SIXTY-FIRST

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1996

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NATIONAL LABOR RELATIONS BOARD

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[1]Recess appointment effective February 6, 1996.
[2]Recess term expired January 3, 1996.
[3]Recess appointment effective September 8, 1996, to replace Charles I. Cohen whose term expired August 27, 1996.
[4]Effective December 8, 1995.
[5]Limited term appointment June 1, 1996, to replace Berton B. Subrin who retired May 31, 1996.
[6]Appointment effective July 5, 1996, to replace David S. Davidson.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., August 29, 1997.

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Sixty-First Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1996.

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

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

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Operations In Fiscal Year 1996

A. Summary

The National Labor Relations Board, an independent Federal agency, initiates no cases: it acts only on those cases brought before it. All proceedings originate from filings by the major segment of the public covered by the National Labor Relations Act—employees, labor unions, and private employers who are engaged in interstate commerce. During fiscal year 1996, 38,775 cases were received by the Board.

The public filed 33,107 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 5368 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 300 amendment to certification and unit clarification cases.

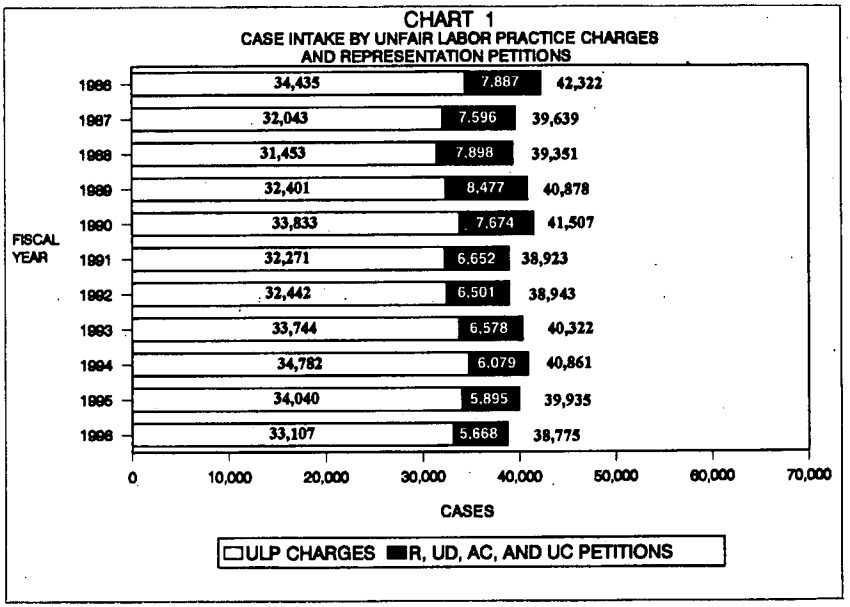
After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

At the end of fiscal year 1996, the five-member Board was composed of Chairman William B. Gould IV and Members Margaret A. Browning, Sarah M. Fox, and John E. Higgins, Jr. Frederick L. Feinstein served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1996 include:

- The NLRB conducted 3277 conclusive representation elections among some 190,338 employee voters, with workers choosing labor unions as their bargaining agents in 44.8 percent of the elections.
- Although the Agency closed 35,165 cases, 35,831 cases were pending in all stages of processing at the end of the fiscal year. The closings included 29,485 cases involving unfair labor practice charges and 5280 cases affecting employee representation and 400 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 10,402.

- The amount of $74,614,307 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 2760 offers of job reinstatements, with 2041 acceptances.
- Acting on the results of professional staff investigations, which produced a reasonable cause to believe unfair labor practices had been committed, Regional Offices of the NLRB issued 3154 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 442 decisions.



NLRB Administration

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

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

The purpose of the Nation's primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for

protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

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

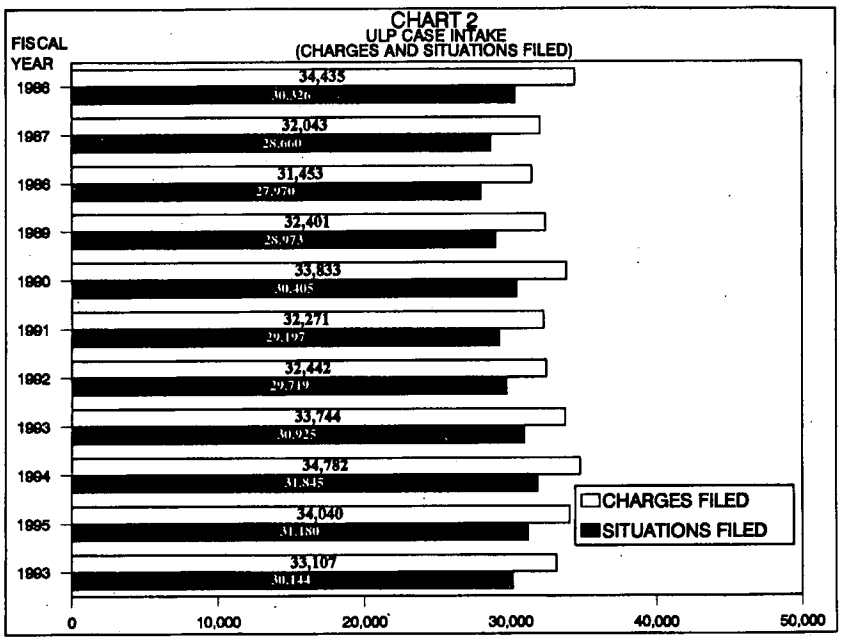
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1996.

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

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

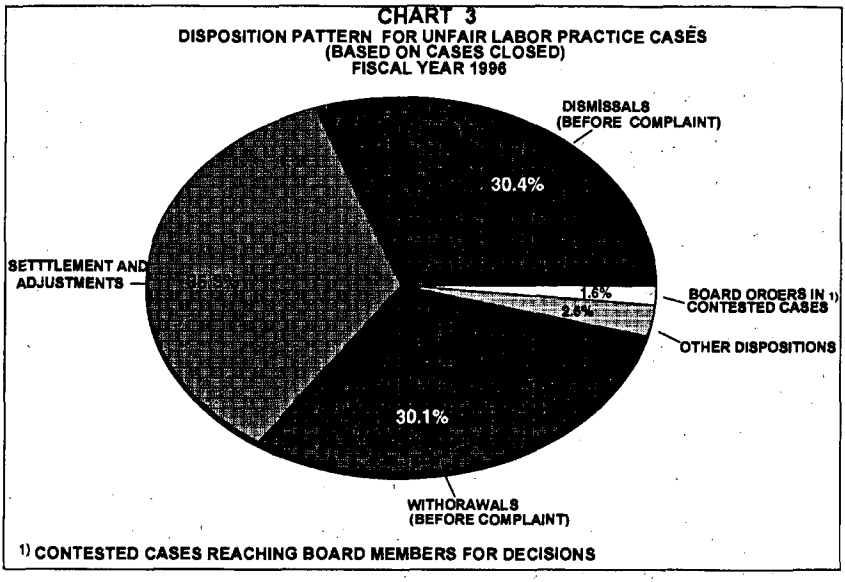
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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



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

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



B. Operational Highlights

1. Unfair Labor Practices

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

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

Approximately 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 77 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1996, 33,107 unfair labor practice charges were filed with the NLRB, an increase of about 3 percent from the 34,040 filed in fiscal year 1995. In situations in which related charges are counted

as a single unit, there was a 3.3-percent decrease from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 25,752 cases, about 2 percent less than the 26,244 of 1995. Charges against unions decreased about 6 percent to 7311 from 7776 in 1995.

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

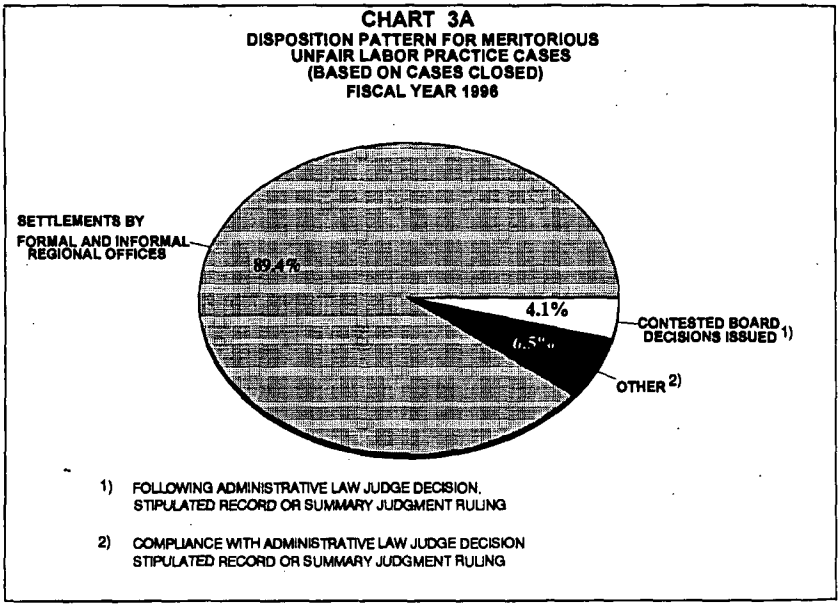
The majority of all charges against employers alleged illegal discharge or other discrimination against employees. There were 13,305 such charges in 56 percent of the total charges that employers committed violations.

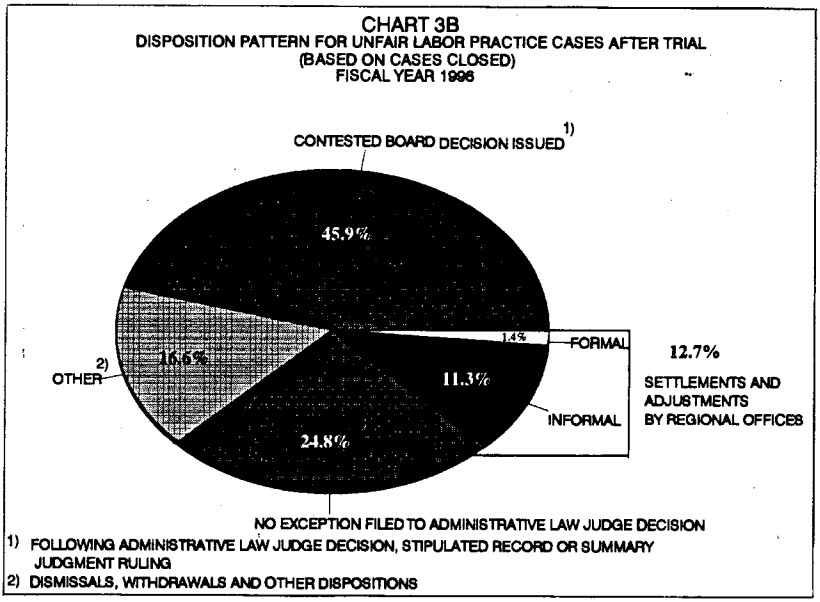
Refusal to bargain was the second largest category of allegations against employers, comprising 10,233 charges, in about 44 percent of the total charges. (Table 2.)

Of charges against unions, the majority (6208) alleged illegal restraint and coercion of employees, 78 percent. There were 706 charges against unions for illegal secondary boycotts and jurisdictional disputes, an increase of about 6 percent from the 667 of 1995.

There were 888 charges (a little more than 11 percent) of illegal union discrimination against employees, a decrease of 22 percent from the 1141 of 1995. There were 85 charges that unions picketed illegally for recognition or for organizational purposes, compared with 98 charges in 1995. (Table 2.)

In charges filed against employers, unions led with 76 percent of the total. Unions filed 19,663 charges and individuals filed 6089.



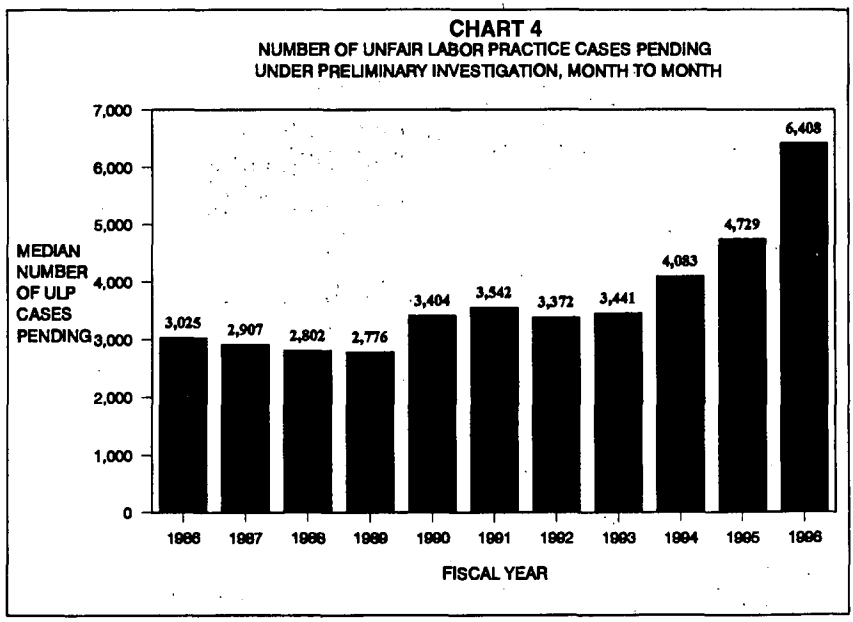


Concerning charges against unions, 5680 were filed by individuals, or 78 percent of the total of 7311. Employers filed 1486 and other unions filed the 145 remaining charges.

In fiscal year 1996, 29,485 unfair labor practice cases were closed. About 96 percent were closed by NLRB Regional Offices, virtually the same as in 1995. During the fiscal year, 35.3 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.1 percent were withdrawn before complaint, and 30.4 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1996, 39.6 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 1996, precomplaint settlements and adjustments were achieved in 7506 cases, or 25.4 percent of the charges. In 1995, the percentage was 22.8. (Chart 5.)

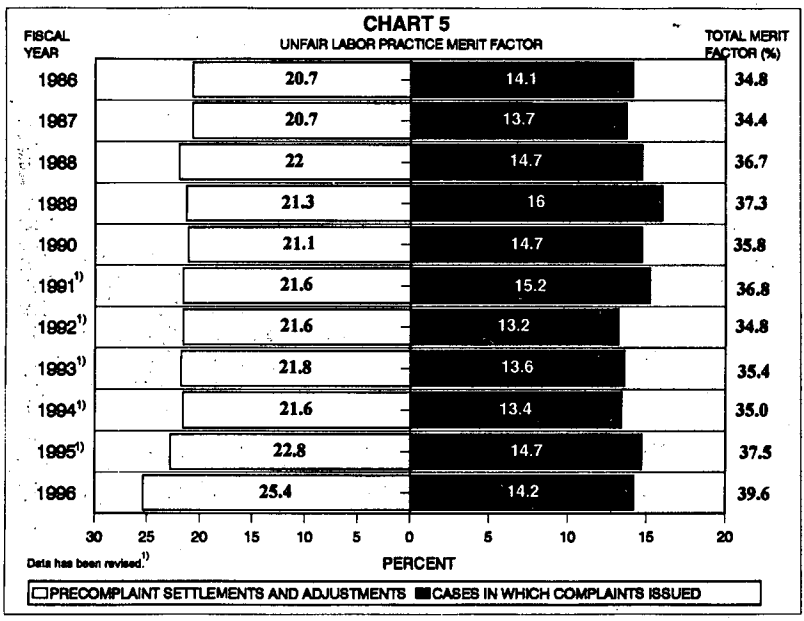


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1996, 3154 complaints were issued, compared with 3618 in the preceding fiscal year. (Chart 6.)

Of complaints issued, 92.6 percent were against employers and 7.4 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 82 days. The 82 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6.)

Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 442 decisions in 468 cases during 1996. They conducted 406 initial hearings, and 19 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

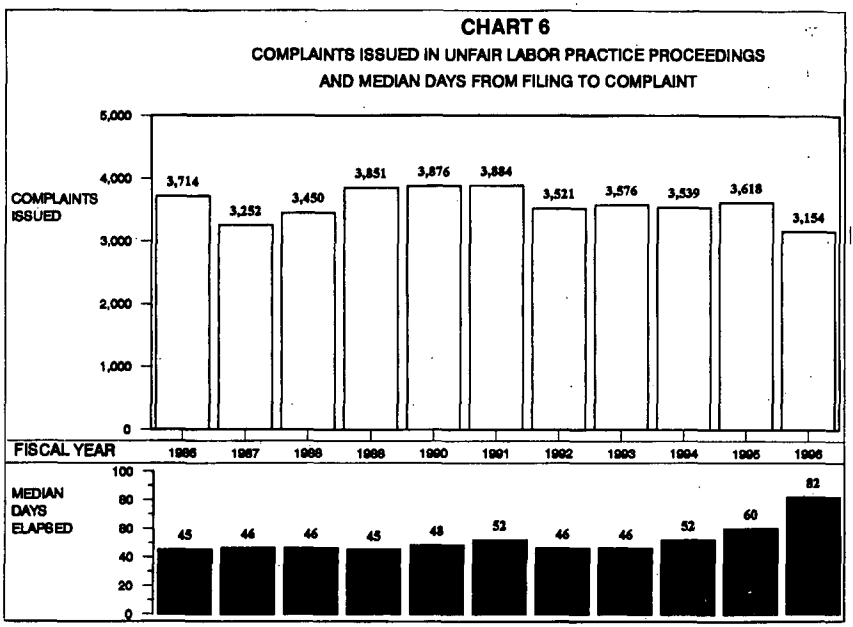


By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 1996, the Board issued 502 decisions in unfair labor practice cases contested as to the law or the facts—445 initial decisions, 26 backpay decisions, 8 determinations in jurisdictional work dispute cases, and 23 decisions on supplemental matters. Of the 445 initial decision cases, 412 involved charges filed against employers and 33 had union respondents.

For the year, the NLRB awarded backpay of $73.5 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $1,113,523. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 2760 employees were offered reinstatement, and about 74 percent accepted.

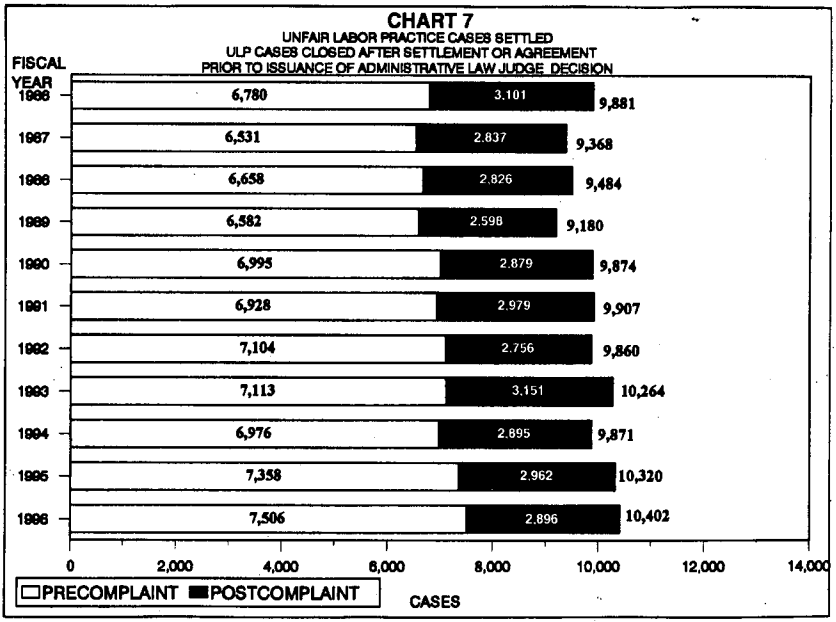
At the end of fiscal 1996, there were 33,351 unfair labor practice cases being processed at all stages by the NLRB, compared to 29,729 cases pending at the beginning of the year.



2. Representation Cases

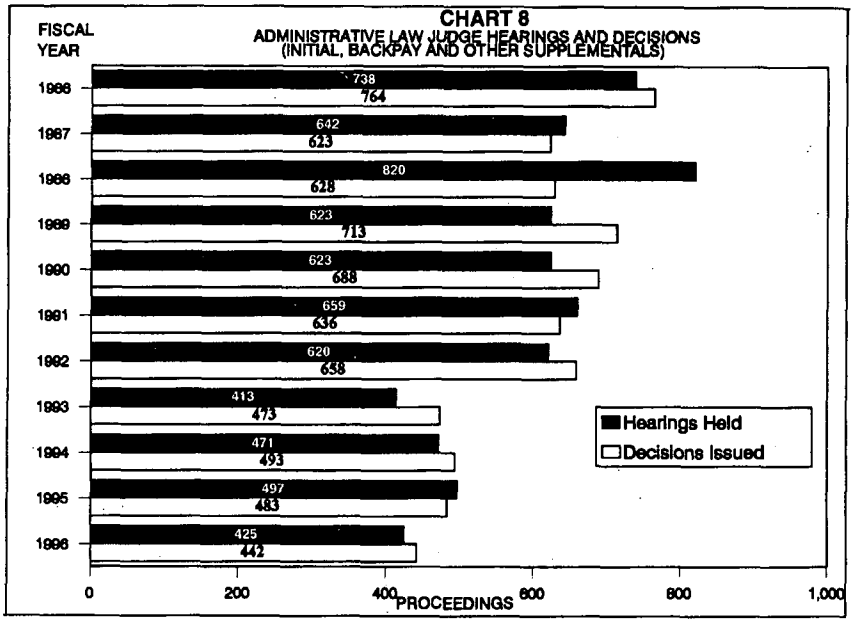
The NLRB received 5668 representation and related case petitions in fiscal 1996, compared to 5895 such petitions a year earlier.

The 1996 total consisted of 4308 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 947 petitions to decertify existing bargaining agents; 113 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 278 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 22 amendment of certification petitions were filed.



During the year, 5680 representation and related cases were closed, compared to 6263 in fiscal 1995. Cases closed included 4296 collective-bargaining election petitions; 984 decertification election petitions; 118 requests for deauthorization polls; and 282 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 12.4 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 36 cases where the Board directed elections after transfers of cases from the Regional Office. (Table 10.) There were two cases that resulted in expedited elections pursuant to the Act's 8(b)(7)(C) provisions pertaining to picketing.

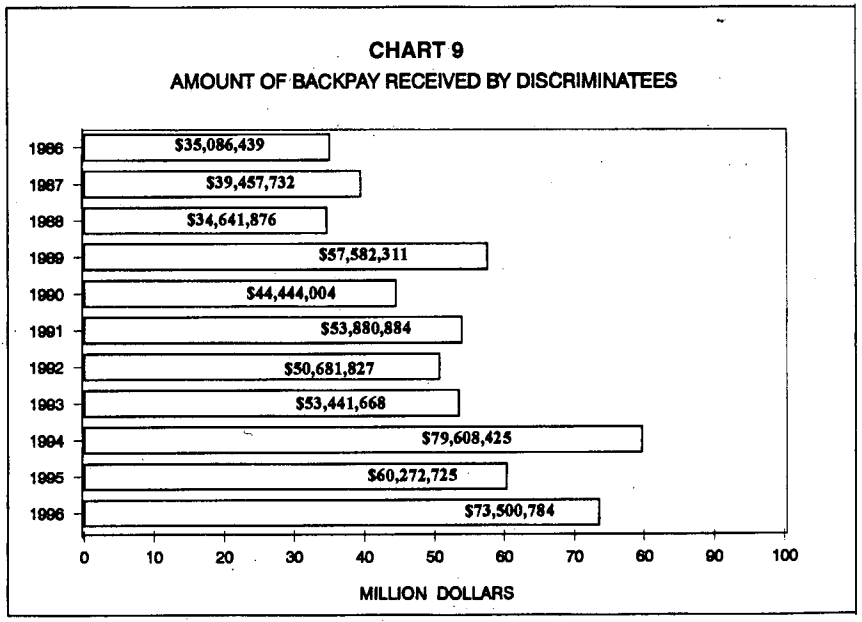


3. Elections

The NLRB conducted 3277 conclusive representation elections in cases closed in fiscal 1996, compared to the 3399 such elections a year earlier. Of 219,073 employees eligible to vote, 190,338 cast ballots, virtually 9 of every 10 eligible.

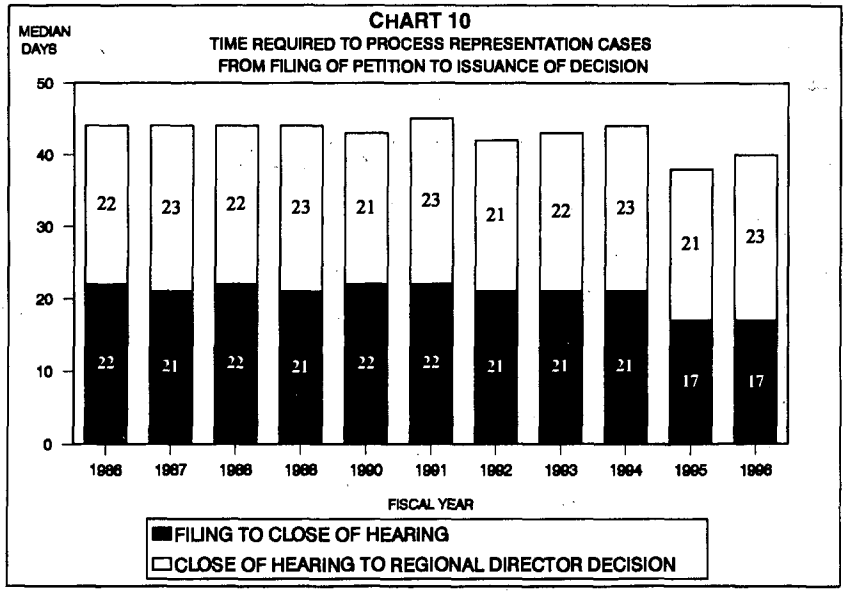
Unions won 1469 representation elections, or 44.8 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 82,947 workers. The employee vote over the course of the year was 90,816 for union representation and 99,522 against.

The representation elections were in two categories—the 2792 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 485 decertification elections determining whether incumbent unions would continue to represent employees.



There were 3170 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1384, or 43.7 percent. In these elections, 79,314 workers voted to have unions as their agents, while 96,253 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 69,129 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 107 multiunion elections, in which 2 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 1 of the unions in 85 elections, or 79.4 percent.

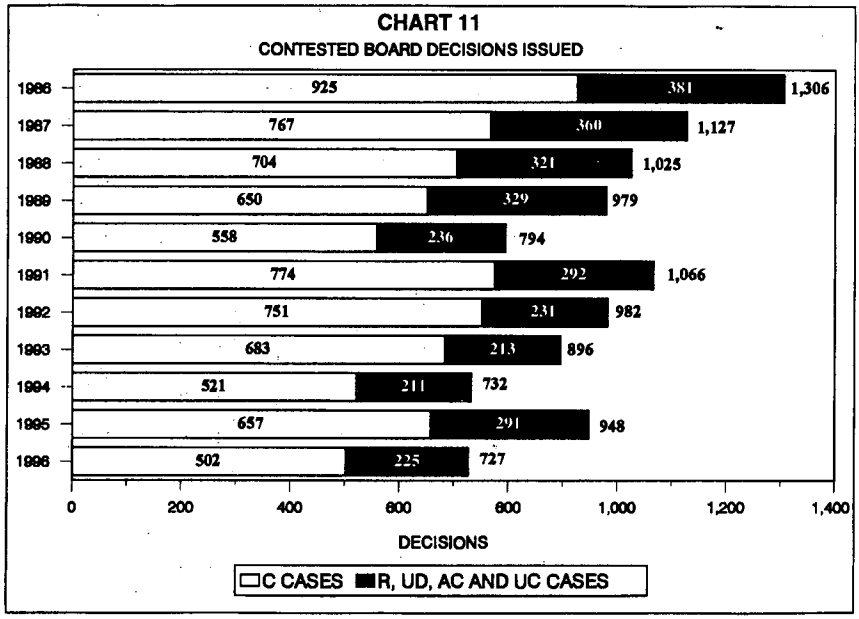


As in previous years, labor organization results brought continued representation by unions in 149 elections, or 30.7 percent, covering 12,132 employees. Unions lost representation rights for 12,879 employees in 336 elections, or 69.3 percent. Unions won in bargaining units averaging 81 employees, and lost in units averaging 38 employees. (Table 13.)

Besides the conclusive elections, there were 193 inconclusive representation elections during fiscal year 1996 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 25 referendums, or 50.0 percent, while they maintained the right in the other 25 polls which covered 1927 employees. (Table 12.)

For all types of elections in 1996, the average number of employees voting, per establishment, was 58, compared to 56 in 1995. A little more than 72 percent of the collective-bargaining and decertification elections involved 59 or fewer employees. (Tables 11 and 17.)



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1089 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1371 decisions rendered during fiscal year 1995.

A breakdown of Board decisions follows:

Total Board decisions		**1,089**
Contested decisions		**727**
Unfair labor practice decisions		502
Initial (includes those based on stipulated record)	445	
Supplemental	23	
Backpay	26	
Determinations in jurisdictional disputes	8	
Representation decisions		222

After transfer by Regional Directors for initial decision	5		
After review of Regional Director decisions	47		
On objections and/or challenges	170		
Other decisions		3	
Clarification of bargaining unit	2		
Amendment to certification	0		
Union-deauthorization	1		
Noncontested decisions			**362**
Unfair labor practice	177		
Representation	183		
Other	2		

The majority (67 percent) of Board decisions resulted from cases contested by the parties as to the facts and/or application of the law. (Tables 3A, 3B, and 3C.)

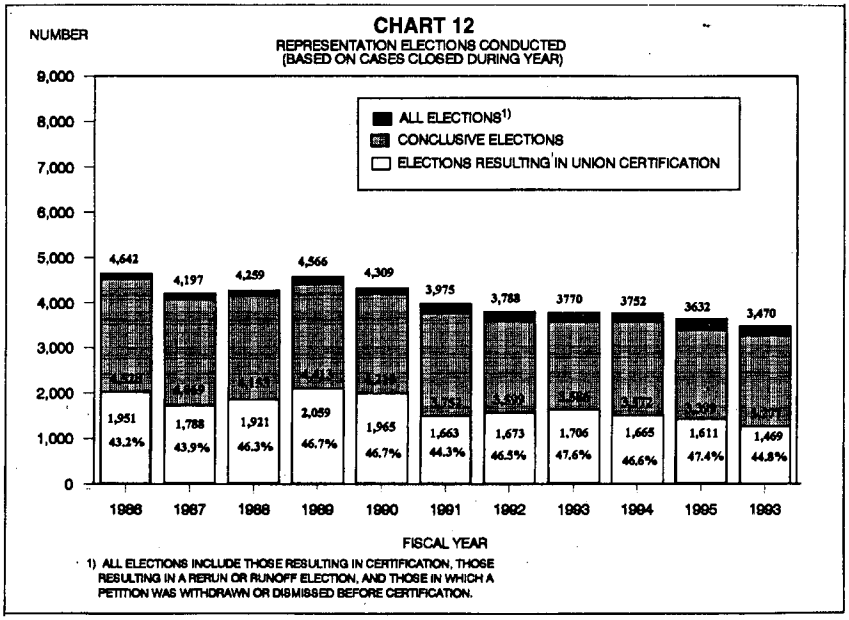
In fiscal 1996 about 4 percent of all meritorious charges and about 46 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take twice as long to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 682 decisions in fiscal 1996, compared to 853 in 1995. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

With a leveling in case filings alleging unfair labor practices, administrative law judges issued 442 decisions and conducted 425 hearings. (Chart 8 and Table 3A.)

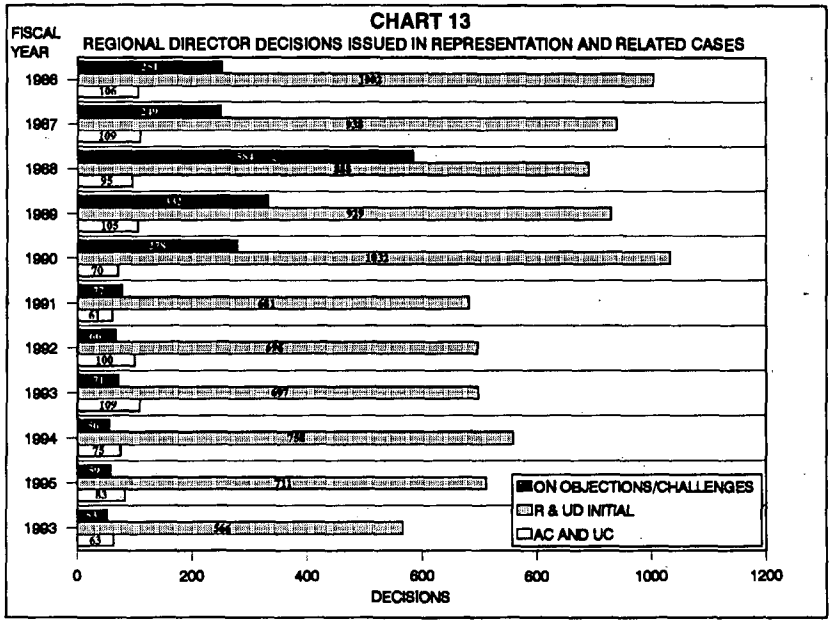


5. Court Litigation

a. Appellate Courts

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

In fiscal year 1996, 147 cases involving the NLRB were decided by the United States courts of appeals compared to 120 in fiscal year 1995. Of these, 83.7 percent were won by NLRB in whole or in part compared to 72.5 percent in fiscal year 1995; 4.1 percent were remanded entirely compared to 7.5 percent in fiscal year 1995; and 12.2 percent were entire losses compared to 20.0 percent in fiscal year 1995.

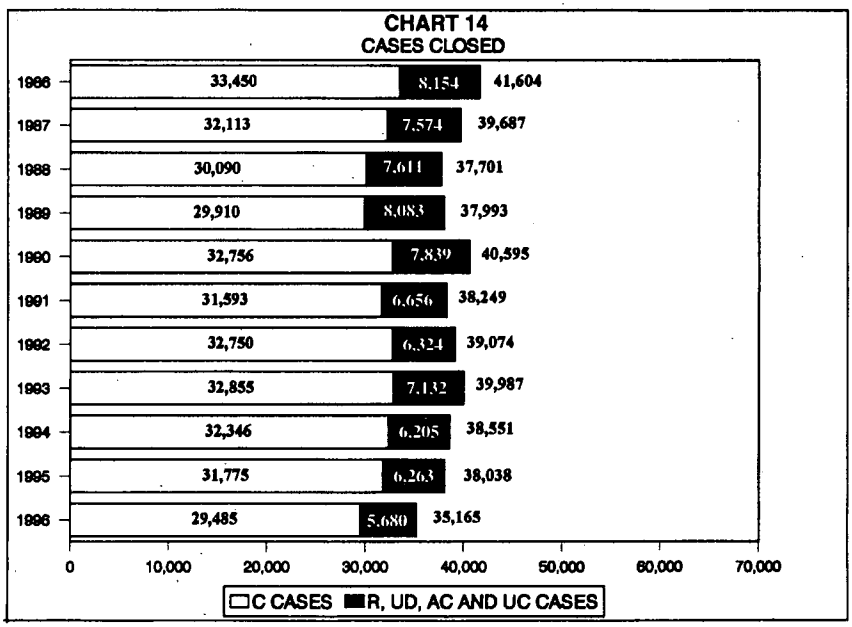


b. The Supreme Court

In fiscal 1996, there were three Board cases decided by the Supreme Court. The Board did not participate as amicus in any cases in fiscal 1996.

c. Contempt Actions

In fiscal 1996, 86 cases were referred to the contempt section for consideration of contempt action. There were 26 contempt proceedings instituted. There were 16 contempt adjudications awarded in favor of the Board; 5 cases in which the court directed compliance without adjudication; 5 cases in which the Board's petitions were denied on the merits; and there were no cases in which the petition was withdrawn.



d. Miscellaneous Litigation

There were 20 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 18 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 57 petitions filed with the U.S. district courts, compared to 104 in fiscal year 1995. (Table 20.) Injunctions were granted in 29, or about 83 percent, of the 35 cases litigated to final order.

NLRB injunction activity in district courts in 1996:

Granted	29
Denied	6
Withdrawn	3
Dismissed	1
Settled or placed on court's inactive lists	23
Awaiting action at end of fiscal year	13

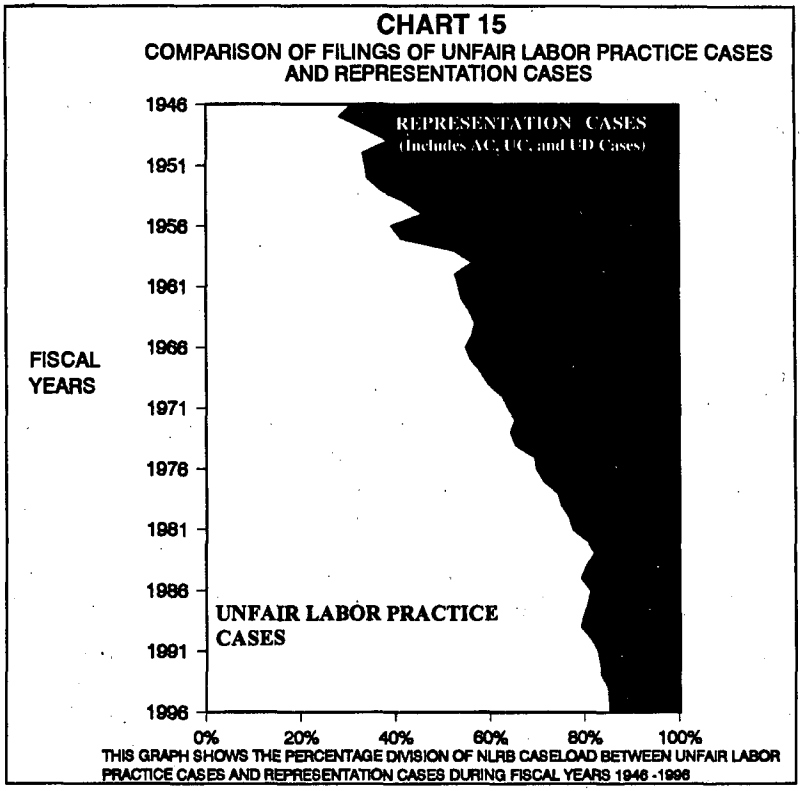


CHART 15
COMPARISON OF FILINGS OF UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES
REPRESENTATION CASES
(Includes AC, UC, and UD Cases)
UNFAIR LABOR PRACTICE CASES
FISCAL YEARS
1946
1951
1956
1961
1966
1971
1976
1981
1986
1991
1996
0%
20%
40%
60%
80%
100%
THIS GRAPH SHOWS THE PERCENTAGE DIVISION OF NLRB CASELOAD BETWEEN UNFAIR LABOR PRACTICE CASES AND REPRESENTATION CASES DURING FISCAL YEARS 1946 -1996

C. Decisional Highlights

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

1. Cross-examination

In *National Telephone Directory Corp.*,[1] a panel majority of the Board ruled that a respondent employer may not obtain, through cross-examination about events testified to on direct examination, the identities of employees who have signed authorization cards and have attended union meetings. The General Counsel's first witness testified on direct that the alleged discriminatee had arranged meetings between the union organizer and the employees, and that at one such meeting the employees in attendance had signed authorization cards. On cross-examination, counsel for the respondent employer asked the witness for the names of the employees who had attended that meeting. The witness replied that she could not recall the names of the employees, but that the names were written down on her notes from the meeting and on the authorization cards signed at the meeting. The respondent then moved for production of the notes and cards.

The panel majority ruled, contrary to the administrative law judge, that the respondent could not obtain, for purposes of cross-examination, the identities of the employees who attended union meetings and signed authorization cards. The majority found that the confidentiality interests of employees who attend union meetings and sign authorization cards are paramount to a respondent employer's need to obtain the identities of those employees for cross-examination and credibility impeachment purposes. While acknowledging the importance of the right to test the credibility of witnesses in cross-examination by asking legitimate questions about subjects brought out on direct examination, the majority found that the danger of employee intimidation would be severly heightened if an employer could obtain the names

[1] 319 NLRB 420 (Chairman Gould and Member Browning; Member Cohen dissenting).

of its employees who have signed authorization cards or attended union meetings.

2. Prison Inmates

In *Speedrack Products Group*,[2] the Board majority held that four prison inmates working for the employer in a work-release program did not have a community of interest with other employees in the unit in which a representation election had been conducted; and therefore it affirmed a hearing officer's ruling sustaining the petitioner union's challenges to the work-release inmates' ballots.

In finding the absence of a community of interest, the Board contrasted the work situations of the inmates with that of the other employees with regard to such matters as opportunity to file grievances, sanctions for refusing to work overtime or engaging in workplace misconduct, and freedom to quit the job. The majority noted that unlike the other employees, the work-release inmates were expected by prison authorities to avoid any grievance filing that might result in "causing an argument," that workplace misconduct, including refusal to work employer-mandated overtime, could result not only in normal employment discipline, but prison disciplinary measures such as an enforced return from the work-release center to the county jail or major prison facility in which they were originally serving their sentences. Work-release inmates could also be subjected to prison discipline for quitting the job. The Board majority also noted that because of the requirement that they return to the work-release center as soon as the workday ends, the inmates could not participate in after work union meetings concerning grievances or contract negotiations. Finally, in the case of a strike, they would not be free to join the picket line, but would be required either to work during the strike or return to the work-release center.

The majority distinguished, rather than overruled, Board precedents such as *Winsett-Simmonds Engineers*,[3] and *Georgia-Pacific Corp.*,[4] finding that, in those cases, there was apparently no evidence of the kinds of restraints, found here, on the exercise of such Section 7 activities as grievance filing, participation in contract negotiations, and picketing during a strike.

[2] 320 NLRB 627 (Members Cohen and Truesdale; Chairman Gould concurring and dissenting).
[3] 164 NLRB 611 (1967).
[4] 201 NLRB 760 (1973).

3. Payments to Employees Voting on Their Day Off

In *Sunrise Rehabilitation Hospital*,[5] the Board found that an employer engaged in objectionable conduct by offering to provide employees who were not scheduled to work on the day of the election 2 hours of pay to come to work to vote. Monetary payments that are offered as reward for coming to a Board election and that exceed reimbursement expenses amount to a benefit that reasonable tends to influence the election outcome. The Board overruled *Young Men's Christian Assn.*,[6] which reached a contrary conclusion.

In determining whether the employer's offer to pay is objectionable, the Board formulated an objective test—whether the challenged conduct had a reasonable tendency to influence the election outcome—and found that no inquiry is necessary into the subjective reactions of the potential recipients of the benefit. In evaluating the likely effect, the Board takes into account such factors as the size of the benefit in relation to its stated legitimate purpose, the number of employees receiving it, how the employees would reasonably construe the purpose given the context of the offer, and its timing.

In *Good Shepherd Home*,[7] a panel majority of the Board adopted a Regional Director's determination that a union organizer did not engage in objectionable conduct by giving $25 in travel expenses to a part-time employee not scheduled to work on the day of the election. The panel majority rejected the employer's argument that the $25 payment was disproportionate to the actual travel expense incurred by the employee.

The Board majority found that the union's payment was in compliance with the guidelines set forth in *Sunrise Rehabilitation Hospital*, supra, because the union, in making an effort to assist an employee who could not afford to travel to the polls, reimbursed the employee based on a good-faith, reasonable estimate of his actual travel costs. The Board majority would not require proof that the reimbursement was precise to a mathematical certitude, as long as the reimbursement is related only to actual travel expenses and the party has made a good-faith effort to estimate those expenses.

4. Videotaping of Employees

In *Allegheny Ludlum Corp.*,[8] the Board affirmed the administrative law judge's findings that the respondent employer violated the Act by engaging in polling of employees regarding their union sentiments during a union campaign to organize the employer's office clerical employees. As part of its campaign to persuade the employees to vote against union representation, the employer prepared a videotape presenting its position, which included footage of about 17 percent of the employees, who were filmed on 3 days at their desks, smiling and

[5] 320 NLRB 212 (Chairman Gould and Members Browning and Truedale; Member Cohen dissenting).
[6] 286 NLRB 1052 (1987).
[7] 321 NLRB 426 (Chairman Gould and Member Browning; Member Cohen concurring).
[8] 320 NLRB 484 (Chairman Gould and Member Truesdale; Member Cohen concurring in part and dissenting in part).

waving at the camera or simply filmed without warning or permission. In other cases, employees received notices advising them that if they objected to being used in the footage, they should contact the personnel office and they would be taken out of the video. A number of employees exercised this option, and the respondent recorded their names on a list.

The Board, in agreement with the judge, found that the respondent employer had thereby effectively polled employees concerning their union sentiments by requiring those who objected to being included in the antiunion videotape to submit a request to be excluded and by maintaining a list of those objectors. Applying settled precedent establishing that polling employees and keeping list of employees reasonably tends to coerce employees in the exercise of Section 7 rights, the Board found that the respondent's actions were unlawful.

The Board rejected the respondent's contention that this finding was inconsistent with the Board's decision in *Sony Corp. of America*,[9] which had found that an employer violated the Act by videotaping employees without their consent for use in an antiunion campaign video. The Board noted that its holding that that employer's conduct was unlawful did not establish that any videotaping of employees with their consent, regardless of the circumstances, is noncoercive and thus lawful.

5. Employer Domination of a Labor Organization

In *Stoody Co.*,[10] the Board reversed the administrative law judge and found that a so-called Handbook Committee did not exist, even in part, for the purpose of dealing with the respondent employer within the meaning of Section 2(5) of the Act notwithstanding that there had been discussions of and proposals concerning working conditions. Relying on *E. I. du Pont & Co.*,[11] the Board required that "dealing" consist of a pattern and practice of making proposals to management on subjects covered by Section 2(5). The Board found that this definition allows for isolated errors that may occur in any genuine attempt to change the interaction between the employer and its employees.

When it was formed, the Handbook Committee had been expressly instructed not to discuss "wages, benefits, or working conditions." In spite of this, at its only meeting the committee did discuss and made proposals about such matters as vacation time. However, the Board held that in the absence of a pattern or practice, or of a design to interfere with the organizing efforts of an independent union, the committee was not a labor organization within the meaning of Section 2(5) and therefore the respondent's actions in connection with the committee could not violate Section 8(a)(2) of the Act.

In *Vons Grocery Co.*,[12] the Board found that a "quality circle group" (QCG) was not a labor organization within the meaning of

[9] 313 NLRB 420 (1993).
[10] 320 NLRB 18 (Chairman Gould and Members Cohen and Truesdale).
[11] 311 NLRB 893, 894 (1993).
[12] 320 NLRB 53 (Chairman Gould and Members Cohen and Truesdale).

Section 2(5) and held that the employer did not violate Section 8(a)(2) by its involvement with the group.

The Board found that a single incident, during the group's 3-year existence, of making proposals on conditions of work did not constitute a "pattern or practice" of dealing with the employer within the meaning of Section 2(5), as discussed in *E. I. du Pont & Co.*, supra, especially since the employer's immediate response to the union's complaint indicated that there was little likelihood that the incident would develop into a pattern. The Board determined that one incident did not transform a lawful employee participation group into a statutory labor organization, and that the circumstances presented did not pose the danger of employer domination of labor organizations that Section 8(a)(2) was designed to prevent.

6. Union Interference with Employee *Beck* Rights

In *California Saw & Knife Works*[13] and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*,[14] the Board first addressed questions arising from the Supreme Court's ruling in *Communications Workers v. Beck*[15] where the Supreme Court held that a union is not permitted, over the objections of dues-paying nonmember employees, to expend funds or activities unrelated to collective bargaining, contract administration, or grievance adjustment. Among the questions left unanswered by the Court in *Beck* were: (1) whether unions must notify nonunion members of the right to object to paying full dues, and whether they must notify employees who do object regarding the use of the dues; (2) whether unions may place restrictions on the manner of registering a *Beck* objection; (3) whether unions may charge objectors only for activities directly on behalf of their bargaining unit; (4) what types of union activities may unions require objectors to pay for; and (5) what procedures are permissible for determining amounts owed by objectors when the chargeability of expenses is in dispute.

In *California Saw* the Board held, inter alia, that a union must inform each nonmember employee, at the same time or before it seeks to obligate the employee to pay dues and fees under a union-security clause, that he has the legal right to remain a nonmember and the right under *Beck* to object to paying for more than "representational" expenses. The Board further held that newly hired employees must be given the notice before they are asked to join the union and pay dues under the union-security clause. The Board also concluded that a union may charge an objector for expenses incurred outside of the objector's bargaining unit that inure to the benefit of the objector's unit, for example, expenses for litigation which have more than a "remote or theoretical benefit to the objector's bargaining unit."

In *Weyerhaeuser*, the Board answered some of the questions not reached in *California Saw*. Thus, the Board held that a union must inform all employees in the bargaining unit, not just nonmembers, of

[13] 320 NLRB 224 (Chairman Gould and Members Browning and Truesdale; Member Cohen dissenting in part).

[14] 320 NLRB 349 (Chairman Gould and Members Browning, Cohen, and Truesdale).

[15] 487 U.S. 735 (1988).

the rights of nonmembers under *Beck* if they were not informed of those rights prior to assuming obligations under a union-security clause. Also, the Board held that a union must inform all such employees that they have a right under *NLRB v. General Motors Corp.*,[16] to become nonmembers of the union in order to be eligible to exercise *Beck* rights.

[16] 373 U.S. 734 (1963).

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1996, are as follows:

Personnel compensation	$114,199,143
Personnel benefits	19,730,958
Benefits for former personnel	43,962
Travel and transportation of persons	1,943,701
Transportation of things	85,818
Rent, communications, and utilities	23,545,084
Printing and reproduction	179,519
Other services	6,303,890
Supplies and materials	1,303,778
Equipment	2,716,384
Insurance claims and indemnities	75,913
Total obligations and expenditures[17]	$170,128,150

[17] Includes $89,342 for reimbursables for casehandling in Saipan. Also includes $24,975 for reimbursables from Agriculture (Fitness Facility).

II

Board Procedure

A. Cross-examination

In *National Telephone Directory Corp.*,[1] a panel majority of the Board ruled that a respondent employer may not obtain, through cross-examination about events testified to on direct examination, the identities of employees who have signed authorization cards and have attended union meetings.

In *National Telephone*, the hearing opened with the General Counsel's first witness testifying about the union activities of an alleged discriminatee. On direct examination, the witness testified that the alleged discriminatee arranged meetings between a union organizer and employees, and that at one such meeting the employees in attendance signed authorization cards. On cross-examination, counsel for the respondent employer asked the witness for the names of the employees who attended that meeting. The witness replied that she could not recall the names of the employees, but that the names were written down on her notes from the meeting and on the authorization cards signed at the meeting. The respondent then moved for production of the notes and cards.

The panel majority ruled, contrary to the administrative law judge, that the respondent could not obtain, for purposes of cross-examination, the identities of the employees who attended union meetings and signed authorization cards. In so ruling, the majority found that the confidentiality interests of employees who attend union meetings and sign authorization cards are paramount to a respondent employer's need to obtain the identities of those employees for cross-examination and credibility impeachment purposes. While acknowledging the importance of the right to test the credibility of witnesses on cross-examination by asking legitimate questions about subjects brought out on direct examination, the majority found that the danger of employee intimidation would be severely heightened if an employer could obtain the names of its employees who have signed authorization cards or attended union meetings.

In dissent, Member Cohen would accord the respondent the right to cross-examine the witness concerning the identities of the employees. Member Cohen found that such cross-examination is appropriate because the witness testified not only that the discriminatee engaged

[1] 319 NLRB 420 (Chairman Gould and Member Browning; Member Cohen dissenting).

in union activities, but that all employees attending a union meeting signed authorization cards. In these circumstances, he would not find such testimony immune from cross-examination.

B. Model Sequestration Language

In *Greyhound Lines*,[2] the Board included model sequestration language pursuant to the suggestion of the NLRB Advisory Committee on Agency Procedure that the Board adopt a more precise and uniform explanation of the sequestration rule. The model sequestration language should be followed whenever a sequestration order issues.[3]

The first and third paragraphs are intended to explain the rule for the benefit of potential witnesses. The second paragraph, which is based on the Federal Rules of Evidence, Rule 615, as modified by *Unga Painting Corp.*,[4] is addressed more to the attorneys and is designed to make the statement of the rule a comprehensive one. The last paragraph incorporates the notion that the respondent's counsel is free to communicate to his witnesses testimony given by opposing witnesses in order to prepare the respondent's case.

[2] 319 NLRB 554 (Chairman Gould and Members Browning, Cohen, and Truesdale).

[3] The model sequestration language reads:

> Counsel has invoked a rule requiring that the witnesses be sequestered. This means that all persons who are going to testify in this proceeding, with specific exceptions that I will tell you about, may only be present in the hearing room when they are giving testimony.
>
> The exceptions are alleged discriminatees, natural persons who are parties, representatives of non-natural parties, and a person who is shown by a party to be essential to the presentation of the party's cause. They may remain in the hearing room even if they are going to testify or have testified. However, alleged discriminatees, including charging parties, may not remain in the hearing room when other witnesses on behalf of the General Counsel or the charging party are giving testimony as to events as to which the alleged discriminatees will be expected to testify.
>
> The rule also means that from this point on until the hearing is finally closed, no witness may discuss with other potential witnesses either the testimony that they have given or that they intend to give. The best way to avoid any problems is simply not to discuss the case with any other potential witness until after the hearing is completed.
>
> Under the rule as applied by the Board, with one exception, counsel for a party may not in any manner, including the showing of transcripts, inform a witness about the content of the testimony given by a preceding witness, without express permission of the Administrative Law Judge. The exception is that counsel for a party may inform counsel's own witness of the content of testimony, including the showing of transcripts, given by a witness for the opposing side in order to prepare for rebuttal of such testimony.

[4] 237 NLRB 1306 (1978).

III

Representation Proceedings

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

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

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

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

A. Preelection Hearing

In *HeartShare Human Services of New York*,[1] the Board denied review of a Regional Director's ruling limiting the scope of a representation hearing to evidence of recent changed circumstances.

In response to a union's petition seeking to represent employees at one of its intermediate care facilities, the employer contended that only a multifacility unit was appropriate. Shortly before the hearing,

[1] 320 NLRB 1 (Chairman Gould and Members Browning and Truesdale).

the Regional Director had issued a decision finding appropriate a single-facility unit at one of the employer's nearby intermediate care facilities, rejecting the employer's contention there that only a multifacility unit was appropriate. The employer did not file a request for review.

In the present case, the employer desired to present additional evidence, in support of its multifacility contention, that was available to it at the time of the hearing in the first case. The Regional Director found, however, that it was appropriate to limit the hearing to evidence of changed circumstances since the earlier hearing. The Regional Director concluded that it would unduly prolong the representation process and compromise the integrity of the Board's processes if the employer were permitted to submit evidence previously available to it. The Regional Director noted that the employer had ample opportunity to present that evidence previously, that it pertained to an identical issue common to both cases, and that the employer declined to seek review of the Regional Director's previous finding concerning its multifacility contention. The Board found that the employer raised no substantial issue warranting review regarding the Regional Director's limitation of evidence to changed circumstances.

B. Appropriate Unit Issues

1. Supervisory Status of Nurses

In *Providence Hospital*,[2] the Board majority found that the hospital's registered nurses who serve as charge nurses are not statutory supervisors as defined in Section 2(11) of the Act. In light of the Supreme Court's decision in *Health Care & Retirement Corp.*,[3] the majority decided to apply the same standards for determining supervisory status in the health care industry as it has traditionally followed in other industries.

In *Health Care & Retirement*, the Court rejected the Board's patient care analysis[4] for determining the supervisory status of charge nurses in the health care industry and found that the Board's use of "in the interest of the employer" was "inconsistent with both the statutory language and this Court's precedents."[5] The Board majority summarized the Court's holding:[6]

> In sum, the Court held that the Board's patient care analysis relying on "in the interest of the employer" was an impermissible shortcut, that there are no hard-and-fast rules, but that the Board should analyze the 12 listed statutory indicia in detail and on a case-by-case basis.

[2] 320 NLRB 717 (Chairman Gould and Members Browning and Truesdale; Member Cohen dissenting).
[3] 114 S.Ct. 1778 (1994).
[4] A charge nurse's assignment and direction of other employees did not involve the exercise of supervisory authority because it stemmed from the nurse's professional or technical judgment in the interest of patient care and was not in the interest of the employer.
[5] 114 S.Ct. at 1783.
[6] 320 NLRB 727.

In light of the Court's rejection of the patient care analysis and the difficulty of explaining the difference between the exercise of professional responsibility and supervisory authority, the Board invited oral argument and amici briefs.

After a detailed summary of the legal principles, of the development of the patient care analysis, and of the Court's decision in *Health Care & Retirement*, the majority examined the 2(11) supervisory indicia of "assign" and "responsibly to direct": the only supervisory authority the employer raised with the Board. The majority considered analyzing charge nurses' alleged supervisory authority by determining whether they responsibly directed other employees, ultimately rejected that approach as unnecessary, and instead relied on the Board's traditional approach of deciding whether the charge nurses' exercised independent judgment in whatever directions they may give to employees:[7]

> Any analysis of responsible direction must, as in any case involving whether an employee is a statutory supervisor, be determined on a case-by-case basis. We also believe that this approach should be supplementary to the Board's traditional approach of resolving the issue of responsible direction by examining whether the employees at issue exercise independent judgment.

The majority recognized that determining whether a professional is exercising "independent judgment" within Section 2(11) is not always readily distinguishable from the "consistent exercise of discretion and judgment" within the 2(12) definition of professional employee. The majority, however, drew the following distinction:[8]

> [W]hen a professional gives directions to other employees, those directions do not make the professional a supervisor merely because the professional used judgment in deciding what instructions to give. For example, designing a patient treatment plan may involve substantial professional judgment, but may result in wholly routine direction to the staff that implements that plan. Independent judgment must be exercised in connection with the Section 2(11) function if the actor is to be deemed a statutory supervisor; use of judgment in related areas of a professional or technical employee's own work does not meet the statute's language.

In applying these standards to the charge nurses and other alleged supervisors in this case, the majority found on the detailed facts of the case that they do not use independent judgment within the meaning of Section 2(11) in any assignments or direction they give to other employees. The majority concluded that "the alleged supervisory independent judgment of charge nurses when examined in detail becomes indistinguishable from the professional judgment exercised by all RNs."[9] Thus, on a detailed examination of the evidence,

[7] Id. at 729.
[8] Id. at 728.
[9] Id. at 730.

the majority found that the charge nurses and other alleged supervisors were not in fact statutory supervisors.

In dissent, Member Cohen recognized that devising a patient treatment plan involves the use of professional judgment but stated that the charge nurse who administers the plan may have to exercise supervisory authority vis-a-vis employees. Specifically, he found that charge nurses possess and exercise a substantial degree of independent judgment: "Charge nurses are not automatons who carry out their functions by rote. The essence of their job is judgment."[10] Based on the facts outlined in his dissent, Member Cohen would have found that the charge nurses and other alleged supervisors are statutory supervisors.

In *Ten Broeck Commons*,[11] the Board addressed the impact of the Supreme Court's decision in *NLRB v. Health Care & Retirement Corp.*[12] on the determination of supervisory status under Section 2(11) of the Act. In light of the Court's rejection of the Board's "patient care" analysis,[13] the Board decided to apply its traditional approach of analyzing whether a nurse's directions require the use of independent judgment or whether such directions are merely routine. Applying this analysis, the Board, by a 2 to 1 majority, found that the approximately 45 licensed practical nurses (LPNs) at the employer's nursing home facility are not supervisors because they do not exercise independent judgment within the meaning of Section 2(11).

The majority found that the LPNs' authority to assign certified nursing assistants (CNAs) to groups of patients is both routine and limited in that such assignments are made on a monthly basis, the CNAs are rotated each month, and all CNAs possess the same skills. Substitute CNAs are normally assigned to the same patients as the regular CNAs. Although LPNs assign lunch and breaktimes, the assignments are routine as there are only two choices, CNAs are regularly switched between the two, and the assignments may also be based on CNAs' preferences. The LPNs' assignment of extra duties is equally routine as the duties are regularly rotated.

The LPNs also do not use independent judgment in directing the work of the CNAs. The duties assigned to the CNAs require little skill, are mostly repetitive, and are set forth in each patient's comprehensive health plan which the CNAs must consult with and follow each day. On those occasions when an LPN finds it necessary to call a CNA's attention to a specific problem, such directions do not require independent judgment as they are either based on the greater skill and experience of the LPN or the problem is obvious. Although the LPNs prepare each patient care plan, this is not "an exercise of supervisory judgment within the meaning of Sec. 2(11) but is an exercise of the expert judgment of the nurses vis-a-vis their position as

[10] Id. at 737.

[11] 320 NLRB 806 (Chairman Gould and Member Browning; Member Cohen dissenting).

[12] 114 S.Ct. 1778 (1994).

[13] A nurse's assignment and direction of less skilled employees does not involve the exercise of supervisory authority because it is based on the nurse's professional judgment incidental to the treatment of patients and is not authority exercised "in the interest of the employer." See *Northcrest Nursing Home*, 313 NLRB 491, 493–497 (1993).

technical or professional employees." Moreover, although the LPNs use their technical expertise and judgment to prepare each patient care plan, "the directions they give to the CNAs in carrying out the plan do not require the use of Section 2(11) independent judgment but are merely routine." The fact that "severe adverse consequences might flow from an employee's routine direction or monitoring of the work of others does not, without more, make the employee a supervisor."

The majority also found that the LPNs do not discipline CNAs nor do they effectively recommend disciplinary action. The role of LPNs is "merely to report incidents of unacceptable work performance or behavior." Like *Passavant Health Center*[14] where the Board found charge nurses not to be supervisors, the LPNs' reports do not contain recommendations and are reviewed by higher authority, and thus have no independent effect on employee job tenure or status.

Although LPNs are involved in the evaluation of CNAs, this case is distinguishable from *Bayou Manor Health Center*,[15] because the LPNs' evaluations are reviewed by the RN nursing supervisor and at times changed, and there is no direct connection between the LPNs' input and a wage increase. Lastly, LPNs do not effectively recommend that CNAs be transferred as such recommendations are not automatically granted but are independently assessed by the director of nursing.

In dissent, Member Cohen would find that LPNs are statutory supervisors. The fact that assignments are for a short duration and routinely rotated "does not mean that they are not assignments." Work directions based on the LPNs' "greater skill and experience" require the exercise of independent judgment; thus, in Member Cohen's view, such directions are an exercise of supervisory authority. Moreover, given the importance and complexity of the individual patient's care plan, "it can hardly be said that the monitoring and directive function is a routine or clerical task."

LPNs also play an effective role in the disciplining of CNAs because their reports can lead to discipline and are placed in the CNAs' files. Evaluations can lead to retention and a salary increase, or to discharge. "The fact that the evaluation is reviewed by the LPN's superiors does not detract from the importance of the LPN's role" because "higher authority relies heavily on the first-hand knowledge of the first-line supervisor." Finally, Member Cohen noted that a number of CNAs were transferred after LPNs recommended they be switched to a different shift due to the CNAs' poor work performance.

2. Prison Inmates

In *Speedrack Products Group*,[16] the Board majority held that four prison inmates working for the employer in a work-release program did not have a community of interest with other employees in the unit

[14] 284 NLRB 887 (1987).
[15] 311 NLRB 955 (1993).
[16] 320 NLRB 627 (Members Cohen and Truesdale; Chairman Gould concurring and dissenting).

in which a representation election had been conducted; and therefore it affirmed a hearing officer's ruling sustaining the petitioner union's challenges to the work-release inmates' ballots.

In finding the absence of a community of interest, the Board contrasted the work situations of the inmates with that of the other employees (known in the workplace as the "free world" employees) with regard to such matters as opportunity to file grievances, sanctions for refusing to work overtime or engaging in workplace misconduct, and freedom to quit the job. The majority noted that unlike the "free world" employees, the work release inmates were expected by prison authorities to avoid any grievance filing that might result in "causing an argument," that workplace misconduct, including refusal to work employer-mandated overtime, could result not only in normal employment discipline, but prison disciplinary measures such as an enforced return from the work-release center to the county jail or major prison facility in which they were originally serving their sentences. Work-release inmates could also be subjected to prison discipline for quitting the job. The Board majority also noted that because of the requirement that they return to the work-release center as soon as the workday ends, the inmates could not participate in after work union meetings concerning grievances or contract negotiations. Finally, in the case of a strike, they would not be free to join the picket line, but would be required either to work during the strike or return to the work-release center.

The majority distinguished, rather than overruled, Board precedents such as *Winsett-Simmonds Engineers*,[17] and *Georgia-Pacific Corp.*, [18] finding that, in those cases, there was apparently no evidence of the kinds of restraints, found here, on the exercise of such Section 7 activities as grievance filing, participation in contract negotiations, and picketing during a strike.

In dissent, Chairman Gould argued that the work-release inmates did not lack a community of interest with other unit employees, and he thus would affirm the hearing officer's finding and overrule the challenges to their ballots. The Chairman emphasized that the work release inmates worked side by side with the "free world" employees, received the same wages and benefits, and were subject to the same supervision in the workplace. He found no meaningful distinction between this case and *Winsett-Simmonds* and *Georgia-Pacific*. In *Winsett-Simmonds*, he noted, inmates were required by the prison to "abide by 'certain rules of conduct'" and to "report promptly for work and return to the Penal Farm if no work is available."[19] He also noted that an opinion letter from a state official in this case suggesting that the work-release inmates were not free to join unions was not based on any state law or regulation and the writer of the opinion letter later expressed the view that there was no such prohibition.

[17] 164 NLRB 611 (1967).
[18] 201 NLRB 760 (1973).
[19] 320 NLRB at 629, fn. 3, quoting *Winsett-Simmonds*, supra at 611.

C. Bars to an Election

In *Douglas-Randall, Inc.*,[20] a Board majority affirmed the Acting Regional Director's dismissal of the decertification petition and, in doing so, overruled *Passavant Health Center*.[21] The Board, returning to its historical procedures for handling decertification petitions (or other petitions challenging unions' majority status), held that an employer's agreement to settle outstanding unfair labor practice charges and complaints by recognizing and bargaining with the union will require final dismissal, without provisions for reinstatement, of a decertification petition or other petition challenging the union's majority status filed subsequent to the onset of the alleged unlawful conduct.

In *Douglas-Randall*, the incumbent union filed charges alleging, inter alia, that since March 30, 1994, the successor employer had violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the union. On May 12, the petitioner filed the decertification petition. On July 29, the Board issued a complaint. The union and the employer, who had resumed negotiations in June, reached agreement on August 3 on a new 2-year collective-bargaining agreement. On September 15, the Acting Regional Director approved a settlement agreement entered into between the union and the employer resolving the 8(a)(5) and (1) violations. The employer agreed that it would not fail to recognize and bargain collectively in good faith with the union as the exclusive collective-bargaining representative of the employer's bargaining unit employees, and would not unilaterally change terms and conditions of employment. The settlement agreement did not contain a nonadmissions clause. Also on September 15, the Acting Regional Director dismissed the instant decertification petition as tainted by the employer's serious unfair labor practices.

The Board found that, historically, dismissal of a decertification petition filed subsequent to the onset of the alleged unlawful conduct but prior to the settlement agreement was sustained when a settlement agreement contained a bargaining provision.[22] Under the Board's then-settled policy, the employer and the union were entitled to a reasonable time within which to effectuate the provisions of the settlement agreement free from rival claims and petitions. The Board reasoned that unless the employer was obligated to honor the agreement, the agreement would not have achieved its purpose. For many years, the Board applied these settled principles to give full effect to settlement agreements and any resultant collective-bargaining agreements. In *Douglas-Randall*, the Board found that the retreat from these principles, as exemplified in *Passavant Health Center*,[23] was in error. In *Passavant*, the Board reinstated a decertification petition in the context of a bilateral settlement agreement resolving allegations that the employer violated Section 8(a)(5) and (1). The Board majority held

[20] 320 NLRB 431 (Chairman Gould and Members Browning and Truesdale; Member Cohen dissenting).
[21] 278 NLRB 483 (1986).
[22] *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), enfd. 192 F.2d 740, 742–743 (4th Cir. 1951), cert. denied 342 U.S. 954 (1952).
[23] 278 NLRB 483 (1986).

that a subsequent collective-bargaining agreement did not bar reinstatement of a decertification petition when the complaint was withdrawn and the terms of the settlement satisfied. Although the reasoning in *Passavant* and similar cases is technically accurate insofar as it observes that settlement of an outstanding unfair labor practice allegation is not the same as an admission by a charged party, or adjudication by the Board, that an unfair labor practice has been committed, it is also not the same as a dismissal of that unfair labor practice allegation. *Passavant* could permit an employer to commit the very evils the Act sought to preclude, by permitting an employer to commit an unfair labor practice by refusing to bargain collectively with an incumbent union, sign a settlement agreement undertaking to bargain with that union, and then benefit from its unlawful conduct by having the union decertified or replaced because of dissatisfaction with the incumbent union arising from the unfair labor practice. The Board recognized that there may be some tension between the employer's concern that it not be treated as if it had been found (or had admitted) to be a violator and the need to give effect to the settlement agreement's remedial provisions, but without giving normal remedial effect, such agreements are largely illusory.

The Board further found that the *Passavant* policy unduly complicates the administration of the Act by bringing the decertification petitioner, who is not a party to the unfair labor practice case, into the conflict to resolve the status of the decertification petition as part of the settlement agreement. Further, because reinstatement of the petition undermines the implicit understanding in the settlement agreement that each party's promise will be fulfilled by permitting decertification efforts to resume, the unions will be understandably reluctant to settle. Absent consent of the petitioner to dismissal of the petition, the Board will be reluctant to approve a settlement agreement, resulting in expenditure by the parties and the Board in time and money on fruitless settlement negotiations and further, perhaps unnecessary, litigation. "The Board's policies are served far better by a practice that encourages the actual parties to an unfair labor practice proceeding to join in an amicable, judicious, and definitive resolution of the case."

Although dismissal of the petition limits to some extent the petitioner's right to seek decertification of the union, that is justified by the unfair labor practice that the employer has allegedly committed and by the remedial steps it has voluntarily undertaken. Although a petitioner's rights will be limited if the parties execute a collective-bargaining agreement, the rights may similarly be limited even if the parties go to trial.

In *Smith's Food & Drug Centers*,[24] a panel majority of the Board modified the rule in *Rollins Transportation System*[25] and held that, in rival union initial organizing situations, the employer's voluntary and good-faith recognition of a union based on an unassisted and

[24] 320 NLRB 844 (Members Browning and Cohen; Chairman Gould concurring).
[25] 296 NLRB 793 (1989).

uncoerced majority showing of interest will bar a petition by a rival union, unless the petitioning union demonstrates a 30-percent showing of interest that predates the recognition.

During the week after the employer began daily production at its new milk processing plant, the intervenor solicited and obtained authorization cards from a majority of the plant employees. The intervenor requested recognition, which was granted following a cross-check of the cards. Prior to this recognition, the petitioners had initiated a coordinated effort to organize the employer's work force into two units. By the time of the intervenor's recognition, each petitioner had obtained one signed authorization card, although the card received by one petitioner was misplaced. The Regional Director, applying Board precedent under *Rollins*, found that the voluntary recognition did not bar the petitions because the petitioners were actively engaged in organizing prior to the date of recognition.

Contrary to the Regional Director, the majority found merit in the contention of the employer and the intervenor that a petitioner's prerecognition organizing efforts only raise a question concerning representation warranting an election if the petitioner has obtained, prior to the recognition, a showing of interest sufficient to support a petition, i.e., 30 percent of the unit employees. The majority noted that although *Rollins* involved a petition filed almost simultaneously with the voluntary recognition, its holding was not limited to such circumstances. Moreover, the majority found that the protection of employee free choice in selecting a collective-bargaining representative that is embodied in the *Rollins* rule undermines other fundamental objectives of the Act, such as the encouragement of voluntary recognition and the stability of new bargaining relationships. The majority concluded that requiring a petitioner to demonstrate a 30-percent showing of interest predating the voluntary recognition of the rival union strikes an appropriate balance among these competing interests. Because neither of the petitioners in this case had obtained such a showing, the petitions were dismissed.

Chairman Gould, concurring, would overrule *Rollins* and bar any petition filed after an employer had granted voluntary recognition based on an unassisted and uncoerced showing of interest by a majority of unit employees. This approach, in Chairman Gould's view, would respect the choice expressed by employees through their authorization cards, and permit the union and the employer to rely on that choice in bargaining without fear of a later challenge by a rival union and the delay involved in a Board election. Furthermore, Chairman Gould would find that this rule conforms as closely as possible to the rule in unfair labor practice cases that an employer may lawfully recognize a union presenting a majority showing of interest at any time until a petition is filed.[26]

[26] See *Bruckner Nursing Home*, 262 NLRB 955 (1982).

D. Election Objections

In *Sunrise Rehabilitation Hospital*,[27] the Board found that an employer engaged in objectionable conduct by offering to provide employees who were not scheduled to work on the day of the election 2 hours of pay to come to work to vote. Monetary payments that are offered as rewards for coming to a Board election and that exceed reimbursement expenses amount to a benefit that reasonably tends to influence the election outcome. With this decision, the Board overruled *Young Men's Christian Assn.*,[28] which reaches a contrary conclusion.

The facts were not in dispute. Several days before the election, the employer distributed a handbill to most of the employees entitled "Important Information about the Union Election." In the handbill, the employer allowed employees to report 2 hours of pay if the employees were not scheduled to work on election day but came in for the election. In addition, the employer offered to provide transportation to and from the facility on election day and to provide child care at the facility during the hours the polls were open for employees not scheduled to work the day of the election.

In determining whether the employer's offer to pay is objectionable, the Board formulated an objective test, and found that no inquiry is necessary into the subjective reactions of the potential recipients of the benefit. The standard is: "Whether the challenged conduct had a reasonable tendency to influence the election outcome." *Gulf States Canners*.[29] When the conduct takes the form of an employer's offer or grant of benefit, the Board is mindful of the "suggestion of the fist inside the velvet glove," i.e., "that employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged." *B & D Plastics*,[30] quoting *NLRB v. Exchange Parts Co.*[31] In evaluating the likely effect, the Board takes into account such factors as the size of the benefit in relation to its stated legitimate purpose, the number of employees receiving it, how the employees would reasonably construe the purpose given the context of the offer, and its timing.

In *Good Shepherd Home*,[32] a panel majority of the Board adopted a Regional Director's determination that a union organizer did not engage in objectionable conduct by giving $25 in travel expenses to a part-time employee not scheduled to work on the day of the election. The panel majority rejected the employer's argument that the $25 payment was disproportionate to the actual travel expense incurred by the employee.

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[27] 320 NLRB 212 (Chairman Gould and Members Browning and Truesdale; Member Cohen dissenting).
[28] 286 NLRB 1052 (1987).
[29] 242 NLRB 1326 (1979).
[30] 302 NLRB 245 (1991).
[31] 375 U.S. 405, 409 (1964).
[32] 321 NLRB 426 (Chairman Gould and Member Browning; Member Cohen concurring).

The Board majority found that the union's payment was in compliance with the guidelines set forth in *Sunrise Rehabilitation Hospital*,[33] because the union, in making an effort to assist an employee who could not afford to travel to the polls, reimbursed the employee based on a good-faith, reasonable estimate of his actual travel costs. The Board majority would not require proof that the reimbursement was precise to a mathematical certitude, as long as the reimbursement is related only to actual travel expenses and the party has made a good-faith effort to estimate those expenses.

In concurrence, Member Cohen agreed that the union's payment of $25 was not objectionable, but would not apply the standard set forth in *Sunrise Rehabilitation Hospital*.[34] Noting that he dissented in *Sunrise*, he found the appropriate standard to be that set forth in *Young Men's Christian Assn. (YMCA)*,[35] which the Board overruled in *Sunrise*. Specifically, Member Cohen found such payments permissible unless the objecting party shows that the payment is not reasonably related to the employee's expenditure of time and money.

In *Novotel New York*[36] a panel majority of the Board held that the petitioner did not engage in objectionable conduct by providing unit employees legal services to investigate, prepare, and file a lawsuit asserting their wage claims under the Fair Labor Standards Act (FLSA).

In September 1994, the petitioner commenced an organizing campaign among hotel workers employed by the employer. Complaints of alleged irregularities regarding the employer's payment of overtime wages were received by the petitioner from employees. The petitioner thereafter investigated the wage and overtime practices of the employer, dispatched an attorney retained by the union to discuss with employees an FLSA lawsuit to recover back wages, and solicited employees to join the FLSA lawsuit. The petitioner's counsel thereafter prepared and filed the FLSA lawsuit. Much of the activity regarding the lawsuit, including its filing, occurred during the critical period prior to the representation election. The petitioner financed all legal services in connection with the lawsuit.

The Board majority held that the petitioner had not engaged in objectionable conduct. The majority concluded that Supreme Court jurisprudence strongly suggests that a union has a First Amendment interest in providing access to the courts by financing litigation to pursue FLSA claims brought by workers who are not members of the union. The Board majority further explained that the petitioner's conduct fell squarely within the statutorily protected role of unions to assist workers in the exercise of their Section 7 rights to better their working conditions. The majority additionally explained that under long-established precedent the conduct of Novotel employees to vindicate rights to payment for overtime work, and to avail themselves of the safeguards of the FLSA, is protected concerted activity under Section 7. The majority additionally observed that the petitioner's

[33] 320 NLRB 212.
[34] Id.
[35] 286 NLRB 1052 (1987).
[36] 321 NLRB 624 (Chairman Gould and Member Browning; Member Cohen dissenting).

conduct was consistent with the historical role of unions to undertake a wide variety of actions to protect and advance the right of workers. The Board declared: "The Petitioner here did precisely what the Act intended labor organizations to do: it aided employees engaged in concerted activity."[37]

The Board majority found that the petitioner's protected conduct to assist employees in improving their terms and conditions of employment was distinguishable from a union's objectionable grant of benefits which bears no connection to the employer-employee relationship and does not fall under the aegis of the Act and the First Amendment. The Board majority explained that the provision of legal services by the petitioner directly implicated the chief employment-related concern of Novotel employees—proper payment of wages—and cannot be characterized as a pecuniary inducement extraneous to efforts to vindicate employment-related concerns, in contrast to the objectionable provision of medical testing, life insurance, cash payments, or waiver of initiation fees. The Board majority stated: "The fundamental statutory role of unions is to assist employees in engaging in Section 7 conduct, and we cannot conclude that the petitioner's fulfillment of that role during the critical period impaired voter free choice by employees."[38] The Board accordingly certified the petitioner as the representative of the petitioned-for unit employees.

In dissent, Member Cohen would have found that the petitioner engaged in objectionable conduct by providing thousands of dollars in legal services to employees prior to the election. Member Cohen stated that the legal services would act as a constraint on employees to vote for the petitioner, and would accordingly have an unlawful tendency to influence the outcome of the election. In support, Member Cohen cited the large monetary amount of the benefit conferred; that a large number of unit employees received the benefit; the timing of the filing of the lawsuit 8 days before the election; and that the petitioner could have assisted employees in vindicating their FLSA rights by advising them to file an administrative claim with state authorities, rather than by giving them the benefit of legal services. Accordingly, Member Cohen would have set the election aside and directed that a second election be conducted.

In *Kalin Construction Co.*,[39] a majority of the Board held that an election will be set aside where an employer attempts to influence the outcome of the election by altering its paycheck or its paycheck process shortly before and during the election. The Board majority adopted a new rule that prohibits changes in the employer's paycheck process, including changes to the check itself, as well as changes in the time, location, and method of distributing the check, for the purposes of influencing the election, during a period beginning 24 hours before the opening of the polls and ending with the closing of the polls. Absent a showing by the employer that the change was motivated by

[37] Id., slip op. at 10.
[38] Id., slip op. at 13.
[39] 321 NLRB 649 (Chairman Gould and Members Browning and Fox; Member Cohen dissenting in part).

a legitimate business reason unrelated to the election, the election will be set aside upon the filing of valid objections.

In this case, the election was held on the employer's regularly scheduled payday. Instead of conforming to its usual practice of distributing paychecks to its workers at their appointed construction sites, however, the employer distributed paychecks to its employees as they reported to the employer's central facility to vote in the election. Because of the physical layout of the employer's facility, employees filed by the company secretary on the way to the polling area. The secretary distributed pay envelopes to the employees and advised each of them to "take time to look at it and understand it." In addition to this modification of its paycheck distribution method, the employer also modified the paychecks themselves. Consequently, instead of receiving just one paycheck in an otherwise empty pay envelope, employees each received an envelope containing two paychecks and a written message from the employer. Each pair of checks constituted the sum owed to an employee for the pay period, but one check reflected the amount of union dues that an employee could expect to pay if the union prevailed in the election and the second check reflected the employee's regular pay less the theoretical union dues. The message in each pay envelope indicated that the "split paychecks" were intended to graphically demonstrate the effect of a union victory on the employees' income. The paychecks were distributed in this manner both immediately before the election and while the polls remained open. The Board found the employer's paycheck modifications in this case to constitute objectionable conduct under the new rule, and set aside the election.

In adopting the new rule, the Board sought to establish and preserve the laboratory conditions necessary to permit the careful determination of "the uninhibited desires of the employees."[40] The Board based its holding in this case on lessons derived from two previous cases in which it held that certain kinds of last-minute pressure to persuade, whether committed by unions or employers, are disruptive of the election process and should be curtailed in order to encourage employee free choice.[41] The Board also noted that paychecks are uniquely scrutinized and safeguarded by employees and, as a result, changes in their form or in their manner of distribution are likely to be the subject of intense attention and concern. Therefore, 11th-hour changes in the paycheck process to express antiunion views, the Board held, is analogous to addressing a captive audience immediately before the election—both tactics are uniquely within the employer's control and can be used to obtain the last word and gain an unfair advantage in the election process.

Member Cohen agreed that the election in this case should be set aside, but dissented from the majority's rationale for so doing. He objected to the majority's adoption of the new rule as antithetical to the Board's 30-year precedent in other "split paycheck" cases, in which

[40] *General Shoe Corp.*, 77 NLRB 124, 127 (1948).

[41] *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953); and *Milchem, Inc.*, 170 NLRB 362 (1968).

the Board never applied a per se rule but instead examined the allegedly objectionable conduct within the context of surrounding circumstances. Under this former analysis, Member Cohen concluded, the employer's conduct in this case is objectionable because the employees "had to run through the Employer's gauntlet to vote." In addition, Member Cohen asserted that the majority's new rule was incompatible with the First Amendment because it "imposes a substantial restraint on free speech." Finally, Member Cohen rejects the majority's reliance on *Peerless Plywood* and *Milchem* as having no precedential application given the decidedly dissimilar factual settings in each case.

IV

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal year 1996 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

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

Videotaping of Employees

In *Allegheny Ludlum Corp.*,[1] the Board affirmed the administrative law judge's findings that the respondent violated the Act by interrogating employees about their union sentiments, coercively threatening that union representation would be futile and would result in more onerous working conditions, polling employees about their union sen-

[1] 320 NLRB 484 (Chairman Gould and Member Truesdale; Member Cohen concurring in part and dissenting in part).

timents, threatening layoffs and job loss, and terminating leading union supporter James Borgan.

Following a bitter strike by the respondent's union-represented production employees, the union began a campaign to organize the respondent's office clerical employees. As part of its campaign to persuade employees to vote against representation, the respondent prepared a videotape presenting its position, which included footage of about 17 percent of the employees. Employees were filmed on 3 days at their desks, smiling and waving at the camera. Some employees were simply filmed without warning or permission. In other cases, employees received notices advising them that if they objected to being used in the footage, they should contact the personnel office and would be taken out of the video. A number of employees exercised this option, and the respondent recorded their names on a list.

The Board, in agreement with the judge, found that the respondent effectively polled employees concerning their union sentiments by requiring those who objected to being included in the antiunion videotape to submit a request to be excluded and by maintaining a list of objectors. Applying settled precedent establishing that polling employees and keeping lists of employees reasonably tends to coerce employees in the exercise of Section 7 rights, the Board found that the respondent's actions were unlawful.

The Board rejected the respondent's contention that this finding was inconsistent with the Board's decision in *Sony Corp. of America*,[2] finding that an employer violated the Act by videotaping employees without their consent for use in an antiunion campaign video. The Board noted that its holding that that employer's conduct was unlawful did not establish that any videotaping of employees with their consent, regardless of the circumstances, is noncoercive and thus lawful.

Member Cohen, concurring, agreed that the respondent's giving employees the option to not appear in the video forced employees to reveal their prounion sentiments and hence violated the Act. Member Cohen also expressed his opinion that *Sony* was wrongly decided because, on the facts of that case, the videotaping without consent was lawful because a viewer would not have reasonably concluded that the employees were antiunion. Thus, Member Cohen would find that an employer may videotape employees at work and include them in a campaign video, without their consent, as long as the video does not express the message that all of the employees in it are antiunion.

B. Employer Domination of a Labor Organization

In *Stoody Co.*,[3] the Board reversed the administrative law judge and found that a Handbook Committee did not exist, at least in part, for the purpose of dealing with the respondent within the meaning of Section 2(5) of the Act even though there had been discussions of

[2] 313 NLRB 420 (1993).

[3] 320 NLRB 18 (Chairman Gould and Members Cohen and Truesdale).

and proposals concerning working conditions. The Board noted that the line between a lawful employee participation program and a statutory labor organization may not be a simple matter because it may be difficult to separate such issues as operations and efficiency from those concerning the subjects listed in the statutory definition of labor organization. The Board decided to adopt an interpretation of the Act which would not discourage employee participation programs. Relying on *E. I. du Pont & Co.*,[4] the Board required that "dealing" consist of a pattern and practice of making proposals to management on subjects covered by Section 2(5). The Board found that this definition allows for isolated errors that may occur in any genuine attempt to change the interaction between employer and employees.

When it formed the Handbook Committee had been expressly instructed not to discuss "wages, benefits, or working conditions." Nevertheless at its only meeting it discussed concerns and made proposals about such matters as vacation time. The Board held that in the absence of a pattern or practice or of a design to interfere with the organizing efforts of an independent labor organization the committee was not a labor organization within the meaning of Section 2(5) and the respondent's action in connection with the committee did not violate Section 8(a)(2).

In *Vons Grocery Co.*,[5] the Board found that a "quality circle group" (QCG) was not a labor organization within the meaning of Section 2(5) and held that the employer did not violate Section 8(a)(2) by its involvement with that group.

For nearly 3 years, the QCG existed lawfully in the employer's unionized work force as an employee participation group devoted to operational matters. On one occasion, however, the QCG developed proposals on matters involving conditions of work such as a dress code and an accident point system. The union was informed of the proposals before any decision was made. Further, when the union later complained, the employer changed the format of the QCG to include a union steward and gave assurances to the union that the QCG would not infringe on the union's rights.

The Board found that the single incident of making proposals on conditions of work did not constitute a "pattern or practice" of dealing with the employer within the meaning of Section 2(5), as discussed in *E. I. du Pont & Co.*[6] The Board further noted that the employer's immediate response to the union's complaint indicated that there was little likelihood that the incident would develop into a pattern. The Board determined, therefore, that this one incident did not transform a lawful employee participation group into a statutory labor organization and that the circumstances presented did not pose the danger of employer domination of labor organizations that Section 8(a)(2) was designed to prevent.

[4] 311 NLRB 893, 894 (1993).
[5] 320 NLRB 53 (Chairman Gould and Members Cohen and Truesdale).
[6] 311 NLRB 893.

C. Employer Discrimination Against Employees

In *International Paper Co.*,[7] the Board held that an employer engages in conduct inherently destructive of employee rights violative of Section 8(a)(3) of the Act when, after it has lawfully locked out its bargaining unit employees and has lawfully subcontracted their work on a temporary basis, it takes the further step of subcontracting their work on a permanent basis in order to bring economic pressure to bear in support of its bargaining position in contract negotiations.

The parties engaged for approximately 2 months in unsuccessful negotiations to reach a new collective-bargaining agreement. The respondent thereafter locked out the bargaining unit production and maintenance employees and continued operations with temporary workers provided under a temporary subcontracting arrangement. Subsequently, the respondent entered into a permanent subcontract for the performance of bargaining unit maintenance work. During the entire 9-month period in which the permanent subcontract was in effect, the bargaining unit employees remained locked out and the parties unsuccessfully sought to negotiate a new collective-bargaining agreement. Following the rescission of the permanent subcontract, the parties continued to bargain and approximately 5 months later reached agreement on the terms of a new agreement, at which time the lockout was ended and all bargaining unit employees returned to work.

The Board initially observed that a single employer may lawfully hire temporary replacements to engage in business operations during an otherwise lawful lockout of its employees, absent specific proof of antiunion motivation.[8] The Board explained that the use of temporary replacements during a lockout has only a comparatively slight impact on employee rights, because there is no threat to the permanent employee status of locked out employees, and the union or its individual members have the ability to relieve their adversity by accepting the employer's less favorable terms and returning to work.[9]

In contrast, the Board found that the use of permanent replacements during the lockout imposed the most severe penalty employees could have suffered: permanent loss of employment and employee status. "There can, of course, be no greater obstacle to the exercise of employee rights than permanent loss of employment and employee status."[10] Likewise, the employees could not end the dispute simply by agreeing to the respondent's terms.

The Board further found that the respondent's conduct would significantly impact the exercise of Section 7 rights by those unit employees whose jobs were not lost as a result of the respondent's conduct. The Board observed that employees who did return to work would perform their duties side-by-side with the contract employees performing on a permanent basis the work of former unit members,

[7] 319 NLRB 1253 (Chairman Gould and Members Browning and Truesdale).

[8] *Harter Equipment*, 280 NLRB 597 (1986) (*Harter I*), affd. sub nom. *Operating Engineers Local 825 v. NLRB*, 829 F.2d 458 (3d Cir. 1987).

[9] *International Paper Co.*, supra at 1268–1269.

[10] Id. at 1270.

and that the resulting altered composition of the bargaining unit would be a new and continuing feature of the respondent's workplace. "Thus, the remaining bargaining unit employees need merely look at those working alongside them to be visibly reminded on a day-to-day basis of the most severe and feared consequence of engaging in collective bargaining and union activities: permanent job loss."[11] The Board accordingly concluded that the respondent's conduct would have a continuing effect on the future exercise of employee rights well beyond the settlement of the instant dispute that "stands as an ever-present reminder of the dangers connected with . . . union activities."[12]

In addition, the Board found that the respondent's permanent subcontracting impaired the parties' process of collective bargaining. The Board concluded that the permanent subcontract diverted the bargaining process away from negotiations regarding the basic issues separating the parties, to a narrow focus on the consequence of the permanent subcontract: whether the unit maintenance employees would return to work at the end of the lockout. "[T]he Respondent's implementation of its permanent subcontracting proposal placed diminution of the bargaining unit at the forefront of the bargaining process, operating as a virtual condition precedent to the settlement of the labor dispute."[13]

Finally, the Board found that the respondent had failed to present a business purpose to justify the severe invasion of employee rights resulting from the respondent's permanent subcontract. The Board noted that the respondent was able to continue its business operations without interruption during the lockout by using temporary subcontract personnel, and that the respondent was pleased with its business performance under that arrangement. The Board thus concluded that the respondent's asserted business justification—to achieve additional cost savings during the lockout—was insufficient to outweigh the severe harm occasioned to employee rights, and that the respondent accordingly had engaged in conduct inherently destructive of employee rights and violative of Section 8(a)(3) of the Act.

D. Employer Bargaining Obligation

1. Continuing Bargaining Obligation

In *Lee Lumber & Building Material Corp.*,[14] the Board held that when an employer unlawfully refuses to recognize and bargain with an incumbent union, any employee disaffection from the union arising during the course of that failure or refusal is presumed to be a result of the earlier unlawful conduct. The employer can rebut the presumption only by showing that the disaffection arose after it resumed its recognition of the union and bargained for a reasonable time without

[11] Id.

[12] Id., quoting *Erie Resistor Corp.*, 373 U.S. 221, 231 (1963).

[13] Id. at 1273.

[14] 322 NLRB No. 14 (Chairman Gould and Members Browning and Fox).

committing other unfair labor practices that would adversely affect the bargaining.[15]

The employer had refused for several weeks to bargain for a successor contract with the incumbent union on the basis of a pending decertification petition. It then agreed to bargain, and the parties held five negotiating sessions over a 5-week period and nearly arrived at a new contract. Before an overall agreement could be reached, however, employees presented the employer with a second petition, signed by a majority of the bargaining unit, stating that they no longer desired union representation. The employer thereupon broke off the bargaining, withdrew recognition from the union, and made several unilateral changes in terms and conditions of employment.

The Board found the initial refusal to bargain unlawful. It then found that the unlawful refusal tainted the second petition because the parties had not bargained for a reasonable time before the employer was presented with the petition. The Board therefore found that the employer violated Section 8(a)(5) by refusing to bargain, withdrawing recognition, and making unilateral changes on the basis of the second petition. For the reasons discussed in *Caterair International*[16] and *Williams Enterprises*,[17] the Board found that an affirmative bargaining order was the appropriate remedy for the unlawful conduct.

In *Sawyer of Napa, Inc.*,[18] the Board, by a two-member majority, voted to reverse the administrative law judge's finding that the parties had reached a bargaining impasse during their postsettlement negotiations and that the respondent, albeit subject to the remedy set out in *Transmarine Navigation Corp.*,[19] was not obligated to bargain about the effects on the employees of its tannery closing.

To settle unfair labor practice charges in May 1991 the respondent entered into a settlement agreement which provided that backpay owed its employees would be paid in accord with the *Transmarine* remedy. The postsettlement negotiations began on June 4 and continued through November 6, 1991. Much attention was paid to the issue of backpay owed the employees as a result of the respondent closing its tannery. Little progress was made; the respondent was unwilling to accept the union's proposal and was insistent that its backpay obligation was limited to 2 weeks' severance pay to those employees who had only received 1 week's severance when the tannery closed, despite being constantly reminded by the union that the backpay clock under *Transmarine* was running and the longer the parties bargained the more the respondent's liability would be.

The judge found that on November 6, 1991, the respondent had bargained to an impasse over the effects of the tannery closing, thereby complying with the *Transmarine* bargaining requirements and making additional bargaining unnecessary. Contrary to the judge, the

[15] The only exception would be where unusual circumstances exist of the kind that would permit a challenge to a newly certified union during the certification year. The Board noted that those circumstances are narrowly construed. See *Ray Brooks v. NLRB*, 348 U.S. 96, 98–99 (1954).

[16] 322 NLRB No. 11 (Chairman Gould and Members Browning, Cohen, and Fox).

[17] 312 NLRB 937 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995).

[18] 321 NLRB 1120 (Chairman Gould and Member Browning; Members Cohen dissenting in part).

[19] 170 NLRB 389 (1968).

Board found that no legally cognizable impasse had been reached, the respondent's insistence throughout the postsettlement bargaining sessions that its backpay obligation was limited to 2 weeks' backpay being a refusal "to acknowledge or accept its full responsibilities under the *Transmarine* remedy thereby denying the union full bargaining strength that the *Transmarine* backpay provisions were designed to generate."

In dissent, Member Cohen would affirm the judge. He asserted that the respondent had already bargained to an impasse over the effects of the tannery closing during the postsettlement negotiations and found that the Board erroneously penalized the respondent for not following a "correct" bargaining position, although there is no "correct" or "incorrect" bargaining position under the Act, a party being free to take whatever position it wants.

2. Successor Employer

In *Galloway School Lines*,[20] a panel majority of the Board held that the respondent, a successor employer which had violated Section 8(a)(3) by carrying out a plan to avoid hiring a majority of the predecessor's employees and Section 8(a)(5) by refusing to recognize the bargaining representative of those employees, also violated Section 8(a)(5) by unilaterally changing conditions of employment established by the predecessor's collective-bargaining agreement. The majority ordered the respondent, inter alia, to restore the contractual employment conditions pending bargaining with the union. The case involved interpretation and application of the successorship doctrine under *NLRB v. Burns Security Services*.[21]

The Board majority posed the major issue before it as the appropriateness of finding such an 8(a)(5) unilateral change violation, and the corresponding remedy restoring contractual terms, when a successor employer fails to hire some, but not all, of the predecessor's employees in order to avoid a bargaining obligation, "i.e., when some of the predecessor employees who applied but were *not* hired by the successor were not unlawfully denied employment by the successor."[22] Referring to *Burns* for guidance, the majority interpreted the Supreme Court precedent as follows:

> The first sentence of the last paragraph of *Burns* states:
>
> > Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is perfectly clear that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms. [406 U.S. at 294–295.]
>
> Viewed in isolation, this sentence may be interpreted to mean that a new employer is free to set its own initial terms unless it hires

[20] 321 NLRB 1422 (Chairman Gould and Member Browning; Member Cohen dissenting in part).
[21] 406 U.S. 272 (1972).
[22] 321 NLRB 1426.

all or virtually all of the predecessor's employees. However, the very next sentence in *Burns* reads as follows:

> In other situations, however, it may not be clear until the successor employer has hired his full complement of employees that he has a duty to bargain with a union, since it will not be evident until then that the bargaining representative represents a majority of the employees in the unit as required by Section 9(a) of the Act, 29 U.S.C. § 159(a). [Id.]

We believe that these two sentences must be read together and in harmony with the Court's decision as a whole. In our view, the above-quoted sentences mean that a duty to bargain over initial terms can arise not only in situations where the new employer's plan is to retain virtually every predecessor employee, but also in cases where, although the plan is to retain a fewer number of predecessor employees, it is still evident that the union's majority status will continue.[23]

Applying this interpretation of *Burns* to the case before it, the majority noted the difficulty of discerning any legitimate hiring plan of a successor employer whose plan in fact was to unlawfully avoid recognition and bargaining with the union. Resolving uncertainty against the wrongdoer, the majority inferred that, but for its unlawful plan, the respondent would have planned from the outset to hire enough of the predecessor's employees to make it clear that the union's majority status would continue. Accordingly, the majority concluded that the respondent violated Section 8(a)(5) not only by refusing to recognize the union as the majority representative of its newly hired employees, but also by making unilateral changes in the employment conditions set by the predecessor's collective-bargaining agreement without first bargaining with the union.

In dissenting to the 8(a)(5) unilateral change violation and corresponding remedy, Member Cohen disagreed with the majority's interpretation of *Burns*. He found that there was no appropriate basis for inferring that, but for its unlawful discrimination, the respondent would have planned to "retain all" of the predecessor's employees.

3. Unilateral Changes

In *McClatchy Newspapers*,[24] on remand from the D.C. Court of Appeals,[25] the Board adhered to its original decision that the merit wage proposal was a mandatory subject of bargaining on which the respondent could lawfully insist to impasse but that implementation nonetheless violated Section 8(a)(5) and (1) of the Act. In so holding, the Board departed from its original *Colorado-Ute*[26] analysis, and held that a narrow exception to the implementation-upon-impasse rules should be recognized at least in the case of wage proposals

[23] Id., slip op. at 5. (Footnote citation omitted.)

[24] 321 NLRB 1386 (Chairman Gould and Members Browning and Fox; Member Cohen dissenting).

[25] *NLRB v. McClatchy Newspapers*, 964 F.2d 1153 (D.C. Cir. 1992), remanding *McClatchy Newspapers*, 299 NLRB 1045 (1990).

[26] *Colorado-Ute Electric Assn.*, 295 NLRB 607 (1989), enf. denied 939 F.2d 1392 (10th Cir. 1991).

"that confer on an employer broad discretionary powers that necessarily entail recurring unilateral decisions regarding changes in the employees' rates of pay."

The respondent bargained to impasse for a wage proposal to be based solely on merit increases and applicable to all employees, except for certain "grandfathered" employees who had not yet reached the top step increase set forth in the expired contract. (The merit pay system had been included in that prior contract as a supplement to established salary minimums and step increases according to specified job classifications.) Under the proposed merit pay system, the respondent would retain ultimate discretion over the timing and amount of individual merit pay increases which were exempt from the contractual grievance and arbitration provisions. The system provided for employee appeals from merit pay determinations, but for no participation by the union, unless requested by an employee during such appeal, other than general comment after notification by the employer within 10 days of the results of any particular evaluation. Following rejection of the respondent's wage proposal by the union membership and after the parties had reached an impasse, the respondent unilaterally implemented merit pay increases for individual unit employees without prior notice to or discussion with the union.

The Board noted that this factual pattern "lodges in the interstices between the type of employer conduct sanctioned as lawful in *American National Insurance*,[27] and the type of employer conduct barred as unlawful in *Katz*."[28] It further noted that when an impasse in bargaining is reached, the duty to bargain is not terminated but only suspended, citing *NLRB v. Tex-Tan*,[29] and that the impasse doctrine allowing implementation of employer proposals is legitimated only as a method for breaking the impasse. The Board thus concluded that "if the [r]espondent was granted carte blanche authority over wage increases (without limitation as to time, standards, criteria, or the [union's] agreement), it would be so *inherently* destructive of the fundamental principles of collective bargaining that it could not be sanctioned as part of a doctrine created to break impasse and restore active collective bargaining."[30]

In dissent, Member Cohen argues that the Board has no business judging bargaining proposals, and that so long as the proposal has been subjected to good-faith bargaining, and impasse has been reached, there is no basis for objecting to its implementation.

4. Economic Exigency

In *RBE Electronics of S.D.*,[31] the Board held that when parties are engaged in negotiations for a collective-bargaining agreement, and the employer is confronted with an economic exigency compelling prompt action but not the type that relieves the employer of its obli-

[27] *NLRB v. American National Insurance Co.*, 343 U.S. 395 (1952).
[28] *NLRB v. Katz*, 369 U.S. 736 (1962).
[29] 318 F.2d 472 (5th Cir. 1963).
[30] 321 NLRB 1390–1391.
[31] 320 NLRB 80 (Chairman Gould and Members Browning, Cohen, and Truesdale).

gation to bargain entirely, the employer will satisfy its statutory duty by providing the union with adequate notice and an opportunity to bargain. This holding further explicates the Board's prior holding in *Bottom Line Enterprises*.[32] *Bottom Line* held that when parties are engaged in bargaining, an employer's obligation to refrain from unilateral changes extends beyond the mere duty to provide notice and an opportunity to bargain about a particular subject matter; rather it encompasses a duty to refrain from implementation at all, absent overall impasse on bargaining for the agreement as a whole. The Board in *Bottom Line* recognized two limited exceptions to that general rule, when a union engages in tactics designed to delay bargaining and, "when economic exigencies compel prompt action." The Board's holding in *RBE* explicates the latter "economic exigency" exception.

The judge had dismissed the complaint allegations that the respondent had refused to bargain over layoffs, recalls, and reduction in hours, and the General Counsel had excepted to the judge's failure to apply the analysis set forth in *Bottom Line*. The Board agreed with the General Counsel that the judge did not apply the appropriate Board precedent in considering these allegations. The Board remanded the allegations for further analysis and disposition consistent with the *Bottom Line* principles as further explicated in *RBE*.

E. Union Interference with Employee *Beck* Rights

The Board's decisions in *California Saw & Knife Works*[33] and *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*,[34] are the first cases in which it has decided questions arising from the Supreme Court's ruling in *Communications Workers v. Beck*.[35]

In *Beck*, the Supreme Court held that a union was not permitted, "over the objections of *dues-paying nonmember employees*" (emphasis added), to expend funds on activities not related to collective bargaining, contract administration, or grievance adjustment. The Court concluded that such expenditures violated the union's duty of fair representation.

Under current law, no employee is required to be a member of a union to obtain a job. Section 8(a)(3) of the National Labor Relations Act (NLRA), however, provides that employers and unions may enter into agreements requiring all employees in a particular bargaining unit to obtain "membership" on or after the 30th day following being hired (except in "right-to-work" States, where employees cannot be compelled to be "members"). In *NLRB v. General Motors Corp.*,[36] the Supreme Court observed that "membership" as used in Section 8(a)(3) requires *only* the payment of periodic dues and fees as op-

[32] 302 NLRB 373 (1991).

[33] 320 NLRB 224 (Chairman Gould and Members Browning and Truesdale; Member Cohen dissenting in part).

[34] 320 NLRB 349 (Chairman Gould and Members Browning, Cohen, and Truesdale).

[35] 487 U.S. 735 (1988).

[36] 373 U.S. 734 (1963).

posed to full membership. The Court noted that "the membership that is required has been whittled down to its financial core."

The *Beck* decision narrowed that "financial core" obligation for those employees who (1) declined full membership and (2) objected to the payment of more than "representational" expenses. After *Beck*, Section 8(a)(3) could no longer be read as permitting a union to charge a nonmember who had objected for expenditures involving nonrepresentational activities.

In *Beck*, the Court addressed only the fundamental issues respecting the meaning of Section 8(a)(3), leaving to the Board and courts to work out the legalities of the various efforts of unions to comply with *Beck*'s letter and spirit. Among the questions left unanswered by the Court were: (1) whether unions must notify nonunion members of the right to object to paying full dues, and whether they must notify employees who do object regarding the use of the dues; (2) whether unions may place restrictions on the manner of registering a *Beck* objection; (3) whether unions may charge objectors only for activities directly on behalf of their bargaining unit; (4) what types of union activities may unions require objectors to pay for; and (5) what procedures are permissible for determining amounts owed by objectors when the chargeability of expenses is in dispute.

The *California Saw & Knife Works* decision addresses those issues in the context of the consolidation of a number of complaints against the International Association of Machinists (IAM) and many of its district and local affiliates brought by employee charging parties working for employers across the country. The decision considers the IAM's national, voluntarily adopted policy to accord nonmembers who object to full dues their rights under *Beck*, as well as complaints involving the conduct of local and district representatives toward dues objectors or the application of the national policies to such individuals.

In *California Saw*, IAM-represented employees who objected to paying full dues challenged various portions of the IAM's national policy, alleging that the policy did not comply with the Supreme Court's holding in *Beck* that unions that charged objectors for activities not related to their role as bargaining agents had failed in their statutory duty to represent each unit employee fairly. The General Counsel agreed and issued a complaint alleging, among other things, that the union's method of notifying nonmembers of their right to pay reduced dues—annual publication in its newspaper, *The Machinist*—was deficient and that the union's method of determining which expenditures properly could be charged to objecting employees was flawed insofar as it charged an objector in one unit for expenses incurred in a different and unrelated unit.

In its decision, the Board uses its court-tested analysis of whether a union has violated its "duty of fair representation" to determine whether the IAM's policy, as applied, violated Section 8(b)(1)(A) of the Act.

Among the Board's findings in *California Saw*:

- A union must inform each nonmember employee, at the same time or before it seeks to obligate the employee to pay dues and fees under a union-security clause, that he has the legal right to remain a nonmember and the right under *Beck* to object to paying for more than "representational" expenses. The Board held, Member Cohen dissenting, that the IAM's method of publishing its notice to employees annually in its publication "falls permissibly within the wide range of reasonableness afforded a union in satisfying its duty of fair representation." The Board held further that newly hired employees must be given the notice before they are asked to join the union and pay dues under the union-security clause.
- The Board concluded that a union may charge an objector for expenses incurred outside of the objector's bargaining unit that inure to the benefit of the objector's unit, and that the union thus does not breach its duty of fair representation by failing to allocate and charge expenses on a unit-by-unit basis. In view of this finding, the Board held that expenses for litigation which have more than a "remote or theoretical benefit to the objector's bargaining unit" properly may be charged to the objectors. Member Cohen dissented as to the litigation expenses issue.
- The Board held that the IAM's method for handling challenges by objectors of the amounts charged for dues and fees was adequate to satisfy the union's duty of fair representation to the objectors.

The Board simultaneously issued another *Beck* case, *Weyerhaeuser*, which answers some questions not reached in *California Saw*. In *Weyerhaeuser*, the Board held that a union must inform *all* employees in the bargaining unit, not just nonmembers, of the rights of nonmembers under *Beck* if they were not informed of those rights prior to assuming obligations under a union-security clause. In addition, the Board held that a union also must inform all such employees that they have a right under *NLRB v. General Motors*, to become nonmembers of the union in order to be eligible to exercise *Beck* rights.

F. Illegal Secondary Conduct

In *Painters District Council 51 (Manganaro Corp., Maryland)*,[37] the panel majority held that the anti-dual-shop clause sought by the union had a primary objective and thus did not violate Section 8(b)(4)(B) of the Act.

Manganaro Corporation, a unionized company, and Sweeney Corporation, a nonunion shop, were both wholly owned subsidiaries of Manganaro Holding Company. During contract negotiations in 1983, the union proposed an anti-dual-shop clause which the union argued was necessary to protect its members from the threat of losing work to nonunion workers. When the parties failed to reach agreement on the clause, the union refused to refer members to Manganaro's jobsites. Manganaro filed charges with the Board, alleging that the union had violated the Act by seeking to cause Manganaro to cease

[37] 321 NLRB 158 (Chairman Gould and Member Browning; Member Cohen dissenting).

doing business with other employers so that they would cease doing business with Sweeney unless the agreement sought by the union was applied to Sweeney, and to force Sweeney to recognize and bargain with the union.

The judge found in his initial decision that the clause sought by the union was protected by the construction industry proviso to Section 8(e) and therefore did not violate the Act. He found it unnecessary to reach the issue of whether the clause had a secondary objective, thereby falling within the general proscription of Section 8(e), or whether the clause constituted a primary work-preservation clause and therefore did not violate the Act. The Board remanded the case to the judge to determine whether the objective of the clause was primary or secondary. In his supplemental decision, the judge found that the clause was a primary work-preservation clause and recommended that the complaint be dismissed in its entirety.

The Board adopted this determination by the judge, and agreed that the clause was not unlawful on its face and accordingly, interpreted it "to require no more tha[n] what is allowed by law."[38]

In dissent, Member Cohen argued that the majority had sanctioned a clause with a secondary objective, and had sub silentio overruled *Carpenters District Council of Northeast Ohio (Alessio Construction)*,[39] a case proscribing such secondary activity. In so doing, Member Cohen stated that the majority has struck a blow against perfectly lawful double-breasted operations, such as the one here.

G. Equal Access to Justice Act

In *Teamsters Local 741 (A.B.F. Freight)*,[40] the primary issue was whether the applicants, Local 741 and Joint Council of Teamsters No. 28, both of which were affiliated with the International Brotherhood of Teamsters, AFL–CIO, had satisfied their burden of showing that they were eligible for relief under the Equal Access to Justice Act (EAJA).[41] A panel majority adopted the administrative law judge's recommendation to dismiss the application on the ground that the applicants had failed to meet their burden of showing that they were eligible for EAJA relief.[42] The panel majority agreed with the judge that the applicants had failed to meet their burden of showing why aggregation of assets, as required under Section 102.143(g) of the Board's Rules and Regulations,[43] was not warranted in determining their eligibility for EAJA relief.

The applicants asserted that it was Congress' intent that if they were treated as separate "labor organizations" for reporting purposes

[38] Slip op. at 7, quoting *General Teamsters Local 982 (J. K. Barker Trucking)*, 181 NLRB 515, 517 (1970), affd. 450 F.2d 1322 (D.C. Cir. 1971).

[39] 310 NLRB 1023 (1993).

[40] 321 NLRB 886 (Chairman Gould and Members Browning and Cohen).

[41] 5 U.S.C. § 504 (1980). As relevant here, EAJA provides that only those corporations, associations, or organizations are eligible for relief whose net worth does not exceed $7 million and which do not employ more than 500 people. 5 U.S.C. § 504(b)(1)(B)(ii).

[42] Member Cohen did not pass on this issue.

[43] As relevant here, Sec. 102.143(g) states that "[t]he net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility."

under the Labor-Management Reporting and Disclosure Act (LMRDA), they were also separate labor organizations for EAJA purposes and that therefore their assets should not be aggregated in determining their eligibility for EAJA relief. In making this assertion, the applicants relied on language in a House Committee Report which accompanied the 1985 extension of and amendment to the Equal Access to Justice Act and the Ninth Circuit's interpretation of that language in *Grason Electric Co. v. NLRB*,[44] where the court stated that "the report makes clear that if the LMRDA treats the two as separate organizations, the Board may not aggregate their assets."

In finding the applicants' argument without merit, the majority stated that:

> Although the Ninth Circuit in *Grason Electric* interpreted the "Committee intent" as "congressional intent," we cannot attribute such broad authority to the Committee's language in light of the Supreme Court's finding in *Pierce v. Underwood*[45] that the Committee Report language was not controlling because it was neither "an authoritative interpretation of what the 1980 statute meant" nor "an authoritative expression of what the 1985 Congress intended."

Although the majority noted that the committee language in *Pierce* was different from the committee language at issue here, the majority found that the same analysis applied in both cases and compelled the same conclusion, "i.e., that the Committee's intent vis-a-vis the aggregation of net worths cannot be an authoritative expression of what the 1985 Congress intended."

The Board found instead that its aggregation requirement, as set out in Section 102.143(g) of the Board's Rules,

> [was] consistent with Congress' intent to limit EAJA's application only to those "for whom costs may be a deterrent to vindicating their rights" and furthers that purpose by foreclosing EAJA eligibility to applicants which have access to "a large pool of resources" from affiliated entities.

Although the majority noted that mere affiliation, without more, would not require the aggregation of assets under Section 102.143(g) because, as there explained, affiliation is found and aggregation is appropriate where one entity "directly or indirectly controls" another entity, or where the entity is itself "directly or indirectly . . . control[led]" by the other, the majority stated that where affiliation is present "it is the applicant's burden to show that control is lacking and that aggregation of net worths would therefore be inappropriate." Because the majority found the applicants' separate labor organization argument without merit, it concluded that the applicants had failed to meet their burden of showing that aggregation of assets was not war-

[44] 951 F.2d 1100, 1105 (1991).
[45] 487 U.S. 522, 566–567 (1988).

ranted here and had therefore failed to establish their eligibility for EAJA relief.[46]

In *Inter-Neighborhood Housing Corp.*,[47] the Board reversed the administrative law judge's ruling granting attorney's fees and expenses under the Equal Access to Justice Act (EAJA).[48] The judge had held that the General Counsel was not justified in issuing the complaint. Specifically, the judge held that prior to the issuance of the complaint, the General Counsel had sufficient documentary evidence to demonstrate not only that the charge's allegations were not supported but that the union's only witness was not sufficiently reliable. The Board, however, held that the General Counsel in issuing the complaint and proceeding through trial was acting without the benefit of the judge's ultimate credibility resolutions. The Board noted that the judge's decision in the underlying unfair labor practice case[49] turned on credibility and inferences from the evidence.

The Board stated that because the evidence gave rise to more than one reasonable inference, depending on which witness was believed, the General Counsel was substantially justified in issuing a complaint so that the issues could be resolved at an evidentiary hearing. The Board noted that resolving credibility, after hearing and observing all the witnesses and weighing the evidence in light of those findings, is precisely within the judge's preview, not that of the General Counsel.

H. Remedial Order Provisions

1. Affirmative Bargaining Orders

In *Caterair International*,[50] on remand from the United States Court of Appeals for the District of Columbia,[51] the Board reaffirmed its longstanding policy that an affirmative bargaining order is the standard appropriate remedy for the restoration of the status quo after an employer's unlawful withdrawal of recognition from an incumbent union and subsequent refusal to bargain. The Board also stated that, having once considered and balanced the critical statutory policies and rights relevant to this remedy, there is no need to engage in a case-by-case factual analysis to justify its imposition. Finally, the Board reiterated its adherence to its traditional multifactor test for determining the "reasonable period of time" for protected bargaining in each case.

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[46] Another issue in this case was whether the General Counsel was "substantially justified" in filing a complaint and proceeding to trial. A panel majority, reversing the judge, found that the General Counsel was substantially justified and therefore dismissed the application on this basis also. Member Browning found it unnecessary to pass on the substantial justification issue.

[47] 321 NLRB 419 (Chairman Gould and Members Browning and Cohen).

[48] 5 U.S.C. § 504 (1980).

[49] *Inter-Neighborhood Housing Corp.*, Case 2–CA–26453 (1994) (not reported in Board volumes).

[50] 322 NLRB No. 11 (Chairman Gould and Members Browning, Cohen, and Fox).

[51] 22 F.3d 1114, cert. denied 115 S.Ct. 575 (1994).

The Board's original decision[52] affirmed an administrative law judge's findings that the respondent violated Section 8(a)(1), (3), and (5) of the Act, and adopted the judge's recommended Order, including provisions requiring both that the respondent cease and desist from its unlawful refusal to bargain and that it affirmatively recognize and bargain with the Union. The court affirmed the Board's unfair labor practice findings and conclusions and enforced the remedial order with the exception of the affirmative provision requiring the respondent to recognize and bargain with the Union. The court remanded the case to the Board to explain why the affirmative bargaining order, with its implicit bar on decertification efforts for a reasonable period of time, was necessary.

Citing its decision in *Williams Enterprises*,[53] the Board reiterated that an affirmative bargaining order has been the standard Board remedy for more than 50 years when an employer has refused to bargain with an incumbent Section 9(a) union, and noted that in *NLRB v. P. Lorillard Co.*[54] and *Franks Bros. Co. v. NLRB*,[55] the Supreme Court explicitly endorsed the Board's use of affirmative bargaining orders when an employer has unlawfully refused to bargain with a majority bargaining representative. The Board emphasized that the Court in *Franks Bros.* expressly agreed with the Board that an affirmative bargaining order is an appropriate remedy even if a union has lost majority support since the unlawful refusal to bargain. Further, the Board stated that nothing in the Supreme Court's subsequent *NLRB v. Gissel Packing Co.*[56] opinion indicates an intent to limit the broad affirmation of Board remedial policy in *Franks Bros.* or *Lorillard.* Quoting the Fourth Circuit's opinion in *Williams*, the Board noted that the unlawful refusal to bargain in this case presents a different remedial question:

> The distinction between incumbent unions and non-incumbent unions is significant. An incumbent union enjoys a presumption of majority status which burdens the . . . company with an obligation to recognize and bargain with it. Thus, when a . . . company refuses to recognize or bargain with an incumbent union, only an affirmative bargaining order can restore the status quo ante—that is, reseat the union as the incumbent and restore to it the bargaining opportunity it would have had but for the successor's unlawful refusal to bargain.[57] In contrast, a non-incumbent union never enjoyed a presumption of majority status; therefore, an affirmative order to bargain with a nonincumbent union grants it a better position than the status quo—initial recognition as the bargaining agent

[52] 309 NLRB 869 (1992).

[53] 312 NLRB 937 (1993), enfd. 50 F.3d 1280 (4th Cir. 1995).

[54] 314 U.S. 512 (1942).

[55] 321 U.S. 702 (1944).

[56] 395 U.S. 575 (1969).

[57] *Franks Bros.*, 321 U.S. at 705; *Ron Tirapelli Ford, Inc. v. NLRB*, 987 F.2d 433, 445 (7th Cir. 1993) ("a bargaining order is the appropriate remedy to return the parties to the status quo ante").

which it would not have had even before the company's unlawful conduct.[58]

The Board also stated that it did not regard the remedial issue presented as involving a balancing of the interests of the union against the statutory rights of employees. In fact, the Board stated that its design in restoring the union's bargaining opportunity is to protect the statutory rights of employees, including the right of free choice of representation, not to protect any independent right of the union. The Board further emphasized that an affirmative bargaining order protects the rights of an employee majority who have previously expressed the desire to bargain collectively through the union and that this antecedent exercise of employees' Section 7 rights is a concrete fact in every case in which the Board imposes an affirmative bargaining order.

2. Time Deadlines for Remedial Actions

In *Indian Hills Care Center*,[59] the Board modified its remedial orders for unlawful discharges in unfair labor practice cases by establishing specific deadlines for posting the notice, offering reinstatement, expunging files, and making records available to the Board. The Board also modified the notice-posting provision and replaced the notice-of-compliance provision with a certification-of-compliance provision.

The judge found, and the Board agreed, that the respondent violated Section 8(a)(1) of the Act by, inter alia, discharging charging party Christine Ryan. The judge also recommended that the respondent take the following affirmative actions: (1) offer Ryan immediate reinstatement; (2) remove any reference of the unlawful discharge from its files; (3) make Ryan whole for loss of earnings and benefits; (4) preserve and make available all records necessary to compute backpay; (5) post a notice to employees; and (6) notify the Regional Director within 20 days of the steps the respondent has taken to comply.

Based on the Board's "broad discretionary" authority under Section 10(c) to fashion appropriate remedies,[60] the Board decided that its standard remedies should be modified to better effectuate the policies of the Act in the following three respects. First, the Board clarified its Orders by including specific time deadlines for posting the notice, offering reinstatement, expunging files, and making records available to the Board.[61] The Board noted that the lack of specificity of its affirmative actions resulted in disagreements between the re-

[58] *NLRB v. Williams Enterprises*, 50 F.3d 1280 at 1289.

[59] 321 NLRB 144 (Chairman Gould and Members Browning, Cohen, and Fox).

[60] E.g., *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 262–263 (1969). It is also firmly established that remedial matters are traditionally within the Board's province and may be addressed by the Board in the absence of exceptions. E.g., *Schnadig Corp.*, 265 NLRB 147 (1982); *R. J. E. Leasing Corp.*, 262 NLRB 373 fn. 1 (1982) (modified decision).

[61] The deadlines are as followed: Within 14 days after service by the Region, the respondent shall post the notice; within 14 days from the date of the Order, the respondent shall offer reinstatement and expunge its files (the respondent shall notify the employee of the expunction within 3 days thereafter); and within 14 days of a request, the respondent shall make its records available to the Board.

spondents and the Board personnel over the meaning of the word "immediate." It also hampered the Agency's efforts to secure expeditious compliance.

Second, the Board modified the Orders to include a certification-of-compliance provision which requires that "the respondent should, within 21 days after service by the Region, file with the Regional Director a sworn certification, on a form provided by the Region, attesting to the steps that the respondent has taken to comply."[62] The Board noted that this requirement places the onus on the respondent, and relieves the Regional Office of the responsibility of determining whether all necessary compliance steps have been taken.

Finally, the Board changed the notice-posting provision to include language that "if the respondent's facility has closed, the respondent shall mail the notice to the employees." The Board noted that this provision ensures that employees are notified of the outcome of the Board proceeding when the respondent's facility has closed after the issuance of the Board's decision.

3. Undocumented Aliens

In *A.P.R.A. Fuel Oil Buyers Group*,[63] the Board, modifying its previous Order,[64] required the respondent to offer discharged discriminatees, whom the respondent contended to be undocumented aliens, reinstatement conditioned on their production, within a reasonable time, of documents enabling the respondent to meet its obligations under the Immigration Reform and Control Act of 1986 (IRCA) to verify eligibility for employment in the United States. A plurality of the Board also modified the backpay order by tolling backpay as of the date of reinstatement or when, after a reasonable period of time, the discriminatees are unable to produce documents enabling the respondent to meet its obligations under IRCA.

The respondent hired the two discriminatees after they disclosed that, based on their immigration status, they could not lawfully be employed in the United States. The Board, in its previous decision, had concluded that the subsequent discharges of the two men resulted from the ongoing union activities among the respondent's employees. Following the issuance of that decision, the Board sua sponte severed for reconsideration the remedial provisions for reinstatement offers and backpay for the discriminatees.

The Board concluded that awarding reinstatement and backpay remedies under the Act in these circumstances is consistent with IRCA and its underlying policies. The legislative history of IRCA specifically states that the statute was not intended to affect the rights and protections of undocumented alien workers under the Act. Congress also noted the Supreme Court's holding in *Sure-Tan, Inc. v. NLRB*[65] that undocumented aliens are employees under Section 2(3)

[62] This provision replaces the notice-of-compliance provision appearing in past Board Orders.

[63] 320 NLRB 408 (Chairman Gould and Member Truesdale; Members Browning and Cohen separately dissenting in part).

[64] 309 NLRB 480 (1992).

[65] 467 U.S. 883 (1984).

of the Act and that their coverage helps to ensure reasonable working conditions for citizens and legal alien workers by decreasing competition from individuals willing to accept substandard conditions. The Board found that granting its traditional remedies to undocumented aliens would deter some unscrupulous employers from flouting their obligations under both IRCA and the Act by hiring these workers in violation of IRCA and then taking advantage of their reluctance to complain about adverse working conditions or employer conduct prohibited by the Act. The Board conditioned its reinstatement order in this case, however, on the discriminatees' production of documents enabling the respondent to meet the IRCA requirement to verify their eligibility for employment, which the respondent had failed to do in the initial hiring process.

The plurality also concluded that an award of backpay in these circumstances would effectuate the policies of the Act by providing some compensatory relief without requiring the reestablishment of an employment relationship that may contravene IRCA. Because the discriminatees were discharged for their union activities, the plurality found that in the absence of these activities they would have retained their employment regardless of their immigration status, and that backpay was therefore appropriate. The backpay obligation, however, would be tolled as of the discriminatees' reinstatement in compliance with IRCA requirements, or their failure to produce within a reasonable time documents enabling the respondent to verify their eligibility for employment under IRCA, whichever is earlier.

In partial dissent, Member Browning agreed with the General Counsel's position that, if within a reasonable time, a discriminatee seeks permission from the Immigration and Naturalization Service (INS) to work, backpay should at least continue until the INS acts on the request. Furthermore, Member Browning would have granted an additional remedy sought by the General Counsel, requiring the respondent to hire an applicant referred by the union to replace a discriminatee in the event that the discriminatee fails to seek permission to work from the INS or the INS rejects the discriminatee's request. Like the *Transmarine*[66] remedy designed to restore the union's bargaining strength after an employer has unlawfully refused to bargain over the effects of a decision to cease operations, Member Browning reasoned that allowing the union to refer applicants in lieu of the discriminatees would effectively restore some of the union support lost as a result of the respondent's misconduct.

Member Cohen, also dissenting in part, would have denied backpay to the discriminatees for any periods for which they could not demonstrate that they were lawfully entitled to be present and employed in the United States. This limitation on backpay, Member Cohen reasoned, would be consistent with the conditions the Board placed on the reinstatement remedy to accommodate IRCA, as well as with established principles governing backpay. Citing the Seventh Circuit's

[66] *Transmarine Navigation Corp.*, 170 NLRB 389 (1968).

decision in *Del Rey Tortilleria v. NLRB*,[67] Member Cohen would find that undocumented aliens are not legally harmed by the termination of employment to which they were never entitled, and therefore an award of backpay is unwarranted.

[67] 976 F.2d 1115 (1992).

V

Supreme Court Litigation

The Board won all three of its cases before the Supreme Court this year. In addition, the Supreme Court decided an important question concerning the application of the antitrust laws to the multiemployer collective-bargaining process.

A. The "Employee" Status of Paid Union Organizers

In *Town & Country*,[1] the Court unanimously held that the Board may lawfully interpret the term "employee"—which Section 2(3) of the NLRA defines as including "any employee," unless the Act explicitly states otherwise—to encompass company workers who are also paid union organizers. This decision is discussed more fully in 60 NLRB Ann. Rep. 85 (1995).

B. The "Employee" Status of Crews Collecting and Transporting Chickens for Slaughter in Their Employer's Processing Plant

In *Holly Farms*,[2] the Court, by a 5–4 vote, upheld the Board's conclusion that Holly Farms' "live-haul" crews were "employees" protected by the NLRA, rather than "agricultural laborers" excluded from the Act's coverage. The live-haul crews are teams of chicken catchers, forklift operators, and truckdrivers, who collect for slaughter chickens raised as broilers by independent contract growers and transport the birds to Holly Farms' processing plant. The substantial question in the case was whether the catching and loading of broilers qualifies as work performed "on a farm as an incident to or in conjunction with" the independent growers' farming operations, within the definition of "agriculture" supplied by Section 3(f) of the Fair Labor Standards Act (FLSA),[3] or whether that work is tied to Holly Farms' processing operations, which are nonagricultural activity. The Court noted that, "[w]hen the legislative prescription is not free from ambiguity, the administrator must choose between conflicting reasonable interpretations"; courts, in turn, "must respect the judgment of

[1] *NLRB v. Town & Country Electric*, 116 S.Ct. 450.

[2] *Holly Farms Corp. v. NLRB*, 116 S.Ct. 1396.

[3] No definition of "agricultural laborer" appears in the NLRA, but annually since 1946, Congress, in riders to Appropriation Acts for the Board, has instructed that the meaning of "agricultural laborer" for NLRA purposes shall be derived from the definition of "agriculture" in Sec. 3(f) of the Fair Labor Standards Act.

the agency," even if the issue "with nearly equal reason [might] be resolved one way rather than another."[4] The Court held that the Board reasonably aligned the work of the live-haul crews with Holly Farms' processing operations, classifying them covered "employees," rather than exempt "agricultural laborers."

Thus, the Court observed that once the broilers have grown to maturity the growers' contractual obligation to raise the birds ends, and the work of the live-haul crew begins. The growers do not assist the crews in catching or loading the chickens, and the crews play no role in the growers' performance of their contractual undertakings. Furthermore, the live-haul employees all work out of Holly Farms' processing plant, begin and end each day by punching a timeclock at the plant, and are functionally integrated with other processing-plant employees. Finally, the Court found that the Board's decision not only adheres to longstanding NLRB precedent, but it is supported by the construction of Section 3(f) of the FLSA by the Department of Labor, the agency responsible for administering the FLSA.

C. Employer's Belated Assertion of Good-Faith Doubt About Union's Majority Status

In *Auciello*,[5] the Court unanimously held that the Board reasonably concluded that an employer may not disavow a collective-bargaining agreement because of a good-faith doubt about a union's majority status at the time the contract was made, when the doubt arises from facts known to the employer before the union accepted its contract offer. The Court noted that, in its efforts to achieve the Act's object of industrial peace and stability fostered by collective-bargaining relationships, the Board has held that a union is entitled to a conclusive presumption of majority status during a collective-bargaining agreement's term up to 3 years. The same need for repose that led the Board to adopt that rule also led the Board to rule out an exception for the benefit of an employer with doubts arising from facts antedating the contract. The Board said that such an exception would allow an employer to "sit" on its assertion of good-faith doubt and raise it after the offer is accepted, and concluded that the risks of giving an employer such unilateral control over a vital part of the collective-bargaining process would undermine the stability of the collective-bargaining relationship, and thus outweigh any benefit that might in theory follow from vindicating a doubt that ultimately proved to be sound.[6]

The Court held that the Board's judgment in the matter is entitled to prevail. "To affirm its rule of decision in this case, indeed, there is no need to invoke the full measure of the 'considerable deference' that the Board is due."[7] Nor was rejection of the Board's position compelled by the statutory right of employees to bargain collectively

[4] 116 S.Ct. at 1401.
[5] *Auciello Iron Works v. NLRB*, 116 S.Ct. 1754.
[6] *Auciello Iron Works*, 317 NLRB 364, 370 and 374 (1995).
[7] 116 S.Ct. at 1759.

through representatives of their own choosing and to refrain from doing so. Adhering to the teaching of *Brooks*,[8] that "[t]o allow employers to rely on employees' rights in refusing to bargain with the formally designated union is not conducive to [industrial peace], it is inimical to it," the Court added:[9]

> The Board is accordingly entitled to suspicion when faced with an employer's benevolence as its workers' champion against their certified union, which is subject to a decertification petition from the workers if they want to file one. There is nothing unreasonable in giving a short leash to the employer as vindicator of its employees' organizational freedom.

D. Application of Antitrust Laws to Agreement by Employers in Multiemployer Unit to Implement the Terms of Their Last Best Good-Faith Bargaining Offer

In *Brown*,[10] the Court, by an 8–1 vote, held that the Federal labor laws shielded from antitrust attack an agreement by a group of football clubs bargaining together in a multiemployer unit to implement, after impasse, the terms of their last best good-faith offer. The Court noted that it had previously found in the labor laws an implicit "nonstatutory" antitrust exemption that applies where needed to make the collective-bargaining process work.[11] The Court added that the practice here—the postimpasse imposition of a proposed employment term concerning a mandatory subject of bargaining—is unobjectionable as a matter of labor law, and, indeed, plays a significant role in the multiemployer collective-bargaining process that itself comprises an important part of the nation's industrial relations system. Subjecting that practice to antitrust law, the Court continued, would threaten to introduce instability and uncertainty into the collective-bargaining process, for antitrust often forbids or discourages the kinds of joint discussions and behavior that collective bargaining invites or requires. Moreover, if antitrust courts tried to evaluate particular kinds of employment understandings, there would be created a web of detailed rules spun by many different nonexpert antitrust judges and parties, rather than a set of labor rules enforced by a single expert body, the National Labor Relations Board, to which the labor laws give primary responsibility for policing collective bargaining. Accordingly, the Court concluded that the implicit exemption from the antitrust laws applies to the employer conduct in this case.

The Court cautioned that its holding "is not intended to insulate from antitrust review every joint imposition of terms by employers, for an agreement among employers could be sufficiently distant in time and in circumstances from the collective-bargaining process that a rule permitting antitrust intervention would not significantly inter-

[8] *Brooks v. NLRB*, 348 U.S. 96, 103 (1954).
[9] 116 S.Ct. at 1760.
[10] *Antony Brown v. Pro Football, Inc.*, 116 S.Ct. 2116.
[11] See *Connell Construction Co. v. Plumbers Local 100*, 421 U.S. 616, 622 (1975).

fere with the process.''[12] The Court added that it need not decide in this case where to draw that line, nor would it be appropriate for it to do so ''without the detailed views of the Board, to whose 'specialized judgment' Congress 'intended to leave' many of the 'inevitable questions concerning multiemployer bargaining bound to arise in the future.''' [13]

[12] 116 S.Ct. at 2127.

[13] Id., quoting *NLRB v. Teamsters Local 449*, 353 U.S. 87, 96 (1957) (*Buffalo Linen*).

VI

Enforcement Litigation

A. Jurisdiction

Section 2(2) of the Act exempts from the Act's coverage "any person subject to the Railway Labor Act." In *United Parcel Service v. NLRB*,[1] a case involving both the scope of the Railway Labor Act (RLA) and the Board's authority to decide that issue, the District of Columbia Circuit concluded that the labor relations between two subsidiaries of United Parcel Service (UPS) and their 175,000 drivers and parcel handlers continue to be governed by the National Labor Relations Act (NLRA) rather than the RLA.

Although the UPS subsidiaries had consistently acknowledged the NLRB's jurisdiction in unfair labor practice proceedings from 1947 through 1991, they asserted in the instant case that they were instead subject to the RLA because of their employees' role in processing and delivering "next day" packages and other parcels transported by air by an UPS air subsidiary. The air subsidiary had been certified to operate aircraft by the Federal Aviation Administration in 1988, and its employees had been governed by the RLA since that time. In upholding the NLRB's assertion of jurisdiction, the court first concluded that the Board had acted reasonably in deciding the issue itself as an initial matter, rather than referring the case to the National Mediation Board (NMB) for an advisory opinion. In so holding, the court determined that the Board's decision not to refer the case to the NMB was not arbitrary and was consistent with the Board's past practice of declining to refer when an employer has admitted jurisdiction in the past, and has failed to show an intervening material change in circumstances. The court rejected UPS' further argument that the Board was required to refer the case because the NMB had "primary jurisdiction" over the matter, noting that the primary jurisdiction doctrine, which allocates jurisdiction between Federal courts and administrative agencies, "does not require a federal agency to respect the policy choices of another such agency."[2]

Turning to the merits, the court agreed with the Board that the UPS ground subsidiaries constituted a "trucking service," excluded from the Railway Labor Act by section 1, first, of that statute. The court distinguished cases in which the NMB has found trucking companies that are affiliated with air or rail carriers, and whose operations are

[1] 92 F.3d 1221.
[2] 92 F.3d at 1224–1226.

integrally related to those of the affiliated carriers, to be subject to the RLA, agreeing with the Board that those cases were inapplicable because UPS' ground operation "does not receive even a tenth of its business from its RLA associate, never mind receiving eight-tenths [as in the cases relied on by the employer]." Thus, the court concluded, the UPS ground subsidiaries did not "principally" serve the air carrier, and therefore remained subject to the NLRA.[3]

B. Employer's Right to Control Its Property

In *Lechmere, Inc. v. NLRB*,[4] the Supreme Court reaffirmed the general rule, first enunciated in *NLRB v. Babcock & Wilcox Co.*,[5] that Section 7 of the Act does not protect nonemployee union organizers who trespass on an employer's property to distribute union literature to employees. During the year, two circuits, the Third and the District of Columbia, reviewed and agreed with the Board's conclusion that this general rule against trespassory access also applies to nonemployees who are engaged in other kinds of Section 7 activity, such as "area standards" activity[6] or secondary consumer boycott activity. In *Carpenters v. NLRB*,[7] the Third Circuit emphasized that *Lechmere*'s concern with protecting private property interests was no less compelling "in a case in which a union was engaged in area standards handbilling than in a case where the union was engaged in direct organizational activity." Similarly, the District of Columbia Circuit, in *Commercial Workers Local 880 v. NLRB*,[8] concluded that "it would make no sense to hold that nonemployees have a greater right of access when attempting to communicate with an employer's customers than when attempting to communicate with an employer's employees."

In *Babcock*,[9] the Supreme Court had also indicated that there were two situations in which the general rule against trespassory access would not apply. The *Lechmere* court specifically reaffirmed the existence of the first exception—the "inaccessibility" exception—and termed it a "narrow one."[10] Under this exception, Section 7 is deemed to protect union access to private property "where 'the location of a plant and the living quarters of employees place the employees beyond the reach of reasonable union efforts to communicate with them.'"[11] In *Oakland Mall II*,[12] the Board assumed without deciding that this exception could apply to situations where the target of the

[3] 92 F.3d at 1226.

[4] 502 U.S. 527 (1992) (*Lechmere*).

[5] 351 U.S. 105 (1956) (*Babcock*).

[6] "Area standards" activity seeks to protect those wages and benefit standards that a union has negotiated for its members by exerting pressure on nonunion employers whose relatively low labor costs give them a competitive advantage over employers having collective-bargaining agreements with a union. *See Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 206 fn. 42 (1978).

[7] 68 F.3d 71, 74, affg. *Leslie Homes, Inc.*, 316 NLRB 123 (1995).

[8] 74 F.3d 292, 293–294, affg. *Loehmann's Plaza*, 316 NLRB 109 (1995) (*Loehmann's Plaza II*) and *Oakland Mall*, 316 NLRB 1160 (1995) (*Oakland Mall II*).

[9] 351 U.S. at 112–113.

[10] 502 U.S. at 539.

[11] Ibid., quoting *Babcock*, 351 U.S. at 113.

[12] 316 NLRB at 1163 fn. 13.

union's message was the employer's customers instead of the employer's employees. In keeping, however, with *Lechmere*'s emphasis on the narrowness of the exception, the Board concluded that, for a union to avail itself of the exception, it must be shown that "the use of the mass media (such as newspapers, radio, and television) would not be a reasonable alternative means for the [u]nion to communicate its message."[13] The District of Columbia Circuit in the *Commercial Workers Local 880* case[14] also affirmed this Board interpretation as "comport[ing] with *Lechmere*."[15]

Babcock's second exception to the general rule against trespassory access indicates that union representatives should be given access to an employer's private property if the employer "discriminate[s] against the union by allowing other distribution."[16] In the year, two circuits, the Sixth and the Fourth, narrowed the Board's construction of the term "discrimination" in this context. In *Cleveland Real Estate Partners*,[17] the Board had determined that the employer improperly discriminated when, on the one hand, it permitted the solicitation of signatures for a ballot initiative and the solicitation of money by school children for school projects but, on the other hand, prevented the union from distributing "do-not-patronize" handbills. The Sixth Circuit disagreed with the Board that the employer had engaged in the kind of discrimination addressed by the second *Babcock* exception.[18] The court held "that the term 'discrimination' as used in *Babcock* means favoring one union over another, or allowing employer-related information while barring similar union-related information."[19] And in *Riesbeck Food Markets*,[20] the Board had held that an employer could not adopt a policy which barred from its property union picketing and handbilling containing a do-not-patronize message aimed at its customers while at the same time allowing various civic and charitable solicitations on its premises. The Fourth Circuit in an unpublished decision denied enforcement of the Board's Order.[21]

C. Unilateral Discontinuance of Discretionary Wage Increases

In *Daily News of Los Angeles v. NLRB*,[22] the District of Columbia Circuit upheld the Board's finding that an employer violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing its merit increase program during negotiations with a newly certified union. Prior to the union's certification, the employer had reviewed each employ-

[13] Id. at 1163.
[14] 74 F.3d 292.
[15] Id. at 300
[16] 351 U.S. at 112.
[17] 316 NLRB 158 (1995).
[18] *Cleveland Real Estate Partners v. NLRB*, 95 F.3d 457.
[19] Id. at 465.
[20] 315 NLRB 940 (1994).
[21] 91 F.3d 132.
[22] 73 F.3d 406.

ee's performance annually; it retained discretion to determine the amounts of individual increases, but virtually every employee whose performance was found satisfactory received some increase. However, after the union's certification, the employer, while still giving annual evaluations to all employees and merit increases to unrepresented employees, unilaterally ceased giving such increases to bargaining unit employees, some of whom were told that they would have received increases but for the pending contract negotiations.

The court had previously remanded the case to the Board because of apparent inconsistencies in Board decisions and because it was not clear that the Supreme Court's decision in *NLRB v. Katz*,[23] holding that an employer may not unilaterally grant discretionary wage increases, was applicable to a unilateral discontinuance of such increases.[24] On remand, the Board held that under *Katz* a unilateral change in an established term or condition of employment is unlawful whether it is beneficial or detrimental to employees, and that a policy of granting merit increases can become an established term and condition of employment even though the employer retains discretion as to the amounts of individual increases.[25]

The court now agreed with the Board that the crucial question is whether the employer has unilaterally changed the existing wage structure; if so, the action is unlawful, whether the change is accomplished by granting increases or withholding them.[26] The court also upheld the Board's finding that the merit increase program in this case was an established term and condition of employment and therefore a mandatory subject of bargaining. Although, in the court's view, bargaining would not be required over totally discretionary wage increases merely because their timing was fixed, the employer's discretion here was constrained both by its established procedures for evaluating employees and by its fixed criteria for making each individual merit decision. The employer had denied increases only to employees whose evaluations were unsatisfactory or who were already at the top of the salary scale. Because the criteria for determining wage increases were fixed, the employer was obligated to continue applying the same criteria. Having based wage decisions on individualized merit evaluations, it was obliged to continue making such evaluations. However, instead of doing so, and possibly concluding that no employee was entitled to an increase, the employer had made a broad policy determination that, regardless of their individual merit, no unit employees would receive pay raises. This across-the-board decision was an impermissible unilateral change in a mandatory subject of bargaining. Because such a unilateral change necessarily interferes with the bargaining process, it could not be a legitimate bargaining weapon.[27]

[23] 369 U.S. 736 (1962).
[24] *Daily News of Los Angeles v. NLRB*, 979 F.2d 1571 (D.C. Cir. 1992).
[25] *Daily News of Los Angeles*, 315 NLRB 1236 (1994).
[26] 73 F.3d at 411.
[27] Id. at 412–414.

D. Employer Polling of Employees About Their Continued Support of an Incumbent Union

Under the Board's longstanding rule, an employer violates Section 8(a)(5) and (1) of the Act by conducting a poll of its employees about their continued support for their union unless, prior to the poll, the employer possesses a good-faith reasonable doubt, based on objective evidence, as to the union's continued majority status. That standard is the same as the standard required by the Board to justify an employer's withdrawal of recognition from an incumbent union or to conduct an election on a petition filed by an employer. In the face of rejection and criticism of its polling standard by three courts of appeals,[28] the Board, in 1991, reexamined its position in *Texas Petrochemicals Corp.*[29] The Board there reaffirmed its policy, determining that its "reasonable doubt" standard for polling is more consistent with the ultimate goal of the Act—stability in collective-bargaining relationships—than is the less stringent standard favored by the courts of appeals that had rejected the Board's rule.[30]

In *Allentown Mack Sales & Service v. NLRB*,[31] a divided panel of the District of Columbia Circuit upheld the Board's "reasonable doubt" standard for polling. The court acknowledged that the Fifth, Sixth, and Ninth Circuits have rejected the Board's standard for polling, but it disagreed with the analysis of those courts. The court observed that even if those courts' "basic proposition" were correct—"that the standard for polling should be lower than the standard for withdrawal of recognition"—that would not necessarily lead to the conclusion that the Board's polling standard should be relaxed. The same objective, the court noted, could be accomplished by raising the Board's withdrawal of recognition standards.[32] The court also noted that the standard adopted by the other courts of appeals has itself created an anomaly, by making it easier for an employer to conduct an unsupervised poll than to obtain a Board-supervised election.[33]

Unlike the other circuits, the District of Columbia Circuit found the polling standard to be an area in which deference to the Board is appropriate, because nothing in the Act specifically governs employee polling. Recognizing the Board's concern that polling employees about their support for an incumbent union is potentially, if not inherently, both disruptive of the collective-bargaining relationship and

[28] *NLRB v. A. W. Thompson, Inc.*, 651 F.2d 1141, 1145 (5th Cir. 1981); *Thomas Industries v. NLRB*, 687 F.2d 863, 867–869 (6th Cir. 1982); *Forbidden City Restaurant v. NLRB*, 736 F.2d 1295, 1298–1299 (9th Cir. 1984).

[29] 296 NLRB 1057 (1989), remanded as modified 923 F.2d 393 (5th Cir. 1991).

[30] 296 NLRB at 1061.

[31] 83 F.3d 1483.

[32] Id. at 1486.

[33] Id.

also unsettling to the employees involved, the court concluded that "[i]n light of these dangers, the Board, in its expert judgment, reasonably limited the circumstances in which employers may conduct polls."[34]

[34] Id.

VII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

Section 10(j) of the Act empowers the Board, in its discretion, after issuance of an unfair labor practice complaint against an employer or a labor organization, to petition a U.S. district court for appropriate, temporary injunctive relief or restraining order in aid of the unfair labor practice proceeding, while the case is pending before the Board.[1] In fiscal 1996, the Board filed a total of 38 petitions for temporary relief under the discretionary provisions of Section 10(j): 35 against employers and 3 against both an employer and a labor organization. Eleven cases authorized in the prior year were also pending at the beginning of the year. Of these 49 cases, 13 were either settled or adjusted prior to court action. One case was withdrawn prior to court decision because of changed circumstances. Injunctions were granted in 24 cases and denied in 6 cases. Five cases remained pending at the end of the fiscal year.

District courts granted injunctions against employers in 23 cases and against both an employer and a labor organization in 1 case. Among the violations were employer interference with nascent union organizing campaigns, including one case where an employer's violations precluded a fair election and warranted a remedial bargaining order based on a union's showing of a majority of authorization cards,[2] several cases where an employer withdrew recognition from an incumbent union, several cases where a successor employer refused to recognize and bargain with an incumbent union,[3] and several cases where an employer was refusing to bargain in good faith with a union.

One of the cases decided during the fiscal year involved an organizing campaign among some 200 unit employees.[4] One employee, assisted by a coworker, generated interest in the union among some 31 coworkers and scheduled a meeting with the union. The day before the scheduled union meeting, the primary employee union sup-

[1] See, e.g., *Silverman v. Major League Baseball Player Relations Committee*, 67 F.3d 1054 (2d Cir. 1995), discussed in the 1995 Annual Report; *Miller v. California Pacific Medical Center*, 19 F.3d 449 (9th Cir. 1994)(en banc); and *Frye v. Specialty Envelope*, 10 F.3d 1221 (6th Cir. 1993), discussed in the 1994 Annual Report.

[2] *Schaub v. Spen-Tech Machine Corp.*, 152 LRRM 2565 (E.D. Mich.). See generally *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

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

[4] *Dunbar v. Northern Lights Enterprises*, 153 LRRM 2457 (N.D.N.Y.).

porter was given a written reprimand, allegedly for poor work performance, and was then discharged the next day. That evening, only eight employees were willing to sign a sign-in sheet at the union meeting. Several other employees who also attended the meeting did not sign the list. The district court found reasonable cause to believe that the employer's business justifications for the reprimand and discharge were pretextual and that its conduct was unlawful. The court also concluded that interim relief under Section 10(j), including the reinstatement of the primary union activist, was also "just and proper." The court noted the circumstantial evidence that the employer intended the discharge to "quash" union activity at its facility and concluded that "if the injunctive relief is not granted, the ability of workers to organize will be significantly injured pending a final determination by the NLRB."[5] The court also rejected a delay defense raised by the employer, stating that the 4 months that had passed between the filing of the original Board charge and the 10(j) petition was "entirely reasonable" and "[d]elay is only significant if the harm has occurred and the parties cannot be returned to the status quo or if the Board's final order is likely to be as effective as an order for interim relief."[6]

The Agency continued to enjoy very good success before the U.S. district courts in *Burns* successorship cases where it is also alleged that the employer discriminatorily refused to consider for hire or hire the unionized employees of the predecessor employer in order to avoid a bargaining obligation with the predecessor's incumbent union.[7] During the fiscal year, district courts in Puerto Rico and Washington granted injunctions in this type of case.[8]

During the fiscal year the Board successfully obtained an interim bargaining order in Louisiana in an unlawful withdrawal of recognition case. In *Kaplan v. Formosa Plastics Corp., Louisiana*,[9] the incumbent union had been certified by the Board and its last collective-bargaining agreement had expired in September 1992. The company conceded that there was reasonable cause to believe that the employer had made unilateral changes in unit employees' working conditions, disparately treated union supporters, and refused to recognize and bargain with the union. The court found that these violations diminished union support and, together with evidence of prior violations, constituted sufficient evidence of a need for interim relief to preserve the status quo pending the Board's completion of its procedures. Thus, the court found that "the injunction will further the statutory policies established by the Congress that employees should be able to select their own bargaining representative without coercion by the employer."[10] The court also rejected the employer's defense based on

[5] Id. at 2464.

[6] Id. at 2463–2464, quoting from *Aguayo v. Tomco Carburetor Co.*, 853 F.2d 744, 750 (9th Cir. 1988).

[7] See generally *U.S. Marine Corp. v. NLRB*, 944 F.2d 1305 (7th Cir. 1991), cert. denied 503 U.S. 936 (1992); *Scott v. El Farra Enterprises, d/b/a Bi-Fair Market*, 863 F.2d 670 (9th Cir. 1988) (10(j) proceeding).

[8] *Asseo v. Le Rendezvous Restaurant*, 913 F.Supp. 89 (D.P.R.); *Nelson v. Western Plant Services*, 152 LRRM 2633 (W.D.Wash.).

[9] Civil Action No. 96-228-A (M.D.La.).

[10] Id., slip op. at 5.

the alleged untimeliness of the Regional Director's injunction request, stating that "[t]he court agrees that it is unrealistic to believe that at this point it can completely return the parties to their former positions, but it is still the case that enjoining respondent is the only way available to the court to stop or at least slow down the drifting of the parties away from those positions."[11]

Another district court also granted interim relief against an unlawful withdrawal of recognition.[12] Some 18 months previously, the independent union which had represented the employees of the employer lawfully merged with a local union affiliated with an international union and the employer had since that time dealt with the affiliated local. The case arose when the "old" independent union asserted a right to disaffiliate from the local union, claiming fraud and lack of due process in the original affiliation or merger process. The employer withdrew recognition from the affiliated local and resumed recognition of the "old" independent union. The Board claimed that both actions were unlawful. The district court found reasonable cause to believe that the Board's legal positions were well founded and that the potential erosion of employee support for the affiliated local union and the conferring of unwarranted prestige on the "old" independent union warranted injunctive relief.

Two appellate court decisions on 10(j) matters, which issued in the fiscal year, are noteworthy. In *NLRB v. Electro-Voice, Inc.*,[13] the Seventh Circuit issued its first interim bargaining order pursuant to *NLRB v. Gissel Packing Co.*[14] Initially, the court clarified the evidentiary burdens required to prove the four equitable criteria necessary for obtaining 10(j) relief in that circuit. The court approved a "sliding scale" analysis in which a strong showing *under either* the "likelihood of success" or "balancing of harms" criteria can offset a weaker showing under the other.[15] The court also held that the Regional Director satisfies the likelihood of success test by demonstrating a better than negligible chance of prevailing on the merits of the allegations before the Board.[16] Applying this test, the Seventh Circuit found that the district court made clearly erroneous factual findings and committed legal errors in denying interim injunctive relief. Applying its "likelihood of success" analysis to allegations of mass discharge and of solicitation of grievances, interrogations, and threats of plant closure, the circuit court reversed the district court's conclusion and found that the Regional Director had shown a better than negligible chance of success. In particular, the court found the district court erred refusing to find likelihood of success where the issue turned on credibility alone. Even where the parties presented conflicting testimony, the test was satisfied where the Regional Director "proceeded under established legal theories and presented evidence sufficient to

[11] Id., slip op. at 6.
[12] *Pascarell v. X-L Plastics*, Civil No. 96-3383 (WGB) (D.N.J.).
[13] 83 F.3d 1559 (7th Cir.).
[14] 395 U.S. 575.
[15] 83 F.3d at 1568.
[16] Ibid.

demonstrate that she has a better than negligible chance of prevailing before the Board."[17] Contrary to the district court, the Seventh Circuit also concluded that the unfair labor practices had a "remarkable chilling effect on the employees' efforts to organize"[18] It concluded that an interim bargaining order was just and proper because "[t]he deprivation to employees from the delay in bargaining and the diminution of union support is immeasurable"[19] In balancing the harms in favor of the Regional Director, the court rejected the employer's claim that reinstatement of the terminated employees would be harmful to productivity or discipline.

The second case, *Rivera-Vega v. ConAgra, Inc.*,[20] involved various violations during bargaining for a successor contract. The company refused to provide relevant financial information to an incumbent union which tainted the company's declared impasse, its subsequent unilateral changes in employee working conditions, and its lockout in furtherance of its bargaining position. The First Circuit affirmed the district court's grant of an interim injunction, including an order to bargain with the union, provide it with the requested financial information, rescind the unilateral changes, and reinstate the locked out employees, displacing newly hired and reassigned employees. In reaching its decision, the First Circuit concluded that there was reasonable cause to believe that the employer engaged in the alleged unfair labor practices. The court further concluded that the lockout, directed to the entire work force, increased the potential for irreparable harm to the union's support among employees and that "the very real danger that the union would lose support because of unfair labor practices committed by the employer, combined with the actual financial harm to the employees, outweighs any harm which granting preliminary injunctive relief may cause the employer."[21] In reaching this conclusion, the First Circuit rejected the employer's argument that interim relief would cause it to lose market share which could not be recouped if the Board ultimately ruled in the employer's favor.

B. Injunction Litigation Under Section 10(l)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[22]

[17] 83 F.3d at 1571.
[18] 83 F.3d at 1572.
[19] 83 F.3d at 1573.
[20] 70 F.3d 153 (1st Cir.).
[21] 70 F.3d at 164.
[22] Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a hot cargo agreement declared unlawful in another Section of the Act (Sec. 8(e)).

or Section 8(b)(7),[23] and against an employer or union charged with a violation of Section 8(e),[24] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue." In cases arising under Section 8(b)(7), however, a district court injunction may not be sought if a charge under Section 8(a)(2) of the Act has been filed alleging that the employer had dominated or interfered with the formation or administration of a labor organization and, after investigation, there is "reasonable cause to believe such charge is true and that a complaint should issue." Section 10(l) also provides that its provisions shall be applicable, "where such relief is appropriate," to threats or other coercive conduct in support of jurisdictional disputes under Section 8(b)(4)(D) of the Act.[25] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the respondent, on a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 19 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with seven cases pending at the beginning of the period, nine cases were settled, one was dismissed, one continued in an inactive status, two were withdrawn, and eight were pending court action at the close of the report year. During this period, five petitions went to final order, the courts granting injunctions in five cases and denying none. Injunctions were issued in two cases involving secondary boycott action proscribed by Section 8(b)(4)(B), as well as in instances involving a violation of Section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by Section 8(e). There were no injunctions granted in cases involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were also issued in one case to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

Of the cases settled, four involved secondary boycotts under the proscriptions of Section 8(b)(4)(B). Two involved jurisdictional disputes under Section 8(b)(4)(D); two involved recognitional or organizational picketing under Section 8(b)(7); and one involved a combination of Section 8(b)(4)(B) and (e).

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

[24] 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.

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

VIII

Contempt Litigation

In fiscal year 1996, 144 cases were referred to the Contempt Litigation Branch for advice, or for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 112 cases in fiscal year 1995. In addition, the Branch conducted 47 asset/entity database investigations to assist Regions in their compliance efforts. Voluntary compliance was achieved in 26 cases during the fiscal year, without the necessity of filing a contempt petition, while in 33 others, it was determined that contempt was not warranted.

During the same period, 15 civil contempt proceedings were instituted as compared to 12 civil proceedings in fiscal year 1995. These included two motions for the assessment of fines and/or writs of body attachment. In addition, one criminal contempt motion, two motions for protective restraining orders, one motion for a writ of nondischargeability under the Bankruptcy Act, one motion to void fraudulent transfers, and one garnishment proceeding under the Federal Debt Collection Procedures Act (FDCPA) were initiated during the year. Fourteen civil contempt or equivalent adjudications were awarded in favor of the Board, and two orders were entered granting temporary injunctive relief.

During the fiscal year, the Contempt Litigation Branch collected $75,000 in fines and $464,324 in backpay, while recouping $167,577 in court costs and attorneys' fees incurred in contempt litigation. We also secured a $50,000 performance bond in one case, and froze $800,000 in assets in another, to assure compliance.

A number of proceedings during the fiscal year were noteworthy. In *NLRB v. Pilgrim Industries*,[1] the Board instituted civil contempt proceedings against the company for repeatedly making unilateral changes in its health care benefits. After a hearing before a court-appointed Special Master and the issuance of the Special Master's decision, the court held Pilgrim in civil contempt for violating a 1992 Fifth Circuit order. The contempt order, which became final on May 30, 1996, required Pilgrim, among other things, to expeditiously restore the employees' health care benefits to the levels that existed in 1988; to mail notices of the contempt adjudication to all employees; to make the employees whole for any losses suffered as a result of the unlawful increase in health care premiums; and to pay the Board's

[1] No. 91-4577 (5th Cir.).

costs and attorneys' fees. After subsequent negotiations, the company paid $974,000 in insurance premium refunds to present and former employees and $100,000 to cover the Board's costs and attorneys' fees, and entered into a collective-bargaining agreement with the Union.

In *Crystal Window Cleaning Co.*,[2] the Board, for the first time, sought felony sanctions against a company president for willfully disobeying several orders of the United States Court of Appeals for the Sixth Circuit, including a September 23, 1991 judgment, an April 28, 1993 civil contempt adjudication, and a July 8, 1993 purgation. Following a jury trial in this criminal case the defendant, Thomas R. Hochschild, was convicted on all counts of the criminal contempt indictment. He was subsequently ordered imprisoned for a term of 18 months by the Honorable Paul R. Matia, United States District Court Judge for the Northern District of Ohio.

Finally, the Board's Contempt Branch was successful in obtaining *pendente lite* injunctive relief in two significant cases. In *United States Service Industries*,[3] the Board's Contempt Branch obtained an interim injunction under Section 10(e) of the Act prohibiting United States Service Industries (USSI) from threatening, interrogating, or in any other manner interfering with janitorial employees' Section 7 rights. The injunction also contains certain unusual affirmative provisions meant to dispel the coercive atmosphere left by USSI's unfair labor practices, including a provision requiring USSI to mail copies of the court order, in English and Spanish, to employees' homes; hold meetings of the janitors during working time and read the injunction in English and Spanish, with a representative of the Union present; and to grant the Union reasonable access to the Respondent's employees at their worksites in nonwork areas during employees' nonworktime. And in *NLRB v. Maddox*,[4] the Seventh Circuit froze more than $800,000 in proceeds from a lawsuit in the Respondent's favor pending the outcome of a Board backpay proceeding in which both the company and its president were to be named as liable for the calculated backpay. Facing the loss of the use of those funds for an indefinite period, the Respondent settled with the Board.

[2] No. 96-3517 (sub nom. U.S. v. Hochschild).

[3] 319 NLRB 231 (Chairman Gould and Members Browning and Cohen).

[4] No. 94-1307 (7th Cir.).

IX

Special Litigation

A. Litigation Concerning the Board's Jurisdiction

In *Operating Engineers Local 70 v. NLRB*,[1] a union unsuccessfully sought district court review of the Board's application of its standard for exercising jurisdiction over employers who cede some control over working conditions to a political subdivision. In 1993, Aramark Corporation contracted to provide food services to a local school district, and the company subsequently hired employees for this purpose. Local 70, International Union of Operating Engineers, which was the recognized representative of food service workers employed directly by the school district, commenced a state administrative proceeding seeking accretion of the Aramark employees into the unit of school district employees. Aramark then commenced a representation proceeding with Region 18. The union sought to dismiss the Board proceeding, contending that the Board lacked jurisdiction under Section 2(2) of the Act because Aramark had ceded control over its own employees' working conditions to the school district, allegedly a political subdivision. Applying the Board's standard in *Management Training Corp.*,[2] the Regional Director directed an election, which the union lost. The union filed suit in Federal district court, arguing that the *Management Training* standard exceeds the Board's statutory authority because it effectively subjected the school district to the Board's jurisdiction. Applying the rule that a clear violation of a mandatory provision of the Act is a prerequisite for district court jurisdiction over an action challenging a Board representation decision, the district court granted the Board's motion to dismiss for lack of jurisdiction. The court held that the Board had not violated a mandatory provision of the Act because the agency had not purported to exercise jurisdiction over the school district or the school district's own employees, and because the *Management Training* standard explicitly recognizes that the Board will exercise its authority only where the statutory definition of employer is satisfied.

In another case,[3] the District Court for the Eastern District of North Carolina issued a preliminary injunction halting the Board's representation proceeding until such time as the District Court concludes that the Board has complied with the mandate of 29 U.S.C. § 159(c)(1)

[1] 940 F.Supp. 1439 (D.Minn.).
[2] 317 NLRB 1355 (1995).
[3] *Perdue Farms, Inc. v. NLRB*, 935 F.Supp. 713 (E.D.N.C.), appeal pending No. 96-2128 (4th Cir.).

by conducting an appropriate investigation into allegations that the petitioning union had forged signatures on authorization cards relied on to secure the conduct of an election. The court found that both prongs of the test for jurisdiction over Board representation proceedings set forth in *Leedom v. Kyne*,[4] had been met. As to the first prong, the court found that the Board violated a clear statutory mandate by departing from the Board's Casehandling Manual and/or from established "policy" during its investigation of Perdue's allegations that United Food and Commercial Workers (UFCW) had made a fraudulent showing of employee interest. As to the second prong, the district court found that the availability of review of Perdue's forgery allegations both before the Board and the circuit court was "illusory" or "irrelevant" in light of the "passage of time" and other factors which would detract from the meaningfulness of such review.

B. Subpoena Enforcement Proceeding

In *NLRB v. Carolina Food Processors*,[5] the Fourth Circuit reaffirmed the Board's broad power to issue prehearing, investigatory subpoenas. Subsequent to an election loss, a union filed unfair labor practice charges and requested a *Gissel*[6] bargaining order. The union alleged that a majority of bargaining unit employees had signed authorization cards, but that the employer had undermined the union's majority through unfair labor practices. To determine the authenticity of the authorization cards, the General Counsel issued investigatory subpoenas for official forms containing the employees' signatures. The employer refused to comply, and the Board sought subpoena enforcement in district court. The Fourth Circuit affirmed the district court's order of enforcement. The appellate court rejected the company's arguments that Board subpoenas must be returnable at a hearing, that the General Counsel was engaging in impermissible pretrial discovery, and that it would violate the company's due process rights to give the General Counsel access to signature samples prior to the unfair labor practice hearing, unless the company was given access to the authorization cards to conduct its own forgery investigation.

C. The Authority of the General Counsel

In *Beverly Health Services v. Feinstein*,[7] the District Court for the District of Columbia dismissed a suit against the General Counsel alleging a breach of a written agreement between Beverly and the General Counsel which governed how unfair labor practice charges would be processed and complaints issued against Beverly. After issuance of a particular unfair labor practice complaint, Beverly filed suit in court, asserting that the General Counsel's administrative complaint breached the agreement. Beverly sought to enjoin the administrative

[4] 358 U.S. 184 (1958).
[5] 81 F.3d 507.
[6] *Gissel Packing Co.*, 395 U.S. 525 (1969).
[7] 152 LRRM 2868 (D.D.C.)

prosecution of the unfair labor practice complaint. In dismissing the action, the district court reasoned that it is "well settled that a federal district court does not have jurisdiction to enjoin or restrain the Board or its agents from conducting unfair labor practice proceedings[,]" and that exclusive review of unfair labor practice proceedings abides in the courts of appeals.[8] The district court further concluded that the case did not fall within the *Leedom v. Kyne*[9] exception to such exclusive review, since the claim was based on an alleged violation of an agreement between the parties, rather than a provision of the Labor Act, and Beverly would have the normal opportunity through Section 10 of the Act to raise any arguments before an administrative law judge, the Board, and a court of appeals. In addition, the court reasoned that Beverly's complaint should be dismissed because the General Counsel's conduct at issue was an exercise of unreviewable prosecutorial discretion. "That Beverly complains that issuance of the complaint violates the Agreement between the parties does not alter the prosecutorial nature of the decision."[10]

D. Freedom of Information Act

In *Avondale Industries v. NLRB*,[11] the Fifth Circuit reversed the order of the District Court for the Eastern District of Louisiana which had found certain marked Board voting lists protected from disclosure under Exemption 6 of the Freedom of Information Act (FOIA). The voting lists contained employee names, home addresses, and marks indicating that the named persons had voted without challenge, or had appeared to vote, were challenged and for this reason had a "C" marked next to their names. The Board asserted that the marked voting lists were protected under FOIA Exemption 6, 7(A), and 7(C), primarily on the basis that disclosure would constitute an invasion of the employees' personal privacy. The Fifth Circuit found that Exemption 6, which protects against clearly unwarranted invasions of personal privacy, did not apply to protect the Board's voting lists. The court balanced the privacy interests of the employees against the public interest in disclosure. It found that the employees had only a minimal privacy interest concerning records indicating whether or not they voted. The court found the employees no longer had a privacy interest in the nondisclosure of their names and home addresses since *un*marked voting lists from the election were available as part of the NLRB representation case record. By contrast, the court held that the public interest in monitoring Board conduct of elections was "significant." Accordingly, the court concluded that Exemption 6 did not apply. In addition, the court found that Exemption 7 did not apply because, it concluded, the evidence did not support a finding that the records were compiled for a law enforcement purpose.

[8] Id. at 2869.
[9] 358 U.S. 184 (1958).
[10] 152 LRRM at 2870.
[11] 90 F.3d 955.

INDEX OF CASES DISCUSSED

APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

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

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 1996[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	All cases					
Pending October 1, 1995	*32,221	18,536	1,282	1,507	9,375	1,521
Received fiscal 1996	38,775	21,810	778	1,587	12,832	1,768
On docket fiscal 1996	70,996	40,346	2,060	3,094	22,207	3,289
Closed fiscal 1996	35,165	19,467	809	1,409	11,786	1,694
Pending September 30, 1996	35,831	20,879	1,251	1,685	10,421	1,595
	Unfair labor practice cases[2]					
Pending October 1, 1995	*29,729	16,960	1,203	1,313	8,918	1,335
Received fiscal 1996	33,107	17,967	624	1,220	11,772	1,524
On docket fiscal 1996	62,836	34,927	1,827	2,533	20,690	2,859
Closed fiscal 1996	29,485	15,645	648	1,044	10,684	1,464
Pending September 30, 1996	33,351	19,282	1,179	1,489	10,006	1,395
	Representation cases[3]					
Pending October 1, 1995	*2,235	1,500	76	171	394	94
Received fiscal 1996	5,255	3,665	139	349	947	155
On docket fiscal 1996	7,490	5,165	215	520	1,341	249
Closed fiscal 1996	5,280	3,653	147	341	984	155
Pending September 30, 1996	2,210	1,512	68	179	357	94
	Union-shop deauthorization cases					
Pending October 1, 1995	*63	—	—	—	63	—
Received fiscal 1996	113	—	—	—	113	—
On docket fiscal 1996	176	—	—	—	176	—
Closed fiscal 1996	118	—	—	—	118	—
Pending September 30, 1996	58	—	—	—	58	—
	Amendment of certification cases					
Pending October 1, 1995	14	5	0	4	0	5
Received fiscal 1996	22	17	0	5	0	0
On docket fiscal 1996	36	22	0	9	0	5
Closed fiscal 1996	24	18	0	4	0	2
Pending September 30, 1996	12	4	0	5	0	3
	Unit clarification cases					
Pending October 1, 1995	*180	71	3	19	0	87
Received fiscal 1996	278	161	15	13	0	89
On docket fiscal 1996	458	232	18	32	0	176
Closed fiscal 1996	258	151	14	20	0	73
Pending September 30, 1996	200	81	4	12	0	103

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1A for totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Revised, reflects higher figures than reported pending September 30, 1995, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 1996[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA cases					
Pending October 1, 1995	*24,850	16,868	1,196	1,264	5,522	0
Received fiscal 1996	25,752	17,876	621	1,166	6,089	0
On docket fiscal 1996	50,602	34,744	1,817	2,430	11,611	0
Closed fiscal 1996	22,703	15,559	640	987	5,517	0
Pending September 30, 1996	27,899	19,185	1,177	1,443	6,094	0
	CB cases					
Pending October 1, 1995	*4,238	83	2	40	3,395	718
Received fiscal 1996	6,491	64	2	43	5,680	702
On docket fiscal 1996	10,729	147	4	83	9,075	1,420
Closed fiscal 1996	5,942	61	2	44	5,167	668
Pending September 30, 1996	4,787	86	2	39	3,908	752
	CC cases					
Pending October 1, 1995	*408	3	3	4	0	398
Received fiscal 1996	507	4	0	4	0	499
On docket fiscal 1996	915	7	3	8	0	897
Closed fiscal 1996	482	5	3	4	0	470
Pending September 30, 1996	433	2	0	4	0	427
	CD cases					
Pending October 1, 1995	*121	4	2	1	0	114
Received fiscal 1996	199	20	0	4	0	175
On docket fiscal 1996	320	24	2	5	0	289
Closed fiscal 1996	194	19	2	4	0	169
Pending September 30, 1996	126	5	0	1	0	120
	CE cases					
Pending October 1, 1995	34	0	0	2	1	31
Received fiscal 1996	44	2	1	0	3	38
On docket fiscal 1996	78	2	1	2	4	69
Closed fiscal 1996	35	0	1	2	0	32
Pending September 30, 1996	43	2	0	0	4	37
	CG cases					
Pending October 1, 1995	11	0	0	0	0	11
Received fiscal 1996	29	1	0	0	0	28
On docket fiscal 1996	40	1	0	0	0	39
Closed fiscal 1996	25	1	0	0	0	24
Pending September 30, 1996	15	0	0	0	0	15
	CP cases					
Pending October 1, 1995	*67	2	0	2	0	63
Received fiscal 1996	85	0	0	3	0	82
On docket fiscal 1996	152	2	0	5	0	145
Closed fiscal 1996	104	0	0	3	0	101
Pending September 30, 1996	48	2	0	2	0	44

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1995, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 1996[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	RC cases					
Pending October 1, 1995	*1,743	1,498	76	169	0	—
Received fiscal 1996	4,153	3,665	139	349	0	—
On docket fiscal 1996	5,896	5,163	215	518	0	—
Closed fiscal 1996	4,141	3,653	147	341	0	—
Pending September 30, 1996	1,755	1,510	68	177	0	—
	RM cases					
Pending October 1, 1995	*94	—	—	—	—	94
Received fiscal 1996	155	—	—	—	—	155
On docket fiscal 1996	249	—	—	—	—	249
Closed fiscal 1996	155	—	—	—	—	155
Pending September 30, 1996	94	—	—	—	—	94
	RD cases					
Pending October 1, 1995	*398	2	0	2	394	—
Received fiscal 1996	947	0	0	0	947	—
On docket fiscal 1996	1,345	2	0	2	1,341	—
Closed fiscal 1996	984	0	0	0	984	—
Pending September 30, 1996	361	2	0	2	357	—

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1995, in last year's annual report. Revised totals result from post-report adjustments to last year's "on docket" and/or "closed" figures.

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1996

	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	25,752	100.0
8(a)(1)	4,378	17.0
8(a)(1)(2)	190	0.7
8(a)(1)(3)	10,080	39.1
8(a)(1)(4)	134	0.5
8(a)(1)(5)	7,590	29.5
8(a)(1)(2)(3)	157	0.6
8(a)(1)(2)(4)	7	0.0
8(a)(1)(2)(5)	109	0.4
8(a)(1)(3)(4)	560	2.2
8(a)(1)(3)(5)	2,262	8.8
8(a)(1)(4)(5)	26	0.1
8(a)(1)(2)(3)(4)	13	0.1
8(a)(1)(2)(3)(5)	84	0.3
8(a)(1)(2)(4)(5)	13	0.1
8(a)(1)(3)(4)(5)	124	0.5
8(a)(1)(2)(3)(4)(5)	25	0.1
Recapitulation[1]		
8(a)(1)	25,752	100.0
8(a)(2)	598	2.3
8(a)(3)	13,305	51.7
8(a)(4)	902	3.5
8(a)(5)	10,233	39.7
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	7,282	100.0
8(b)(1)	5,088	69.9
8(b)(2)	69	0.9
8(b)(3)	202	2.8
8(b)(4)	706	9.7
8(b)(5)	2	0.0
8(b)(6)	2	0.0
8(b)(7)	85	1.2
8(b)(1)(2)	751	10.3
8(b)(1)(3)	286	3.9
8(b)(1)(5)	7	0.1
8(b)(1)(6)	11	0.2
8(b)(2)(3)	4	0.1
8(b)(3)(5)	2	0.0
8(b)(1)(2)(3)	55	0.8
8(b)(1)(2)(5)	2	0.0
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	2	0.0
8(b)(1)(3)(6)	1	0.0
8(b)(2)(3)(6)	2	0.0
8(b)(1)(2)(3)(5)	4	0.1

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1996—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	6,208	85.3
8(b)(2)	888	12.2
8(b)(3)	558	7.7
8(b)(4)	706	9.7
8(b)(5)	19	0.3
8(b)(6)	17	0.2
8(b)(7)	85	1.2
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	706	100.0
8(b)(4)(A)	45	6.4
8(b)(4)(B)	430	60.9
8(b)(4)(C)	8	1.1
8(b)(4)(D)	199	28.2
8(b)(4)(A)(B)	18	2.5
8(b)(4)(B)(C)	2	0.3
8(b)(4)(A)(B)(C)	4	0.6
Recapitulation[1]		
8(b)(4)(A)	67	9.5
8(b)(4)(B)	454	64.3
8(b)(4)(C)	14	2.0
8(b)(4)(D)	199	28.2
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	85	100.0
8(b)(7)(A)	38	44.7
8(b)(7)(B)	6	7.1
8(b)(7)(C)	32	37.6
8(b)(7)(A)(B)	3	3.5
8(b)(7)(A)(C)	4	4.7
8(b)(7)(B)(C)	1	1.2
8(b)(7)(A)(B)(C)	1	1.2
Recapitulation[1]		
8(b)(7)(A)	46	54.1
8(b)(7)(B)	11	12.9
8(b)(7)(C)	38	44.7
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	44	100.0
Against unions alone	44	100.0
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	29	100.0

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

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1996[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	45	41	—	—	—	41	—	—	—	—	—	—	—
Complaints issued	4,193	3,154	2,919	149	37	—	1	4	0	7	0	0	37
Backpay specifications issued	79	56	53	3	0	—	0	0	0	0	0	0	0
Hearings completed, total	557	426	373	27	6	1	0	2	0	0	0	0	17
Initial ULP hearings	536	407	355	27	6	1	0	1	0	0	0	0	17
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	21	19	18	0	0	—	0	1	0	0	0	0	0
Decisions by administrative law judges, total	468	442	395	36	6	—	2	2	0	0	0	0	1
Initial ULP decisions	439	421	381	32	6	—	1	1	0	0	—	—	0
Backpay decisions	13	5	2	2	0	—	1	0	0	0	0	0	0
Supplemental decisions	16	16	12	2	0	—	0	1	0	0	0	0	1
Decisions and orders by the Board, total	1,395	679	569	43	3	8	0	0	0	1	8	44	3
Upon consent of parties:													
Initial decisions	91	30	23	2	2	0	0	0	0	1	0	1	1
Supplemental decisions	4	4	4	0	0	0	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	238	138	111	16	0	0	0	0	0	0	0	11	0
Backpay decisions	14	5	5	0	0	0	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	902	446	378	22	1	8	0	0	0	0	7	29	1
Decisions based on stipulated record	14	7	5	2	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	93	23	18	1	0	0	0	0	0	0	1	2	1
Backpay decisions	39	26	25	0	0	0	0	0	0	0	0	1	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1996[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Hearings completed, total	814	793	709	11	73	9
Initial hearings	672	656	589	9	58	5
Hearings on objections and/or challenges	142	137	120	2	15	4
Decisions issued, total	625	613	552	12	49	2
By Regional Directors	575	564	506	11	47	2
Elections directed	520	512	464	8	40	0
Dismissals on record	55	52	42	3	7	2
By Board	53	52	46	2	4	0
Transferred by Regional Directors for initial decision	5	5	5	0	0	0
Elections directed	4	4	4	0	0	0
Dismissals on record	1	1	1	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	331	318	278	10	30	1
Withdrawn before request ruled upon	26	25	23	1	1	0
Board action on request ruled upon, total	309	295	261	6	28	0
Granted	50	50	45	2	3	0
Denied	255	241	212	4	25	0
Remanded	4	4	4	0	0	0
Withdrawn after request granted, before Board review	1	1	1	0	0	0
Board decision after review, total	48	47	41	2	4	0
Regional Directors' decisions:						
Affirmed	15	15	13	1	1	0
Modified	7	7	5	0	2	0
Reversed	26	25	23	1	1	0
Outcome:						
Election directed	43	43	38	2	3	0
Dismissals on record	5	4	3	0	1	0

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

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 1996[1]—Continued

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case				
		Total formal actions taken[2]	RC	RM	RD	UD
Decisions on objections and/or challenges, total	418	406	357	5	44	3
By Regional Directors	58	53	46	2	5	0
By Board	360	353	311	3	39	3
In stipulated elections	321	318	277	2	39	2
No exceptions to Regional Directors' reports	186	183	158	1	24	2
Exceptions to Regional Directors' reports	135	135	119	1	15	0
In directed elections (after transfer by Regional Director)	36	32	31	1	0	1
Review of Regional Directors' supplemental decisions:						
Request for review received	37	35	32	1	2	0
Withdrawn before request ruled upon	3	2	2	0	0	0
Board action on request ruled upon, total	31	31	29	1	1	0
Granted	5	5	5	0	0	0
Denied	24	24	23	0	1	0
Remanded	2	2	1	1	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	3	3	3	0	0	0
Regional Directors' decisions:						
Affirmed	0	0	0	0	0	0
Modified	0	0	0	0	0	0
Reversed	3	3	3	0	0	0

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

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1996[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	62	6	54
Decisions issued after hearing	65	6	59
By Regional Directors	63	6	57
By Board	2	0	2
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	37	0	35
Withdrawn before request ruled upon	2	0	2
Board action on requests ruled upon, total	30	1	28
Granted	5	0	4
Denied	25	1	24
Remanded	0	0	0
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	2	0	2
Regional Directors' decisions:			
Affirmed	0	0	0
Modified	0	0	0
Reversed	2	0	2

[1] See Glossary of *terms* for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1996[1]

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved	[2]11,245	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,105	2,685	2,008	103	20	357	197	420	355	16	0	20	29
Recognition or other assistance withdrawn	19	19	12	4	0	1	2	—	—	—	—	—	—
Employer-dominated union disestablished	13	13	9	4	0	0	0	—	—	—	—	—	—
Employees offered reinstatement	909	909	722	24	3	108	52	—	—	—	—	—	—
Employees placed on preferential hiring list	94	94	70	12	2	3	7	—	—	—	—	—	—
Hiring hall rights restored	14	—	—	—	—	—	—	14	12	0	2	0	0
Objections to employment withdrawn	6	—	—	—	—	—	—	6	3	0	0	3	0
Picketing ended	124	—	—	—	—	—	—	124	115	3	0	0	6
Work stoppage ended	11	—	—	—	—	—	—	11	11	0	0	0	0
Collective bargaining begun	2,878	2,728	2,471	51	4	134	68	150	146	0	0	2	2
Backpay distributed	2,632	2,536	2,148	78	15	198	97	96	71	5	1	8	11
Reimbursement of fees, dues, and fines	83	33	28	2	0	1	2	50	47	0	2	0	1
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:.													
Employees offered reinstatement, total	2,760	2,760	2,061	233	6	255	205	—	—	—	—	—	—
Accepted	2,041	2,041	1,657	140	2	153	89	—	—	—	—	—	—

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1996[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
Declined	719	719	404	93	4	102	116	—	—	—	—	—	—
Employees placed on preferential hiring list	690	690	635	33	6	6	10	0	0	0	0	0	0
Hiring hall rights restored	15	—	—	—	—	—	—	15	14	0	1	0	0
Objections to employment withdrawn	786	—	—	—	—	—	—	786	782	0	0	4	0
Employees receiving backpay:													
From either employer or union	17,741	17,505	13,151	880	437	2,406	631	236	93	2	1	7	133
From both employer and union	10	8	8	0	0	0	0	2	2	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	2,763	2,404	470	72	0	42	1,820	359	358	0	1	0	0
From both employer and union	615	615	0	0	0	0	615	0	0	0	0	0	0
C. By amounts of monetary recovery, total	$74,614,307	70,989,883	39,010,020	8,831,639	2,397,751	13,754,663	6,995,810	3,624,424	479,381	12,095	6,065	69,030	3,057,853
Backpay (includes all monetary payments except fees, dues, and fines)	73,500,784	69,945,621	38,851,594	8,745,627	2,397,751	13,476,330	6,474,319	3,555,163	410,675	12,095	5,510	69,030	3,057,853
Reimbursement of fees, dues, and fines	1,113,523	1,044,262	158,426	86,012	0	278,333	521,491	69,261	68,706	0	555	0	0

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1996 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 1996[1]

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Food and kindred products	1,532	1,291	1,000	280	8	2	0	0	1	225	187	7	31	2	1	13
Tobacco manufacturers	19	18	12	6	0	0	0	0	0	1	0	0	1	0	0	0
Textile mill products	246	221	188	33	0	0	0	0	0	25	17	0	8	0	0	0
Apparel and other finished products made from fabric and similar materials	204	183	158	24	1	0	0	0	0	18	12	1	5	2	0	1
Lumber and wood products (except furniture)	305	237	205	30	1	1	0	0	0	59	43	0	16	2	0	7
Furniture and fixtures	243	207	173	31	3	0	0	0	0	35	32	0	3	1	0	0
Paper and allied products	469	410	323	87	0	0	0	0	0	55	40	1	14	3	0	1
Printing, publishing, and allied products	670	580	461	112	3	4	0	0	0	75	49	4	22	0	0	15
Chemicals and allied products	521	428	352	72	2	0	1	0	1	89	66	3	20	3	1	0
Petroleum refining and related industries	197	166	142	20	3	1	0	0	0	26	16	0	10	0	4	1
Rubber and miscellaneous plastic products	479	428	355	69	3	0	0	0	1	48	38	1	9	1	0	2
Leather and leather products	41	35	30	4	1	0	0	0	0	6	6	0	0	0	0	0
Stone, clay, glass, and concrete products	531	422	310	95	7	5	0	0	5	105	73	6	26	2	1	1
Primary metal industries	934	806	608	193	4	1	0	0	0	117	83	4	30	5	0	6
Fabricated metal products (except machinery and transportation equipment)	1,026	897	714	169	6	3	1	0	4	123	96	1	26	1	0	5
Machinery (except electrical)	1,056	913	781	124	6	2	0	0	0	140	111	5	24	0	0	3
Electrical and electronic machinery, equipment, and supplies	504	450	326	120	4	0	0	0	0	50	32	1	17	1	0	3
Aircraft and parts	264	258	143	115	0	0	0	0	0	6	6	0	0	0	0	0
Ship and boat building and repairing	132	123	89	34	0	0	0	0	0	9	7	2	0	0	0	0
Automotive and other transportation equipment	910	794	536	258	0	0	0	0	0	111	92	1	18	3	1	1
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods, watches and clocks	140	118	90	27	0	0	0	0	1	21	14	1	6	1	0	0
Miscellaneous manufacturing industries	193	159	121	37	1	0	0	0	0	33	26	0	7	1	0	0
Manufacturing	10,616	9,144	7,117	1,940	53	19	2	0	13	1,377	1,046	38	293	28	8	59
Metal mining	61	56	50	6	0	0	0	0	0	5	2	0	3	0	0	0
Coal mining	129	122	108	10	4	0	0	0	0	7	4	0	3	0	0	0
Oil and gas extraction	24	15	12	3	0	0	0	0	0	9	6	0	3	0	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	74	62	45	14	3	0	0	0	0	11	7	0	4	0	0	1
Mining	288	255	215	33	7	0	0	0	0	32	19	0	13	0	0	1
Construction	4,873	4,347	3,324	606	244	125	9	0	39	512	435	25	52	5	0	9

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1996[1]—Continued

Industrial group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Wholesale trade	1,504	1,194	955	225	9	3	0	0	2	297	217	10	70	7	2	4
Retail trade	2,469	2,023	1,579	394	37	5	1	0	7	409	291	20	98	22	1	14
Finance, insurance, and real estate	661	523	372	132	14	3	0	0	2	110	88	2	20	3	0	25
U.S. Postal Service	3,191	3,190	2,499	691	0	0	0	0	0	1	1	0	0	0	0	0
Local and suburban transit and interurban highway passenger transportation	685	492	396	95	1	0	0	0	0	186	161	1	24	2	0	5
Motor freight transportation and warehousing	2,338	1,927	1,560	337	26	0	1	0	3	393	325	9	59	7	0	11
Water transportation	287	258	114	119	9	10	4	0	2	25	23	0	2	0	0	4
Other transportation	491	423	283	132	7	0	1	0	0	61	51	2	8	3	0	4
Communication	995	855	671	167	7	8	2	0	0	124	83	4	37	4	0	12
Electric, gas, and sanitary services	1,070	884	709	148	14	5	7	0	1	174	142	3	29	3	0	9
Transportation, communication, and other utilities	5,866	4,839	3,733	998	64	23	15	0	6	963	785	19	159	19	0	45
Hotels, rooming houses, camps, and other lodging places	840	742	564	170	6	0	1	0	1	95	78	3	14	0	0	3
Personal services	242	182	157	20	4	1	0	0	0	55	38	2	15	2	0	3
Automotive repair, services, and garages	436	323	277	45	0	0	0	0	1	107	75	1	31	3	1	2
Motion pictures	210	190	98	85	2	3	0	0	2	20	15	2	3	0	0	0
Amusement and recreation services (except motion pictures)	401	313	229	69	8	2	3	0	2	84	73	2	9	2	0	2
Health services	3,427	2,789	2,331	400	19	0	8	29	2	559	468	17	74	5	4	70
Educational services	315	265	202	49	7	6	0	0	1	42	38	1	3	0	1	7
Membership organizations	606	524	327	188	8	1	0	0	0	68	58	3	7	3	0	11
Business services	2,033	1,665	1,257	372	19	7	4	0	6	343	281	5	57	10	5	10
Miscellaneous repair services	96	71	62	7	1	0	1	0	0	23	15	1	7	2	0	0
Legal services	63	56	49	7	0	0	0	0	0	7	3	0	4	0	0	0
Museums, art galleries, and botanical and zoological gardens	19	15	12	2	1	0	0	0	0	3	3	0	0	0	0	1
Social services	426	317	282	31	3	0	0	0	1	96	80	3	13	2	0	11
Miscellaneous services	95	78	59	17	1	1	0	0	0	17	14	0	3	0	0	0
Services	9,209	7,530	5,906	1,462	79	21	17	29	16	1,519	1,239	40	240	29	11	120
Public administration	97	61	51	10	0	0	0	0	0	35	32	1	2	0	0	1
Total, all industrial groups	38,774	33,106	25,751	6,491	507	199	44	29	85	5,255	4,153	155	947	113	22	278

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

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1996[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	131	122	115	7	0	0	0	0	0	9	7	0	2	0	0	0
New Hampshire	53	48	42	6	0	0	0	0	0	5	5	0	0	0	0	0
Vermont	71	60	50	10	0	0	0	0	0	10	9	0	1	0	1	0
Massachusetts	1,244	1,117	883	162	40	21	1	0	10	115	98	5	12	3	0	9
Rhode Island	193	164	143	16	4	1	0	0	0	27	23	0	4	0	0	2
Connecticut	631	551	437	96	11	4	1	1	1	77	62	3	12	0	0	3
New England	2,323	2,062	1,670	297	55	26	2	1	11	243	204	8	31	3	1	14
New York	4,327	3,697	2,543	1,019	70	33	12	7	13	558	442	18	98	10	3	59
New Jersey	1,490	1,219	899	259	37	16	4	0	4	249	210	6	33	11	0	11
Pennsylvania	2,448	2,117	1,676	373	40	22	2	2	2	306	244	4	58	6	0	19
Middle Atlantic	8,265	7,033	5,118	1,651	147	71	18	9	19	1,113	896	28	189	27	3	89
Ohio	2,086	1,774	1,403	319	36	10	2	2	2	287	239	4	44	8	2	15
Indiana	1,300	1,130	906	192	24	5	0	0	3	161	124	4	33	1	0	8
Illinois	2,468	2,038	1,570	373	63	13	3	0	16	397	325	16	56	16	4	13
Michigan	2,191	1,877	1,440	406	23	5	0	0	3	288	216	10	62	9	2	15
Wisconsin	709	557	441	109	6	0	1	0	0	136	96	2	38	6	0	10
East North Central	8,754	7,376	5,760	1,399	152	33	6	2	24	1,269	1,000	36	233	40	8	61
Iowa	235	179	140	31	5	3	0	0	0	56	47	0	9	0	0	0
Minnesota	479	340	254	70	10	3	0	0	3	128	101	3	24	4	3	4
Missouri	1,014	830	600	180	23	22	0	0	5	177	135	3	39	3	0	4
North Dakota	54	32	29	3	0	0	0	0	0	21	18	0	3	0	0	1
South Dakota	35	28	28	0	0	0	0	0	0	7	5	0	2	0	0	0
Nebraska	119	101	90	11	0	0	0	0	0	18	14	0	4	0	0	0
Kansas	252	201	158	34	8	1	0	0	0	50	42	0	8	0	0	1
West North Central	2,188	1,711	1,299	329	46	29	0	0	8	457	362	6	89	7	3	10
Delaware	70	62	56	6	0	0	0	0	0	7	7	0	0	0	0	1
Maryland	639	549	436	107	4	2	0	0	0	85	79	2	4	0	0	5
District of Columbia	141	120	97	23	0	0	0	0	0	18	14	2	2	0	0	3

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1996[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Virginia	491	425	348	71	5	1	0	0	0	66	53	2	11	0	0	0
West Virginia	615	553	489	53	9	0	0	0	2	57	42	2	13	1	1	3
North Carolina	371	337	279	57	1	0	0	0	0	32	25	0	7	0	0	2
South Carolina	120	110	98	11	1	0	0	0	0	9	8	0	1	0	0	1
Georgia	624	574	441	131	1	0	0	1	0	50	41	1	8	0	0	0
Florida	1,342	1,203	1,033	164	2	0	4	0	0	132	116	2	14	0	0	7
South Atlantic	4,413	3,933	3,277	623	23	3	4	1	2	456	385	11	60	1	1	22
Kentucky	596	521	457	61	1	1	0	0	1	70	61	2	7	2	0	3
Tennessee	716	645	522	119	2	1	0	0	1	68	50	2	16	3	0	0
Alabama	517	460	387	72	0	0	0	1	0	55	40	3	12	0	0	2
Mississippi	223	195	168	26	1	0	0	0	0	28	24	0	4	0	0	0
East South Central	2,052	1,821	1,534	278	4	2	0	1	2	221	175	7	39	5	0	5
Arkansas	204	175	141	34	0	0	0	0	0	29	21	3	5	0	0	0
Louisiana	427	373	316	53	2	0	0	0	2	54	39	2	13	0	0	0
Oklahoma	211	183	161	20	1	0	1	0	0	26	19	0	7	2	0	0
Texas	1,076	977	740	236	0	0	1	0	0	95	71	4	20	0	2	2
West South Central	1,918	1,708	1,358	343	3	0	2	0	2	204	150	9	45	2	2	2
Montana	150	99	95	4	0	0	0	0	0	49	28	1	20	2	0	0
Idaho	107	87	84	2	0	1	0	0	0	20	18	0	2	0	0	0
Wyoming	76	63	51	12	0	0	0	0	0	12	10	1	1	0	0	1
Colorado	878	809	695	102	9	0	2	0	1	64	47	2	15	0	0	5
New Mexico	168	142	123	18	1	0	0	0	0	23	16	0	7	0	1	2
Arizona	388	343	270	69	4	0	0	0	0	40	34	0	6	0	0	5
Utah	187	157	144	12	0	1	0	0	0	28	24	0	4	0	0	2
Nevada	416	348	258	82	2	3	0	0	3	68	60	3	5	0	0	0
Mountain	2,370	2,048	1,720	301	16	5	2	0	4	304	237	7	60	2	1	15

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1996[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Washington	846	660	518	125	9	3	3	0	2	166	117	5	44	7	2	11
Oregon	374	281	209	63	7	1	0	0	1	79	52	7	20	3	0	11
California	4,248	3,651	2,631	942	39	13	3	14	9	554	420	23	111	14	1	28
Alaska	158	120	92	24	2	0	2	0	0	35	26	3	6	1	0	2
Hawaii	408	358	272	70	2	10	2	1	1	48	36	2	10	1	0	1
Guam	45	42	40	2	0	0	0	0	0	3	3	0	0	0	0	0
Pacific	6,079	5,112	3,762	1,226	59	27	10	15	13	885	654	40	191	26	3	53
Puerto Rico	390	293	248	40	2	3	0	0	0	91	80	3	8	0	0	6
Virgin Islands	16	10	6	4	0	0	0	0	0	5	5	0	0	0	0	1
Outlying areas	406	303	254	44	2	3	0	0	0	96	85	3	8	0	0	7
Total, all States and areas	38,768	33,107	25,752	6,491	507	199	44	29	85	5,248	4,148	155	945	113	22	278

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

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1996[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	631	551	437	96	11	4	1	1	1	77	62	3	12	0	0	3
Maine	131	122	115	7	0	0	0	0	0	9	7	0	2	0	0	0
Massachusetts	1,244	1,117	883	162	40	21	1	0	10	115	98	5	12	3	0	9
New Hampshire	53	48	42	6	0	0	0	0	0	5	5	0	0	0	0	0
Rhode Island	193	164	143	16	4	1	0	0	0	27	23	0	4	0	0	2
Vermont	71	60	50	10	0	0	0	0	0	10	9	0	1	0	1	0
Region I	2,323	2,062	1,670	297	55	26	2	1	11	243	204	8	31	3	1	14
Delaware	70	62	56	6	0	0	0	0	0	7	7	0	0	0	0	1
New Jersey	1,490	1,219	899	259	37	16	4	0	4	249	210	6	33	11	0	11
New York	4,327	3,697	2,543	1,019	70	33	12	7	13	558	442	18	98	10	3	59
Puerto Rico	390	293	248	40	2	3	0	0	0	91	80	3	8	0	0	6
Virgin Islands	16	10	6	4	0	0	0	0	0	5	5	0	0	0	0	1
Region II	6,293	5,281	3,752	1,328	109	52	16	7	17	910	744	27	139	21	3	78
District of Columbia	141	120	97	23	0	0	0	0	0	18	14	2	2	0	0	3
Maryland	639	549	436	107	4	2	0	0	0	85	79	2	4	0	0	5
Pennsylvania	2,448	2,117	1,676	373	40	22	2	2	2	306	244	4	58	6	0	19
Virginia	491	425	348	71	5	1	0	0	0	66	53	2	11	0	0	0
West Virginia	615	553	489	53	9	0	0	0	2	57	42	2	13	1	1	3
Region III	4,334	3,764	3,046	627	58	25	2	2	4	532	432	12	88	7	1	30
Alabama	517	460	387	72	0	0	0	1	0	55	40	3	12	0	0	2
Florida	1,342	1,203	1,033	164	2	0	4	0	0	132	116	2	14	0	0	7
Georgia	624	574	441	131	1	0	0	1	0	50	41	1	8	0	0	0
Kentucky	596	521	457	61	1	1	0	0	1	70	61	2	7	2	0	3
Mississippi	223	195	168	26	1	0	0	0	0	28	24	0	4	0	0	0
North Carolina	371	337	279	57	1	0	0	0	0	32	25	0	7	0	0	2

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1996[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
South Carolina	120	110	98	11	1	0	0	0	0	9	8	0	1	0	0	1
Tennessee	716	645	522	119	2	1	0	0	1	68	50	2	16	3	0	0
Region IV	4,509	4,045	3,385	641	9	2	4	2	2	444	365	10	69	5	0	15
Illinois	2,468	2,038	1,570	373	63	13	3	0	16	397	325	16	56	16	4	13
Indiana	1,300	1,130	906	192	24	5	0	0	3	161	124	4	33	1	0	8
Michigan	2,191	1,877	1,440	406	23	5	0	0	3	288	216	10	62	9	2	15
Minnesota	479	340	254	70	10	3	0	0	3	128	101	3	24	4	3	4
Ohio	2,086	1,774	1,403	319	36	10	2	2	2	287	239	4	44	8	2	15
Wisconsin	709	557	441	109	6	0	1	0	0	136	96	2	38	6	0	10
Region V	9,233	7,716	6,014	1,469	162	36	6	2	27	1,397	1,101	39	257	44	11	65
Arkansas	204	175	141	34	0	0	0	0	0	29	21	3	5	0	0	0
Louisiana	427	373	316	53	2	0	0	0	2	54	39	2	13	0	0	0
New Mexico	168	142	123	18	1	0	0	0	0	23	16	0	7	0	1	2
Oklahoma	211	183	161	20	1	0	1	0	0	26	19	0	7	2	0	0
Texas	1,076	977	740	236	0	0	1	0	0	95	71	4	20	0	2	2
Region VI	2,086	1,850	1,481	361	4	0	2	0	2	227	166	9	52	2	3	4
Iowa	235	179	140	31	5	3	0	0	0	56	47	0	9	0	0	0
Kansas	252	201	158	34	8	1	0	0	0	50	42	0	8	0	0	1
Missouri	1,014	830	600	180	23	22	0	0	5	177	135	3	39	3	0	4
Nebraska	119	101	90	11	0	0	0	0	0	18	14	0	4	0	0	0
Region VII	1,620	1,311	988	256	36	26	0	0	5	301	238	3	60	3	0	5
Colorado	878	809	695	102	9	0	2	0	1	64	47	2	15	0	0	5
Montana	150	99	95	4	0	0	0	0	0	49	28	1	20	2	0	0
North Dakota	54	32	29	3	0	0	0	0	0	21	18	0	3	0	0	1
South Dakota	35	28	28	0	0	0	0	0	0	7	5	0	2	0	0	0
Utah	187	157	144	12	0	1	0	0	0	28	24	0	4	0	0	2
Wyoming	76	63	51	12	0	0	0	0	0	12	10	1	1	0	0	1

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1996[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Region VIII	1,380	1,188	1,042	133	9	1	2	0	1	181	132	4	45	2	0	9
Arizona	388	343	270	69	4	0	0	0	0	40	34	0	6	0	0	5
California	4,248	3,651	2,631	942	39	13	3	14	9	554	420	23	111	14	1	28
Hawaii	408	358	272	70	2	10	2	1	1	48	36	2	10	1	0	1
Guam	45	42	40	2	0	0	0	0	0	3	3	0	0	0	0	0
Nevada	416	348	258	82	2	3	0	0	3	68	60	3	5	0	0	0
Region IX	5,505	4,742	3,471	1,165	47	26	5	15	13	713	553	28	132	15	1	34
Alaska	158	120	92	24	2	0	2	0	0	35	26	3	6	1	0	2
Idaho	107	87	84	2	0	1	0	0	0	20	18	0	2	0	0	0
Oregon	374	281	209	63	7	1	0	0	1	79	52	7	20	3	0	11
Washington	846	660	518	125	9	3	3	0	2	166	117	5	44	7	2	11
Region X	1,485	1,148	903	214	18	5	5	0	3	300	213	15	72	11	2	24
Total, all States and areas	38,768	33,107	25,752	6,491	507	199	44	29	85	5,248	4,148	155	945	113	22	278

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

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1996[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	29,485	100.0	0.0	22,703	100.0	5,942	100.0	482	100.0	194	100.0	35	100.0	25	100.0	104	100.0
Agreement of the parties	10,319	35.0	100.0	9,068	39.9	968	16.2	213	44.1	5	2.5	12	34.2	9	36.0	44	42.3
Informal settlement	10,248	34.8	99.3	9,008	39.6	962	16.1	212	43.9	3	1.5	12	34.2	9	36.0	42	40.3
Before issuance of complaint	7,423	25.2	71.9	6,470	28.4	730	12.2	178	36.9	(2)	—	8	22.8	8	32.0	29	27.8
After issuance of complaint, before opening of hearing	2,709	9.2	26.3	2,433	10.7	225	3.7	32	6.6	3	1.5	4	11.4	1	4.0	11	10.5
After hearing opened, before issuance of administrative law judge's decision	116	0.4	1.1	105	0.4	7	0.1	2	0.4	0	—	0	—	0	—	2	1.9
Formal settlement	71	0.2	0.7	60	0.2	6	0.1	1	0.2	2	1.0	0	—	0	—	2	1.9
After issuance of complaint, before opening of hearing	57	0.2	0.6	49	0.2	3	0.0	1	0.2	2	1.0	0	—	0	—	2	1.9
Stipulated decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	57	0.2	0.6	49	0.2	3	0.0	1	0.2	2	1.0	0	—	0	—	2	1.9
After hearing opened	14	0.0	0.1	11	0.0	3	0.0	0	—	0	—	0	—	0	—	0	—
Stipulated decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Consent decree	14	0.0	0.1	11	0.0	3	0.0	0	—	0	—	0	—	0	—	0	—
Compliance with	691	2.3	100.0	636	2.8	44	0.7	8	1.6	1	0.5	0	—	0	—	2	1.9

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1996[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Administrative law judge's decision	29	0.1	4.2	26	0.1	3	0.0	0	—	0	—	0	—	0	—	0	—
Board decision	428	1.5	61.9	407	1.7	18	0.3	1	0.2	0	—	0	—	0	—	2	1.9
Adopting administrative law judge's decision (no exceptions filed)	210	0.7	30.4	197	0.8	10	0.1	1	0.2	0	—	0	—	0	—	2	1.9
Contested	218	0.7	31.5	210	0.9	8	0.1	0	—	0	—	0	—	0	—	0	—
Circuit court of appeals decree	234	0.8	33.9	203	0.8	23	0.3	7	1.4	1	0.5	0	—	0	—	0	—
Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	9,077	30.8	100.0	7,216	31.8	1,652	27.8	163	33.8	1	0.5	13	37.1	7	28.0	25	24.0
Before issuance of complaint	8,827	29.9	97.5	7,002	30.8	1,624	27.3	156	32.3	(2)	—	13	37.1	7	28.0	25	24.0
After issuance of complaint, before opening of hearing	240	0.8	2.4	206	0.9	26	0.3	7	1.4	1	0.5	0	—	0	—	0	—
After hearing opened, before administrative law judge's decision	9	0.0	0.1	7	0.0	2	0.0	0	—	0	—	0	—	0	—	0	—
After administrative law judge's decision, before Board decision	1	0.0	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	9,081	30.8	100.0	5,676	24.9	3,256	55.1	97	19.9	0	—	10	28.5	9	36.0	33	31.7
Before issuance of complaint	8,930	30.2	97.8	5,564	24.5	3,219	54.1	96	19.9	(2)	—	10	28.5	9	36.0	32	30.7
After issuance of complaint, before opening of hearing	85	0.3	0.9	59	0.2	25	0.4	0	—	0	—	0	—	0	—	1	0.9
After hearing opened, before administrative law judge's decision	2	0.0	0.0	2	0.0	0	—	0	—	0	—	0	—	0	—	0	—
By administrative law judge's decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
By Board decision	58	0.1	1.2	46	0.1	11	0.5	1	0.1	0	—	0	—	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	45	0.3	0.9	36	0.2	9	0.2	0	—	0	—	0	—	0	—	0	—
Contested	13	0.1	0.4	10	0.1	2	0.1	1	0.1	0	—	0	—	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1996[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
By circuit court of appeals decree	6	0.0	0.1	5	0.0	1	0.0	0	—	0	—	0	—	0	—	0	—
By Supreme Court action	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
10(k) actions (see Table 7A for details of dispositions)	187	0.6	0.0	0	—	0	—	0	—	187	96.3	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	130	0.4	0.0	127	0.5	1	0.0	2	0.4	0	—	0	—	0	—	0	—

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

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 1996[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	187	100.0
Agreement of the parties—informal settlement	83	44.3
Before 10(k) notice	68	36.3
After 10(k) notice, before opening of 10(k) hearing	15	8.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
Compliance with Board decision and determination of dispute	0	0.0
Withdrawal	59	31.5
Before 10(k) notice	52	27.8
After 10(k) notice, before opening of 10(k) hearing	6	3.2
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	1	0.5
Dismissal	45	24.1
Before 10(k) notice	32	17.1
After 10(k) notice, before opening of 10(k) hearing	7	3.7
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.5
By Board decision and determination of dispute	5	2.8

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1996[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	29,485	100.0	22,703	100.0	5,942	100.0	482	100.0	194	100.0	35	100.0	25	100.0	104	100.0
Before issuance of complaint	25,320	85.9	18,988	83.6	5,573	93.8	430	89.2	187	96.4	31	88.6	24	96.0	87	83.7
After issuance of complaint, before opening of hearing	3,062	10.4	2,731	12.0	271	4.6	36	7.5	6	3.1	4	11.4	1	4.0	13	12.5
After hearing opened, before issuance of administrative law judge's decision	136	0.5	123	0.5	9	0.2	2	0.4	0	—	0	—	0	—	2	1.9
After administrative law judge's decision, before issuance of Board decision	62	0.2	59	0.3	3	0.1	0	—	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	307	1.0	269	1.2	35	0.6	1	0.2	0	—	0	—	0	—	2	1.9
After Board decision, before circuit court decree	287	1.0	269	1.2	18	0.3	0	—	0	—	0	—	0	—	0	—
After circuit court decree, before Supreme Court action	289	1.0	254	1.1	25	0.4	9	1.9	1	0.5	0	—	0	—	0	—
After Supreme Court action	0	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 1996[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	5,281	100.0	4,142	100.0	155	100.0	984	100.0	118	100.0
Before issuance of notice of hearing	1,560	29.5	994	24.0	69	44.5	497	50.5	94	79.7
After issuance of notice, before close of hearing	3,025	57.3	2,540	61.3	70	45.2	415	42.2	6	5.1
After hearing closed, before issuance of decision	67	1.3	55	1.3	1	0.6	11	1.1	3	2.5
After issuance of Regional Director's decision	615	11.6	543	13.1	14	9.0	58	5.9	12	10.2
After issuance of Board decision	14	0.3	10	0.2	1	0.6	3	0.3	3	2.5

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1996[1]

Method and stage of disposition	All R cases		RC cases		RM cases		RD cases		UD cases	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total, all	5,281	100.0	4,142	100.0	155	100.0	984	100.0	118	100.0
Certification issued, total	3,317	62.8	2,766	66.8	57	36.8	494	50.2	68	57.6
After:										
Consent election	7	0.1	6	0.1	0	0.0	1	0.1	4	3.4
Before notice of hearing	2	0.0	2	0.0	0	0.0	0	0.0	4	3.4
After notice of hearing, before hearing closed	5	0.1	4	0.1	0	0.0	1	0.1	0	0.0
After hearing closed, before decision	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	2,864	54.2	2,362	57.0	48	31.0	454	46.1	51	43.2
Before notice of hearing	869	16.5	648	15.6	16	10.3	205	20.8	49	41.5
After notice of hearing, before hearing closed	1,973	37.4	1,694	40.9	32	20.6	247	25.1	2	1.7
After hearing closed, before decision	22	0.4	20	0.5	0	0.0	2	0.2	0	0.0
Expedited election	2	0.0	1	0.0	1	0.6	0	0.0	0	0.0
Regional Director-directed election	408	7.7	363	8.7	8	5.2	37	3.7	13	11.0
Board-directed election	36	0.6	34	0.8	0	0.0	2	0.2	0	0.0
By withdrawal, total	1,676	31.7	1,270	30.7	71	45.8	335	34.0	41	34.7
Before notice of hearing	563	10.7	326	7.9	42	27.1	195	19.8	36	30.5
After notice of hearing, before hearing closed	979	18.5	825	19.9	27	17.4	127	12.9	3	2.5
After hearing closed, before decision	31	0.6	26	0.6	0	0.0	5	0.5	2	1.7
After Regional Director's decision and direction of election	103	2.0	93	2.2	2	1.3	8	0.8	0	0.0
After Board decision and direction of election	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By dismissal, total	288	5.5	106	2.6	27	17.4	155	15.8	9	7.6
Before notice of hearing	125	2.4	18	0.4	10	6.5	97	9.9	5	4.2
After notice of hearing, before hearing closed	67	1.3	16	0.4	11	7.1	40	4.1	1	0.8
After hearing closed, before decision	10	0.2	5	0.1	1	0.6	4	0.4	0	0.0
By Regional Director's decision	72	1.4	57	1.4	4	2.6	11	1.1	0	0.0
By Board decision	14	0.3	10	0.2	1	0.6	3	0.3	3	2.5

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1996

	AC	UC
Total, all	24	258
Certification amended or unit clarified	4	33
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	4	33
By Regional Director's decision	4	33
By Board decision	0	0
Dismissed	5	58
Before hearing	3	11
By Regional Director's decision	3	11
By Board decision	0	0
After hearing	2	47
By Regional Director's decision	2	47
By Board decision	0	0
Withdrawn	15	167
Before hearing	15	165
After hearing	0	2

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1996[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	3,327	8	2,827	7	484	1
Eligible voters	222,045	161	177,504	708	43,657	15
Valid votes	192,678	129	155,317	612	36,606	14
RC cases:						
Elections	2,738	4	2,301	7	426	0
Eligible voters	191,929	69	152,564	708	38,588	0
Valid votes	166,873	65	133,665	612	32,531	0
RM cases:						
Elections	54	0	46	0	7	1
Eligible voters	2,133	0	1,786	0	332	15
Valid votes	1,808	0	1,522	0	272	14
RD cases						
Elections	485	1	445	0	39	0
Eligible voters	25,011	19	21,143	0	3,849	0
Valid votes	21,657	9	18,557	0	3,091	0
UD cases:						
Elections	50	3	35	0	12	—
Eligible voters	2,972	73	2,011	0	888	—
Valid votes	2,340	55	1,573	0	712	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1996

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification[1]	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All types	3,470	88	105	3,277	2,905	78	89	2,738	58	2	2	54	507	8	14	485
Rerun required	—	—	90	—	—	—	76	—	—	—	1	—	—	—	13	—
Runoff required	—	—	15	—	—	—	13	—	—	—	1	—	—	—	1	—
Consent elections	5	0	0	5	4	0	0	4	0	0	0	0	1	0	0	1
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	2,936	64	80	2,792	2,425	56	68	2,301	49	2	1	46	462	6	11	445
Rerun required	—	—	69	—	—	—	58	—	—	—	0	—	—	—	11	—
Runoff required	—	—	11	—	—	—	10	—	—	—	1	—	—	—	0	—
Regional Director-directed	521	24	25	472	469	22	21	426	8	0	1	7	44	2	3	39
Rerun required	—	—	21	—	—	—	18	—	—	—	1	—	—	—	2	—
Runoff required	—	—	4	—	—	—	3	—	—	—	0	—	—	—	1	—
Board-directed	7	0	0	7	7	0	0	7	0	0	0	0	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	1	0	0	1	0	0	0	0	1	0	0	1	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed, Fiscal Year 1996

	Total elections	Objections only		Challenges only		Objections and challenges		Total objections[1]		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	3,470	139	4.0	60	1.7	24	0.7	163	4.7	84	2.4
By type of case:											
In RC cases	2,905	127	4.4	51	1.8	20	0.7	147	5.1	71	2.4
In RM cases	58	1	1.7	2	3.4	0	—	1	1.7	2	3.4
In RD cases	507	11	2.2	7	1.4	4	0.8	15	3.0	11	2.2
By type of election:											
Consent elections	5	0	—	1	20.0	0	—	0	—	1	20.0
Stipulated elections	2,936	101	3.4	44	1.5	18	0.6	119	4.1	62	2.1
Expedited elections	1	0	—	0	—	0	—	0	—	0	—
Regional Director-directed elections	521	38	7.3	15	2.9	6	1.2	44	8.4	21	4.0
Board-directed elections	7	0	—	0	—	0	—	0	—	0	—

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing, Fiscal Year 1996[1]

	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	253	100.0	91	36.0	159	62.8	3	1.2
By type of case:								
RC cases	232	100.0	85	36.6	144	62.1	3	1.3
RM cases	1	100.0	1	100.0	0	—	0	—
RD cases	20	100.0	5	25.0	15	75.0	0	—
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	188	100.0	71	37.8	115	61.2	2	1.0
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	65	100.0	20	30.8	44	67.7	1	1.5
Board-directed elections	0	—	0	—	0	—	0	—

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 1996[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	253	90	163	125	76.7	38	23.3
By type of case:							
RC cases	232	85	147	114	77.6	33	22.4
RM cases	1	0	1	1	100.0	0	—
RD cases	20	5	15	10	66.7	5	33.3
By type of election:							
Consent elections	0	0	0	0	—	0	—
Stipulated elections	188	69	119	94	79.0	25	21.0
Expedited elections	0	0	0	0	—	0	—
Regional Director-directed elections	65	21	44	31	70.5	13	29.5
Board-directed elections	0	0	0	0	—	0	—

[1] See Glossary of terms for definitions.
[2] See Table 11E for rerun elections held after objections were sustained. In 2 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 1996[1]

	Total rerun elections [2]		Union certified		No union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	84	100.0	32	38.1	52	61.9	34	40.5
By type of case:								
RC cases	73	100.0	27	37.0	46	63.0	30	41.1
RM cases	1	100.0	1	100.0	0	—	0	—
RD cases	10	100.0	4	40.0	6	60.0	4	40.0
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	63	100.0	22	34.9	41	65.1	26	41.3
Expedited elections	0	—	0	—	0	—	0	—
Regional Director-directed elections	21	100.0	10	47.6	11	52.4	8	38.1
Board-directed elections	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 6 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1996

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)[1]					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total	50	25	50.0	25	50.0	2,972	1,045	35.2	1,927	64.8	2,340	78.7	843	28.4
AFL–CIO unions	40	19	47.5	21	52.5	2,362	801	33.9	1,561	66.1	1,847	78.2	662	28.0
Other national unions	6	3	50.0	3	50.0	319	83	26.1	236	73.9	261	81.8	71	22.3
Other local unions	4	3	75.0	1	25.0	291	161	55.3	130	44.7	232	79.7	110	37.8

[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 1996[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by AFL–CIO unions	In units won by Other national unions	In units won by Other local unions	
	A. All representation elections												
AFL–CIO	2,872	42.9	1,231	1,231	—	—	1,641	181,967	60,346	60,346	—	—	121,621
Other national unions	88	54.5	48	—	48	—	40	6,678	3,178	—	3,178	—	3,500
Other local unions	210	50.0	105	—	—	105	105	11,717	5,605	—	—	5,605	6,112
1-union elections	3,170	43.7	1,384	1,231	48	105	1,786	200,362	69,129	60,346	3,178	5,605	131,233
AFL–CIO v. AFL–CIO	37	70.3	26	26	—	—	11	3,966	2,350	2,350	—	—	1,616
AFL–CIO v. National	5	80.0	4	2	2	—	1	441	407	158	249	—	34
AFL–CIO v. Local	52	88.5	46	28	—	18	6	13,018	9,954	6,698	—	3,256	3,064
National v. Local	3	66.7	2	—	1	1	1	251	162	—	119	43	89
Local v. Local	7	71.4	5	—	—	5	2	451	436	—	—	436	15
2-union elections	104	79.8	83	56	3	24	21	18,127	13,309	9,206	368	3,735	4,818
AFL–CIO v. Teamsters v. Local	1	0.0	0	0	—	0	1	75	0	0	—	0	75
AFL–CIO v. Local v. Local	1	100.0	1	1	—	0	0	159	159	159	—	0	0
Local v. Local v. Local	1	100.0	1	—	—	1	0	350	350	—	—	350	0
3 (or more)-union elections	3	66.7	2	1	0	1	1	584	509	159	0	350	75
Total representation elections	3,277	44.8	1,469	1,288	51	130	1,808	219,073	82,947	69,711	3,546	9,690	136,126
	B. Elections in RC cases												
AFL–CIO	2,385	45.5	1,084	1,084	—	—	1,301	159,038	50,272	50,272	—	—	108,766
Other national unions	82	53.7	44	—	44	—	38	6,249	2,907	—	2,907	—	3,342
Other local unions	170	55.3	94	—	—	94	76	9,364	4,307	—	—	4,307	5,057
1-union elections	2,637	46.3	1,222	1,084	44	94	1,415	174,651	57,486	50,272	2,907	4,307	117,165
AFL–CIO v. AFL–CIO	35	68.6	24	24	—	—	11	3,867	2,251	2,251	—	—	1,616
AFL–CIO v. National	5	80.0	4	2	2	—	1	441	407	158	249	—	34

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1996[1]—Continued

Participating unions	Total elections[2]	Elections won by unions: Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions	Elections in which no representative chosen	Employees eligible to vote: Total	In elections won	In units won by: AFL–CIO unions	Other national unions	Other local unions	In elections where no representative chosen
AFL–CIO v. Local	50	90.0	45	28	—	17	5	11,876	8,822	6,698	—	2,124	3,054
National v. Local	3	66.7	2	—	1	1	1	251	162	—	119	43	89
Local v. Local	5	60.0	3	—	—	3	2	259	244	—	—	244	15
2-union elections	98	79.6	78	54	3	21	20	16,694	11,886	9,107	368	2,411	4,808
AFL–CIO v. Teamsters v. Local	1	0.0	0	0	—	0	1	75	0	0	—	0	75
AFL–CIO v. Local v. Local	1	100.0	1	1	—	0	0	159	159	159	—	0	0
Local v. Local v. Local	1	100.0	1	—	—	1	0	350	350	—	—	350	0
3 (or more)-union elections	3	66.7	2	1	0	1	1	584	509	159	0	350	75
Total RC elections	2,738	47.6	1,302	1,139	47	116	1,436	191,929	69,881	59,538	3,275	7,068	122,048
C. Elections in RM cases													
AFL–CIO	46	28.3	13	13	—	—	33	1,888	754	754	—	—	1,134
Other National unions	1	100.0	1	—	1	—	0	16	16	—	16	—	0
Other local unions	4	50.0	2	—	—	2	2	120	65	—	—	65	55
1-union elections	51	31.4	16	13	1	2	35	2,024	835	754	16	65	1,189
AFL–CIO v. AFL–CIO	2	100.0	2	2	—	—	0	99	99	99	—	—	0
AFL–CIO v. Local	1	0.0	0	0	—	0	1	10	0	0	—	0	10
2-union elections	3	66.7	2	2	0	0	1	109	99	99	0	0	10
Total RM elections	54	33.3	18	15	1	2	36	2,133	934	853	16	65[r]	1,199
D. Elections in RD cases													
AFL–CIO	441	30.4	134	134	—	—	307	21,041	9,320	9,320	—	—	11,721
Other national unions	5	60.0	3	—	3	—	2	413	255	—	255	—	158
Other local unions	36	25.0	9	—	—	9	27	2,233	1,233	—	—	1,233	1,000

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1996[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
1-union elections	482	30.3	146	134	3	9	336	23,687	10,808	9,320	255	1,233	12,879
AFL–CIO v. Local	1	100.0	1	0	—	1	0	1,132	1,132	0	—	1,132	0
Local v. Local	2	100.0	2	—	—	2	0	192	192	—	—	192	0
2-union elections	3	100.0	3	0	0	3	0	1,324	1,324	0	0	1,324	0
Total RD elections	485	30.7	149	134	3	12	336	25,011	12,132	9,320	255	2,557	12,879

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

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1996[1]

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
	A. All representation elections										
AFL–CIO	159,923	34,519	34,519	—	—	17,725	36,532	36,532	—	—	71,147
Other national unions	5,932	1,790	—	1,790	—	910	1,201	—	1,201	—	2,031
Other local unions	9,712	3,461	—	—	3,461	1,090	1,811	—	—	1,811	3,350
1-union elections	175,567	39,770	34,519	1,790	3,461	19,725	39,544	36,532	1,201	1,811	76,528
AFL–CIO v. AFL–CIO	2,872	1,332	1,332	—	—	97	454	454	—	—	989
AFL–CIO v. National	289	235	118	117	—	24	9	9	0	—	21
AFL–CIO v. Local	10,610	7,595	4,298	—	3,297	615	1,051	814	—	237	1,349
National v. Local	231	144	—	102	42	1	28	—	27	1	58
Local v. Local	356	291	—	—	291	51	2	—	—	2	12
2-union elections	14,358	9,597	5,748	219	3,630	788	1,544	1,277	27	240	2,429
AFL–CIO v. Teamsters v. Local	74	0	0	—	0	0	32	31	—	1	42
AFL–CIO v. Local v. Local	143	140	74	—	66	3	0	0	—	0	0
Local v. Local v. Local	196	189	—	—	189	7	0	—	—	0	0
3 (or more)-union elections	413	329	74	0	255	10	32	31	0	1	42
Total representation elections	190,338	49,696	40,341	2,009	7,346	20,523	41,120	37,840	1,228	2,052	78,999
	B. Elections in RC cases										
AFL–CIO	140,038	28,651	28,651	—	—	14,674	33,045	33,045	—	—	63,668
Other national unions	5,551	1,630	—	1,630	—	837	1,158	—	1,158	—	1,926
Other local unions	7,678	2,413	—	—	2,413	911	1,602	—	—	1,602	2,752
1-union elections	153,267	32,694	28,651	1,630	2,413	16,422	35,805	33,045	1,158	1,602	68,346
AFL–CIO v. AFL–CIO	2,796	1,257	1,257	—	—	96	454	454	—	—	989
AFL–CIO v. National	289	235	118	117	—	24	9	9	0	—	21

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1996[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
AFL–CIO v. Local	9,649	6,897	4,296	—	2,601	361	1,049	812	—	237	1,342
National v. Local	231	144	—	102	42	1	28	—	27	1	58
Local v. Local	228	166	—	—	166	48	2	—	—	2	12
2-union elections	13,193	8,699	5,671	219	2,809	530	1,542	1,275	27	240	2,422
AFL–CIO v. Teamsters v. Local	74	0	0	—	0	0	32	31	—	1	42
AFL–CIO v. Local v. Local	143	140	74	—	66	3	0	0	—	0	0
Local v. Local v. Local	196	189	—	—	189	7	0	—	—	0	0
3 (or more)-union elections	413	329	74	0	255	10	32	31	0	1	42
Total RC elections	166,873	41,722	34,396	1,849	5,477	16,962	37,379	34,351	1,185	1,843	70,810
	C. Elections in RM cases										
AFL–CIO	1,609	425	425	—	—	213	276	276	—	—	695
Other national unions	16	14	—	14	—	2	0	—	0	—	0
Other local unions	98	38	—	—	38	17	4	—	—	4	39
1-union elections	1,723	477	425	14	38	232	280	276	0	4	734
AFL–CIO v. AFL–CIO	76	75	75	—	—	1	0	0	—	—	0
AFL–CIO v. Local	9	0	0	—	0	0	2	2	—	0	7
2-union elections	85	75	75	0	0	1	2	2	0	0	7
Total RM elections	1,808	552	500	14	38	233	282	278	0	4	741
	D. Elections in RD cases										
AFL–CIO	18,276	5,443	5,443	—	—	2,838	3,211	3,211	—	—	6,784
Other national unions	365	146	—	146	—	71	43	—	43	—	105
Other local unions	1,936	1,010	—	—	1,010	162	205	—	—	205	559

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1996[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
1-union elections	20,577	6,599	5,443	146	1,010	3,071	3,459	3,211	43	205	7,448
AFL–CIO v. Local	952	698	2	—	696	254	0	0	—	0	0
Local v. Local	128	125	—	—	125	3	0	—	—	0	0
2-union elections	1,080	823	2	0	821	257	0	0	0	0	0
Total RD elections	21,657	7,422	5,445	146	1,831	3,328	3,459	3,211	43	205	7,448

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1996

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	10	5	4	1	0	5	544	496	232	141	91	0	264	168
New Hampshire	3	1	1	0	0	2	256	233	98	98	0	0	135	160
Vermont	7	5	4	1	0	2	119	116	71	46	25	0	45	89
Massachusetts	81	43	41	2	0	38	3,549	3,383	1,694	1,459	235	0	1,689	1,833
Rhode Island	12	8	8	0	0	4	924	876	465	441	24	0	411	655
Connecticut	51	20	18	0	2	31	2,532	2,249	1,007	789	19	199	1,242	924
New England	164	82	76	4	2	82	7,924	7,353	3,567	2,974	394	199	3,786	3,829
New York	304	170	145	5	20	134	19,483	15,731	8,145	6,952	214	979	7,586	8,430
New Jersey	157	68	53	3	12	89	7,502	6,176	2,696	2,046	154	496	3,480	2,574
Pennsylvania	215	91	74	6	11	124	12,999	11,322	5,377	4,390	286	701	5,945	5,505
Middle Atlantic	676	329	272	14	43	347	39,984	33,229	16,218	13,388	654	2,176	17,011	16,509
Ohio	195	83	79	4	0	112	15,311	13,690	6,140	5,989	135	16	7,550	4,634
Indiana	90	34	32	2	0	56	7,511	6,936	2,979	2,842	29	108	3,957	2,100
Illinois	187	85	78	2	5	102	9,939	8,914	4,268	4,018	114	136	4,646	3,413
Michigan	208	89	86	0	3	119	15,006	13,186	6,562	5,986	33	543	6,624	6,016
Wisconsin	82	32	29	3	0	50	4,844	4,396	2,130	1,872	250	8	2,266	1,706
East North Central	762	323	304	11	8	439	52,611	47,122	22,079	20,707	561	811	25,043	17,869
Iowa	35	15	14	1	0	20	1,733	1,512	621	610	11	0	891	499
Minnesota	80	34	29	1	4	46	4,719	4,037	1,838	1,737	31	70	2,199	1,233
Missouri	123	49	46	0	3	74	6,054	5,185	1,867	1,760	9	98	3,318	1,215
North Dakota	7	5	5	0	0	2	78	69	32	32	0	0	37	33
South Dakota	6	3	2	0	1	3	178	172	68	61	0	7	104	22
Nebraska	10	4	4	0	0	6	2,204	1,958	963	963	0	0	995	1,845
Kansas	29	13	12	0	1	16	6,352	5,300	4,495	2,718	0	1,777	805	5,910
West North Central	290	123	112	2	9	167	21,318	18,233	9,884	7,881	51	1,952	8,349	10,757

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Delaware	6	3	3	0	0	3	348	306	101	101	0	0	205	76
Maryland	52	14	11	0	3	38	3,068	2,708	1,170	972	0	198	1,538	602
District of Columbia	17	12	10	1	1	5	1,220	1,053	684	542	122	20	369	1,128
Virginia	41	19	13	4	2	22	2,461	2,177	1,096	798	151	147	1,081	749
West Virginia	37	16	15	1	0	21	4,357	4,067	1,762	1,197	560	5	2,305	889
North Carolina	18	11	10	1	0	7	3,316	2,766	1,259	1,253	6	0	1,507	966
South Carolina	9	3	3	0	0	6	1,574	1,472	721	693	28	0	751	670
Georgia	28	8	8	0	0	20	2,721	2,390	1,020	1,020	0	0	1,370	671
Florida	87	41	38	0	3	46	4,268	3,981	1,846	1,637	0	209	2,135	1,487
South Atlantic	295	127	111	7	9	168	23,333	20,920	9,659	8,213	867	579	11,261	7,238
Kentucky	41	12	11	0	1	29	2,693	2,490	998	946	35	17	1,492	658
Tennessee	48	13	11	0	2	35	5,136	4,703	1,660	1,648	0	12	3,043	528
Alabama	42	18	17	1	0	24	4,910	4,404	2,065	2,054	11	0	2,339	1,568
Mississippi	18	8	8	0	0	10	2,666	2,405	1,135	1,135	0	0	1,270	953
East South Central	149	51	47	1	3	98	15,405	14,002	5,858	5,783	46	29	8,144	3,707
Arkansas	24	6	6	0	0	18	1,882	1,603	675	675	0	0	928	434
Louisiana	39	19	17	2	0	20	2,385	1,784	787	761	26	0	997	800
Oklahoma	25	10	9	1	0	15	2,473	2,126	905	874	23	8	1,221	243
Texas	66	25	23	0	2	41	4,696	4,273	1,804	1,691	0	113	2,469	1,147
West South Central	154	60	55	3	2	94	11,436	9,786	4,171	4,001	49	121	5,615	2,624
Montana	25	13	13	0	0	12	835	732	357	357	0	0	375	580
Idaho	18	9	7	0	2	9	1,475	1,209	566	332	0	234	643	444
Wyoming	6	1	1	0	0	5	277	267	105	53	52	0	162	15
Colorado	32	12	12	0	0	20	2,819	2,577	996	996	0	0	1,581	625
New Mexico	20	7	7	0	0	13	1,322	1,240	669	669	0	0	571	728
Arizona	22	12	12	0	0	10	1,615	1,435	527	521	0	6	908	530
Utah	18	3	3	0	0	15	1,477	1,306	456	413	43	0	850	129
Nevada	37	22	17	5	0	15	2,182	1,804	1,159	956	144	59	645	1,594

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Mountain	178	79	72	5	2	99	12,002	10,570	4,835	4,297	239	299	5,735	4,645
Washington	108	50	48	1	1	58	6,614	5,744	2,822	2,579	47	196	2,922	2,461
Oregon	50	28	25	0	3	22	2,138	1,755	976	796	0	180	779	1,302
California	334	149	132	2	15	185	20,096	16,512	8,039	6,468	20	1,551	8,473	8,698
Alaska	30	16	14	1	1	14	1,764	1,408	772	448	305	19	636	1,227
Hawaii	21	11	10	0	1	10	731	603	296	255	4	37	307	293
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	543	254	229	4	21	289	31,343	26,022	12,905	10,546	376	1,983	13,117	13,981
Puerto Rico	61	40	9	0	31	21	3,545	2,960	1,591	342	0	1,249	1,369	1,775
Virgin Islands	5	1	1	0	0	4	172	141	49	49	0	0	92	13
Outlying Areas	66	41	10	0	31	25	3,717	3,101	1,640	391	0	1,249	1,461	1,788
Total, all States and areas	3,277	1,469	1,288	51	130	1,808	219,073	190,338	90,816	78,181	3,237	9,398	99,522	82,947

[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 1996

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	7	3	3	0	0	4	389	366	159	132	27	0	207	24
New Hampshire	3	1	1	0	0	2	256	233	98	98	0	0	135	160
Vermont	7	5	4	1	0	2	119	116	71	46	25	0	45	89
Massachusetts	73	39	37	2	0	34	3,334	3,174	1,581	1,346	235	0	1,593	1,682
Rhode Island	11	8	8	0	0	3	730	702	384	360	24	0	318	655
Connecticut	42	18	16	0	2	24	1,982	1,741	825	607	19	199	916	746
New England	143	74	69	3	2	69	6,810	6,332	3,118	2,589	330	199	3,214	3,356
New York	271	157	138	5	14	114	18,281	14,701	7,603	6,662	214	727	7,098	7,645
New Jersey	144	64	49	3	12	80	7,003	5,811	2,524	1,874	154	496	3,287	2,242
Pennsylvania	187	81	65	5	11	106	11,838	10,320	4,869	3,910	269	690	5,451	4,747
Middle Atlantic	602	302	252	13	37	300	37,122	30,832	14,996	12,446	637	1,913	15,836	14,634
Ohio	170	76	72	4	0	94	13,537	12,350	5,523	5,372	135	16	6,827	3,835
Indiana	80	30	28	2	0	50	7,273	6,718	2,887	2,750	29	108	3,831	2,001
Illinois	161	75	68	2	5	86	8,861	7,938	3,723	3,477	114	132	4,215	2,759
Michigan	170	75	72	0	3	95	13,356	11,796	5,846	5,270	33	543	5,950	5,124
Wisconsin	61	27	24	3	0	34	3,780	3,419	1,680	1,422	250	8	1,739	1,261
East North Central	642	283	264	11	8	359	46,807	42,221	19,659	18,291	561	807	22,562	14,980
Iowa	28	15	14	1	0	13	1,592	1,382	582	571	11	0	800	499
Minnesota	66	28	24	1	3	38	3,827	3,322	1,508	1,421	31	56	1,814	800
Missouri	101	43	40	0	3	58	5,673	4,845	1,717	1,610	9	98	3,128	1,077
North Dakota	7	5	5	0	0	2	78	69	32	32	0	0	37	33
South Dakota	6	3	2	0	1	3	178	172	68	61	0	7	104	22
Nebraska	9	4	4	0	0	5	2,145	1,902	939	939	0	0	963	1,845
Kansas	23	10	10	0	0	13	5,099	4,252	3,754	2,673	0	1,081	498	4,742
West North Central	240	108	99	2	7	132	18,592	15,944	8,600	7,307	51	1,242	7,344	9,018

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Delaware	6	3	3	0	0	3	348	306	101	101	0	0	205	76
Maryland	50	14	11	0	3	36	3,001	2,653	1,146	961	0	185	1,507	602
District of Columbia	13	10	8	1	1	3	1,000	845	561	419	122	20	284	918
Virginia	36	17	12	3	2	19	1,783	1,605	844	611	86	147	761	617
West Virginia	34	14	13	1	0	20	4,138	3,903	1,644	1,079	560	5	2,259	689
North Carolina	14	8	7	1	0	6	3,031	2,502	1,105	1,099	6	0	1,397	707
South Carolina	9	3	3	0	0	6	1,574	1,472	721	693	28	0	751	670
Georgia	23	7	7	0	0	16	2,329	2,054	854	854	0	0	1,200	489
Florida	75	34	31	0	3	41	3,441	3,301	1,480	1,307	0	173	1,821	1,052
South Atlantic	260	110	95	6	9	150	20,645	18,641	8,456	7,124	802	530	10,185	5,820
Kentucky	37	11	10	0	1	26	2,594	2,411	958	906	35	17	1,453	616
Tennessee	42	13	11	0	2	29	5,043	4,613	1,646	1,634	0	12	2,967	528
Alabama	37	16	15	1	0	21	4,081	3,653	1,608	1,597	11	0	2,045	1,123
Mississippi	16	6	6	0	0	10	2,537	2,282	1,056	1,056	0	0	1,226	824
East South Central	132	46	42	1	3	86	14,255	12,959	5,268	5,193	46	29	7,691	3,091
Arkansas	20	6	6	0	0	14	1,828	1,554	655	655	0	0	899	434
Louisiana	33	19	17	2	0	14	2,286	1,695	760	734	26	0	935	800
Oklahoma	16	7	6	1	0	9	1,618	1,389	571	540	23	8	818	115
Texas	54	21	19	0	2	33	3,935	3,564	1,518	1,405	0	113	2,046	983
West South Central	123	53	48	3	2	70	9,667	8,202	3,504	3,334	49	121	4,698	2,332
Montana	13	12	12	0	0	1	528	489	281	281	0	0	208	510
Idaho	17	9	7	0	2	8	1,427	1,166	551	317	0	234	615	444
Wyoming	6	1	1	0	0	5	277	267	105	53	52	0	162	15
Colorado	26	10	10	0	0	16	2,682	2,451	955	955	0	0	1,496	587
New Mexico	13	5	5	0	0	8	598	538	210	210	0	0	328	114
Arizona	16	9	9	0	0	7	1,404	1,246	454	448	0	6	792	418
Utah	16	3	3	0	0	13	1,321	1,162	404	404	0	0	758	129
Nevada	35	22	17	5	0	13	1,947	1,645	1,149	946	144	59	496	1,594

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Mountain	142	71	64	5	2	71	10,184	8,964	4,109	3,614	196	299	4,855	3,811
Washington	86	47	45	1	1	39	5,230	4,533	2,335	2,092	47	196	2,198	2,326
Oregon	40	25	22	0	3	15	1,830	1,481	869	689	0	180	612	1,199
California	275	137	124	2	11	138	17,128	13,808	6,462	5,873	20	569	7,346	7,092
Alaska	25	14	12	1	1	11	1,506	1,211	678	354	305	19	533	1,117
Hawaii	19	9	8	0	1	10	689	564	271	230	4	37	293	251
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	445	232	211	4	17	213	26,383	21,597	10,615	9,238	376	1,001	10,982	11,985
Puerto Rico	58	40	9	0	31	18	3,425	2,848	1,561	340	0	1,221	1,287	1,775
Virgin Islands	5	1	1	0	0	4	172	141	49	49	0	0	92	13
Outlying Areas	63	41	10	0	31	22	3,597	2,989	1,610	389	0	1,221	1,379	1,788
Total, all States and area	2,792	1,320	1,154	48	118	1,472	194,062	168,681	79,935	69,525	3,048	7,362	88,746	70,815

[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 1996

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	3	2	1	1	0	1	155	130	73	9	64	0	57	144
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	8	4	4	0	0	4	215	209	113	113	0	0	96	151
Rhode Island	1	0	0	0	0	1	194	174	81	81	0	0	93	0
Connecticut	9	2	2	0	0	7	550	508	182	182	0	0	326	178
New England	21	8	7	1	0	13	1,114	1,021	449	385	64	0	572	473
New York	33	13	7	0	6	20	1,202	1,030	542	290	0	252	488	785
New Jersey	13	4	4	0	0	9	499	365	172	172	0	0	193	332
Pennsylvania	28	10	9	1	0	18	1,161	1,002	508	480	17	11	494	758
Middle Atlantic	74	27	20	1	6	47	2,862	2,397	1,222	942	17	263	1,175	1,875
Ohio	25	7	7	0	0	18	1,774	1,340	617	617	0	0	723	799
Indiana	10	4	4	0	0	6	238	218	92	92	0	0	126	99
Illinois	26	10	10	0	0	16	1,078	976	545	541	0	4	431	654
Michigan	38	14	14	0	0	24	1,650	1,390	716	716	0	0	674	892
Wisconsin	21	5	5	0	0	16	1,064	977	450	450	0	0	527	445
East North Central	120	40	40	0	0	80	5,804	4,901	2,420	2,416	0	4	2,481	2,889
Iowa	7	0	0	0	0	7	141	130	39	39	0	0	91	0
Minnesota	14	6	5	0	1	8	892	715	330	316	0	14	385	433
Missouri	22	6	6	0	0	16	381	340	150	150	0	0	190	138
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nebraska	1	0	0	0	0	1	59	56	24	24	0	0	32	0
Kansas	6	3	2	0	1	3	1,253	1,048	741	45	0	696	307	1,168
West North Central	50	15	13	0	2	35	2,726	2,289	1,284	574	0	710	1,005	1,739
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Maryland	2	0	0	0	0	2	67	55	24	11	0	13	31	0
District of Columbia	4	2	2	0	0	2	220	208	123	123	0	0	85	210
Virginia	5	2	1	1	0	3	678	572	252	187	65	0	320	132
West Virginia	3	2	2	0	0	1	219	164	118	118	0	0	46	200
North Carolina	4	3	3	0	0	1	285	264	154	154	0	0	110	259
South Carolina	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Georgia	5	1	1	0	0	4	392	336	166	166	0	0	170	182
Florida	12	7	7	0	0	5	827	680	366	330	0	36	314	435
South Atlantic	35	17	16	1	0	18	2,688	2,279	1,203	1,089	65	49	1,076	1,418
Kentucky	4	1	1	0	0	3	99	79	40	40	0	0	39	42
Tennessee	6	0	0	0	0	6	93	90	14	14	0	0	76	0
Alabama	5	2	2	0	0	3	829	751	457	457	0	0	294	445
Mississippi	2	2	2	0	0	0	129	123	79	79	0	0	44	129
East South Central	17	5	5	0	0	12	1,150	1,043	590	590	0	0	453	616
Arkansas	4	0	0	0	0	4	54	49	20	20	0	0	29	0
Louisiana	6	0	0	0	0	6	99	89	27	27	0	0	62	0
Oklahoma	9	3	3	0	0	6	855	737	334	334	0	0	403	128
Texas	12	4	4	0	0	8	761	709	286	286	0	0	423	164
West South Central	31	7	7	0	0	24	1,769	1,584	667	667	0	0	917	292
Montana	12	1	1	0	0	11	307	243	76	76	0	0	167	70
Idaho	1	0	0	0	0	1	48	43	15	15	0	0	28	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1996—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Colorado	6	2	2	0	0	4	137	126	41	41	0	0	85	38
New Mexico	7	2	2	0	0	5	724	702	459	459	0	0	243	614
Arizona	6	3	3	0	0	3	211	189	73	73	0	0	116	112
Utah	2	0	0	0	0	2	156	144	52	9	43	0	92	0
Nevada	2	0	0	0	0	2	235	159	10	10	0	0	149	0
Mountain	36	8	8	0	0	28	1,818	1,606	726	683	43	0	880	834
Washington	22	3	3	0	0	19	1,384	1,211	487	487	0	0	724	135
Oregon	10	3	3	0	0	7	308	274	107	107	0	0	167	103
California	59	12	8	0	4	47	2,968	2,704	1,577	595	0	982	1,127	1,606
Alaska	5	2	2	0	0	3	258	197	94	94	0	0	103	110
Hawaii	2	2	2	0	0	0	42	39	25	25	0	0	14	42
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	98	22	18	0	4	76	4,960	4,425	2,290	1,308	0	982	2,135	1,996
Puerto Rico	3	0	0	0	0	3	120	112	30	2	0	28	82	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	3	0	0	0	0	3	120	112	30	2	0	28	82	0
Total, all States and areas	485	149	134	3	12	336	25,011	21,657	10,881	8,656	189	2,036	10,776	12,132

[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 1996

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Food and kindred products	186	80	77	1	2	106	21,114	18,252	10,189	8,817	79	1,293	8,063	12,313
Textile mill products	15	5	5	0	0	10	1,224	1,121	421	400	0	21	700	262
Apparel and other finished products made from fabric and similar materials	3	1	1	0	0	2	567	521	146	146	0	0	375	110
Lumber and wood products (except furniture)	33	12	12	0	0	21	3,820	3,456	1,456	1,427	0	29	2,000	683
Furniture and fixtures	23	6	5	0	1	17	1,991	1,815	744	728	0	16	1,071	209
Paper and allied products	33	10	9	0	1	23	2,568	2,370	906	866	13	27	1,464	609
Printing, publishing, and allied products	58	25	18	0	7	33	4,526	3,995	1,493	1,301	20	172	2,502	834
Chemicals and allied products	68	25	23	0	2	43	3,721	3,444	1,415	1,343	27	45	2,029	908
Petroleum refining and related industries	20	9	9	0	0	11	952	882	494	360	0	134	388	446
Rubber and miscellaneous plastic products	41	12	11	0	1	29	6,428	5,881	2,898	1,644	396	858	2,983	1,892
Leather and leather products	3	0	0	0	0	3	133	122	42	42	0	0	80	0
Stone, clay, glass, and concrete products	71	31	30	1	0	40	3,496	3,161	1,340	1,299	40	1	1,821	1,001
Primary metal industries	79	36	35	0	1	43	6,397	5,926	2,728	2,709	9	10	3,198	1,744
Fabricated metal products (except machinery and transportation equipment)	89	33	31	1	1	56	8,368	7,608	3,318	3,165	60	93	4,290	2,383
Machinery (except electrical)	100	32	27	2	3	68	7,421	6,922	3,401	2,721	91	589	3,521	2,500
Electrical and electronic machinery, equipment, and supplies	32	15	15	0	0	17	3,590	3,273	1,491	1,491	0	0	1,782	1,377
Aircraft and parts	62	24	21	1	2	38	10,598	9,544	4,450	3,618	32	800	5,094	3,725
Ship and boat building and repairing	6	2	2	0	0	4	893	833	341	341	0	0	492	39
Automotive and other transportation equipment	18	9	9	0	0	9	1,216	1,113	536	535	0	1	577	188
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	18	4	3	1	0	14	770	740	285	213	66	6	455	85
Miscellaneous manufacturing industries	19	8	8	0	0	11	2,393	2,233	1,122	1,121	1	0	1,111	844
Manufacturing	977	379	351	7	21	598	92,186	83,212	39,216	34,287	834	4,095	43,996	32,152

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1996—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Metal mining	5	1	1	0	0	4	1,283	1,203	608	608	0	0	595	561
Coal mining	5	2	1	1	0	3	273	259	131	49	82	0	128	90
Oil and gas extraction	5	3	3	0	0	2	330	290	140	140	0	0	150	174
Mining and quarrying of nonmetallic minerals (except fuels)	9	5	4	0	1	4	606	577	293	235	43	15	284	433
Mining	24	11	9	1	1	13	2,492	2,329	1,172	1,032	125	15	1,157	1,258
Construction	236	113	101	2	10	123	7,786	5,388	2,776	2,267	22	487	2,612	3,658
Wholesale trade	186	53	50	1	2	133	9,402	8,594	3,387	3,251	103	33	5,207	1,526
Retail trade	260	106	100	0	6	154	11,716	9,999	4,511	4,038	39	434	5,488	4,330
Finance, insurance, and real estate	61	34	28	1	5	27	3,254	2,764	994	854	25	115	1,770	564
U.S. Postal Service	1	0	0	0	0	1	88	82	24	24	0	0	58	0
Local and suburban transit and interurban highway passenger transportation	115	59	51	1	7	56	10,582	8,705	4,402	3,894	100	408	4,303	4,691
Motor freight transportation and warehousing	236	100	96	2	2	136	10,499	9,176	4,052	3,909	51	92	5,124	2,703
Water transportation	14	6	5	0	1	8	317	285	118	74	0	44	167	91
Other transportation	50	25	25	0	0	25	3,951	3,420	1,758	1,577	0	181	1,662	1,325
Communication	63	28	26	0	2	35	2,136	1,908	832	775	0	57	1,076	731
Electric, gas, and sanitary services	100	44	42	2	0	56	4,554	3,969	1,804	1,573	111	120	2,165	1,583
Transportation, communication, and other utilities	578	262	245	5	12	316	32,039	27,463	12,966	11,802	262	902	14,497	11,124
Hotels, rooming houses, camps, and other lodging places	55	31	30	1	0	24	2,737	2,448	1,087	1,043	44	0	1,361	896
Personal services	45	23	21	1	1	22	1,672	1,491	935	757	98	80	556	1,034
Automotive repair, services, and garages	67	30	26	0	4	37	1,566	1,334	658	598	0	60	676	756
Motion pictures	10	5	5	0	0	5	470	393	228	228	0	0	165	277
Amusement and recreation services (except motion pictures)	39	15	15	0	0	24	1,661	1,339	497	471	0	26	842	438
Health services	370	205	160	13	32	165	33,475	28,471	14,269	11,530	1,029	1,710	14,202	15,677
Educational services	28	18	14	2	2	10	1,439	1,130	678	541	27	110	452	910
Membership organizations	29	14	8	0	6	15	1,170	999	419	199	13	207	580	438
Business services	196	110	65	17	28	86	8,427	6,863	3,850	2,171	592	1,087	3,013	4,480
Miscellaneous repair services	17	2	2	0	0	15	974	898	275	275	0	0	623	68

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1996—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Museums, art galleries, botanical and zoological gardens	1	0	0	0	0	1	57	55	23	23	0	0	32	0
Legal services	5	2	2	0	0	3	79	70	18	18	0	0	52	9
Social services	66	43	43	0	0	23	5,150	3,933	2,315	2,286	0	29	1,618	2,896
Miscellaneous services	9	5	5	0	0	4	322	288	107	99	0	8	181	113
Services	937	503	396	34	73	434	59,199	49,712	25,359	20,239	1,803	3,317	24,353	27,992
Public administration	17	8	8	0	0	9	911	795	411	387	24	0	384	343
Total, all industrial groups	3,277	1,469	1,288	51	130	1,808	219,073	190,338	90,816	78,181	3,237	9,398	99,522	82,947

[1] Source: Standard Industrial Classification, Statistical Policy Division, Office of Management and Budget, Washington, D.C., 1972.

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1996[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	194,062	2,792	100.0	—	1,154	100.0	48	100.0	118	100.0	1,472	100.0
Under 10	3,188	553	19.8	19.8	319	27.6	4	8.3	21	17.8	209	14.2
10 to 19	7,352	521	18.7	38.5	228	19.8	16	33.3	16	13.6	261	17.7
20 to 29	7,918	326	11.7	50.2	125	10.8	3	6.3	19	16.1	179	12.2
30 to 39	8,911	260	9.3	59.5	102	8.8	4	8.3	12	10.2	142	9.6
40 to 49	7,739	175	6.3	65.8	71	6.2	3	6.3	10	8.5	91	6.2
50 to 59	8,380	154	5.5	71.3	62	5.4	2	4.1	9	7.6	81	5.5
60 to 69	6,390	99	3.5	74.8	35	3.0	3	4.1	4	3.4	57	3.9
70 to 79	5,370	72	2.6	77.4	25	2.2	4	8.3	1	0.8	42	2.9
80 to 89	5,881	70	2.5	79.9	26	2.3	1	2.1	2	1.7	41	2.8
90 to 99	6,793	72	2.6	82.5	30	2.6	0	—	5	4.2	37	2.5
100 to 109	6,544	63	2.3	84.8	20	1.7	0	—	4	3.4	39	2.6
110 to 119	4,122	36	1.3	86.1	12	1.0	1	2.1	2	1.7	21	1.4
120 to 129	4,962	40	1.4	87.5	7	0.6	0	—	2	1.7	31	2.1
130 to 139	3,607	27	1.0	88.5	10	0.9	0	—	2	1.7	15	1.0
140 to 149	4,479	31	1.1	89.6	11	1.0	0	—	0	—	20	1.4
150 to 159	3,857	25	0.9	90.5	7	0.6	0	—	3	2.6	15	1.0
160 to 169	4,267	26	0.9	91.4	8	0.7	0	—	1	0.8	17	1.2
170 to 179	3,479	20	0.7	92.1	4	0.3	2	4.1	1	0.8	13	0.9
180 to 189	2,582	14	0.5	92.6	5	0.4	0	—	0	—	9	0.6
190 to 199	3,101	16	0.6	93.2	2	0.2	1	2.1	0	—	13	0.9
200 to 299	19,584	80	2.9	96.1	18	1.6	3	6.3	0	—	59	4.0
300 to 399	11,553	34	1.2	97.3	7	0.6	0	—	3	2.6	24	1.6
400 to 499	12,101	27	1.0	98.3	10	0.9	0	—	0	—	17	1.2
500 to 599	10,213	19	0.7	99.0	3	0.3	0	—	0	—	16	1.1
600 to 799	10,999	16	0.6	99.6	4	0.3	1	2.1	0	—	11	0.7
800 to 999	4,475	5	0.1	99.8	0	—	0	—	0	—	5	0.3
1,000 to 1,999	11,749	9	0.3	100.0	1	0.0	0	—	1	0.8	7	0.5
2,000 to 2,999	4,466	2	0.0	100.0	2	0.2	0	—	0	—	0	—

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1996[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL–CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent of size class	Number	Percent by size class
	B. Decertification elections (RD)											
Total RD elections	25,011	485	100.0	—	134	100.0	3	100.0	12	100.0	336	100.0
Under 10	535	100	20.6	20.6	7	5.2	0	—	0	—	93	27.7
10 to 19	1,589	111	22.9	43.5	24	17.9	0	—	3	25.0	84	25.0
20 to 29	1,618	67	13.8	57.3	18	13.4	1	33.3	1	8.3	47	14.0
30 to 39	1,582	46	9.5	66.8	13	9.7	0	—	3	25.0	30	8.9
40 to 49	1,295	30	6.2	73.0	9	6.7	0	—	0	—	21	6.3
50 to 59	1,057	19	3.9	76.9	14	10.4	0	—	1	8.3	4	1.2
60 to 69	1,542	24	4.9	81.8	9	6.7	0	—	0	—	15	4.5
70 to 79	877	12	2.5	84.3	4	3.0	0	—	0	—	8	2.4
80 to 89	597	7	1.4	85.7	3	2.2	0	—	0	—	4	1.2
90 to 99	667	7	1.4	87.1	4	3.0	1	33.3	0	—	2	0.6
100 to 109	417	4	0.8	87.9	1	0.8	0	—	0	—	3	0.8
110 to 119	910	8	1.6	89.5	2	1.5	0	—	0	—	6	1.8
120 to 129	1,000	8	1.6	91.1	5	3.7	1	33.3	0	—	2	0.6
130 to 139	403	3	0.6	91.7	2	1.5	0	—	1	8.3	0	—
140 to 149	295	2	0.4	92.1	1	0.8	0	—	0	—	1	0.3
150 to 159	625	4	0.8	92.9	1	0.8	0	—	0	—	3	0.8
160 to 169	994	6	1.3	94.2	5	3.7	0	—	1	8.3	0	—
170 to 199	2,014	11	2.4	96.6	6	4.5	0	—	0	—	5	1.5
200 to 299	1,264	5	1.1	97.7	3	2.2	0	—	0	—	2	0.6
300 to 499	2,107	6	1.3	99.0	2	1.5	0	—	0	—	4	1.2
500 to 799	1,593	3	0.6	99.6	1	0.8	0	—	0	—	2	0.6
800 and over	2,030	2	0.4	100.0	0	—	0	—	2	16.8	0	—

[1] See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1996[1]

Size of establishment (number of employees)[1]	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	30,144	100.0	—	23,224	100.0	5,545	100.0	431	100.0	178	100.0	43	100.0	29	100.0	76	100.0	601	100.0	17	100.0
Under 10	3,543	11.8	11.8	2,688	11.6	598	10.8	117	27.1	61	34.3	6	14.0	8	27.6	22	28.9	39	6.5	4	23.5
10–19	2,754	9.1	20.9	2,203	9.5	399	7.2	72	16.7	30	16.9	5	11.6	1	3.4	13	17.1	25	4.2	6	35.3
20–29	2,049	6.8	27.7	1,673	7.2	265	4.8	39	9.0	25	14.0	7	16.3	0	—	10	13.2	28	4.7	2	11.8
30–39	1,586	5.3	33.0	1,287	5.5	224	4.0	28	6.5	11	6.2	3	7.0	0	—	3	3.9	30	5.0	0	—
40–49	1,076	3.6	36.6	872	3.8	162	2.9	12	2.8	4	2.2	1	2.3	0	—	7	9.2	17	2.8	1	5.9
50–59	1,725	5.7	42.3	1,384	6.0	274	4.9	29	6.7	8	4.5	4	9.3	1	3.4	6	7.9	19	3.2	0	—
60–69	870	2.9	45.2	737	3.2	104	1.9	15	3.5	1	0.6	1	2.3	0	—	0	—	10	1.7	2	11.8
70–79	838	2.8	48.0	678	2.9	130	2.3	7	1.6	1	0.6	1	2.3	0	—	0	—	21	3.5	0	—
80–89	618	2.1	50.1	548	2.4	56	1.0	3	0.7	0	—	0	—	0	—	0	—	11	1.8	0	—
90–99	353	1.2	51.3	296	1.3	48	0.9	3	0.7	1	0.6	0	—	0	—	0	—	5	0.8	0	—
100–109	2,166	7.2	58.5	1,557	6.7	508	9.2	18	4.2	11	6.2	4	9.3	6	20.7	5	6.6	56	9.3	1	5.9
110–119	241	0.8	59.3	221	1.0	14	0.3	0	—	0	—	0	—	0	—	1	1.3	5	0.8	0	—
120–129	473	1.6	60.9	398	1.7	61	1.1	0	—	2	1.1	0	—	0	—	1	1.3	10	1.7	1	5.9
130–139	245	0.8	61.7	200	0.9	37	0.7	2	0.5	1	0.6	0	—	2	6.9	0	—	3	0.5	0	—
140–149	189	0.6	62.3	163	0.7	19	0.3	1	0.2	1	0.6	0	—	0	—	0	—	5	0.8	0	—
150–159	801	2.7	65.0	590	2.5	171	3.1	13	3.0	3	1.7	2	4.7	0	—	1	1.3	21	3.5	0	—
160–169	191	0.6	65.6	158	0.7	28	0.5	1	0.2	1	0.6	0	—	0	—	0	—	3	0.5	0	—
170–179	197	0.7	66.3	163	0.7	25	0.5	1	0.2	0	—	1	2.3	0	—	1	1.3	6	1.0	0	—
180–189	152	0.5	66.8	125	0.5	24	0.4	0	—	0	—	0	—	0	—	0	—	3	0.5	0	—
190–199	38	0.1	66.9	29	0.1	8	0.1	0	—	0	—	0	—	0	—	1	1.3	0	—	0	—
200–299	2,082	6.9	73.8	1,548	6.7	458	8.3	12	2.8	4	2.2	3	7.0	4	13.8	0	—	53	8.8	0	—
300–399	1,356	4.5	78.3	984	4.2	310	5.6	7	1.6	0	—	0	—	1	3.4	0	—	54	9.0	0	—
400–499	728	2.4	80.7	550	2.4	143	2.6	9	2.1	3	1.7	0	—	2	6.9	5	6.6	16	2.7	0	—
500–599	819	2.7	83.4	559	2.4	230	4.1	5	1.2	0	—	0	—	1	3.4	0	—	24	4.0	0	—
600–699	407	1.4	84.8	324	1.4	72	1.3	0	—	0	—	0	—	0	—	0	—	11	1.8	0	—
700–799	253	0.8	85.6	190	0.8	53	1.0	1	0.2	0	—	0	—	0	—	0	—	9	1.5	0	—
800–899	246	0.8	86.4	183	0.8	57	1.0	4	0.9	0	—	0	—	0	—	0	—	2	0.3	0	—
900–999	123	0.4	86.8	93	0.4	26	0.5	0	—	0	—	0	—	0	—	0	—	4	.7	0	—
1,000–1,999	1,565	5.2	92.0	1,041	4.5	456	8.2	11	2.6	7	3.9	1	2.3	2	6.9	0	—	47	7.8	0	—
2,000–2,999	701	2.3	94.3	491	2.1	175	3.2	7	1.6	2	1.1	1	2.3	1	3.4	0	—	24	4.0	0	—
3,000–3,999	367	1.2	95.5	225	1.0	122	2.2	3	0.7	0	—	1	2.3	0	—	0	—	16	2.7	0	—

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1996[1]—Continued

Size of establishment (number of employees)	Total number of situations	Total		Type of situations															
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
4,000–4,999	130	0.4	95.9	76	0.3	46	0.8	3	0.7	0	—	2	4.7	0	—	0	—	3	0.5	0	—
5,000–9,999	584	1.9	97.8	440	1.9	128	2.3	4	0.9	0	—	0	—	0	—	0	—	12	2.0	0	—
Over 9,999	678	2.2	100.0	550	2.4	114	2.1	4	0.9	1	0.6	0	—	0	—	0	—	9	1.5	0	—

[1] See Glossary of terms fnr definitions.

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

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1996; and Cumulative Totals, Fiscal Years 1936 Through 1996

	Fiscal Year 1996									July 5, 1935–Sept. 30, 1996	
	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	185	167	18	0	3	—	—	—	—	—	—
On petitions for review and/or enforcement	147	133	14	0	3	100.0	100.0	0.0	100.0	10,926	100.0
Board orders affirmed in full	97	84	13	0	3	63.2	92.9	0.0	100.0	7,193	65.8
Board orders affirmed with modification	19	18	1	0	0	13.5	7.1	0.0	0.0	1,473	13.5
Remanded to Board	6	6	0	0	0	4.5	0.0	0.0	0.0	544	5.0
Board orders partially affirmed and partially remanded	7	7	0	0	0	5.3	0.0	0.0	0.0	228	2.1
Board orders set aside	18	18	0	0	0	13.5	0.0	0.0	0.0	1,488	13.6
On petitions for contempt	38	34	4	0	—	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	12	12	0	0	—	35.3	0.0	—	—	—	—
Court orders holding respondent in contempt	16	14	2	0	—	41.1	50.0	—	—	—	—
Court orders denying petition	5	4	1	0	—	11.8	25.0	—	—	—	—
Court orders directing compliance without contempt adjudication	5	4	1	0	—	11.8	25.0	—	—	—	—
Contempt petitions withdrawn without compliance	0	0	0	0	—	0.0	0.0	—	—	—	—
Proceedings decided by U.S. Supreme Court[3]	3	3	0	0	0	100.0	—	—	—	256	100.0
Board orders affirmed in full	3	3	0	0	0	100.0	—	—	—	155	60.6
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.0
Board orders set aside	0	0	0	0	0	—	—	—	—	45	17.6
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.4
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.2
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	—	—	—	—	1	0.4
Contempt cases enforced	0	0	0	0	0	—	—	—	—	1	0.4

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

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

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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1996, Compared With 5-Year Cumulative Totals, Fiscal Years 1991 Through 1995[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1996	Total fiscal years 1991–1995	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1996		Cumulative fiscal years 1991–1995		Fiscal Year 1996		Cumulative fiscal years 1991–1995		Fiscal Year 1996		Cumulative fiscal years 1991–1995		Fiscal Year 1996		Cumulative fiscal years 1991–1995		Fiscal Year 1996		Cumulative fiscal years 1991–1995	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	147	780	97	66.0	556	71.3	19	12.9	63	8.1	6	4.1	48	6.2	7	4.8	26	3.3	18	12.2	87	11.2
1. Boston, MA	9	21	8	88.9	14	66.7	1	11.1	2	9.5	0	0.0	4	19.0	0	0.0	0	0.0	0	0.0	1	4.8
2. New York, NY	16	69	10	62.5	52	75.4	4	25.0	8	11.6	1	6.3	4	5.8	1	6.2	0	0.0	0	0.0	5	7.2
3. Philadelphia, PA	10	84	10	100.0	72	85.6	0	0.0	2	2.4	0	0.0	4	4.8	0	0.0	2	2.4	0	0.0	4	4.8
4. Richmond, VA	10	63	4	40.0	42	66.7	1	10.0	7	11.1	1	10.0	4	6.3	1	10.0	2	3.2	3	30.0	8	12.7
5. New Orleans, LA	7	46	5	71.4	31	67.4	1	14.3	5	10.9	0	0.0	4	8.7	0	0.0	2	4.3	1	14.3	4	8.7
6. Cincinnati, OH	22	118	13	59.1	72	61.0	4	18.2	13	11.0	1	4.5	7	5.9	0	0.0	3	2.5	4	18.2	23	19.5
7. Chicago, IL	7	83	3	42.9	64	77.1	0	0.0	9	10.8	2	28.6	2	2.4	1	14.3	2	2.4	1	14.3	6	7.2
8. St. Louis, MO	7	44	3	42.9	26	59.1	1	14.3	5	11.4	1	14.3	0	0.0	0	0.0	0	0.0	2	28.5	13	29.5
9. San Francisco, CA	18	96	14	77.8	80	83.4	2	11.1	4	4.2	0	0.0	4	4.2	0	0.0	3	3.1	2	11.1	5	5.2
10. Denver, CO	6	23	5	83.3	18	78.3	0	0.0	1	4.3	0	0.0	0	0.0	0	0.0	1	4.3	1	16.7	3	13.0
11. Atlanta, GA	2	25	2	100.0	24	96.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	4.0	0	0.0	0	0.0
Washington, DC	33	108	20	60.6	61	56.5	5	15.2	7	6.5	0	0.0	15	13.9	4	12.1	10	9.2	4	12.1	15	13.9

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

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1996

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1996
		Pending in district court Oct. 1, 1995	Filed in district court fiscal year 1996		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	2	0	[1]2	2	1	1	0	0	0	0	0
Under Sec. 10(j) total	49	11	38	44	24	6	13	1	0	0	5
8(a)(1)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(2)(3) 8(b)(1)(A) 8(b)(2)	2	1	1	2	0	1	1	0	0	0	0
8(a)(1)(2)(3)(5) 8(b)(1)(A) 8(b)(2)	2	0	2	2	1	0	1	0	0	0	0
8(a)(1)(2)(5)	1	0	1	1	0	1	0	0	0	0	0
8(a)(1)(3)	18	3	15	17	8	1	7	1	0	0	1
8(a)(1)(3)(4)	1	0	1	1	1	0	0	0	0	0	0
8(a)(1)(3)(5)	13	6	7	11	8	3	0	0	0	0	2
8(a)(1)(5)	11	1	10	9	6	0	3	0	0	0	2
Under Sec. 10(l) total	26	7	19	18	5	0	9	2	1	1	8
8(a)(1)(3)	1	0	1	0	0	0	0	0	0	0	1
8(b)(3) 8(b)(4)(B)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)	1	0	1	1	1	0	0	0	0	0	0
8(b)(4)(A) 8(b)(4)(B)	1	0	1	1	0	0	0	0	0	1	0
8(b)(4)(B)	11	3	8	7	2	0	4	0	1	0	4
8(b)(4)(B) 8(b)(4)(D)	1	0	1	1	0	0	0	1	0	0	0
8(b)(4)(B) 8(b)(7)(C)	1	0	1	0	0	0	0	0	0	0	1
8(b)(4)(B) 8(e)	1	1	0	1	0	0	1	0	0	0	0
8(b)(4)(D)	5	3	2	3	0	0	2	1	0	0	2
8(b)(7)(A)	2	0	2	1	0	0	1	0	0	0	1
8(b)(7)(B)	1	0	1	1	0	0	1	0	0	0	0
8(b)(7)(C)	1	0	1	1	1	0	0	0	0	0	0

[1] In courts of appeals.

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1996

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Totals—all types	20	18	2	9	8	1	10	9	1	1	1	0
NLRB-initiated actions or interventions	0	0	0	0	0	0	0	0	0	0	0	0
To quash state court subpoena	1	1	0	0	0	0	0	0	0	1	1	0
To enforce subpoena	4	4	0	2	2	0	2	2	0	0	0	0
To stay collateral action	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	0	0	0	0	0	0	0	0	0	0	0	0
To review:	0	0	0	0	0	0	0	0	0	0	0	0
Prosecutorial discretion	1	1	0	0	0	0	1	1	0	0	0	0
Nonfinal orders	0	0	0	0	0	0	0	0	0	0	0	0
Attorney discipline orders	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from	0	0	0	0	0	0	0	0	0	0	0	0
Enforcing Board subpoenas	1	1	0	1	1	0	0	0	0	0	0	0
Proceeding in R case	1	0	1	0	0	0	1	0	1	0	0	0
Proceeding in unfair labor practice case	2	2	0	0	0	0	2	2	0	0	0	0
Collecting pursuant to settlement agreement	0	0	0	0	0	0	0	0	0	0	0	0
To compel NLRB to:	0	0	0	0	0	0	0	0	0	0	0	0
Issue complaint	3	3	0	2	2	0	1	1	0	0	0	0
Take action in R case	3	3	0	1	1	0	2	2	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	1	0	1	1	0	1	0	0	0	0	0	0
Take action in compliance proceeding	1	1	0	1	1	0	0	0	0	0	0	0
Take action in C case	1	1	0	0	0	0	1	1	0	0	0	0

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1996—Continued

Type of litigation	Number of proceedings											
	Total—all courts			In courts of appeals			In district courts			In bankruptcy courts		
	Number decided	Court determination		Number decided	Court determination		Number decided	Court determination		Number decided	Court determination	
		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position		Upholding Board position	Contrary to Board position
Other	0	0	0	0	0	0	0	0	0	0	0	0
Objection to Board's Proof of Claim	0	0	0	0	0	0	0	0	0	0	0	0
Mandamus recusal of Board members	0	0	0	0	0	0	0	0	0	0	0	0
Intervention in §301 suit	0	0	0	0	0	0	0	0	0	0	0	0
Suit to compel distribution of recovered preference moneys to administrative claimants	0	0	0	0	0	0	0	0	0	0	0	0
Opposition to §1113 motion	0	0	0	0	0	0	0	0	0	0	0	0
Motion to dismiss bankruptcy petition	0	0	0	0	0	0	0	0	0	0	0	0
EAJA	1	1	0	1	1	0	0	0	0	0	0	0

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

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 1996[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1995	1	1	0	0	0
Received fiscal 1996	9	9	0	0	0
On docket fiscal 1996	10	10	0	0	0
Closed fiscal 1996	10	10	0	0	0
Pending September 30, 1996	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1996[1]

Action taken	Total cases closed
	10
Board would assert jurisdiction	6
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	2
Dismissed	1
Withdrawn	0
Denied	1

[1] See Glossary for of terms definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1996; and Age of Cases Pending Decision, September 30, 1996

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	82
2. Complaint to close of hearing	165
3. Close of hearing to issuance of administrative law judge's decision	111
4. Administrative law judge's decision to issuance of Board decision	217
5. Originating document to Board decision	132
6. Filing of charge to issuance of Board decision	591
B. Age of cases pending administrative law judge's decision, September 30, 1996.	
1. From filing of charge	265
2. From close of hearing	90
C. Age of cases pending Board decision, September 30, 1996.	
1. From filing of charge	846
2. From originating document	215
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	4
2. Notice of hearing to close of hearing	13
3. Close of hearing to Regional Director's decision issued	23
4. Close of pre-election hearing to Board's decision issued	246
5. Close of post-election hearing to Board's decision issued	183
6. Filing of petition to—	
a. Board decision issued	267
b. Regional Director's decision issued	45
7. Originating document to Board decision	126
B. Age of cases pending Board decision, September 30, 1996.	
1. From filing of petition	369
2. From originating document	158
C. Age of cases pending Regional Director's decision, September 30, 1996	122

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1996

I. Applications for fees and expenses filed with the NLRB under 5 U.S.C. § 504:	
A. Number of applications filed	8
B. Decisions in EAJA cases ruled on (includes ALJ awards adopted by the Board and settlements):	
Granting fees	1
Denying fees	7
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$177,433.47
Recovered	$11,318.98
II. Petitions for review of Board Orders denying fees under 5 U.S.C. § 504:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	1
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	0
III. Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. § 2412	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered	0
IV. Applications for fees and expenses before the district courts under 5 U.S.C. § 2412:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered	$0.00