor intensifying their effect." Moreover, the court also held that events occurring subsequent to the commission of the unfair labor practices, including changes in management personnel and employee turnover, were relevant in assessing the impact of these less serious violations on employees. Applying these standards, the court found that a bargaining order was inappropriate in *Jamaica Towing* because the unfair labor practices were "non-hallmark" violations and there was a high degree of employee turnover prior to the Board's decision.

The adequacy of the Board's justification for a *Gissel* bargaining order was also at issue in *N.L.R.B.* v. *Permanent Label Corp.*[90] Although the Third Circuit found that the employer had engaged in pervasive unfair labor practices, a divided panel denied enforcement of the Board's bargaining order and remanded the case to the Board. The panel held that the Board had failed to make specific findings demonstrating that the employer's unlawful conduct precluded a fair rerun election. However, on rehearing, the *en banc* majority noted that the administrative law judge addressed the issue of the appropriateness of the bargaining order remedy and had shown that the widespread and serious nature of the employer's misconduct would preclude a fair rerun election. The court concluded that to require that the administrative law judge also specifically state each inference drawn from these factors "would elevate form over substance and overstep the appropriate limits of judicial review." [91]

In *Massey Stores d/b/a Kermit Super Value* v. *N.L.R.B.*[92] the Fourth Circuit denied enforcement of a bargaining order because it found that the union's card majority had been obtained by misrepresentation. While distributing authorization cards during an organizational campaign at a newly opened company store, union representatives told employees that the company would recognize the union without an election and that employees would be required to join the union in accordance with provisions of the collective-bargaining agreement covering employees at other company stores. While there was a contract between the union and

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[90] 657 F 2d 512
[91] 657 F 2d at 521
[92] 631 F 2d 328

company which contained a union-security clause and a provision which gave the union bargaining status at some new company stores, an arbitrator had found that the contract did not cover the store that the union was seeking to organize. Rejecting the Board's finding that the union organizer was merely explaining the general consequences of a union-security clause, the court concluded that the organizer had categorically told employees that the contract which would govern their employment contained a union-security clause. In light of the arbitrator's decision, the court held that the union had obtained its card majority by misrepresentation of material facts and that therefore the authorization cards could not serve as a basis for determining the union's majority status.

### 3. Other Issues

In *N.L.R.B.* v. *Lyon & Ryan Ford*,[93] the Seventh Circuit approved the Board's new remedial policy towards unlawfully discharged strikers announced in *Abilities & Goodwill*.[94] Under that decision an unlawfully discharged striker is no longer required to request reinstatement in order to trigger an employer's backpay obligation. The Seventh Circuit quoted with approval the Board's holding in *Abilities & Goodwill* that "a discharged striker is a discharged employee and entitled to be treated as such, for there is nothing peculiar to a strike which justifies dissimilar treatment." With the discharge, the striking employee's absence from the job is no longer attributable solely to a voluntary strike action. The court noted that the Board now properly places the burden on the employer to make an offer of reinstatement to the unlawfully discharged striker. Absent such an offer, any uncertainty in the employee's withholding of services is resolved against the employer and backpay commences from the date of discharge.

Several courts of appeal had occasion to review Board orders providing for extraordinary companywide remedies. In *J. P. Stevens & Co.* v. *N.L.R.B.*,[95] the Fourth Circuit approved a remedial order which included a provision for companywide access by the union to the employer's plants. In enforcing the Board's companywide remedy, the court commented that such measures called for approval because of the employers' "extraordinary history of lawlessness." The District of Columbia Circuit found the Board's companywide access remedy more troublesome, citing the Supreme Court's emphasis on the employer's private property rights in *N.L.R.B.* v. *Babcock & Wilcox Co.*[96] The District of Columbia Circuit

[93] 647 F 2d 745
[94] 241 NLRB 27 (1979), enforcement denied on other grounds 612 F 2d 6 (1st Cir 1979)
[95] 638 F 2d 76
[96] 351 U S 105

refused to enforce a companywide access order against the Florida Steel Corporation and remanded the case to the Board for further proceedings. While the court affirmed the Board's "broad authority to use access as a remedial measure, it placed the burden on the Board to demonstrate that such access is necessary to offset the consequences of unlawful employer conduct. The court suggested that the Board might examine such factors as the seriousness of the violations; the extent to which employees in other plants know or have reason to know about the unlawful conduct; the distance between the employer's operations; the presence or absence of union activity at various company locations; and, in the case of a violation, the passage of time between violations. In short, the court held that before access is awarded beyond the locations at which the unfair labor practices occurred, the Board must find that "it is reasonably foreseeable that the employees at those plants where access is imposed have suffered coercive effects from the employer's conduct and that an access remedy is necessary to cure those effects."

In *Jacksonville Maritime Assn.*,[98] the Fifth Circuit enforced a Board order directing the ILA welfare, vacation, and pension fund to accept, as part of a backpay award, retroactive contributions on behalf of an employee unlawfully refused referral by the union. The court agreed with the Board's conclusion that "for the limited purpose of accepting contributions the Fund is an agent of both union and employees" and is, therefore, properly a party before the Board and properly subject to a Board order. This "limited agency," the court held, does not involve discretionary decisions by the trustees and does not conflict with common law fiduciary principles or with ERISA provisions. To the contrary, the court noted approvingly that because the Board's order imposed the costs associated with the processing the contributions on the union, not on the Fund, "compliance with the Board order and acceptance of the contributions fall squarely within the fiduciary duty imposed on the Fund's trustees by both ERISA and the common law: to administer the trust solely in the interest of its beneficiaries." In addition, the court rejected the fund's contention that it should have been made a party to the earlier proceedings in which the Board determined the existence of the employer's obligation to make contributions and the amount of the contributions. Noting that the Fund "became a party in interest only in the remedy proceedings," the court upheld the Board's decision to permit the Fund to intervene only in the supplemental compliance proceedings.

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[97] *United Steelworkers of America [Florida Steel Corp ] v N L R B* , 646 F 2d 616

[98] *N L R B v Clerks and Checkers Local 1593, ILA [Jacksonville Maritime Assn ]*, 644 F 2d 408

# VII

# Injunction Litigation

## A. Injunctive Litigation Under Section 10(j)

Section 10(j) empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate temporary relief or restraining order in aid of the unfair labor practice proceeding pending before the Board. In fiscal 1981, the Board filed 45 petitions for temporary relief under the discretionary provisions of section 10(j): 41 against employers and 4 against unions. Of this number, together with petitions pending in court at the beginning of this report period, injunctions were granted by the courts in 18 cases and denied in 4. Of the remaining cases, 14 were settled prior to court action, 1 was withdrawn, 7 were pending further processing in court, and 1 case was in inactive status at the close of the period.

Injunctions were obtained against employers in 15 cases and against labor organizations in 3 cases. The cases against employers variously involved alleged interference with organizational activity, conduct designed to undermine the union's status, bad-faith bargaining, and interference with protected concerted activity and access to Board processes. Two cases against employers involved the sequestration of sufficient funds from any liquidation of the employer's assets. The cases against unions variously involved a union and its members engaging in violent acts and serious picket line misconduct and a union seeking or threatening to seek the discharge of employees for failure to pay fines imposed by the union.

During the past year, the propriety of reinstatement orders as temporary injunctive relief under section 10(j) in appropriate circumstances was affirmed in two cases.

In *Eisenberg* v. *Wellington Hall Nursing Home*,[1] the Third Circuit reversed a district court's refusal to order interim reinstatement of eight discharged union supporters.[2] The district court found reasonable cause to believe the discharges were motivated by the nursing home's animus toward the certified union and fashioned temporary relief designed to

[1] 651 F 2d 902

[2] The circuit court granted the Board's motion for an injunction pending appeal and directed the immediate reinstatement of the five employees who were members of the union's bargaining committee to permit meaningful bargaining to occur during the pendency of the appeal

prevent further discriminatory discharges. However, the court concluded that an interim reinstatement order was not just and proper. The district court reasoned that, absent posting of an injunction bond by the Board, an employer may be subjected to irreparable harm as a result of reinstating employees whom the Board may later find to have been discharged for cause, whereas the Board ultimately could fully remedy any violation by ordering reinstatement with backpay. The court of appeals affirmed the district court's finding of reasonable cause, rejecting the nursing home's contention that the district court erred by failing to find that the discharges were for cause. The appellate court held that in proceedings under section 10(j) "the court need not, indeed should not, make a finding of employer motivation. It need only find reasonable cause for belief that there was [antiunion] motivation." In affirming the district court's finding that this burden was met, the Third Circuit noted that "[e]ach employee discharged was an active union supporter, and five of the eight who were discharged were designated members of the union-sponsored six employee negotiating committee" and that the alleged derelictions cited by the nursing home in support of the discharges "were remote in time or of minimal gravity." Flatly rejecting, as "legally insufficient" the district court's reason for denying a reinstatement order pending the Board's adjudication, the court of appeals held that "the unavailability of an injunction bond is no reason for permitting a change in status quo which risks giving ongoing effect to what may be an unfair labor practice." Moreover, the court explained, the Board seeks temporary injunctive relief not on behalf of individual employees, but in furtherance of the "public interest" in maintaining "the integrity of the collective bargaining process." Thus, the Court continued, when an employer "resort[s] to tactics calculated to undermine union support at a critical stage of the bargaining process . . . the focus of attention should not be on what relief may ultimately be granted to individual employees, but on the likelihood of harm to the bargaining process in the interim." The court concluded that, "[i]n view of the potential for irreparable harm to the designated bargaining representative from the loss of eight union supporters in the small bargaining unit, it was an abuse of the discretion that Section 10(j) affords to refuse to order reinstatement."

Interim reinstatement also was granted in *Farkas* v. *R. L. White Co.*,[3] where the Board sought reinstatement of 78 employees who were denied reemployment when they offered to return to work after a brief strike in protest of the employer's alleged serious and pervasive unfair labor practices. The district court enjoined the employer from committing further violations of section 8(a)(1) and (3) and directed the immediate reinstatement of all 78 alleged unfair labor practice strikers pending the

[3] Docket C–81–0198 (D C Ky ), appeal pending (6th Cir )

outcome of Board proceedings. However, the court declined to grant an interim bargaining order on the grounds that the evidence failed to establish reasonable cause to believe that the union represented a majority of the unit employees at any material time.

The grant of a temporary bargaining order was affirmed by courts of appeals in two cases involving alleged refusals to bargain with certified unions. In *Morio* v. *North American Soccer League*,[4] the Second Circuit upheld what it characterized as "agressive remedial relief" which it deemed "necessary" to free the soccer players' union from "severe . . . restraints" allegedly imposed by the league over a 2-year period during which the league was challenging the union's certification before the Board and courts. While it was refusing to recognize and bargain with the union, the league allegedly had dealt directly with players in negotiating individual contracts and had made unilateral changes in players' terms and conditions of employment, including the institution of a mandatory winter indoor soccer season. In addition to enjoining the league from refusing to bargain in good faith with the players' union, from dealing directly with the players, and from unilaterally changing terms and conditions of employment, the district court's order affirmatively directed the league to recognize and bargain in good faith with the players' union, to void individual player contracts upon request by the union, to revoke unilateral changes in players' employment conditions, and to refrain from implementing the scheduled 1980–81 winter indoor soccer season pending bargaining with the union to agreement or good-faith impasse on that subject. In holding that the relief fashioned by the district court was "just and proper," the court of appeals observed that such relief was consistent with relief typically fashioned by the Board in its orders, that the league's alleged unfair labor practices during the preceding 2 years had "severely eroded . . . the union's prestige and legitimacy with its members" and that allowing those alleged unfair labor practices to remain unremedied during the Board proceedings threatened "to render the N.L.R.B.'s processes 'totally ineffective' by precluding a meaningful final remedy." The court concluded that "[w]here, as in this case, an equity court has 'reasonable cause' to believe that particularly flagrant unfair labor practices have been committed, the court's fashioning of those remedies typically framed by the Board in an unfair labor practice proceeding is 'just and proper,' even though a final decision by the Board is pending." In *Boire* v. *S.A.S. Ambulance Service*,[5] the Fifth Circuit affirmed, without opinion, an interim bargaining order against an employer who allegedly placed unreasonable conditions on bargaining with a newly certified union. In finding reasonable cause to

[4] 632 F 2d 217

[5] No 81–1767, affg 108 LRRM 2388 (D C Fla )

believe that the employer violated section 8(a)(5) of the Act by conditioning negotiations on the removal of former employees from the union's bargaining committee, the district court rejected the employer's contention that it was privileged to refuse to bargain with the former employees because of their alleged antagonism toward the employer.[6] The district court had also concluded that the employer improperly insisted as a precondition to bargaining that the union disclose the names of all bargaining unit employees who were members of the union and that all bargaining sessions be conducted at the employer's offices during normal business hours. The injunction order affirmed by the court of appeals directed the employer to cease and desist from engaging in the alleged unfair labor practices, and to bargain at reasonable times and places with the union's designated bargaining committee.

In *Squillacote* v. *Advertisers Mfg.*,[7] an order was granted requiring the employer to bargain with the union before implementing any significant changes in working conditions while the employer's objections to an election won by the union were pending before the Board. There, a district court found reasonable cause to believe that, while the employer was challenging the union's election victory before the Board, it violated section 8(a)(1), (3), and (5) of the Act by discharging a supervisor whose son was an active union supporter, issuing discriminatory warnings to another union supporter on two occasions, and engaging in a pattern of unilateral, discriminatory changes in the terms and conditions of employment. The court ordered the employer to reinstate the supervisor and to rescind and disregard the discriminatory warnings. Although the court found that the cumulative effect of the employer's numerous changes in employment conditions was sufficient to establish reasonable cause to believe that the employer had violated section 8(a)(3) and (5) of the Act, the court concluded that, except for the washup policy, the individual changes were not sufficiently significant to make it just and proper to order their restoration pending the Board proceedings. Accordingly, the court directed the employer to restore its former washup policy and to bargain with the union before implementing any other "significant" changes in working conditions

In *Silverman* v. *40–41 Realty Associates*,[8] a district court enjoined a dental clinic and the owner of the office building in which it is located from threatening two union pickets with arrest for trespassing or from otherwise denying them access to the second floor hallway to picket the entrance to the clinic in support of the union's economic dispute with the

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[6] In an earlier proceeding, an administrative law judge had found that two of the former employees to whom the employer objected had been discriminatorily discharged for distributing a leaflet seeking public support for their efforts to improve their working conditions (255 NLRB 286 )

[7] Docket 81–C–343 (D C Wis ), appeal pending (7th Cir )

[8] Docket 81–Civ –3393 (D C N Y ), stayed pending appeal (2d Cir )

clinic. Relying on the Ninth Circuit's decision in *Seattle-First Natl. Bank* v. *N.L.R.B.*,[9] and noting the diminished effect of picketing confined to the public sidewalk outside of the building, the district court found reasonable cause to believe that the landlord and the dental clinic violated section 8(a)(1) of the Act by precluding the union from picketing the entrance to the dental facility in the hallway on the second floor of a 20-story office building. Balancing the employers' private property interests against the employees' section 7 rights, the court concluded that the employers' interference with the employees' right to picket effectively outweighed any destruction of property rights which might be occasioned by permitting two individuals to picket peacefully in the second floor hallway. The court found interim injunctive relief to be just and proper because "[t]he purpose of the Act would be frustrated in this case by the passage of time if the Court failed to issue the injunctive relief . . . ."

Injunctive relief was denied in *Silverman* v. *Major League Baseball Player Relations Committee*.[10] There, the principle established in *N.L.R.B.* v. *Truitt Mfg. Co.*,[11] that an employer asserting in bargaining an inability to meet a union's economic demands must produce supporting financial data on request, was applied to collective bargaining in major league baseball under novel circumstances. During the course of negotiations about free agency and player compensation pursuant to a provision to reopen the collective-bargaining agreement, the players' union requested the production of financial information in order to assess the accuracy of public statements made by the commissioner of baseball and several club owners suggesting that the free agency system sought by the players' union threatened to destroy the financial viability of a number of baseball clubs. When the club owners' bargaining agent disavowed the statements of the commissioner and the owners at the bargaining table and declined to furnish the requested financial data, the players' union filed charges alleging a violation of section 8(a)(5) of the Act. With the financial data issue impeding negotiations and the parties' agreed upon June 1 strike deadline approaching, the Board sought an injunction designed to maintain the status quo without requiring disclosure of the financial data pending Board adjudication of the issue. However, the district court concluded that there was not reasonable cause to believe that the Act was violated and denied the injunction. In so concluding, the court found that the 26 club owners had vested their bargaining agent with exclusive authority to represent them in negotiations with the players' union, that the bargaining agent had never asserted an inability to pay in negotiations with the players' union, and that the statements of the commissioner and various club owners could not be imputed to the

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[9] 651 F 2d 1272, enfg 243 NLRB 898 (1979)
[10] 516 F Supp 588 (D C N Y )
[11] 351 U S 149 (1956)

bargaining agent so as to inject the issue of financial inability into negotiations and thereby trigger the obligation to furnish financial data.

Finally, in *Levine* v. *Fry Foods*,[12] the Sixth Circuit affirmed a district court's order [13] holding the employer in civil contempt of a 10(j) injunction and directing the employer to pay compensatory damages to both the Board and the charging party union despite the fact that the Board issued its order in the underlying unfair labor practice proceeding 5 days before the adjudication in civil contempt was rendered. Rejecting the employer's contention that the court's jurisdiction under section 10(j) terminated for all purposes upon the issuance of the Board's order, the district court observed that sanctions in civil contempt may be imposed both to coerce a respondent into compliance with the court's order and to compensate a complainant for losses sustained by the respondent's noncompliance. The court recognized that, since the injunction expired upon issuance of the Board's order, the need for coercive compliance fines had abated. However, the court held that "[t]he fact that the Court did not issue its decision until shortly after the Board issued its ruling does not erase the acts of non-compliance and [does] not preclude the Court from ordering a fine to compensate petitioner and the [charging party] for their efforts to secure compliance." Included in the compensatory fines assessed were all amounts expended by the Board and the charging party in the investigation, preparation, presentation, and final disposition of the contempt proceeding, including attorney's fees and expenses and salaries of Board personnel.

## B. Injunctive Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with violation of section 8(b) (4) (A), (B), and (C),[14] or section 8(b) (7),[15] and against an employer or union charged with a violation of section 8(e),[16] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint

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[12] 108 LRRM 2280

[13] 108 LRRM 2208 (D C Ohio 1979), 44 NLRB Ann Rep 230 (1979)

[14] 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 certification 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 or 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)

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

[16] 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

should issue." In cases arising under section 8(b) (7), however, a district court injunction may not be sought if a charge under section 8(a) (2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to violations of section 8(b)(4)(D) of the Act, which prohibits strikes and other coercive conduct in support of jurisdictional disputes. In addition, under section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such *ex parte* relief, however, may not extend beyond 5 days.

In this report period, the Board filed 137 petitions for injunctions under section 10(l). Of the total caseload, comprised of this number together with 21 cases pending at the beginning of the period, 60 cases were settled, 9 were dismissed, 1 continued in an inactive status, 4 were withdrawn, and 17 were pending court action at the close of the report year.[17] During this period, 67 petitions went to final order, the courts granting injunctions in 59 cases and denying them in 8 cases. Injunctions were issued in 40 cases involving secondary boycott action proscribed by section 8(b)(4)(B), as well as in one instance involving a violation of section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by section 8(e). Injunctions were granted in 8 cases involving jurisdictional disputes in violation of section 8(b)(4)(D). Injunctions were also issued in 10 cases to proscribe alleged recognitional or organizational picketing in violations of section 8(b)(7).

Of the eight in which injunctions were denied, five involved secondary picketing activity by labor organizations, one involved recognitional picketing and two involved picketing in furtherance of a work jurisdiction claim.

In *Pascarell* v. *N.Y. Shipping Assn.*,[18] the Third Circuit affirmed an injunction which enjoined a union and several employer associations from maintaining and implementing, and enjoined the union from employing coercive measures to enforce, an agreement (the rules on containers) which there was reasonable cause to believe was violative of section 8(e) of the Act.[19] The case arose when, after the Supreme Court[20] affirmed

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[17] See table 20, p 225, *infra*

[18] 650 F 2d 19, cert denied 108 LRRM 2558

[19] The injunction applied to all ports on the east and gulf coasts, other than Philadelphia, where an injunction was already outstanding *Hirsch* v *I L A , Local 1242*, Docket 79-2022 (D C Pa. 1980)

[20] *N L R B* v *Intl Longshoremen's Assn* , 447 U S 490 (1980)

the D.C. Circuit's decision[21] vacating two Board orders[22] which had enjoined the maintenance and enforcement of the rules of containers and remanded the cases to the Board, the union and employer associations reaffirmed and announced their intention to implement the rules and began enforcing them. In affiming the district court's broad injunction granted on the basis of new charges filed while the remanded cases were pending before the Board, the court of appeals rejected the contention that the district court lacked jurisdiction to grant an injunction because the D.C. Circuit had retained exclusive jurisdiction pending Board disposition of the remanded cases. The court held that any jurisdiction retained by the D.C. Circuit pending remand "in no way preempts the district court's Section 10(l) authority or the Board's 10(j) discretion and Section 10(l) duty." On the issue of whether the district court had properly found reasonable cause to believe that the employers and union violated section 8(e) and 8(b)(4)(i) and (ii)(A) and (B) of the Act, the court held that the district court was correct in concluding that the regional director met his "relatively insubstantial" burden by presenting a "substantial and not frivolous" theory of violation. Finally, in holding that injunctive relief was just and proper to prevent the reimplementation of the rules on containers, which had been inoperative since 1973, the court explained that "we cannot hold that the trial court erred in refusing to permit a change in the status quo by authorizing operation of the Rules, and putting the freight consolidators out of business, while the Board hearing went forward."

Injunctive relief was denied in *Blyer* v. *Intl. Ladies' Garment Wkrs. Union*,[23] the first injunction case dealing with the scope of the garment industry *proviso* to section 8(e) since the Second Circuit's oft-cited decision in *Danielson* v. *Joint Bd. of Coat, Suit & Allied Garment Wkrs.' Union, ILGWU*.[24] The union picketed a garment industry jobber in an attempt to force it to sign a "jobber's agreement" which would oblige the jobber to subcontract cutting and sewing work to shops having contracts with the union. During the picketing, the jobber signed a different "jobber's agreement" with a rival union. When the union continued to picket, an 8(b)(4)(D) charge was filed alleging that any picketing occurring after the jobber reached agreement with the rival union was necessarily for an object of forcing the jobber to assign the work to shops whose employees were represented by the picketing union rather than by the rival union. The district court found that there was not reasonable cause to believe that the union's picketing was violative of section 8(b)(4)(D) on

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[21] *Intl Longshoremen's Assn [Houff Transfer]* v *N L R B* , 613 F 2d 890 (D C Cir 1979)

[22] *Intl Longshoremen's Assn (Dolphin Forwarding)*, 236 NLRB 525 (1978), and *Intl Longshoremen's Assn (Associated Transport)*, 231 NLRB 351 (1977)

[23] 108 LRRM 2465 (D C N Y )

[24] 367 F Supp 486 (D C N Y )

the grounds that, prior to the picketing, the jobber had subcontracted with shops under contract with the union for *some* of its cutting and sewing work and that the union had expressly disclaimed any intention of forcing the reassignment of *other* work from shops under contract with the rival union; the jobber's agreement with the rival union was executed only as a response to the union's picketing; some of the terms and conditions of employment specified in the rival union's agreement were less favorable than those in the union's agreement; and the rival union's jobber's agreement did not require the jobber to subcontract all of its cutting and sewing to shops having contracts with the rival union, so that some of the jobber's work was still being performed in nonunion shops. The district court found that enjoining the union's picketing would do violence to the garment industry *proviso* to section 8(e), as interpreted in the *Joint Board* case, where the Second Circuit held that section 8(b)(7) of the Act cannot be used as a vehicle for defeating the exemption embodied in the *proviso*. The court concluded that in the circumstances, reading the 8(e) *proviso* into section 8(b)(4)(D), was also appropriate.

# VIII

# Contempt Litigation

During fiscal 1981, petitions for adjudication in contempt for noncompliance with decrees enforcing Board orders were filed in 36 cases seeking civil contempt and 1 civil and criminal contempt.[1] As to the civil petitions, one was granted and civil contempt adjudicated,[2] while three were discontinued upon full compliance.[3] In two cases, the Board's petition was withdrawn upon respondents' filing in bankruptcy[4] while another was denied without prejudice upon an answer asserting the total destruction of the business.[5] In 11 cases, the courts referred the issues to special masters for trials and recommendations; 2 to U.S. district court judges;[6] 5 to U.S. magistrates;[7] and 4 to other experienced triers.[8] Five cases are awaiting referral to a special master.[9] The remaining 13 cases are before the courts in various stages of litigation: 2 await the issuance of

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[1] *N L R B* v *Dominion Tool & Die Co* , in civil and criminal contempt of the bargaining provisions of the judgment of June 26, 1980, in No 78–1187 (6th Cir )

[2] *N L R B* v *All Safety Service Co* , by order of January 26, 1981, in civil contempt of the backpay judgment of June 23, 1980, in No 80–2516 (3d Cir )

[3] *N L R B* v *Full Line Distributors & Very Fine Foods*, by order of August 19, 1981, upon compliance with the backpay judgment of March 31, 1980, in No 79–4209 (2d Cir ), *N L R B* v *Tetmyer Constr Co* , by order of April 15, 1981, upon compliance with the backpay judgment of September 9, 1981, in No 80–2094 (3d Cir ), *N L R B* v *Wellington Hall Nursing Home, & Hugh Husband*, upon execution of a collective-bargaining agreement in compliance with the judgment of December 5, 1979, in No 79–1415 (3d Cir )

[4] *N L R B* v *Arga Textile Corp* , petition withdrawn April 30, 1981, upon respondents' filing in bankruptcy with respect to the judgment of June 10, 1980, in No 80–5339 (5th Cir ), *N L R B* v *Gerald G Gogin, et al* , petition withdrawn January 12, 1981, upon respondents' filing in bankruptcy with respect to the backpay judgment of June 4, 1980, in No 80–1637 (7th Cir )

[5] *N L R B* v *S S R Systems*, by order of July 14, 1981, in No 81–1469 (3d Cir)

[6] To United States District Judge Constance Baker Motley in *N L R B* v *Dist 1199, Natl Union of Hospital & Health Care Employees, RWDSU, AFL–CIO*, in civil contempt of the 8(a)(1) provisions of the judgment of May 22, 1980, in No 81–4031 (2d Cir ), to United States District Judge Thomas P Thornton in *N L R B* v *Aquabrom Div of Great Lakes Chemical Corp as successor to Bromine Div of Drug Research*, in civil contempt of 621 F 2d 806 (6th Cir 1980)

[7] *N L R B* v *Fugazy Continental Corp* , in civil contempt of the 8(a)(1) and (3) provisions of 603 F 2d 214 (2d Cir 1979), *N L R B* v *Bldg & Constr Trades Council of Philadelphia & Vicinity, AFL–CIO*, in civil contempt of the secondary boycott provisions of the judgment of November 28, 1980, in No 80–2506 (3d Cir ), *N L R B* v *Koval Press*, in civil contempt of the bargaining provisions of the judgment of May 27, 1980, in Nos 79–1886 and 81–2057 (3d Cir ), *N L R B* v *Sally Lyn Fashions*, in civil contempt of the backpay judgment of October 1, 1981, in No 80–2067 (3d Cir ), *N L R B* v *Seven Motors Ltd* , in civil contempt of the backpay judgment of May 7, 1981, in No 81–1423 (8th Cir )

[8] *N L R B* v *Union de Tronquistas de Puerto Rico, Local 901, Teamsters*, in civil contempt of the picket line violence injunction in the earlier civil contempt adjudication of February 23, 1976, and April 1, 1980, in No 71–13171 (1st Cir ), *N L R B* v *Trailways*, in civil contempt of the 8(a)(1) provisions of 608 F 2d 523 (5th Cir 1979), *N L R B* v *Rabco Metals Products*, in further civil contempt of the bargaining provisions of the judgment of February 17, 1978, and the civil contempt adjudication of September 4, 1979, in No 76–3132 (9th Cir ), *N L R B* v *Bernie Zieminski, d/b/a United Boat Center*, in civil contempt of the reinstatement provisions of the judgment of September 9, 1980, in No 80–7426 (9th Cir )

[9] *N L R B* v *Empire Shirt Trimming Co* , in civil contempt of the reinstatement provisions of the judgment of July 28, 1980, in No 79–1902 (5th Cir ), *N L R B* v *Tupco, Div of Dart Industries*, in civil contempt of the 8(a)(1) and (3) provisions of 525 F 2d 692 (5th Cir 1975), *N L R B* v *United Inventories of Dallas & United Physical Inventories*, in civil contempt of the bargaining provisions of June 3, 1981, in No 81–4171 (5th Cir ), *N L R B* v *Shaw College at Detroit*, in civil contempt of the 8(a)(1),(3), and (5) provisions of the judgment of July 29, 1980, in No 77–1729 (6th Cir ), *N L R B* v *Musicians' Union of San Francisco Local 6, American Federation of Musicians*, in civil contempt of the 8(e) provisions of the judgment of February 20, 1979, in 78–3702 (9th Cir )

an order to show cause;[10] 5 are awaiting disposition of the Board's motions for summary adjudication;[11] 2 are awaiting entry of consent contempt adjudications;[12] 2 are in abeyance pending respondents' compliance,[13] while 2 are in abeyance pending discovery proceedings.[14] In addition, protective orders enjoining the dissipation of respondents' assets were obtained in six cases.[15]

Thirty cases which were commenced prior to fiscal 1981 were disposed of during the period. In one the union and its business agent were adjudicated in criminal contempt.[16] In 14 cases, civil contempt was adjudicated,[17] in 2 of which, in addition to adjudicating civil contempt for a second time, the court assessed the prospective fine which had been imposed in the earlier adjudication;[18] 9 were discontinued on full com-

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[10] *N L R B* v *SFS Painting & Drywall & James Seech*, in civil contempt of the discovery provisions of the judgment of January 13, 1981, in No 80-7552 (9th Cir ), *N L R B* v *United Brothd of Carpenters & Joiners of America, Carpenter's Union No 829*, in civil contempt of the secondary boycott provisions of September 22, 1980, in No 807410 (9th Cir )

[11] *N L R B* v *Fotomat Corp* , in civil contempt of the bargaining provisions of 634 F 2d 320 (6th Cir 1980), *N L R B* v *R T C , d/b/a RZEPKA Trucking Co* , in civil contempt of the backpay judgment of April 27, 1981, in No 81-1532 (7th Cir ), *Three Brothers Markets, d/b/a Ha's Bi-Rite*, in civil contempt of the backpay judgment of May 13, 1981, in No 81-1458 (8th Cir ), *N L R B* v *Ad Art*, in civil contempt of the reinstatement provisions of 645 F 2d 669 (9th Cir 1981), *N L R B* v *Betra Manufacturing Co* , in civil contempt of the bargaining provisions of 624 F 2d 192 (9th Cir 1980)

[12] *N L R B* v *District 17, United Mine Workers of America*, upon the report of United States District Judge Dennis R Knapp, in civil contempt of the 8(b)(1)(A) provisions of the judgment of November 14, 1980, in No 80-1680 (4th Cir ), *N L R B* v *Lodge 84, Intl Assn of Machinists & Aerospace Wkrs , AFL-CIO*, in civil contempt of the 8(b)(1)(A) provisions of the judgment of October 14, 1980, in No 80-2430 (7th Cir )

[13] *N L R B* v *Ronald A Hintz & Lenore Hintz d/b/a Hintz's Restaurant*, in civil contempt of the 8(a)(1), (3), and (5) provisions of the judgment of July 25, 1980, in No 80-1490 (8th Cir ), *N L R B* v *FMG Industries, d/b/a Gamco Industries*, in civil contempt of the bargaining provisions of the judgment of May 7, 1981, in No 81-7180 (9th Cir )

[14] *N L R B* v *Hot Bagels & Donuts of Staten Island*, in civil contempt of the backpay judgment of June 5, 1980, in No 80-4009 (2d Cir ), *N L R B* v *Carbide Tools*, in civil contempt of the backpay judgment of September 11, 1979, in No 73-2115 (6th Cir )

[15] *N L R B* v *Local 867, Intl Brothd of Electrical Wkrs* , with respect to 578 F 2d 1375 (3d Cir 1978), *N L R B* v *Custom Wood Specialties*, with respect to 104 LRRM 2130 (8th Cir 1980), *N L R B* v *Gerald Maykuth d/b/a Bighorn Beverage*, with respect to the judgment of April 25, 1980, in No 78-2995 (9th Cir ), *N L R B* v *Hutsell Transfer Co* , with respect to the judgment of December 19, 1980, in No 80-7542 (9th Cir ), *N L R B* v *Charles Deen d/b/a Hopp Top Mfg Co* , with respect to the judgment of March 12, 1981, in No 80-2330 (7th Cir ), *N L R B* v *S S R Systems, Inc , et al* , with respect to the judgment of October 6, 1980, in No 81-1469 (3d Cir )

[16] *In Re Michigan State Bldg & Constr Trades Council, AFL-CIO*, union was fined ($11,000) and business agent sentenced (suspended) upon their criminal contempt of the decrees of May 13, 1975, and April 22, 1977, in No 75-1453 (6th Cir )

[17] *N L R B* v *Mattiace Petrochemical Co* , civil contempt order of October 21, 1980, upon the 8(a)(1), (2), and (3) provisions of the judgment of October 1, 1979, in No 79-4029 (2d Cir ), *N L R B* v *Vanguard Oil and Service Co* , civil contempt order of October 10, 1980, 106 LRRM 2294, 106 LRRM 2312 (2d Cir ), *N L R B* v *Bancroft Mfg Co , & Croft Metals Co* , civil contempt order of January 30, 1981, upon the bargaining provisions of 635 F 2d 492 (see also 106 LRRM 2603 (5th Cir )), *Florida Steel Corp* v *N L R B* , 648 F 2d 233 (5th Cir 1981), on rehearing 107 LRRM 3191, *N L R B* v *A W Thompson*, 651 F 2d 1141 (5th Cir 1981), *N L R B* v *Airlines Parking & Wendell Flynn*, civil contempt order of April 22, 1981, upon the 8(a)(1) and (3) provisions of 470 F 2d 994 (6th Cir ), *N L R B* v *American Steel Line Co* , civil contempt order of August 28, 1981, upon the bargaining provisions of the judgment of January 21, 1981, in No 80-1598 (6th Cir ), *N L R B* v *Bruce Cartage*, civil contempt order of July 17, 1981, upon the reinstatement provisions of the judgment of July 17, 1981, in No 79-1185 (6th Cir ), *N L R B* v *Lithography Services & Lear Colorprint Corp* , civil contempt order of August 10, 1981, upon the backpay judgment of April 19, 1979, in No 79-1282 (7th Cir ), *N L R B* v *United Contractors & JMCO Trucking*, civil contempt order of February 5, 1981, upon the 8(a)(3) provisions of 539 F 2d 713 (7th Cir ), *N L R B* v *Intl Assn of Bridge, Structural & Ornamental Ironworkers, Local 433*, order of August 5, 1981, upon the hiring hall provisions of 600 F 2d 770 (9th Cir ), *N L R B* v *Goodsell & Vocke*, civil contempt order of February 23, 1981, upon the bargaining provisions of 555 F 2d 1141 (9th Cir )

[18] *N L R B* v *Local 282, Intl Brothd of Teamsters*, $15,000 fine assessed and civil contempt adjudicated by order of November 3, 1980, in civil contempt of the judgment of May 10, 1965, and the civil contempt orders of November 9, 1970, and June 20, 1978, in No 29149 (2d Cir ), *N L R B* v *David D Sutherland d/b/a Maaco Auto Painting & Body Work*, civil contempt adjudicated and $5,000 fine assessed by order of August 17, 1981, in civil contempt of 646 F 2d 1273 (8th Cir )

pliance;[19] 4 were disposed of by orders calling for full compliance.[20] Finally, in one case the Board's petition was dismissed on the merits.[21]

Three opinions issued during this fiscal period warrant comment. *A. W. Thompson*[22] represents the first clear judicial test of the Board's *Montgomery Ward* rule (210 NLRB 717), which prohibits employee polls from being taken to test a union's continuing majority unless there is objective evidence supporting a good-faith doubt of loss of majority prior to the taking of the poll. Refusing to embrace *Montgomery Ward*, the court held that "when an employer 'has not engaged in unfair labor practices or otherwise created a coercive atmosphere', it may, after giving notice to the union, poll the employees for their union sentiment if there is other substantial, objective evidence of a loss of union support (even if that evidence is not sufficient by itself to justify withdrawal) and if the poll meets the procedural guidelines set out in *Struksnes* [165 NLRB 1062 (1967)]" (651 F.2d at 1145). The court nevertheless adjudicated the company in civil contempt because it had not met the requirements for the taking of a poll as set forth by the court; i.e., the company had engaged in repeated unfair labor practices and did not have a substantial basis for doubting the union's majority prior to the poll.

In *Florida Steel Corp.*,[23] the Fifth Circuit sustained the master's findings that an antiunion videotape impermissibly threatened company employees that the selection of a union representative would delay or prevent wage increases that otherwise would have been granted. Rejecting the Board's request that a prospective compliance fine be imposed as part of the remedial measures, the court noted that the standard to be employed in deciding whether to impose a fine is "whether such fine is necessary to 'coerce the contemnor into compliance with the court's order.' " Finding that the company had voluntarily excised the principal offensive portion of the videotape even before the contempt hearing, it

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[19] *N L R B* v *Hoover*, by order of December 22, 1980, upon compliance with reinstatement provisions of the judgment of January 18, 1980, in No 79–2132 (5th Cir ), *N L R B* v *Martin Luther King, Sr Nursing Center*, by order of December 23, 1980, upon compliance with the backpay provisions of the judgment of August 8, 1980, in No 80–7507 (5th Cir ), *N L R B* v *United Inventories of Dallas*, by order of November 22, 1980, upon compliance with the reinstatement provisions of the judgment of July 13, 1979, in No 79–2274 (5th Cir ), *N L R B* v *Franklin Properties Co* , by order of February 18, 1981, upon compliance with the posting provisions of the judgment of March 20, 1980, in No 77–1726 (6th Cir ), *N L R B* v *Tony DeClue*, by order of January 20, 1981, upon compliance with the backpay provisions of the judgment of August 3, 1979, in No 79–1533 (8th Cir ), *Tipton Electric Co* v *N L R B* , by order of October 1, 1980, upon compliance with 104 LRRM 2073 (8th Cir 1980), *N L R B* v *Frank Falkowski, d/b/a Falkowski Grocery*, by order of November 13, 1980, upon compliance with the bargaining provisions of the judgment of July 25, 1979, in No 78–1737 (8th Cir ), *N L R B* v *Amado Electric*, by order of July 21, 1980, upon compliance with the bargaining provisions of the judgment of March 30, 1979, in No 78–3537 (9th Cir ), *Local 18, Detroit Newspapers Printing & Graphic Communications Union, AFL-CIO* v *N L R B* , by order of January 12, 1981, upon compliance with No 78–1052 (D C Cir )

[20] *N L R B* v *Terrace Lithographers & General Lithography Corp* , order of June 18, 1981, with respect to the bargaining provisions of the judgment of October 13, 1978, in No 78–4110 (2d Cir ), *N L R B* v *Turbodyne Corp as successor to Wagner Electric Corp* , order of February 17, 1981, with respect to 586 F 2d 1074 (5th Cir ), *N L R B* v *Fry Foods*, order of September 30, 1981, upon 609 F 2d 267 (6th Cir 1979), *N L R B* v *Leslie Metal Arts Company*, order of March 25, 1981, with respect to the 8(a)(1) provisions of 472 F 2d 584 (6th Cir 1972), and 509 F 2d 811 (6th Cir 1974)

[21] *N L R B* v *Local 825, A, B, C, D, Intl Union of Operating Engineers, AFL-CIO*, 108 LRRM 2480 (3d Cir 1981)

[22] See fn 17, *supra*

[23] See fn 17, *supra*

concluded that *Florida Steel* had already manifested a willingness to comply with its order, and therefore the coercive sanction of a compliance fine was unnecessary.

In *N.L.R.B.* v. *Blevins Popcorn Co.*,[24] the District of Columbia Circuit reversed a special master's determination that the Board, in a "third stage" civil contempt proceeding brought to assess fines which had been imposed as part of the purgation remedy in a prior contempt case, was required to prove that the respondents had acted in "wilful and deliberate" disregard of the court's orders. The master had also held, in dismissing the Board's contempt motion, that "if there is ground to doubt the wrongfulness of the conduct, the Company should not be held in contempt." The court observed that the third stage "does not lose its civil character simply because a penalty may be imposed"; otherwise, a court might never achieve compliance with its orders by imposing prospective penalties in civil proceedings. It also noted that in civil contempt proceedings, the failure to comply need not be intentional to be contumacious. Because the master had erroneously applied a "reasonable doubt" standard of proof rather than the "clear and convincing evidence" standard, and had imposed a "wilfulness" requirement, the court remanded the case to the master to reconsider his decision in light of the proper standards.

[24] 659 F 2d 1173

# IX

# Special and Miscellaneous Litigation

## A. Litigation Involving the Board's Jurisdiction

In *Newport News Shipbldg. & Drydock Co.* v. *Peninsula Shipbldrs. Assn.*, the Fourth Circuit [1] reversed the district court's denial of intervenor status to the Board in a declaratory judgment action seeking judicial construction of section 23 of a collective-bargaining contract.[2] The suit was brought by the Company against PSA and a group of employees who had attempted to revoke their PSA dues after the Steelworkers had won an election. While the action was pending in the district court, the Board issued unfair labor practice complaints against both the company and PSA arising out of the refusal of the company to honor the revocations. The Board sought to intervene in, and to stay, the district court action pending the outcome of the unfair labor practice case, but the district court granted the Board *amicus curiae* status only and, further, issued a declaratory judgment holding the disputed section of the contract to be valid and binding.

The Fourth Circuit found that the Board had a right to intervene because: (1) it had an interest in the subject matter stemming from its role as primary tribunal for the adjudication of unfair labor practices, and the proceeding before it involved common issues, including the ultimate liability resulting from the unfair labor practice proceeding; (2) it might be impeded from protecting its interest absent intervenor status since, as a result of the district court judgment, the company and PSA were armed with a final decision — from which no party appealed — which created for the Board the kind of "practical disadvantage" that has been thought sufficient to warrant intervention of right; and (3) the Board's interests in the subject matter of the district court action were not adequately represented by the parties.

The court further concluded that the Board's interest as intervenor of right enabled it to appeal from the district court's judgment on the merits

[1] 646 F 2d 117

[2] Sec 23 2 of the contract provided that dues revocations had to be submitted on forms provided by PSA, which the group of employees seeking to revoke their dues had failed to do, accordingly, PSA threatened to sue the company if it honored the revocations Sec 23 3 provided for indemnification of the company by PSA against any claim arising out of the administration of sec 23

as well as the district court's assumption of jurisdiction and its refusal to stay its proceedings.[3]

In *Local 315, Assn. of Western Pulp & Paper Wkrs.* v. *Henderson*, the Ninth Circuit,[4] reversing the district court,[5] held that the district court lacked jurisdiction over a suit brought by a union to enjoin a Board representation proceeding and order a hearing on challenges to ballots case in a representation election. Pursuant to an employee-filed representation petition seeking to decertify the union as the employees' collective-bargaining representative, the Board conducted an election. At the election the union challenged ballots cast by 21 nonstriking employees. The subsequent tally of ballots showed 16 votes for the union, zero against the union, and 21 challenged ballots. The union filed timely challenges and objections to the election alleging that the Board had improperly permitted all 21 strike replacement employees to vote. The regional director determined that the union had failed to submit evidence sufficient to support its challenges and objections and, accordingly, did not conduct a hearing and ordered that the challenged ballots be counted. The Board denied review of this decision. Thereafter, based on the union's complaint the district court issued an order enjoining the Board from opening and counting the challenged ballots and ordering the Board to conduct an evidentiary hearing on the union's challenges and objections to the counting of the ballots. In reversing the district court's injunction, the Ninth Circuit rejected the union's argument that the case fell within an exception to the general rule of nonreviewability of Board representation decisions because the Board's failure to hold a hearing prior to decertification would deprive the Union of a property right without due process of law. Rather, the court, stating that a "decertification order does not become effective until unfair labor practice proceedings in which decertification is relevant are brought," held that the procedures in section 10 of the Act afford the appropriate means for the union to obtain judicial review of a decertification decision. The court stated that if the union is decertified it could obtain review by undertaking conduct amounting to an unfair labor practice — for example picketing in violation of section 8(b)(7) of the NLRA — and seeking review under section 10(f) of any unfair labor practice order issued by the Board.

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[3] On appeal, the Fourth Circuit combined the enforcement proceeding with the appeal from the district court, concluding in a footnote to its decision (108 LRRM 2400, 2404, fn 9) that, although the district court's "better course" would have been to stay its action pending resolution of the issue by the Board, nevertheless, the district court's judgment was valid, except insofar as it conflicted with the remedial aspects of the Board's order in the enforcement case, which the court enforced in full, including the separate and joint liability of the company and PSA The court refused to delineate the precise jurisdictional line between the two adjudications, and concluded that to the extent any conflict might exist between the two decisions, it was sufficient merely to confirm the primary nature of the Board's remedial order

[4] Docket 79-4502 (May 4, 1981)

[5] Docket C 79-171 T (D C Wash , August 3, 1979)

## B. Litigation Involving the Freedom of Information Act and Subpena Enforcement

Several cases arose out of an organizing drive at the Martins Ferry Hospital. In one the Southern District of Ohio,[6] citing *Pacific Molasses Co.*,[7] held that NLRB Form No. 4069, the report on the investigation of a showing of interest, is not exempt from disclosure under the FOIA. The district court rejected the Board's contention that it was entitled to withhold Form No. 4069 under exemptions 5, 6, and 7(A), (C) and (D) of the FOIA. It noted that the form "does not reveal the identity of persons who sign authorization cards for a union but only tallies the results of a card-signing drive, without any reference to the source of a particular union's support."

In a consolidated appeal proceeding, the Sixth Circuit,[8] under the FOIA, affirmed the district court's order upholding the Board's refusal to disclose to the hospital the membership authorization cards purportedly signed by certain of its employees. The district court had found that the Board was entitled to withhold the cards under exemptions 6 and 7(A). In the second appeal the Sixth Circuit [9] affirmed the district court's order enforcing a *subpoena duces tecum* issued by the Board to the employer requiring it to produce IRS W–4 forms, or, if such forms were unavailable, other documents bearing signatures of all employees in the involved units during the period of the union organizing campaign. The court found that the Board needed the subpenaed documents to make signature comparisons to enable it to determine (1) the authenticity of the signatures, (2) whether there was *prima facie* evidence of majority status, and (3) whether the General Counsel should issue a complaint seeking a *Gissel* [10] bargaining order. The court rejected the employer's contention that due process entitled it to equal discovery — specifically, disclosure of the authorization cards to make its own handwriting comparison — in the precomplaint, investigative stage of the Board proceedings. The court did modify the district court's order, however, to permit the employer to obliterate all personal information concerning employees on the W–4 forms which could be of no interest to the Board, thereby avoiding unnecessary disclosure of private information.

Finally, the Sixth Circuit [11] affirmed a district order rejecting the hospital's mandamus action to compel the Board to issue it investigative subpenas requiring the union and the Board field examiner to turn over

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[6] *Martins Ferry Hospital Assn* v *N L R B*, 107 LRRM 2569, 91 LC ¶12,791
[7] *Pacific Molasses Co* v *N L R B*, 577 F 2d 1172 (5th Cir 1978)
[8] *Martins Ferry Hospital Assn* v *N L R B*, 649 F 2d 445
[9] *Id*
[10] *N L R B* v *Gissel Packing Co*, 395 U S 575, 614 (1969)
[11] *Martins Ferry Hospital Assn* v *N L R B*, 654 F 2d 455

dues authorization cards or copies in their possession to permit the hospital to make its own handwriting comparison. The court affirmed the district court's conclusion that the hospital had failed to establish that the Board had an "indisputable and peremptory" duty to issue investigative subpenas to the hospital before any complaint has issued under section 11(1) of the Act.[12] It concluded that the word "proceeding" in Section 11(1) "is not without ambiguity" and held that the Board's alleged duty "is not so clearly established that the hospital is entitled to mandamus relief."

In *Fugazy Continental Corp. of Connecticut* v. *N.L.R.B.*, the district court[13] resolved complex issues involving the enforceability of Board subpenas issued in a related unfair labor practice proceeding. The Board had issued an unfair labor practice complaint against Airport Bus Services, Inc., and its alleged successors and alter egos. Fugazy, an alleged alter ego, moved the district court for leave to intervene as a respondent in a subpena enforcement proceeding brought by the Board against Airport Bus pursuant to section 11(1) of the Act.[14] Fugazy argued, in support of intervention that since it is the alleged alter ego of Airport Bus it is in fact "the same employer under a new name, [and] it enjoys, or should enjoy, the same standing as its co-respondents," even though it neither owned nor possessed the subpenaed materials. The district court rejected Fugazy's arguments and held that judicial intervention was unwarranted at the subpena enforcement stage because Fugazy will have the right to argue the relevancy of any subpenaed materials which are introduced at the unfair labor practice hearing upon appeal of a final order of the Board. The district court additionally noted that the Act does not provide for parties not under subpena to petition to revoke subpenas served on others and a person has no fourth amendment basis for challenging subpenas directed to the business records of a third party. Finally, the district court rejected Fugazy's argument that permissive intervention was warranted. Noting that Fugazy never established a claim of privilege or a proprietary right in the subpenaed records, the district court rejected the contention that "the mere assertion that the examination of third party records may unearth incriminating evidence" is sufficient to allow intervention. In this connection, the district court held that the subpenaed parties could adequately represent Fugazy's interest and that, in any event, Fugazy will have the opportunity to inspect and oppose the introduction of the subpenaed material at the unfair labor practice hearing. The district court then enforced the subpenas against Airport Bus.

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[12] 29 U S C § 161(1)
[13] 514 F Supp 718 (D C N Y)
[14] 29 U S C § 161(1)

## C. Litigation Involving the Bankruptcy Code

In *N.L.R.B.* v. *Evans Plumbing Co.*, the Fifth Circuit [15] held that the automatic stay provisions of the Bankruptcy Act of 1978 [16] (the Bankruptcy Code) are inapplicable to enforcement proceedings instituted by the Board against a bankrupt employer.

The Board sought enforcement of its decision and order requiring the debtor-employer to reinstate with backpay two employees found to have been discharged in violation of section 8(a)(3) and (1) of the Act. Noting that section 362(b)(4) of the Bankruptcy Code excepts from its automatic stay provisions proceedings "by a governmental unit to enforce such governmental unit's police or regulatory power," the court concluded that enforcement proceedings instituted by the Board constituted an exercise of police or regulatory power within the meaning of the statutory exemption. The court thus noted that its decision "would permit the entry of judgment for injunctive relief and for backpay"; however, the court reserved judgment as to whether an action by the Board to execute or enforce a money judgment would be exempt from the automatic stay.

In *Seeburg Corp.* v. *N.L.R.B.*, the district court [17] overturned the bankruptcy court's stay of Board unfair labor practice proceedings involving the trustee in bankruptcy, and ordered the bankruptcy court to refrain from adjudicating the merits of the unfair labor charges. The district court found that a reorganization plan had already been approved in bankruptcy, including a provision for prospective backpay claims, and that the Board's unfair labor practice proceeding therefore did not "threaten estate assets" within the meaning of *In re Shippers Interstate Services*.[18] The district court also determined that the bankruptcy proceeding was a "reorganization" rather than a "liquidation" in bankruptcy, and would therefore not be effective to moot further Board proceedings; on the contrary, since the purchaser of the bankrupt's assets had full knowledge of the pending unfair labor practice charges, the Board might impose future backpay liability on the purchaser under the successorship doctrine of *Golden State Bottling Co.* v. *N.L.R.B.*[19] Since the Board's unfair labor practice proceeding did not threaten estate assets and was not mooted by the bankruptcy proceeding, the district court concluded that a stay of Board proceedings was not warranted and that the bankruptcy court should refrain from hearing the unfair labor practice charges in place of the Board.

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[15] 639 F 2d 291

[16] 11 U S C A §362 (1979)

[17] 105 LRRM 3355 (D C Ill ), vacating 105 LRRM 3050 (B Ct 1980)

[18] 618 F 2d 9, 12–13 (7th Cir )

[19] 414 U S 168 (1973)

# INDEX OF CASES DISCUSSED

# APPENDIX

# GLOSSARY OF TERMS USED IN STATISTICAL TABLES

The definitions of terms contained in this glossary are not intended for general application but are specially 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 the 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 Cases" 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 concludes on the basis of a completed investigation that any of the allegations contained in the charge have merit and adjustment or settlement has not been achieved by the parties. The complaint sets forth all allegations and information necessary to bring a case to hearing before an administrative law judge pursuant to due process of law. The complaint contains a notice of hearing, specifying the time and place of hearing.

## Compliance

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 his 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.

## 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 hall arrangement, or an invalid or unlawfully applied union-security agreement; where dues were deducted from employees' pay without their authorization; or, in the case 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 decisionmaking 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.

## 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 purposes 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 a 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 committeed 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 committeed 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 committeed 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 the 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 classifications of employees should or should not be included within a presently existing bargaining unit.

UD: (Union Deauthorization cases): 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 Deauthorizing 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 of the charge or the petition and such request is approved.

# SUBJECT INDEX TO ANNUAL REPORT TABLES



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

## Table 1.—Total Cases Received, Closed and Pending, Fiscal Year 1981 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| Pending October 1, 1980 | 22,118 | 8,862 | 2,572 | 912 | 732 | 7,150 | 1,890 |
| Received fiscal 1981 | 55,897 | 17,895 | 6,175 | 1,815 | 1,767 | 23,116 | 5,129 |
| On docket fiscal 1981 | 78,015 | 26,757 | 8,747 | 2,727 | 2,499 | 30,266 | 7,019 |
| Closed fiscal 1981 | 52,804 | 16,949 | 5,851 | 1,660 | 1,414 | 22,082 | 4,848 |
| Pending September 30, 1981 | 25,211 | 9,808 | 2,896 | 1,067 | 1,085 | 8,184 | 2,171 |
| | Unfair labor practice cases [2] | | | | | | |
| Pending October 1, 1980 | 18,673 | 7,136 | 1,856 | 724 | 542 | 6,717 | 1,698 |
| Received fiscal 1981 | 43,321 | 12,200 | 3,404 | 1,385 | 1,000 | 21,076 | 4,256 |
| On docket fiscal 1981 | 61,994 | 19,336 | 5,260 | 2,109 | 1,542 | 27,793 | 5,954 |
| Closed fiscal 1981 | 41,020 | 11,531 | 3,176 | 1,243 | 759 | 20,185 | 4,126 |
| Pending September 30, 1981 | 20,974 | 7,805 | 2,084 | 866 | 783 | 7,608 | 1,828 |
| | Representation cases [3] | | | | | | |
| Pending October 1, 1980 | 3,246 | 1,674 | 703 | 179 | 180 | 351 | 159 |
| Received fiscal 1981 | 11,790 | 5,450 | 2,725 | 417 | 719 | 1,752 | 727 |
| On docket fiscal 1981 | 15,036 | 7,124 | 3,428 | 596 | 899 | 2,103 | 886 |
| Closed fiscal 1981 | 11,114 | 5,230 | 2,633 | 401 | 621 | 1,623 | 606 |
| Pending September 30, 1981 | 3,922 | 1,894 | 795 | 195 | 278 | 480 | 280 |
| | Union-shop deauthorization cases | | | | | | |
| Pending October 1, 1980 | 76 | | | | | 76 | |
| Received fiscal 1981 | 274 | | | | | 274 | |
| On docket fiscal 1981 | 350 | | | | | 350 | |
| Closed fiscal 1981 | 257 | | | | | 257 | |
| Pending September 30, 1981 | 93 | | | | | 93 | |
| | Amendment of certification cases | | | | | | |
| Pending October 1, 1980 | 9 | 6 | 0 | 1 | 1 | 1 | 0 |
| Received fiscal 1981 | 43 | 21 | 3 | 4 | 9 | 1 | 5 |
| On docket fiscal 1981 | 52 | 27 | 3 | 5 | 10 | 2 | 5 |
| Closed fiscal 1981 | 34 | 19 | 2 | 2 | 6 | 2 | 3 |
| Pending September 30, 1981 | 18 | 8 | 1 | 3 | 4 | 0 | 2 |
| | Unit clarification cases | | | | | | |
| Pending October 1, 1980 | 114 | 46 | 13 | 8 | 9 | 5 | 33 |
| Received fiscal 1981 | 469 | 224 | 43 | 9 | 39 | 13 | 141 |
| On docket fiscal 1981 | 583 | 270 | 56 | 17 | 48 | 18 | 174 |
| Closed fiscal 1981 | 379 | 169 | 40 | 14 | 28 | 15 | 113 |
| Pending September 30, 1981 | 204 | 101 | 16 | 3 | 20 | 3 | 61 |

[1] See Glossary for definitions of terms Advisory Opinion (AO) cases not included See table 22
[2] See table 1A for totals by types of cases
[3] See table 1B for totals by types of cases

## Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1981 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | CA cases | | | | | | |
| Pending October 1, 1980 | 15,083 | 7,091 | 1,846 | 720 | 479 | 4,907 | 40 |
| Received fiscal 1981 | 31,273 | 11,989 | 3,374 | 1,351 | 882 | 13,633 | 44 |
| On docket fiscal 1981 | 46,356 | 19,080 | 5,220 | 2,071 | 1,361 | 18,540 | 84 |
| Closed fiscal 1981 | 29,351 | 11,361 | 3,146 | 1,208 | 639 | 12,956 | 41 |
| Pending September 30, 1981 | 17,005 | 7,719 | 2,074 | 863 | 722 | 5,584 | 43 |
| | CB cases | | | | | | |
| Pending October 1, 1980 | 2,402 | 34 | 10 | 3 | 19 | 1,719 | 617 |
| Received fiscal 1981 | 9,036 | 127 | 24 | 28 | 68 | 7,355 | 1,434 |
| On docket fiscal 1981 | 11,438 | 161 | 34 | 31 | 87 | 9,074 | 2,051 |
| Closed fiscal 1981 | 8,640 | 102 | 25 | 29 | 68 | 7,090 | 1,326 |
| Pending September 30, 1981 | 2,798 | 59 | 9 | 2 | 19 | 1,984 | 725 |
| | CC cases | | | | | | |
| Pending October 1, 1980 | 753 | 1 | 0 | 1 | 19 | 59 | 673 |
| Received fiscal 1981 | 1,950 | 52 | 1 | 4 | 23 | 50 | 1,820 |
| On docket fiscal 1981 | 2,703 | 53 | 1 | 5 | 42 | 109 | 2,493 |
| Closed fiscal 1981 | 1,960 | 38 | 1 | 4 | 28 | 79 | 1,810 |
| Pending September 30, 1981 | 743 | 15 | 0 | 1 | 14 | 30 | 683 |
| | CD cases | | | | | | |
| Pending October 1, 1980 | 149 | 9 | 0 | 0 | 0 | 17 | 123 |
| Received fiscal 1981 | 442 | 10 | 2 | 1 | 8 | 21 | 400 |
| On docket fiscal 1981 | 591 | 19 | 2 | 1 | 8 | 38 | 523 |
| Closed fiscal 1981 | 427 | 12 | 2 | 1 | 6 | 36 | 370 |
| Pending September 30, 1981 | 164 | 7 | 0 | 0 | 2 | 2 | 153 |
| | CE cases | | | | | | |
| Pending October 1, 1980 | 109 | 0 | 0 | 0 | 24 | 6 | 79 |
| Received fiscal 1981 | 131 | 7 | 2 | 0 | 8 | 7 | 107 |
| On docket fiscal 1981 | 240 | 7 | 2 | 0 | 32 | 13 | 186 |
| Closed fiscal 1981 | 126 | 6 | 1 | 0 | 8 | 8 | 103 |
| Pending September 30, 1981 | 114 | 1 | 1 | 0 | 24 | 5 | 83 |
| | CG cases | | | | | | |
| Pending October 1, 1980 | 28 | 0 | 0 | 0 | 1 | 0 | 27 |
| Received fiscal 1981 | 35 | 0 | 0 | 0 | 2 | 1 | 32 |
| On docket fiscal 1981 | 63 | 0 | 0 | 0 | 3 | 1 | 59 |
| Closed fiscal 1981 | 38 | 0 | 0 | 0 | 3 | 0 | 35 |
| Pending September 30, 1981 | 25 | 0 | 0 | 0 | 0 | 1 | 24 |
| | CP cases | | | | | | |
| Pending October 1, 1980 | 149 | 1 | 0 | 0 | 0 | 9 | 139 |
| Received fiscal 1981 | 454 | 15 | 1 | 1 | 9 | 9 | 419 |
| On docket fiscal 1981 | 603 | 16 | 1 | 1 | 9 | 18 | 558 |
| Closed fiscal 1981 | 478 | 12 | 1 | 1 | 7 | 16 | 441 |
| Pending September 30, 1981 | 125 | 4 | 0 | 0 | 2 | 2 | 117 |

[1] See Glossary for definitions of terms

## Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1981 [1]

| | Total | Identification of filing party | | | | | |
|---|---|---|---|---|---|---|---|
| | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | Individuals | Employers |
| | RC cases | | | | | | |
| Pending October 1, 1980 | 2,748 | 1,672 | 703 | 178 | 178 | 17 | |
| Received fiscal 1981 | 9,332 | 5,443 | 2,720 | 416 | 712 | 41 | |
| On docket fiscal 1981 | 12,080 | 7,115 | 3,423 | 594 | 890 | 58 | |
| Closed fiscal 1981 | 8,904 | 5,222 | 2,629 | 400 | 612 | 41 | |
| Pending September 30, 1981 | 3,176 | 1,893 | 794 | 194 | 278 | 17 | |
| | RM cases | | | | | | |
| Pending October 1, 1980 | 159 | | | | | | 159 |
| Received fiscal 1981 | 727 | | | | | | 727 |
| On docket fiscal 1981 | 886 | | | | | | 886 |
| Closed fiscal 1981 | 606 | | | | | | 606 |
| Pending September 30, 1981 | 280 | | | | | | 280 |
| | RD cases | | | | | | |
| Pending October 1, 1980 | 339 | 2 | 0 | 1 | 2 | 334 | |
| Received fiscal 1981 | 1,731 | 7 | 5 | 1 | 7 | 1,711 | |
| On docket fiscal 1981 | 2,070 | 9 | 5 | 2 | 9 | 2,045 | |
| Closed fiscal 1981 | 1,604 | 8 | 4 | 1 | 9 | 1,582 | |
| Pending September 30, 1981 | 466 | 1 | 1 | 1 | 0 | 463 | |

[1] See Glossary for definitions of terms

## Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1981

| | 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 | 31,273 | 100 0 |
| 8(a)(1) | 6,394 | 20 4 |
| 8(a)(1)(2) | 301 | 1 0 |
| 8(a)(1)(3) | 13,277 | 42 5 |
| 8(a)(1)(4) | 295 | 0 9 |
| 8(a)(1)(5) | 6,569 | 21 0 |
| 8(a)(1)(2)(3) | 239 | 0 8 |
| 8(a)(1)(2)(4) | 6 | 0 0 |
| 8(a)(1)(2)(5) | 114 | 0 4 |
| 8(a)(1)(3)(4) | 925 | 3 0 |
| 8(a)(1)(3)(5) | 2,809 | 9 0 |
| 8(a)(1)(4)(5) | 19 | 0 1 |
| 8(a)(1)(2)(3)(4) | 21 | 0 1 |
| 8(a)(1)(2)(3)(5) | 161 | 0 5 |
| 8(a)(1)(2)(4)(5) | 4 | 0 0 |
| 8(a)(1)(3)(4)(5) | 116 | 0 4 |
| 8(a)(1)(2)(3)(4)(5) | 23 | 0 1 |
| **Recapitulation [1]** | | |
| 8(a)(1) [2] | 31,273 | 100 0 |
| 8(a)(2) | 869 | 2 8 |
| 8(a)(3) | 17,571 | 56 2 |
| 8(a)(4) | 1,409 | 4 5 |
| 8(a)(5) | 9,815 | 31 4 |
| **B Charges filed against unions under sec 8(b)** | | |
| Subsections of sec 8(b) Total cases | 11,882 | 100 0 |
| 8(b)(1) | 6,627 | 55 8 |
| 8(b)(2) | 151 | 1 3 |
| 8(b)(3) | 458 | 3 9 |
| 8(b)(4) | 2,392 | 20 1 |
| 8(b)(5) | 6 | 0 1 |
| 8(b)(6) | 17 | 0 1 |
| 8(b)(7) | 454 | 3 8 |
| 8(b)(1)(2) | 1,265 | 10 6 |
| 8(b)(1)(3) | 377 | 3 2 |
| 8(b)(1)(5) | 11 | 0 1 |
| 8(b)(1)(6) | 7 | 0 1 |
| 8(b)(2)(3) | 12 | 0 1 |
| 8(b)(2)(5) | 2 | 0 0 |
| 8(b)(3)(5) | 2 | 0 0 |
| 8(b)(3)(6) | 6 | 0 1 |
| 8(b)(1)(2)(3) | 69 | 0 6 |
| 8(b)(1)(2)(5) | 3 | 0 0 |
| 8(b)(1)(2)(6) | 2 | 0 0 |
| 8(b)(1)(3)(5) | 8 | 0 1 |
| 8(b)(1)(3)(6) | 4 | 0 0 |
| 8(b)(1)(2)(3)(5) | 5 | 0 0 |
| 8(b)(1)(2)(3)(6) | 4 | 0 0 |

| | Number of cases showing specific allegations | Percent of total cases |
|---|---|---|
| **Recapitulation [1]** | | |
| 8(b)(1) | 8,382 | 70 5 |
| 8(b)(2) | 1,513 | 12.7 |
| 8(b)(3) | 945 | 8.0 |
| 8(b)(4) | 2,392 | 20 1 |
| 8(b)(5) | 37 | 0 3 |
| 8(b)(6) | 40 | 0 3 |
| 8(b)(7) | 454 | 3 8 |
| **B1 Analysis of 8(b)(4)** | | |
| Total cases 8(b)(4) | 2,392 | 100 0 |
| 8(b)(4)(A) | 209 | 8 7 |
| 8(b)(4)(B) | 1,565 | 65 4 |
| 8(b)(4)(C) | 14 | 0 6 |
| 8(b)(4)(D) | 442 | 18 5 |
| 8(b)(4)(A)(B) | 134 | 5 6 |
| 8(b)(4)(A)(C) | 3 | 0 1 |
| 8(b)(4)(B)(C) | 12 | 0 5 |
| 8(b)(4)(A)(B)(C) | 13 | 0.5 |
| **Recapitulation [1]** | | |
| 8(b)(4)(A) | 359 | 15 0 |
| 8(b)(4)(B) | 1,724 | 72 1 |
| 8(b)(4)(C) | 42 | 1 8 |
| 8(b)(4)(D) | 442 | 18 5 |
| **B2 Analysis of 8(b)(7)** | | |
| Total cases 8(b)(7) | 454 | 100 0 |
| 8(b)(7)(A) | 101 | 22 2 |
| 8(b)(7)(B) | 27 | 5.9 |
| 8(b)(7)(C) | 317 | 69 8 |
| 8(b)(7)(A)(C) | 8 | 1 8 |
| 8(b)(7)(A)(B)(C) | 1 | 0 2 |
| **Recapitulation [1]** | | |
| 8(b)(7)(A) | 110 | 24 2 |
| 8(b)(7)(B) | 28 | 6.2 |
| 8(b)(7)(C) | 326 | 71 8 |
| **C Charges filed under sec. 8(e)** | | |
| Total cases 8(e) | 131 | 100.0 |
| Against unions alone | 130 | 99 2 |
| Against employers alone | 1 | 0 8 |
| **D Charges filed under sec 8(g)** | | |
| Total cases 8(g) | 35 | 100 0 |

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

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

# Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1981 [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 | 71 | 60 | | | | 60 | | | | | | | |
| Complaints issued | 5,801 | 5,711 | 4,672 | 497 | 211 | | 23 | 11 | 2 | 80 | 103 | 98 | 14 |
| Backpay specifications issued | 143 | 138 | 115 | 14 | 0 | | 0 | 0 | 0 | 0 | 9 | 0 | 0 |
| Hearings completed, total | 1,311 | 1,258 | 1,090 | 16 | 36 | 37 | 0 | 16 | 0 | 8 | 28 | 25 | 2 |
| Initial ULP hearings | 1,270 | 1,219 | 1,051 | 16 | 36 | 37 | 0 | 16 | 0 | 8 | 28 | 25 | 2 |
| Backpay hearings | 15 | 13 | 13 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Other hearings | 26 | 26 | 26 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Decisions by administrative law judges, total | 1,340 | 1,255 | 1,129 | 85 | 7 | | 0 | 5 | 5 | 8 | 4 | 1 | 11 |
| Initial ULP decisions | 1,291 | 1,213 | 1,098 | 82 | 7 | | 0 | 5 | 5 | 8 | 4 | 1 | 3 |
| Backpay decisions | 21 | 15 | 14 | 1 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Supplemental decisions | 28 | 27 | 17 | 2 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 8 |
| Decisions and orders by the Board, total | 1,733 | 1,596 | 1,337 | 106 | 40 | 52 | 6 | 8 | 3 | 13 | 14 | 8 | 9 |
| Upon consent of parties | | | | | | | | | | | | | |
| Initial decisions | 259 | 205 | 126 | 35 | 16 | | 4 | 4 | 0 | 8 | 3 | 0 | 9 |
| Supplemental decisions | 0 | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Adopting administrative law judges' decisions (no exceptions filed) | | | | | | | | | | | | | |
| Initial ULP decisions | 407 | 360 | 341 | 10 | 3 | | 0 | 0 | 0 | 2 | 3 | 1 | 0 |
| Backpay decisions | 4 | 3 | 3 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Contested | | | | | | | | | | | | | |
| Initial ULP decisions | 990 | 963 | 814 | 51 | 21 | 52 | 2 | 4 | 3 | 3 | 6 | 7 | 0 |
| Decisions based on stipulated record | 25 | 23 | 21 | 1 | 0 | | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| Supplemental ULP decisions | 2 | 2 | 2 | 0 | 0 | | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Backpay decisions | 46 | 40 | 30 | 9 | 0 | | 0 | 0 | 0 | 0 | 1 | 0 | 0 |

[1] See Glossary for definitions of terms

## Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1981 [1]

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | | | | |
|---|---|---|---|---|---|---|
| | | Total formal actions taken | RC | RM | RD | UD |
| Hearings completed, total | 2,486 | 2,299 | 1,983 | 81 | 235 | 7 |
| Initial hearings | 2,180 | 2,017 | 1,731 | 76 | 210 | 7 |
| Hearings on objections and/or challenges | 306 | 282 | 252 | 5 | 25 | 0 |
| Decisions issued, total | 2,129 | 1,936 | 1,669 | 76 | 191 | 6 |
| By regional directors | 2,016 | 1,831 | 1,579 | 67 | 185 | 6 |
| Elections directed | 1,800 | 1,627 | 1,409 | 52 | 166 | 4 |
| Dismissals on record | 216 | 204 | 170 | 15 | 19 | 2 |
| By Board | 113 | 105 | 90 | 9 | 6 | 0 |
| Transferred by regional directors for initial decision | 31 | 29 | 26 | 1 | 2 | 0 |
| Elections directed | 19 | 19 | 17 | 0 | 2 | 0 |
| Dismissals on record | 12 | 10 | 9 | 1 | 0 | 0 |
| Review of regional directors' decisions | | | | | | |
| Requests for review received | 741 | 644 | 593 | 16 | 35 | 2 |
| Withdrawn before request ruled upon | 1 | 1 | 1 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 666 | 586 | 540 | 14 | 32 | 1 |
| Granted | 70 | 55 | 44 | 5 | 6 | 0 |
| Denied | 593 | 528 | 493 | 9 | 26 | 1 |
| Remanded | 3 | 3 | 3 | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decision after review, total | 82 | 76 | 64 | 8 | 4 | 0 |
| Regional directors' decisions | | | | | | |
| Affirmed | 39 | 37 | 29 | 5 | 3 | 0 |
| Modified | 17 | 16 | 16 | 0 | 0 | 0 |
| Reversed | 26 | 23 | 19 | 3 | 1 | 0 |
| Outcome | | | | | | |
| Elections directed | 62 | 60 | 51 | 5 | 4 | 0 |
| Dismissals on record | 18 | 16 | 13 | 3 | 0 | 0 |

[1] See Glossary for definitions of terms

## Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1981 [1]—Contd.

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | | | | |
|---|---|---|---|---|---|---|
| | | Total formal actions taken | RC | RM | RD | UD |
| Decisions on objections and/or challenges, total | 1,229 | 1,160 | 1,023 | 29 | 108 | 13 |
| By regional directors | 304 | 271 | 243 | 3 | 25 | 4 |
| By Board | 925 | 889 | 780 | 26 | 83 | 9 |
| In stipulated elections | 842 | 812 | 710 | 24 | 78 | 8 |
| No exceptions to regional directors' reports | 486 | 461 | 398 | 16 | 47 | 8 |
| Exceptions to regional directors' reports | 356 | 351 | 312 | 8 | 31 | 0 |
| In directed elections (after transfer by regional director) | 81 | 75 | 69 | 2 | 4 | 1 |
| Review of regional directors' supplemental decisions | | | | | | |
| Request for review received | 55 | 50 | 45 | 1 | 4 | 0 |
| Withdrawn before request ruled upon | 0 | 0 | 0 | 0 | 0 | 0 |
| Board action on request ruled upon, total | 42 | 37 | 34 | 1 | 2 | 0 |
| Granted | 4 | 4 | 4 | 0 | 0 | 0 |
| Denied | 37 | 32 | 29 | 1 | 2 | 0 |
| Remanded | 1 | 1 | 1 | 0 | 0 | 0 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 | 0 | 0 | 0 |
| Board decisions after review, total | 2 | 2 | 1 | 0 | 1 | 0 |
| Regional directors' decisions | | | | | | |
| Affirmed | 1 | 1 | 0 | 0 | 1 | 0 |
| Modified | 1 | 1 | 1 | 0 | 0 | 0 |
| Reversed | 0 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

## Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1981 [1]

| Types of formal actions taken | Cases in which formal actions taken | Formal actions taken by type of case | |
|---|---|---|---|
| | | AC | UC |
| Hearings completed | 130 | 6 | 104 |
| Decision issued after hearing | 150 | 7 | 120 |
| By regional directors | 146 | 7 | 116 |
| By Board | 4 | 0 | 4 |
| Transferred by regional directors for initial decision | 2 | 0 | 2 |
| Review of regional director's decisions Requests for review received | 24 | 0 | 16 |
| Withdrawn before request ruled upon | 0 | 0 | 0 |
| Board action on requests ruled upon, total | 16 | 0 | 12 |
| Granted | 3 | 0 | 2 |
| Denied | 12 | 0 | 9 |
| Remanded | 1 | 0 | 1 |
| Withdrawn after request granted, before Board review | 0 | 0 | 0 |
| Board decision after review, total | 2 | 0 | 2 |
| Regional director's decisions | | | |
| Affirmed | 1 | 0 | 1 |
| Modified | 0 | 0 | 0 |
| Reversed | 1 | 0 | 1 |

[1] See Glossary for definitions of terms

## Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1981 [1]

| Action taken | Total all | Remedial action taken by— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | |
| | | Total | Pursuant to— | | | | | Total | Pursuant to— | | | | |
| | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | |
| | | | Informal settlement | Formal settlement | | Board | Court | | Informal settlement | Formal settlement | | Board | Court |
| A By number of cases involved | [2] 12,114 | | | | | | | | | | | | |
| Notice posted | 6,648 | 5,069 | 3,953 | 205 | 20 | 631 | 260 | 1,579 | 1,337 | 74 | 15 | 132 | 21 |
| Recognition or other assistance withdrawn | 56 | 56 | 21 | 10 | 0 | 20 | 5 | | | | | | |
| Employer-dominated union disestablished | 35 | 35 | 13 | 3 | 0 | 14 | 5 | | | | | | |
| Employees offered reinstatement | 2,322 | 2,322 | 1,652 | 139 | 8 | 355 | 168 | | | | | | |
| Employees placed on preferential hiring list | 750 | 750 | 566 | 39 | 2 | 94 | 49 | | | | | | |
| Hiring hall rights restored | 97 | | | | | | | 97 | 73 | 4 | 0 | 13 | 7 |
| Objections to employment withdrawn | 109 | | | | | | | 109 | 78 | 4 | 0 | 20 | 7 |
| Picketing ended | 868 | | | | | | | 868 | 792 | 43 | 0 | 17 | 16 |
| Work stoppage ended | 205 | | | | | | | 205 | 190 | 9 | 0 | 5 | 1 |
| Collective bargaining begun | 2,028 | 1,876 | 1,660 | 37 | 0 | 95 | 84 | 152 | 145 | 3 | 2 | 2 | 0 |
| Backpay distributed | 3,776 | 3,474 | 2,814 | 45 | 29 | 347 | 239 | 302 | 195 | 15 | 0 | 75 | 17 |
| Reimbursement of fees, dues, and fines | 483 | 401 | 302 | 25 | 0 | 45 | 29 | 82 | 68 | 4 | 0 | 6 | 4 |
| Other conditions of employment improved | 2,637 | 1,819 | 1,806 | 0 | 2 | 7 | 4 | 818 | 808 | 2 | 0 | 8 | 0 |
| Other remedies | 21 | 19 | 19 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 |

## Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1981 [1]—Continued

| Action taken | Total all | Remedial action taken by— | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | |
| | | Total | Pursuant to— | | | | | Total | Pursuant to— | | | | |
| | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | |
| | | | Informal settlement | Formal settlement | | Board | Court | | Informal settlement | Formal settlement | | Board | Court |
| B By number of employees affected | | | | | | | | | | | | | |
| Employees offered reinstatement, total | 6,463 | 6,463 | 4,677 | 425 | 17 | 881 | 463 | | | | | | |
| Accepted | 5,025 | 5,025 | 4,009 | 201 | 1 | 522 | 292 | | | | | | |
| Declined | 1,438 | 1,438 | 668 | 224 | 16 | 359 | 171 | | | | | | |
| Employees placed on preferential hiring list | 3,373 | 3,373 | 3,257 | 56 | 2 | 47 | 11 | | | | | | |
| Hiring hall rights restored | 160 | | | | | | | 160 | 94 | 13 | 0 | 35 | 18 |
| Objections to employment withdrawn | 251 | | | | | | | 251 | 142 | 25 | 0 | 44 | 39 |
| Employees receiving backpay | | | | | | | | | | | | | |
| From either employer or union | 25,929 | 25,631 | 16,089 | 6,572 | 31 | 1,500 | 1,439 | 298 | 204 | 13 | 0 | 61 | 20 |
| From both employer and union | 162 | 162 | 83 | 10 | 0 | 54 | 15 | 162 | 83 | 10 | 0 | 54 | 15 |
| Employees reimbursed for fees, dues, and fines | | | | | | | | | | | | | |
| From either employer or union | 1,586 | 1,460 | 779 | 21 | 0 | 618 | 42 | 126 | 117 | 0 | 0 | 0 | 9 |
| From both employer and union | 99 | 99 | 87 | 4 | 0 | 7 | 1 | 99 | 87 | 4 | 0 | 7 | 1 |

## Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1981 [1]—Continued

| Action taken | Total all | Remedial action taken by— | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Employer | | | | | | Union | | | | | | |
| | | Total | Pursuant to— | | | | | Total | Pursuant to— | | | | | |
| | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | | Agreement of parties | | Recommendation of administrative law judge | Order of— | | |
| | | | Informal settlement | Formal settlement | | Board | Court | | Informal settlement | Formal settlement | | Board | Court | |
| C By amounts of monetary recovery, total | $37,617,144 | $36,749,349 | $12,269,342 | $2,557,501 | $1,825,004 | $5,124,983 | $14,972,519 | $867,795 | $219,106 | $44,619 | 0 | $499,661 | $104,409 | |
| Backpay (includes all monetary payments except fees, dues, and fines) | 37,244,982 | 36,500,083 | 12,045,027 | 2,555,006 | 1,825,004 | 5,110,012 | 14,965,034 | 744,899 | 156,429 | 37,245 | 0 | 446,939 | 104,286 | |
| Reimbursement of fees, dues and fines | 372,162 | 249,266 | 224,315 | 2,495 | 0 | 14,971 | 7,485 | 122,896 | 62,677 | 7,374 | 0 | 52,722 | 123 | |

[1] See Glossary for definitions of terms Data in this table are based on unfair labor practice cases that were closed during fiscal year 1981 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 1981 [1]

| Industrial group [2] | All cases | Unfair labor practice cases | | | | | | | | Representation cases | | | | Union deauthorization cases | Amendment of certification cases | Unit clarification cases |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | All C cases | CA | CB | CC | CD | CE | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Food and kindred products | 2,046 | 1,518 | 1,143 | 331 | 27 | 12 | 3 | 0 | 2 | 505 | 421 | 21 | 63 | 5 | 2 | 16 |
| Tobacco manufacturers | 30 | 25 | 13 | 12 | 0 | 0 | 0 | 0 | 0 | 5 | 5 | 0 | 0 | 0 | 0 | 0 |
| Textile mill products | 475 | 376 | 329 | 46 | 1 | 0 | 0 | 0 | 0 | 96 | 77 | 4 | 15 | 1 | 0 | 2 |
| Apparel and other finished products made from fabric and similar materials | 558 | 447 | 336 | 95 | 8 | 0 | 0 | 0 | 8 | 107 | 81 | 4 | 22 | 2 | 0 | 2 |
| Lumber and wood products (except furniture) | 678 | 489 | 419 | 59 | 8 | 3 | 0 | 0 | 0 | 184 | 144 | 11 | 29 | 3 | 0 | 2 |
| Furniture and fixtures | 542 | 411 | 346 | 64 | 1 | 0 | 0 | 0 | 0 | 126 | 97 | 10 | 19 | 1 | 0 | 4 |
| Paper and allied products | 601 | 489 | 368 | 118 | 2 | 1 | 0 | 0 | 0 | 107 | 87 | 5 | 15 | 0 | 0 | 5 |
| Printing, publishing, and allied products | 1,214 | 911 | 749 | 145 | 4 | 10 | 0 | 0 | 3 | 279 | 205 | 15 | 59 | 7 | 0 | 17 |
| Chemicals and allied products | 1,029 | 763 | 626 | 114 | 16 | 4 | 0 | 0 | 3 | 253 | 190 | 19 | 44 | 4 | 1 | 8 |
| Petroleum refining and related industries | 328 | 255 | 177 | 56 | 17 | 4 | 0 | 0 | 1 | 62 | 43 | 3 | 16 | 3 | 0 | 8 |
| Rubber and miscellaneous plastic products | 716 | 508 | 413 | 82 | 6 | 7 | 0 | 0 | 0 | 194 | 156 | 7 | 31 | 7 | 0 | 7 |
| Leather and leather products | 175 | 136 | 113 | 21 | 1 | 0 | 0 | 0 | 1 | 39 | 35 | 2 | 2 | 0 | 0 | 0 |
| Stone, clay, glass, and concrete products | 932 | 739 | 499 | 183 | 35 | 6 | 9 | 0 | 7 | 184 | 143 | 11 | 30 | 6 | 0 | 3 |
| Primary metal industries | 1,558 | 1,306 | 910 | 376 | 17 | 2 | 1 | 0 | 0 | 236 | 198 | 7 | 36 | 6 | 0 | 10 |
| Fabricated metal products (except machinery and transportation equipment) | 2,014 | 1,506 | 1,152 | 319 | 25 | 2 | 3 | 0 | 5 | 488 | 378 | 24 | 86 | 10 | 1 | 9 |
| Machinery (except electrical) | 2,263 | 1,767 | 1,327 | 374 | 44 | 17 | 1 | 0 | 4 | 482 | 392 | 22 | 68 | 8 | 1 | 5 |
| Electrical and electronic machinery, equipment, and supplies | 1,292 | 990 | 768 | 208 | 9 | 3 | 0 | 0 | 2 | 288 | 230 | 11 | 47 | 4 | 2 | 8 |
| Aircraft and parts | 453 | 405 | 246 | 153 | 6 | 0 | 0 | 0 | 0 | 41 | 34 | 1 | 6 | 0 | 5 | 2 |
| Ship and boat building and repairing | 268 | 241 | 148 | 85 | 6 | 1 | 0 | 0 | 1 | 26 | 24 | 0 | 2 | 0 | 0 | 1 |
| Automotive and other transportation equipment | 1,038 | 897 | 633 | 260 | 2 | 1 | 0 | 0 | 1 | 132 | 103 | 4 | 25 | 6 | 0 | 3 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 479 | 360 | 290 | 64 | 2 | 3 | 0 | 0 | 1 | 112 | 93 | 4 | 15 | 3 | 0 | 4 |
| Miscellaneous manufacturing industries | 2,791 | 2,366 | 1,521 | 676 | 118 | 22 | 6 | 2 | 21 | 401 | 311 | 31 | 59 | 11 | 4 | 9 |
| Manufacturing | 21,480 | 16,905 | 12,526 | 3,841 | 355 | 98 | 23 | 2 | 60 | 4,347 | 3,442 | 216 | 689 | 87 | 16 | 125 |
| Metal mining | 156 | 126 | 83 | 39 | 4 | 0 | 0 | 0 | 0 | 28 | 25 | 0 | 3 | 0 | 0 | 2 |
| Coal mining | 652 | 538 | 297 | 153 | 72 | 6 | 2 | 0 | 8 | 109 | 94 | 3 | 12 | 0 | 0 | 5 |
| Oil and gas extraction | 77 | 70 | 55 | 10 | 3 | 2 | 0 | 0 | 0 | 7 | 7 | 0 | 0 | 0 | 0 | 0 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 142 | 101 | 78 | 14 | 5 | 1 | 1 | 0 | 2 | 39 | 27 | 9 | 3 | 0 | 0 | 2 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Mining | 1,027 | 835 | 513 | 216 | 84 | 9 | 3 | 0 | 10 | 183 | 153 | 12 | 18 | 0 | 0 | 9 |
| Construction | 5,634 | 5,073 | 2,298 | 1,201 | 1,024 | 259 | 46 | 1 | 244 | 534 | 344 | 151 | 39 | 6 | 2 | 19 |
| Wholesale trade | 3,624 | 2,627 | 2,023 | 480 | 94 | 5 | 3 | 0 | 22 | 959 | 748 | 69 | 142 | 22 | 0 | 16 |
| Retail trade | 5,603 | 4,045 | 3,226 | 674 | 84 | 10 | 6 | 0 | 45 | 1,466 | 1,037 | 116 | 313 | 61 | 2 | 29 |
| Finance, insurance, and real estate | 973 | 728 | 564 | 131 | 29 | 2 | 1 | 0 | 1 | 230 | 201 | 8 | 21 | 6 | 0 | 9 |
| U S Postal Service | 1,290 | 1,279 | 1,053 | 226 | 0 | 0 | 0 | 0 | 0 | 10 | 8 | 1 | 1 | 1 | 0 | 0 |
| Local and suburban transit and inter-urban highway passenger transportation | 648 | 486 | 377 | 99 | 7 | 0 | 0 | 0 | 3 | 152 | 127 | 4 | 21 | 5 | 2 | 3 |
| Motor freight transportation and warehousing | 3,101 | 2,419 | 1,809 | 518 | 58 | 7 | 18 | 1 | 8 | 649 | 539 | 35 | 75 | 21 | 0 | 12 |
| Water transportation | 438 | 386 | 204 | 155 | 16 | 4 | 3 | 0 | 4 | 49 | 40 | 1 | 8 | 1 | 0 | 2 |
| Other transportation | 480 | 379 | 273 | 80 | 15 | 1 | 5 | 0 | 5 | 98 | 81 | 3 | 14 | 2 | 0 | 1 |
| Communication | 1,107 | 746 | 569 | 144 | 23 | 8 | 1 | 0 | 1 | 336 | 284 | 3 | 49 | 7 | 0 | 18 |
| Electric, gas, and sanitary services | 772 | 566 | 436 | 101 | 22 | 4 | 1 | 0 | 2 | 180 | 159 | 6 | 15 | 1 | 0 | 25 |
| Transportation, communication, and other utilities | 6,546 | 4,982 | 3,668 | 1,097 | 141 | 24 | 28 | 1 | 23 | 1,464 | 1,230 | 52 | 182 | 37 | 2 | 61 |
| Hotels, rooming houses, camps, and other lodging places | 1,046 | 827 | 647 | 150 | 14 | 6 | 4 | 0 | 6 | 210 | 177 | 7 | 26 | 2 | 0 | 7 |
| Personal services | 349 | 255 | 210 | 39 | 4 | 1 | 0 | 0 | 1 | 92 | 70 | 5 | 17 | 1 | 0 | 1 |
| Automotive repair, services, and garages | 573 | 355 | 296 | 52 | 5 | 0 | 0 | 0 | 2 | 210 | 168 | 13 | 29 | 6 | 0 | 2 |
| Motion pictures | 267 | 227 | 124 | 86 | 5 | 5 | 1 | 0 | 6 | 40 | 35 | 2 | 3 | 0 | 0 | 0 |
| Amusement and recreation services (except motion pictures) | 433 | 306 | 229 | 56 | 12 | 2 | 3 | 0 | 4 | 117 | 84 | 6 | 27 | 8 | 0 | 2 |
| Health services | 3,347 | 2,136 | 1,817 | 269 | 12 | 4 | 1 | 30 | 3 | 1,032 | 869 | 35 | 128 | 15 | 13 | 151 |
| Educational services | 356 | 263 | 227 | 31 | 5 | 0 | 0 | 0 | 0 | 81 | 71 | 2 | 8 | 2 | 1 | 9 |
| Membership organizations | 476 | 424 | 254 | 135 | 20 | 3 | 7 | 1 | 4 | 40 | 34 | 4 | 2 | 1 | 1 | 10 |
| Business services | 1,948 | 1,391 | 1,074 | 247 | 42 | 8 | 4 | 0 | 16 | 526 | 449 | 26 | 51 | 15 | 4 | 12 |
| Miscellaneous repair services | 276 | 209 | 148 | 52 | 4 | 2 | 0 | 0 | 3 | 63 | 43 | 0 | 20 | 3 | 0 | 1 |
| Legal services | 52 | 39 | 38 | 1 | 0 | 0 | 0 | 0 | 0 | 13 | 13 | 0 | 0 | 0 | 0 | 0 |
| Museums, art galleries, and botanical and zoological gardens | 8 | 5 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 | 0 |
| Social services | 304 | 186 | 174 | 12 | 0 | 0 | 0 | 0 | 0 | 110 | 103 | 0 | 7 | 0 | 2 | 6 |
| Miscellaneous services | 116 | 89 | 61 | 14 | 8 | 3 | 1 | 0 | 2 | 27 | 22 | 1 | 4 | 0 | 0 | 0 |
| Services | 9,551 | 6,712 | 5,304 | 1,144 | 131 | 34 | 21 | 31 | 47 | 2,564 | 2,141 | 101 | 322 | 53 | 21 | 201 |
| Public administration | 169 | 135 | 98 | 26 | 8 | 1 | 0 | 0 | 2 | 33 | 28 | 1 | 4 | 1 | 0 | 0 |
| Total, all industrial groups | 55,897 | 43,321 | 31,273 | 9,036 | 1,950 | 442 | 131 | 35 | 454 | 11,790 | 9,332 | 727 | 1,731 | 274 | 43 | 469 |

[1] See Glossary for definitions of terms

[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 1981 [1]

| Division and State [2] | All cases | Unfair labor practice cases | | | | | | | | Representation cases | | | | Union deauthorization cases | Amendment of certification cases | Unit clarification cases |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | All C cases | CA | CB | CC | CD | CE | CG | CP | All R cases | RC | RM | RD | UD | AC | UC |
| Maine | 217 | 153 | 132 | 21 | 0 | 0 | 0 | 0 | 0 | 62 | 49 | 2 | 11 | 0 | 1 | 1 |
| New Hampshire | 97 | 64 | 52 | 8 | 4 | 0 | 0 | 0 | 0 | 30 | 24 | 3 | 3 | 1 | 0 | 2 |
| Vermont | 92 | 70 | 65 | 5 | 0 | 0 | 0 | 0 | 0 | 22 | 12 | 1 | 9 | 0 | 0 | 0 |
| Massachusetts | 1,583 | 1,211 | 899 | 233 | 57 | 16 | 2 | 2 | 2 | 343 | 280 | 18 | 45 | 11 | 0 | 18 |
| Rhode Island | 214 | 158 | 123 | 26 | 7 | 1 | 0 | 0 | 1 | 52 | 48 | 0 | 4 | 0 | 4 | 0 |
| Connecticut | 812 | 626 | 513 | 107 | 3 | 2 | 0 | 0 | 1 | 167 | 143 | 8 | 16 | 5 | 8 | 6 |
| New England | 3,015 | 2,282 | 1,784 | 400 | 71 | 19 | 2 | 2 | 4 | 676 | 556 | 32 | 88 | 17 | 13 | 27 |
| New York | 4,995 | 3,735 | 2,409 | 1,076 | 140 | 42 | 10 | 11 | 47 | 1,110 | 968 | 39 | 103 | 17 | 5 | 128 |
| New Jersey | 1,930 | 1,396 | 1,080 | 250 | 35 | 14 | 3 | 1 | 13 | 513 | 436 | 23 | 54 | 14 | 1 | 6 |
| Pennsylvania | 3,285 | 2,528 | 1,738 | 564 | 145 | 52 | 6 | 1 | 22 | 715 | 612 | 24 | 79 | 12 | 1 | 29 |
| Middle Atlantic | 10,210 | 7,659 | 5,227 | 1,890 | 320 | 108 | 19 | 13 | 82 | 2,338 | 2,016 | 86 | 236 | 43 | 7 | 163 |
| Ohio | 3,339 | 2,658 | 2,000 | 515 | 89 | 16 | 9 | 3 | 26 | 645 | 519 | 26 | 100 | 16 | 4 | 16 |
| Indiana | 2,457 | 2,133 | 1,545 | 517 | 46 | 12 | 4 | 0 | 9 | 303 | 240 | 12 | 51 | 9 | 0 | 12 |
| Illinois | 3,730 | 3,015 | 2,018 | 720 | 180 | 53 | 2 | 1 | 41 | 664 | 493 | 54 | 117 | 29 | 1 | 21 |
| Michigan | 2,828 | 2,181 | 1,678 | 407 | 66 | 20 | 1 | 0 | 9 | 596 | 464 | 21 | 111 | 29 | 0 | 22 |
| Wisconsin | 1,239 | 920 | 730 | 165 | 15 | 10 | 0 | 0 | 0 | 294 | 239 | 13 | 42 | 7 | 5 | 13 |
| East North Central | 13,593 | 10,907 | 7,971 | 2,324 | 396 | 111 | 16 | 4 | 85 | 2,502 | 1,955 | 126 | 421 | 90 | 10 | 84 |
| Iowa | 429 | 302 | 245 | 48 | 4 | 5 | 0 | 0 | 0 | 118 | 91 | 4 | 23 | 0 | 0 | 9 |
| Minnesota | 822 | 502 | 331 | 64 | 78 | 14 | 1 | 1 | 13 | 309 | 225 | 20 | 64 | 4 | 0 | 7 |
| Missouri | 2,105 | 1,742 | 1,190 | 410 | 81 | 33 | 2 | 1 | 25 | 351 | 275 | 8 | 68 | 2 | 0 | 10 |
| North Dakota | 73 | 41 | 33 | 6 | 2 | 0 | 0 | 0 | 0 | 31 | 27 | 1 | 3 | 0 | 0 | 1 |
| South Dakota | 89 | 63 | 53 | 9 | 0 | 1 | 0 | 0 | 0 | 25 | 21 | 0 | 4 | 0 | 0 | 1 |
| Nebraska | 234 | 179 | 142 | 24 | 9 | 2 | 1 | 0 | 1 | 55 | 44 | 3 | 8 | 0 | 0 | 0 |
| Kansas | 376 | 310 | 221 | 70 | 8 | 6 | 0 | 0 | 5 | 66 | 54 | 0 | 12 | 0 | 0 | 0 |
| West North Central | 4,128 | 3,139 | 2,215 | 631 | 182 | 61 | 4 | 2 | 44 | 955 | 737 | 36 | 182 | 6 | 0 | 28 |
| Delaware | 120 | 94 | 52 | 18 | 20 | 3 | 0 | 0 | 1 | 25 | 19 | 4 | 2 | 0 | 0 | 1 |
| Maryland | 877 | 709 | 474 | 215 | 14 | 2 | 1 | 2 | 1 | 159 | 142 | 2 | 15 | 3 | 0 | 6 |
| District of Columbia | 338 | 284 | 220 | 49 | 8 | 0 | 3 | 3 | 1 | 44 | 40 | 2 | 2 | 2 | 0 | 8 |
| Virginia | 703 | 552 | 463 | 82 | 6 | 1 | 0 | 0 | 0 | 147 | 124 | 4 | 19 | 0 | 2 | 2 |
| West Virginia | 675 | 574 | 407 | 111 | 37 | 2 | 1 | 0 | 16 | 95 | 77 | 7 | 11 | 0 | 1 | 5 |
| North Carolina | 652 | 566 | 512 | 52 | 1 | 1 | 0 | 0 | 0 | 85 | 66 | 4 | 15 | 0 | 1 | 0 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| South Carolina | 312 | 258 | 211 | 33 | 8 | 0 | 6 | 0 | 0 | 53 | 41 | 6 | 6 | 0 | 0 | 1 |
| Georgia | 1,144 | 948 | 739 | 183 | 17 | 1 | 4 | 0 | 4 | 188 | 145 | 7 | 36 | 0 | 0 | 8 |
| Florida | 1,053 | 762 | 617 | 98 | 25 | 14 | 0 | 1 | 7 | 286 | 257 | 9 | 20 | 0 | 0 | 5 |
| South Atlantic | 5,874 | 4,747 | 3,695 | 841 | 136 | 24 | 15 | 6 | 30 | 1,082 | 911 | 45 | 126 | 5 | 4 | 36 |
| Kentucky | 1,070 | 879 | 708 | 119 | 46 | 0 | 0 | 1 | 5 | 181 | 160 | 2 | 19 | 1 | 0 | 9 |
| Tennessee | 1,139 | 926 | 695 | 154 | 50 | 16 | 0 | 0 | 11 | 205 | 173 | 5 | 27 | 0 | 1 | 7 |
| Alabama | 571 | 457 | 352 | 90 | 11 | 3 | 1 | 0 | 0 | 108 | 90 | 6 | 12 | 0 | 0 | 6 |
| Mississippi | 285 | 213 | 179 | 31 | 2 | 1 | 0 | 0 | 0 | 68 | 59 | 2 | 7 | 0 | 0 | 4 |
| East South Central | 3,065 | 2,475 | 1,934 | 394 | 109 | 20 | 1 | 1 | 16 | 562 | 482 | 15 | 65 | 1 | 1 | 26 |
| Arkansas | 270 | 191 | 168 | 20 | 3 | 0 | 0 | 0 | 0 | 77 | 62 | 3 | 12 | 0 | 0 | 2 |
| Louisiana | 514 | 423 | 300 | 102 | 10 | 7 | 2 | 0 | 2 | 88 | 74 | 4 | 10 | 1 | 1 | 1 |
| Oklahoma | 390 | 282 | 240 | 26 | 16 | 0 | 0 | 0 | 0 | 105 | 88 | 4 | 13 | 2 | 0 | 1 |
| Texas | 1,686 | 1,384 | 1,069 | 264 | 30 | 12 | 0 | 2 | 7 | 289 | 221 | 15 | 53 | 2 | 0 | 11 |
| West South Central | 2,860 | 2,280 | 1,777 | 412 | 59 | 19 | 2 | 2 | 9 | 559 | 445 | 26 | 88 | 5 | 1 | 15 |
| Montana | 215 | 134 | 90 | 29 | 14 | 0 | 0 | 0 | 1 | 74 | 47 | 7 | 20 | 5 | 0 | 2 |
| Idaho | 211 | 153 | 116 | 26 | 10 | 0 | 0 | 1 | 0 | 52 | 38 | 2 | 12 | 4 | 0 | 2 |
| Wyoming | 89 | 66 | 56 | 10 | 0 | 0 | 0 | 0 | 0 | 23 | 20 | 1 | 2 | 0 | 0 | 0 |
| Colorado | 813 | 661 | 512 | 127 | 17 | 2 | 0 | 2 | 1 | 143 | 107 | 2 | 34 | 7 | 0 | 2 |
| New Mexico | 229 | 182 | 118 | 52 | 9 | 1 | 0 | 0 | 2 | 40 | 33 | 3 | 4 | 2 | 0 | 5 |
| Arizona | 743 | 609 | 448 | 128 | 22 | 3 | 0 | 1 | 7 | 130 | 99 | 9 | 22 | 0 | 0 | 4 |
| Utah | 147 | 103 | 85 | 10 | 4 | 2 | 2 | 0 | 0 | 42 | 31 | 0 | 11 | 2 | 0 | 0 |
| Nevada | 555 | 449 | 300 | 115 | 24 | 6 | 0 | 0 | 4 | 102 | 81 | 7 | 14 | 0 | 1 | 3 |
| Mountain | 3,002 | 2,357 | 1,725 | 497 | 100 | 14 | 2 | 4 | 15 | 606 | 456 | 31 | 119 | 20 | 1 | 18 |
| Washington | 1,710 | 1,264 | 881 | 292 | 57 | 17 | 2 | 0 | 15 | 419 | 271 | 53 | 95 | 16 | 0 | 11 |
| Oregon | 568 | 361 | 266 | 52 | 32 | 3 | 1 | 0 | 7 | 193 | 127 | 22 | 44 | 6 | 0 | 8 |
| California | 7,012 | 5,302 | 3,401 | 1,187 | 468 | 42 | 58 | 1 | 145 | 1,606 | 1,131 | 238 | 237 | 59 | 6 | 39 |
| Alaska | 234 | 165 | 92 | 50 | 10 | 3 | 9 | 0 | 1 | 61 | 43 | 6 | 12 | 2 | 0 | 6 |
| Hawaii | 241 | 155 | 108 | 36 | 9 | 1 | 0 | 0 | 1 | 82 | 67 | 5 | 10 | 1 | 0 | 3 |
| Guam | 4 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| Pacific | 9,769 | 7,249 | 4,749 | 1,618 | 576 | 66 | 70 | 1 | 169 | 2,363 | 1,640 | 325 | 398 | 84 | 6 | 67 |
| Puerto Rico | 340 | 201 | 175 | 26 | 0 | 0 | 0 | 0 | 0 | 131 | 118 | 5 | 8 | 3 | 0 | 5 |
| Virgin Islands | 41 | 25 | 21 | 3 | 1 | 0 | 0 | 0 | 0 | 16 | 16 | 0 | 0 | 0 | 0 | 0 |
| Outlying areas | 381 | 226 | 196 | 29 | 1 | 0 | 0 | 0 | 0 | 147 | 134 | 5 | 8 | 3 | 0 | 5 |
| Total, all States and areas | 55,897 | 43,321 | 31,273 | 9,036 | 1,950 | 442 | 131 | 35 | 454 | 11,790 | 9,332 | 727 | 1,731 | 274 | 43 | 469 |

[1] See Glossary for definitions of terms

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

## Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received Fiscal Year 1981 [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 | 812 | 626 | 513 | 107 | 3 | 2 | 0 | 0 | 1 | 167 | 143 | 8 | 16 | 5 | 8 | 6 |
| Maine | 217 | 153 | 132 | 21 | 0 | 0 | 0 | 0 | 0 | 62 | 49 | 2 | 11 | 0 | 1 | 1 |
| Massachusetts | 1,583 | 1,211 | 899 | 233 | 57 | 16 | 2 | 2 | 2 | 343 | 280 | 18 | 45 | 11 | 0 | 18 |
| New Hampshire | 97 | 64 | 52 | 8 | 4 | 0 | 0 | 0 | 0 | 30 | 24 | 3 | 3 | 1 | 0 | 2 |
| Rhode Island | 214 | 158 | 123 | 26 | 6 | 1 | 0 | 0 | 1 | 52 | 48 | 0 | 4 | 0 | 4 | 0 |
| Vermont | 92 | 70 | 65 | 5 | 0 | 0 | 0 | 0 | 0 | 22 | 12 | 1 | 9 | 0 | 0 | 0 |
| Region I | 3,015 | 2,282 | 1,784 | 400 | 71 | 19 | 2 | 2 | 4 | 676 | 556 | 32 | 88 | 17 | 13 | 27 |
| Delaware | 120 | 94 | 52 | 18 | 20 | 3 | 0 | 0 | 1 | 25 | 19 | 4 | 2 | 0 | 0 | 1 |
| New Jersey | 1,930 | 1,396 | 1,080 | 250 | 35 | 14 | 3 | 1 | 13 | 513 | 436 | 23 | 54 | 14 | 1 | 6 |
| New York | 4,995 | 3,735 | 2,409 | 1,076 | 140 | 42 | 10 | 11 | 47 | 1,110 | 968 | 39 | 103 | 17 | 5 | 128 |
| Puerto Rico | 340 | 201 | 175 | 26 | 0 | 0 | 0 | 0 | 0 | 131 | 118 | 5 | 8 | 3 | 0 | 5 |
| Virgin Islands | 41 | 25 | 21 | 3 | 1 | 0 | 0 | 0 | 0 | 16 | 16 | 0 | 0 | 0 | 0 | 0 |
| Region II | 7,426 | 5,451 | 3,737 | 1,373 | 196 | 59 | 13 | 12 | 61 | 1,795 | 1,557 | 71 | 167 | 34 | 6 | 140 |
| District of Columbia | 338 | 284 | 220 | 49 | 8 | 0 | 3 | 3 | 1 | 44 | 40 | 2 | 2 | 2 | 0 | 8 |
| Maryland | 877 | 709 | 474 | 215 | 14 | 2 | 1 | 2 | 1 | 159 | 142 | 2 | 15 | 3 | 0 | 6 |
| Pennsylvania | 3,285 | 2,528 | 1,738 | 564 | 145 | 52 | 6 | 1 | 22 | 715 | 612 | 24 | 79 | 12 | 1 | 29 |
| Virginia | 703 | 552 | 463 | 82 | 6 | 1 | 0 | 0 | 0 | 147 | 124 | 4 | 19 | 0 | 2 | 2 |
| West Virginia | 675 | 574 | 407 | 111 | 37 | 2 | 1 | 0 | 16 | 95 | 77 | 7 | 11 | 0 | 1 | 5 |
| Region III | 5,878 | 4,647 | 3,302 | 1,021 | 210 | 57 | 11 | 6 | 40 | 1,160 | 995 | 39 | 126 | 17 | 4 | 50 |
| Alabama | 571 | 457 | 352 | 90 | 11 | 3 | 1 | 0 | 0 | 108 | 90 | 6 | 12 | 0 | 0 | 6 |
| Florida | 1,053 | 762 | 617 | 98 | 25 | 14 | 0 | 1 | 7 | 286 | 257 | 9 | 20 | 0 | 0 | 5 |
| Georgia | 1,144 | 948 | 739 | 183 | 17 | 1 | 4 | 0 | 4 | 188 | 145 | 7 | 36 | 0 | 0 | 8 |
| Kentucky | 1,070 | 879 | 708 | 119 | 46 | 0 | 0 | 1 | 5 | 181 | 160 | 2 | 19 | 1 | 0 | 9 |
| Mississippi | 285 | 213 | 179 | 31 | 2 | 1 | 0 | 0 | 0 | 68 | 59 | 2 | 7 | 0 | 0 | 4 |
| North Carolina | 652 | 566 | 512 | 52 | 1 | 1 | 0 | 0 | 0 | 85 | 66 | 4 | 15 | 0 | 1 | 0 |
| South Carolina | 312 | 258 | 211 | 33 | 8 | 0 | 6 | 0 | 0 | 53 | 41 | 6 | 6 | 0 | 0 | 1 |
| Tennessee | 1,139 | 926 | 695 | 154 | 50 | 16 | 0 | 0 | 11 | 205 | 173 | 5 | 27 | 0 | 1 | 7 |
| Region IV | 6,226 | 5,009 | 4,013 | 760 | 160 | 36 | 11 | 2 | 27 | 1,174 | 991 | 41 | 142 | 1 | 2 | 40 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Illinois | 3,730 | 3,015 | 2,018 | 720 | 180 | 53 | 2 | 1 | 41 | 664 | 493 | 54 | 117 | 29 | 1 | 21 |
| Indiana | 2,457 | 2,133 | 1,545 | 517 | 46 | 12 | 4 | 0 | 9 | 303 | 240 | 12 | 51 | 9 | 0 | 12 |
| Michigan | 2,828 | 2,181 | 1,678 | 407 | 66 | 20 | 1 | 0 | 9 | 596 | 464 | 21 | 111 | 29 | 0 | 22 |
| Minnesota | 822 | 502 | 331 | 64 | 78 | 14 | 1 | 1 | 13 | 309 | 225 | 20 | 64 | 4 | 0 | 7 |
| Ohio | 3,339 | 2,658 | 2,000 | 515 | 89 | 16 | 9 | 3 | 26 | 645 | 519 | 26 | 100 | 16 | 4 | 16 |
| Wisconsin | 1,239 | 920 | 730 | 165 | 15 | 10 | 0 | 0 | 0 | 294 | 239 | 13 | 42 | 7 | 5 | 13 |
| Region V | 14,415 | 11,409 | 8,302 | 2,388 | 474 | 125 | 17 | 5 | 98 | 2,811 | 2,180 | 146 | 485 | 94 | 10 | 91 |
| Arkansas | 270 | 191 | 168 | 20 | 3 | 0 | 0 | 0 | 0 | 77 | 62 | 3 | 12 | 0 | 0 | 2 |
| Louisiana | 514 | 423 | 300 | 102 | 10 | 7 | 2 | 0 | 2 | 88 | 74 | 4 | 10 | 1 | 1 | 1 |
| New Mexico | 229 | 182 | 118 | 52 | 9 | 1 | 0 | 0 | 2 | 40 | 33 | 3 | 4 | 2 | 0 | 5 |
| Oklahoma | 390 | 282 | 240 | 26 | 16 | 0 | 0 | 0 | 0 | 105 | 88 | 4 | 13 | 2 | 0 | 1 |
| Texas | 1,686 | 1,384 | 1,069 | 264 | 30 | 12 | 0 | 2 | 7 | 289 | 221 | 15 | 53 | 2 | 0 | 11 |
| Region VI | 3,089 | 2,462 | 1,895 | 464 | 68 | 20 | 2 | 2 | 11 | 599 | 478 | 29 | 92 | 7 | 1 | 20 |
| Iowa | 429 | 302 | 245 | 48 | 4 | 5 | 0 | 0 | 0 | 118 | 91 | 4 | 23 | 0 | 0 | 9 |
| Kansas | 376 | 310 | 221 | 70 | 8 | 6 | 0 | 0 | 5 | 66 | 54 | 0 | 12 | 0 | 0 | 0 |
| Missouri | 2,105 | 1,742 | 1,190 | 410 | 81 | 33 | 2 | 1 | 25 | 351 | 275 | 8 | 68 | 2 | 0 | 10 |
| Nebraska | 234 | 179 | 142 | 24 | 9 | 2 | 1 | 0 | 1 | 55 | 44 | 3 | 8 | 0 | 0 | 0 |
| Region VII | 3,144 | 2,533 | 1,798 | 552 | 102 | 46 | 3 | 1 | 31 | 590 | 464 | 15 | 111 | 2 | 0 | 19 |
| Colorado | 813 | 661 | 512 | 127 | 17 | 2 | 0 | 2 | 1 | 143 | 107 | 2 | 34 | 7 | 0 | 2 |
| Montana | 215 | 134 | 90 | 29 | 14 | 0 | 0 | 0 | 1 | 74 | 47 | 7 | 20 | 5 | 0 | 2 |
| North Dakota | 73 | 41 | 33 | 6 | 2 | 0 | 0 | 0 | 0 | 31 | 27 | 1 | 3 | 0 | 0 | 1 |
| South Dakota | 89 | 63 | 53 | 9 | 0 | 1 | 0 | 0 | 0 | 25 | 21 | 0 | 4 | 0 | 0 | 1 |
| Utah | 147 | 103 | 85 | 10 | 4 | 2 | 2 | 0 | 0 | 42 | 31 | 0 | 11 | 2 | 0 | 0 |
| Wyoming | 89 | 66 | 56 | 10 | 0 | 0 | 0 | 0 | 0 | 23 | 20 | 1 | 2 | 0 | 0 | 0 |
| Region VIII | 1,426 | 1,068 | 829 | 191 | 37 | 5 | 2 | 2 | 2 | 338 | 253 | 11 | 74 | 14 | 0 | 6 |
| Arizona | 743 | 609 | 448 | 128 | 22 | 3 | 0 | 1 | 7 | 130 | 99 | 9 | 22 | 0 | 0 | 4 |
| California | 7,012 | 5,302 | 3,401 | 1,187 | 468 | 42 | 58 | 1 | 145 | 1,606 | 1,131 | 238 | 237 | 59 | 6 | 39 |
| Hawaii | 241 | 155 | 108 | 36 | 9 | 1 | 0 | 0 | 1 | 82 | 67 | 5 | 10 | 1 | 0 | 3 |
| Guam | 4 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| Nevada | 555 | 449 | 300 | 115 | 24 | 6 | 0 | 0 | 4 | 102 | 81 | 7 | 14 | 0 | 1 | 3 |
| Region IX | 8,555 | 6,517 | 4,258 | 1,467 | 523 | 52 | 58 | 2 | 157 | 1,922 | 1,379 | 260 | 283 | 60 | 7 | 49 |
| Alaska | 234 | 165 | 92 | 50 | 10 | 3 | 9 | 0 | 1 | 61 | 43 | 6 | 12 | 2 | 0 | 6 |
| Idaho | 211 | 153 | 116 | 26 | 10 | 0 | 0 | 1 | 0 | 52 | 38 | 2 | 12 | 4 | 0 | 2 |
| Oregon | 568 | 361 | 266 | 52 | 32 | 3 | 1 | 0 | 7 | 193 | 127 | 22 | 44 | 6 | 0 | 8 |
| Washington | 1,710 | 1,264 | 881 | 292 | 57 | 17 | 2 | 0 | 15 | 419 | 271 | 53 | 95 | 16 | 0 | 11 |
| Region X | 2,723 | 1,943 | 1,355 | 420 | 109 | 23 | 12 | 1 | 23 | 725 | 479 | 83 | 163 | 28 | 0 | 27 |
| Total, all States and areas | 55,897 | 43,321 | 31,273 | 9,036 | 1,950 | 442 | 131 | 35 | 454 | 11,790 | 9,332 | 727 | 1,731 | 274 | 43 | 469 |

[1] See Glossary for definitions of terms

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

## Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1981 [1]

| Method and stage of disposition | All C cases | | | CA cases | | CB cases | | CC cases | | CD cases | | CE cases | | CG cases | | CP cases | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent of total closed | Percent of total method | Number | Percent of total closed | Number | Percent of total closed | Number | Percent of total closed | Number | Percent of total closed | Number | Percent of total closed | Number | Percent of total closed | Number | Percent of total closed |
| Total number of cases closed | 41,020 | 100.0 | 0.0 | 29,351 | 100 0 | 8,640 | 100.0 | 1,960 | 100 0 | 427 | 100 0 | 126 | 100 0 | 38 | 100.0 | 478 | 100 0 |
| Agreement of the parties . . | 10,720 | 26 1 | 100 0 | 8,293 | 28 3 | 1,290 | 14 9 | 900 | 45 9 | 15 | 3 5 | 49 | 38 9 | 16 | 42 1 | 157 | 32 8 |
| Informal settlement | 10,421 | 25 4 | 97 2 | 8,075 | 27 5 | 1,263 | 14 6 | 856 | 43 7 | 14 | 3 3 | 48 | 38 1 | 14 | 36 8 | 151 | 31 6 |
| Before issuance of complaint | 6,376 | 15 5 | 59 5 | 4,744 | 16 2 | 886 | 10 3 | 617 | 31 5 | (2) | | 30 | 23 8 | 7 | 18 4 | 92 | 19 2 |
| After issuance of complaint, before opening of hearing | 3,914 | 9 5 | 36 5 | 3,210 | 10 9 | 373 | 4 3 | 236 | 12 0 | 14 | 3 3 | 18 | 14 3 | 7 | 18 4 | 56 | 11 7 |
| After hearing opened, before issuance of administrative law judge's decision | 131 | 0 3 | 1 2 | 121 | 0 4 | 4 | 0 0 | 3 | 0 2 | 0 | | 0 | . . | 0 | . . | 3 | 0 6 |
| Formal settlement | 299 | 0 7 | 2 8 | 218 | 0 7 | 27 | 0 3 | 44 | 2 2 | 1 | 0 2 | 1 | 0 8 | 2 | 5 3 | 6 | 1 3 |
| After issuance of complaint, before opening of hearing | 166 | 0 4 | 1 5 | 100 | 0 3 | 17 | 0 2 | 41 | 2 1 | 1 | 0 2 | 1 | 0 8 | 0 | . | 6 | 1 3 |
| Stipulated decision | 38 | 0 1 | 0 3 | 16 | 0 0 | 5 | 0 0 | 11 | 0 6 | 0 | | 1 | 0 8 | 0 | | 5 | 1 0 |
| Consent decree | 128 | 0 3 | 1 2 | 84 | 0 3 | 12 | 0 1 | 30 | 1 5 | 1 | 0 2 | 0 | . . . | 0 | | 1 | 0 2 |
| After hearing opened. | 133 | 0 3 | 1 2 | 118 | 0 4 | 10 | 0 1 | 3 | 0 2 | 0 | | 0 | ... | 2 | 5 3 | 0 | |
| Stipulated decision | 17 | 0 0 | 0 2 | 12 | 0 0 | 3 | 0 0 | 0 | . | 0 | . | 0 | | 2 | 5 3 | 0 | |
| Consent decree | 116 | 0 3 | 1.0 | 106 | 0 4 | 7 | 0 0 | 3 | 0 2 | 0 | . . . | 0 | | 0 | | 0 | .. ... |
| Compliance with . . | 1,233 | 3 0 | 100 0 | 1,053 | 3 6 | 120 | 1 4 | 35 | 1 8 | 4 | 0 9 | 6 | 4 8 | 4 | 10 5 | 11 | 2 3 |
| Administrative law judge's decision . . .. .. .. | 35 | 0 1 | 2 8 | 20 | 0.0 | 13 | 0 2 | 0 | | 0 | | 0 | | 2 | 5 3 | 0 | |
| Board decision . .. . | 848 | 2 1 | 68 8 | 710 | 2 4 | 95 | 1 1 | 26 | 1 3 | 1 | . 0 2 | 4 | 3 2 | 2 | 5 3 | 10 | 2 1 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adopting administrative law judge's decision (no exceptions filed) | 101 | 0 2 | 8.2 | 87 | 0.3 | 10 | 0 1 | 3 | 0 2 | 0 | . | 0 | . | 0 | | 1 | 0 2 |
| Contested | 747 | 1 8 | 60.6 | 623 | 2 1 | 85 | 1 0 | 23 | 1 2 | 1 | 0 2 | 4 | 3 2 | 2 | 5 3 | 9 | 1 9 |
| Circuit court of appeals decree | 299 | 0 7 | 24 3 | 275 | 0 9 | 11 | 0 1 | 7 | 0 4 | 3 | 0 7 | 2 | 1 6 | 0 | . . | 1 | 0 2 |
| Supreme Court action | 51 | 0 1 | 4 1 | 48 | 0 2 | 1 | 0 0 | 2 | 0 1 | 0 | . | 0 | | 0 | | 0 | |
| Withdrawal | 14,089 | 34 3 | 100 0 | 10,090 | 34 4 | 3,087 | 35 7 | 682 | 34 8 | 3 | 0 7 | 43 | 34 1 | 12 | 31 6 | 172 | 36 0 |
| Before issuance of complaint | 13,478 | 32 9 | 95 7 | 9,613 | 32 8 | 2,994 | 34 7 | 657 | 33 5 | (2) | | 37 | 29 4 | 11 | 28 9 | 166 | 34 7 |
| After issuance of complaint, before opening of hearing | 428 | 1.0 | 3 0 | 323 | 1 1 | 70 | 0 8 | 23 | 1 2 | 1 | 0 2 | 5 | 4 0 | 1 | 2 6 | 5 | 1 0 |
| After hearing opened, before administrative law judge's decision | 84 | 0 2 | 0 6 | 70 | 0 2 | 13 | 0 2 | 1 | 0 1 | 0 | | 0 | . | 0 | | 0 | |
| After administrative law judge's decision, before Board decision | 5 | 0.0 | 0 0 | 5 | 0 0 | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | . . . |
| After Board or court decision | 94 | 0 2 | 0 7 | 79 | 0 3 | 10 | 0 1 | 1 | 0 1 | 2 | 0 5 | 1 | 0 8 | 0 | . | 1 | 0 2 |
| Dismissal | 14,577 | 35 5 | 100 0 | 9,915 | 33 8 | 4,143 | 48 0 | 343 | 17 5 | 4 | 0 9 | 28 | 22 2 | 6 | 15 8 | 138 | 28 9 |
| Before issuance of complaint | 14,102 | 34 4 | 96 7 | 9,527 | 32 5 | 4,078 | 47 2 | 329 | 16 8 | (2) | | 26 | 20 6 | 6 | 15 8 | 136 | 28 5 |
| After issuance of complaint, before opening of hearing | 207 | 0 5 | 1 4 | 159 | 0.5 | 36 | 0 4 | 11 | 0 6 | 0 | . | 0 | | 0 | | 1 | 0 2 |
| After hearing opened, before administrative law judge's decision | 17 | 0 0 | 0 1 | 13 | 0.0 | 3 | 0 0 | 0 | | 0 | | 0 | | 0 | . | 1 | 0 2 |
| By administrative law judge's decision | 13 | 0 0 | 0 1 | 12 | 0.0 | 1 | 0 0 | 0 | | 0 | | 0 | | 0 | | 0 | . |
| By Board decision | 226 | 0 6 | 1 6 | 193 | 0 7 | 25 | 0 3 | 3 | 0 2 | 3 | 0 7 | 2 | 1 6 | 0 | . | 0 | . . |
| Adopting administrative law judge's decision (no exceptions filed) | 165 | 0 4 | 1 1 | 145 | 0 5 | 17 | 0 2 | 0 | | 1 | 0 2 | 2 | 1 6 | 0 | | 0 | |
| Contested | 61 | 0.1 | 0 4 | 48 | 0 2 | 8 | 0 1 | 3 | 0 2 | 2 | 0 5 | 0 | . | 0 | . | 0 | |
| By circuit court of appeals decree | 9 | 0 0 | 0 1 | 8 | 0 0 | 0 | | 0 | . | 1 | 0 2 | 0 | | 0 | | 0 | |
| By Supreme Court action | 3 | 0 0 | 0 0 | 3 | 0 0 | 0 | . | 0 | | 0 | | 0 | | 0 | | 0 | |
| 10(k) actions (see table 7A for details of dispositions) | 401 | 1 0 | . . . | 0 | | 0 | | 0 | | 401 | 93 9 | 0 | | 0 | | 0 | . . . |
| Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business) | 0 | . . . . . | . . . | 0 | . | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | . . . |

[1] See table 8 for summary of disposition by stage. See Glossary for definitions of terms

[2] CD cases closed in this stage are processed as jurisdictional disputes under Sec. 10(k) of the Act See table 7A

## Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1981

| Method and stage of disposition | Number of cases | Percent of total closed |
|---|---|---|
| Total number of cases closed before issuance of complaint | 401 | 100 0 |
| Agreement of the parties—informal settlement | 142 | 35.4 |
| Before 10(k) notice | 106 | 26 4 |
| After 10(k) notice, before opening of 10(k) hearing | 32 | 8 0 |
| After opening of 10(k) hearing, before issuance of Board decision and determination of dispute | 4 | 1 0 |
| Compliance with Board decision and determination of dispute | 19 | 4 8 |
| Withdrawal | 142 | 35 4 |
| Before 10(k) notice | 131 | 32 7 |
| After 10(k) notice, before opening of 10(k) hearing | 11 | 2 7 |
| 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 | 98 | 24 4 |
| Before 10(k) notice | 61 | 15 2 |
| After 10(k) notice, before opening of 10(k) hearing | 5 | 1 2 |
| 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 | 32 | 8 0 |

## Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1981 [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 | 41,020 | 100 0 | 29,351 | 100 0 | 8,640 | 100 0 | 1,960 | 100 0 | 427 | 100 0 | 126 | 100 0 | 38 | 100 0 | 478 | 100 0 |
| Before issuance of complaint | 34,357 | 83 8 | 23,884 | 81 4 | 7,958 | 92 2 | 1,603 | 81 6 | 401 | 93 9 | 93 | 73 8 | 24 | 63 0 | 394 | 82 5 |
| After issuance of complaint, before opening of hearing | 4,715 | 11 5 | 3,792 | 12 9 | 496 | 5 7 | 311 | 15 9 | 16 | 3 8 | 24 | 19 0 | 8 | 21 1 | 68 | 14 2 |
| After hearing opened, before issuance of administrative law judge's decision | 365 | 0 9 | 322 | 1 1 | 30 | 0 3 | 7 | 0 4 | 0 | | 0 | | 2 | 5 3 | 4 | 0 8 |
| After administrative law judge's decision, before issuance of Board decision | 53 | 0 1 | 37 | 0 1 | 14 | 0 2 | 0 | | 0 | | 0 | | 2 | 5 3 | 0 | . |
| After Board order adopting administrative law judge's decision in absence of exceptions | 266 | 0 6 | 232 | 0 7 | 27 | 0 3 | 3 | 0 2 | 1 | 0 2 | 2 | 1 6 | 0 | | 1 | 0 2 |
| After Board decision, before circuit court decree | 902 | 2 2 | 750 | 2 6 | 103 | 1 2 | 27 | 1 4 | 5 | 1 2 | 5 | 4 0 | 2 | 5 3 | 10 | 2.1 |
| After circuit court decree, before Supreme Court action | 308 | 0 8 | 283 | 1 0 | 11 | 0 1 | 7 | 0 4 | 4 | 0 9 | 2 | 1 6 | 0 | | 1 | 0 2 |
| After Supreme Court action | 54 | 0 1 | 51 | 0 2 | 1 | 0 0 | 2 | 0 1 | 0 | | 0 | | 0 | | 0 | |

[1] See Glossary for definitions of terms

## Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1981 [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 | 11,114 | 100 0 | 8,904 | 100 0 | 606 | 100 0 | 1,604 | 100 0 | 257 | 100 0 |
| Before issuance of notice of hearing | 3,156 | 28 4 | 2,023 | 22 7 | 332 | 54 8 | 801 | 49 9 | 164 | 63 8 |
| After issuance of notice, before close of hearing | 5,925 | 53 3 | 5,137 | 57 7 | 192 | 31 7 | 596 | 37 2 | 22 | 8 6 |
| After hearing closed, before issuance of decision | 96 | 0 9 | 74 | 0 8 | 4 | 0 6 | 18 | 1 1 | 2 | 0 8 |
| After issuance of regional director's decision | 1,891 | 17 0 | 1,627 | 18 3 | 77 | 12 7 | 187 | 11 7 | 69 | 26 8 |
| After issuance of Board decision | 46 | 0.4 | 43 | 0 5 | 1 | 0 2 | 2 | 0 1 | 0 | 0 0 |

[1] See Glossary for definitions of terms

## Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1981 [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 | 11,114 | 100 0 | 8,904 | 100 0 | 606 | 100 0 | 1,604 | 100 0 | 257 | 100 0 |
| Certification issued, total | 7,564 | 68 1 | 6,445 | 72 4 | 255 | 42 1 | 864 | 53.9 | 147 | 57 2 |
| After | | | | | | | | | | |
| Consent election | 277 | 2 5 | 231 | 2 6 | 11 | 1 8 | 35 | 2 2 | 10 | 3 9 |
| Before notice of hearing | 132 | 1 2 | 103 | 1 2 | 8 | 1 3 | 21 | 1 3 | 10 | 3 9 |
| After notice of hearing, before hearing closed | 145 | 1 3 | 128 | 1 4 | 3 | 0 5 | 14 | 0 9 | 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 | 5,793 | 52 1 | 4,943 | 55 5 | 179 | 29 5 | 671 | 41 9 | 75 | 29.2 |
| Before notice of hearing | 1,456 | 13.1 | 1,114 | 12 5 | 80 | 13 2 | 262 | 16 3 | 59 | 23 0 |
| After notice of hearing, before hearing closed | 4,311 | 38.8 | 3,807 | 42 8 | 99 | 16 3 | 405 | 25.3 | 15 | 5 8 |
| After hearing closed, before decision | 26 | 0 2 | 22 | 0 2 | 0 | 0 0 | 4 | 0 3 | 1 | 0 4 |
| Expedited election | 18 | 0 2 | 3 | 0 0 | 15 | 2 5 | 0 | 0 0 | 0 | 0.0 |
| Regional director directed election | 1,451 | 13 1 | 1,245 | 14 0 | 50 | 8 3 | 156 | 9 7 | 62 | 24 1 |
| Board directed election | 25 | 0 2 | 23 | 0 3 | 0 | 0 0 | 2 | 0 1 | 0 | 0 0 |
| By withdrawal, total | 2,758 | 24 8 | 2,039 | 22 9 | 241 | 39 8 | 478 | 29 8 | 83 | 32.3 |
| Before notice of hearing | 1,160 | 10 4 | 683 | 7 7 | 156 | 25 7 | 321 | 20 0 | 76 | 29.6 |
| After notice of hearing, before hearing closed | 1,341 | 12 1 | 1,130 | 12 7 | 72 | 11 9 | 139 | 8.7 | 6 | 2 3 |
| After hearing closed, before decision | 48 | 0.4 | 38 | 0.4 | 3 | 0 5 | 7 | 0 4 | 0 | 0 0 |
| After regional director's decision and direction of election | 205 | 1 8 | 185 | 2 1 | 9 | 1 5 | 11 | 0 7 | 1 | 0 4 |
| After Board decision and direction of election | 4 | 0 1 | 3 | 0 0 | 1 | 0 2 | 0 | 0 0 | 0 | 0.0 |
| By dismissal, total | 792 | 7 1 | 420 | 4 7 | 110 | 18 1 | 262 | 16 3 | 27 | 10 5 |
| Before notice of hearing | 392 | 3 5 | 121 | 1 4 | 74 | 12 2 | 197 | 12 3 | 19 | 7.4 |
| After notice of hearing, before hearing closed | 126 | 1 1 | 71 | 0 8 | 17 | 2 8 | 38 | 2 4 | 1 | 0 4 |
| After hearing closed, before decision | 22 | 0 2 | 14 | 0 1 | 1 | 0 2 | 7 | 0 4 | 1 | 0.4 |
| By regional director's decision | 235 | 2 1 | 197 | 2 2 | 18 | 2 9 | 20 | 1 2 | 6 | 2 3 |
| By Board decision | 17 | 0 2 | 17 | 0 2 | 0 | 0 0 | 0 | 0 0 | 0 | 0 0 |

[1] See Glossary for definitions of terms

## Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1981

| | AC | UC |
|---|---|---|
| Total, all | 34 | 379 |
| Certification amended or unit clarified | 15 | 57 |
| Before hearing | 0 | 0 |
| By regional director's decision | 0 | 0 |
| By Board decision | 0 | 0 |
| After hearing | 15 | 57 |
| By regional director's decision | 15 | 55 |
| By Board decision | 0 | 2 |
| Dismissed | 9 | 138 |
| Before hearing | 2 | 12 |
| By regional director's decision | 2 | 12 |
| By Board decision | 0 | 0 |
| After hearing | 7 | 126 |
| By regional director's decision | 7 | 123 |
| By Board decision | 0 | 3 |
| Withdrawn | 10 | 184 |
| Before hearing | 10 | 184 |
| After hearing | 0 | 0 |

## Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1981 [1]

| Type of case | Total | Type of election | | | | |
|---|---|---|---|---|---|---|
| | | Consent | Stipulated | Board-directed | Regional director-directed | Expedited elections under 8(b)(7)(C) |
| All types, total. | | | | | | |
| Elections | 7,659 | 301 | 5,834 | 27 | 1,479 | 17 |
| Eligible voters | 455,678 | 7,314 | 343,362 | 2,675 | 101,848 | 479 |
| Valid votes | 396,551 | 6,303 | 300,615 | 2,259 | 86,940 | 434 |
| RC cases | | | | | | |
| Elections | 6,439 | 233 | 4,962 | 18 | 1,233 | 3 |
| Eligible voters | 395,573 | 5,623 | 298,696 | 1,941 | 89,117 | 196 |
| Valid votes | 346,523 | 4,839 | 263,016 | 1,621 | 76,876 | 171 |
| RM cases | | | | | | |
| Elections | 217 | 11 | 153 | 0 | 39 | 14 |
| Eligible voters | 8,264 | 191 | 5,351 | 0 | 2,439 | 283 |
| Valid votes | 6,380 | 172 | 4,201 | 0 | 1,744 | 263 |
| RD cases | | | | | | |
| Elections | 856 | 33 | 672 | 1 | 150 | 0 |
| Eligible voters | 45,406 | 625 | 36,472 | 517 | 7,792 | 0 |
| Valid votes | 39,254 | 523 | 31,783 | 451 | 6,497 | 0 |
| UD cases | | | | | | |
| Elections | 147 | 24 | 58 | 8 | 57 | |
| Eligible voters | 6,435 | 875 | 2,843 | 217 | 2,500 | |
| Valid votes | 4,394 | 769 | 1,615 | 187 | 1,823 | |

[1] See Glossary for definitions of terms.

## Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1981

| Type of election | All R elections | | | | RC elections | | | | RM elections | | | | RD elections | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Elections conducted | | | | Elections conducted | | | | Elections conducted | | | | Elections conducted | | | |
| | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification [1] | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification | Total elections | Withdrawn or dismissed before certification | Resulting in a rerun or runoff | Resulting in certification |
| All types | 7,789 | 86 | 191 | 7,512 | 6,694 | 79 | 176 | 6,439 | 221 | 2 | 2 | 217 | 874 | 5 | 13 | 856 |
| Rerun required | | | 172 | | | | 157 | | | | 2 | | | | 13 | |
| Runoff required | | | 19 | | | | 19 | | | | 0 | | | | 0 | |
| Consent elections | 285 | 3 | 5 | 277 | 239 | 2 | 4 | 233 | 12 | 0 | 1 | 11 | 34 | 1 | 0 | 33 |
| Rerun required | | | 5 | | | | 4 | | | | 1 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Stipulated elections | 5,977 | 66 | 134 | 5,777 | 5,134 | 62 | 120 | 4,952 | 154 | 0 | 1 | 153 | 689 | 4 | 13 | 672 |
| Rerun required | | | 122 | | | | 108 | | | | 1 | | | | 13 | |
| Runoff required | | | 12 | | | | 12 | | | | 0 | | | | 0 | |
| Regional director-directed | 1,490 | 16 | 52 | 1,422 | 1,300 | 15 | 52 | 1,233 | 40 | 1 | 0 | 39 | 150 | 0 | 0 | 150 |
| Rerun required | | | 45 | | | | 45 | | | | 0 | | | | 0 | |
| Runoff required | | | 7 | | | | 7 | | | | 0 | | | | 0 | |
| Board-directed | 19 | 0 | 0 | 19 | 18 | 0 | 0 | 18 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 |
| Rerun required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Expedited—sec 8(b)(7)(C) | 18 | 1 | 0 | 17 | 3 | 0 | 0 | 3 | 15 | 1 | 0 | 14 | 0 | 0 | 0 | 0 |
| Rerun required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |
| Runoff required | | | 0 | | | | 0 | | | | 0 | | | | 0 | |

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

## Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1981

| | 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 | 7,789 | 672 | 8 6 | 272 | 3 5 | 170 | 2 2 | 842 | 10 8 | 442 | 5 7 |
| By type of case | | | | | | | | | | | |
| In RC cases | 6,694 | 607 | 9 1 | 236 | 3 5 | 149 | 2 2 | 756 | 11 3 | 385 | 5 8 |
| In RM cases | 221 | 12 | 5 4 | 7 | 3 2 | 5 | 2 3 | 17 | 7 7 | 12 | 5 4 |
| In RD cases | 874 | 53 | 6 1 | 29 | 3 3 | 16 | 1 8 | 69 | 7 9 | 45 | 5 1 |
| By type of election | | | | | | | | | | | |
| Consent elections | 285 | 8 | 2 8 | 10 | 3 5 | 6 | 2 1 | 14 | 4 9 | 16 | 5 6 |
| Stipulated elections | 5,977 | 477 | 8 0 | 189 | 3 2 | 105 | 1 8 | 582 | 9 7 | 294 | 4 9 |
| Expedited elections | 18 | 3 | 16 7 | 0 | 0 0 | 0 | 0 0 | 3 | 16 7 | 0 | 0 0 |
| Regional director-directed elections | 1,490 | 181 | 12 1 | 68 | 4 6 | 57 | 3 8 | 238 | 16 0 | 125 | 8 4 |
| Board-directed elections | 19 | 3 | 15 8 | 5 | 26 3 | 2 | 10 5 | 5 | 26 3 | 7 | 36 8 |

[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 1981 [1]

| | Total | | By employer | | By union | | By both parties [2] | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| All representation elections | 1,199 | 100 0 | 479 | 40 0 | 696 | 58 0 | 24 | 2 0 |
| By type of case | | | | | | | | |
| RC cases | 1,081 | 100 0 | 447 | 41 3 | 619 | 57 3 | 15 | 1 4 |
| RM cases | 29 | 100 0 | 8 | 27 6 | 19 | 65 5 | 2 | 6 9 |
| RD cases | 89 | 100 0 | 24 | 27 0 | 58 | 65 2 | 7 | 7 8 |
| By type of election | | | | | | | | |
| Consent elections | 29 | 100 0 | 9 | 31 0 | 20 | 69 0 | 0 | 0 0 |
| Stipulated elections | 833 | 100 0 | 328 | 39 4 | 488 | 58 6 | 17 | 2 0 |
| Expedited elections | 6 | 100 0 | 1 | 16 7 | 5 | 83 3 | 0 | 0 0 |
| Regional director-directed elections | 326 | 100 0 | 139 | 42 6 | 181 | 55 5 | 6 | 1 9 |
| Board-directed elections | 5 | 100 0 | 2 | 40 0 | 2 | 40 0 | 1 | 20 0 |

[1] See Glossary for definitions of terms

[2] Objections filed by more than one party in the same case are counted as one

## Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1981 [1]

| | Objections filed | Objections withdrawn | Objections ruled upon | Overruled | | Sustained [2] | |
|---|---|---|---|---|---|---|---|
| | | | | Number | Percent of total ruled upon | Number | Percent of total ruled upon |
| All representation elections | 1,199 | 357 | 842 | 670 | 79 6 | 172 | 20.4 |
| By type of case: | | | | | | | |
| RC cases | 1,081 | 325 | 756 | 597 | 79 0 | 159 | 21 0 |
| RM cases | 29 | 12 | 17 | 16 | 94 1 | 1 | 5.9 |
| RD cases | 89 | 20 | 69 | 57 | 82 6 | 12 | 17.4 |
| By type of election | | | | | | | |
| Consent elections | 29 | 15 | 14 | 10 | 71 4 | 4 | 28 6 |
| Stipulated elections | 833 | 251 | 582 | 459 | 78 9 | 123 | 21 1 |
| Expedited elections | 6 | 3 | 3 | 3 | 100 0 | 0 | 0 0 |
| Regional director-directed elections | 326 | 88 | 238 | 194 | 81 5 | 44 | 18 5 |
| Board-directed elections | 5 | 0 | 5 | 4 | 80 0 | 1 | 20 0 |

[1] See Glossary for definitions of terms

[2] See table 11E for rerun elections held after objections were sustained In 14 elections in which objections were sustained, the cases were subsequently withdrawn. Therefore, in these cases no rerun elections were conducted

## Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 1981 [1]

| | Total rerun elections[2] | | Union certified | | No union chosen | | Outcome of original election reversed | |
|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| All representation elections | 158 | 100 0 | 47 | 29 7 | 111 | 70 3 | 45 | 28 5 |
| By type of case | | | | | | | | |
| RC cases | 146 | 100 0 | 44 | 30 1 | 102 | 69.9 | 43 | 29 5 |
| RM cases | 1 | 100 0 | 0 | 0 0 | 1 | 100 0 | 0 | 0 0 |
| RD cases | 11 | 100 0 | 3 | 27 3 | 8 | 72 7 | 2 | 18 2 |
| By type of election | | | | | | | | |
| Consent elections | 3 | 100 0 | 0 | 0 0 | 3 | 100 0 | 1 | 33 3 |
| Stipulated elections | 114 | 100 0 | 38 | 33 3 | 76 | 66 7 | 37 | 32.5 |
| Expedited elections | 0 | | 0 | . | 0 | . | 0 | |
| Regional director-directed elections | 41 | 100 0 | 9 | 22 0 | 32 | 78 0 | 7 | 17 1 |
| Board-directed elections | 0 | | 0 | | 0 | | 0 | .. |

[1] See Glossary for definitions of terms
[2] Only the final election is included in this table

## Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1981

| Affiliation of union holding union-shop contract | Number of polls | | | | | Employees involved (number eligible to vote) [1] | | | | | Valid votes cast | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Total | Resulting in deauthorization | | Resulting in continued authorization | | Total eligible | In polls | | | | Total | Percent of total eligible | Cast for deauthorization | |
| | | | | | | | Resulting in deauthorization | | Resulting in continued authorization | | | | | |
| | | Number | Percent of total | Number | Percent of total | | Number | Percent of total | Number | Percent of total | | | Number | Percent of total eligible |
| Total | 147 | 98 | 66 7 | 49 | 33 3 | 6,435 | 3,121 | 48.5 | 3,314 | 51 5 | 4,394 | 68 3 | 2,355 | 36 6 |
| AFL-CIO unions | 92 | 59 | 64.1 | 33 | 35 9 | 4,253 | 1,856 | 43 6 | 2,397 | 56.4 | 2,825 | 66.4 | 1,555 | 36.6 |
| Teamsters | 41 | 30 | 73 2 | 11 | 26.8 | 1,525 | 1,150 | 75.4 | 375 | 24.6 | 1,052 | 69 0 | 708 | 46.4 |
| Other national unions | 3 | 1 | 33 3 | 2 | 66 7 | 107 | 9 | 8 4 | 98 | 91 6 | 75 | 70.1 | 9 | 8.4 |
| Other local unions | 11 | 8 | 72 7 | 3 | 27.3 | 550 | 106 | 19.3 | 444 | 80 7 | 442 | 80.4 | 83 | 15.1 |

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

## Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1981 [1]

| Participating unions | Total elections [2] | Elections won by unions | | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | In elections won | In units won by AFL-CIO unions | In units won by Teamsters | In units won by Other national unions | In units won by Other local unions | |
| | A All representation elections | | | | | | | | | | | | | | |
| AFL-CIO | 4,485 | 42 0 | 1,883 | 1,883 | | | | 2,602 | 287,951 | 92,200 | 92,200 | | | | 195,751 |
| Teamsters | 2,166 | 37 6 | 815 | | 815 | | | 1,351 | 78,714 | 20,938 | | 20,938 | | | 57,776 |
| Other national unions | 213 | 52 6 | 112 | | | 112 | | 101 | 12,797 | 5,794 | | | 5,794 | | 7,003 |
| Other local unions | 280 | 51 1 | 143 | | | | 143 | 137 | 14,954 | 6,332 | | | | 6,332 | 8,622 |
| 1-union elections | 7,144 | 41 3 | 2,953 | 1,883 | 815 | 112 | 143 | 4,191 | 394,416 | 125,264 | 92,200 | 20,938 | 5,794 | 6,332 | 269,152 |
| AFL-CIO v AFL-CIO | 96 | 66 7 | 64 | 64 | | | | 32 | 12,693 | 7,981 | 7,981 | | | | 4,712 |
| AFL-CIO v Teamsters | 72 | 65 3 | 47 | 17 | 30 | | | 25 | 10,753 | 6,593 | 3,050 | 3,543 | | | 4,160 |
| AFL-CIO v national | 22 | 86 4 | 19 | 5 | | 14 | | 3 | 6,570 | 5,978 | 490 | | 5,488 | | 592 |
| AFL-CIO v local | 114 | 87 7 | 100 | 52 | | | 48 | 14 | 16,975 | 13,502 | 9,311 | | | 4,191 | 3,473 |
| Teamsters v national | 5 | 80 0 | 4 | | 1 | 3 | | 1 | 263 | 100 | | 56 | 44 | | 163 |
| Teamsters v local | 27 | 77 8 | 21 | | 13 | | 8 | 6 | 3,258 | 2,254 | | 1,941 | | 313 | 1,004 |
| Teamsters v Teamsters | 3 | 100 0 | 3 | | 3 | | | 0 | 161 | 161 | | 161 | | | 0 |
| National v local | 6 | 83 3 | 5 | | | 1 | 4 | 1 | 882 | 819 | | | 238 | 581 | 63 |
| National v. national | 1 | 0 0 | 0 | | | 0 | | 1 | 18 | 0 | | | 0 | | 18 |
| Local v local | 12 | 83 3 | 10 | | | | 10 | 2 | 2,372 | 2,232 | | | | 2,232 | 140 |
| 2-union elections | 358 | 76 3 | 273 | 138 | 47 | 18 | 70 | 85 | 53,945 | 39,620 | 20,832 | 5,701 | 5,770 | 7,317 | 14,325 |
| AFL-CIO v AFL-CIO v AFL-CIO | 2 | 100 0 | 2 | 2 | | | | 0 | 152 | 152 | 152 | | | | 0 |
| AFL-CIO v AFL-CIO v Teamsters | 2 | 50 0 | 1 | 1 | 0 | | | 1 | 527 | 15 | 15 | 0 | | | 512 |
| AFL-CIO v AFL-CIO v local | 1 | 100 0 | 1 | 1 | | | 0 | 0 | 20 | 20 | 20 | | | 0 | 0 |
| AFL-CIO v Teamsters v local | 3 | 100 0 | 3 | 0 | 3 | | 0 | 0 | 86 | 86 | 0 | 86 | | 0 | 0 |
| AFL-CIO v national v local | 1 | 100 0 | 1 | 0 | | 1 | 0 | 0 | 75 | 75 | 0 | | 75 | 0 | 0 |
| Local v local v local | 1 | 0 0 | 0 | | | | 0 | 1 | 22 | 0 | | | | 0 | 22 |
| 3 (or more)-union elections | 10 | 80.0 | 8 | 4 | 3 | 1 | 0 | 2 | 882 | 348 | 187 | 86 | 75 | 0 | 534 |
| Total representation elections | 7,512 | 43 1 | 3,234 | 2,025 | 865 | 131 | 213 | 4,278 | 449,243 | 165,232 | 113,219 | 26,725 | 11,639 | 13,649 | 284,011 |

## Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total elections [2] | Elections won by unions | | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | In elections won | In units won by | | | | |
| | | | | | | | | | | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | B Elections in RC cases | | | | | | | | | | | | | | |
| AFL-CIO | 3,788 | 45 2 | 1,711 | 1,711 | | | | 2,077 | 251,190 | 77,787 | 77,787 | | | | 173,403 |
| Teamsters | 1,879 | 40 8 | 767 | | 767 | | | 1,112 | 68,652 | 18,863 | | 18,863 | | | 49,789 |
| Other national unions | 190 | 54 7 | 104 | | | 104 | | 86 | 10,665 | 4,178 | | | 4,178 | | 6,487 |
| Other local unions | 249 | 54 6 | 136 | | | | 136 | 113 | 13,753 | 6,105 | | | | 6,105 | 7,648 |
| 1-union elections | 6,106 | 44 5 | 2,718 | 1,711 | 767 | 104 | 136 | 3,388 | 344,260 | 106,933 | 77,787 | 18,863 | 4,178 | 6,105 | 237,327 |
| AFL-CIO v AFL-CIO | 88 | 65 9 | 58 | 58 | | | | 30 | 12,169 | 7,469 | 7,469 | | | | 4,700 |
| AFL-CIO v Teamsters | 63 | 66 7 | 42 | 15 | 27 | | | 21 | 10,502 | 6,449 | 2,979 | 3,470 | | | 4,053 |
| AFL-CIO v national | 19 | 89 5 | 17 | 5 | | 12 | | 2 | 5,696 | 5,339 | 490 | | 4,849 | | 357 |
| AFL-CIO v local | 105 | 86 7 | 91 | 50 | | | 41 | 14 | 16,421 | 12,948 | 9,127 | | | 3,821 | 3,473 |
| Teamsters v national | 5 | 80 0 | 4 | | 1 | 3 | | 1 | 263 | 100 | | 56 | 44 | | 163 |
| Teamsters v local | 26 | 76 9 | 20 | | 12 | | 8 | 6 | 2,946 | 1,942 | | 1,629 | | 313 | 1,004 |
| Teamsters v Teamsters | 2 | 100 0 | 2 | | 2 | | | 0 | 89 | 89 | | 89 | | | 0 |
| National v local | 5 | 80 0 | 4 | | | 0 | 4 | 1 | 644 | 581 | | | 0 | 581 | 63 |
| National v national | 1 | 0 0 | 0 | | | 0 | | 1 | 18 | 0 | | | 0 | | 18 |
| Local v local | 9 | 88 9 | 8 | | | | 8 | 1 | 1,683 | 1,662 | | | | 1,662 | 21 |
| 2-union elections | 323 | 76 2 | 246 | 128 | 42 | 15 | 61 | 77 | 50,431 | 36,579 | 20,065 | 5,244 | 4,893 | 6,377 | 13,852 |
| AFL-CIO v AFL-CIO v AFL-CIO | 2 | 100 0 | 2 | 2 | | | | 0 | 152 | 152 | 152 | | | | 0 |
| AFL-CIO v. AFL-CIO v. Teamsters | 2 | 50 0 | 1 | 1 | 0 | | | 1 | 527 | 15 | 15 | 0 | | | 512 |
| AFL-CIO v AFL-CIO v local | 1 | 100 0 | 1 | 1 | | | 0 | 0 | 20 | 20 | 20 | | | 0 | 0 |
| AFL-CIO v Teamsters v local | 3 | 100.0 | 3 | 0 | 3 | | 0 | 0 | 86 | 86 | 0 | 86 | | 0 | 0 |
| AFL-CIO v. national v local | 1 | 100 0 | 1 | 0 | | 1 | 0 | 0 | 75 | 75 | 0 | | 75 | 0 | 0 |
| Local v local v local | 1 | 0 0 | 0 | | | | 0 | 1 | 22 | 0 | | | | 0 | 22 |
| 3 (or more)-union elections | 10 | 80 0 | 8 | 4 | 3 | 1 | 0 | 2 | 882 | 348 | 187 | 86 | 75 | 0 | 534 |
| Total RC elections | 6,439 | 46 2 | 2,972 | 1,843 | 812 | 120 | 197 | 3,467 | 395,573 | 143,860 | 98,039 | 24,193 | 9,146 | 12,482 | 251,713 |

## Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total elections [2] | Elections won by unions | | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | In elections won | In units won by | | | | |
| | | | | | | | | | | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | C Elections in RM cases | | | | | | | | | | | | | | |
| AFL-CIO | 120 | 15 8 | 19 | 19 | | | | 101 | 5,036 | 1,353 | 1,353 | | | | 3,683 |
| Teamsters | 77 | 19 5 | 15 | | 15 | | | 62 | 1,280 | 415 | | 415 | | | 865 |
| Other national unions | 4 | 50 0 | 2 | | | 2 | | 2 | 1,036 | 976 | | | 976 | | 60 |
| Other local unions | 4 | 50 0 | 2 | | | | 2 | 2 | 108 | 76 | | | | 76 | 32 |
| 1-union elections | 205 | 18 5 | 38 | 19 | 15 | 2 | 2 | 167 | 7,460 | 2,820 | 1,353 | 415 | 976 | 76 | 4,640 |
| AFL-CIO v AFL-CIO | 6 | 66 7 | 4 | 4 | | | | 2 | 217 | 205 | 205 | | | | 12 |
| AFL-CIO v Teamsters | 1 | 100 0 | 1 | 0 | 1 | | | 0 | 5 | 5 | 0 | 5 | | | 0 |
| AFL-CIO v local | 2 | 100 0 | 2 | 0 | | | 2 | 0 | 153 | 153 | 0 | | | 153 | 0 |
| Teamsters v Teamsters | 1 | 100 0 | 1 | | 1 | | | 0 | 72 | 72 | | 72 | | | 0 |
| National v local | 1 | 100 0 | 1 | | | 1 | 0 | 0 | 238 | 238 | | | 238 | 0 | 0 |
| Local v local | 1 | 0 0 | 0 | | | | 0 | 1 | 119 | 0 | | | | 0 | 119 |
| 2-union elections | 12 | 75 0 | 9 | 4 | 2 | 1 | 2 | 3 | 804 | 673 | 205 | 77 | 238 | 153 | 131 |
| Total RM elections | 217 | 21 7 | 47 | 23 | 17 | 3 | 4 | 170 | 8,264 | 3,493 | 1,558 | 492 | 1,214 | 229 | 4,771 |

## Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total elections [2] | Elections won by unions | | | | | | Elections in which no representative chosen | Employees eligible to vote | | | | | | In elections where no representative chosen |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Percent won | Total won | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | In elections won | In units won by | | | | |
| | | | | | | | | | | | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | D Elections in RD cases | | | | | | | | | | | | | | |
| AFL-CIO | 577 | 26 5 | 153 | 153 | | | | 424 | 31,725 | 13,060 | 13,060 | | | | 18,665 |
| Teamsters | 210 | 15 7 | 33 | | 33 | | | 177 | 8,782 | 1,660 | | 1,660 | | | 7,122 |
| Other national unions | 19 | 31 6 | 6 | | | 6 | | 13 | 1,096 | 640 | | | 640 | | 456 |
| Other local unions | 27 | 18 5 | 5 | | | | 5 | 22 | 1,093 | 151 | | | | 151 | 942 |
| 1-union elections | 833 | 23 6 | 197 | 153 | 33 | 6 | 5 | 636 | 42,696 | 15,511 | 13,060 | 1,660 | 640 | 151 | 27,185 |
| AFL-CIO v AFL-CIO | 2 | 100 0 | 2 | 2 | | | | 0 | 307 | 307 | 307 | | | | 0 |
| AFL-CIO v Teamsters | 8 | 50 0 | 4 | 2 | 2 | | | 4 | 246 | 139 | 71 | 68 | | | 107 |
| AFL-CIO v national | 3 | 66 7 | 2 | 0 | | 2 | | 1 | 874 | 639 | 0 | | 639 | | 235 |
| AFL-CIO v local | 7 | 100 0 | 7 | 2 | | | 5 | 0 | 401 | 401 | 184 | | | 217 | 0 |
| Teamsters v local | 1 | 100 0 | 1 | | 1 | | 0 | 0 | 312 | 312 | | 312 | | 0 | 0 |
| Local v local | 2 | 100 0 | 2 | | | | 2 | 0 | 570 | 570 | | | | 570 | 0 |
| 2-union elections | 23 | 78 3 | 18 | 6 | 3 | 2 | 7 | 5 | 2,710 | 2,368 | 562 | 380 | 639 | 787 | 342 |
| Total RD elections | 856 | 25 1 | 215 | 159 | 36 | 8 | 12 | 641 | 45,406 | 17,879 | 13,622 | 2,040 | 1,279 | 938 | 27,527 |

[1] See Glossary for definitions of terms

[2] Includes each unit in which a choice as to collective-bargaining agent was made, for example, there may have been more than one election in a single case, or several cases may have been involved in one election unit

## Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1981 [1]

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | | Total votes for no union | Votes for unions | | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | A All representation elections | | | | | | | | | | | | |
| AFL-CIO | 253,758 | 52,153 | 52,153 | | | | 26,905 | 59,225 | 59,225 | | | | 115,475 |
| Teamsters | 70,558 | 12,758 | | 12,758 | | | 5,927 | 16,207 | | 16,207 | | | 35,666 |
| Other national unions | 11,303 | 3,433 | | | 3,433 | | 1,514 | 2,032 | | | 2,032 | | 4,324 |
| Other local unions | 12,118 | 3,419 | | | | 3,419 | 1,560 | 1,957 | | | | 1,957 | 5,182 |
| 1-union elections | 347,737 | 71,763 | 52,153 | 12,758 | 3,433 | 3,419 | 35,906 | 79,421 | 59,225 | 16,207 | 2,032 | 1,957 | 160,647 |
| AFL-CIO v AFL-CIO | 8,923 | 4,482 | 4,482 | | | | 482 | 1,603 | 1,603 | | | | 2,356 |
| AFL-CIO v Teamsters | 9,313 | 4,790 | 2,139 | 2,651 | | | 760 | 1,283 | 387 | 896 | | | 2,480 |
| AFL-CIO v national | 5,483 | 4,826 | 1,916 | | 2,910 | | 95 | 195 | 51 | | 144 | | 367 |
| AFL-CIO v local | 14,318 | 10,670 | 6,068 | | | 4,602 | 542 | 859 | 201 | | | 658 | 2,247 |
| Teamsters v national | 240 | 75 | | 42 | 33 | | 12 | 14 | | 3 | 11 | | 139 |
| Teamsters v local | 2,670 | 1,629 | | 920 | | 709 | 140 | 416 | | 341 | | 75 | 485 |
| Teamsters v Teamsters | 142 | 142 | | 142 | | | 0 | 0 | | 0 | | | 0 |
| National v local | 775 | 746 | | | 287 | 459 | 7 | 8 | | | 5 | 3 | 14 |
| National v national | 15 | 0 | | | 0 | | 0 | 2 | | | 2 | | 13 |
| Local v local | 1,741 | 1,558 | | | | 1,558 | 54 | 55 | | | | 55 | 74 |
| 2-union elections | 43,620 | 28,918 | 14,605 | 3,755 | 3,230 | 7,328 | 2,092 | 4,435 | 2,242 | 1,240 | 162 | 791 | 8,175 |
| AFL-CIO v AFL-CIO v AFL-CIO | 146 | 101 | 101 | | | | 45 | 0 | 0 | | | | 0 |
| AFL-CIO v AFL-CIO v Teamsters | 484 | 15 | 14 | 1 | | | 0 | 127 | 127 | 0 | | | 342 |
| AFL-CIO v AFL-CIO v local | 19 | 19 | 15 | | | 4 | 0 | 0 | 0 | | | 0 | 0 |
| AFL-CIO v Teamsters v local | 81 | 81 | 26 | 54 | | 1 | 0 | 0 | 0 | 0 | | 0 | 0 |
| AFL-CIO v national v. local | 53 | 48 | 3 | | 43 | 2 | 5 | 0 | 0 | | 0 | 0 | 0 |
| Local v local v local | 17 | 0 | | | | 0 | 0 | 5 | | | | 5 | 12 |
| 3 (or more)-union elections | 800 | 264 | 159 | 55 | 43 | 7 | 50 | 132 | 127 | 0 | 0 | 5 | 354 |
| Total representation elections | 392,157 | 100,945 | 66,917 | 16,568 | 6,706 | 10,754 | 38,048 | 83,988 | 61,594 | 17,447 | 2,194 | 2,753 | 169,176 |

## Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | | Total votes for no union | Votes for unions | | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | | B Elections in RC cases | | | | | | | | | | | |
| AFL-CIO | 222,539 | 44,069 | 44,069 | | | | 22,458 | 53,488 | 53,488 | | | | 102,524 |
| Teamsters | 61,640 | 11,535 | | 11,535 | | | 5,316 | 13,987 | | 13,987 | | | 30,802 |
| Other national unions | 9,619 | 2,525 | | | 2,525 | | 1,201 | 1,873 | | | 1,873 | | 4,020 |
| Other local unions | 11,150 | 3,271 | | | | 3,271 | 1,491 | 1,782 | | | | 1,782 | 4,606 |
| 1-union elections | 304,948 | 61,400 | 44,069 | 11,535 | 2,525 | 3,271 | 30,466 | 71,130 | 53,488 | 13,987 | 1,873 | 1,782 | 141,952 |
| AFL-CIO v AFL-CIO | 8,467 | 4,076 | 4,076 | | | | 443 | 1,603 | 1,603 | | | | 2,345 |
| AFL-CIO v Teamsters | 9,084 | 4,686 | 2,088 | 2,598 | | | 737 | 1,256 | 385 | 871 | | | 2,405 |
| AFL-CIO v national | 4,894 | 4,468 | 1,776 | | 2,692 | | 88 | 126 | 4 | | 122 | | 212 |
| AFL-CIO v local | 13,845 | 10,219 | 5,856 | | | 4,363 | 520 | 859 | 201 | | | 658 | 2,247 |
| Teamsters v national | 240 | 75 | | 42 | 33 | | 12 | 14 | | 3 | 11 | | 139 |
| Teamsters v local | 2,478 | 1,446 | | 805 | | 641 | 131 | 416 | | 341 | | 75 | 485 |
| Teamsters v Teamsters | 73 | 73 | | 73 | | | 0 | 0 | | 0 | | | 0 |
| National v local | 539 | 514 | | | 160 | 354 | 3 | 8 | | | 5 | 3 | 14 |
| National v national | 15 | 0 | | | 0 | | 0 | 2 | | | 2 | | 13 |
| Local v local | 1,140 | 1,078 | | | | 1,078 | 46 | 8 | | | | 8 | 8 |
| 2-union elections | 40,775 | 26,635 | 13,796 | 3,518 | 2,885 | 6,436 | 1,980 | 4,292 | 2,193 | 1,215 | 140 | 744 | 7,868 |
| AFL-CIO v AFL-CIO v AFL-CIO | 146 | 101 | 101 | | | | 45 | 0 | 0 | | | | 0 |
| AFL-CIO v AFL-CIO v Teamsters | 484 | 15 | 14 | 1 | | | 0 | 127 | 127 | 0 | | | 342 |
| AFL-CIO v AFL-CIO v local | 19 | 19 | 15 | | | 4 | 0 | 0 | 0 | | | 0 | 0 |
| AFL-CIO v Teamsters v local | 81 | 81 | 26 | 54 | | 1 | 0 | 0 | 0 | 0 | | 0 | 0 |
| AFL-CIO v national v local | 53 | 48 | 3 | | 43 | 2 | 5 | 0 | 0 | | 0 | 0 | 0 |
| Local v local v local | 17 | 0 | | | | 0 | 0 | 5 | | | | 5 | 12 |
| 3 (or more)-union elections | 800 | 264 | 159 | 55 | 43 | 7 | 50 | 132 | 127 | 0 | 0 | 5 | 354 |
| Total RC elections | 346,523 | 88,299 | 58,024 | 15,108 | 5,453 | 9,714 | 32,496 | 75,554 | 55,808 | 15,202 | 2,013 | 2,531 | 150,174 |

## Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | | Total votes for no union | Votes for unions | | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | C Elections in RM cases | | | | | | | | | | | | |
| AFL-CIO | 3,687 | 759 | 759 | | | | 257 | 704 | 704 | | | | 1,967 |
| Teamsters | 1,156 | 242 | | 242 | | | 119 | 164 | | 164 | | | 631 |
| Other national unions | 727 | 593 | | | 593 | | 81 | 26 | | | 26 | | 27 |
| Other local unions | 99 | 39 | | | | 39 | 33 | 0 | | | | 0 | 27 |
| 1-union elections | 5,669 | 1,633 | 759 | 242 | 593 | 39 | 490 | 894 | 704 | 164 | 26 | 0 | 2,652 |
| AFL-CIO v AFL-CIO | 178 | 132 | 132 | | | | 35 | 0 | 0 | | | | 11 |
| AFL-CIO v Teamsters | 5 | 5 | 0 | 5 | | | 0 | 0 | 0 | 0 | | | 0 |
| AFL-CIO v local | 110 | 100 | 22 | | | 78 | 10 | 0 | 0 | | | 0 | 0 |
| Teamsters v Teamsters | 69 | 69 | | 69 | | | 0 | 0 | | 0 | | | 0 |
| National v local | 236 | 232 | | | 127 | 105 | 4 | 0 | | | 0 | 0 | 0 |
| Local v. local | 113 | 0 | | | | 0 | 0 | 47 | | | | 47 | 66 |
| 2-union elections | 711 | 538 | 154 | 74 | 127 | 183 | 49 | 47 | 0 | 0 | 0 | 47 | 77 |
| Total RM elections | 6,380 | 2,171 | 913 | 316 | 720 | 222 | 539 | 941 | 704 | 164 | 26 | 47 | 2,729 |

## Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1981 [1]—Continued

| Participating unions | Total valid votes cast | Valid votes cast in elections won | | | | | | Valid votes cast in elections lost | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Votes for unions | | | | | Total votes for no union | Votes for unions | | | | | Total votes for no union |
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | |
| | D Elections in RD cases | | | | | | | | | | | | |
| AFL-CIO | 27,532 | 7,325 | 7,325 | | | | 4,190 | 5,033 | 5,033 | | | | 10,984 |
| Teamsters | 7,762 | 981 | | 981 | | | 492 | 2,056 | | 2,056 | | | 4,233 |
| Other national unions | 957 | 315 | | | 315 | | 232 | 133 | | | 133 | | 277 |
| Other local unions | 869 | 109 | | | | 109 | 36 | 175 | | | | 175 | 549 |
| 1-union elections | 37,120 | 8,730 | 7,325 | 981 | 315 | 109 | 4,950 | 7,397 | 5,033 | 2,056 | 133 | 175 | 16,043 |
| AFL-CIO v AFL-CIO | 278 | 274 | 274 | | | | 4 | 0 | 0 | | | | 0 |
| AFL-CIO v Teamsters | 224 | 99 | 51 | 48 | | | 23 | 27 | 2 | 25 | | | 75 |
| AFL-CIO v national | 589 | 358 | 140 | | 218 | | 7 | 69 | 47 | | 22 | | 155 |
| AFL-CIO v local | 363 | 351 | 190 | | | 161 | 12 | 0 | 0 | | | 0 | 0 |
| Teamsters v local | 192 | 183 | | 115 | | 68 | 9 | 0 | | 0 | | 0 | 0 |
| Local v local | 488 | 480 | | | | 480 | 8 | 0 | | | | 0 | 0 |
| 2-union elections | 2,134 | 1,745 | 655 | 163 | 218 | 709 | 63 | 96 | 49 | 25 | 22 | 0 | 230 |
| Total RD elections | 39,254 | 10,475 | 7,980 | 1,144 | 533 | 818 | 5,013 | 7,493 | 5,082 | 2,081 | 155 | 175 | 16,273 |

[1] See glossary for definitions of terms

# Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1981

| Division and State [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Maine | 37 | 14 | 10 | 2 | 1 | 1 | 23 | 2,437 | 2,269 | 1,002 | 865 | 105 | 5 | 27 | 1,267 | 930 |
| New Hampshire | 18 | 13 | 9 | 4 | 0 | 0 | 5 | 652 | 585 | 313 | 258 | 55 | 0 | 0 | 272 | 428 |
| Vermont | 6 | 2 | 2 | 0 | 0 | 0 | 4 | 494 | 455 | 199 | 133 | 66 | 0 | 0 | 256 | 192 |
| Massachusetts | 245 | 93 | 56 | 29 | 4 | 4 | 152 | 15,398 | 13,287 | 5,981 | 3,729 | 941 | 1,038 | 273 | 7,306 | 4,175 |
| Rhode Island | 23 | 8 | 6 | 2 | 0 | 0 | 15 | 1,057 | 985 | 428 | 377 | 51 | 0 | 0 | 557 | 326 |
| Connecticut | 104 | 45 | 27 | 12 | 2 | 4 | 59 | 6,273 | 5,425 | 2,273 | 1,550 | 298 | 29 | 396 | 3,152 | 1,894 |
| New England | 433 | 175 | 110 | 49 | 7 | 9 | 258 | 26,311 | 23,006 | 10,196 | 6,912 | 1,516 | 1,072 | 696 | 12,810 | 7,945 |
| New York | 602 | 305 | 196 | 56 | 10 | 43 | 297 | 42,276 | 32,465 | 18,572 | 13,323 | 1,687 | 973 | 2,589 | 13,893 | 24,473 |
| New Jersey | 306 | 139 | 90 | 33 | 1 | 15 | 167 | 15,707 | 13,613 | 6,155 | 4,089 | 1,593 | 181 | 292 | 7,458 | 5,085 |
| Pennsylvania | 463 | 204 | 105 | 66 | 13 | 20 | 259 | 25,196 | 22,778 | 11,121 | 6,527 | 2,623 | 551 | 1,420 | 11,657 | 9,465 |
| Middle Atlantic | 1,371 | 648 | 391 | 155 | 24 | 78 | 723 | 83,179 | 68,856 | 35,848 | 23,939 | 5,903 | 1,705 | 4,301 | 33,008 | 39,023 |
| Ohio | 442 | 190 | 127 | 47 | 8 | 8 | 252 | 20,491 | 18,244 | 8,220 | 6,512 | 1,034 | 268 | 406 | 10,024 | 6,925 |
| Indiana | 187 | 78 | 49 | 27 | 1 | 1 | 109 | 10,508 | 9,465 | 4,230 | 3,354 | 588 | 26 | 262 | 5,235 | 2,888 |
| Illinois | 376 | 150 | 77 | 54 | 14 | 5 | 226 | 17,569 | 15,459 | 7,887 | 4,710 | 1,042 | 1,774 | 361 | 7,572 | 6,440 |
| Michigan | 396 | 172 | 117 | 35 | 9 | 11 | 224 | 20,086 | 17,433 | 8,526 | 6,977 | 722 | 327 | 500 | 8,907 | 9,679 |
| Wisconsin | 205 | 85 | 55 | 23 | 3 | 4 | 120 | 10,391 | 9,317 | 4,374 | 2,869 | 1,216 | 81 | 208 | 4,943 | 3,946 |
| East North Central | 1,606 | 675 | 425 | 186 | 35 | 29 | 931 | 79,045 | 69,918 | 33,237 | 24,422 | 4,602 | 2,476 | 1,737 | 36,681 | 29,878 |
| Iowa | 68 | 34 | 19 | 13 | 1 | 1 | 34 | 3,258 | 2,943 | 1,416 | 945 | 306 | 71 | 94 | 1,527 | 1,559 |
| Minnesota | 216 | 91 | 47 | 30 | 6 | 8 | 125 | 8,033 | 7,275 | 3,361 | 1,899 | 1,028 | 232 | 202 | 3,914 | 2,598 |
| Missouri | 237 | 114 | 67 | 35 | 7 | 5 | 123 | 9,495 | 8,387 | 3,649 | 2,584 | 799 | 79 | 187 | 4,738 | 3,050 |
| North Dakota | 26 | 13 | 7 | 6 | 0 | 0 | 13 | 857 | 773 | 313 | 119 | 194 | 0 | 0 | 460 | 175 |
| South Dakota | 20 | 6 | 5 | 1 | 0 | 0 | 14 | 948 | 824 | 304 | 215 | 32 | 57 | 0 | 520 | 38 |
| Nebraska | 33 | 14 | 10 | 4 | 0 | 0 | 19 | 1,083 | 913 | 387 | 324 | 63 | 0 | 0 | 526 | 284 |
| Kansas | 54 | 16 | 10 | 6 | 0 | 0 | 38 | 5,495 | 4,880 | 1,803 | 947 | 725 | 20 | 111 | 3,077 | 1,096 |
| West North Central | 654 | 288 | 165 | 95 | 14 | 14 | 366 | 29,169 | 25,995 | 11,233 | 7,033 | 3,147 | 459 | 594 | 14,762 | 8,800 |
| Delaware | 7 | 5 | 3 | 1 | 1 | 0 | 2 | 296 | 259 | 129 | 109 | 10 | 10 | 0 | 130 | 52 |
| Maryland | 123 | 45 | 32 | 12 | 0 | 1 | 78 | 6,306 | 5,624 | 2,162 | 1,596 | 502 | 0 | 64 | 3,462 | 1,335 |
| District of Columbia | 32 | 19 | 15 | 1 | 1 | 2 | 13 | 1,976 | 1,536 | 748 | 508 | 97 | 53 | 90 | 788 | 892 |
| Virginia | 82 | 31 | 25 | 4 | 0 | 2 | 51 | 6,951 | 5,902 | 2,967 | 2,549 | 204 | 82 | 132 | 2,935 | 2,137 |
| West Virginia | 69 | 38 | 20 | 14 | 3 | 1 | 31 | 3,315 | 2,983 | 1,499 | 928 | 374 | 89 | 108 | 1,484 | 1,335 |
| North Carolina | 76 | 25 | 21 | 4 | 0 | 0 | 51 | 11,642 | 10,673 | 4,752 | 3,960 | 792 | 0 | 0 | 5,921 | 3,015 |
| South Carolina | 29 | 13 | 8 | 4 | 0 | 1 | 16 | 2,708 | 2,523 | 1,091 | 1,019 | 58 | 0 | 14 | 1,432 | 264 |
| Georgia | 147 | 54 | 38 | 15 | 1 | 0 | 93 | 16,257 | 14,687 | 6,286 | 5,260 | 997 | 23 | 6 | 8,401 | 3,965 |
| Florida | 187 | 70 | 52 | 14 | 1 | 3 | 117 | 12,757 | 11,303 | 4,871 | 3,404 | 1,192 | 48 | 227 | 6,432 | 3,515 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| South Atlantic | 752 | 300 | 214 | 69 | 7 | 10 | 452 | 62,208 | 55,490 | 24,505 | 19,333 | 4,226 | 305 | 641 | 30,985 | 16,510 |
| Kentucky | 109 | 47 | 28 | 15 | 2 | 2 | 62 | 8,472 | 7,653 | 3,279 | 1,681 | 865 | 539 | 194 | 4,374 | 2,404 |
| Tennessee | 148 | 58 | 28 | 28 | 1 | 1 | 90 | 12,173 | 11,060 | 4,514 | 3,023 | 1,478 | 2 | 11 | 6,546 | 3,157 |
| Alabama | 75 | 28 | 20 | 3 | 4 | 1 | 47 | 7,670 | 7,011 | 3,290 | 2,925 | 75 | 171 | 119 | 3,721 | 2,993 |
| Mississippi | 46 | 24 | 20 | 3 | 1 | 0 | 22 | 4,876 | 4,588 | 2,249 | 2,192 | 48 | 9 | 0 | 2,339 | 2,019 |
| East South Central | 378 | 157 | 96 | 49 | 8 | 4 | 221 | 33,191 | 30,312 | 13,332 | 9,821 | 2,466 | 721 | 324 | 16,980 | 10,573 |
| Arkansas | 51 | 25 | 12 | 13 | 0 | 0 | 26 | 5,175 | 4,657 | 2,169 | 1,145 | 1,024 | 0 | 0 | 2,488 | 1,680 |
| Louisiana | 101 | 34 | 24 | 7 | 1 | 2 | 67 | 9,682 | 8,837 | 3,448 | 2,812 | 470 | 7 | 159 | 5,389 | 1,197 |
| Oklahoma | 84 | 38 | 30 | 7 | 1 | 0 | 46 | 5,153 | 4,670 | 2,300 | 1,965 | 267 | 68 | 0 | 2,370 | 2,763 |
| Texas | 198 | 78 | 56 | 20 | 0 | 2 | 120 | 14,426 | 12,992 | 5,927 | 4,369 | 1,309 | 124 | 125 | 7,065 | 4,916 |
| West South Central | 434 | 175 | 122 | 47 | 2 | 4 | 259 | 34,436 | 31,156 | 13,844 | 10,291 | 3,070 | 199 | 284 | 17,312 | 10,556 |
| Montana | 40 | 18 | 5 | 13 | 0 | 0 | 22 | 842 | 720 | 353 | 171 | 170 | 12 | 0 | 367 | 444 |
| Idaho | 32 | 7 | 1 | 3 | 1 | 2 | 25 | 793 | 705 | 272 | 71 | 140 | 6 | 55 | 433 | 171 |
| Wyoming | 18 | 5 | 2 | 2 | 0 | 1 | 13 | 517 | 450 | 166 | 46 | 101 | 0 | 19 | 284 | 102 |
| Colorado | 106 | 46 | 35 | 8 | 1 | 2 | 60 | 5,274 | 4,536 | 2,214 | 1,970 | 120 | 8 | 116 | 2,322 | 2,160 |
| New Mexico | 27 | 13 | 11 | 2 | 0 | 0 | 14 | 797 | 714 | 367 | 295 | 72 | 0 | 0 | 347 | 350 |
| Arizona | 88 | 42 | 20 | 21 | 1 | 0 | 46 | 6,497 | 5,490 | 2,658 | 1,627 | 1,004 | 27 | 0 | 2,832 | 2,009 |
| Utah | 28 | 11 | 9 | 2 | 0 | 0 | 17 | 1,672 | 1,504 | 626 | 578 | 46 | 2 | 0 | 878 | 550 |
| Nevada | 44 | 18 | 12 | 5 | 0 | 1 | 26 | 2,440 | 2,076 | 1,064 | 792 | 258 | 1 | 13 | 1,012 | 1,089 |
| Mountain | 383 | 160 | 95 | 56 | 3 | 6 | 223 | 18,832 | 16,195 | 7,720 | 5,550 | 1,911 | 56 | 203 | 8,475 | 6,875 |
| Washington | 268 | 118 | 80 | 27 | 3 | 8 | 150 | 11,317 | 9,672 | 4,911 | 3,264 | 657 | 168 | 822 | 4,761 | 4,685 |
| Oregon | 104 | 35 | 24 | 9 | 1 | 1 | 69 | 2,829 | 2,415 | 1,009 | 799 | 138 | 20 | 52 | 1,406 | 784 |
| California | 949 | 406 | 248 | 113 | 17 | 28 | 543 | 57,755 | 49,586 | 24,926 | 15,147 | 6,070 | 1,438 | 2,271 | 24,660 | 25,855 |
| Alaska | 25 | 13 | 12 | 1 | 0 | 0 | 12 | 596 | 515 | 301 | 244 | 57 | 0 | 0 | 214 | 306 |
| Hawaii | 63 | 37 | 20 | 4 | 10 | 3 | 26 | 2,193 | 1,671 | 864 | 494 | 115 | 213 | 42 | 807 | 1,164 |
| Guam | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 79 | 76 | 63 | 63 | 0 | 0 | 0 | 13 | 79 |
| Pacific | 1,410 | 610 | 385 | 154 | 31 | 40 | 800 | 74,769 | 63,935 | 32,074 | 20,011 | 7,037 | 1,839 | 3,187 | 31,861 | 32,873 |
| Puerto Rico | 78 | 39 | 17 | 3 | 0 | 19 | 39 | 7,598 | 6,929 | 2,702 | 964 | 130 | 68 | 1,540 | 4,227 | 1,855 |
| Virgin Islands | 13 | 7 | 5 | 2 | 0 | 0 | 6 | 505 | 365 | 242 | 235 | 7 | 0 | 0 | 123 | 344 |
| Outlying Areas | 91 | 46 | 22 | 5 | 0 | 19 | 45 | 8,103 | 7,294 | 2,944 | 1,199 | 137 | 68 | 1,540 | 4,350 | 2,199 |
| Total, all States and areas | 7,512 | 3,234 | 2,025 | 865 | 131 | 213 | 4,278 | 449,243 | 392,157 | 184,933 | 128,511 | 34,015 | 8,900 | 13,507 | 207,224 | 165,232 |

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

## Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1981

| Division and State [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Maine | 34 | 12 | 8 | 2 | 1 | 1 | 22 | 2,248 | 2,093 | 912 | 775 | 105 | 5 | 27 | 1,181 | 769 |
| New Hampshire | 18 | 13 | 9 | 4 | 0 | 0 | 5 | 652 | 585 | 313 | 258 | 55 | 0 | 0 | 272 | 428 |
| Vermont | 5 | 1 | 1 | 0 | 0 | 0 | 4 | 418 | 398 | 158 | 92 | 66 | 0 | 0 | 240 | 116 |
| Massachusetts | 219 | 86 | 50 | 29 | 4 | 3 | 133 | 14,019 | 12,125 | 5,516 | 3,338 | 871 | 1,038 | 269 | 6,609 | 3,703 |
| Rhode Island | 22 | 8 | 6 | 2 | 0 | 0 | 14 | 1,048 | 976 | 425 | 374 | 51 | 0 | 0 | 551 | 326 |
| Connecticut | 98 | 43 | 25 | 12 | 2 | 4 | 55 | 5,924 | 5,114 | 2,105 | 1,383 | 297 | 29 | 396 | 3,009 | 1,714 |
| New England | 396 | 163 | 99 | 49 | 7 | 8 | 233 | 24,309 | 21,291 | 9,429 | 6,220 | 1,445 | 1,072 | 692 | 11,862 | 7,056 |
| New York | 566 | 293 | 190 | 54 | 9 | 40 | 273 | 40,824 | 31,226 | 17,727 | 12,713 | 1,614 | 920 | 2,480 | 13,499 | 23,452 |
| New Jersey | 278 | 133 | 86 | 32 | 0 | 15 | 145 | 12,706 | 11,263 | 4,882 | 3,687 | 908 | 16 | 271 | 6,381 | 3,998 |
| Pennsylvania | 423 | 191 | 99 | 63 | 11 | 18 | 232 | 23,672 | 21,499 | 10,611 | 6,327 | 2,523 | 452 | 1,309 | 10,888 | 8,813 |
| Middle Atlantic | 1,267 | 617 | 375 | 149 | 20 | 73 | 650 | 77,202 | 63,988 | 33,220 | 22,727 | 5,045 | 1,388 | 4,060 | 30,768 | 36,263 |
| Ohio | 385 | 179 | 118 | 45 | 8 | 8 | 206 | 19,079 | 16,996 | 7,702 | 6,080 | 965 | 267 | 390 | 9,294 | 6,394 |
| Indiana | 166 | 71 | 43 | 26 | 1 | 1 | 95 | 9,688 | 8,729 | 3,816 | 2,983 | 545 | 26 | 262 | 4,913 | 2,421 |
| Illinois | 327 | 144 | 73 | 53 | 13 | 5 | 183 | 15,938 | 14,003 | 7,410 | 4,416 | 987 | 1,682 | 325 | 6,593 | 5,989 |
| Michigan | 329 | 156 | 103 | 34 | 8 | 11 | 173 | 16,606 | 14,499 | 7,250 | 5,822 | 663 | 272 | 493 | 7,249 | 8,412 |
| Wisconsin | 180 | 78 | 50 | 21 | 3 | 4 | 102 | 9,551 | 8,606 | 4,058 | 2,633 | 1,136 | 81 | 208 | 4,548 | 3,616 |
| East North Central | 1,387 | 628 | 387 | 179 | 33 | 29 | 759 | 70,862 | 62,833 | 30,236 | 21,934 | 4,296 | 2,328 | 1,678 | 32,597 | 26,832 |
| Iowa | 59 | 32 | 18 | 12 | 1 | 1 | 27 | 2,739 | 2,434 | 1,154 | 704 | 285 | 71 | 94 | 1,280 | 1,234 |
| Minnesota | 186 | 84 | 41 | 30 | 6 | 7 | 102 | 6,513 | 5,894 | 2,730 | 1,349 | 967 | 232 | 182 | 3,164 | 1,897 |
| Missouri | 200 | 106 | 60 | 35 | 7 | 4 | 94 | 8,412 | 7,445 | 3,303 | 2,301 | 762 | 79 | 161 | 4,142 | 2,840 |
| North Dakota | 26 | 13 | 7 | 6 | 0 | 0 | 13 | 857 | 773 | 313 | 119 | 194 | 0 | 0 | 460 | 175 |
| South Dakota | 17 | 6 | 5 | 1 | 0 | 0 | 11 | 862 | 742 | 270 | 200 | 13 | 57 | 0 | 472 | 38 |
| Nebraska | 32 | 14 | 10 | 4 | 0 | 0 | 18 | 1,080 | 910 | 387 | 324 | 63 | 0 | 0 | 523 | 284 |
| Kansas | 43 | 13 | 7 | 6 | 0 | 0 | 30 | 4,807 | 4,284 | 1,604 | 829 | 664 | 0 | 111 | 2,680 | 908 |
| West North Central | 563 | 268 | 148 | 94 | 14 | 12 | 295 | 25,270 | 22,482 | 9,761 | 5,826 | 2,948 | 439 | 548 | 12,721 | 7,376 |
| Delaware | 7 | 5 | 3 | 1 | 1 | 0 | 2 | 296 | 259 | 129 | 109 | 10 | 10 | 0 | 130 | 52 |
| Maryland | 111 | 43 | 31 | 11 | 0 | 1 | 68 | 5,722 | 5,080 | 1,915 | 1,405 | 446 | 0 | 64 | 3,165 | 1,090 |
| District of Columbia | 30 | 18 | 14 | 1 | 1 | 2 | 12 | 1,708 | 1,288 | 635 | 395 | 97 | 53 | 90 | 653 | 874 |
| Virginia | 76 | 29 | 23 | 4 | 0 | 2 | 47 | 5,966 | 4,991 | 2,532 | 2,198 | 192 | 10 | 132 | 2,459 | 1,851 |
| West Virginia | 65 | 38 | 20 | 14 | 3 | 1 | 27 | 3,114 | 2,827 | 1,467 | 899 | 371 | 89 | 108 | 1,360 | 1,335 |
| North Carolina | 64 | 20 | 16 | 4 | 0 | 0 | 44 | 9,045 | 8,276 | 3,582 | 3,127 | 455 | 0 | 0 | 4,694 | 1,987 |
| South Carolina | 27 | 13 | 8 | 4 | 0 | 1 | 14 | 2,680 | 2,497 | 1,079 | 1,010 | 55 | 0 | 14 | 1,418 | 264 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Georgia | 25 | 9 | 6 | 3 | 0 | 0 | 16 | 3,099 | 2,766 | 1,174 | 730 | 444 | 0 | 0 | 1,592 | 950 |
| Florida | 14 | 5 | 4 | 1 | 0 | 0 | 9 | 799 | 743 | 329 | 240 | 89 | 0 | 0 | 414 | 321 |
| South Atlantic | 77 | 24 | 19 | 5 | 0 | 0 | 53 | 8,561 | 7,791 | 3,512 | 2,496 | 944 | 72 | 0 | 4,279 | 2,848 |
| Kentucky | 7 | 3 | 3 | 0 | 0 | 0 | 4 | 337 | 314 | 142 | 142 | 0 | 0 | 0 | 172 | 104 |
| Tennessee | 15 | 8 | 4 | 4 | 0 | 0 | 7 | 738 | 686 | 360 | 232 | 128 | 0 | 0 | 326 | 543 |
| Alabama | 10 | 1 | 1 | 0 | 0 | 0 | 9 | 324 | 254 | 85 | 85 | 0 | 0 | 0 | 169 | 59 |
| Mississippi | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 319 | 301 | 167 | 167 | 0 | 0 | 0 | 134 | 223 |
| East South Central | 34 | 13 | 9 | 4 | 0 | 0 | 21 | 1,718 | 1,555 | 754 | 626 | 128 | 0 | 0 | 801 | 929 |
| Arkansas | 9 | 2 | 1 | 1 | 0 | 0 | 7 | 743 | 650 | 294 | 212 | 82 | 0 | 0 | 356 | 209 |
| Louisiana | 11 | 2 | 2 | 0 | 0 | 0 | 9 | 775 | 685 | 214 | 151 | 63 | 0 | 0 | 471 | 71 |
| Oklahoma | 12 | 5 | 4 | 1 | 0 | 0 | 7 | 658 | 546 | 263 | 204 | 59 | 0 | 0 | 283 | 363 |
| Texas | 37 | 14 | 12 | 2 | 0 | 0 | 23 | 1,750 | 1,562 | 847 | 707 | 124 | 0 | 16 | 715 | 947 |
| West South Central | 69 | 23 | 19 | 4 | 0 | 0 | 46 | 3,926 | 3,443 | 1,618 | 1,274 | 328 | 0 | 16 | 1,825 | 1,590 |
| Montana | 8 | 2 | 0 | 2 | 0 | 0 | 6 | 143 | 105 | 43 | 17 | 26 | 0 | 0 | 62 | 57 |
| Idaho | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 6 | 3 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| Wyoming | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | 7 | 1 | 1 | 0 | 0 | 0 | 6 | 571 | 358 | 242 | 239 | 0 | 3 | 0 | 116 | 481 |
| New Mexico | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 168 | 137 | 104 | 104 | 0 | 0 | 0 | 33 | 168 |
| Arizona | 7 | 1 | 0 | 1 | 0 | 0 | 6 | 853 | 629 | 295 | 248 | 47 | 0 | 0 | 334 | 54 |
| Utah | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 55 | 52 | 16 | 3 | 13 | 0 | 0 | 36 | 13 |
| Nevada | 5 | 0 | 0 | 0 | 0 | 0 | 5 | 207 | 176 | 36 | 24 | 12 | 0 | 0 | 140 | 0 |
| Mountain | 34 | 7 | 3 | 4 | 0 | 0 | 27 | 2,003 | 1,460 | 736 | 635 | 98 | 3 | 0 | 724 | 773 |
| Washington | 42 | 11 | 5 | 2 | 1 | 3 | 31 | 1,612 | 1,430 | 899 | 323 | 44 | 24 | 508 | 531 | 933 |
| Oregon | 14 | 0 | 0 | 0 | 0 | 0 | 14 | 314 | 267 | 70 | 57 | 4 | 0 | 9 | 197 | 0 |
| California | 127 | 26 | 22 | 2 | 1 | 1 | 101 | 7,039 | 5,975 | 2,461 | 2,022 | 231 | 104 | 104 | 3,514 | 2,676 |
| Alaska | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 41 | 37 | 7 | 5 | 2 | 0 | 0 | 30 | 0 |
| Hawaii | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 91 | 78 | 33 | 25 | 8 | 0 | 0 | 45 | 11 |
| Guam | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pacific | 189 | 38 | 27 | 5 | 2 | 4 | 151 | 9,097 | 7,787 | 3,470 | 2,432 | 289 | 128 | 621 | 4,317 | 3,620 |
| Puerto Rico | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 40 | 37 | 10 | 0 | 4 | 0 | 6 | 27 | 0 |
| Virgin Islands | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Outlying Areas | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 40 | 37 | 10 | 0 | 4 | 0 | 6 | 27 | 0 |
| Total, all States and areas | 856 | 215 | 159 | 36 | 8 | 12 | 641 | 45,406 | 39,254 | 17,968 | 13,062 | 3,225 | 688 | 993 | 21,286 | 17,879 |

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

## Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1981

| Division and State [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Maine | 3 | 2 | 2 | 0 | 0 | 0 | 1 | 189 | 176 | 90 | 90 | 0 | 0 | 0 | 86 | 161 |
| New Hampshire | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 76 | 57 | 41 | 41 | 0 | 0 | 0 | 16 | 76 |
| Massachusetts | 26 | 7 | 6 | 0 | 0 | 1 | 19 | 1,379 | 1,162 | 465 | 391 | 70 | 0 | 4 | 697 | 472 |
| Rhode Island | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 9 | 9 | 3 | 3 | 0 | 0 | 0 | 6 | 0 |
| Connecticut | 6 | 2 | 2 | 0 | 0 | 0 | 4 | 349 | 311 | 168 | 167 | 1 | 0 | 0 | 143 | 180 |
| New England | 37 | 12 | 11 | 0 | 0 | 1 | 25 | 2,002 | 1,715 | 767 | 692 | 71 | 0 | 4 | 948 | 889 |
| New York | 36 | 12 | 6 | 2 | 1 | 3 | 24 | 1,452 | 1,239 | 845 | 610 | 73 | 53 | 109 | 394 | 1,021 |
| New Jersey | 28 | 6 | 4 | 1 | 1 | 0 | 22 | 3,001 | 2,350 | 1,273 | 402 | 685 | 165 | 21 | 1,077 | 1,087 |
| Pennsylvania | 40 | 13 | 6 | 3 | 2 | 2 | 27 | 1,524 | 1,279 | 510 | 200 | 100 | 99 | 111 | 769 | 652 |
| Middle Atlantic | 104 | 31 | 16 | 6 | 4 | 5 | 73 | 5,977 | 4,868 | 2,628 | 1,212 | 858 | 317 | 241 | 2,240 | 2,760 |
| Ohio | 57 | 11 | 9 | 2 | 0 | 0 | 46 | 1,412 | 1,248 | 518 | 432 | 69 | 1 | 16 | 730 | 531 |
| Indiana | 21 | 7 | 6 | 1 | 0 | 0 | 14 | 820 | 736 | 414 | 371 | 43 | 0 | 0 | 322 | 467 |
| Illinois | 49 | 6 | 4 | 1 | 1 | 0 | 43 | 1,631 | 1,456 | 477 | 294 | 55 | 92 | 36 | 979 | 451 |
| Michigan | 67 | 16 | 14 | 1 | 1 | 0 | 51 | 3,480 | 2,934 | 1,276 | 1,155 | 59 | 55 | 7 | 1,658 | 1,267 |
| Wisconsin | 25 | 7 | 5 | 2 | 0 | 0 | 18 | 840 | 711 | 316 | 236 | 80 | 0 | 0 | 395 | 330 |
| East North Central | 219 | 47 | 38 | 7 | 2 | 0 | 172 | 8,183 | 7,085 | 3,001 | 2,488 | 306 | 148 | 59 | 4,084 | 3,046 |
| Iowa | 9 | 2 | 1 | 1 | 0 | 0 | 7 | 519 | 509 | 262 | 241 | 21 | 0 | 0 | 247 | 325 |
| Minnesota | 30 | 7 | 6 | 0 | 0 | 1 | 23 | 1,520 | 1,381 | 631 | 550 | 61 | 0 | 20 | 750 | 701 |
| Missouri | 37 | 8 | 7 | 0 | 0 | 1 | 29 | 1,083 | 942 | 346 | 283 | 37 | 0 | 26 | 596 | 210 |
| North Dakota | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| South Dakota | 3 | 0 | 0 | 0 | 0 | 0 | 3 | 86 | 82 | 34 | 15 | 19 | 0 | 0 | 48 | 0 |
| Nebraska | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| Kansas | 11 | 3 | 3 | 0 | 0 | 0 | 8 | 688 | 596 | 199 | 118 | 61 | 20 | 0 | 397 | 188 |
| West North Central | 91 | 20 | 17 | 1 | 0 | 2 | 71 | 3,899 | 3,513 | 1,472 | 1,207 | 199 | 20 | 46 | 2,041 | 1,424 |
| Delaware | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Maryland | 12 | 2 | 1 | 1 | 0 | 0 | 10 | 584 | 544 | 247 | 191 | 56 | 0 | 0 | 297 | 245 |
| District of Columbia | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 268 | 248 | 113 | 113 | 0 | 0 | 0 | 135 | 18 |
| Virginia | 6 | 2 | 2 | 0 | 0 | 0 | 4 | 985 | 911 | 435 | 351 | 12 | 72 | 0 | 476 | 286 |
| West Virginia | 4 | 0 | 0 | 0 | 0 | 0 | 4 | 201 | 156 | 32 | 29 | 3 | 0 | 0 | 124 | 0 |
| North Carolina | 12 | 5 | 5 | 0 | 0 | 0 | 7 | 2,597 | 2,397 | 1,170 | 833 | 337 | 0 | 0 | 1,227 | 1,028 |
| South Carolina | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 28 | 26 | 12 | 9 | 3 | 0 | 0 | 14 | 0 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Georgia | 25 | 9 | 6 | 3 | 0 | 0 | 16 | 3,099 | 2,766 | 1,174 | 730 | 444 | 0 | 0 | 1,592 | 950 |
| Florida | 14 | 5 | 4 | 1 | 0 | 0 | 9 | 799 | 743 | 329 | 240 | 89 | 0 | 0 | 414 | 321 |
| South Atlantic | 77 | 24 | 19 | 5 | 0 | 0 | 53 | 8,561 | 7,791 | 3,512 | 2,496 | 944 | 72 | 0 | 4,279 | 2,848 |
| Kentucky | 7 | 3 | 3 | 0 | 0 | 0 | 4 | 337 | 314 | 142 | 142 | 0 | 0 | 0 | 172 | 104 |
| Tennessee | 15 | 8 | 4 | 4 | 0 | 0 | 7 | 738 | 686 | 360 | 232 | 128 | 0 | 0 | 326 | 543 |
| Alabama | 10 | 1 | 1 | 0 | 0 | 0 | 9 | 324 | 254 | 85 | 85 | 0 | 0 | 0 | 169 | 59 |
| Mississippi | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 319 | 301 | 167 | 167 | 0 | 0 | 0 | 134 | 223 |
| East South Central | 34 | 13 | 9 | 4 | 0 | 0 | 21 | 1,718 | 1,555 | 754 | 626 | 128 | 0 | 0 | 801 | 929 |
| Arkansas | 9 | 2 | 1 | 1 | 0 | 0 | 7 | 743 | 650 | 294 | 212 | 82 | 0 | 0 | 356 | 209 |
| Louisiana | 11 | 2 | 2 | 0 | 0 | 0 | 9 | 775 | 685 | 214 | 151 | 63 | 0 | 0 | 471 | 71 |
| Oklahoma | 12 | 5 | 4 | 1 | 0 | 0 | 7 | 658 | 546 | 263 | 204 | 59 | 0 | 0 | 283 | 363 |
| Texas | 37 | 14 | 12 | 2 | 0 | 0 | 23 | 1,750 | 1,562 | 847 | 707 | 124 | 0 | 16 | 715 | 947 |
| West South Central | 69 | 23 | 19 | 4 | 0 | 0 | 46 | 3,926 | 3,443 | 1,618 | 1,274 | 328 | 0 | 16 | 1,825 | 1,590 |
| Montana | 8 | 2 | 0 | 2 | 0 | 0 | 6 | 143 | 105 | 43 | 17 | 26 | 0 | 0 | 62 | 57 |
| Idaho | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 6 | 3 | 0 | 0 | 0 | 0 | 0 | 3 | 0 |
| Wyoming | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Colorado | 7 | 1 | 1 | 0 | 0 | 0 | 6 | 571 | 358 | 242 | 239 | 0 | 3 | 0 | 116 | 481 |
| New Mexico | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 168 | 137 | 104 | 104 | 0 | 0 | 0 | 33 | 168 |
| Arizona | 7 | 1 | 0 | 1 | 0 | 0 | 6 | 853 | 629 | 295 | 248 | 47 | 0 | 0 | 334 | 54 |
| Utah | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 55 | 52 | 16 | 3 | 13 | 0 | 0 | 36 | 13 |
| Nevada | 5 | 0 | 0 | 0 | 0 | 0 | 5 | 207 | 176 | 36 | 24 | 12 | 0 | 0 | 140 | 0 |
| Mountain | 34 | 7 | 3 | 4 | 0 | 0 | 27 | 2,003 | 1,460 | 736 | 635 | 98 | 3 | 0 | 724 | 773 |
| Washington | 42 | 11 | 5 | 2 | 1 | 3 | 31 | 1,612 | 1,430 | 899 | 323 | 44 | 24 | 508 | 531 | 933 |
| Oregon | 14 | 0 | 0 | 0 | 0 | 0 | 14 | 314 | 267 | 70 | 57 | 4 | 0 | 9 | 197 | 0 |
| California | 127 | 26 | 22 | 2 | 1 | 1 | 101 | 7,039 | 5,975 | 2,461 | 2,022 | 231 | 104 | 104 | 3,514 | 2,676 |
| Alaska | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 41 | 37 | 7 | 5 | 2 | 0 | 0 | 30 | 0 |
| Hawaii | 4 | 1 | 0 | 1 | 0 | 0 | 3 | 91 | 78 | 33 | 25 | 8 | 0 | 0 | 45 | 11 |
| Guam | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pacific | 189 | 38 | 27 | 5 | 2 | 4 | 151 | 9,097 | 7,787 | 3,470 | 2,432 | 289 | 128 | 621 | 4,317 | 3,620 |
| Puerto Rico | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 40 | 37 | 10 | 0 | 4 | 0 | 6 | 27 | 0 |
| Virgin Islands | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Outlying Areas | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 40 | 37 | 10 | 0 | 4 | 0 | 6 | 27 | 0 |
| Total, all States and areas | 856 | 215 | 159 | 36 | 8 | 12 | 641 | 45,406 | 39,254 | 17,968 | 13,062 | 3,225 | 688 | 993 | 21,286 | 17,879 |

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

## Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1981

| Industrial group [1] | Total elections | Number of elections in which representation rights were won by unions | | | | | Number of elections in which no representative was chosen | Number of employees eligible to vote | Total valid votes cast | Valid votes cast for unions | | | | | Total votes for no union | Eligible employees in units choosing representation |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | | | Total | AFL-CIO unions | Teamsters | Other national unions | Other local unions | | |
| Food and kindred products | 375 | 144 | 77 | 59 | 0 | 8 | 231 | 27,530 | 24,164 | 10,720 | 5,730 | 3,348 | 33 | 1,609 | 13,444 | 7,588 |
| Tobacco manufacturers | 7 | 2 | 0 | 2 | 0 | 0 | 5 | 813 | 729 | 255 | 212 | 28 | 0 | 15 | 474 | 18 |
| Textile mill products | 64 | 20 | 13 | 5 | 1 | 1 | 44 | 9,298 | 8,524 | 3,528 | 2,664 | 571 | 238 | 55 | 4,996 | 1,669 |
| Apparel and other finished products made from fabric and similar materials | 72 | 29 | 24 | 5 | 0 | 0 | 43 | 9,898 | 8,942 | 3,598 | 3,347 | 240 | 0 | 11 | 5,344 | 2,252 |
| Lumber and wood products (except furniture) | 130 | 39 | 29 | 6 | 2 | 2 | 91 | 6,933 | 6,332 | 2,851 | 2,207 | 401 | 15 | 228 | 3,481 | 2,170 |
| Furniture and fixtures | 83 | 34 | 21 | 9 | 2 | 2 | 49 | 5,984 | 5,480 | 2,437 | 1,651 | 524 | 107 | 155 | 3,043 | 2,503 |
| Paper and allied products | 74 | 27 | 17 | 10 | 0 | 0 | 47 | 3,717 | 3,402 | 1,755 | 1,327 | 234 | 0 | 194 | 1,647 | 1,503 |
| Printing, publishing, and allied products | 209 | 89 | 72 | 11 | 1 | 5 | 120 | 12,008 | 10,374 | 4,499 | 3,610 | 741 | 9 | 139 | 5,875 | 3,226 |
| Chemicals and allied products | 170 | 72 | 42 | 24 | 1 | 5 | 98 | 8,054 | 7,426 | 3,433 | 2,363 | 677 | 106 | 287 | 3,993 | 2,570 |
| Petroleum refining and related industries | 53 | 21 | 13 | 4 | 1 | 3 | 32 | 2,712 | 2,394 | 1,127 | 917 | 62 | 81 | 67 | 1,267 | 1,652 |
| Rubber and miscellaneous plastic products | 137 | 46 | 29 | 12 | 1 | 4 | 91 | 12,246 | 11,192 | 4,709 | 3,929 | 550 | 9 | 221 | 6,483 | 3,896 |
| Leather and leather products | 24 | 8 | 5 | 3 | 0 | 0 | 16 | 3,287 | 3,054 | 1,261 | 1,036 | 225 | 0 | 0 | 1,793 | 977 |
| Stone, clay, glass, and concrete products | 134 | 62 | 36 | 22 | 2 | 2 | 72 | 7,149 | 6,544 | 3,610 | 2,701 | 622 | 127 | 160 | 2,934 | 3,475 |
| Primary metal industries | 177 | 81 | 58 | 15 | 4 | 4 | 96 | 9,570 | 8,499 | 4,241 | 3,241 | 594 | 64 | 342 | 4,258 | 4,151 |
| Fabricated metal products (except machinery and transportation equipment) | 353 | 137 | 106 | 23 | 2 | 6 | 216 | 21,554 | 19,387 | 8,795 | 6,830 | 1,218 | 156 | 591 | 10,592 | 6,778 |
| Machinery (except electrical) | 337 | 114 | 78 | 29 | 1 | 6 | 223 | 25,029 | 22,901 | 9,670 | 7,235 | 1,863 | 265 | 307 | 13,231 | 5,656 |
| Electrical and electronic machinery, equipment, and supplies | 211 | 85 | 57 | 16 | 5 | 7 | 126 | 28,317 | 25,492 | 11,647 | 7,898 | 2,714 | 239 | 796 | 13,845 | 8,015 |
| Aircraft and parts | 105 | 44 | 28 | 8 | 3 | 5 | 61 | 15,944 | 14,687 | 7,927 | 5,305 | 881 | 1,437 | 304 | 6,760 | 6,842 |
| Ship and boat building and repairing | 19 | 8 | 6 | 0 | 1 | 1 | 11 | 4,995 | 4,248 | 3,084 | 2,156 | 140 | 14 | 774 | 1,164 | 3,266 |
| Automotive and other transportation equipment | 21 | 9 | 8 | 1 | 0 | 0 | 12 | 1,731 | 1,543 | 764 | 726 | 36 | 0 | 2 | 779 | 608 |
| Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks | 73 | 30 | 22 | 7 | 1 | 0 | 43 | 5,495 | 5,048 | 2,105 | 1,679 | 394 | 32 | 0 | 2,943 | 1,321 |
| Miscellaneous manufacturing industries | 246 | 99 | 57 | 35 | 2 | 5 | 147 | 13,791 | 12,363 | 5,475 | 3,376 | 1,603 | 189 | 307 | 6,888 | 3,246 |
| Manufacturing | 3,074 | 1,200 | 798 | 306 | 30 | 66 | 1,874 | 236,055 | 212,725 | 97,491 | 70,140 | 17,666 | 3,121 | 6,564 | 115,234 | 73,382 |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Metal mining | 12 | 3 | 3 | 0 | 0 | 0 | 9 | 750 | 697 | 275 | 202 | 34 | 0 | 39 | 422 | 295 |
| Coal mining | 50 | 28 | 8 | 3 | 15 | 2 | 22 | 2,316 | 2,137 | 1,178 | 196 | 178 | 609 | 195 | 959 | 1,167 |
| Oil and gas extraction | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 220 | 205 | 52 | 52 | 0 | 0 | 0 | 153 | 0 |
| Mining and quarrying of nonmetallic minerals (except fuels) | 25 | 13 | 9 | 4 | 0 | 0 | 12 | 711 | 672 | 355 | 289 | 54 | 5 | 7 | 317 | 301 |
| Mining | 88 | 44 | 20 | 7 | 15 | 2 | 44 | 3,997 | 3,711 | 1,860 | 739 | 266 | 614 | 241 | 1,851 | 1,763 |
| Construction | 220 | 94 | 68 | 15 | 4 | 7 | 126 | 5,683 | 4,687 | 2,381 | 2,079 | 202 | 33 | 67 | 2,306 | 3,002 |
| Wholesale trade | 626 | 248 | 79 | 158 | 5 | 6 | 378 | 19,991 | 18,093 | 7,859 | 3,854 | 3,754 | 132 | 119 | 10,234 | 6,104 |
| Retail trade | 843 | 329 | 218 | 87 | 6 | 18 | 514 | 34,792 | 29,824 | 12,047 | 8,961 | 2,452 | 114 | 520 | 17,777 | 9,952 |
| Finance, insurance, and real estate | 164 | 93 | 80 | 12 | 0 | 1 | 71 | 6,906 | 6,113 | 3,029 | 2,705 | 272 | 23 | 29 | 3,084 | 2,574 |
| U S Postal Service | 7 | 5 | 2 | 3 | 0 | 0 | 2 | 436 | 393 | 232 | 130 | 99 | 3 | 0 | 161 | 364 |
| Local and surburban transit and interurban highway passenger transportation | 90 | 36 | 16 | 16 | 0 | 4 | 54 | 5,791 | 4,523 | 2,295 | 1,273 | 731 | 0 | 291 | 2,228 | 2,192 |
| Motor freight transportation and warehousing | 406 | 178 | 37 | 129 | 5 | 7 | 228 | 11,325 | 9,959 | 4,712 | 839 | 3,612 | 94 | 167 | 5,247 | 5,347 |
| Water transportation | 26 | 10 | 7 | 1 | 2 | 0 | 16 | 646 | 571 | 192 | 146 | 8 | 26 | 12 | 379 | 181 |
| Other transportation | 48 | 26 | 16 | 9 | 0 | 1 | 22 | 2,408 | 2,156 | 1,005 | 790 | 193 | 0 | 22 | 1,151 | 1,008 |
| Communication. | 260 | 119 | 102 | 6 | 4 | 7 | 141 | 8,360 | 7,439 | 3,523 | 3,072 | 155 | 65 | 231 | 3,916 | 2,842 |
| Electric, gas, and sanitary services | 114 | 50 | 36 | 12 | 1 | 1 | 64 | 5,442 | 5,067 | 2,347 | 1,518 | 630 | 136 | 63 | 2,720 | 1,828 |
| Transportation, communication, and other utilities | 944 | 419 | 214 | 173 | 12 | 20 | 525 | 33,972 | 29,715 | 14,074 | 7,638 | 5,329 | 321 | 786 | 15,641 | 13,398 |
| Hotels, rooming houses, camps, and other lodging places | 129 | 51 | 40 | 5 | 1 | 5 | 78 | 9,215 | 6,919 | 3,167 | 2,339 | 278 | 165 | 385 | 3,752 | 3,763 |
| Personal services | 55 | 28 | 17 | 10 | 1 | 0 | 27 | 1,276 | 1,132 | 565 | 405 | 153 | 7 | 0 | 567 | 572 |
| Automotive repair, services, and garages | 144 | 72 | 34 | 38 | 0 | 0 | 72 | 2,826 | 2,518 | 1,225 | 468 | 733 | 16 | 8 | 1,293 | 1,181 |
| Motion pictures | 20 | 16 | 12 | 2 | 0 | 2 | 4 | 438 | 353 | 285 | 122 | 81 | 0 | 82 | 68 | 371 |
| Amusement and recreation services (except motion pictures) | 60 | 24 | 19 | 1 | 2 | 2 | 36 | 1,397 | 1,164 | 501 | 431 | 24 | 14 | 32 | 663 | 440 |
| Health services | 653 | 343 | 251 | 18 | 32 | 42 | 310 | 65,931 | 55,591 | 28,567 | 20,459 | 1,719 | 3,879 | 2,510 | 27,024 | 31,120 |
| Educational services | 50 | 33 | 20 | 4 | 0 | 9 | 17 | 3,963 | 3,337 | 1,770 | 1,456 | 96 | 0 | 218 | 1,567 | 2,606 |
| Membership organizations | 9 | 2 | 1 | 0 | 0 | 1 | 7 | 276 | 257 | 77 | 73 | 0 | 0 | 4 | 180 | 6 |
| Business services | 269 | 141 | 78 | 18 | 21 | 24 | 128 | 11,153 | 8,667 | 4,811 | 2,023 | 583 | 434 | 1,771 | 3,856 | 6,159 |
| Miscellaneous repair services | 43 | 15 | 10 | 4 | 1 | 0 | 28 | 1,448 | 1,337 | 546 | 349 | 180 | 17 | 0 | 791 | 263 |
| Museums, art galleries, botanical and zoological gardens | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 94 | 87 | 32 | 32 | 0 | 0 | 0 | 55 | 28 |
| Legal services | 9 | 8 | 4 | 0 | 0 | 4 | 1 | 291 | 251 | 180 | 61 | 0 | 0 | 119 | 71 | 268 |
| Social services | 79 | 59 | 52 | 2 | 1 | 4 | 20 | 8,348 | 4,631 | 3,909 | 3,806 | 49 | 7 | 47 | 722 | 7,544 |
| Miscellaneous services | 13 | 6 | 4 | 2 | 0 | 0 | 7 | 339 | 301 | 148 | 85 | 62 | 0 | 1 | 153 | 155 |
| Services | 1,535 | 799 | 543 | 104 | 59 | 93 | 736 | 106,995 | 86,545 | 45,783 | 32,109 | 3,958 | 4,539 | 5,177 | 40,762 | 54,476 |
| Public administration | 11 | 3 | 3 | 0 | 0 | 0 | 8 | 416 | 351 | 177 | 156 | 17 | 0 | 4 | 174 | 217 |
| Total, all industrial groups | 7,512 | 3,234 | 2,025 | 865 | 131 | 213 | 4,278 | 449,243 | 392,157 | 184,933 | 128,511 | 34,015 | 8,900 | 13,507 | 207,224 | 165,232 |

[1] Source Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D C., 1972

## Table 17.—Size of Units in Representation Cases Closed, Fiscal Year 1981 [1]

| Size of unit (number of employees) | Number eligible to vote | Total elections | Percent of total | Cumulative percent of total | Elections in which representation rights were won by | | | | | | | | Elections in which no representative was chosen | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | AFL-CIO unions | | Teamsters | | Other national unions | | Other local unions | | | |
| | | | | | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class |
| | A. Certification elections (RC and RM) | | | | | | | | | | | | | |
| Total RC and RM elections | 403,837 | 6,656 | 100 0 | | 1,866 | 100 0 | 829 | 100 0 | 123 | 100 0 | 201 | 100 0 | 3,637 | 100 0 |
| Under 10 | 8,234 | 1,463 | 22 0 | 22 0 | 415 | 22 2 | 322 | 38 9 | 33 | 26 8 | 30 | 14 9 | 663 | 18 2 |
| 10 to 19 | 20,584 | 1,455 | 21 9 | 43 9 | 427 | 22 9 | 229 | 27 6 | 30 | 24 4 | 47 | 23 4 | 722 | 19 9 |
| 20 to 29 | 20,828 | 867 | 13 0 | 56 9 | 242 | 13 0 | 98 | 11 8 | 19 | 15 5 | 27 | 13 4 | 481 | 13 2 |
| 30 to 39 | 19,652 | 578 | 8 7 | 65 6 | 177 | 9 5 | 54 | 6 5 | 7 | 5 7 | 21 | 10 4 | 319 | 8 8 |
| 40 to 49 | 17,614 | 400 | 6 0 | 71 6 | 118 | 6 3 | 30 | 3 6 | 2 | 1 6 | 12 | 5 9 | 238 | 6 5 |
| 50 to 59 | 15,993 | 295 | 4 4 | 76 0 | 98 | 5 3 | 15 | 1 8 | 3 | 2 5 | 11 | 5 5 | 168 | 4 6 |
| 60 to 69 | 14,684 | 229 | 3 4 | 79 4 | 57 | 3 1 | 23 | 2.8 | 2 | 1 6 | 7 | 3 5 | 140 | 3 8 |
| 70 to 79 | 13,585 | 182 | 2 7 | 82 1 | 52 | 2 8 | 8 | 1 0 | 6 | 4 9 | 9 | 4 5 | 107 | 2 9 |
| 80 to 89 | 12,698 | 151 | 2 3 | 84 4 | 43 | 2 3 | 5 | 0 6 | 1 | 0 8 | 4 | 2 0 | 98 | 2 7 |
| 90 to 99 | 9,982 | 106 | 1 6 | 86 0 | 32 | 1 7 | 4 | 0 5 | 4 | 3 3 | 2 | 1 0 | 64 | 1 8 |
| 100 to 109 | 8,402 | 81 | 1 2 | 87 2 | 22 | 1 2 | 5 | 0 6 | 1 | 0 8 | 0 | | 53 | 1 5 |
| 110 to 119 | 9,175 | 80 | 1 2 | 88 4 | 15 | 0 8 | 3 | 0 4 | 1 | 0 8 | 3 | 1 5 | 58 | 1 6 |
| 120 to 129 | 8,973 | 72 | 1 1 | 89 5 | 20 | 1 1 | 3 | 0 4 | 2 | 1 6 | 3 | 1 5 | 44 | 1 2 |
| 130 to 139 | 7,790 | 58 | 0 9 | 90 4 | 11 | 0 6 | 2 | 0 2 | 1 | 0 8 | 2 | 1 0 | 42 | 1 2 |
| 140 to 149 | 5,597 | 39 | 0 6 | 91 0 | 10 | 0 5 | 4 | 0 5 | 0 | | 3 | 1 5 | 22 | 0 6 |
| 150 to 159 | 6,295 | 41 | 0 6 | 91 6 | 10 | 0 5 | 2 | 0 2 | 1 | 0 8 | 1 | 0 5 | 27 | 0 7 |
| 160 to 169 | 7,073 | 43 | 0 6 | 92 2 | 9 | 0 5 | 4 | 0 5 | 0 | | 0 | | 30 | 0 8 |
| 170 to 179 | 5,059 | 29 | 0 4 | 92 6 | 8 | 0 4 | 1 | 0 1 | 0 | | 1 | 0 5 | 19 | 0 5 |
| 180 to 189 | 8,786 | 48 | 0 7 | 93 3 | 13 | 0 7 | 3 | 0 4 | 0 | | 1 | 0 5 | 31 | 0 9 |
| 190 to 199 | 7,000 | 36 | 0 5 | 93 8 | 9 | 0 5 | 1 | 0 1 | 2 | 1 6 | 1 | 0 5 | 23 | 0 6 |
| 200 to 299 | 42,357 | 173 | 2 6 | 96 4 | 31 | 1 7 | 5 | 0 6 | 3 | 2 5 | 7 | 3 5 | 127 | 3 5 |
| 300 to 399 | 32,864 | 96 | 1 4 | 97 8 | 22 | 1 2 | 2 | 0 2 | 2 | 1 6 | 6 | 3 0 | 64 | 1 8 |
| 400 to 499 | 22,428 | 51 | 0 8 | 98 6 | 9 | 0 5 | 3 | 0 4 | 0 | | 2 | 1 0 | 37 | 1 0 |
| 500 to 599 | 11,455 | 21 | 0 3 | 98 9 | 4 | 0 2 | 1 | 0 1 | 0 | | 0 | | 16 | 0 4 |
| 600 to 799 | 15,268 | 23 | 0 4 | 99 3 | 5 | 0 3 | 0 | | 0 | | 0 | | 18 | 0 5 |
| 800 to 999 | 15,338 | 17 | 0 3 | 99 6 | 1 | 0 0 | 1 | 0 1 | 1 | 0 8 | 0 | | 14 | 0 4 |
| 1,000 to 1,999 | 23,182 | 17 | 0 3 | 99 9 | 4 | 0 2 | 1 | 0 1 | 1 | 0 8 | 1 | 0 5 | 10 | 0 3 |
| 2,000 to 2,999 | 9,680 | 4 | 0 1 | 100 0 | 1 | 0 0 | 0 | | 1 | 0 8 | 0 | | 2 | 0 1 |
| 3,000 to 9,999 | 3,261 | 1 | 0 0 | 100 0 | 1 | 0 0 | 0 | | 0 | | 0 | | 0 | |

## Table 17.—Size of Units in Representation Cases Closed, Fiscal Year 1981 [1]—Continued

| Size of unit (number of employees) | Number eligible to vote | Total elections | Percent of total | Cumulative percent of total | Elections in which representation rights were won by | | | | | | | | Elections in which no representative was chosen | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | AFL-CIO unions | | Teamsters | | Other national unions | | Other local unions | | | |
| | | | | | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class | Number | Percent by size class |
| | B Decertification Elections (RD) | | | | | | | | | | | | | |
| Total RD elections | 45,406 | 856 | 100 0 | | 159 | 100 0 | 36 | 100 0 | 8 | 100 0 | 12 | 100 0 | 641 | 100 0 |
| Under 10 | 1,222 | 223 | 26 0 | 26 0 | 17 | 10 7 | 1 | 2 8 | 1 | 12 5 | 1 | 8 3 | 203 | 31 7 |
| 10 to 19 | 2,744 | 193 | 22 5 | 48 5 | 26 | 16 3 | 11 | 30 5 | 0 | | 3 | 25 0 | 153 | 23 9 |
| 20 to 29 | 2,643 | 111 | 13 0 | 61 5 | 20 | 12 6 | 4 | 11 1 | 0 | | 1 | 8 3 | 86 | 13 4 |
| 30 to 39 | 1,837 | 54 | 6 3 | 67 8 | 9 | 5 7 | 5 | 13 8 | 0 | | 2 | 16 7 | 38 | 5 9 |
| 40 to 49 | 2,254 | 51 | 6 0 | 73 8 | 8 | 5 0 | 2 | 5 6 | 2 | 25 0 | 2 | 16 7 | 37 | 5 8 |
| 50 to 59 | 1,910 | 35 | 4 1 | 77 9 | 12 | 7 5 | 4 | 11 1 | 0 | | 1 | 8 3 | 18 | 2 8 |
| 60 to 69 | 1,294 | 20 | 2 3 | 80 2 | 6 | 3 8 | 1 | 2 8 | 0 | | 0 | | 13 | 2 0 |
| 70 to 79 | 1,261 | 17 | 2 0 | 82 2 | 9 | 5 7 | 0 | | 0 | | 0 | | 8 | 1 2 |
| 80 to 89 | 1,868 | 22 | 2 6 | 84 8 | 5 | 3.1 | 0 | | 0 | | 1 | 8 3 | 16 | 2 5 |
| 90 to 99 | 1,603 | 17 | 2 0 | 86 8 | 4 | 2 5 | 1 | 2 8 | 0 | | 0 | | 12 | 1 9 |
| 100 to 109 | 944 | 9 | 1.0 | 87 8 | 2 | 1 3 | 4 | 11 1 | 0 | | 0 | | 3 | 0 5 |
| 110 to 119 | 1,359 | 12 | 1 4 | 89 2 | 7 | 4 4 | 1 | 2 8 | 1 | 12 5 | 0 | | 3 | 0 5 |
| 120 to 129 | 1,979 | 16 | 1 9 | 91 1 | 9 | 5 7 | 0 | | 0 | | 0 | | 7 | 1 1 |
| 130 to 139 | 671 | 5 | 0 6 | 91 7 | 2 | 1 3 | 0 | | 0 | | 0 | | 3 | 0 5 |
| 140 to 149 | 429 | 3 | 0 3 | 92 0 | 1 | 0 6 | 0 | | 0 | | 0 | | 2 | 0 3 |
| 150 to 159 | 765 | 5 | 0 6 | 92 6 | 1 | 0 6 | 0 | | 0 | | 0 | | 4 | 0 6 |
| 160 to 169 | 321 | 2 | 0 2 | 92 8 | 0 | | 0 | | 0 | | 0 | | 2 | 0 3 |
| 170 to 199 | 3,133 | 17 | 2 0 | 94 8 | 5 | 3 1 | 0 | | 3 | 37 5 | 0 | | 9 | 1 4 |
| 200 to 299 | 4,909 | 21 | 2 5 | 97 3 | 9 | 5 7 | 1 | 2 8 | 0 | | 0 | | 11 | 1 7 |
| 300 to 499 | 3,800 | 11 | 1 3 | 98 6 | 4 | 2 5 | 1 | 2 8 | 0 | | 0 | | 6 | 0 9 |
| 500 to 799 | 5,112 | 9 | 1 0 | 99 6 | 2 | 1 3 | 0 | | 1 | 12 5 | 1 | 8 3 | 5 | 0 8 |
| 800 and over | 3,348 | 3 | 0 4 | 100 0 | 1 | 0 6 | 0 | | 0 | | 0 | | 2 | 0 3 |

[1] See Glossary for definitions of terms

## Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1981 [1]

| Size of establishment (number of employees) | Total number of situations | Total | | Type of situations | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | CA | | CB | | CC | | CD | | CE | | CG | | CP | | CA-CB combinations | | Other C combinations | |
| | | Percent of all situations | Cumulative percent of all situations | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class | Number of situations | Percent by size class |
| Total | [2] 38,107 | 100 0 | | 28,298 | 100 0 | 7,248 | 100 0 | 1,563 | 100 0 | 357 | 100 0 | 103 | 100 0 | 34 | 100 0 | 364 | 100 0 | 123 | 100 0 | 17 | 100 0 |
| Under 10 | 11,388 | 29 9 | 29 9 | 7,728 | 27 3 | 2,498 | 34 5 | 753 | 48 2 | 127 | 35 6 | 65 | 63 1 | 8 | 23 7 | 177 | 48 6 | 24 | 19 5 | 8 | 47 0 |
| 10–19 | 3,339 | 8 8 | 38 7 | 2,641 | 9 3 | 373 | 5 1 | 187 | 12 0 | 55 | 15 4 | 9 | 8 7 | 0 | | 61 | 16 8 | 12 | 9 8 | 1 | 5 9 |
| 20–29 | 2,679 | 7 0 | 45 7 | 2,119 | 7 5 | 336 | 4 6 | 135 | 8 6 | 32 | 9 0 | 4 | 3 9 | 1 | 2 9 | 42 | 11 5 | 9 | 7 4 | 1 | 5 9 |
| 30–39 | 1,770 | 4 6 | 50 3 | 1,442 | 5 1 | 249 | 3 4 | 45 | 2 9 | 11 | 3 1 | 0 | | 2 | 5 9 | 15 | 4 1 | 6 | 4 9 | 0 | |
| 40–49 | 1,309 | 3 4 | 53 7 | 1,051 | 3 7 | 182 | 2 5 | 46 | 2 9 | 20 | 5 6 | 0 | | 1 | 2 9 | 7 | 1 9 | 2 | 1 6 | 0 | |
| 50–59 | 1,446 | 3 8 | 57 5 | 1,116 | 3 9 | 244 | 3 4 | 52 | 3 3 | 12 | 3 4 | 6 | 5 8 | 0 | | 13 | 3 6 | 3 | 2 4 | 0 | |
| 60–69 | 1,012 | 2 6 | 60 1 | 828 | 2 9 | 144 | 2 0 | 17 | 1 1 | 10 | 2 8 | 1 | 1 0 | 0 | | 9 | 2 5 | 2 | 1 6 | 1 | 5 9 |
| 70–79 | 862 | 2 3 | 62 4 | 695 | 2 5 | 136 | 1 9 | 17 | 1 1 | 8 | 2 2 | 2 | 1 9 | 0 | | 1 | 0 3 | 3 | 2 4 | 0 | |
| 80–89 | 623 | 1 6 | 64 0 | 509 | 1 8 | 96 | 1 3 | 10 | 0 6 | 3 | 0 8 | 0 | | 0 | | 4 | 1 1 | 1 | 0 8 | 0 | |
| 90–99 | 329 | 0 9 | 64 9 | 281 | 1 0 | 36 | 0 5 | 4 | 0 3 | 4 | 1 1 | 0 | | 0 | | 2 | 0 5 | 1 | 0 8 | 1 | 5 9 |
| 100–109 | 1,487 | 3 9 | 68 8 | 1,092 | 3 9 | 306 | 4 2 | 62 | 3 9 | 7 | 2 0 | 2 | 1 9 | 2 | 5 9 | 10 | 2 8 | 6 | 4 9 | 0 | |
| 110–119 | 236 | 0 6 | 69 4 | 205 | 0 7 | 30 | 0 4 | 0 | | 1 | 0 3 | 0 | | 0 | | 0 | | 0 | | 0 | |
| 120–129 | 514 | 1 3 | 70 7 | 393 | 1 4 | 82 | 1 1 | 28 | 1 8 | 7 | 2 0 | 1 | 1 0 | 0 | | 0 | | 3 | 2 4 | 0 | |
| 130–139 | 232 | 0 6 | 71 3 | 191 | 0 7 | 36 | 0 5 | 2 | 0 1 | 1 | 0 3 | 0 | | 0 | | 0 | | 0 | | 2 | 11 7 |
| 140–149 | 186 | 0 5 | 71 8 | 163 | 0 6 | 17 | 0 2 | 3 | 0 2 | 2 | 0 5 | 0 | | 0 | | 1 | 0 3 | 0 | | 0 | |
| 150–159 | 653 | 1 7 | 73 5 | 499 | 1 8 | 136 | 1 9 | 8 | 0 5 | 2 | 0 5 | 0 | | 1 | 2 9 | 1 | 0 3 | 5 | 4 1 | 1 | 5 9 |
| 160–169 | 150 | 0 4 | 73 9 | 110 | 0 4 | 27 | 0 4 | 7 | 0 4 | 1 | 0 3 | 0 | | 0 | | 5 | 1 4 | 0 | | 0 | |
| 170–179 | 175 | 0 5 | 74 4 | 149 | 0 5 | 20 | 0 3 | 5 | 0 3 | 0 | | 0 | | 0 | | 0 | | 1 | 0 8 | 0 | |
| 180–189 | 165 | 0 4 | 74 8 | 143 | 0 5 | 19 | 0 3 | 1 | 0 1 | 0 | | 0 | | 0 | | 2 | 0 5 | 0 | | 0 | |
| 190–199 | 53 | 0 1 | 74 9 | 46 | 0 2 | 6 | 0 1 | 1 | 0 1 | 0 | | 0 | | 0 | | 0 | | 0 | | 0 | |
| 200–299 | 1,973 | 5 2 | 80 1 | 1,504 | 5 3 | 398 | 5 5 | 38 | 2 4 | 12 | 3 4 | 5 | 4 8 | 4 | 11 8 | 4 | 1 1 | 7 | 5 7 | 1 | 5 9 |
| 300–399 | 1,286 | 3 4 | 83 5 | 960 | 3 4 | 284 | 3 9 | 20 | 1 3 | 5 | 1 4 | 1 | 1 0 | 3 | 8 9 | 4 | 1 1 | 8 | 6 6 | 1 | 5 9 |
| 400–499 | 826 | 2 2 | 85 7 | 616 | 2 2 | 178 | 2 5 | 21 | 1 3 | 6 | 1 7 | 2 | 1 9 | 1 | 2 9 | 1 | 0 3 | 1 | 0 8 | 0 | |
| 500–599 | 846 | 2 2 | 87 9 | 627 | 2 2 | 183 | 2 5 | 22 | 1 4 | 5 | 1 4 | 1 | 1 0 | 1 | 2 9 | 2 | 0 5 | 5 | 4 1 | 0 | |
| 600–699 | 406 | 1 1 | 89 0 | 301 | 1 1 | 91 | 1 3 | 12 | 0 8 | 0 | | 0 | | 1 | 2 9 | 0 | | 1 | 0 8 | 0 | |
| 700–799 | 342 | 0 9 | 89 9 | 267 | 0 9 | 68 | 0 9 | 4 | 0 3 | 2 | 0 5 | 0 | | 0 | | 0 | | 1 | 0 8 | 0 | |
| 800–899 | 281 | 0 7 | 90 6 | 204 | 0 7 | 69 | 1 0 | 6 | 0 4 | 0 | | 1 | 1 0 | 0 | | 0 | | 1 | 0 8 | 0 | |
| 900–999 | 131 | 0 3 | 90 9 | 95 | 0 3 | 28 | 0 4 | 3 | 0 2 | 1 | 0 3 | 0 | | 1 | 2 9 | 0 | | 3 | 2 4 | 0 | |
| 1,000–1,999 | 1,408 | 3 7 | 94 6 | 1,002 | 3 5 | 362 | 5 0 | 22 | 1 4 | 8 | 2 2 | 1 | 1 0 | 5 | 14 8 | 3 | 0 8 | 5 | 4 1 | 0 | |
| 2,000–2,999 | 710 | 1 9 | 96 5 | 468 | 1 7 | 215 | 3 0 | 13 | 0 8 | 7 | 2 0 | 1 | 1 0 | 0 | | 0 | | 6 | 4 9 | 0 | |
| 3,000–3,999 | 373 | 1 0 | 97 5 | 255 | 0 9 | 111 | 1 5 | 3 | 0 2 | 1 | 0 3 | 1 | 1 0 | 1 | 2 9 | 0 | | 1 | 0 8 | 0 | |
| 4,000–4,999 | 215 | 0 6 | 98 1 | 147 | 0 5 | 60 | 0 8 | 4 | 0 3 | 2 | 0 5 | 0 | | 1 | 2 9 | 0 | | 1 | 0 8 | 0 | |
| 5,000–9,999 | 561 | 1 5 | 99 6 | 348 | 1 2 | 196 | 2 7 | 8 | 0 5 | 5 | 1 4 | 0 | | 1 | 2 9 | 0 | | 3 | 2 4 | 0 | |
| Over 9,999 | 141 | 0 4 | 100 0 | 103 | 0 4 | 32 | 0 4 | 4 | 0 3 | 0 | | 0 | | 0 | | 0 | | 2 | 1 6 | 0 | |

[1] See Glossary for definitions of terms

[2] Based on revised situation count which absorbs companion cases, cross-filings, and multiple filings as compared to situations shown in Charts 1 and 2 of Chapter I, which are based on single and multiple filings of same type of case

## Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1981 and Cumulative Totals, Fiscal Years 1936–1981

| | Fiscal year 1981 | | | | | | | | | July 5, 1935–Sept 30, 1981 | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of proceedings [1] | | | | | Percentages | | | | | |
| | Total | Vs. employers only | Vs unions only | Vs both employers and unions | Board dismissal [2] | Vs employers only | Vs unions only | Vs both employers and unions | Board dismissal | Number | Percent |
| Proceedings decided by U S courts of appeals | 515 | 452 | 51 | 10 | 2 | | | | | | |
| On petitions for review and/or enforcement | 479 | 421 | 46 | 10 | 2 | 100 0 | 100 0 | 100 0 | 100 0 | 8,145 | 100 0 |
| Board orders affirmed in full | 306 | 263 | 36 | 7 | 0 | 62 5 | 78 3 | 70 0 | .. | 5,176 | 63 5 |
| Board orders affirmed with modification | 67 | 63 | 4 | 0 | 0 | 15 0 | 8 7 | | | 1,262 | 15 5 |
| Remanded to Board | 29 | 24 | 3 | 1 | 1 | 5 7 | 6 5 | 10 0 | 50 0 | 373 | 4 6 |
| Board orders partially affirmed and partially remanded | 11 | 11 | 0 | 0 | 0 | 2 6 | | | | 131 | 1 6 |
| Board orders set aside | 66 | 60 | 3 | 2 | 1 | 14 2 | 6 5 | 20 0 | 50 0 | 1,203 | 14 8 |
| On petitions for contempt | 36 | 31 | 5 | 0 | 0 | 100 0 | 100 0 | | | | |
| Compliance after filing of petition, before court order. | 11 | 10 | 1 | 0 | 0 | 32 3 | 20 0 | | .. | | |
| Court orders holding respondent in contempt | 16 | 13 | 3 | 0 | 0 | 41 9 | 60.0 | | | | ... |
| Court order directing compliance, without contempt adjudication | 5 | 5 | 0 | 0 | 0 | 16 1 | .. | | | | |
| Contempt petitions withdrawn without compliance | 2 | 2 | 0 | 0 | 0 | 6 5 | | | | | |
| Court order denying petition. | 2 | 1 | 1 | 0 | 0 | 3 2 | 20 0 | | | | |
| Proceedings decided by U S Supreme Court | 2 | 2 | 0 | 0 | 0 | 100 0 | | | | 231 | 100 0 |
| Board orders affirmed in full | 1 | 1 | 0 | 0 | 0 | 50 0 | | | | 138 | 59 8 |
| Board orders affirmed with modification | 0 | 0 | 0 | 0 | 0 | | | | | 17 | 7 4 |
| Board orders set aside | 1 | 1 | 0 | 0 | 0 | 50 0 | | | | 38 | 16 5 |
| Remanded to Board | 0 | 0 | 0 | 0 | 0 | | | | | 19 | 8 2 |
| Remanded to court of appeals. | 0 | 0 | 0 | 0 | 0 | | | | | 16 | 6.9 |
| 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 for definitions of terms

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

## Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1981, Compared With 5-Year Cumulative Totals, Fiscal Years 1976 Through 1980 [1]

| Circuit courts of appeals (headquarters) | Total fiscal year 1981 | Total fiscal years 1976–1980 | Affirmed in full | | | | Modified | | | | Remanded in full | | | | Affirmed in part and remanded in part | | | | Set aside | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Fiscal Year 1981 | | Cumulative fiscal years 1976–1980 | | Fiscal Year 1981 | | Cumulative fiscal years 1976–1980 | | Fiscal Year 1981 | | Cumulative fiscal years 1976–1980 | | Fiscal Year 1981 | | Cumulative fiscal years 1976–1980 | | Fiscal Year 1981 | | Cumulative fiscal years 1976–1980 | |
| | | | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| Total all circuits | 479 | 1,653 | 306 | 63 9 | 1,104 | 66 8 | 67 | 14 0 | 184 | 11 1 | 29 | 6 0 | 86 | 5 2 | 11 | 2 3 | 31 | 1 9 | 66 | 13 8 | 248 | 15 0 |
| 1 Boston, Mass | 26 | 82 | 19 | 73 1 | 52 | 63 4 | 5 | 19 2 | 13 | 15 8 | 0 | | 3 | 3 7 | 0 | | 3 | 3 7 | 2 | 7 7 | 11 | 13 4 |
| 2 New York, N Y | 27 | 140 | 18 | 66 7 | 91 | 65 0 | 5 | 18 5 | 17 | 12 1 | 1 | 3 7 | 7 | 5 0 | 0 | | 4 | 2 9 | 3 | 11 1 | 21 | 15 0 |
| 3 Philadelphia, Pa | 54 | 144 | 36 | 66 6 | 101 | 70 1 | 3 | 5 6 | 15 | 10 4 | 4 | 7 4 | 10 | 7 0 | 3 | 5 6 | 1 | 0 7 | 8 | 14 8 | 17 | 11 8 |
| 4 Richmond, Va | 42 | 107 | 21 | 50 0 | 70 | 65 4 | 8 | 19 0 | 16 | 14 9 | 1 | 2 4 | 8 | 7 5 | 0 | | 2 | 1 9 | 12 | 28 6 | 11 | 10.3 |
| 5 New Orleans, La. | 55 | 227 | 35 | 63 7 | 152 | 67 0 | 6 | 10 9 | 32 | 14 1 | 2 | 3 6 | 8 | 3 5 | 2 | 3 6 | 5 | 2 2 | 10 | 18 2 | 30 | 13 2 |
| 6 Cincinnati, Ohio | 80 | 198 | 50 | 62 5 | 133 | 67 2 | 14 | 17 5 | 15 | 7 6 | 3 | 3 7 | 9 | 4 5 | 0 | | 4 | 2 0 | 13 | 16 3 | 37 | 18 7 |
| 7 Chicago, Ill | 30 | 175 | 14 | 46 7 | 105 | 60 0 | 7 | 23 3 | 26 | 14 9 | 0 | | 10 | 5 7 | 0 | | 1 | 0 5 | 9 | 30 0 | 33 | 18 9 |
| 8 St Louis, Mo | 30 | 119 | 22 | 73 3 | 79 | 66 4 | 4 | 13 4 | 16 | 13 5 | 1 | 3 3 | 1 | 0 8 | 0 | | 3 | 2 5 | 3 | 10 0 | 20 | 16 8 |
| 9 San Francisco, Calif | 90 | 310 | 60 | 66 7 | 221 | 71 3 | 11 | 12 2 | 21 | 6.8 | 12 | 13 3 | 18 | 5 8 | 2 | 2.2 | 3 | 1 0 | 5 | 5 6 | 47 | 15 1 |
| 10. Denver, Colo | 17 | 58 | 12 | 70 6 | 35 | 60 3 | 1 | 5 9 | 7 | 12 1 | 3 | 17 6 | 3 | 5 2 | 1 | 5 9 | 2 | 3 4 | 0 | | 11 | 19 0 |
| Washington, D C. | 28 | 93 | 19 | 67 9 | 65 | 69 9 | 3 | 10 7 | 6 | 6 4 | 2 | 7 1 | 9 | 9 7 | 3 | 10 7 | 3 | 3 2 | 1 | 3 6 | 10 | 10 8 |

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

## Table 20.—Injunction Litigation Under Section 10(e), 10(j), and 10 (l), Fiscal Year 1981

| | Total proceedings | Injunction proceedings | | Total dispositions | Disposition of injunctions | | | | | | Pending in district court Sept 30, 1981 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Pending in district court Oct 1, 1980 | Filed in district court fiscal year 1981 | | Granted | Denied | Settled | Withdrawn | Dismissed | Inactive | |
| Under Sec 10(e) Total | [1] 8 | 0 | 8 | 8 | 7 | 0 | 0 | 1 | 0 | 0 | 0 |
| Under Sec 10(j) Total | 58 | 13 | 45 | 49 | 21 | 4 | 16 | 5 | 2 | 1 | 9 |
| 8(a)(1) | 2 | 0 | 2 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(a)(1)(3) | 8 | 1 | 7 | 5 | 2 | 1 | 2 | 0 | 0 | 0 | 3 |
| 8(a)(1)(4) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(a)(1)(5) | 7 | 1 | 6 | 6 | 4 | 1 | 0 | 0 | 0 | 1 | 1 |
| 8(a)(1)(3)(4) | 3 | 1 | 2 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| 8(a)(1)(3)(5) | 28 | 8 | 20 | 25 | 8 | 2 | 10 | 4 | 1 | 0 | 3 |
| 8(a)(1)(3)(4)(5) | 3 | 0 | 3 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| 8(b)(1) | 4 | 1 | 3 | 4 | 2 | 0 | 1 | 0 | 1 | 0 | 0 |
| 8(b)(2) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(3) | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Under Sec 10(l) Total | 158 | 21 | 137 | 141 | 59 | 8 | 60 | 4 | 9 | 1 | 17 |
| 8(b)(4)(A) | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(4)(A), 8(e) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B) | 88 | 10 | 78 | 77 | 34 | 5 | 30 | 3 | 5 | 0 | 11 |
| 8(b)(4)(B)(C)(D), 8(b)(7)(A) | 1 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B)(D) | 9 | 0 | 9 | 7 | 2 | 0 | 4 | 0 | 1 | 0 | 2 |
| 8(b)(4)(B); 8(b)(7)(B) | 1 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B), 8(b)(7)(C) | 9 | 3 | 6 | 9 | 2 | 0 | 7 | 0 | 0 | 0 | 0 |
| 8(b)(4)(B), 8(e) | 2 | 0 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(4)(D) | 20 | 2 | 18 | 19 | 8 | 2 | 7 | 0 | 1 | 1 | 1 |
| 8(b)(7)(A) | 5 | 3 | 2 | 5 | 4 | 0 | 1 | 0 | 0 | 0 | 0 |
| 8(b)(7)(B) | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| 8(b)(7)(C) | 19 | 1 | 18 | 18 | 6 | 1 | 8 | 1 | 2 | 0 | 1 |
| 8(b)(7)(B)(C) | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |

[1] In courts of appeals.

## Table 21.—Miscellaneous Litigation Involving NLRB; Outcome of Proceedings in Which Court Decision Issued in Fiscal Year 1981

| Type of litigation | Number of proceedings | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Total—all courts | | | In courts of appeals | | | In district courts | | |
| | Number decided | Court determination | | Number decided | Court determination | | Number decided | Court determination | |
| | | Upholding Board position | Contrary to Board position | | Upholding Board position | Contrary to Board position | | Upholding Board position | Contrary to Board position |
| Total—all types | 47 | 42 | 5 | 13 | 12 | 1 | 34 | 30 | 4 |
| NLRB-initiated actions or interventions | 17 | 16 | 1 | 6 | 6 | 0 | 11 | 10 | 1 |
| To enforce subpoena | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To defend Board's jurisdiction | 4 | 4 | 0 | 3 | 3 | 0 | 1 | 1 | 0 |
| To prevent conflict between NLRA and Bankruptcy Code | 13 | 12 | 1 | 3 | 3 | 0 | 10 | 9 | 1 |
| Action by other parties | 30 | 26 | 4 | 7 | 6 | 1 | 23 | 20 | 3 |
| To review non-final orders | 3 | 3 | 0 | 3 | 3 | 0 | 0 | 0 | 0 |
| To restrain NLRB from | 7 | 6 | 1 | 0 | 0 | 0 | 7 | 6 | 1 |
| Proceeding in R case | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 | 0 |
| Proceeding in unfair labor practice case | 5 | 5 | 0 | 0 | 0 | 0 | 5 | 5 | 0 |
| Enforcing subpoena | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 1 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| To compel NLRB to | 20 | 17 | 3 | 4 | 3 | 1 | 16 | 14 | 2 |
| Issue complaint | 9 | 9 | 0 | 1 | 1 | 0 | 8 | 8 | 0 |
| Take action in R Case | 5 | 5 | 0 | 1 | 1 | 0 | 4 | 4 | 0 |
| Comply with Freedom of Information Act [1] | 6 | 3 | 3 | 2 | 1 | 1 | 4 | 2 | 2 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

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

## Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1981 [1]

| | Total | Number of cases | | | |
|---|---|---|---|---|---|
| | | Identification of petitioner | | | |
| | | Employer | Union | Courts | State boards |
| Pending October 1, 1980 | 0 | 0 | 0 | 0 | 0 |
| Received fiscal 1981 | 7 | 5 | 2 | 0 | 0 |
| On docket fiscal 1981 | 7 | 5 | 2 | 0 | 0 |
| Closed fiscal 1981 | 7 | 5 | 2 | 0 | 0 |
| Pending Sept 30, 1981 | 0 | 0 | 0 | 0 | 0 |

[1] See Glossary for definitions of terms

## Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1981 [1]

| Action taken | Total cases closed |
|---|---|
| | 7 |
| Board would assert jurisdiction | 5 |
| Board would not assert jurisdiction | 0 |
| Unresolved because of insufficient evidence submitted | 0 |
| Dismissed | 1 |
| Withdrawn. | 1 |

[1] See Glossary for definitions of terms

## Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1981; and Age of Cases Pending Decision, September 30, 1981

| Stage | Median days |
|---|---|
| I Unfair labor practice cases | |
| A Major stages completed — | |
| 1 Filing of charge to issuance of complaint | 44 |
| 2 Complaint to close of hearing | 173 |
| 3 Close of hearing to issuance of administrative law judge's decision | 139 |
| 4 Administrative law judge's decision to issuance of Board decision | 120 |
| 5 Filing of charge to issuance of Board decision | 490 |
| B Age [1] of cases pending administrative law judge's decision, September 30, 1981 | 421 |
| C Age [1] of cases pending Board decision, September 30, 1981 | 534 |
| II Representation cases | |
| A Major stages completed — | |
| 1 Filing of petition to notice of hearing issued | 8 |
| 2 Notice of hearing to close of hearing | 12 |
| 3 Close of hearing to — | |
| Board decision issued | 209 |
| Regional director's decision issued | 19 |
| 4 Filing of petition to — | |
| Board decision issued | 215 |
| Regional director's decision issued | 41 |
| B Age [2] of cases pending Board decision, September 30, 1981 | 251 |
| C Age [2] of cases pending Regional Director's decision, September 30, 1981 | 62 |

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

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