FIFTY-NINTH

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

1994

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NATIONAL LABOR RELATIONS BOARD

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Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Appointment and designation as Chairman effective March 7, 1994.

[2] Appointment effective March 9, 1994, to replace John Neil Raudabaugh whose resignation was effective November 26, 1993.

[3] Appointment effective March 18, 1994.

[4] Recess appointment as a Board Member effective from January 24 to March 3, 1994.

[5] Designated Acting Chief Administrative Law Judge to replace Melvin J. Welles who retired November 1, 1993. Appointment effective July 10, 1994.

[6] Appointment effective March 3, 1994, to replace Jerry M. Hunter whose term expired November 27, 1993. Daniel Silverman served as Acting General Counsel from November 28, 1993, until March 2, 1994.

[7] Effective December 15, 1993, to replace Nicholas Karatinos.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C., June 23, 1995

SIR: As provided in Section 3(c) of the Labor Management Relations Act, 1947, I submit the Fifty-Ninth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 1994.

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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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 1994, 40,861 cases were received by the Board.

The public filed 34,782 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 5724 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 355 amendment to certification and unit clarification cases.

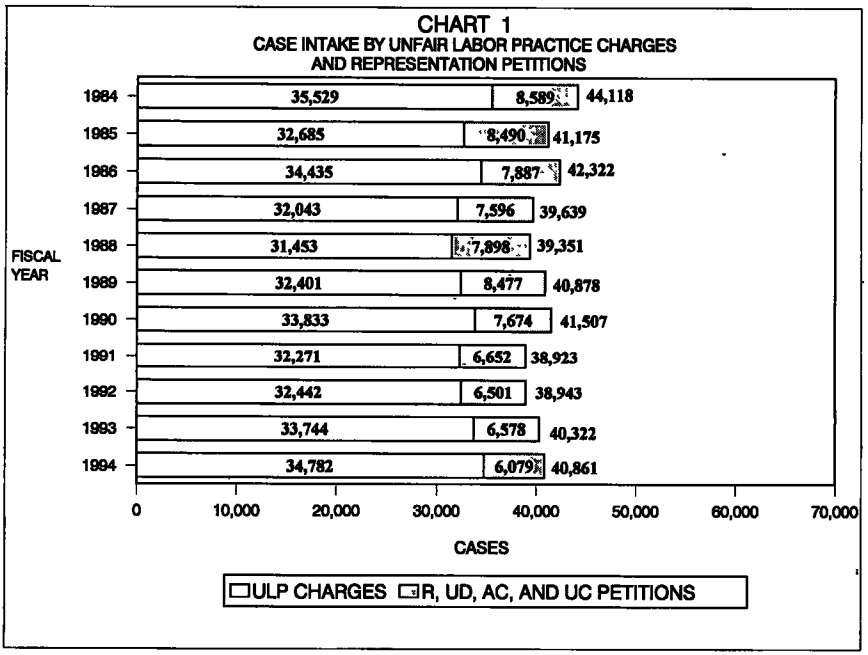
After the initial flood of charges and petitions, the flow narrows because the great majority of the newly filed cases are resolved—and quickly—in NLRB's national network of field offices by dismissals, withdrawals, agreements, and settlements.

At the end of fiscal year 1994, the five-member Board was composed of Chairman William B. Gould IV and Members James M. Stephens, Dennis M. Devaney, Margaret A. Browning, and Charles I. Cohen. Frederick L. Feinstein served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 1994 include:

- The NLRB conducted 3572 conclusive representation elections among some 185,754 employee voters, with workers choosing labor unions as their bargaining agents in 46.6 percent of the elections.
- Although the Agency closed 38,551 cases, 29,743 cases were pending in all stages of processing at the end of the fiscal year. The closings included 32,346 cases involving unfair labor practice charges and 5802 cases affecting employee representation and 403 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 9871.

- The amount of $82,158,463 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 4165 offers of job reinstatements, with 3722 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 3539 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 493 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.

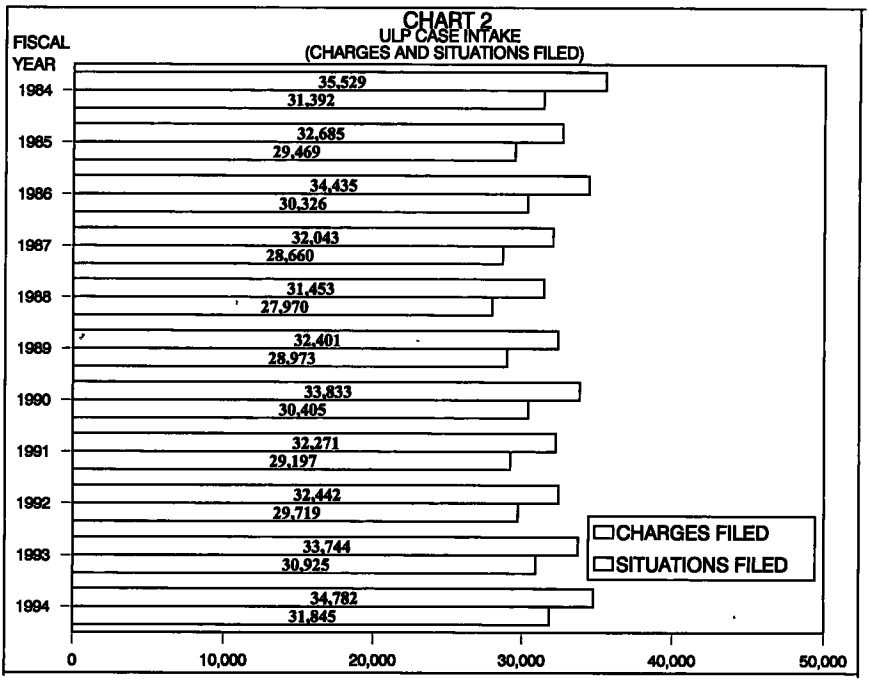
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 52 during fiscal year 1994.

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.

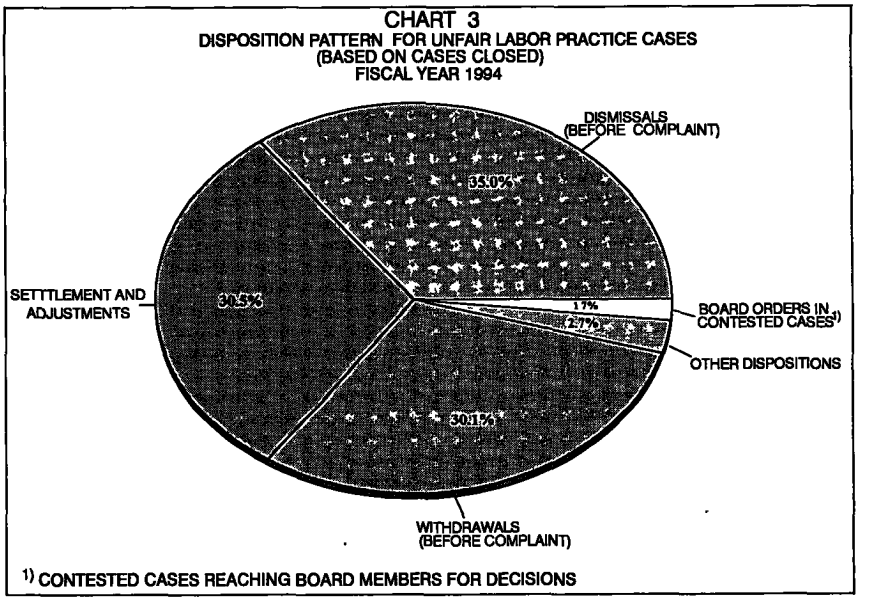
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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.

More than 90 percent of the unfair labor practice cases filed with the NLRB in the field offices are disposed of in a median of some 56 days without the necessity of formal litigation before the Board. About 2 percent of the cases go through to Board decision.

In fiscal year 1994, 34,782 unfair labor practice charges were filed with the NLRB, an increase of about 3 percent from the 33,744 filed in fiscal year 1993. In situations in which related charges are counted as a single unit, there was a 3-percent increase from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 26,058 cases, about 6 percent more than the 24,500 of 1993. Charges against unions decreased 5 percent to 8697 from 9191 in 1993.

There were 27 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 13,316 such charges in 55 percent of the total charges that employers committed violations.

Refusal to bargain was the second largest category of allegations against employers, comprising 10,736 charges, in about 45 percent of the total charges. (Table 2.)

Of charges against unions, the majority (7590) alleged illegal restraint and coercion of employees, about 79 percent. There were 743 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 23 percent from the 961 of 1993.

There were 1134 charges (about 12 percent) of illegal union discrimination against employees, a decrease of 3 percent from the 1174 of 1993. There were 114 charges that unions picketed illegally for recognition or for organizational purposes, compared with 118 charges in 1993. (Table 2.)

In charges filed against employers, unions led with 72 percent of the total. Unions filed 18,797 charges and individuals filed 7261.

Concerning charges against unions, 6945 were filed by individuals, or 80 percent of the total of 8697. Employers filed 1585 and other unions filed the 167 remaining charges.

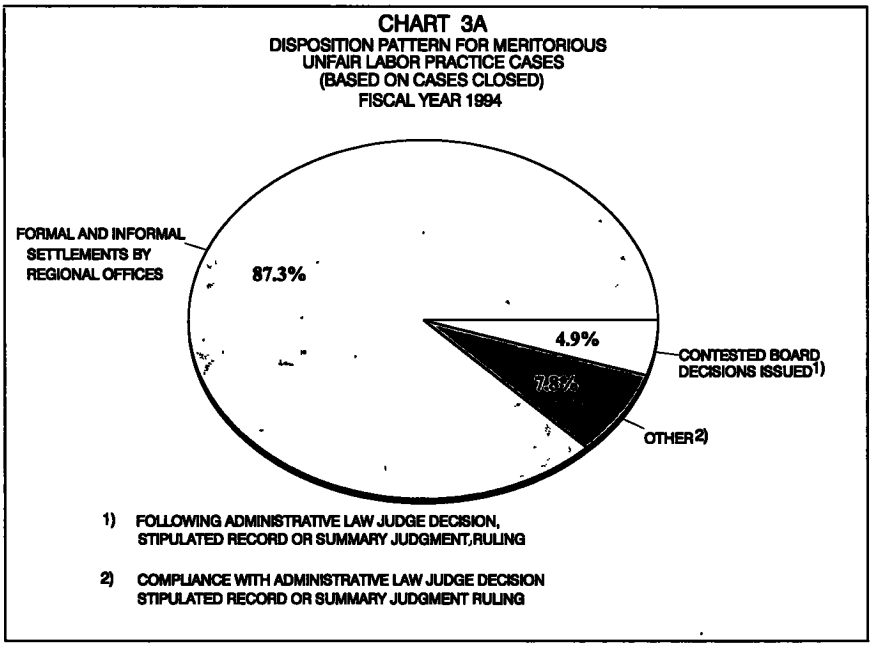
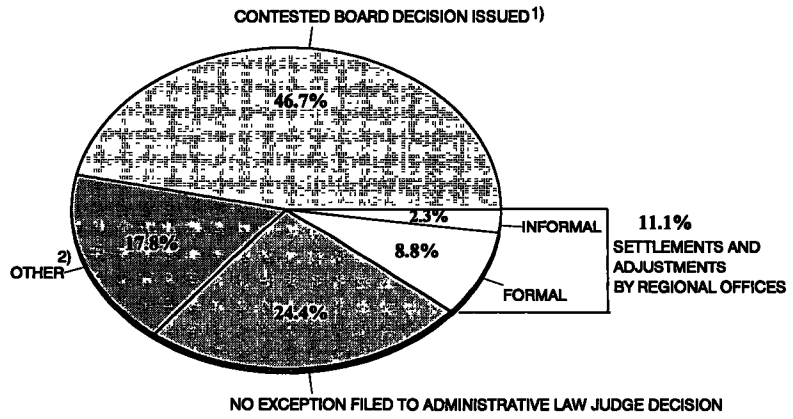


CHART 3B
DISPOSITION PATTERN FOR UNFAIR LABOR PRACTICE CASES AFTER TRIAL
(BASED ON CASES CLOSED)
FISCAL YEAR 1994



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

In fiscal year 1994, 32,346 unfair labor practice cases were closed. About 96 percent were closed by NLRB Regional Offices, virtually the same as in 1993. During the fiscal year, 30.5 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 30.1 percent were withdrawn before complaint, and 35 percent were administratively dismissed.

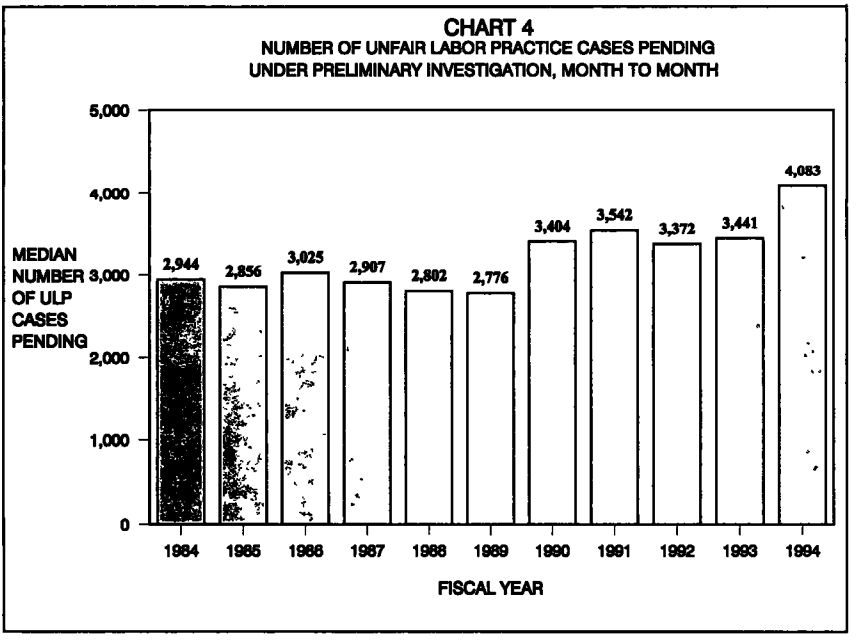
In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 1994, 40 percent of the unfair labor practice cases were found to have merit, a 2-percent decrease from 1993.

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 1994, precomplaint settlements and adjustments were achieved in 9677 cases, or 27.6 percent of the charges. In 1993, the percentage was 28.0. (Chart 5.)

Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 1994, 3539 complaints were issued, compared with 3576 in the preceding fiscal year. (Chart 6.)

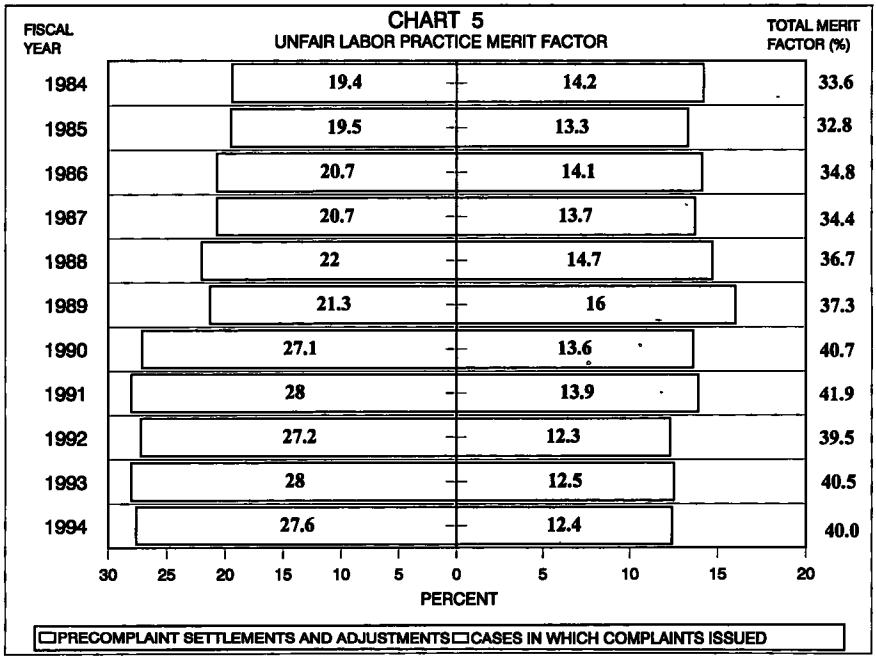
Of complaints issued, 89.3 percent were against employers and 10.7 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 52 days. The 52 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 493 decisions in

741 cases during 1994. They conducted 463 initial hearings, and 8 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.

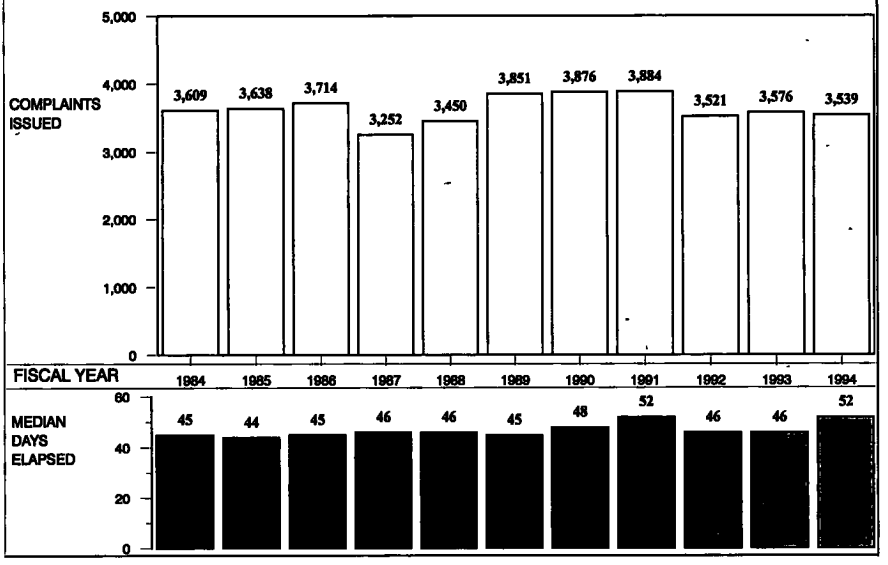
In fiscal year 1994, the Board issued 521 decisions in unfair labor practice cases contested as to the law or the facts—434 initial decisions, 47 backpay decisions, 16 determinations in jurisdictional work dispute cases, and 24 decisions on supplemental matters. Of the 434 initial decision cases, 394 involved charges filed against employers and 40 had union respondents.

For the year, the NLRB awarded backpay of $79.6 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added another $2,550,038. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 4165 employees were offered reinstatement, and 89 percent accepted.

At the end of fiscal 1994, there were 29,743 unfair labor practice cases being processed at all stages by the NLRB, compared to 27,433 cases pending at the beginning of the year.

CHART 6

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

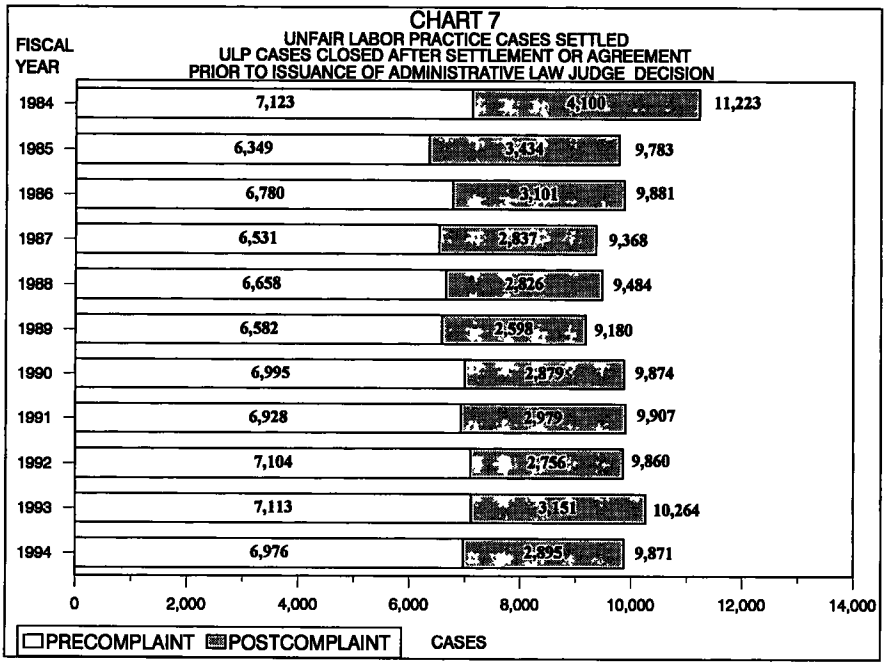


2. Representation Cases

The NLRB received 6079 representation and related case petitions in fiscal 1994, compared to 6578 such petitions a year earlier.

The 1994 total consisted of 4610 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 1024 petitions to decertify existing bargaining agents; 90 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 341 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from

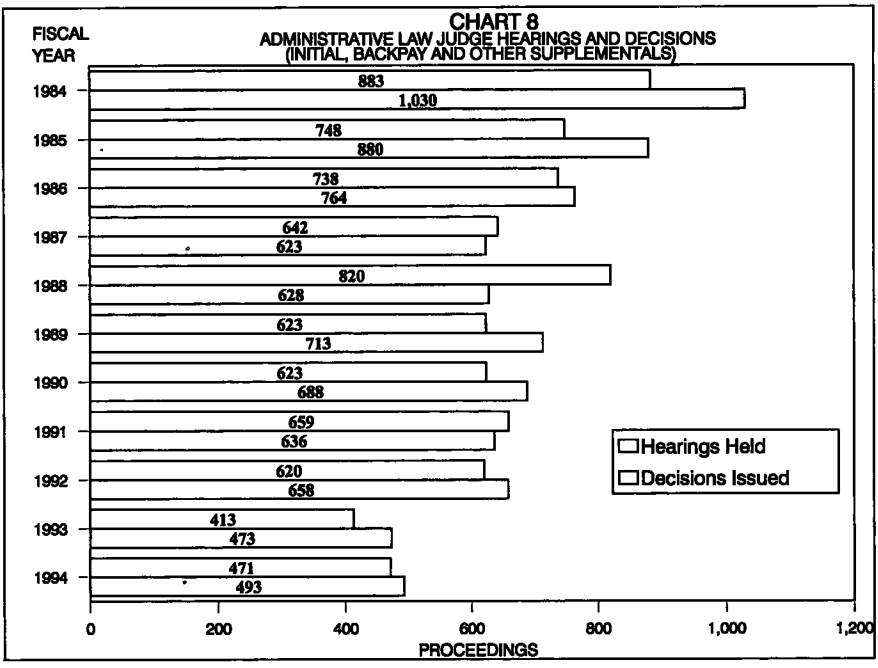
existing bargaining units. Additionally, 14 amendment of certification petitions were filed.



During the year, 6205 representation and related cases were closed, compared to 7132 in fiscal 1993. Cases closed included 4802 collective-bargaining election petitions; 1000 decertification election petitions; 85 requests for deauthorization polls; and 318 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 14.5 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 25 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.



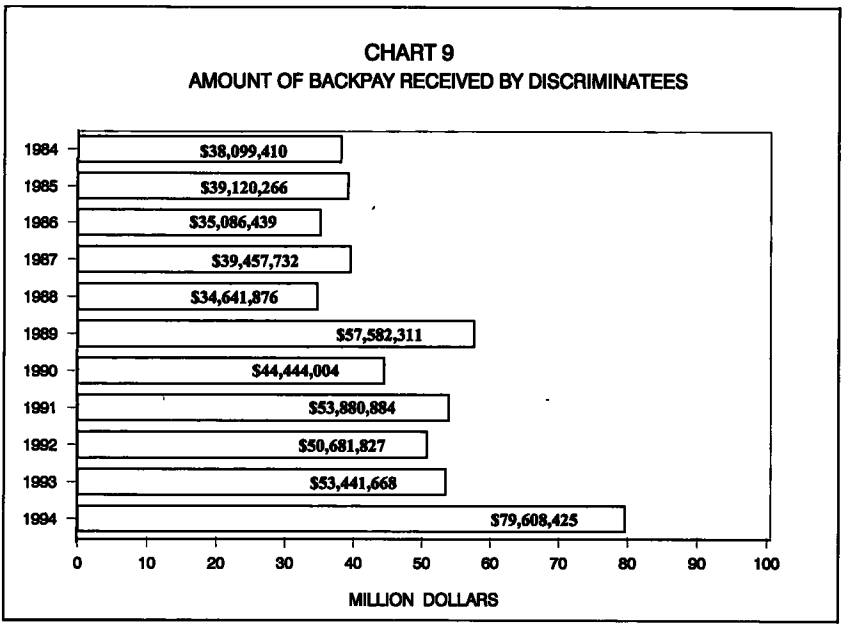
3. Elections

The NLRB conducted 3572 conclusive representation elections in cases closed in fiscal 1994, compared to the 3586 such elections a year earlier. Of 210,834 employees eligible to vote, 185,754 cast ballots, virtually 9 of every 10 eligible.

Unions won 1665 representation elections, or 46.6 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 85,603 workers. The employee vote over the course of the year was 88,343 for union representation and 97,411 against.

The representation elections were in two categories—the 3079 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 493 decerti-

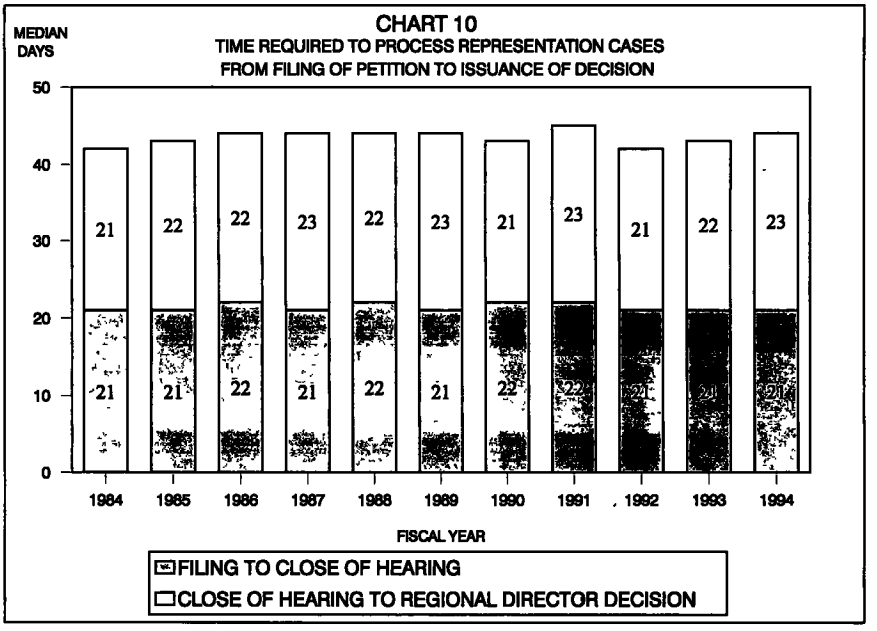
fication elections determining whether incumbent unions would continue to represent employees.



There were 3437 select-or-reject-bargaining-rights (1 union on ballot) elections, of which unions won 1549, or 45.1 percent. In these elections, 80,129 workers voted to have unions as their agents, while 95,131 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 75,288 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 135 multiunion elections, in which 2 or more labor organizations were on the ballot, as well as a choice for no representa-

tion. Employees voted to continue or to commence representation by 1 of the unions in 116 elections, or 85.9 percent.



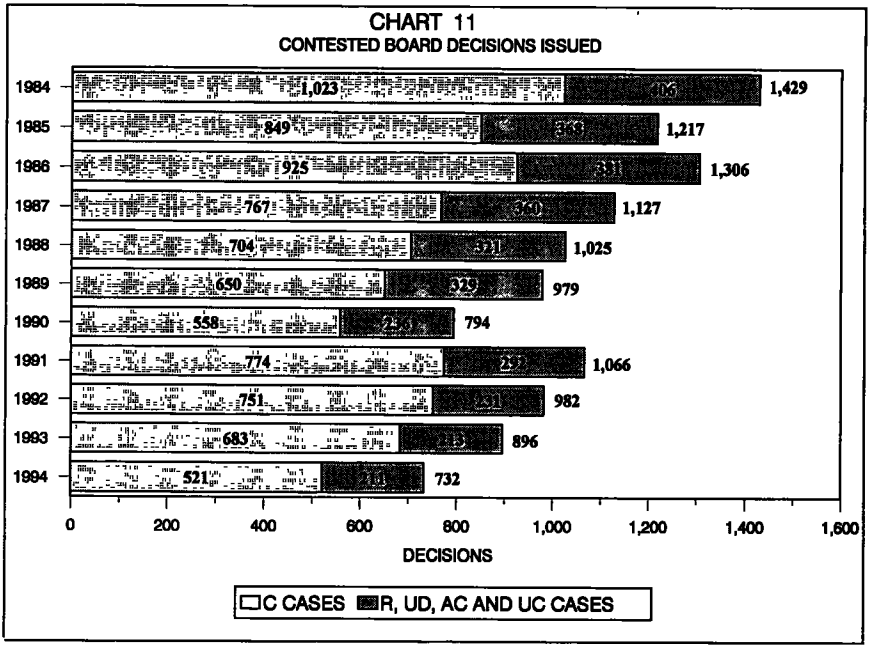
As in previous years, labor organizations lost decertification elections by a substantial percentage. The decertification results brought continued representation by unions in 168 elections, or 34.1 percent, covering 10,913 employees. Unions lost representation rights for 11,022 employees in 325 elections, or 65.9 percent. Unions won in bargaining units averaging 65 employees, and lost in units averaging 34 employees. (Table 13.)

Besides the conclusive elections, there were 180 inconclusive representation elections during fiscal year 1994 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 10 referendums, or 31.3 percent, while they maintained the right in the other 22 polls which covered 1329 employees. (Table 12.)

For all types of elections in 1994, the average number of employees voting, per establishment, was 52, compared to 56 in 1993. About

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



4. Decisions Issued

a. The Board

Dealing effectively with the remaining cases reaching it from nationwide filings after dismissals, settlements, and adjustments in earlier processing stages, the Board handed down 1179 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 1320 decisions rendered during fiscal year 1993.

A breakdown of Board decisions follows:

Total Board decisions		**1,179**
Contested decisions		**732**
Unfair labor practice decisions	521	
Initial (includes those based on stipulated record)	434	
Supplemental	24	
Backpay	47	
Determinations in jurisdictional disputes	16	

Representation decisions		206	
After transfer by Regional Directors for initial decision	9		
After review of Regional Director decisions	36		
On objections and/or challenges	161		
Other decisions		5	
Clarification of bargaining unit	5		
Amendment to certification	0		
Union-deauthorization	0		
Noncontested decisions			447
Unfair labor practice	237		
Representation	209		
Other	1		

The majority (62 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 1994 about 5 percent of all meritorious charges and 47 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about 2-1/2 times longer to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 889 decisions in fiscal 1994, compared to 877 in 1993. (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 493 decisions and conducted 471 hearings. (Chart 8 and Table 3A.)

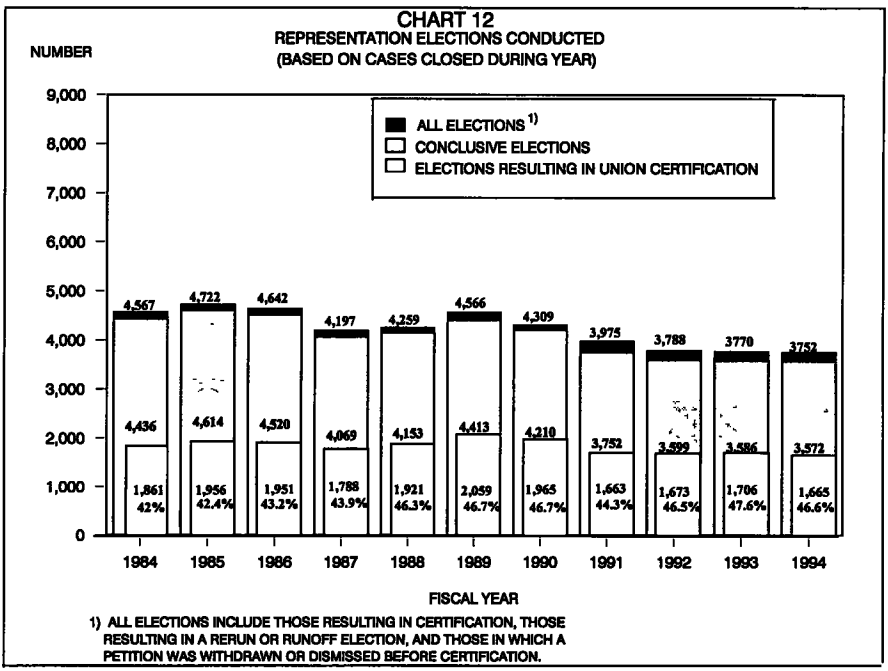


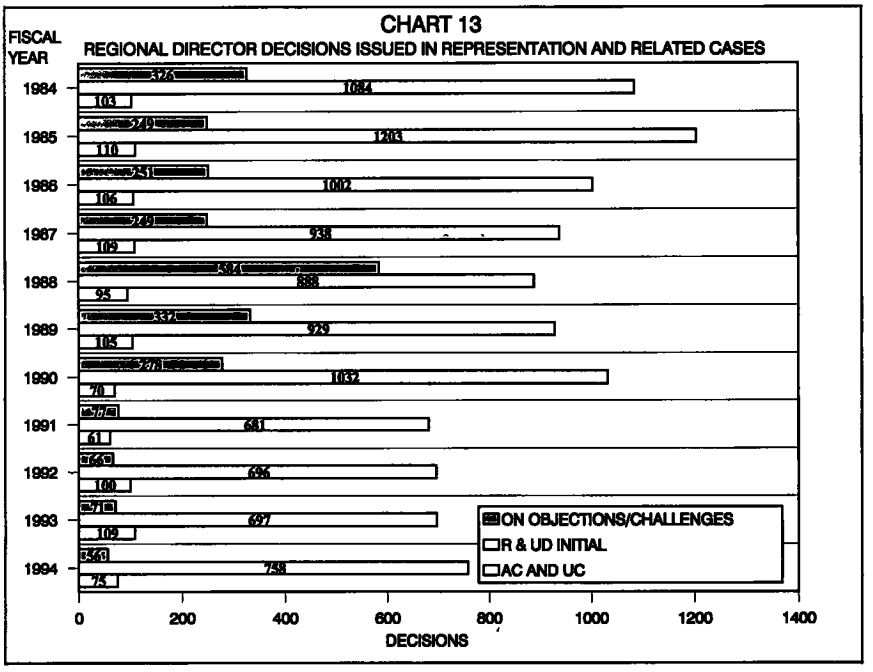
CHART 12
REPRESENTATION ELECTIONS CONDUCTED
(BASED ON CASES CLOSED DURING YEAR)
NUMBER
ALL ELECTIONS 1)
CONCLUSIVE ELECTIONS
ELECTIONS RESULTING IN UNION CERTIFICATION
9,000
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
4,567
4,722
4,642
4,197
4,259
4,566
4,309
3,975
3,788
3770
3752
4,436
4,614
4,520
4,069
4,153
4,413
4,210
3,752
3,599
3,586
3,572
1,861 42%
1,956 42.4%
1,951 43.2%
1,788 43.9%
1,921 46.3%
2,059 46.7%
1,965 46.7%
1,663 44.3%
1,673 46.5%
1,706 47.6%
1,665 46.6%
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
FISCAL YEAR
1) ALL ELECTIONS INCLUDE THOSE RESULTING IN CERTIFICATION, THOSE RESULTING IN A RERUN OR RUNOFF ELECTION, AND THOSE IN WHICH A PETITION WAS WITHDRAWN OR DISMISSED BEFORE CERTIFICATION.

5. Court Litigation

a. Appellate Courts

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

In fiscal year 1994, 142 cases involving the NLRB were decided by the United States courts of appeals compared to 179 in fiscal year 1993. Of these, 77.5 percent were won by NLRB in whole or in part compared to 88.8 percent in fiscal year 1993; 7.7 percent were remanded entirely compared to 5.6 percent in fiscal year 1993; and 14.8 percent were entire losses compared to 5.6 percent in fiscal year 1993.



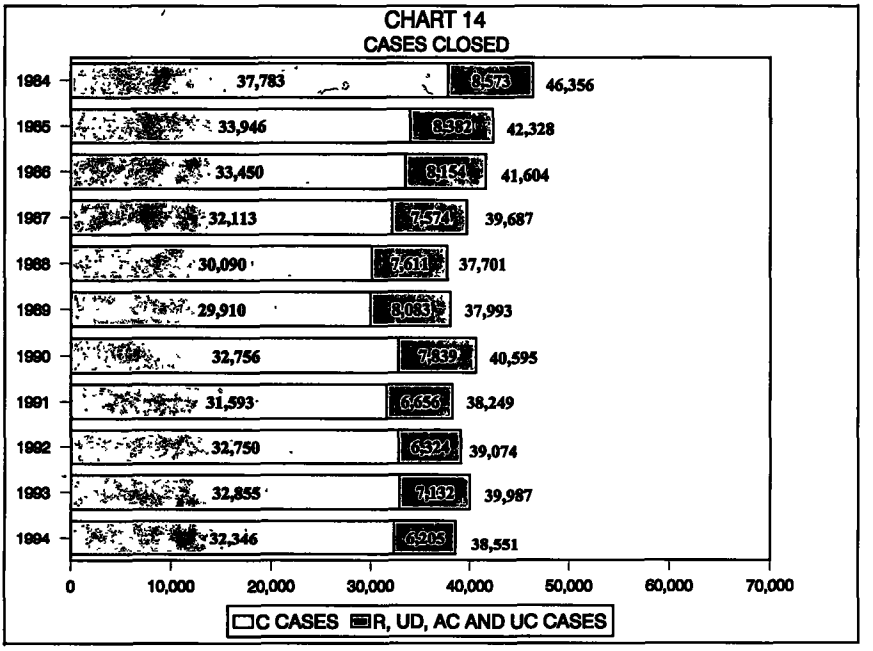
b. The Supreme Court

In fiscal 1994, there were two Board cases decided by the Supreme Court. The Board participated as amicus in two cases in fiscal 1994.

c. Contempt Actions

In fiscal 1994, 122 cases were referred to the contempt section for consideration of contempt action. There were 21 contempt proceedings instituted. There were 12 contempt adjudications awarded in

favor of the Board; 4 cases in which the court directed compliance without adjudication; and 1 case in which the petition was withdrawn.



d. Miscellaneous Litigation

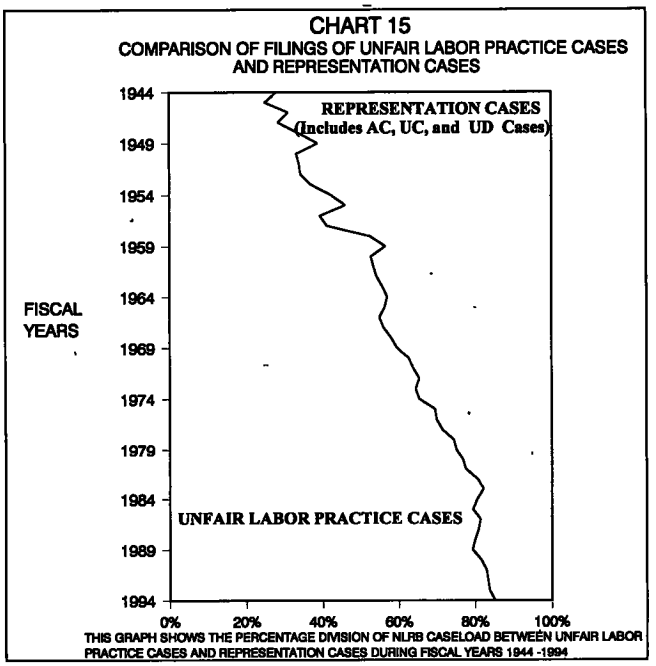
There were 27 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 23 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 82 petitions filed with the U.S. district courts, compared to 78 in fiscal year 1993. (Table 20.) Injunctions were granted in 24, or 73 percent, of the 33 cases litigated to final order.

NLRB injunction activity in district courts in 1994:

Granted	24
Denied	9
Withdrawn	8
Dismissed	2



C. Decisional Highlights

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

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

1. Attorney Discipline

In *Sargent Karch*,[1] the Board suspended a respondent employer's attorney for 6 months for violating an administrative law judge witness sequestration order by giving one of his witnesses a copy of the transcript of the testimony previously given by one of the General Counsel's witnesses. The administrative law judge's blanket sequestration order was found to be sufficiently broad to prohibit such conduct and the attorney was found to have known that when he gave the witness the transcript.

2. Production of Affidavits

In *Caterpillar, Inc.*,[2] the Board reversed the administrative law judge's ruling regarding the production of affidavits under the *Jencks Act*, 18 U.S.C. §3500 and Section 102.118(b)(1) and (2) of the Board's Rules and Regulations. The administrative law judge had held that all affidavits of the witnesses must be made available "to allow the defendant to have access to any information that the government has which is exculpatory or which affects the credibility of the witness." The Board, however, held that the administrative law judge had interpreted and applied the *Jencks* rule in an overly broad fashion, ignored the Board's direction that an administrative law judge should excise portions of a statement which do not relate to matters about which the witness has testified or to matters raised by the pleadings, and erred by compelling production of materials and memoranda in the absence of evidence that the witness had adopted them.

3. Preelection Hearing

In *Bennett Industries*,[3] the Board, in upholding a Regional Director, ruled that a party who refuses to take a position at a hearing on individuals' supervisory status and their inclusion or exclusion from the bargaining unit is precluded from introducing evidence at the hearing on the issue. The Board held that its duty to ensure due process for the parties in the conduct of Board proceedings requires that the Board provide parties with the opportunity to present evidence and advance arguments concerning relevant issues. But the Board also noted that it has an affirmative duty to protect the integrity of the Board's processes against unwarranted burdening of the record and unnecessary delay. The Board further observed that the burden of proving that an individual is a supervisor rests on the party alleging

[1] 314 NLRB 482 (Chairman Gould and Members Stephens, Devaney, and Browning; Member Cohen concurring).

[2] 313 NLRB 626 (Deputy Executive Secretary Joseph E. Moore, by direction of the Board).

[3] 313 NLRB 1363 (Chairman Gould and Members Stephens, Devaney, Browning, and Cohen).

that the supervisory status exists. Here, the petitioner contended the persons in question were not supervisors and the employer took no position. Thus, the Board reasoned that because no party alleged supervisory status, there was no basis for making any determination and no need to obtain record evidence on the "issue."

4. Showing of Interest

In *Excel Corp.*,[4] the Board overruled its prior decision[5] and affirmed the Regional Director's dismissal of a decertification petition, finding that the petitioners were not entitled to submit additional showing-of-interest signatures outside the window period. In its prior ruling the Board had held that the Regional Director's dismissal (which had relied on sec. 11024.1 of the Board's Casehandling Manual) was unduly harsh. The Board had found that the late filing was the result of a set of unusual circumstances not attributable to the petitioners, who had acted with diligence, and that the purposes and provisions of the Act would best be effectuated by allowing the petitioners a reasonable additional period of time to provide the requisite showing of interest. On motions for reconsideration, the Board concluded that its prior decision did not "adequately protect the established bargaining relationship between the Employer and the Union and marks an ill-advised departure from both Board precedent and the Board's published Rules." Specifically, the Board noted that Section 101.17 of the Board's Rules and Regulations provides that a showing of interest must be submitted within 48 hours of the filing of the petition, but in no event later than the last day on which the petition might timely be filed. The Board stated that "strict application of the Board's Rule establishes a reasonable and predictable test and discourages unsupported petitions which might cause disruptions in the existing collective-bargaining relationship, thus furthering the general policy of the Board's contract bar rules."

5. Mail Ballot Elections

In *Shepard Convention Services*,[6] the Board overruled a Regional Director's decision to conduct an election manually on the employer's premises and directed the Regional Director to conduct the election, at least in part, by mail ballot. The Regional Director had denied the petitioner's request for a mail ballot election with regard to "on-call" employees included in the bargaining unit, and the Board noted that a number of these on-call employees "may have other employment which may restrict their ability to reach the polls."

6. Challenge Procedure

In *Solvent Services*,[7] the Board adopted a Regional Director's determination that a Board agent did not err by failing to challenge the

[4] 313 NLRB 588 (Members Devaney and Raudabaugh; Chairman Stephens dissenting).
[5] 311 NLRB 710 (1993).
[6] 314 NLRB 689 (Chairman Gould and Member Devaney; Member Stephens dissenting).
[7] 313 NLRB 645 (Chairman Stephens and Members Devaney and Truesdale).

mail ballot of a voter, despite an annotation on the *Excelsior* list to the effect that the voter had been permanently laid off prior to the election. The Board held that the "parties to an election bear the primary responsibility for challenging voter eligibility," and a Board agent is not obligated to challenge a voter merely because there is an eligibility dispute. In rejecting the argument that section 11338 of the Board's Casehandling Manual obligated the Board agent to challenge the voter, the Board held that the casehandling provisions merely provide operational guidance in representation proceedings and do not supersede decisional law.

7. Illegal Secondary Conduct

In *Longshoremen ILA (Coastal Stevedoring)*,[8] the Board held that the International Longshoremen's Association (ILA) violated Section 8(b)(4)(ii)(B) through threats made in Japan by Japanese unions, acting as agents of the ILA, to neutral persons such as shippers, exporters, and importers who were involved in the Florida-Japan citrus trade. The Board concluded that the ILA was responsible for the conduct of the Japanese unions even though the unions were foreign entities and their conduct occurred outside of the United States. The Board further concluded that the assertion of jurisdiction in this case was proper because it did not interfere with the laws of Japan or affect the employment conditions of Japanese employees.

The stipulated facts showed that, in response to an ILA request, the Japanese unions widely disseminated communications to stevedoring companies, citrus importers, and shipping companies, asking that they ensure that citrus fruit was loaded in Florida by stevedoring companies that hired union-represented employees. These communications also warned that Japanese dockworkers would not unload fruit loaded in the United States by nonunion labor. The Japanese unions' threat in support of the ILA caused all the citrus shipments from Florida to Japan during the 1990–1991 export season to be shipped through the port of Tampa where they were loaded by stevedores represented by the ILA.

The Board observed that if the threats at issue had been made, at the ILA's request, by a U.S. union in the United States, the respondent would have been found to have authorized and ratified the threats because it informed the unions of its dispute with nonunion stevedoring companies, requested assistance from the unions in preventing the use of nonunion stevedores, and did nothing to disavow or halt the unions' threats. The Board concluded that the same result should apply in this case wherein the threats were made by a foreign entity in a foreign country. The Board held that the fact that the Japanese unions were foreign entities was irrelevant to the issue of agency. The Board found that "if a union (or an employer) acts through the instrumentality of another entity, it makes no difference whether that other entity is domestic or foreign. The essential point is that the

[8] 313 NLRB 412 (Chairman Stephens and Member Raudabaugh; Member Devaney concurring in the result).

union is acting through the instrumentality of another entity.'' The Board further held that the trade links between the ILA and the Japanese unions, as well as the immediate contact through telecommunications of all entities involved in the Florida-Japan citrus trade, warranted a finding of ILA responsibility for the conduct of the Japanese unions notwithstanding that the conduct occurred in a foreign country.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 1994, are as follows in thousands of dollars:

Personnel compensation	$113,664
Personnel benefits	19,851
Travel and transportation of persons	3,234
Transportation of things	92
Rent, communications, and utilities	23,760
Printing and reproduction	256
Other services	5,596
Supplies and materials	1,296
Equipment	3,112
Insurance claims and indemnities	93
Total obligations and expenditures[9]	$170,954

[9] Includes $31,565 for reimbursables from the administrative law judge program.

II

Board Procedure

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

A. Submission of Documents Out of Time

In *Bartlett Nuclear*,[1] the Board found that a family medical emergency did not justify the late filing of the respondent's counsel's reply brief, as the emergency did not occur until 6 days after the date on which the brief was due.

On February 18, 1993, on receipt of the respondent's motion for leave to file a reply brief, the Executive Secretary's office advised the respondent's counsel that Section 102.46 of the Board's Rules and Regulations automatically provided for the filing of reply briefs and that the deadline for filing in this case had been January 22, 1993. Respondent's counsel was further advised that she had the right to seek relief under the excusable neglect provisions of Section 102.111(c) of the Board's Rules.

The respondent's counsel filed a revised motion for leave to file a reply brief and an affidavit. The respondent's counsel stated, in her affidavit, that she had originally consulted an outdated copy of the Board's Rules which required a motion for leave to file a reply brief but did not set forth a specific time limit for filing the motion. She had intended to file such a motion and the brief within a reasonable time, however, a family medical emergency delayed the filing.

The Board found that respondent's counsel's proffered reasons for failing to file a timely reply brief do not rise to the level of excusable neglect. Here, the family medical emergency, which would ordinarily excuse a late filing, occurred 6 days after the date on which the brief was due. Further, in regard to counsel's contention that she had consulted an outdated copy of the Board's Rules, the Board noted that the operative rule had been in effect since October 1991, and the Office of the Executive Secretary and the Regional Offices are available for consultation regarding due dates. The Board stated that excusing

[1] 314 NLRB 1 (Members Stephens, Browning, and Cohen).

failure to ascertain the requirements of the applicable rules would result in the Rules becoming a nullity.

B. Attorney Discipline

In *Sargent Karch*,[2] the Board suspended a respondent employer's attorney for 6 months for violating an administrative law judge's witness sequestration order. The attorney had given one of the respondent employer's prospective witnesses a copy of the transcript of the testimony previously given by one of the General Counsel's witnesses. The Board found that the judge's blanket sequestration order was sufficiently broad to prohibit such conduct, and that the attorney understood this when he gave the transcript to the witness.

As for the appropriate discipline, the Board found that suspension of the attorney was warranted given that the Board had formally admonished the attorney in a prior case for a similar sequestration violation and the absence of any mitigating circumstances. Under all the circumstances, however, the Board found that a 6-month suspension, rather than 1-year suspension sought by the General Counsel, was appropriate.

C. Production of Affidavits

In *Caterpillar, Inc.*,[3] on appeal from the General Counsel, the Board reversed the administrative law judge's rulings with respect to the production of affidavits under the *Jencks Act*, 18 U.S.C. §3500 and Section 102.118(b)(1) and (2) of the Board's Rules and Regulations. The judge held that all affidavits of a testifying witness are available because the underlying rationale of *Jencks* "is to allow the defendant to have access to any information that the government has which is exculpatory or which affects the credibility of the witness." In reversing the judge, the Board held that he had interpreted and applied the *Jencks* rule in an overly broad fashion, ignored the Board's direction that a judge should excise portions of a statement which do not relate to matters about which the witness has testified or to matters raised by the pleadings, and erred by compelling production of materials and memoranda in the absence of evidence that the witness had adopted such.

[2] 314 NLRB 482 (Chairman Gould and Members Stephens, Devaney, and Browning; Member Cohen concurring).

[3] 313 NLRB 626 (Deputy Executive Secretary Joseph E. Moore, by direction of the Board).

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 *Bennett Industries*,[1] a party who refuses to take a position at a hearing on individuals' supervisory status and their inclusion or exclusion from the unit is precluded from introducing evidence at the hearing on the issue.

The petitioner sought to form a production and maintenance unit to include inspection and quality control employees and leadpersons.

[1] 313 NLRB 1363 (Chairman Gould and Members Stephens, Devaney, Browning, and Cohen). Member Cohen confines his decision to the facts in this case.

The employer raised issues regarding the potential supervisory status of leadpersons and quality control inspectors, and whether its quality control employees shared a community of interest with employees undisputedly included in the petitioned-for unit. Although the employer refused to take positions on these issues, it sought to introduce evidence regarding them. The hearing officer refused to permit introduction of evidence by the employer on these issues. The Regional Director agreed.

The Board's duty to ensure due process for the parties in the conduct of Board proceedings requires that the Board provide parties with the opportunity to present evidence and advance arguments concerning relevant issues. However, the Board also has an affirmative duty to protect the integrity of the Board's processes against unwarranted burdening of the record and unnecessary delay. Under Section 101.20(c) of the NLRB's Statement of Procedure, hearings are intended to afford parties "full opportunity to present their respective *positions* and to produce the significant facts in support of their contentions." (Emphasis added.) A party's refusal to take a position at a hearing while attempting to introduce evidence may in some circumstance signify a lack of good faith. In order to effectuate the purposes of the Act through expeditiously providing for a representation election, the Board seeks to narrow the issues and limit its investigation to areas in dispute.

In cases involving supervisory status, the burden of proving that an individual is a statutory supervisor rests on the party alleging that the supervisory status exists. Here, the employer refused to take a position on the supervisory issue both at the hearing and its posthearing brief, while the petitioner took the position that the leadpersons and inspectors were not supervisors. Thus, not only was there no dispute regarding the employees' supervisory status, there was also no contention by any party that the employees were in fact supervisors. Because no party alleged supervisory status, there was no basis for making a determination that the individuals in question were supervisors and no need to obtain record evidence on the issue. The Board noted that even on review, the employer still took no position on the merits although the employer obviously knew the duties and authority of individuals in the classifications, and whether it viewed the positions as supervisory.

The Board rejected the Regional Director's statement that if the employer decided prior to the election to take the position that the employees were statutory supervisors, its observers could challenge their ballots during the election. "The proper place for this issue to be litigated is at the hearing; to permit a party to take no position at the hearing when the subject is raised, leading to an uncontested nonsupervisory finding by the Regional Director, and then to permit the same party to litigate—or, in effect, relitigate—the same question in a challenged ballot proceeding would be an unwise administrative practice because it would amount to condoning duplicative procedures, unjustified delays, and unnecessary expenses for all parties, including the Board."

B. Appropriate Unit Issues

In *Lundy Packing Co.*,[2] the Board reversed the Regional Director's supplemental decision on challenged ballots and objections to election and order, and found that the industrial engineers, quality assurance/lab technicians, temporary management trainees I, lab technicians, and management trainees are not required to be included in the petitioned-for unit of production and maintenance employees over the objections of the petitioning union.

The employer processes and sells pork and pork products at its Clinton, North Carolina facility. The union sought to represent a unit of all production and maintenance employees, excluding quality assurance/lab technicians, temporary management trainees I, lab technicians, and management trainees (collectively referred to as technicians) and industrial engineers. Quality assurance employees spend approximately 80 percent of their time on the production floor taking samples, testing the housekeeping and the cleanliness of the facility, performing inspections, and obtaining weights and temperatures. The remaining 20 percent of their time is spent recording the results of their inspections in their office. Lab technicians spend approximately 85 percent of their time in the laboratory doing tests and the remainder working around the production areas gathering samples.

The industrial engineers and industrial engineer trainees do time-studies, observing production employees and recording the time spent to perform production functions, and make calculations to obtain standards for classifications and products. Industrial engineers spend half of their time in and around the production area speaking with production employees and gathering data, and the other half of their time in their office located away from the production floor. There is no interchange between them and production employees, but they had, on occasion, been temporarily assigned to perform production tasks. Of the three industrial engineers, two had transferred from production and maintenance positions.

Noting that the petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate unit, and that in representation proceedings, the unit sought by the petitioner is always a relevant consideration, the Board concluded that the technicians and the industrial engineers did not share such an overwhelming community of interest with the petitioned-for production and maintenance employees as to mandate their inclusion in the unit over the joint petitioners' objections. The disputed employees had separate supervision, were paid differently, and did not interchange with production and maintenance employees. Further, the Board found that although the disputed employees did perform some of the same functions as performed by the petitioned-for employees, the majority of their functions, albeit related to the production process, were generally different from those performed by production and maintenance employees. Moreover, although there was some contact be-

[2] 314 NLRB 1042 (Chairman Gould and Member Devaney; Member Stephens dissenting).

tween the industrial engineers, technicians, and production and maintenance employees, the Board found that such contact was not so substantial and regular as to compel their inclusion in the unit. Finally, no labor organization sought to represent a broader unit including the disputed employees.

In concluding that the petitioned-for production and maintenance unit need not include the industrial engineers and technicians, the Board relied on its decision in *Penn Color*,[3] in which the Board found appropriate the petitioned-for production and maintenance employees, excluding quality control and development technicians.

C. Showing of Interest

In *Excel Corp.*,[4] on motions for reconsideration, the Board, overruling its prior decision,[5] affirmed the Regional Director's dismissal of the decertification petition, finding that the petitioners were not entitled to submit additional signatures outside the window period.

The employer and the union were parties to a collective-bargaining agreement which was to expire on April 25, 1993. The window period during which other parties could file petitions expired on February 24, 1993. Petitioners timely filed their decertification petition 13 days before the close of the window period, supported by a large number of signatures ultimately determined to be valid. On March 17, 1993, the Regional Director, relying on section 11024.1 of the Board's Casehandling Manual, advised the petitioners that the petition was being dismissed because they had failed to submit a sufficient showing of interest to support the petition. That section provides that a petitioner must supply evidence within 48 hours of filing a petition and in no event later than the last day on which the petition could be filed. It further provides that the Regional Director at his discretion may give reasonable time to cure a defect in the showing of interest, but in no event later than the last day on which the petition could be filed.

In its Ruling on Administrative Action and Order Remanding, the Board initially held that strict application of section 11024.1 was unduly harsh. The Board found that the late filing of additional signatures was a result of a set of unusual circumstances not attributable to the petitioners, who had acted with diligence. Because of the unusually large number of employees in the unit, the apparent high turnover of employees, and delays in transmission of documents between the Regional Office and the employer, the Regional Office was unable to verify the number of employees in the unit and the number of valid signatures submitted until after the window period had closed. The Board found that the purposes and provisions of the Act would best be effectuated by allowing the petitioners a reasonable additional period of time to provide the requisite showing of interest, a period to be determined by the Regional Director.

[3] 249 NLRB 1117 (1980)
[4] 313 NLRB 588 (Members Devaney and Raudabaugh; Chairman Stephens dissenting).
[5] 311 NLRB 710 (1993).

On the motions for reconsideration, the Board, on further reflection, concluded that "the prior decision permitting consideration of signatures submitted by the decertification Petitioners after the expiration of the window period does not adequately protect the established bargaining relationship between the Employer and the Union and marks an ill-advised departure from both Board precedent and the Board's published Rules."

The Board noted that in addition to the Board's Casehandling Manual, Section 101.17 of the Board's Rules and Regulations provides that a showing of interest must be submitted within 48 hours of the filing of the petition, but in no event later than the last day on which the petition might timely be filed. The Board stated that it has consistently required petitioners to submit signatures prior to the commencement of the insulated period of an existing contract, or, when the contract has expired and negotiations are ongoing, prior to the execution of a new agreement. The petitioner bears the burden of establishing an adequate showing of interest. "The strict application of the Board's Rule establishes a reasonable and predictable test and discourages unsupported petitions which might cause disruptions in the existing collective-bargaining relationship, thus furthering the general policy of the Board's contract bar rules."

The Board relied on *Mallinckrodt Chemical Workers*,[6] wherein the Board had found a petitioner's showing of interest untimely when it was submitted 2 days after the execution of the new agreement. The Board there noted that the petitioner, faced with the long bargaining history between the employer and the intervenor union and their persistent efforts to reach agreement, had adequate knowledge of the risk involved in any dilatory action and should not be relieved from compliance with the Board's Rules.

The Board found that the exception to the Rules set forth in *Rappahannock Sportswear Co.*[7] was not applicable here. In *Rappahannock* there was no existing collective-bargaining relationship and no corresponding interest in stabilizing an enduring relationship. Further, the employer had hastily signed the contract with one of two unions it knew were simultaneously engaged in organizing. Here, there is an existing contract, and, unlike *Rappahannock*, the additional cards were obtained, as well as submitted, following the deadline. The employer and the union have executed a successor agreement, which has been ratified. Permitting a decertification election based on untimely collected and submitted signatures "would unjustifiably place at risk the collective-bargaining agreement and the bargaining relationship between the Employer and the Union." The Board concluded that the Regional Director was correct in dismissing the petition and adopted his position.[8]

[6] 200 NLRB 1 (1972).

[7] 163 NLRB 703 (1967).

[8] The Board noted that even if the late submitted signatures were counted, it appeared that the petitioners still had not presented an adequate showing of interest.

In *Pike Co.*,[9] the Board found that in construction industry elections, the numerical sufficiency of a petitioner's showing of interest will be measured against the number of current unit employees employed at the time the petition is filed rather than against the number of employees eligible under the construction industry eligibility formula in *Steiny & Co.*,[10] reaffirming *Daniel Construction Co.*[11] The Board granted the employer's request for review of the Regional Director's decision measuring the showing of interest against the number of unit employees employed at the time the petition was filed.

In affirming the Regional Director, the Board noted that to determine the showing of interest based on the number of employees eligible under the formula, as argued by the employer, would place an undue burden on the parties and on the Board. In an industry characterized by an intermittent and fluctuating work force often involving several employers, the burden of checking the showing of interest might prove to be more time-consuming and costly than simply running the election. The limited purpose of the showing of interest, which is to save the time and needless expense of running an election, could be undermined. To broaden the showing-of-interest requirement in this industry may ultimately frustrate the purposes of the Act by severely restricting these employees in the exercise of their rights under Section 7 of the Act. The Board also pointed out that valid cards will be acceptable only from those *currently* employed since it is that work force which is the group against which the numerical sufficiency will be judged.

D. Mail Ballot Elections

In *Shepard Convention Services*,[12] the Board overruled a Regional Director's decision to conduct an election manually on the employer's premises and directed the Regional Director to conduct the election, at least in part, by mail ballot. The Board found that the Regional Director abused his discretion by denying the request for a mail ballot election with regard to "on-call" employees. The Board noted that the on-call employees "may have other employment which may restrict their ability to reach the polls." In his dissent, Member Stephens argued that the Regional Director's decision to conduct a mail ballot election was consistent with section 11336 of the NLRB's Casehandling Manual and, accordingly, there was sufficient basis to find that the Regional Director abused his discretion by not conducting the election by mail ballot.

[9] 314 NLRB 691 (Chairman Gould and Members Stephens and Browning).
[10] 308 NLRB 1323 (1992).
[11] 133 NLRB 264 (1961), as modified 167 NLRB 1078 (1967).
[12] 314 NLRB 689 (Chairman Gould and Member Devaney; Member Stephens dissenting).

E. Challenge Procedure

In *Solvent Services*,[13] the Board adopted a Regional Director's determination that a Board agent did not compromise an election by failing to challenge a voter, despite an annotation on the *Excelsior* list that the voter had been permanently laid off prior to the election.

In *Solvent Services*, the Board agent informed the parties' observers, prior to the tally of mail ballots, to check names off the *Excelsior* list as they were shown the corresponding mail ballot. When the Board agent displayed the ballot of a voter for whom the employer had noted "permanent layoff" on the eligibility list, no challenge was made, and the ballot was tallied. After the election, the employer filed objections alleging that the laid-off voter was ineligible, and that the Board agent improperly failed to challenge him.

The Board agreed with the Regional Director that the employer's objections lacked merit. Citing well-settled law, the Board held that "[the] parties to an election bear the primary responsibility for challenging voter eligibility,"[14] and a Board agent is not obligated to challenge a voter merely because there is an eligibility dispute. See also *Fern Laboratories*.[15] The Board further determined that post-election eligibility challenges, like the employer's, are barred except when the Board agent or a party benefiting from the bar "knew of the voter's ineligibility and suppressed the facts."[16] Because the Board agent did not have actual knowledge of the contested voter's eligibility, the *A. J. Tower* exception was found inapplicable. In reaching this result, the Board particularly relied on the fact that although the employer placed the annotation on the *Excelsior* list, its observer—who participated in the layoff decision—did not challenge the voter; further, at the time of the tally there was a pending unfair labor practice charge alleging that the layoff was unlawful. In these circumstances, the Board concluded that, at most, the Board agent knew that the voter's eligibility was in dispute.

The Board also rejected the employer's argument that the Board agent was obligated to challenge the voter under section 11338 of the Board's Casehandling Manual which specifies, among other things, that "the agent must challenge a voter if he/she knows or has reason to believe that the voter is ineligible to vote." The Board held that casehandling provisions merely provide operational guidance in representation proceedings and do not supersede decisional law.

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[13] 313 NLRB 645 (Chairman Stephens and Members Devaney and Truesdale).

[14] Id. at 646, citing *Balfre Gear & Mfg. Co.*, 115 NLRB 19, 22 (1956); *Galli Produce Co.*, 269 NLRB 478 (1984).

[15] 232 NLRB 379 (1977).

[16] 313 NLRB at 646; *NLRB v A. J. Tower*, 329 U.S. 324, 333 (1946).

F. Election Objections

In *Comet Electric*,[17] the Board majority found that an employer interfered with the employees' free choice in an election by requiring their attendance at a "captive audience" speech after their normal quitting time, without providing them full compensation for the time spent at the meeting and without distributing the employees' paychecks until the meeting concluded.

One week before the election, the employer told its employees to report back to the shop at 3 p.m. for a meeting. The employees' regular quitting time is 4 p.m. At the meeting, which lasted from 3 to 5:30 p.m., the employer's owners made an antiunion speech to the assembled employees. Although the employees normally would have received their paychecks at 4 p.m. that day, they were not paid until the meeting concluded. Following the meeting, the employees were not fully compensated for the time spent at the meeting.

The Board found that employee attendance at the meeting was mandatory and that employees were compelled to remain for its entire duration as a condition of receiving their paychecks. No employee was compensated for the 1-1/2 hours spent at the meeting beyond the normal 4 p.m. quitting time. In these circumstances, the Board found that "employees would reasonably perceive that the Union's campaign had caused them to suffer an economic detriment." The Board concluded that because of the captive audience speech, employees were required to give uncompensated time to the employer, and were effectively punished for seeking union representation. Accordingly, the Board sustained the petitioner's objection and set aside the election.

Member Stephens, dissenting, would have found that the record was too ambiguous to support the finding that the employees were "compelled" to attend the entire meeting. He noted that it is not unlawful for an employer to subject its employees during working time to antiunion remarks. Member Stephens also noted that no employee left the meeting before it ended, the employer did not prevent any employee from leaving after 4 p.m., and there was no evidence that the owners would have withheld checks from anyone who had attempted to depart after 4 p.m.

In *Heartland of Martinsburg*,[18] the Board reversed the Regional Director and found that the evidence submitted by the employer in support of its objections to the representation election was sufficient, albeit, unaccompanied by signed witness statements or affidavits.

Prior to the election, the Regional Office mailed the employer a form entitled "Notice of Procedures to be Followed when Filing Objections to an Election with Region 5 and/or After Election(s) in [w]hich there are Determinative Challenged Ballots." The notice stated, in relevant part, that evidence submitted in support of objections

[17] 314 NLRB 1215 (Chairman Gould and Members Devaney, Browning, and Cohen, Member Stephens dissenting).

[18] 313 NLRB 655 (Chairman Stephens and Members Devaney and Truesdale).

should be a "list of all witnesses whose testimony is relied on to support the objections, together with the written statements or affidavits incorporating the witnesses' testimony and *signed by the witness.*" (Emphasis in the original.) The employer denied receiving this document.

On July 9, 1993, the employer filed timely objections to the election, asserting that the election should be set aside because of alleged threats of violence by union agents and alleged prounion activity by supervisors. On July 19, the employer filed a 13-page evidentiary statement, with attachments, in support of its objections. While the employer's statement provided specific descriptions of allegedly objectionable activity, lists of witnesses who could provide testimony about this activity, and legal arguments, it did not include signed witness statements or affidavits. The Regional Director did not consider the employer's evidentiary statement and found that the absence of such witness statements and affidavits made the employer's submission inadequate.

The Board found that the Board's Rules and Regulations do not define the nature of evidence that the objecting party must submit in order to initiate a Regional Director's investigation and that contrary to the Regional Director and Region 5's procedure notice, the Board does not require that such evidence include signed witness statements or affidavits (thereby making immaterial whether the employer received the preelection notice of Region 5 procedures). The Board, relied on *Holladay Corp.*,[19] a case also involving Region 5. Here, the Board recognized the practical difficulties which may confront an objecting party in securing the voluntary cooperation of employee witnesses, and held that when the objecting party has provided details of the alleged objectionable conduct and identified witnesses who allegedly could provide supporting evidence, the Regional Director could not overrule objections solely on the basis that the objecting party had not provided witnesses or their affidavits.

In *Embassy Suites Hotel*,[20] the Board affirmed the Regional Director and found that the use of a discharged employee as the petitioner's election observer was not grounds for setting aside the election.

The employer's objection challenged the petitioner's use of a discharged employee as an election observer. The employee's name had appeared on the *Excelsior* list submitted to the Region, but the employer discharged him prior to the election. The Regional Director found that the union's designation and use of a nonemployee as its election observer was not objectionable conduct and further found that the employer failed to produce evidence that the employee's presence at the election had a coercive effect on any employee.

The employer sought support for its objection, in part, on section 11310 of the Board's Casehandling Manual for representation proceedings. Section 11310 states that "[o]bservers must be nonsupervisory employees of the employer, unless a written agreement

[19] 266 NLRB 621 (1983).

[20] 313 NLRB 302 (Chairman Stephens and Members Devaney and Raudabaugh).

by the parties provides otherwise" and "the use of an ineligible observer may result in the election being set aside." The employer also relied on the Board's decision in *Kellwood Co.*[21] Here, the Board held that discharged employees could be considered employees of the employer for purposes of serving as election observers pending the resolution of unfair labor practices against the employer. The employer argued that the obverse proposition was also true, namely, that a discharged employee could not serve as an election observer if there were no charges concerning him.

The Board stated that the provisions of the Board's Casehandling Manual were guidelines and not binding rules; that in any event, the concern that underlies section 11310 is aimed primarily at preventing intimidation that might take place should the employer choose to have supervisory employees present and it would be unreasonable to assume that use of a former employee for any party to an election would intimidate voters. Thus, absent misconduct, use of this employee as an election observer would not be objectionable. The Board dismissed the employer's additional argument, concluding that it did not necessarily follow that a former employee is ineligible to serve simply because the discharge is undisputed at the time of the election. Member Raudabaugh asserted that there were circumstances under which he would bar nonemployees who were union officials from serving as observers, but that there was no evidence in this case that the discharged employee was a petitioner official.

In *Terrace Gardens Plaza*,[22] the Board sustained the employer's objection and set aside a mail ballot election because the employer did not timely receive and post the notices of election.

The Regional Director had determined to conduct a mail ballot election after the employer allegedly failed to cooperate in furnishing information necessary to arrange a manual election. The employer received the notice of election the same day as the ballots were mailed and immediately protested conducting the election without the required 3-day posting pursuant to Section 103.20 of the Board's Rules. The majority of Chairman Stephens and Member Raudabaugh found that pursuant to Section 103.20, the employer was required to post the notice in a mail ballot election for 3 working days prior to election, i.e., 3 days from the day the ballots were deposited in the mail, and that the employer's failure to do so required overturning the election. The Board found that the Rule's provisions are mandatory in nature, do not provide for an alternative means of compliance, and do not allow for any analysis as to the actual impact of noncompliance on a particular election. The Board noted that a case-by-case analysis would require the Board to engage in precisely the type of inquiry Section 103.20 was designed to obviate—unnecessary and time-consuming litigation.

In dissent, Member Devaney would have found that the failure to post the notice for 3 days is not per se grounds for setting aside an

[21] 299 NLRB 1026, 1029 (1990).

[22] 313 NLRB 571 (Chairman Stephens and Member Raudabaugh; Member Devaney dissenting).

election, noting that at the time the Rule was promulgated, the Board acknowledged in its explanatory statement that some issues would require case-by-case determinations. He would have found under the circumstances of the case, "including the [e]mployer's failure to cooperate in arranging the election, its failure to object concerning the notice-posting issue in a timely manner, and the absence of any indication that the election was affected in any way by the late posting," that the election should not be set aside.

G. Qualification of Bargaining Representative

In *Dynair Services*,[23] the Board denied the employer's appeal that the stipulated election agreement be vacated and the petition be dismissed because the petitioner was seeking to represent a unit of nonguards notwithstanding the fact that the petitioner also represented alleged guards at the same facility. The Board found the employer's request for review lacked merit, finding that "the Board has long held that 'the Act does not prohibit the Board from certifying a labor organization which itself represents guards as the representative of employees other than guards,'" citing *Pinkerton's National Detective Agency*.[24] Moreover, the Board found that the employees alleged to be guards were apparently public employees and therefore "are not statutory guards and Section 9(b)(3) has no application . . . ." Finally, the Board found that the employer had entered into a stipulated election agreement and that pursuant to *Sunnyvale Medical Clinic*,[25] the employer had made insufficient argument to justify withdrawal from stipulation.

H. Unit Clarification

In *Edison Sault Electric Co.*,[26] the Board dismissed an employer's unit clarification petition as untimely because the employer failed to reserve its position, that foremen special were supervisors who should be excluded from the unit, prior to the conclusion of bargaining.

At the expiration of the parties' most recent collective-bargaining agreement in October 1992, the parties began to bargain over a new contract. In November 1992, the new contract was ratified by union members. In January 1993, the employer sent a letter to the union, claiming there was a disagreement over the inclusion of foremen special in the new contract. The employer thereafter filed a petition with the Board to clarify the bargaining unit.

The Board concluded that the employer's petition was untimely. The Board noted its well-established rule that a unit clarification petition filed during the term of a contract specifically dealing with a disputed classification will be dismissed if the party filing the petition

[23] 314 NLRB 161 (Members Stephens, Devaney, and Browning).
[24] 90 NLRB 532, 533 (1950), and *E. R. Squibb & Sons*, 77 NLRB 84 (1948).
[25] 241 NLRB 1156, 1157 (1979).
[26] 313 NLRB 753 (Chairman Stephens and Members Devaney and Truesdale).

did not reserve its right to file during the course of bargaining.[27] It was undisputed that neither party raised the placement of the foremen special during contract negotiations. The Board then decided that it was appropriate to extend the *Wallace-Murray* rationale to cases in which a party files a unit clarification petition prior to signing a contract, but after negotiations have ended and a contract has been agreed to.

The Board noted that its result was grounded on the rationale that when parties have reached a contract, it would be disruptive for the Board to change the contract midterm. Here, the Board observed, the same principles were involved. To allow the employer to file and have processed a unit clarification petition after negotiations had been concluded would not, the Board concluded, be any less disruptive to the bargaining relationship than it would be if the petition were filed after the contract was signed by the parties.

Finally, the Board noted that the petition would be untimely without regard to the actual status of the foremen special. The Board's *Wallace-Murray* rule applies when alleged supervisors are involved. The Board observed that the "stability rationale for extension of *Wallace-Murray* to cases of agreed-on, but not yet signed, contracts applies as logically to cases in which a party is attempting a postagreement exclusion of classifications on grounds of supervisory status as to those in which it is attempting exclusion on other grounds."

[27] *Wallace-Murray Corp.*, 192 NLRB 1090 (1971).

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 1994 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Discrimination Against Employees

In *F. L. Thorpe & Co.*,[1] the Board found that an economic strike had been converted to an unfair labor practice strike by the employer's many unfair labor practices and that there had been no reconversion prior to the union's unconditional offer to return to work.

The union called a strike after 9 months of fruitless bargaining for a first contract following certification. The employer immediately announced that it would hire permanent replacements. In addition, supervisors unlawfully told striking employees that they had to resign from the union in order to return to work and that their anniversary dates would be set back for every week they remained on strike, and one of the employer's top managers repeatedly told picketing strikers that they did not have jobs anymore, that a particular striker was a "jobless wonder," and that the strikers should go find a job and get a life.

The Board found that these unfair labor practices converted the strike into an unfair labor practice strike based on both subjective and objective factors indicating that the unfair labor practices were a factor that caused a prolongation of the work stoppage. Thus, the Board found that the unfair labor practices by their nature had a reasonable tendency to prolong the strike. The Board also found sufficient evi-

[1] 315 NLRB 147 (Members Stephens, Devaney, and Cohen).

dence to indicate that the strikers' subjective motivations changed as a result of the strike. The strikers' testimony showed that employees were angered and frustrated by the unfair labor practices, which were frequently discussed at union meetings, so much so that they would not have cared if the employer "went under" and wanted to go back as a group, displacing the replacements hired by the employer.

In discussing the evidence of strikers' subjective motivations for continuing the strike, the Board stated that it was not necessary that employees discussed the unfair labor practices among each other as reasons for continuing the strike, and that it was troubled by the judge's evidentiary rulings limiting the General Counsel to presenting evidence of this type. Instead, the Board observed that it is not necessary that employees have perceived or expressed the view that the employer's action was unlawful, and that evidence that the employer's actions angered and frustrated strikers "is precisely one of the elements the Board has focused on in finding a conversion." A panel majority stated, however, that it would not admit testimony of an employee's subjective reasons for striking, as expressed for the first time at the hearing in the unfair labor practice case.[2]

Finally, the Board concluded that the strike had not been reconverted by the employer's several letters during the course of the work stoppage purporting to disavow certain of the unfair labor practices. Noting that an "unequivocal" repudiation of the unfair labor practices is required before a reconversion will be found, the Board determined that none of the employer's letters to employees satisfied this requirement prior to the final letter sent by the employer 3 days prior to the union's unconditional offer to return to work. A panel majority found that, even assuming that letter had reconverted the strike, no permanent replacements were shown to have been hired in the interim period between the union's receipt of the letter and the offer to return and, because all replacements were hired at a time when the strike was an unfair labor practice strike, the respondent's refusal to reinstate the strikers was unlawful.[3]

B. Union Coercion of Employer

Section 8(b)(1)(B) of the Act makes it an unfair labor practice for a union to coerce or restrain an employer in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances.

In *Sheet Metal Workers Local 162 (Dwight Lang's Enterprises)*,[4] a majority of the Board found that a union that had an 8(f) relationship with an employer did not violate Section 8(b)(1)(B) by (1) uni-

[2] Member Devaney found it unnecessary to pass on the admissibility of after-the-fact characterizations, as it was not necessary to pass on any testimony of this character in deciding the case.

[3] Member Devaney found it unnecessary to rely on the dates on which permanent replacements were hired as, in light of the short delay between the date of the employer's letter and the union's offer to return, he would find that the strike remained an unfair labor practice strike when the union offered to return the strikers to work.

[4] 314 NLRB 923 (Chairman Gould and Members Devaney and Browning; Members Stephens and Cohen dissenting in part).

laterally submitting unresolved bargaining issues to the contractual interest arbitration process after the employer has timely withdrawn from multiemployer bargaining and notified the union that it has no obligation to bargain for a new contract, or (2) filing an action in Federal court to confirm the resulting arbitration award.

The union and Dwight Lang's had an 8(f) bargaining relationship and were parties to a multiemployer collective-bargaining agreement. The contract contained an interest arbitration clause which provided that any dispute arising out of the failure of the parties to negotiate a renewal agreement would be submitted to the bipartite National Joint Adjustment Board (NJAB) for binding arbitration if agreement could not otherwise be reached. The contract also provided that the contractual expiration date would not be effective if interest arbitration proceedings had not been completed by that date.

Lang's timely withdrew from multiemployer bargaining. Its representatives and those of the union met once to discuss a successor contract, but did not reach agreement. After the contractual expiration date, Lang's withdrew from bargaining, citing recent Board authority.[5] The union replied that it considered Lang's bound by the interest arbitration provisions and, over Lang's protest, submitted the parties' failure to conclude a new agreement to the NJAB for resolution. The NJAB rendered an award imposing a new contract including an interest arbitration clause and a union-security clause. The award stated, however, that it was not intended to impose a nonmandatory bargaining subject on an unwilling party, and that any objected-to provision found to be a nonmandatory subject would be deleted. When Lang's refused to comply with the award, the union petitioned in Federal court for enforcement.

The Board majority found that the union had not violated Section 8(b)(1)(B) by submitting the dispute to the NJAB or by suing to enforce the arbitral award. Applying the analytical framework established in *Collier Electric*,[6] the majority found that the contractual interest arbitration provisions could arguably be interpreted as binding on Lang's as a single employer even after it had withdrawn from multiemployer bargaining, and therefore that the union had a reasonable basis in fact and law for its actions. As in *Baylor Heating*,[7] the majority found that even though the parties had an 8(f) relationship, the contract language arguably bound the parties to a renewal of their agreement and to NJAB resolution of disputes regarding renewal. Arguably, then, the parties had agreed to extend their bargaining relationship past the contract's expiration date; thus, Lang's privilege under *Deklewa* to repudiate the bargaining relationship had not been triggered when the dispute was submitted to the NJAB. Concerning the inclusion of an interest arbitration provision in the NJAB-imposed contract, the majority found that the union had not insisted to impasse on such a provision, and that, in any event, the award made clear that

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

[6] *Electrical Workers IBEW Local 113 (Collier Electric)*, 296 NLRB 1095 (1989).

[7] *Sheet Metal Workers Local 20 (Baylor Heating)*, 301 NLRB 258 (1991).

no nonmandatory term such as interest arbitration would be imposed on an objecting party.

The majority also found that, under *Bill Johnson's Restaurants v. NLRB*,[8] the union's court action to enforce the award had a reasonable basis in fact and law, and thus would not be enjoined by the Board. Finally, the majority found that, because the union had acted lawfully in invoking interest arbitration and in seeking to enforce the NJAB award, it did not violate Section 8(b)(1)(A) by attempting to impose on Lang's a contract containing a union-security clause.

In dissent, Members Stephens and Cohen would have found, for the reasons set forth in Member Stephens' dissent in *Baylor Heating*, that the union's submission of the dispute to interest arbitration and its court action to enforce the NJAB award violated Section 8(b)(1)(B). They also would have found that, by attempting to impose a contract with a union-security clause on Lang's without its consent, at a time when the parties did not have a 9(a) relationship, the union violated Section 8(b)(1)(A).

C. Illegal Secondary Conduct

In *Longshoremen ILA (Coastal Stevedoring)*,[9] the Board held that the International Longshoremen's Association (ILA) violated Section 8(b)(4)(ii)(B) through threats made in Japan by Japanese unions, acting as agents of the ILA, to neutral persons such as shippers, exporters, and importers who were involved in the Florida-Japan citrus trade. The Board concluded that the ILA was responsible for the conduct of the Japanese unions even though the unions were foreign entities and their conduct occurred outside of the United States. The Board further concluded that the assertion of jurisdiction in this case was proper because it did not interfere with the laws of Japan or affect the employment conditions of Japanese employees.

According to the stipulation of the parties, the ILA was involved in a primary labor dispute with two nonunion stevedoring companies concerning their failure to hire employees represented by a union. Before the 1990–1991 citrus export season, the ILA's representatives visited Japan and requested assistance from various Japanese unions in preventing Japanese importers and shipping companies from using the nonunion stevedores. In response to the ILA's request, the Japanese unions widely disseminated communications to stevedoring companies, citrus importers, and shipping companies, asking that they ensure that citrus fruit was loaded in Florida by stevedoring companies that hired union-represented employees. These communications also warned that Japanese dockworkers would not unload fruit loaded in the United States by nonunion labor. The ILA acknowledged the actions of the Japanese unions by letter and stated, "Your continued efforts on our behalf will be most appreciated."

[8] 461 U.S. 731 (1983).

[9] 313 NLRB 412 (Chairman Stephens and Member Raudabaugh; Member Devaney concurring in the result).

The Japanese unions' threat in support of the ILA caused all the citrus shipments from Florida to Japan during the 1990–1991 export season to be shipped through the port of Tampa where they were loaded by stevedores represented by the ILA. For the same reason, no ships were scheduled for ports where the nonunion stevedoring companies operated during that season.

The Board observed that if the threats at issue had been made, at the ILA's request, by a U.S. union in the United States, the respondent would have been found to have authorized and ratified the threats because it informed the unions of its dispute with nonunion stevedoring companies, requested assistance from the unions in preventing the use of nonunion stevedores, and did nothing to disavow or halt the unions' threats.[10] The Board concluded that the same result should apply in this case wherein the threats were made by a foreign entity in a foreign country.

The Board held that the fact that the Japanese unions were foreign entities was irrelevant to the issue of agency. The Board found that "if a union (or an employer) acts through the instrumentality of another entity, it makes no difference whether that other entity is domestic or foreign. The essential point is that the union is acting through the instrumentality of another entity." The Board further held that the trade links between the ILA and the Japanese unions, as well as the immediate contact through telecommunications of all entities involved in the Florida-Japan citrus trade, warranted a finding of ILA responsibility for the conduct of the Japanese unions notwithstanding that the conduct occurred in a foreign country.

The Board also found that policy considerations supported the finding of a violation by the ILA. The Board noted that all conduct at issue was initiated at the request of the ILA in furtherance of its primary labor dispute with nonunion companies in Florida. "In an increasingly global economy, the opportunities abound for U.S. unions to initiate harmful secondary activities by unions representing employees of the foreign trade partner. Permitting U.S. unions to escape responsibility purely on geographical grounds for the economic harm they unleash subverts the purpose of the Act."

Member Devaney, concurring, believed that in the unique circumstances of the case, the ILA was responsible for the conduct of the Japanese unions. He noted that the ILA stipulated that it repeatedly invoked the aid of the Japanese unions and sought their assistance in pressuring neutral persons in the Florida-Japan citrus trade. Member Devaney believed that in the face of such a stipulation, and in view of the flexibility which must be used in applying agency principles in the context of labor relations, "the General Counsel has established a causal link between the ILA's invocation of action and the Japanese unions' heeding that call to hold the ILA responsible under the National Labor Relations Act."

[10] *Pipefitters Local 280 (Aero Plumbing Co.)*, 184 NLRB 398 (1970).

D. Remedial Orders

In *Kaumagraph Corp.*,[11] the Regional Director issued a complaint alleging that the employer violated Section 8(a)(1), (3), and (5) by transferring unit operations from a facility in Wilmington, Delaware, to Flint, Michigan. During the investigation of the charge, the charging party requested the General Counsel to seek a restoration and reinstatement remedy. The Regional Office administratively investigated the remedy question and advised the charging party that "the Wilmington plant had been unprofitable for several years" and that the Region would not seek a restoration remedy. The Regional Director also advised the charging party that it could seek review of the Region's determination by filing an appeal with the General Counsel. The charging party did not appeal the Region's determination. Rather, the charging party advised that it intended to raise the restoration issue before the administrative law judge.

At the hearing, the charging party raised the remedy question with the judge who, after hearing from the parties, ruled that he would not permit the charging party to introduce evidence in support of restoration, but would permit the charging party to argue this matter in its brief to the judge. On appeal, the Board vacated the judge's ruling and directed him to permit the introduction of evidence bearing on whether restoration and reinstatement is an appropriate remedy. In reversing the judge, the Board noted that Section 3(d) of the Act vests the General Counsel with exclusive jurisdiction regarding an investigation and prosecution of unfair labor practice charges. However, once a complaint has issued, the General Counsel's authorization does not extend so far as to preclude litigation over the question of whether a restoration and reinstatement remedy is appropriate.

In *Fairmont Hotel*,[12] the issue in this proceeding involved the charging party's contention that the Board should review a remedy approved by the General Counsel over the charging party's objections in a postcomplaint, but prehearing, unilateral settlement. The charging party argued that the Board's Order in *Kaumagraph Corp.*,[13] conferred absolute jurisdiction over remedies to the Board. In support of its position, the charging party relied on the following statement in *Kaumagraph*: "Once a complaint has issued, however, responsibility for fashioning an appropriate remedy for the alleged unfair labor practices rests with the Board." After reviewing the Supreme Court's decision in *NLRB v. Food & Commercial Workers Local 23*,[14] the Board held that the General Counsel's determination to withdraw a complaint, pursuant to a prehearing settlement, is not a final order subject to court review, because it was undisputed that the hearing in *Fairmont* had not opened, whether to (1) proceed with the case or

[11] 313 NLRB 624 (Deputy Executive Secretary Joseph E. Moore).
[12] 314 NLRB 534 (Chairman Gould and Members Stephens, Devaney, Browning, and Cohen).
[13] 313 NLRB 624.
[14] 484 U.S. 112 (1987).

(2) settle the case over the charging party's objections falls under the General Counsel's jurisdiction.[15]

In *We Can, Inc.*,[16] the Board found that the employer violated Section 8(a)(3) and (1) by reducing the size of its collection network (CN) and discharging most of the CN employees in response to the employees' union organizing efforts. The Board observed that when an employer has committed such violations, it is usually ordered to restore the operations to their former size and to reinstate the discharged employees unless it can show that those actions would be unduly burdensome.[17] The Board found that We Can had failed to make that showing on the basis of evidence presented at the hearing. However, the company had moved to reopen the record in order to introduce evidence of events since the hearing that, it contended, would establish that restoration and reinstatement were inappropriate. The Board denied the motion, but provided in its Order that restoration and reinstatement would be required unless the company could establish in compliance proceedings, on the basis of evidence that had come to light since the hearing in the unfair labor practices case, that those remedies would be inappropriate.[18]

In issuing this provisional Order, the Board acknowledged that the Seventh Circuit recently denied enforcement of a similar order in *NLRB v. Special Mine Services*.[19] However, the Board noted that in *We Can, Inc.*, in contrast with *Special Mine Services*, the Board had fully explained why the company had failed to show that restoration and reinstatement would be unduly burdensome. The Board next explained that, contrary to the court's understanding, the Board was not deferring its decision regarding the remedy; it was plainly ordering restoration and reinstatement. But, the Board continued, because almost any remedial provision, though appropriate when imposed, may later be shown to be inappropriate because of posthearing events, its provisional Order simply afforded the employer an effective mechanism for amending those remedies if it should make such a showing.

The Board also explained that, contrary to the court's concern, enforcement of the Order would not unequivocally require We Can to restore the CN network to its former scope and to reinstate all the discharged employees, nor would it subject the company to contempt penalties if it failed to do so. The Board stressed that contempt proceedings could be brought only if the company failed to show at compliance proceedings that restoration and reinstatement would be unduly burdensome, and nevertheless refused to comply with an enforced Board order requiring those actions. If the company did show at compliance that restoration and reinstatement would be unduly burdensome, the Board observed, it would not be required to implement

[15] The Board also noted that to the extent there is any ambiguity, the Order in *Kaumagraph* is clarified as follows: once a complaint has issued, however, and the hearing has opened, responsibility for fashioning an appropriate remedy for the alleged unfair labor practices rests with the Board.

[16] 315 NLRB 170 (Chairman Gould and Members Stephens and Devaney).

[17] See *Lear Siegler, Inc.*, 295 NLRB 857, 861 (1989).

[18] Id. at 861–862.

[19] 11 F.3d 88.

those portions of the Order and would not be in danger of contempt proceedings if it failed to do so.

The Board noted that the approach it was taking was consistent with its usual policy of leaving the details of the remedy to the compliance process. The Board found that this approach was more efficient than the fragmented procedure suggested by the company, which would have involved remanding the case to the judge, awaiting his supplementary findings and recommendations, issuing a supplemental decision and order, and only then beginning compliance proceedings.

V

Supreme Court Litigation

During fiscal year 1994, the Supreme Court decided two cases in which the Board was a party. The Board participated as amicus curiae in two other cases.

A. The Board's Discretion to Order Make-Whole Relief Notwithstanding the Discriminatee's False Testimony at the Unfair Labor Practice Hearing

In *ABF Freight System v. NLRB*,[1] the Supreme Court[2] held that a discriminatee's false testimony under oath before an administrative law judge does not preclude the Board from granting the discriminatee the traditional remedy of reinstatement with backpay. The relevant facts are as follows:

Michael Manso worked for the company as a casual dockworker from the summer of 1987 to August 1989. During that period, the company discharged Manso three times. The first time, Manso was 1 of 12 employees discharged in June 1988 in a dispute over a contractual provision relating to "preferential casual" dockworkers. In April 1989, a grievance panel ordered the company to reinstate Manso as a preferential casual; Manso also filed an unfair labor practice charge with the Board over that discharge. When Manso returned to work, several supervisors warned him that the company was "gunning" for him. In June 1989, Manso was fired for the second time, ostensibly for failing to respond to a work call; a grievance panel ordered him reinstated. Manso's third discharge occurred less than 2 months later. On August 11, 1989, he arrived 4 minutes late for his shift. At that time, the company had no disciplinary policy regarding lateness. After Manso's August 11 tardiness, however, the company decided to discharge preferential casuals who were late twice without good cause. On August 17, Manso triggered the company's first application of the new policy when he arrived about an hour late for his shift. Manso told the company that he had experienced car trouble on the way to work. The company investigated his story, determined that he was lying, and fired him under its new lateness policy.

Manso filed a second unfair labor practice charge with the Board. At the hearing before the administrative law judge, Manso repeated

[1] 114 S.Ct 835, affg. 982 F.2d 441 (10th Cir. 1992).

[2] Justice Stevens delivered the opinion of the Court. Separate concurring opinions were filed by Justice Scalia, joined by Justice O'Connor, and by Justice Kennedy.

his story about car trouble that allegedly caused him to report late for work on August 17. The administrative law judge credited most of Manso's testimony about events surrounding his dismissals, but concluded that Manso's story about car trouble was a lie. Although finding that the company unlawfully discharged Manso in June 1989 because he was a party to the earlier union grievance and had filed a related charge with the Board, the administrative law judge concluded that the company fired Manso for just cause on August 17 since he had lied about the reason for being late that day. The Board agreed with the administrative law judge's conclusion as to Manso's June discharge. However, in disagreement with the administrative law judge, the Board found that the August discharge violated Section 8(a)(1), (3), and (4) of the Act, because the company did not in fact discharge Manso for lying, but, rather, for his protected activity of filing grievances and unfair labor practice charges. The Tenth Circuit enforced the Board's Order that the company reinstate Manso with backpay, holding that the Board did not abuse its broad discretion in deciding that reinstatement of Manso was appropriate despite his false testimony.

The Supreme Court affirmed. While stressing that "[f]alse testimony in a formal proceeding is intolerable," and recognizing that "the Board might . . . even have adopted a flat rule precluding reinstatement when a former employee so testifies," 114 S.Ct. at 839, the Court rejected the company's contention that the Act requires the Board to adopt such a rule. The Court observed that Congress has delegated to the Board "the primary responsibility for making remedial decisions that best effectuate the policies of the Act when it has substantiated an unfair labor practice." Ibid. The Court stated that, "[b]ecause this case involves that kind of express delegation, the Board's views merit the greatest deference." Ibid. The Court concluded that the Board acted within its discretion in ordering Manso reinstated with backpay, and that the Board is not "obligated to adopt a rigid rule that would foreclose relief in all comparable cases." Id. at 840. The Court agreed with the Board that Manso's reason for being late to work on August 17 was "ultimately irrelevant to whether antiunion animus actually motivated his discharge" and that "ordering effective relief in a case of this character promotes a vital public interest." Ibid. Noting that the administrative law judge refused to credit the testimony of several company witnesses, the Court observed that it would be unfair to sanction Manso "while indirectly rewarding those witnesses' lack of candor." Moreover, "a categorial exception to the familar remedy of reinstatement" where a discriminatee has given false testimony "might force the Board to divert its attention from its primary mission and devote unnecessary time and energy to resolving collateral disputes about credibility." Ibid.

B. The Board's Construction of Section 2(11) of the Act in the Health Care Field

In *NLRB v. Health Care Corp.*,[3] the Supreme Court[4] rejected as inconsistent with the Act the Board's rule that the direction a nurse gives to less-skilled employees in connection with the delivery of patient care does not make that nurse a supervisor within the meaning of Section 2(11) of the Act because such direction is not authority exercised "in the interest of the employer."[5] The relevant facts are as follows:

The company owns and operates the Heartland nursing home in Urbana, Ohio. The nursing department at Heartland is headed by a director of nursing and an assistant director of nursing. The nursing department is staffed by about 65 personnel, including 9 to 11 staff nurses and 50 to 55 nurse aides. Some of the staff nurses are registered nurses while others are licensed practical nurses, but all have essentially the same duties. The staff nurses made assignments to nurse aides, monitored their work to ensure proper performance, evaluated their performance, and reported to management. Four licensed practical nurses filed charges with the Board that Heartland had violated the Act by discriminating against them for engaging in union activities. The administrative law judge, whose decision in this regard was affirmed by the Board, rejected Heartland's contention that the nurses were supervisors within the meaning of Section 2(11), and thus not entitled to the Act's protections. The administrative law judge found that the nurses' supervisory work did not "equate to 'responsibly . . . direct[ing]' the aides '*in the interest of the employer*,'" for the "nurses' focus is on the well-being of the residents rather than of the employer."[6] (Emphasis added.) The Sixth Circuit reversed the Board's decision, concluding that the Board's rule that a nurse's supervisory authority is not exercised in the interest of the employer if it is incidental to the treatment of patients was inconsistent with the statute.

The Supreme Court affirmed the lower court. The Court first observed that the Board's rule is similar to an approach rejected by the Court in *NLRB v. Yeshiva University*:[7] as it had with respect to the faculty members alleged to be "managerial employees" in *Yeshiva*, "the Board has created a false dichotomy . . . between acts taken in

[3] 114 S.Ct. 1778, affg. 987 F.2d 1256 (6th Cir. 1993).

[4] Justice Kennedy delivered the opinion of the Court. Justice Ginsburg, joined by Justices Blackmun, Stevens, and Souter, filed a dissenting opinion.

[5] Sec. 2(11) of the Act, 29 U.S.C. § 152(11), defines a supervisor as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

[6] *Health Care Corp.*, 306 NLRB 63, 70 (1992).

[7] 444 U.S. 672, 684–687 (1980). The Court rejected the Board's position that the university's faculty members were not "managerial employees" because, although the faculty participated in academic governance, the university anticipated that they would do so exercising independent professional judgment and did not expect them to conform to management policies.

connection with patient care and acts taken in the interest of the employer." 114 S.Ct. at 1782. According to the Court, "[p]atient care is the business of a nursing home, and it follows that attending to the needs of the nursing home patients, who are the employer's customers, is in the interest of the employer." Ibid. The Court also stated that the Board's rule ran afoul of the Court's decision in *Packard Motor Car Co. v. NLRB*[8] where, "[c]onsistent with the ordinary meaning of the phrase," the Court held that all "acts within the scope of employment or on the authorized business of the employer are in the interest of the employer."[9]

The Court further found that the Board's interpretation of the phrase "in the interest of the employer" "read[] the responsible direction portion of [Section] 2(11) out of the statute in nurse cases"; "[o]nly a nurse who in the course of employment uses independent judgment to engage in one of the activities related to another employee's job status or pay can qualify as a supervisor under the Board's test." Id. at 1783. The Court acknowledged that phrases in Section 2(11) such as "independent judgment" and "responsibly to direct" are ambiguous, so that the Board needs to be given ample room to apply them to different categories of employees. But, it stated that this was irrelevant here because the Board "has placed exclusive reliance on the 'in the interest of the employer' language in [Section] 2(11)," a phrase, with respect to which, "we find no ambiguity supporting the Board's position." Ibid.

The Court also rejected, as foreclosed by *Yeshiva*, the contention that granting organizational rights to nurses whose supervisory authority concerns only patient care does not threaten the kind of conflicting loyalties that Section 2(11) was designed to avoid. "The Act is to be enforced according to its own terms," the Court stated, "not by creating legal categories inconsistent with its meaning." 114 S.Ct. at 1783. Nor, in the Court's view, could the tension between the Act's exclusion of supervisory employees and its inclusion of professional employees be resolved "by distorting the statutory language in the manner proposed by the Board." Id. at 1784. Finally, the Court declined to give any weight to Congress' apparent approval of the Board's rule in committee reports that accompanied the 1974 amendments to the Act, stating that the 1974 legislative history could not be considered "an authoritative interpretation" of statutory language enacted by Congress in 1947. Ibid.

Although it rejected the Board's rule, the Court made clear that its decision "casts no doubt on Board or court decisions interpreting parts of [Section] 2(11) other than the specific phrase 'in the interest of the employer.'" Id. at 1785. It acknowledged that an examination

[8] 330 U.S. 485 (1947). The Court held that supervisors were "employees" protected by the Act, rejecting the argument of the dissenters that the phrase "in the interest of the employer" contained in the definition of "employer" in the original 1935 Act covered only those who acted for management in formulating and exercising its labor policies.

[9] The Court added that, although Congress altered the result of *Packard* in 1947, by enacting the 2(11) supervisor exclusion, "it did not change the meaning of the phrase 'in the interest of the employer' when doing so." 114 S.Ct. at 1782.

of a nurse's duties to determine whether 1 or more of the 12 activities listed in Section 2(11) "is performed in a manner that makes the employee a supervisor is, of course, part of the Board's routine and proper adjudicative function," and that "[i]n cases involving nurses, that inquiry no doubt could lead the Board in some cases to conclude that supervisory status has not been demonstrated." Ibid.

C. Judicial Authority to Coerce Compliance with Injunctions by Means of Civil Contempt Fines

In *Mine Workers v. Bagwell*,[10] the Supreme Court[11] held that a $52 million fine imposed by a trial judge against the union for violation of the court's injunction was criminal in nature and thus could not be imposed absent a jury trial. The relevants facts are as follows:

In April 1989, the United Mine Workers of America and its District 28 (the union) called a strike against Clinchfield Coal Co. and Sea "B" Mining Co., which continued operations with replacement workers. Shortly after the strike began, the companies sued the union in Virginia state court, alleging that the union was committing unlawful acts in connection with the strike. After an evidentiary hearing, the court issued an order which enjoined the union, its agents, and members from engaging in such acts as obstructing ingress and egress at the companies' facilities, throwing objects at persons employed by or performing services for the companies, placing tire-damaging devices on roads, and picketing in greater than specified numbers. In May 1989, the court found that the union had committed 72 violations of the injunction since it was entered; the court established a schedule of fines for future violations, under which a $100,000 fine would be levied for each violation involving violence and a $20,000 fine for each day in which the union committed specified nonviolent violations. In 7 subsequent contempt hearings held between June and December 1989, the court found the union in contempt for more than 400 violations of the injunction. As a result of the contempt proceedings, the court levied over $64 million in fines against the union, approximately $12 million of which was ordered payable to the companies. Because the union objected to any payments to the companies, and in view of the law enforcement burdens placed on the communities, the court ordered the remaining approximately $52 million of the fines paid to the clerk of the court for the benefit of the Commonwealth of Virginia and the two counties most heavily affected by the unlawful activity.

In January 1990, while appeals from the contempt orders were pending, the union and the companies settled their labor dispute. Pursuant to the settlement agreement, the union and the companies asked the court to dismiss the complaint and to vacate all contempt fines. The court dismissed the complaint, dissolved the injunction, and va-

[10] 114 S.Ct. 2552, revg. 423 S.E.2d 349 (1992).

[11] Justice Blackmun delivered the opinion of the Court. Concurring opinions were filed by Justice Ginsburg, joined by Chief Justice Rehnquist, and by Justice Scalia.

cated the fines owed to the companies. The court declined, however, to vacate the fines owed to the state and county governments, and it appointed a special commissioner, Bagwell, to collect them. Thereafter, a divided panel of the Virginia Court of Appeals, treating the outstanding contempt fines as civil, rather than criminal, in nature, vacated the fines as mooted under state law by the settlement of the underlying litigation. The Supreme Court of Virginia reversed, holding that the fines were civil in nature, that settlement of the underlying dispute did not moot those fines under state law, and that the fines were not so excessive as to violate substantive due process or Federal labor policy.

The Supreme Court reversed. Rejecting the respondent's contention that the fines were necessarily civil because the trial court prospectively announced the sanctions it would impose, the Court concluded that "[t]he fines are not coercive day fines, or even suspended fines, but are more closely analogous to fixed, determinate, retrospective criminal fines which [the union] had no opportunity to purge once imposed." 114 S.Ct. at 2562. "Other considerations," the Court added, "convince us that the fines challenged here are criminal." Ibid. First, "[t]he union's sanctionable conduct did not occur in the court's presence or otherwise implicate the court's ability to maintain order and adjudicate the proceedings before it." Ibid. Second, the union's contumacy did not involve "simple, affirmative acts"; rather, "the Virginia trial court levied contempt fines for widespread, ongoing, out-of-court violations of a complex injunction," in effect policing the union's compliance "with an entire code of conduct that the court itself had imposed." Ibid. Finally, the union's contumacy "lasted many months and spanned a substantial portion of the State," and the amount of the fines assessed, $52 million, was "serious." Ibid. "Under such circumstances," the Court concluded, "disinterested factfinding and even-handed adjudication were essential, and [the union] was entitled to a criminal jury trial." Ibid.

D. Preemption of State Policy of Refusing to Enforce State Law Labor Standards on Behalf of Unionized Employees

In *Livadas v. Bradshaw*,[12] the Supreme Court[13] held that the California labor commissioner's policy of declining to enforce state law claims for late payment of outstanding wages, on behalf of discharged employees whose terms and conditions of employment were governed by a collective-bargaining agreement containing an arbitration clause, was preempted by Federal law, for such a policy impermissibly abridged the exercise of employees' right under Section 7 of the Act to bargain collectively with their employer. The Court also held that employees affected by the State's policy have a Federal remedy for official deprivation of that right under 42 U.S.C. § 1983. The relevant facts are as follows:

[12] 114 S.Ct. 2068, revg. 987 F.2d 552 (9th Cir. 1991).

[13] Justice Souter delivered the opinion for a unanimous Court.

On January 2, 1990, Livadas, a union-represented employee covered by a collective-bargaining agreement, was discharged from her position as a clerk at a Safeway store. On that date, she requested payment of all wages due her, but the store manager refused, telling Livadas that he would mail her a check instead. Livadas received that check 3 days later, on January 5. Livadas believed that Safeway's 3-day delay in payment violated California law.[14] Accordingly, Livadas filed a claim with the California Division of Labor Standards Enforcement (DLSE) seeking a penalty payment from Safeway pursuant to Section 203 of the state labor code. DLSE, however, declined to prosecute Livadas's claim. DLSE's asserted reason for doing so was that, in order to determine the penalty due Livadas under Section 203, it would be necessary to apply the collective-bargaining agreement under which Livadas worked during her employment at Safeway. According to DLSE, it was prohibited by Section 229 of the state labor code from prosecuting penalty claims in those circumstances.[15]

Livadas then filed an action in Federal district court against the California labor commissioner, who heads DLSE, under 42 U.S.C. § 1983, seeking injunctive and declaratory relief and damages based on DLSE's refusal to prosecute her penalty claim. The district court granted Livadas summary judgment, concluding that DLSE's policy of prosecuting penalty claims on behalf of all employees except those whose employment is covered by a labor contract infringed on Livadas' Section 7 right to negotiate, through her union, a collective-bargaining agreement with her employer. The Ninth Circuit, with one judge dissenting, reversed, holding that no Federal right had been infringed because Livadas' case reduced to an assertion that DLSE had misapplied Section 229 of the state labor code.

The Supreme Court reversed. The Court concluded that "[t]his case is fundamentally no different" from *Nash v. Florida Industrial Commission*,[16] where the Court had held the State's policy preempted by the supremacy clause: "[j]ust as the respondent State Commission in that case offered an employee the choice of pursuing her unfair labor practice claim or receiving unemployment compensation, the Commissioner has presented Livadas and others like her with the choice of having state-law rights under [Sections] 201 and 203 enforced or exercising the right to enter into a collective-bargaining agreement with an arbitration clause." 114 S.Ct. at 2074–2075. The Court rejected the State's contention that DLSE's nonenforcement policy is actually required by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The Court explained that in *Allis-*

[14] Sec. 201 of the California Labor Code provides: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Sec. 203 provides: "If an employer willfully fails to pay . . . in accordance with Section[ ] 201 . . . any wages of an employee who is discharged . . . the wages of such employee[ ] shall continue as a penalty at the same rate until paid."

[15] Sec. 229 provides: "Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreements to arbitrate. This section shall not apply to claims involving any dispute concerning the interpretation or application of any collective bargaining agreement containing such an arbitration agreement."

[16] 389 U.S. 235 (1967).

Chalmers Corp. v. Lueck,[17] and *Lingle v. Magic Chef*,[18] "we underscored the point that [Section] 301 cannot be read broadly to preempt nonnegotiable rights conferred on individual employees as a matter of state law, and we stressed that it is the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement . . . that decides whether a state cause of action may go forward." 114 S.Ct. at 2078. Those principles, in the Court's view, foreclosed the commissioner's preemption argument, since "the primary text for deciding whether Livadas was entitled to a penalty was not [the collective-bargaining agreement], but a calendar"; and *Lingle* makes clear that "the mere need to 'look to' the collective-bargaining agreement for damage computation is no reason to hold the state law claim defeated by [Section] 301." Id. at 2079.

The Court further held that Livadas is entitled to seek relief under 42 U.S.C. § 1983 for the commissioner's abridgment of her rights under the Act. The Court observed that "[t]he right Livadas asserts, to complete the collective-bargaining process and agree to an arbitration clause, is, if not provided in so many words in the NLRA . . . at least as imminent in its structure as the right of the cab company in *Golden State II*"[19] to resolve its labor dispute without governmental interference; the obligation on the part of the State to respect that right "is no more 'vague and amorphous' than the obligation in *Golden State*"; and Congress has given no indication of an intent to foreclose Federal actions such as Livadas'. Id. at 2083–2084.

[17] 471 U.S. 202 (1985).

[18] 486 U.S. 399 (1988).

[19] *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103 (1989).

VI

Enforcement Litigation

A. Jurisdiction Over United States Flag Vessels

Section 10(a) of the Act (29 U.S.C. §160(a)) empowers the Board "to prevent any person from engaging in any unfair labor practice . . . affecting commmerce." The Act broadly defines the term "commerce."[1] In a line of cases considering the application of Section 10(a) of the Act to the maritime industry, the Supreme Court has determined that the Act covers disputes involving American workers on American ships, but not those that involve the labor disputes of foreign workers on foreign ships.[2]

In *NLRB v. Dredge Operators*,[3] the Fifth Circuit upheld the Board's assertion of jurisdiction over the dredge *Stuyvesant*, a United States flag vessel working in Hong Kong, although the company that operates the vessel had no intention of returning it to the United States and the unit included 12 Hong Kong seamen in addition to 14 American seaman. The court cited with approval the Board's analysis of a similar case in which the Board asserted jurisdiction over a United States flag vessel operating in foreign waters with no intention of returning to the United States[4] and agreed with the Board that "since a United States flag vessel is considered United States territory," application of the National Labor Relations Act is appropriate.[5] The court noted "in support of the [Board's] exercise of jurisdiction . . . that a majority of seamen aboard [the] . . . vessel are American," but expressed no opinion whether the Board's assertion of jurisdiction would be proper if that were not the case.[6] The court also found that the *Stuyvesant* was "in commerce" for purposes of the Act because the Louisiana company that operates it had received over $1 million from the government of Hong Kong.[7]

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[1] Sec 2(6) of the Act (29 U.S.C. §152(6)) defines "commerce" as "trade, traffic, commerce, transportation, or communication among the several States . . . or between any foreign country and any State . . . or between points in the same State but through any other State . . . or any foreign country."

[2] See, for example, *Benz v. Compania Naviera Hidalgo*, 353 U.S. 138, 143 (1957); *McCulloch v. Sociedad Nacional*, 372 U.S. 10, 20–22 (1963); *Windward Shipping v. American Radio Assn.*, 415 U.S 104, 112–115 (1974). See also *Longshoremen v. Allied International*, 456 U.S. 212, 221 (1982) (the Act was "developed for American workers and American employers").

[3] 19 F.3d 206.

[4] Id. at 212 (citing *Alcoa Marine Corp.*, 240 NLRB 1265 (1979)).

[5] 19 F.3d at 212.

[6] Id. at 212.

[7] Id. at 209 fn. 5.

B. Definition of Supervisor

Section 2(11) of the Act states in part that "The term 'supervisor' means any individual having authority . . . responsibly to direct [employees] . . . if . . . the exercise of such authority . . . requires the use of independent judgment." Over the years, the Board and the courts of appeals have disagreed about the application of that statutory test to individuals who are in charge of a utility's control room.[8] Two cases reaching the courts of appeals this year reflect that continuing disagreement.

In *Northeast Utilities Service Corp. v. NLRB*,[9] the First Circuit agreed with the Board that master control room coordinators who relayed instructions to component power plants through regional satellite operations were not supervisors. The coordinators were highly trained employees who used independent judgment to make and implement complex technical decisions affecting the day-to-day production, sale, and purchase of bulk electric power throughout New England. As the court stressed, however, the Act requires supervisors responsibly to direct other employees, and "[t]o be responsible is to be answerable for the discharge of a duty or obligation."[10] The coordinators directed and instructed satellite employees, but they were not responsible for what those employees actually did, and the coordinators were not answerable for engineering or equipment failures. In those circumstances, the court held, "[t]he Board . . . refused to take the further step of concluding that [coordinators] were responsible for other employees' actions, and in that, we conclude, it was correct."[11]

In the other case, *NLRB v. McCullough Environmental Services*,[12] the Fifth Circuit rejected the Board's conclusion that lead operators who worked in the control room of a sewage treatment plant were not supervisors. Finding indistinguishable an earlier Board case which had reached a different result,[13] the court held, in disagreement with the Board's assessment of the evidence, that lead operators exercised independent judgment in responsibly directing other employees. Among other factors, the court noted that lead operators are the highest ranking employees present during the majority of the plant's operating hours; that they have the authority to assign employees to specific tasks and to direct them to complete assigned tasks; that they make operational decisions based on their knowledge and experience; that they are directly responsible for the operation of the plant; and that they are held responsible for the actions of employees on their shifts.[14]

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[8] See, for example, *Maine Yankee Atomic Power Co. v. NLRB*, 624 F.2d 347 (1st Cir. 1980)
[9] 35 F.3d 621.
[10] Id. at 625.
[11] Ibid.
[12] 5 F.3d 923.
[13] *Dale Service Corp.*, 269 NLRB 924 (1984).
[14] 5 F.3d at 940–943.

C. Employee Participation Committees

Employers' use of employee involvement committees or other structures that encourage employee input into workplace policies and procedures increasingly has been the focus of attention and discussion. A significant issue in the debate is whether such committees run afoul of Section 8(a)(2) of the Act, which proscribes employer domination or interference with the formation or administration of any labor organization. In a closely watched case, *Electromation, Inc. v. NLRB*,[15] the Seventh Circuit upheld the Board's determination that employee-manager "action committees," created by the employer in that case to address specific work condition issues, were labor organizations dominated by the employer. In so holding, however, the court emphasized that its reasoning and ruling were limited to the action committees at issue in *Electromation*, and that the finding of a violation did "not foreclose the lawful use of legitimate employee participation organizations, especially those which are independent, which do not function in a representational capacity, and which focus solely on increasing company productivity, efficiency, and quality control, in appropriate settings."[16]

In *Electromation*, the employer created five so-called "action committees" after employees complained about the employer's unilateral revision of the employee attendance policy and its replacement of scheduled wage increases with a lump sum payment. The employer assigned each committee a specific topic, including infractions for absenteeism, attendance bonus policy, and pay progression for premium positions. The employer determined that the committees would be made up of employees and managers, and designated a manager as the coordinator. The employer set the number of employees who could serve on each committee, decided that an individual employee could participate on only one committee, and made the final selection from among the employee volunteers. The committees met on company premises, and the employer paid the employees for their time and provided all necessary materials and supplies. Employees on the attendance bonus committee developed a proposal, which the employer's controller, a committee member, rejected as too costly. The controller, however, approved a second proposal developed by employees.

The court first determined that substantial evidence supported the Board's finding that the action committees were labor organizations under Section 2(5) of the Act, which includes "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Relying on the Supreme Court's decision in

[15] 35 F.3d 1148.
[16] Id. at 1157.

NLRB v. Cabot Carbon Co.[17] that "dealing with" includes conduct much broader than collective bargaining, the court agreed with the Board that the committees, which were formed to make recommendations, existed for the purpose of "dealing with" the employer about conditions of employment.[18]

The court also upheld the Board's finding that the employer unlawfully dominated the action committees. The court observed that the employer "proposed and essentially imposed the action committees upon its employees as the only acceptable mechanism for resolution of their acknowledged grievances," and "played a pivotal role in establishing both the framework and the agenda for the action committees."[19] The employer unilaterally decided the number of committees and the topics to be addressed by each and drafted the committees' purposes and goal statements. The employer also exercised significant control over the employees' participation and voice at committee meetings by determining how many employees could serve on each committee and which committee certain employees would serve on and limiting employees to serving on only one committee. Finally, the court stated that the role of management representatives on the committees in reviewing and rejecting employee proposals "effectively put the employer on both sides of the bargaining table, an avowed proscription of the Act."[20] The court additionally agreed with the Board that the employer's financial support of the committees, in the circumstances of the case, furthered the employer's domination of the committees and therefore constituted unlawful interference with those committees.[21]

D. Accretion

Three cases in the courts of appeals this year involved application of the accretion doctrine. Two of those cases, both in the Second Circuit, arose in the context of hospital mergers. In *Brooklyn Hospital Center*,[22] two hospitals, one organized and one not, merged. The emerging hospital continued to operate the two facilities, which were 3 miles apart, with essentially separate work forces. Six years later, however, the hospital asserted that the smaller, nonunion facility work force had been "accreted" into the bargaining units at the other, larger location. The hospital recognized the unions representing those units as the bargaining representatives of the employees at both facilities and began applying their collective-bargaining agreements to all employees. The Board found that there was no accretion, and therefore that the hospital's actions violated the Act. In particular, the Board relied on the hospital's deliberate, 6-year exclusion from the bargaining units of the employees it now claimed as accreted and on

[17] 360 U.S. 203 (1959).
[18] 35 F.3d at 1158–1161.
[19] 35 F.3d at 1169.
[20] Id. at 1170.
[21] Ibid.
[22] *Service Employees Local 144 v. NLRB*, 9 F.3d 218 (2d Cir.), enfg. 309 NLRB 1163 (1992).

an absence of a community of interests between the employees of the two facilities. In so holding, the Board rejected the hospital's argument that the congressional "admonition" against the proliferation of units in the health care industry required a finding of accretion.[23]

The Second Circuit affirmed. Recognizing that accretion is an "exception" to the Act's policy of employee self-determination, the court agreed with the Board that it should be "narrowly applied."[24] On the facts, the court found the Board's application of the historical exclusion doctrine and its determination of separate communities of interests to be well supported. The court also acknowledged that its prior decision in *Long Island Jewish-Hillside Medical Center v. NLRB*,[25] rejecting the single-facility presumption in the health care context, had been "undercut" by the Supreme Court's decision in *American Hospital Assn. v. NLRB*,[26] which had found no merit in the argument that the admonition reflected an authoritative statement of congressional intent.[27]

Shortly after deciding *Brooklyn Hospital*, the Second Circuit dealt with a similar issue in *Staten Island University Hospital*.[28] Two hospitals, both with unionized nurses' staffs (but two separate unions), merged. Several years after the merger, a third union petitioned for an election at the smaller of the merged entity's two facilities. The Board conducted a hearing at which the hospital contended, for the first time, that the merger had resulted in the accretion of the nurses at the smaller location into a single, hospitalwide nurses' unit, represented by the union that was the bargaining representative at the other, larger location. The Board rejected the contention and conducted an election, in which the petitioning union prevailed. The hospital refused to bargain.

The Second Circuit enforced the Board's bargaining order. The court noted that the difference between "accretion and unit determination analyses is one of degree rather than kind," and held that a Board finding of accretion *vel non*, like any unit determination, "will stand unless arbitrary or unreasonable."[29] Turning to the facts, the court found that the Board's findings of differences in employment conditions, lack of functional integration, and separate bargaining histories were supported by the evidence and that those considerations justified the Board's no-accretion finding. In response to the hospital's proliferation argument, the court stated that it had not sufficiently acknowledged in *Brooklyn Hospital* the effect of the Supreme Court's decision in *American Hospital Assn.* The court stated that the single-facility presumption was "the kind of rebutable presumption that was beyond dispute" in light of *American Hospital Assn.*, and that "[t]he NLRB has good reasons to use [it]." The court also re-

[23] 309 NLRB at 1183–1185.
[24] 9 F.3d at 223.
[25] 685 F.2d 29 (2d Cir. 1982).
[26] 499 U.S. 606 (1991).
[27] 9 F.3d at 224–225.
[28] *Staten Island University Hospital v. NLRB*, 24 F.3d 450, enfg. 310 NLRB No. 207 (Apr. 29, 1993) (not reported in Board volumes).
[29] 24 F.3d at 455.

jected the hospital's contentions that it had overcome, on the evidence, the single-facility presumption, and that the Board had erred by refusing to reopen the case to hear evidence that postdated the representation hearing.[30]

In the third case, *Teamsters National United Parcel Service Negotiating Committee*,[31] the District of Columbia Circuit also enforced a Board finding of no accretion. In that case, for many years the employer and union had bargained on a local-by-local basis concerning the employer's operations clerks. About 40 percent of the operations clerks were not included in any bargaining unit. In 1979, the employer recognized the union as the representative of a single, nationwide unit of operations clerks. It refused, however, to include within that unit the operations clerks who had not previously been represented by the union. The parties negotiated a series of multiyear contracts on that basis. In 1987, the employer accepted the union's proposal to include the previously unrepresented clerks in the bargaining unit. Thereafter, by agreement of the parties, the employer began deducting union dues and initiation fees from the salaries of the new unit members and remitting them to the union.

The Board found that both the employer and the union had violated the Act. It held that the agreement to include the previously unrepresented employees in the bargaining unit amounted to an accretion. The Board further held that an accretion was not permissible here because the affected employees were not a new group of employees that had come into existence after the union's recognition or during the term of an agreement, but were an existing, previously excluded group. "*[T]he fact of historical exclusion*," the Board stated, "*is determinative*" (emphasis in original).[32]

The court affirmed. The court noted that the *Laconia Shoe* principle vindicates employee free choice and prevents unions from consciously excluding groups of employees from participating in elections, only to accrete them later. Although the court acknowledged that the union had not engaged in that conduct here, it held that the Board had applied *Laconia Shoe* consistently, and that the Board was entitled to maintain such a bright-line rule.[33] The court also rejected the argument that the General Counsel had failed to show that the union lacked majority support among the allegedly accreted employees. The court determined that once the General Counsel established historical exclusion, a prima facie case was made out; it then became the respondents' obligation to rebut that prima facie case by producing some reliable evidence of majority status. Here, because no evidence on the issue was offered by any party, the court concluded that the General Counsel had established a violation of the Act.[34]

[30] Id. at 456–457.

[31] *Teamsters National United Parcel Service Negotiating Committee v. NLRB*, 17 F.3d 1518 (D.C. Cir.), enfg. *United Parcel Service*, 303 NLRB 326 (1991).

[32] 303 NLRB at 327, citing *Laconia Shoe Co.*, 215 NLRB 573 (1974).

[33] 17 F.3d at 1521–1522.

[34] 17 F.3d at 1523–1524.

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 1994, the Board filed a total of 65 petitions for temporary relief under the discretionary provisions of Section 10(j): 59 against employers, 4 against labor organizations, and 2 against both an employer and a labor organization. Seven cases authorized in the prior year were also pending at the beginning of the year.[2] Of these 72 cases, 20 were either settled or adjusted prior to court action. Five cases were withdrawn prior to decision because of changed circumstances. Injunctions were granted in 18 cases and denied in 9 cases. Twenty cases remained pending at the end of the fiscal year.

District courts granted injunctions against employers in 18 cases and none against a labor organization. Among the violations that gave rise to the actions against employers were interference with nascent organizing campaigns, including several cases where an employer's violations precluded a fair election and warranted a remedial bargaining order based on a union's showing of a majority of authorization cards,[3] withdrawal of recognition from an incumbent union, refusal to sign and comply with the terms of an agreed-on labor agreement[4] and a successor employer's refusal to recognize and bargain with an incumbent union.[5]

One of the cases decided during the year presented a situation wherein an employer responded to a union's organizing drive with a widespread campaign of unlawful threats and other 8(a)(1) conduct.[6] Although the union had obtained a clear majority of union authorization cards before the employer's violations commenced, the ballots counted at the Board-conducted election showed only the barest ad-

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[1] See, e.g., *Frye v. Service Employees District 1199*, 996 F.2d 141 (6th Cir. 1993); *Arlook v. S. Lichtenberg & Co.*, 952 F.2d 367 (11th Cir. 1992).

[2] The figure of five pending cases as of September 30, 1993, as stated in the 1993 Annual Report, was incorrect.

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

[4] See *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941).

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

[6] *Garner v. MacClenny Products*, 859 F.Supp. 1478 (M.D.Fla.), appeal pending Nos. 94-3185 and 94-3236 (11th Cir.).

vantage for the union and unresolved challenged ballots will be determinative of the election. The district court granted the Board's prayer for an interim remedial bargaining order under *Gissel.*[7] The employer conceded there was reasonable cause to believe the violations alleged had occurred, but argued that relief was not just and proper, because, inter alia, there was only a single allegation of postelection misconduct, the number of unit employees had increased since the election, and a new plant manager and plant engineer had been hired. The employer also argued that the union's organizing efforts remained "vibrant" and that the union had not suffered irreparable damage.[8] The court noted that employer violations which tend to undermine a union's majority strength and impede the election process frustrate national labor policy and warrant injunctive relief under Section 10(j).[9] The court further concluded that the employer's alleged violations "were so pervasive and numerous as to render meaningless any final order of the administrative process."[10] The court decided that an interim *Gissel* bargaining order was warranted even though the results of the Board election were still to be determined.[11] The court found that an interim bargaining order "will neither permanently alter nor unduly disrupt the labor relationship existing at Respondent's Macclenny facility."[12]

In a second case, the district court also granted the Board's petition for a remedial bargaining order under *Gissel* and a mass reinstatement order of alleged discriminatees.[13] The court entered both a default judgment against the respondent and a decision on the merits of the petition. On the merits, it found reasonable cause to believe that the employer had committed a variety of 8(a)(1) violations as well as the unlawful terminations of 11 unit employees under Section 8(a)(3). The court concluded that the failure to preserve the status quo would cause irreparable harm to the union, "in that the Union will lose strength and be unable to bargain effectively."

In another case decided during the year which involved an employer's bargaining obligation, the Board had alleged that there was reasonable cause to believe that the employer had withdrawn recognition from a certified union during its initial certification year and had refused to sign and be bound by a labor contract agreed on by the parties.[14] The district court agreed with the Board's contentions and granted an injunction which, inter alia, required the employer to recognize and bargain with the union and to "comply with, and acknowledge the existence of" all the terms of the parties' agreed-on collective-bargaining agreement.

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[7] See generally *Asseo v. Pan American Grain Co.*, 805 F.2d 23 (1st Cir. 1986); *Seeler v. Trading Port*, 517 F.2d 33 (2d Cir. 1975).

[8] 859 F.Supp. at 1481.

[9] 859 F.Supp. at 1482, citing *Levine v. C & W Mining Co.*, 610 F.2d 432, 437 (6th Cir. 1979).

[10] Ibid.

[11] Id. at 1483, citing *Kaynard v. MMIC, Inc.*, 734 F.2d 950, 954 (2d Cir. 1984).

[12] Ibid.

[13] *Clark v. Jack Gray Transport*, 2:94CV00348 (M.D.N.C. Greensboro Div.). This district court is in the Fourth Circuit, which has not yet passed on the propriety of interim *Gissel* bargaining orders under Sec. 10(j).

[14] *Schaub v. Yukon Mfg. Co.*, Civil No. 94-X-70811 (E.D.Mich. Southern Div.).

One case decided during the year concerned a group of unrepresented employees who were discharged because of their protected concerted activity to improve their working conditions.[15] The employee drivers were concerned with what they perceived as recent employer cuts in their wages, mileage rates, and holiday pay. The drivers had a meeting about their working conditions, which was followed by their preparation of a letter sent to their employer. The Board's petition alleged that the leaders of this group of employees had been unlawfully terminated because of this protected concerted activity.[16] The district court granted an injunction which adopted a consent decree proposed by the respondent and which was recommended by a magistrate judge. The proposed consent decree included interim reinstatement of the discharged employees and posting of a notice at the employer's facility which acknowledged the right of employees to engage in protected concerted activity under the Act to improve their working conditions. The consent order further provided that the employer agreed that it would not "take any action designed to influence its employees against participating in activity protected by the National Labor Relations Act." Although the Board had sought further relief before the district court beyond the terms of the proposed consent order, in the nature of a cease-and-desist order which would provide for possible contempt sanctions, the court noted that the consent order provided that the petition could be reopened in the event of a future violation. The district court concluded that the proposed consent order was just and proper "and all that is reasonably necessary to preserve the ultimate remedial power of the Board."

One case during the year involved an allegation that an employer had extended unlawful recognition to a union which did not represented an uncoerced majority of the unit employees, in violation of Section 8(a)(2).[17] In *Silverman v. Red & Tan Charters*,[18] the district court found reasonable cause to believe that the respondent, a successful bidder to perform certain bus transportation service for a county government, had hired employees and recognized a union without any proof that this union represented an uncoerced majority of the employees hired. The court further found that the evidence supported the Board's allegations that the employer had threatened employees with discharge or a denial of employment if they did not become and remain members of the favored union and that the employer had distributed this union's membership cards to prospective employees and had directed them to sign them. The court concluded that injunctive relief was warranted to enjoin the employer's recognition of the assisted union and the enforcement of the parties' labor

[15] *Szabo v. Krist Oil Co.*, Case No. 2:94-CV-99 (W.D.Mich. Southern Div.).

[16] The Board relied on *NLRB v. Lloyd A. Fry Roofing Co.*, 651 F.2d 442 (6th Cir. 1981).

[17] See generally *Ladies Garment Workers (Bernhard-Altmann Texas Corp.) v. NLRB*, 366 U.S. 731 (1961).

[18] 93 Civ. 6353 (LMM) (S.D.N.Y.).

agreement.[19] The court found merit to the Board's argument that, absent interim relief, the assisted union could become "entrenched" in the unit as the bargaining representative and "the institutionalization of the installed union will progress."[20]

Two appellate court decisions on 10(j) matters, which issued in the fiscal year, are noteworthy. First, in *Miller v. California Pacific Medical Center*,[21] a case discussed in the 1992 and 1993 reports, an en banc panel of the Ninth Circuit concluded that its previous "reasonable cause/just and proper" test for reviewing 10(j) petitions did not comport with the language of Section 10(j) or the Supreme Court precedent regarding how to construe regulatory statutes that authorize injunctive relief.[22] It overruled its prior decisions insofar as they required a district court to determine whether the Board has "reasonable cause" to believe an unfair labor practice has occurred and held that the district court should consider only whether relief is "just and proper." In making that determination, the courts should consider traditional equitable criteria, including likelihood of success, the balance of harms, and the public interest. The court further held, however, that in applying such traditional equitable principles, district courts must do so "through the prism of the underlying purpose of Section 10(j), which is to protect the integrity of the collective bargaining process and to preserve the Board's remedial power while it processes the charge."[23] In assessing the Board's likelihood of success, the district court must factor in its lack of jurisdiction over unfair labor practices and the probability that the Board's determination on the merits will be given considerable deference. In balancing the hardships, the district court must take into account the "probability that declining to issue an injunction will permit the allegedly unfair labor practice to reach fruition and thereby render meaningless the Board's remedial authority."[24]

The second case, *Frye v. Specialty Envelope*,[25] involved a successor's bargaining obligation which arose when Specialty Envelope purchased the assets of Western Paper Products, Inc. from a state court receiver, appointed when Western defaulted on loan payments. The district court had denied injunctive relief under traditional preliminary injunction standards, reasoning that the Board had an adequate rem-

[19] The court included a proviso to protect the employees' current working conditions, i.e., "nothing in this Order shall require the Employer to vary or abandon any existing wages or benefits of unit employees established by the [assisted] agreement." See, e.g., *NLRB v. American Beef Packers*, 438 F.2d 331, 333 (10th Cir. 1971), cert. denied 403 U.S. 919 (1971).

[20] The court relied on *Kaynard v. Mego Corp.*, 633 F.2d 1026, 1035 (2d Cir. 1980).

[21] 19 F.3d 449 (9th Cir.).

[22] 19 F.3d at 456, citing *Weinberger v. Romero-Barcelo*, 456 U.S. 305 (1982). As a threshhold issue, the en banc panel determined that, although the Board's Decision and Order issued while en banc hearing was pending, and, therefore, the 10(j) injunction itself had expired, the legal question of the appropriate standard to be applied in a 10(j) proceeding was not moot under the "capable of repetition yet evading review" exception to the mootness doctrine. 19 F.3d at 453–454. Because the issuance of the Board's Order deprived the district court of jurisdiction to consider the case under the newly announced standard, the majority of the court vacated the district court's opinion as well as the appellate panel's decision. Id. at 461 and fn. 6. Four judges dissenting on this point would have applied the court's analysis to the case before it and affirmed the district court's grant of an injunction. Id. at 462–463.

[23] 19 F.3d at 459–460.

[24] Id. at 460.

[25] 10 F.3d 1221 (6th Cir.).

edy at law and failed to establish irreparable harm. The Sixth Circuit held that the Board was not required to make such a showing and that the district court erred in failing to consider the case under the "well-established standards" of reasonable cause/just and proper used to review petitions for 10(j) relief in that circuit.[26] Because the Regional Director had presented evidence to show that Specialty had purchased the assets of Western, hired Western's employees and continued the business essentially unchanged, the court concluded that under *Fall River Dyeing Corp. v. NLRB*,[27] there was reasonable cause to believe that there was a "substantial continuity between the enterprises" and Specialty was obligated to recognize and bargain with the union which represented Western's employees.[28] The court concluded that the interim bargaining order sought by the Regional Director was just and proper in order to "prevent further erosion of union support," and rejected the company's argument that the Board's 3-month delay in filing the petition precluded the issuance of an injunction.[29]

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),[30] or Section 8(b)(7),[31] and against an employer or union charged with a violation of Section 8(e),[32] 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.[33] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be

[26] 10 F.3d at 1224–1225, citing *Fleischut v. Nixon Detroit Diesel*, 859 F.2d 26 (6th Cir. 1988).

[27] 482 U.S. 27, 43 (1987).

[28] 10 F.3d at 1226.

[29] Id. at 1227.

[30] 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).

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

[32] 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.

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

obtained, without notice to the respondent, upon a showing that "substantial and irreparable injury to the charging party will be unavoidable" unless immediate injunctive relief is granted. Such ex parte relief, however, may not extend beyond 5 days.

In this report period, the Board filed 15 petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with five cases pending at the beginning of the period, four cases were settled, two were dismissed, three were withdrawn, and there were no cases continued in an inactive status or pending court action at the close of the report year. During this period, six petitions went to final order, the courts granting injunctions in six cases and denying none. Injunctions were issued in three cases involving secondary boycott action proscribed by Section 8(b)(4)(B). An injunction was granted in one case involving jurisdictional disputes in violation of Section 8(b)(4)(D). Injunctions were also issued in two cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

Of the two cases which were dismissed, one involved an 8(b)(4)(D) jurisdictional dispute and one involved a combination of Sections 8(b)(7)(C) and 8(b)(4)(D). Of the cases settled, two involved secondary boycotts under the proscriptions of Section 8(b)(4)(B); one involved a jurisdictional dispute under Section 8(b)(4)(D); and one involved a combination of Sections 8(b)(4)(B) and 8(b)(4)(D).

VIII

Contempt Litigation

In fiscal year 1994, 122 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 154 cases in fiscal year 1993. Voluntary compliance was achieved in 15 cases during the fiscal year, without the necessity of filing a contempt petition, while in 32 others, it was determined that contempt was not warranted.

During the same period, 21 civil contempt proceedings were instituted as compared to 23 civil proceedings in fiscal year 1993. These included three motions for the assessment of fines and writ of body attachment. In addition, one criminal contempt proceeding was initiated during the year. Sixteen civil contempt or equivalent adjudications were awarded in favor of the Board, including one where the court ordered civil arrest and assessment of fines.

During the fiscal year, the Contempt Litigation Branch collected $100,297 in fines and $534,995 in backpay, while recouping $8700 in court costs and attorneys' fees incurred in contempt litigation.

A number of proceedings during the fiscal year were noteworthy. In one case, the Board initiated a major civil contempt action against Monfort, Inc. (a wholly owned subsidiary of ConAgra, Inc.), one of the nation's largest meat packers, for violating a 1992 order of the Tenth Circuit. As amended, the Board's contempt petition alleged that, in response to a renewed organizational campaign by the United Food and Commercial Workers at the employer's Greeley, Colorado beef plant, Monfort violated the court's judgment by, on various occasions, threatening and interrogating employees; by disparately applying work rules to permit antiunion employees to engage in antiunion activities in the plant while not permitting employees to engage in prounion activities; by harassing and discriminating against leading prounion advocates at the plant; by requiring employees to remove prounion insignia; and by engaging in other acts of interference, restraint, and coercion.

Following a 2-week trial the Special Master issued his report, largely affirmed by the Tenth Circuit, adjudging Monfort in civil contempt.[1] Among other remedies, the court imposed a prospective compliance fine against Monfort of $25,000 per violation for each future violation of the court's judgment and contempt order. The court also

[1] *NLRB v. Monfort, Inc.*, 145 LRRM 2923 (S.M. Report), affd. 145 LRRM 2919.

imposed an additional fine against the company for continuing violations and a separate fine schedule against any officer, representative, agent, or attorney of Monfort who, in active concert and participation with Monfort and with notice and knowledge of the court's judgment or adjudication, violates that judgment or adjudication. The court further ordered that fines imposed against such individual contemnors not be paid for or reimbursed by Monfort. Monfort was also ordered to pay portions of the Board's attorney's fees and expenses. In settlement of its claims, the Board subsequently received $95,000 from the company, representing the largest recovery of attorney's fees and expenses in the Agency's history.

Following entry of the contempt adjudication, the union successfully negotiated a collective-bargaining agreement with the company, covering the employees at the Greeley facility. No contract had existed at the plant since the early 1980s, when the company committed the original unfair labor practices that led to the judgment underlying the 1994 contempt adjudication.

Because the NLRA embodies a civil remedial scheme, the Board ordinarily seeks coercive civil contempt sanctions, rather than criminal sanctions, when a respondent refuses to comply with a court-enforced Board order. On occasion, however, where civil contempt sanctions prove to be ineffective or where the facts warrant punishment rather than coercion, the Board seeks criminal contempt sanctions pursuant to 18 U.S.C. § 401(3). On such occasions in the past, the punishment sought by the Board has been at a level equal to a misdemeanor offense—that is, imprisonment for 6 months or less. This past year marked the first time that the Board sought felony contempt sanctions—imprisonment in excess of 1 year—against a respondent whose history of blatant defiance of both Board and court orders made it appropriate to seek such sanctions. In *Crystal Window Cleaning Co.*,[2] the Board first obtained civil contempt sanctions against the respondent company and its owner for refusing to comply with a 1991 judgment of the Sixth Circuit. When, in the Board's view, compliance was still not forthcoming, the Board and the U.S. attorney for the Northern District of Ohio filed with the court a request for the institution of grand jury proceedings against the respondent's owner. After this request was approved, the Board's attorneys, having been appointed as special assistant U.S. attorneys, presented the case to a grand jury, which issued an indictment against the owner. Because the Board is seeking to have him imprisoned for more than 1 year, he has a right to be tried before a jury. *Bloom v. Illinois*.[3] A trial will be held in 1995.

[2] Unpublished Board Order dated November 6, 1990 (Case 8–CA–21911), enfd. mem. 944 F.2d 905.
[3] 391 U.S. 194, 207–208 (1968).

IX

Special Litigation

A. Litigation Under the Freedom of Information Act

In *Gallant v. NLRB*,[1] the United States Court of Appeals for the District of Columbia affirmed the district court's finding that the correspondence of a former Board Member, relating to renomination efforts, constituted personal rather than "agency records" under the FOIA. The court found that, although the correspondence was created by an Agency employee and located within the Agency, the correspondence was part of a "purely personal" effort to retain employment. Moreover, the court noted that the Board did not rely on the correspondence to carry out the business of the Agency. In addition, the court ruled that the Board's *Vaughn* Index was not required to detail the kind of correspondence or the names of recipients of the correspondence. The court of appeals found that the affidavits submitted by the Board were sufficiently detailed to allow the district court to determine that the correspondence did not constitute Agency records and that the names of recipients of the documents were protected by the privacy exemption under the FOIA.

B. Litigation Under the Equal Access to Justice Act

In *Europlast, Ltd. v. NLRB*,[2] the Seventh Circuit upheld the Board's decision denying fees and costs pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. §504. The court held that there was substantial evidence from which the Board could conclude that the General Counsel's position throughout the proceedings was substantially justified. The Seventh Circuit noted that the complaint was based on testimony of witnesses credited by the General Counsel. He had no way of foreseeing that the judge would make the credibility determinations in favor of the respondent employer. Further, the court found that the General Counsel's filing exceptions to the merits decision of the administrative law judge was substantially justified. The court held that, even if reviewing the case de novo, it might have come to a different conclusion, the Board's decision was entitled to deference under 5 U.S.C. §504(a)(2). "It cannot be said that the Board's position lacks a reasonable basis in the record; therefore the petition for review of the Board's decision is dismissed." The Board

[1] 26 F.3d 168.
[2] 33 F.3d 16.

had affirmed the administrative law judge's dismissal of the EAJA application, noting the General Counsel's exceptions were based on more than a dispute over credibility resolutions. The Board explained that the General Counsel reasonably argued that the judge should have drawn other inferences from the record.

C. Litigation Concerning the Board's Jurisdiction

In *Union de la Construccion de Concreto y Equipo Pesado v. NLRB*,[3] the union asked the First Circuit to review a Board determination in a consolidated representation case and unfair labor practice proceeding. The Board had ruled: (1) the company violated the Act by refusing to bargain with the Construction Workers; and (2) the company's misconduct did not affect the outcome of a subsequent representation election which was won by a different union, the Industrial Workers. Accordingly, the Board certified the Industrial Workers as representative of the company's employees and declined to order bargaining with the unsuccessful Construction Workers as a remedy for the refusal-to-bargain violation. The First Circuit found that it lacked the legal power to review directly what is, in essence, a decision about which union represents the unit employees. As the court observed, the Construction Workers demanded review of the absence of a remedial bargaining order, even though it had failed to make that same argument to the Board on exceptions from the administrative law judge's decision. As a result, the court found that 29 U.S.C. § 160(e) prevented the court from considering the issue which had not been presented to the Board.

In *Bud Antle, Inc., d/b/a Bud of California v. Barbosa*,[4] the Ninth Circuit considered whether a proceeding against Bud Antle before the California Agricultural Labor Relations Board (ALRB) should be enjoined as preempted by the NLRA under *San Diego Building Trades Council v. Garmon*.[5] Initially, the circuit found that the district court possessed jurisdiction to hear the private party's *Garmon* preemption claim. The court noted that the Board lacks the resources to take action on every preempted state proceeding. The Ninth Circuit further concluded that the Anti-Injunction Act, 28 U.S.C. § 2283, does not preclude a district court from issuing an injunction against state administrative proceedings because the statute bars only injunctions of proceedings in a state *court*. The Ninth Circuit also considered the abstention doctrine of *Younger v. Harris*[6] that Federal courts generally should abstain from enjoining state proceedings. The court found *Younger* inapplicable to this case because it was "readily apparent" that the *Garmon* doctrine ousted the ALRB of jurisdiction. The circuit reasoned that under *Garmon*, the employees at issue only needed to be "arguably" subject to the NLRA. The circuit concluded that it is at least arguable that the employees at issue are not "agri-

[3] 10 F.3d 14.
[4] 35 F.3d 1355.
[5] 359 U.S. 236 (1959).
[6] 401 U.S. 37 (1971).

cultural laborers," and thus *are* within the jurisdiction of the NLRA. Accordingly, the court reversed the district court's denial of an injunction against the ALRB proceedings.

In *Bevona v. Field Bridge Associates*,[7] the Second Circuit summarily affirmed a judgment of the Southern District of New York vacating arbitration awards because they were in direct conflict with a Board decision previously enforced by the Second Circuit. The arbitration awards gave collateral estoppel effect to a state court judgment to find that Field Bridge Associates and Rachel Bridge Corporation assumed a collective-bargaining agreement between the union and the previous owners of two apartment buildings. The Board previously had found, however, that there was no assumption of the agreement and that Field Bridge and Rachel Bridge were not liable as successors for violating the agreement. In *Service Employees Local 32B-32J v. NLRB*,[8] the Second Circuit enforced that Board Order, finding that collateral estoppel was inapplicable to the state court decision which had declared only that Field Bridge and Rachel Bridge were bound to arbitrate under the agreement, not that they assumed the agreement for any other purpose. Applying the supremacy doctrine of *Carey v. Westinghouse Electric Corp.*,[9] the Second Circuit found that the Board's decision takes precedence over the arbitration awards. The court noted that the Second Circuit has not adopted the Ninth Circuit's more narrow rule that the Board's primary jurisdiction extends only to representation issues and further found that the Board has special expertise in successorship and collective-bargaining issues entitling its decision to deference. The court also concluded that even under the more narrow rule, the successorship issue in this case was linked to representational issues, further making deference to the Board's decision appropriate.

D. Litigation Under the Bankruptcy Code

In *NLRB v. Walsh (In re Palau Corp.)*,[10] the Ninth Circuit, affirming the Bankruptcy Appellate Panel,[11] held that backpay accruing during the postpetition period in a bankruptcy proceeding as a result of prepetition unfair labor practice conduct was not entitled to administrative priority pursuant to 11 U.S.C. §§ 507(a)(1) and 503(b)(1)(A). Relying on *Kapernekas v. Continental Airlines (In re Continental Airlines)*,[12] the court held that the plain language of the Bankruptcy Code prohibited according administrative priority to the Board's claim for postpetition backpay because the discharged employee had not rendered actual services during the postpetition period. The court also concluded that, because no actual postpetition services had been rendered, the Board's postpetition backpay claim did not represent an ac-

[7] 2d Cir. 94-6002 (unpublished), affg. 146 LRRM 3144 (S.D.N.Y.).
[8] 982 F.2d 845 (2d Cir. 1993).
[9] 375 U.S. 261 (1964).
[10] 18 F.3d 746.
[11] 139 B.R. 942 (Bankr. 9th Cir. 1992).
[12] 148 B.R. 207 (D. Del. 1992).

tual and necessary cost of preserving the estate, as required under Ninth Circuit precedent. Distinguishing *Reading v. Brown*,[13] a decision according administrative priority to damages resulting from a bankruptcy receiver's postpetition negligence, the court rejected the Board's argument that the postpetition backpay was entitled to priority because it arose as a result of the bankruptcy trustee's postpetition failure to reinstate the discharged employee. The court concluded by observing that according administrative priority to postpetition backpay would ignore bankruptcy's purpose of permitting debtors to "start fresh" while fairly apportioning losses among creditors.

E. Miscellaneous

In *Secretary of Labor & NLRB v. Thunder Basin Coal Co.*,[14] the Board intervened in a case under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. §801 et seq. (the Mine Act) on appeal to the Federal Mine Safety and Health Review Commission (FMSHRC) and successfully argued that that agency must consider privileges, including the informant's and official information privileges, asserted to protect Board records from compelled disclosure. In the underlying proceeding, two employees filed complaints under the Mine Act alleging that Thunder Basin had discriminated against them because they had testified in a district court proceeding on behalf of the Department of Labor's Mine Safety Administration. The United Mine Workers of America (UMW), on behalf of the employees, also filed an unfair labor practice charge with the Board alleging discrimination against the employees based on their union membership. In the Mine Act proceeding, in response to deposition notices, the employees refused to turn over NLRB witness affidavits on grounds of informant's privilege. The company's motion to compel such discovery was granted by the Mine Safety administrative law judge. When the Secretary refused to comply with the order compelling discovery, the administrative law judge dismissed the Mine Act complaints. The FMSHRC granted the Secretary's petition for discretionary review and the NLRB's motion to intervene. The FMSHRC held that, while the NLRB witness statement information was relevant to the Mine Act case, it was protected by a qualified informant's privilege. Further, although one of the employees was listed on the NLRA charge as a discriminatee, the employee did not thereby waive the informant's privilege because the UMW was the charging party. Under the circumstances, being identified as a discriminatee in an unfair labor practice charge does not identify one as an informant; nor does it constitute a waiver. The FMSHRC remanded the matter to the administrative law judge so that he could balance the informant's privilege protection against Thunder Basin's need for the information. Further, concerning the official information privilege, the FMSHRC held that the official information privilege prevents the unwarranted disclosure

[13] 391 U.S. 471 (1968).
[14] 15 FMSHRC 2228, 1993 WL 479059 (FMSHRC).

of documents from law enforcement investigatory files. In addition, the FMSHRC found the official information privilege to be applicable in Mine Act cases and noted that it, like the informant's privilege, is subject to a balancing of the Government's interest in non-disclosure and the discovering party's need for the information. The FMSHRC accordingly also remanded this issue to the administrative law judge.

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.)

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 1994[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	All cases					
Pending October 1, 1993	*27,433	14,770	1,132	1,210	8,539	1,782
Received fiscal 1994	40,861	21,057	1,021	1,532	15,321	1,930
On docket fiscal 1994	68,294	35,827	2,153	2,742	23,860	3,712
Closed fiscal 1994	38,551	19,282	959	1,380	14,858	2,072
Pending September 30, 1994	29,743	16,545	1,194	1,362	9,002	1,640
	Unfair labor practice cases[2]					
Pending October 1, 1993	*24,526	12,845	1,031	1,029	8,063	1,558
Received fiscal 1994	34,782	16,972	821	1,171	14,207	1,611
On docket fiscal 1994	59,308	29,817	1,852	2,200	22,270	3,169
Closed fiscal 1994	32,346	15,047	747	1,023	13,773	1,756
Pending September 30, 1994	26,962	14,770	1,105	1,177	8,497	1,413
	Representation cases[3]					
Pending October 1, 1993	*2,659	1,849	96	163	423	128
Received fiscal 1994	5,634	3,920	186	331	1,024	173
On docket fiscal 1994	8,293	5,769	282	494	1,447	301
Closed fiscal 1994	5,802	4,073	200	328	1,000	201
Pending September 30, 1994	2,491	1,696	82	166	447	100
	Union-shop deauthorization cases					
Pending October 1, 1993	53	—	—	—	53	—
Received fiscal 1994	90	—	—	—	90	—
On docket fiscal 1994	143	—	—	—	143	—
Closed fiscal 1994	85	—	—	—	85	—
Pending September 30, 1994	58	—	—	—	58	—
	Amendment of certification cases					
Pending October 1, 1993	9	4	1	3	0	1
Received fiscal 1994	14	9	2	2	0	1
On docket fiscal 1994	23	13	3	5	0	2
Closed fiscal 1994	10	6	3	1	0	0
Pending September 30, 1994	13	7	0	4	0	2
	Unit clarification cases					
Pending October 1, 1993	*186	72	4	15	0	95
Received fiscal 1994	341	156	12	28	0	145
On docket fiscal 1994	527	228	16	43	0	240
Closed fiscal 1994	308	156	9	28	0	115
Pending September 30, 1994	219	72	7	15	0	125

[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, 1993, 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 1994[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	CA cases					
Pending October 1, 1993	*19,702	12,782	1,028	981	4,911	0
Received fiscal 1994	26,058	16,863	820	1,114	7,261	0
On docket fiscal 1994	45,760	29,645	1,848	2,095	12,172	0
Closed fiscal 1994	23,705	14,953	745	965	7,042	0
Pending September 30, 1994	22,055	14,692	1,103	1,130	5,130	
	CB cases					
Pending October 1, 1993	*4,030	55	3	30	3,150	792
Received fiscal 1994	7,817	77	0	36	6,945	759
On docket fiscal 1994	11,847	132	3	66	10,095	1,551
Closed fiscal 1994	7,660	61	2	29	6,731	837
Pending September 30, 1994	4,187	71	1	37	3,364	714
	CC cases					
Pending October 1, 1993	*546	1	0	12	0	533
Received fiscal 1994	532	16	0	16	0	500
On docket fiscal 1994	1,078	17	0	28	0	1,033
Closed fiscal 1994	624	15	0	23	0	586
Pending September 30, 1994	454	2	0	5	0	447
	CD cases					
Pending October 1, 1993	*127	3	0	1	0	123
Received fiscal 1994	211	14	1	4	0	192
On docket fiscal 1994	338	17	1	5	0	315
Closed fiscal 1994	186	13	0	3	0	170
Pending September 30, 1994	152	4	1	2	0	145
	CE cases					
Pending October 1, 1993	50	2	0	4	2	42
Received fiscal 1994	27	0	0	0	1	26
On docket fiscal 1994	77	2	0	4	3	68
Closed fiscal 1994	35	2	0	2	0	31
Pending September 30, 1994	42	0	0	2	3	37
	CG cases					
Pending October 1, 1993	20	0	0	0	0	20
Received fiscal 1994	23	0	0	1	0	22
On docket fiscal 1994	43	0	0	1	0	42
Closed fiscal 1994	27	0	0	0	0	27
Pending September 30, 1994	16	0	0	1	0	15
	CP cases					
Pending October 1, 1993	51	2	0	1	0	48
Received fiscal 1994	114	2	0	0	0	112
On docket fiscal 1994	165	4	0	1	0	160
Closed fiscal 1994	109	3	0	1	0	105
Pending September 30, 1994	56	1	0	0	0	55

[1] See Glossary of terms for definitions.

*Revised, reflects higher figures than reported pending September 30, 1993, 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 1994[1]

	Total	Identification of filing party				
		AFL–CIO unions	Other national unions	Other local unions	Individuals	Employers
	RC cases					
Pending October 1, 1993	*2,104	1,847	96	161	0	—
Received fiscal 1994	4,437	3,920	186	331	0	—
On docket fiscal 1994	6,541	5,767	282	492	0	—
Closed fiscal 1994	4,601	4,073	200	328	0	—
Pending September 30, 1994	1,940	1,694	82	164	0	—
	RM cases					
Pending October 1, 1993	*128	—	—	—	—	128
Received fiscal 1994	173	—	—	—	—	173
On docket fiscal 1994	301	—	—	—	—	301
Closed fiscal 1994	201	—	—	—	—	201
Pending September 30, 1994	100	—	—	—	—	100
	RD cases					
Pending October 1, 1993	*427	2	0	2	423	—
Received fiscal 1994	1,024	0	0	0	1,024	—
On docket fiscal 1994	1,451	2	0	2	1,447	—
Closed fiscal 1994	1,000	0	0	0	1,000	—
Pending September 30, 1994	451	2	0	2	447	—

[1] See Glossary of terms for definitions.

* Revised, reflects higher figures than reported pending September 30, 1993, 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 1994

	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	26,058	100.0
8(a)(1)	4,332	16 6
8(a)(1)(2)	227	0 9
8(a)(1)(3)	9,699	37.2
8(a)(1)(4)	195	0.7
8(a)(1)(5)	7,778	29.8
8(a)(1)(2)(3)	206	0.8
8(a)(1)(2)(4)	6	0.0
8(a)(1)(2)(5)	174	0.7
8(a)(1)(3)(4)	641	2.5
8(a)(1)(3)(5)	2,496	9.6
8(a)(1)(4)(5)	24	0.1
8(a)(1)(2)(3)(4)	16	0.1
8(a)(1)(2)(3)(5)	116	0.4
8(a)(1)(2)(4)(5)	6	0.0
8(a)(1)(3)(4)(5)	94	0.4
8(a)(1)(2)(3)(4)(5)	48	0.2
Recapitulation[1]		
8(a)(1)	26,058	100.0
8(a)(2)	799	3 1
8(a)(3)	13,316	51.1
8(a)(4)	1,030	4.0
8(a)(5)	10,736	41.2
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	8,674	100.0
8(b)(1)	6,168	71.1
8(b)(2)	39	0.4
8(b)(3)	168	1.9
8(b)(4)	743	8.6
8(b)(5)	4	0.0
8(b)(6)	9	0.1
8(b)(7)	114	1.3
8(b)(1)(2)	868	10.0
8(b)(1)(3)	327	3.8
8(b)(1)(5)	2	0.0
8(b)(1)(6)	3	0.0
8(b)(2)(3)	5	0.1
8(b)(2)(5)	1	0.0
8(b)(1)(2)(3)	212	2.4
8(b)(1)(2)(5)	3	0.0
8(b)(1)(2)(6)	1	0.0
8(b)(1)(3)(5)	1	0.0
8(b)(1)(3)(6)	1	0.0
8(b)(2)(3)(6)	1	0.0
8(b)(1)(2)(3)(5)	1	0.0
8(b)(1)(2)(3)(6)	3	0.0

Table 2.—Types of Unfair Labor Practices Alleged, Fiscal Year 1994—Continued

	Number of cases showing specific allegations	Percent of total cases
Recapitulation[1]		
8(b)(1)	7,590	87.5
8(b)(2)	1,134	13.1
8(b)(3)	719	8.3
8(b)(4)	743	8.6
8(b)(5)	12	0.1
8(b)(6)	18	0.2
8(b)(7)	114	1.3
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	743	100.0
8(b)(4)(A)	58	7.8
8(b)(4)(B)	424	57.1
8(b)(4)(C)	6	0.8
8(b)(4)(D)	211	28.4
8(b)(4)(A)(B)	40	5.4
8(b)(4)(A)(C)	1	0.1
8(b)(4)(B)(C)	1	0.1
8(b)(4)(A)(B)(C)	2	0.3
Recapitulation[1]		
8(b)(4)(A)	101	13.6
8(b)(4)(B)	467	62.9
8(b)(4)(C)	10	1.3
8(b)(4)(D)	211	28.4
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	114	100.0
8(b)(7)(A)	33	28.9
8(b)(7)(B)	8	7.0
8(b)(7)(C)	69	60.5
8(b)(7)(A)(B)	2	1.8
8(b)(7)(A)(C)	1	0.9
8(b)(7)(A)(B)(C)	1	0.9
Recapitulation[1]		
8(b)(7)(A)	37	32.5
8(b)(7)(B)	11	9.6
8(b)(7)(C)	71	62.3
C. Charges filed under Sec 8(e)		
Total cases 8(e)	27	100.0
Against unions alone	27	100.0
D. Charges filed under Sec. 8(g)		
Total cases 8(g)	23	100.0

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

Table 3A.—Formal Actions Taken in Unfair Labor Practice Cases, Fiscal Year 1994[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	54	54	—	—	—	54	—	—	—	—	—	—	—
Complaints issued	4,346	3,539	3,162	263	39	—	4	5	4	5	0	0	57
Backpay specifications issued	135	90	86	3	0	—	0	0	0	0	0	0	1
Hearings completed, total	718	481	422	34	4	10	0	0	1	2	0	0	8
Initial ULP hearings	704	473	414	34	4	10	0	0	1	2	0	0	8
Backpay hearings	0	0	0	0	0	—	0	0	0	0	0	0	0
Other hearings	14	8	8	0	0	—	0	0	0	0	0	0	0
Decisions by administrative law judges, total	741	493	453	30	5	—	0	0	0	0	0	0	5
Initial ULP decisions	734	487	448	29	5	—	0	0	0	0	0	0	5
Backpay decisions	6	5	4	1	0	—	0	0	0	0	0	0	0
Supplemental decisions	1	1	1	0	0	—	0	0	0	0	0	0	0
Decisions and orders by the Board, total	1,334	758	638	44	7	16	0	0	1	1	11	34	6
Upon consent of parties:													
Initial decisions	122	39	34	4	0	—	0	0	0	0	0	0	1
Supplemental decisions	18	7	5	0	0	—	0	0	0	0	0	1	1
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	309	182	147	17	2	—	0	0	0	0	3	12	1
Backpay decisions	17	9	9	0	0	—	0	0	0	0	0	0	0
Contested:													
Initial ULP decisions	732	444	373	22	3	16	0	0	1	1	7	18	3
Decisions based on stipulated record	8	6	3	1	2	—	0	0	0	0	0	0	0
Supplemental ULP decisions	49	24	21	0	0	—	0	0	0	0	1	2	0
Backpay decisions	79	47	46	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 1994[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	988	959	835	16	108	7
Initial hearings	836	815	711	15	89	6
Hearings on objections and/or challenges	152	144	124	1	19	1
Decisions issued, total	825	798	708	16	74	5
By Regional Directors	776	753	666	15	72	5
Elections directed	685	664	587	11	66	5
Dismissals on record	91	89	79	4	6	0
By Board	49	45	42	1	2	0
Transferred by Regional Directors for initial decision	11	9	9	0	0	0
Elections directed	11	9	9	0	0	0
Dismissals on record	0	0	0	0	0	0
Review of Regional Directors' decisions						
Requests for review received	353	329	304	7	18	1
Withdrawn before request ruled upon	23	21	19	2	0	0
Board action on request ruled upon, total	277	260	240	4	16	1
Granted	48	40	36	1	3	0
Denied	224	215	200	3	12	1
Remanded	5	5	4	0	1	0
Withdrawn after request granted, before Board review	2	2	2	0	0	0
Board decision after review, total	38	36	33	1	2	0
Regional Directors' decisions						
Affirmed	24	23	21	1	1	0
Modified	4	4	3	0	1	0
Reversed	10	9	9	0	0	0
Outcome:						
Election directed	31	30	28	0	2	0
Dismissals on record	7	6	5	1	0	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 1994[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	437	426	362	5	59	1
By Regional Directors	58	56	45	1	10	0
By Board	379	370	317	4	49	1
In stipulated elections	343	334	284	4	46	1
No exceptions to Regional Directors' reports	214	209	172	4	33	1
Exceptions to Regional Directors' reports	129	125	112	0	13	0
In directed elections (after transfer by Regional Director)	30	30	27	0	3	0
Review of Regional Directors' supplemental decisions						
Request for review received	59	58	52	1	5	0
Withdrawn before request ruled upon	2	2	2	0	0	0
Board action on request ruled upon, total	52	51	44	1	6	0
Granted	6	6	6	0	0	0
Denied	39	39	33	1	5	0
Remanded	7	6	5	0	1	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	6	6	6	0	0	0
Regional Directors' decisions:						
Affirmed	3	3	3	0	0	0
Modified	1	1	1	0	0	0
Reversed	2	2	2	0	0	0

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

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 1994[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case	
		AC	UC
Hearings completed	70	1	64
Decisions issued after hearing	80	2	78
By Regional Directors	75	2	73
By Board	5	0	5
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions.			
Requests for review received	50	0	46
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	38	0	34
Granted	8	0	8
Denied	29	0	25
Remanded	1	0	1
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	5	0	5
Regional Directors' decisions:			
Affirmed	1	0	1
Modified	1	0	1
Reversed	3	0	3

[1] See Glossary of terms for definitions.

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1994[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]10,819	—	—	—	—	—	—	—	—	—	—	—	—	—
Notice posted	3,290	2,680	1,984	129	4	346	217	610	452	50	1	73	34	
Recognition or other assistance withdrawn	15	15	8	1	1	2	3	—	—	—	—	—	—	
Employer-dominated union disestablished	72	72	61	0	0	11	0	—	—	—	—	—	—	
Employees offered reinstatement	7,947	7,947	6,882	172	34	529	330	—	—	—	—	—	—	
Employees placed on preferential hiring list	3,773	3,773	3,329	75	7	222	140	—	—	—	—	—	—	
Hiring hall rights restored	463	—	—	—	—	—	—	463	363	28	1	51	20	
Objections to employment withdrawn	459	—	—	—	—	—	—	459	358	28	1	51	21	
Picketing ended	146	—	—	—	—	—	—	146	136	7	0	3	0	
Work stoppage ended	19	—	—	—	—	—	—	19	12	6	0	1	0	
Collective bargaining begun	2,990	2,844	2,527	65	31	146	75	146	144	0	0	2	0	
Backpay distributed	9,889	8,559	7,711	129	47	423	249	1,330	1,191	33	3	78	25	
Reimbursement of fees, dues, and fines	8,007	6,780	6,197	94	21	290	178	1,227	1,103	31	3	69	21	
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0	
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0	

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1994[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
B. By number of employees affected:.													
Employees offered reinstatement, total	4,165	4,165	2,963	134	177	578	313	—	—	—	—	—	—
Accepted	3,722	3,722	2,739	88	177	506	212	—	—	—	—	—	—
Declined	443	443	224	46	0	72	101	—	—	—	—	—	—
Employees placed on preferential hiring list	244	244	210	0	0	34	0	0	0	0	0	0	0
Hiring hall rights restored	85	—	—	—	—	—	—	85	85	0	0	0	0
Objections to employment withdrawn	14	—	—	—	—	—	—	14	12	0	0	0	2
Employees receiving backpay·													
From either employer or union	20,778	20,248	10,736	434	560	6,625	1,893	530	170	14	0	335	11
From both employer and union	19	16	15	0	0	1	0	3	3	0	0	0	0
Employees reimbursed for fees, dues, and fines													
From either employer or union	1,260	637	277	15	1	342	2	623	258	0	30	335	0
From both employer and union	170	90	43	0	0	0	47	80	80	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 1994[1]—Continued

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
C. By amounts of monetary recovery, total	$82,158,463	$77,566,573	$29,395,032	$1,614,687	$6,122,858	$32,602,966	$7,831,030	$4,591,890	$390,003	$58,485	$40,000	$3,659,686	$443,716
Backpay (includes all monetary payments except fees, dues, and fines)	79,608,425	76,035,008	29,042,646	1,590,799	6,052,858	31,548,062	7,800,643	3,573,417	349,904	58,485	0	2,774,820	390,208
Reimbursement of fees, dues, and fines	2,550,038	1,531,565	352,386	23,888	70,000	1,054,904	30,387	1,018,473	40,099	0	40,000	884,866	53,508

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during fiscal year 1980 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 1994[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	1,571	1,309	989	310	8	2	0	0	0	245	196	7	42	2	0	15
Tobacco manufacturers	5	4	2	2	0	0	0	0	0	1	1	0	0	0	0	0
Textile mill products	235	194	152	40	1	1	0	0	0	39	32	1	6	1	0	1
Apparel and other finished products made from fabric and similar materials	265	223	162	54	3	0	2	0	2	40	29	3	8	2	0	0
Lumber and wood products (except furniture)	368	299	229	51	7	6	0	0	6	68	49	3	16	0	0	1
Furniture and fixtures	273	226	193	30	1	1	0	0	1	43	32	3	8	3	0	1
Paper and allied products	573	503	393	100	8	2	0	0	0	64	46	2	16	1	0	5
Printing, publishing, and allied products	890	762	602	157	0	3	0	0	0	109	77	3	29	1	0	18
Chemicals and allied products	664	578	473	103	2	0	0	0	0	85	69	1	15	0	0	1
Petroleum refining and related industries	184	153	126	27	0	0	0	0	0	29	25	1	3	0	0	2
Rubber and miscellaneous plastic products	510	438	353	85	0	0	0	0	0	72	61	2	9	0	0	0
Leather and leather products	44	37	31	5	0	0	0	0	1	6	3	1	2	1	0	0
Stone, clay, glass, and concrete products	575	478	368	91	11	5	0	0	3	92	66	0	26	3	0	2
Primary metal industries	944	813	554	255	1	2	0	0	1	119	89	2	28	4	3	5
Fabricated metal products (except machinery and transportation equipment)	985	809	619	184	3	2	0	0	1	170	131	2	37	1	0	5
Machinery (except electrical)	1,095	940	773	159	7	1	0	0	0	149	115	5	29	3	0	3
Electrical and electronic machinery, equipment, and supplies	604	546	395	137	11	1	0	0	2	57	41	5	11	1	0	0
Aircraft and parts	346	334	185	145	0	4	0	0	0	12	9	0	3	0	0	0
Ship and boat building and repairing	340	329	195	133	1	0	0	0	0	10	8	1	1	0	0	1
Automotive and other transportation equipment	1,016	902	569	328	4	1	0	0	0	109	92	2	15	3	0	2
Measuring, analyzing, and controlling instruments, photographic, medical, and optical goods, watches and clocks	208	181	138	39	3	1	0	0	0	25	18	0	7	2	0	0
Miscellaneous manufacturing industries	285	240	160	78	2	0	0	0	0	43	30	0	13	0	0	2
Manufacturing	11,980	10,298	7,661	2,513	73	32	2	0	17	1,587	1,219	44	324	28	3	64
Metal mining	45	36	29	7	0	0	0	0	0	8	6	1	1	0	0	1
Coal mining	312	297	200	86	9	0	0	0	2	14	11	0	3	0	0	1
Oil and gas extraction	54	48	37	8	0	3	0	0	0	6	3	0	3	0	0	0
Mining and quarrying of nonmetallic minerals (except fuels)	116	94	67	21	5	1	0	0	0	20	17	0	3	1	0	1
Mining	527	475	333	122	14	4	0	0	2	48	37	1	10	1	0	3
Construction	5,407	4,843	3,566	855	239	118	11	0	54	550	450	40	60	8	0	6
Wholesale trade	1,727	1,365	1,072	264	13	12	0	0	4	343	250	19	74	6	0	13
Retail trade	2,793	2,265	1,717	511	21	5	2	0	9	492	348	20	124	17	0	19

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 1994[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
Finance, insurance, and real estate	644	528	385	119	13	5	0	0	6	99	81	2	16	1	0	16
U.S. Postal Service	2,726	2,725	1,977	748	0	0	0	0	0	1	0	0	1	0	0	0
Local and suburban transit and interurban highway passenger transportation	712	554	451	103	0	0	0	0	0	149	132	0	17	2	0	7
Motor freight transportation and warehousing	2,486	1,984	1,549	360	51	13	7	0	4	476	396	10	70	8	3	15
Water transportation	260	243	125	106	9	2	0	0	1	14	14	0	0	0	0	3
Other transportation	423	336	258	66	7	2	1	0	2	81	65	2	14	0	0	6
Communication	921	806	527	277	2	0	0	0	0	105	75	4	26	2	0	8
Electric, gas, and sanitary services	1,109	903	721	163	12	3	2	0	2	179	152	3	24	0	0	27
Transportation, communication, and other utilities	5,911	4,826	3,631	1,075	81	20	10	0	9	1,004	834	19	151	12	3	66
Hotels, rooming houses, camps, and other lodging places	1,087	975	785	173	14	1	0	0	2	103	80	5	18	2	2	5
Personal services	251	177	146	29	1	0	0	0	1	68	48	2	18	1	1	4
Automotive repair, services, and garages	413	304	235	66	1	0	0	0	2	108	70	3	35	0	0	1
Motion pictures	153	136	70	61	1	2	0	0	2	14	13	0	1	1	0	2
Amusement and recreation services (except motion pictures)	425	345	221	121	3	0	0	0	0	78	67	1	10	1	0	1
Health services	3,144	2,509	2,101	371	10	1	1	23	2	525	423	12	90	4	0	106
Educational services	282	236	193	32	10	0	0	0	1	42	40	0	2	0	1	3
Membership organizations	587	511	291	212	4	3	0	0	1	68	59	2	7	0	0	8
Business services	1,946	1,618	1,157	432	23	5	0	0	1	311	272	0	39	4	3	10
Miscellaneous repair services	76	62	46	11	2	2	0	0	1	12	8	1	3	1	0	1
Legal services	40	30	25	5	0	0	0	0	0	7	2	0	5	0	0	3
Museums, art galleries, and botanical and zoological gardens	30	27	15	7	5	0	0	0	0	2	1	0	1	0	0	1
Social services	476	345	287	57	1	0	0	0	0	121	91	1	29	2	1	7
Miscellaneous services	98	81	63	16	2	0	0	0	0	16	14	1	1	1	0	0
Services	9,008	7,356	5,635	1,593	77	14	1	23	13	1,475	1,188	28	259	17	8	152
Public administration	138	101	81	17	1	1	1	0	0	35	30	0	5	0	0	2
Total, all industrial groups	40,861	34,782	26,058	7,817	532	211	27	23	114	5,634	4,437	173	1,024	90	14	341

[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 1994[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	158	132	114	17	0	0	0	1	0	22	18	0	4	0	0	4
New Hampshire	83	68	57	9	0	1	1	0	0	14	9	0	5	0	0	1
Vermont	85	81	76	5	0	0	0	0	0	3	3	0	0	0	0	1
Massachusetts	1,209	1,075	867	156	35	12	3	0	2	117	90	3	24	0	1	16
Rhode Island	205	175	148	13	12	0	1	0	1	24	19	2	3	1	0	5
Connecticut	636	535	417	104	10	1	0	1	2	96	85	2	9	2	0	3
New England	2,376	2,066	1,679	304	57	14	5	2	5	276	224	7	45	3	1	30
New York	4,515	3,946	2,607	1,165	91	51	5	9	18	490	388	16	86	6	2	71
New Jersey	1,692	1,393	980	331	43	32	2	0	5	270	214	7	49	11	0	18
Pennsylvania	2,567	2,153	1,617	463	45	18	4	0	6	384	311	14	59	7	1	22
Middle Atlantic	8,774	7,492	5,204	1,959	179	101	11	9	29	1,144	913	37	194	24	3	111
Ohio	2,356	2,013	1,582	408	18	1	2	1	1	319	265	5	49	4	0	20
Indiana	1,352	1,181	902	255	11	5	2	0	6	159	125	5	29	2	0	10
Illinois	2,351	1,949	1,352	475	70	26	0	0	26	383	292	18	73	8	2	9
Michigan	2,363	1,979	1,454	490	23	2	2	2	6	363	292	5	66	10	1	10
Wisconsin	698	527	404	114	4	3	0	0	2	157	110	5	42	5	0	9
East North Central	9,120	7,649	5,694	1,742	126	37	6	3	41	1,381	1,084	38	259	29	3	58
Iowa	283	201	164	33	1	3	0	0	0	77	63	2	12	0	0	5
Minnesota	522	382	264	104	12	1	0	0	1	126	88	1	37	1	0	13
Missouri	1,159	943	715	186	18	17	0	0	7	211	160	7	44	4	0	1
North Dakota	49	43	28	15	0	0	0	0	0	5	1	1	3	0	0	1
South Dakota	38	29	28	1	0	0	0	0	0	9	9	0	0	0	0	0
Nebraska	123	95	68	27	0	0	0	0	0	27	20	0	7	0	0	1
Kansas	236	185	147	35	0	3	0	0	0	47	38	1	8	0	0	4
West North Central	2,410	1,878	1,414	401	31	24	0	0	8	502	379	12	111	5	0	25
Delaware	96	80	63	16	1	0	0	0	0	15	10	0	5	0	0	1
Maryland	639	546	393	149	3	0	1	0	0	87	75	0	12	1	0	5
District of Columbia	205	174	144	28	2	0	0	0	0	26	26	0	0	0	0	5
Virginia	487	416	323	93	0	0	0	0	0	71	62	1	8	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1994[1]—Continued

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
West Virginia	574	509	411	86	7	1	0	0	4	62	50	2	10	0	0	3
North Carolina	395	355	284	70	1	0	0	0	0	36	30	1	5	0	1	3
South Carolina	185	164	123	40	0	0	1	0	0	21	18	0	3	0	0	0
Georgia	780	697	535	160	2	0	0	0	0	77	56	1	20	0	0	6
Florida	1,263	1,121	946	170	4	1	0	0	0	139	127	2	10	0	0	3
South Atlantic	4,624	4,062	3,222	812	20	2	2	0	4	534	454	7	73	1	1	26
Kentucky	728	638	510	120	7	0	0	0	1	84	68	2	14	1	1	4
Tennessee	659	572	473	90	9	0	0	0	0	85	67	3	15	0	0	2
Alabama	474	400	346	54	0	0	0	0	0	71	55	1	15	0	1	2
Mississippi	227	208	181	27	0	0	0	0	0	19	15	0	4	0	0	0
East South Central	2,088	1,818	1,510	291	16	0	0	0	1	259	205	6	48	1	2	8
Arkansas	220	189	162	27	0	0	0	0	0	31	22	0	9	0	0	0
Louisiana	463	422	354	64	2	0	0	0	2	41	32	1	8	0	0	0
Oklahoma	259	219	184	33	0	1	0	0	1	38	28	0	10	1	0	1
Texas	1,169	1,053	815	236	2	0	0	0	0	114	84	4	26	0	1	1
West South Central	2,111	1,883	1,515	360	4	1	0	0	3	224	166	5	53	1	1	2
Montana	156	107	95	11	1	0	0	0	0	43	27	3	13	4	0	2
Idaho	100	85	76	9	0	0	0	0	0	15	12	0	3	0	0	0
Wyoming	72	68	62	6	0	0	0	0	0	4	4	0	0	0	0	0
Colorado	632	575	468	107	0	0	0	0	0	52	41	1	10	0	0	5
New Mexico	162	135	108	27	0	0	0	0	0	27	26	0	1	0	0	0
Arizona	336	285	194	90	1	0	0	0	0	48	38	2	8	0	0	3
Utah	129	107	96	10	0	0	0	0	1	21	19	0	2	0	0	1
Nevada	488	442	304	119	14	4	0	0	1	45	34	2	9	0	0	1
Mountain	2,075	1,804	1,403	379	16	4	0	0	2	255	201	8	46	4	0	12

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 1994[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	903	714	506	197	6	3	0	1	1	158	108	4	46	8	1	22
Oregon	646	545	276	248	18	1	1	0	1	93	64	12	17	1	0	7
California	4,522	3,846	2,781	975	54	11	0	7	18	633	488	32	113	11	2	30
Alaska	125	89	71	18	0	0	0	0	0	33	27	1	5	1	0	2
Hawaii	724	672	564	87	5	13	2	0	1	48	34	4	10	0	0	4
Guam	5	1	1	0	0	0	0	0	0	4	4	0	0	0	0	0
Pacific	6,925	5,867	4,199	1,525	83	28	3	8	21	969	725	53	191	21	3	65
Puerto Rico	326	242	201	40	0	0	0	1	0	79	75	0	4	1	0	4
Virgin Islands	27	21	17	4	0	0	0	0	0	6	6	0	0	0	0	0
Outlying areas	353	263	218	44	0	0	0	1	0	85	81	0	4	1	0	4
Total, all States and areas	40,856	34,782	26,058	7,817	532	211	27	23	114	5,629	4,432	173	1,024	90	14	341

[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 1994[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	636	535	417	104	10	1	0	1	2	96	85	2	9	2	0	3
Maine	158	132	114	17	0	0	0	1	0	22	18	0	4	0	0	4
Massachusetts	1,209	1,075	867	156	35	12	3	0	2	117	90	3	24	0	1	16
New Hampshire	83	68	57	9	0	1	1	0	0	14	9	0	5	0	0	1
Rhode Island	205	175	148	13	12	0	1	0	1	24	19	2	3	1	0	5
Vermont	85	81	76	5	0	0	0	0	0	3	3	0	0	0	0	1
Region I	2,376	2,066	1,679	304	57	14	5	2	5	276	224	7	45	3	1	30
Delaware	96	80	63	16	1	0	0	0	0	15	10	0	5	0	0	1
New Jersey	1,692	1,393	980	331	43	32	2	0	5	270	214	7	49	11	0	18
New York	4,515	3,946	2,607	1,165	91	51	5	9	18	490	388	16	86	6	2	71
Puerto Rico	326	242	201	40	0	0	0	1	0	79	75	0	4	1	0	4
Virgin Islands	27	21	17	4	0	0	0	0	0	6	6	0	0	0	0	0
Region II	6,656	5,682	3,868	1,556	135	83	7	10	23	860	693	23	144	18	2	94
District of Columbia	205	174	144	28	2	0	0	0	0	26	26	0	0	0	0	5
Maryland	639	546	393	149	3	0	1	0	0	87	75	0	12	1	0	5
Pennsylvania	2,567	2,153	1,617	463	45	18	4	0	6	384	311	14	59	7	1	22
Virginia	487	416	323	93	0	0	0	0	0	71	62	1	8	0	0	0
West Virginia	574	509	411	86	7	1	0	0	4	62	50	2	10	0	0	3
Region III	4,472	3,798	2,888	819	57	19	5	0	10	630	524	17	89	8	1	35
Alabama	474	400	346	54	0	0	0	0	0	71	55	1	15	0	1	2
Florida	1,263	1,121	946	170	4	1	0	0	0	139	127	2	10	0	0	3
Georgia	780	697	535	160	2	0	0	0	0	77	56	1	20	0	0	6
Kentucky	728	638	510	120	7	0	0	0	1	84	68	2	14	1	1	4
Mississippi	227	208	181	27	0	0	0	0	0	19	15	0	4	0	0	0
North Carolina	395	355	284	70	1	0	0	0	0	36	30	1	5	0	1	3

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1994[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	185	164	123	40	0	0	1	0	0	21	18	0	3	0	0	0
Tennessee	659	572	473	90	9	0	0	0	0	85	67	3	15	0	0	2
Region IV	4,711	4,155	3,398	731	23	1	1	0	1	532	436	10	86	1	3	20
Illinois	2,351	1,949	1,352	475	70	26	0	0	26	383	292	18	73	8	2	9
Indiana	1,352	1,181	902	255	11	5	2	0	6	159	125	5	29	2	0	10
Michigan	2,363	1,979	1,454	490	23	2	2	2	6	363	292	5	66	10	1	10
Minnesota	522	382	264	104	12	1	0	0	1	126	88	1	37	1	0	13
Ohio	2,356	2,013	1,582	408	18	1	2	1	1	319	265	5	49	4	0	20
Wisconsin	698	527	404	114	4	3	0	0	2	157	110	5	42	5	0	9
Region V	9,642	8,031	5,958	1,846	138	38	6	3	42	1,507	1,172	39	296	30	3	71
Arkansas	220	189	162	27	0	0	0	0	0	31	22	0	9	0	0	0
Louisiana	463	422	354	64	2	0	0	0	2	41	32	1	8	0	0	0
New Mexico	162	135	108	27	0	0	0	0	0	27	26	0	1	0	0	0
Oklahoma	259	219	184	33	0	1	0	0	1	38	28	0	10	1	0	1
Texas	1,169	1,053	815	236	2	0	0	0	0	114	84	4	26	0	1	1
Region VI	2,273	2,018	1,623	387	4	1	0	0	3	251	192	5	54	1	1	2
Iowa	283	201	164	33	1	3	0	0	0	77	63	2	12	0	0	5
Kansas	236	185	147	35	0	3	0	0	0	47	38	1	8	0	0	4
Missouri	1,159	943	715	186	18	17	0	0	7	211	160	7	44	4	0	1
Nebraska	123	95	68	27	0	0	0	0	0	27	20	0	7	0	0	1
Region VII	1,801	1,424	1,094	281	19	23	0	0	7	362	281	10	71	4	0	11
Colorado	632	575	468	107	0	0	0	0	0	52	41	1	10	0	0	5
Montana	156	107	95	11	1	0	0	0	0	43	27	3	13	4	0	2
North Dakota	49	43	28	15	0	0	0	0	0	5	1	1	3	0	0	1
South Dakota	38	29	28	1	0	0	0	0	0	9	9	0	0	0	0	0
Utah	129	107	96	10	0	0	0	0	1	21	19	0	2	0	0	1
Wyoming	72	68	62	6	0	0	0	0	0	4	4	0	0	0	0	0
Region VIII	1,076	929	777	150	1	0	0	0	1	134	101	5	28	4	0	9

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 1994[1]—Continued

Standard Federal Regions[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Arizona	336	285	194	90	1	0	0	0	0	48	38	2	8	0	0	3
California	4,522	3,846	2,781	975	54	11	0	7	18	633	488	32	113	11	2	30
Hawaii	724	672	564	87	5	13	2	0	1	48	34	4	10	0	0	4
Guam	5	1	1	0	0	0	0	0	0	4	4	0	0	0	0	0
Nevada	488	442	304	119	14	4	0	0	1	45	34	2	9	0	0	1
Region IX	6,075	5,246	3,844	1,271	74	28	2	7	20	778	598	40	140	11	2	38
Alaska	125	89	71	18	0	0	0	0	0	33	27	1	5	1	0	2
Idaho	100	85	76	9	0	0	0	0	0	15	12	0	3	0	0	0
Oregon	646	545	276	248	18	1	1	0	1	93	64	12	17	1	0	7
Washington	903	714	506	197	6	3	0	1	1	158	108	4	46	8	1	22
Region X	1,774	1,433	929	472	24	4	1	1	2	299	211	17	71	10	1	31
Total, all States and areas	40,856	34,782	26,058	7,817	532	211	27	23	114	5,629	4,432	173	1,024	90	14	341

[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 1994[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	32,346	100.0	——	23,705	100.0	7,660	100.0	624	100.0	186	100.0	35	100.0	27	100.0	109	100.0
Agreement of the parties	9,795	30.3	100.0	8,304	35.0	1,098	14.3	317	50.8	7	3.7	14	40.0	10	37.0	45	41.2
Informal settlement	9,601	29.7	98.0	8,165	34.3	1,066	13 9	295	47.2	7	3.7	14	40.0	10	37.0	44	40.3
Before issuance of complaint	6,900	21.3	70.4	5,793	24.3	818	10.6	237	37.9	(2)	——	8	22 8	9	33.3	35	32 1
After issuance of complaint, before opening of hearing	2,674	8.3	27.4	2,348	9.9	248	3.2	58	9.2	4	2.1	6	17.1	1	3.7	9	8.2
After hearing opened, before issuance of administrative law judge's decision	27	0.1	0.3	24	0.1	0	——	0	——	3	1.6	0	——	0	——	0	——
Formal settlement	194	0.6	2.0	139	0.5	32	0.4	22	3.5	0	——	0	——	0	——	1	0.9
After issuance of complaint, before opening of hearing	89	0.3	0.9	41	0.1	28	0.3	20	3.2	0	——	0	——	0	——	0	——
Stipulated decision	4	0.0	0.0	4	0.0	0	——	0	——	0	——	0	——	0	——	0	——
Consent decree	85	0.3	0 9	37	0.1	28	0.3	20	3.2	0	——	0	——	0	——	0	——
After hearing opened	105	0.3	1.1	98	0.4	4	0.0	2	0.3	0	——	0	——	0	——	1	0.9
Stipulated decision	5	0.0	0.1	5	0.0	0	——	0	——	0	——	0	——	0	——	0	——
Consent decree	100	0.3	1.0	93	0.3	4	0.0	2	0.3	0	——	0	——	0	——	1	0.9
Compliance with	815	2.5	100.0	695	2.9	96	1.2	22	3.5	0	——	0	——	1	3.7	1	0.9

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1994[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	46	0.1	5.6	43	0.1	3	0 0	0	—	0	—	0	—	0	—	0	—
Board decision	491	1.5	60.2	411	1.7	68	0 8	10	1.6	0	—	0	—	1	3 7	1	0.9
Adopting administrative law judge's decision (no exceptions filed)	251	0.8	30.8	207	0.8	41	0 5	2	0.3	0	—	0	—	0	—	1	0.9
Contested	240	0.7	29.4	204	0.8	27	0.3	8	1.2	0	—	0	—	1	3.7	0	—
Circuit court of appeals decree	274	0.8	33.6	237	0.9	25	0.3	12	1.9	0	—	0	—	0	—	0	—
Supreme Court action	4	0.0	0.5	4	0.0	0	—	0	—	0	—	0	—	0	—	0	—
Withdrawal	9,951	30.8	100.0	7,705	32.5	2,014	26 2	177	28.3	1	0.5	9	25.7	10	37.0	35	32.1
Before issuance of complaint	9,667	29.9	97.2	7,473	31.5	1,969	25 7	174	27.8	(2)	—	9	25.7	7	25.9	35	32.1
After issuance of complaint, before opening of hearing	259	0.8	2.6	212	0.8	40	0.5	3	0.4	1	0.5	0	—	3	11.1	0	—
After hearing opened, before administrative law judge's decision	18	0.1	0.2	13	0.0	5	0.0	0	—	0	—	0	—	0	—	0	—
After administrative law judge's decision, before Board decision	7	0.1	0.0	7	0.0	0	—	0	—	0	—	0	—	0	—	0	—
After Board or court decision	0	—	0.0	0	—	0	—	0	—	0	—	0	—	0	—	0	—
Dismissal	11,476	35.5	100.0	6,877	29.0	4,445	58.0	108	17.3	0	—	12	34.2	6	22.2	28	25 6
Before issuance of complaint	11,271	34.8	98.3	6,722	28.3	4,399	57.4	105	16.8	(2)	—	12	34.2	6	22 2	27	24.7
After issuance of complaint, before opening of hearing	122	0.4	1.1	88	0.3	30	0 3	3	0.4	0	—	0	—	0	—	1	0.9
After hearing opened, before administrative law judge's decision	8	0.0	0.1	4	0.0	4	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	63	0.2	0.5	56	0.2	7	0.0	0	—	0	—	0	—	0	—	0	—
Adopting administrative law judge's decision (no exceptions filed)	39	0.1	0.2	34	0.0	5	0.0	0	—	0	—	0	—	0	—	0	—
Contested	24	0.1	0.3	22	0.1	2	0.0	0	—	0	—	0	—	0	—	0	—

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 1994[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	12	0.0	0 1	5	0.0	7	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)	177	0.5	0.0	0	—	0	—	0	—	177	95.1	0	—	0	—	0	—
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	132	0.4	0.0	125	0.5	6	0.0	0	—	1	0.5	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 1994[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	177	100.0
Agreement of the parties—informal settlement	72	40.7
Before 10(k) notice	48	27.1
After 10(k) notice, before opening of 10(k) hearing	21	11.9
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	3	1.7
Compliance with Board decision and determination of dispute	4	2.3
Withdrawal	68	38.4
Before 10(k) notice	54	30.5
After 10(k) notice, before opening of 10(k) hearing	13	7.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	1	0.6
After Board decision and determination of dispute	0	0.0
Dismissal	33	18.6
Before 10(k) notice	31	17.5
After 10(k) notice, before opening of 10(k) hearing	2	1.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
By Board decision and determination of dispute	0	0.0

[1] See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 1994[1]

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed	Number	Percent of cases closed
Total number of cases closed	32,346	100.0	23,706	100.0	7,659	100.0	624	100.0	186	100.0	35	100.0	27	100.0	109	100.0
Before issuance of complaint	28,031	86.7	20,004	84.5	7,186	93.8	516	82.7	177	95.2	29	82.9	22	81.5	97	89.0
After issuance of complaint, before opening of hearing	3,144	9.7	2,689	11.3	346	4.5	84	13.5	5	2.7	6	17.1	4	14.8	10	9.2
After hearing opened, before issuance of administrative law judge's decision	158	0.5	139	0.6	13	0.2	2	0.3	3	1.6	0	—	0	—	1	0.9
After administrative law judge's decision, before issuance of Board decision	75	0.2	72	0.3	3	0.0	0	—	0	—	0	—	0	—	0	—
After Board order adopting administrative law judge's decision in absence of exceptions	308	1.0	264	1.1	41	0.5	2	0.3	0	—	0	—	0	—	1	0.9
After Board decision, before circuit court decree	296	0.9	248	1.0	38	0.5	8	1.3	1	0.5	0	—	1	3.7	0	—
After circuit court decree, before Supreme Court action	330	1.0	286	1.2	32	0.4	12	1.9	0	—	0	—	0	—	0	—
After Supreme Court action	4	0.0	4	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 1994[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	5,802	100.0	4,601	100.0	201	100.0	1,000	100.0	85	100.0
Before issuance of notice of hearing	1,834	31.6	1,184	25.7	103	51.2	547	54.7	69	81.2
After issuance of notice, before close of hearing	3,149	54.3	2,698	58.6	78	38 8	373	37.3	5	5.9
After hearing closed, before issuance of decision	62	1.1	53	1.2	3	1.5	6	0.6	0	—
After issuance of Regional Director's decision	757	13.0	666	14.5	17	8.5	74	7.4	11	12.9
After issuance of Board decision	0	—	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.

Table 10.—Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 1994[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	5,802	100.0	4,601	100.0	201	100.0	1,000	100.0	85	100.0
Certification issued, total	3,714	64.0	3,111	67.6	78	38.8	525	52.5	44	51.8
After:										
Consent election	22	0.4	17	0.4	3	1.5	2	0.2	0	—
Before notice of hearing	7	0.1	6	0.1	1	0.5	0	—	0	—
After notice of hearing, before hearing closed	13	0.2	9	0.2	2	1.0	2	0.2	0	—
After hearing closed, before decision	2	0.0	2	0.0	0	—	0	—	0	—
Stipulated election	3,130	53.9	2,601	56.5	65	32.3	464	46.4	34	40.0
Before notice of hearing	1,024	17.6	733	15.9	32	15.9	259	25.9	32	37.6
After notice of hearing, before hearing closed	2,086	35.9	1,849	40.1	32	15.9	205	20.5	2	2.4
After hearing closed, before decision	20	0.3	19	0.4	1	0.5	0	—	0	—
Expedited election	2	0.0	1	0.0	1	0.5	0	—	0	—
Regional Director-directed election	535	9.2	471	10.2	8	4.0	56	5.6	10	11.8
Board-directed election	25	0.4	21	0.5	1	0.5	3	0.3	0	—
By withdrawal, total	1,718	29.6	1,309	28.5	81	40.3	328	32.8	32	37.6
Before notice of hearing	609	10.5	376	8.2	45	22.4	188	18.8	29	34.1
After notice of hearing, before hearing closed	980	16.9	821	17.8	32	15.9	127	12.7	2	2.4
After hearing closed, before decision	26	0.4	19	0.4	2	1.0	5	0.5	0	—
After Regional Director's decision and direction of election	103	1.8	93	2.0	2	1.0	8	0.8	1	1.2
After Board decision and direction of election	0	—	0	—	0	—	0	—	0	—
By dismissal, total	370	6.4	181	3.9	42	20.9	147	14.7	9	10.6
Before notice of hearing	161	2.8	42	0.9	22	10.9	97	9.7	8	9.4
After notice of hearing, before hearing closed	82	1.4	31	0.7	12	6.0	39	3.9	1	1.2
After hearing closed, before decision	2	0.0	1	0.0	0	—	1	0.1	0	—
By Regional Director's decision	119	2.1	102	2.2	7	3.5	10	1.0	0	—
By Board decision	6	0.1	5	0.1	1	0.5	0	—	0	—

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed, Fiscal Year 1994

	AC	UC
Total, all	10	308
Certification amended or unit clarified	1	47
Before hearing	0	0
By Regional Director's decision	0	0
By Board decision	0	0
After hearing	1	47
By Regional Director's decision	1	47
By Board decision	0	0
Dismissed	2	78
Before hearing	0	17
By Regional Director's decision	0	17
By Board decision	0	0
After hearing	2	61
By Regional Director's decision	2	61
By Board decision	0	0
Withdrawn	7	183
Before hearing	7	178
After hearing	0	5

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 1994[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	3,604	18	2,988	9	588	1
Eligible voters	212,637	1,156	170,788	2,240	38,447	6
Valid votes	187,165	1,036	151,219	1,861	33,046	3
RC cases:						
Elections	3,020	15	2,482	9	514	0
Eligible voters	186,339	1,095	148,249	2,240	34,755	0
Valid votes	164,044	983	131,318	1,861	29,882	0
RD cases						
Elections	59	2	48	0	8	1
Eligible voters	2,560	58	1,783	0	713	6
Valid votes	2,293	50	1,555	0	685	3
RD cases:						
Elections	493	1	437	0	55	0
Eligible voters	21,935	3	19,337	0	2,595	0
Valid votes	19,417	3	17,240	0	2,174	0
UD cases:						
Elections	32	0	21	0	11	—
Eligible voters	1,803	0	1,419	0	384	—
Valid votes	1,411	0	1,106	0	305	—

[1] See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 1994

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	3,752	86	94	3,572	3,182	80	82	3,020	62	0	3	59	508	6	9	493
Rerun required	—	—	79	—	—	—	68	—	—	—	3	—	—	—	8	—
Runoff required	—	—	15	—	—	—	14	—	—	—	0	—	—	—	1	—
Consent elections	20	2	0	18	17	2	0	15	2	0	0	2	1	0	0	1
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Stipulated elections	3,108	65	76	2,967	2,609	61	66	2,482	49	0	1	48	450	4	9	437
Rerun required	—	—	64	—	—	—	55	—	—	—	1	—	—	—	8	—
Runoff required	—	—	12	—	—	—	11	—	—	—	0	—	—	—	1	—
Regional Director-directed	613	19	17	577	547	17	16	514	9	0	1	8	57	2	0	55
Rerun required	—	—	14	—	—	—	13	—	—	—	1	—	—	—	0	—
Runoff required	—	—	3	—	—	—	3	—	—	—	0	—	—	—	0	—
Board-directed	9	0	0	9	9	0	0	9	0	0	0	0	0	0	0	0
Rerun required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Runoff required	—	—	0	—	—	—	0	—	—	—	0	—	—	—	0	—
Expedited—Sec. 8(b)(7)(C)	2	0	1	1	0	0	0	0	2	0	1	1	0	0	0	0
Rerun required	—	—	1	—	—	—	0	—	—	—	1	—	—	—	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 1994

	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	3,752	152	4.1	83	2.2	25	0.7	177	4 7	108	2 9
By type of case											
In RC cases	3,182	127	4 0	68	2.1	22	0 7	149	4.7	90	2.8
In RM cases	62	1	1 6	4	6.5	0	—	1	1.6	4	6.5
In RD cases	508	24	4 7	11	2 2	3	0 6	27	5 3	14	2.8
By type of election:											
Consent elections	20	0	—	0	—	0	—	0	—	0	—
Stipulated elections	3,108	119	3.8	62	2.0	17	0.6	136	4.4	79	2.5
Expedited elections	2	0	—	1	50.0	0	—	0	—	1	50.0
Regional Director-directed elections	613	33	5 4	20	3.3	8	1 3	41	6.7	28	4.6
Board-directed elections	9	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 1994[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	263	100.0	101	38.4	157	59.7	5	1 9
By type of case								
RC cases	225	100.0	93	41.3	129	57.4	3	1.3
RM cases	2	100.0	2	100.0	0	—	0	—
RD cases	36	100.0	6	16.7	28	77.7	2	5.6
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	206	100.0	76	36.9	127	61.6	3	1.5
Expedited elections	1	100.0	1	100.0	0	—	0	—
Regional Director-directed elections	56	100.0	24	42.8	30	53.6	2	3.6
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 1994[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	263	86	177	142	80.2	35	19.8
By type of case:							
RC cases	225	76	149	120	80.5	29	19.5
RM cases	2	1	1	1	100.0	0	—
RD cases	36	9	27	21	77 8	6	22.2
By type of election:							
Consent elections	0	0	0	0	—	0	—
Stipulated elections	206	70	136	107	78.7	29	21.3
Expedited elections	1	1	0	0	—	0	—
Regional Director-directed elections	56	15	41	35	85.4	6	14.6
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 4 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 1994[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	75	100.0	28	37.3	47	62.7	24	32.0
By type of case.								
RC cases	64	100.0	24	37 5	40	62.5	21	32.8
RM cases	3	100.0	1	33.3	2	66.7	1	33.3
RD cases	8	100.0	3	37.5	5	62.5	2	25.0
By type of election:								
Consent elections	0	—	0	—	0	—	0	—
Stipulated elections	61	100.0	26	42.6	35	57.4	22	36.1
Expedited elections	1	100.0	0	—	1	100.0	0	—
Regional Director-directed elections	13	100.0	2	15.4	11	84 6	2	15.4
Board-directed elections	0	—	0	—	0	—	0	—

[1] See Glossary of terms for definitions.
[2] More than 1 rerun election was conducted in 4 cases; however, only the final election is included in this table.

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 1994

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	32	10	31.3	22	68.7	1,803	474	26.3	1,329	73.7	1,411	78.3	369	20 5
AFL–CIO unions	30	9	30.0	21	70.0	1,719	427	24 8	1,292	75.2	1,349	78 5	333	19 4
Other national unions	1	1	100 0	0	—	47	47	100 0	0	—	36	76 6	36	76 6
Other local unions	1	0	—	1	100.0	37	0	—	37	100.0	26	70 3	0	—

[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 1994[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
	A. All representation elections												
AFL–CIO	3,151	43.7	1,377	1,377	—	—	1,774	182,023	67,831	67,831	—	—	114,192
Other national unions	113	58.4	66	—	66	—	47	7,321	3,184	—	3,184	—	4,137
Other local unions	173	61.3	106	—	—	106	67	8,460	4,273	—	—	4,273	4,187
1-union elections	3,437	45.1	1,549	1,377	66	106	1,888	197,804	75,288	67,831	3,184	4,273	122,516
AFL–CIO v. AFL–CIO	52	73.1	38	38	—	—	14	4,042	2,672	2,672	—	—	1,370
AFL–CIO v. National	11	100.0	11	4	7	—	0	948	948	170	778	—	0
AFL–CIO v. Local	50	94.0	47	27	—	20	3	5,108	4,420	3,109	—	1,311	688
National v. Local	2	100.0	2	—	2	0	0	390	390	—	390	0	0
National v. National	3	100.0	3	—	3	—	0	83	83	—	83	—	0
Local v. Local	9	88.9	8	—	—	8	1	1,359	930	—	—	930	429
2-union elections	127	85.8	109	69	12	28	18	11,930	9,443	5,951	1,251	2,241	2,487
AFL–CIO v. AFL–CIO v. AFL–CIO	3	66.7	2	2	—	—	1	367	139	139	—	—	228
AFL–CIO v. AFL–CIO v. National	1	100.0	1	1	0	—	0	191	191	191	0	—	
AFL–CIO v. AFL–CIO v. Local	3	100.0	3	1	—	2	0	264	264	89	—	175	0
AFL–CIO v National v. Local	1	100.0	1	1	0	0	0	278	278	278	0	0	0
3 (or more)-union elections	8	87.5	7	5	0	2	1	1,100	872	697	0	175	228
Total representation elections	3,572	46.6	1,665	1,451	78	136	1,907	210,834	85,603	74,479	4,435	6,689	125,231

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1994[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL–CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL–CIO unions	Other national unions	Other local unions	
	B. Elections in RC cases												
AFL–CIO	2,633	46.1	1,213	1,213	—	—	1,420	159,773	57,507	57,507	—	—	102,266
Other national unions	103	57.3	59	—	59	—	44	6,176	2,127	—	2,127	—	4,049
Other local unions	155	63.2	98	—	—	98	57	7,748	4,065	—	—	4,065	3,683
1-union elections	2,891	47.4	1,370	1,213	59	98	1,521	173,697	63,699	57,507	2,127	4,065	109,998
AFL–CIO v. AFL–CIO	50	74.0	37	37	—	—	13	4,009	2,656	2,656	—	—	1,353
AFL–CIO v. National	11	100.0	11	4	7	—	0	948	948	170	778	—	0
AFL–CIO v. Local	47	93.6	44	25	—	19	3	4,780	4,092	2,864	—	1,228	688
National v. Local	2	100.0	2	—	2	0	0	390	390	—	390	0	0
National v. National	2	100.0	2	—	2	—	0	56	56	—	56	—	0
Local v. Local	9	88.9	8	—	—	8	1	1,359	930	—	—	930	429
2-union elections	121	86.0	104	66	11	27	17	11,542	9,072	5,690	1,224	2,158	2,470
AFL–CIO v. AFL–CIO v. AFL–CIO	3	66.7	2	2	—	—	1	367	139	139	—	—	228
AFL–CIO v. AFL–CIO v. National	1	100.0	1	1	0	—	0	191	191	191	0	—	0
AFL–CIO v. AFL–CIO v. Local	3	100.0	3	1	—	2	0	264	264	89	—	175	0
AFL–CIO v. National v. Local	1	100.0	1	1	0	0	0	278	278	278	0	0	0
3 (or more)-union elections	8	87.5	7	5	0	2	1	1,100	872	697	0	175	228
Total RC elections	3,020	49.0	1,481	1,284	70	127	1,539	186,339	73,643	63,894	3,351	6,398	112,696
	C. Elections in RM cases												
AFL–CIO	57	24 6	14	14	—	—	43	2,094	581	581	—	—	1,513
Other national unions	1	100.0	1	—	1	—	0	425	425	—	425	—	0
Other local unions	1	100.0	1	—	—	1	0	41	41	—	—	41	0
1-union elections	59	27.1	16	14	1	1	43	2,560	1,047	581	425	41	1,513
Total RM elections	59	27.1	16	14	1	1	43	2,560	1,047	581	425	41	1,513

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 1994[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	
	D. Elections in RD cases												
AFL–CIO	461	32.5	150	150	—	—	311	20,156	9,743	9,743	—	—	10,413
Other national unions	9	66.7	6	—	6	—	3	720	632	—	632	—	88
Other local unions	17	41.2	7	—	—	7	10	671	167	—	—	167	504
1-union elections	487	33 5	163	150	6	7	324	21,547	10,542	9,743	632	167	11,005
AFL–CIO v. AFL–CIO	2	50.0	1	1	—	—	1	33	16	16	—	—	17
AFL–CIO v. Local	3	100.0	3	2	—	1	0	328	328	245	—	83	0
National v. National	1	100.0	1	—	1	—	0	27	27	—	27	—	0
2-union elections	6	83.3	5	3	1	1	1	388	371	261	27	83	17
Total RD elections	493	34.1	168	153	7	8	325	21,935	10,913	10,004	659	250	11,022

[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 1994[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	161,568	39,611	39,611	—	—	19,667	33,591	33,591	—	—	68,699
Other national unions	6,526	1,921	—	1,921	—	910	1,258	—	1,258	—	2,437
Other local unions	7,166	2,548	—	—	2,548	900	1,200	—	—	1,200	2,518
1-union elections	175,260	44,080	39,611	1,921	2,548	21,477	36,049	33,591	1,258	1,200	73,654
AFL–CIO v. AFL–CIO	3,313	1,856	1,856	—	—	266	414	414	—	—	777
AFL–CIO v. National	773	740	222	518	—	33	0	0	0	—	0
AFL–CIO v. Local	3,980	3,148	1,864	—	1,284	222	226	160	—	66	384
National v. Local	358	246	—	234	12	112	0	—	0	0	0
National v. National	80	69	—	69	—	11	0	—	0	—	0
Local v. Local	1,082	669	—	—	669	91	59	—	—	59	263
2-union elections	9,586	6,728	3,942	821	1,965	735	699	574	0	125	1,424
AFL–CIO v. AFL–CIO v. AFL–CIO	311	102	102	—	—	1	103	103	—	—	105
AFL–CIO v. AFL–CIO v. National	149	148	105	43	—	1	0	0	—	0	0
AFL–CIO v. AFL–CIO v. Local	240	226	107	—	119	14	0	0	—	0	0
AFL–CIO v. National v. Local	208	208	118	86	4	0	0	0	0	0	0
3 (or more)-union elections	908	684	432	129	123	16	103	103	0	0	105
Total representation elections	185,754	51,492	43,985	2,871	4,636	22,228	36,851	34,268	1,258	1,325	75,183

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1994[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
	B. Elections in RC cases										
AFL–CIO	141,884	33,714	33,714	—	—	16,368	30,416	30,416	—	—	61,386
Other national unions	5,442	1,270	—	1,270	—	547	1,233	—	1,233	—	2,392
Other local unions	6,527	2,408	—	—	2,408	867	1,042	—	—	1,042	2,210
1-union elections	153,853	37,392	33,714	1,270	2,408	17,782	32,691	30,416	1,233	1,042	65,988
AFL–CIO v. AFL–CIO	3,283	1,843	1,843	—	—	266	408	408	—	—	766
AFL–CIO v. National	773	740	222	518	—	33	0	0	0	—	0
AFL–CIO v. Local	3,733	2,920	1,738	—	1,182	203	226	160	—	66	384
National v. Local	358	246	—	234	12	112	0	—	0	0	0
National v. National	54	44	—	44	—	10	0	—	0	—	0
Local v Local	1,082	669	—	—	669	91	59	—	—	59	263
2-union elections	9,283	6,462	3,803	796	1,863	715	693	568	0	125	1,413
AFL–CIO v. AFL–CIO v. AFL–CIO	311	102	102	—	—	1	103	103	—	—	105
AFL–CIO v. AFL–CIO v. National	149	148	105	43	—	1	0	0	0	—	0
AFL–CIO v. AFL–CIO v. Local	240	226	107	—	119	14	0	0	—	0	0
AFL–CIO v. National v. Local	208	208	118	86	4	0	0	0	0	0	0
3 (or more)-union elections	908	684	432	129	123	16	103	103	0	0	105
Total RC elections	164,044	44,538	37,949	2,195	4,394	18,513	33,487	31,087	1,233	1,167	67,506
	C. Elections in RM cases										
AFL–CIO	1,842	317	317	—	—	205	373	373	—	—	947
Other national unions	425	271	—	271	—	154	0	—	0	—	0
Other local unions	26	26	—	—	26	0	0	—	—	0	0
1-union elections	2,293	614	317	271	26	359	373	373	0	0	947
Total RM elections	2,293	614	317	271	26	359	373	373	0	0	947

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 1994[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL–CIO unions	Other national unions	Other local unions		Total	AFL–CIO unions	Other national unions	Other local unions	
	D. Elections in RD cases										
AFL–CIO	17,842	5,580	5,580	—	—	3,094	2,802	2,802	—	—	6,366
Other national unions	659	380	—	380	—	209	25	—	25	—	45
Other local unions	613	114	—	—	114	33	158	—	—	158	308
1-union elections	19,114	6,074	5,580	380	114	3,336	2,985	2,802	25	158	6,719
AFL–CIO v. AFL–CIO	30	13	13	—	—	0	6	6	—	—	11
AFL–CIO v. Local	247	228	126	—	102	19	0	0	—	0	0
National v. National	26	25	—	25	—	1	0	—	0	—	0
2-union elections	303	266	139	25	102	20	6	6	0	0	11
Total RD elections	19,417	6,340	5,719	405	216	3,356	2,991	2,808	25	158	6,730

[1] See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1994

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	14	5	4	1	0	9	1,215	1,165	436	309	127	0	729	242
New Hampshire	5	2	2	0	0	3	203	187	88	88	0	0	99	54
Vermont	2	2	2	0	0	0	88	78	66	66	0	0	12	88
Massachusetts	82	41	38	2	1	41	5,821	5,309	2,619	2,121	489	9	2,690	3,088
Rhode Island	15	8	8	0	0	7	2,576	2,177	1,249	1,249	0	0	928	2,215
Connecticut	51	28	22	0	6	23	2,640	2,207	997	898	0	99	1,210	1,040
New England	169	86	76	3	7	83	12,543	11,123	5,455	4,731	616	108	5,668	6,727
New York	302	174	135	13	26	128	15,791	12,986	7,441	5,926	528	987	5,545	9,606
New Jersey	175	74	67	2	5	101	8,886	7,435	3,772	3,067	187	518	3,663	3,522
Pennsylvania	251	116	95	9	12	135	14,267	12,492	6,287	4,969	361	957	6,205	6,426
Middle Atlantic	728	364	297	24	43	364	38,944	32,913	17,500	13,962	1,076	2,462	15,413	19,554
Ohio	219	89	81	5	3	130	15,497	13,902	5,993	5,724	125	144	7,909	4,026
Indiana	103	43	38	3	2	60	5,913	5,663	2,469	2,383	80	6	3,194	1,560
Illinois	188	80	72	2	6	108	9,699	8,773	3,819	3,276	175	368	4,954	3,314
Michigan	225	99	96	2	1	126	11,502	10,345	4,518	4,317	129	72	5,827	3,553
Wisconsin	105	46	42	4	0	59	4,895	4,360	2,103	1,712	348	43	2,257	2,424
East North Central	840	357	329	16	12	483	47,506	43,043	18,902	17,412	857	633	24,141	14,877
Iowa	51	23	21	1	1	28	2,087	1,790	832	750	24	58	958	915
Minnesota	88	41	37	2	2	47	4,102	3,393	1,541	1,393	39	109	1,852	1,574
Missouri	148	76	74	1	1	72	6,818	6,280	3,035	2,919	11	105	3,245	2,744
North Dakota	4	2	2	0	0	2	196	142	59	59	0	0	83	74
South Dakota	7	3	3	0	0	4	505	466	193	193	0	0	273	129
Nebraska	16	5	4	1	0	11	931	770	267	256	11	0	503	78
Kansas	30	13	13	0	0	17	2,198	1,958	882	882	0	0	1,076	621
West North Central	344	163	154	5	4	181	16,837	14,799	6,809	6,452	85	272	7,990	6,135

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1994—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Delaware	11	7	7	0	0	4	882	787	395	370	0	25	392	308
Maryland	43	18	17	0	1	25	2,487	2,162	957	932	0	25	1,205	777
District of Columbia	17	11	5	0	6	6	1,024	851	504	258	0	246	347	789
Virginia	48	30	27	2	1	18	6,100	5,443	2,859	2,780	66	13	2,584	3,346
West Virginia	43	22	19	3	0	21	3,612	3,106	1,335	1,287	48	0	1,771	917
North Carolina	22	7	7	0	0	15	1,791	1,658	603	603	0	0	1,055	385
South Carolina	17	7	6	0	1	10	3,077	2,655	965	924	0	41	1,690	184
Georgia	48	16	15	1	0	32	4,296	3,929	1,849	1,809	40	0	2,080	1,746
Florida	86	34	25	3	6	52	5,631	5,426	2,423	2,032	77	314	3,003	2,596
South Atlantic	335	152	128	9	15	183	28,900	26,017	11,890	10,995	231	664	14,127	11,048
Kentucky	59	25	23	2	0	34	5,295	4,876	2,286	1,971	315	0	2,590	2,136
Tennessee	49	15	15	0	0	34	5,130	4,669	1,836	1,799	0	37	2,833	1,053
Alabama	42	18	17	1	0	24	3,722	3,342	1,554	1,478	76	0	1,788	784
Mississippi	14	2	2	0	0	12	1,352	1,271	397	382	0	15	874	53
East South Central	164	60	57	3	0	104	15,499	14,158	6,073	5,630	391	52	8,085	4,026
Arkansas	22	8	8	0	0	14	2,873	2,654	1,182	1,182	0	0	1,472	268
Louisiana	33	16	15	1	0	17	2,253	2,007	1,002	881	118	3	1,005	1,214
Oklahoma	32	12	11	1	0	20	1,702	1,578	755	733	22	0	823	575
Texas	79	35	27	1	7	44	6,219	5,691	2,599	2,231	101	267	3,092	2,820
West South Central	166	71	61	3	7	95	13,047	11,930	5,538	5,027	241	270	6,392	4,877
Montana	27	11	7	4	0	16	959	844	392	201	168	23	452	520
Idaho	11	7	7	0	0	4	130	114	68	68	0	0	46	104
Wyoming	3	0	0	0	0	3	62	55	22	22	0	0	33	0
Colorado	33	18	14	2	2	15	1,941	1,672	708	563	28	117	964	864
New Mexico	17	10	10	0	0	7	503	463	276	276	0	0	187	280
Arizona	26	12	12	0	0	14	1,487	1,305	509	507	0	2	796	199
Utah	17	12	9	2	1	5	769	683	324	200	121	3	359	509
Nevada	30	11	10	0	1	19	1,269	1,146	580	572	2	6	566	704
Mountain	164	81	69	8	4	83	7,120	6,282	2,879	2,409	319	151	3,403	3,180

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1994—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Washington	121	53	47	2	4	68	4,642	3,912	1,978	1,815	15	148	1,934	2,196
Oregon	58	27	20	1	6	31	2,271	1,901	986	725	20	241	915	999
California	384	195	176	4	15	189	18,464	15,485	8,062	7,446	278	338	7,423	9,460
Alaska	16	8	8	0	0	8	864	713	383	383	0	0	330	563
Hawaii	37	18	16	0	2	19	1,386	1,149	482	458	0	24	667	424
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	616	301	267	7	27	315	27,627	23,160	11,891	10,827	313	751	11,269	13,642
Puerto Rico	39	28	11	0	17	11	2,426	2,017	1,314	716	0	598	703	1,431
Virgin Islands	7	2	2	0	0	5	385	312	92	92	0	0	220	106
Outlying Areas	46	30	13	0	17	16	2,811	2,329	1,406	808	0	598	923	1,537
Total, all States and areas	3,572	1,665	1,451	78	136	1,907	210,834	185,754	88,343	78,253	4,129	5,961	97,411	85,603

[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 1994

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	12	5	4	1	0	7	953	914	353	226	127	0	561	242
New Hampshire	3	2	2	0	0	1	171	160	85	85	0	0	75	54
Vermont	2	2	2	0	0	0	88	78	66	66	0	0	12	88
Massachusetts	66	35	34	1	0	31	5,232	4,766	2,365	1,884	481	0	2,401	2,756
Rhode Island	14	8	8	0	0	6	2,561	2,162	1,247	1,247	0	0	915	2,215
Connecticut	50	27	22	0	5	23	2,596	2,165	966	898	0	68	1,199	996
New England	147	79	72	2	5	68	11,601	10,245	5,082	4,406	608	68	5,163	6,351
New York	268	156	122	12	22	112	14,881	12,239	6,997	5,602	512	883	5,242	8,938
New Jersey	158	71	64	2	5	87	8,328	6,947	3,595	2,890	187	518	3,352	3,396
Pennsylvania	221	109	89	8	12	112	12,522	11,010	5,497	4,256	336	905	5,513	5,481
Middle Atlantic	647	336	275	22	39	311	35,731	30,196	16,089	12,748	1,035	2,306	14,107	17,815
Ohio	192	81	73	5	3	111	14,306	12,872	5,528	5,261	123	144	7,344	3,461
Indiana	88	40	35	3	2	48	5,492	5,261	2,341	2,255	80	6	2,920	1,449
Illinois	163	73	66	1	6	90	8,229	7,450	3,192	2,743	171	278	4,258	2,885
Michigan	201	89	86	2	1	112	10,847	9,764	4,255	4,054	129	72	5,509	3,198
Wisconsin	84	41	37	4	0	43	3,695	3,321	1,622	1,231	348	43	1,699	1,658
East North Central	728	324	297	15	12	404	42,569	38,668	16,938	15,544	851	543	21,730	12,651
Iowa	43	21	19	1	1	22	1,675	1,494	704	622	24	58	790	761
Minnesota	76	36	32	2	2	40	3,757	3,102	1,390	1,261	39	90	1,712	1,407
Missouri	119	66	64	1	1	53	5,413	5,027	2,479	2,363	11	105	2,548	2,174
North Dakota	2	1	1	0	0	1	58	50	31	31	0	0	19	53
South Dakota	7	3	3	0	0	4	505	466	193	193	0	0	273	129
Nebraska	14	4	3	1	0	10	896	735	248	237	11	0	487	53
Kansas	25	11	11	0	0	14	1,973	1,749	772	772	0	0	977	485
West North Central	286	142	133	5	4	144	14,277	12,623	5,817	5,479	85	253	6,806	5,062

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1994—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	8	5	5	0	0	3	735	644	320	295	0	25	324	216
Maryland	41	17	17	0	0	24	2,436	2,113	936	922	0	14	1,177	756
District of Columbia	16	11	5	0	6	5	1,004	831	500	254	0	246	331	789
Virginia	44	28	25	2	1	16	5,955	5,313	2,815	2,736	66	13	2,498	3,306
West Virginia	35	20	17	3	0	15	3,221	2,774	1,165	1,117	48	0	1,609	711
North Carolina	20	6	6	0	0	14	1,743	1,611	582	582	0	0	1,029	356
South Carolina	16	7	6	0	1	9	3,024	2,604	954	913	0	41	1,650	184
Georgia	38	12	11	1	0	26	3,898	3,574	1,673	1,633	40	0	1,901	1,540
Florida	78	32	23	3	6	46	5,325	5,140	2,276	1,885	77	314	2,864	2,443
South Atlantic	296	138	115	9	14	158	27,341	24,604	11,221	10,337	231	653	13,383	10,301
Kentucky	52	22	20	2	0	30	4,921	4,525	2,108	1,815	293	0	2,417	1,898
Tennessee	40	13	13	0	0	27	4,530	4,172	1,641	1,604	0	37	2,531	844
Alabama	36	17	16	1	0	19	3,371	3,020	1,445	1,369	76	0	1,575	746
Mississippi	13	2	2	0	0	11	1,302	1,223	377	362	0	15	846	53
East South Central	141	54	51	3	0	87	14,124	12,940	5,571	5,150	369	52	7,369	3,541
Arkansas	16	5	5	0	0	11	2,391	2,208	972	972	0	0	1,236	142
Louisiana	28	12	12	0	0	16	1,468	1,294	538	532	3	3	756	454
Oklahoma	23	8	7	1	0	15	1,272	1,161	524	502	22	0	637	337
Texas	65	31	24	0	7	34	5,493	5,048	2,267	2,000	0	267	2,781	2,445
West South Central	132	56	48	1	7	76	10,624	9,711	4,301	4,006	25	270	5,410	3,378
Montana	20	9	6	3	0	11	580	483	222	168	31	23	261	248
Idaho	10	6	6	0	0	4	116	102	59	59	0	0	43	90
Wyoming	3	0	0	0	0	3	62	55	22	22	0	0	33	0
Colorado	28	14	10	2	2	14	1,576	1,329	521	376	28	117	808	570
New Mexico	16	10	10	0	0	6	461	424	259	259	0	0	165	280
Arizona	25	11	11	0	0	14	1,434	1,253	482	480	0	2	771	146
Utah	17	12	9	2	1	5	769	683	324	200	121	3	359	509
Nevada	24	11	10	0	1	13	1,102	994	528	520	2	6	466	704
Mountain	143	73	62	7	4	70	6,100	5,323	2,417	2,084	182	151	2,906	2,547

Table 15B.—Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed, Fiscal Year 1994—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Washington	97	46	41	2	3	51	3,717	3,085	1,621	1,516	15	90	1,464	1,971
Oregon	47	24	17	1	6	23	1,934	1,628	888	627	20	241	740	959
California	324	173	154	4	15	151	16,298	13,555	7,037	6,421	278	338	6,518	7,931
Alaska	14	7	7	0	0	7	709	560	280	280	0	0	280	431
Hawaii	31	15	13	0	2	16	1,063	870	344	320	0	24	526	215
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	513	265	232	7	26	248	23,721	19,698	10,170	9,164	313	693	9,528	11,507
Puerto Rico	39	28	11	0	17	11	2,426	2,017	1,314	716	0	598	703	1,431
Virgin Islands	7	2	2	0	0	5	385	312	92	92	0	0	220	106
Outlying Areas	46	30	13	0	17	16	2,811	2,329	1,406	808	0	598	923	1,537
Total, all States and area	3,079	1,497	1,298	71	128	1,582	188,899	166,337	79,012	69,726	3,699	5,587	87,325	74,690

[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 1994

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Maine	2	0	0	0	0	2	262	251	83	83	0	0	168	0
New Hampshire	2	0	0	0	0	2	32	27	3	3	0	0	24	0
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Massachusetts	16	6	4	1	1	10	589	543	254	237	8	9	289	332
Rhode Island	1	0	0	0	0	1	15	15	2	2	0	0	13	0
Connecticut	1	1	0	0	1	0	44	42	31	0	0	31	11	44
New England	22	7	4	1	2	15	942	878	373	325	8	40	505	376
New York	34	18	13	1	4	16	910	747	444	324	16	104	303	668
New Jersey	17	3	3	0	0	14	558	488	177	177	0	0	311	126
Pennsylvania	30	7	6	1	0	23	1,745	1,482	790	713	25	52	692	945
Middle Atlantic	81	28	22	2	4	53	3,213	2,717	1,411	1,214	41	156	1,306	1,739
Ohio	27	8	8	0	0	19	1,191	1,030	465	463	2	0	565	565
Indiana	15	3	3	0	0	12	421	402	128	128	0	0	274	111
Illinois	25	7	6	1	0	18	1,470	1,323	627	533	4	90	696	429
Michigan	24	10	10	0	0	14	655	581	263	263	0	0	318	355
Wisconsin	21	5	5	0	0	16	1,200	1,039	481	481	0	0	558	766
East North Central	112	33	32	1	0	79	4,937	4,375	1,964	1,868	6	90	2,411	2,226
Iowa	8	2	2	0	0	6	412	296	128	128	0	0	168	154
Minnesota	12	5	5	0	0	7	345	291	151	132	0	19	140	167
Missouri	29	10	10	0	0	19	1,405	1,253	556	556	0	0	697	570
North Dakota	2	1	1	0	0	1	138	92	28	28	0	0	64	21

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1994—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	2	1	1	0	0	1	35	35	19	19	0	0	16	25
Kansas	5	2	2	0	0	3	225	209	110	110	0	0	99	136
West North Central	58	21	21	0	0	37	2,560	2,176	992	973	0	19	1,184	1,073
Delaware	3	2	2	0	0	1	147	143	75	75	0	0	68	92
Maryland	2	1	0	0	1	1	51	49	21	10	0	11	28	21
District of Columbia	1	0	0	0	0	1	20	20	4	4	0	0	16	0
Virginia	4	2	2	0	0	2	145	130	44	44	0	0	86	40
West Virginia	8	2	2	0	0	6	391	332	170	170	0	0	162	206
North Carolina	2	1	1	0	0	1	48	47	21	21	0	0	26	29
South Carolina	1	0	0	0	0	1	53	51	11	11	0	0	40	0
Georgia	10	4	4	0	0	6	398	355	176	176	0	0	179	206
Florida	8	2	2	0	0	6	306	286	147	147	0	0	139	153
South Atlantic	39	14	13	0	1	25	1,559	1,413	669	658	0	11	744	747
Kentucky	7	3	3	0	0	4	374	351	178	156	22	0	173	238
Tennessee	9	2	2	0	0	7	600	497	195	195	0	0	302	209
Alabama	6	1	1	0	0	5	351	322	109	109	0	0	213	38
Mississippi	1	0	0	0	0	1	50	48	20	20	0	0	28	0
East South Central	23	6	6	0	0	17	1,375	1,218	502	480	22	0	716	485
Arkansas	6	3	3	0	0	3	482	446	210	210	0	0	236	126
Louisiana	5	4	3	1	0	1	785	713	464	349	115	0	249	760
Oklahoma	9	4	4	0	0	5	430	417	231	231	0	0	186	238
Texas	14	4	3	1	0	10	726	643	332	231	101	0	311	375
West South Central	34	15	13	2	0	19	2,423	2,219	1,237	1,021	216	0	982	1,499
Montana	7	2	1	1	0	5	379	361	170	33	137	0	191	272
Idaho	1	1	1	0	0	0	14	12	9	9	0	0	3	14
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado	5	4	4	0	0	1	365	343	187	187	0	0	156	294
New Mexico	1	0	0	0	0	1	42	39	17	17	0	0	22	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 1994—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Arizona	1	1	1	0	0	0	53	52	27	27	0	0	25	53
Utah	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	6	0	0	0	0	6	167	152	52	52	0	0	100	0
Mountain	21	8	7	1	0	13	1,020	959	462	325	137	0	497	633
Washington	24	7	6	0	1	17	925	827	357	299	0	58	470	225
Oregon	11	3	3	0	0	8	337	273	98	98	0	0	175	40
California	60	22	22	0	0	38	2,166	1,930	1,025	1,025	0	0	905	1,529
Alaska	2	1	1	0	0	1	155	153	103	103	0	0	50	132
Hawaii	6	3	3	0	0	3	323	279	138	138	0	0	141	209
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pacific	103	36	35	0	1	67	3,906	3,462	1,721	1,663	0	58	1,741	2,135
Puerto Rico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Outlying Areas	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total, all States and areas	493	168	153	7	8	325	21,935	19,417	9,331	8,527	430	374	10,086	10,913

[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 1994

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	159	69	67	0	2	90	12,352	11,162	4,999	4,987	0	12	6,163	3,316
Textile mill products	24	8	8	0	0	16	3,084	2,838	1,290	1,290	0	0	1,548	1,653
Apparel and other finished products made from fabric and similar materials	19	10	10	0	0	9	4,458	4,081	2,137	2,092	45	0	1,944	2,943
Lumber and wood products (except furniture)	54	18	18	0	0	36	4,599	4,159	1,739	1,646	0	93	2,420	1,144
Furniture and fixtures	34	15	15	0	0	19	2,920	2,659	1,249	1,120	12	117	1,410	1,091
Paper and allied products	43	13	10	1	2	30	3,130	2,878	1,222	1,155	4	63	1,656	886
Printing, publishing, and allied products	71	35	33	1	1	36	3,635	3,283	1,417	1,315	86	16	1,866	1,438
Chemicals and allied products	55	22	20	0	2	33	3,922	3,655	1,550	1,409	0	141	2,105	824
Petroleum refining and related industries	16	10	9	0	1	6	514	468	249	216	6	27	219	312
Rubber and miscellaneous plastic products	41	11	9	1	1	30	3,158	2,998	1,158	1,113	41	4	1,840	404
Leather and leather products	2	2	2	0	0	0	72	63	39	39	0	0	24	72
Stone, clay, glass, and concrete products	61	17	17	0	0	44	3,369	3,169	1,170	1,167	0	3	1,999	446
Primary metal industries	76	32	29	0	3	44	4,896	4,531	2,094	1,924	17	153	2,437	1,826
Fabricated metal products (except machinery and transportation equipment)	128	47	42	3	2	81	12,817	11,699	5,183	4,942	137	104	6,516	3,607
Machinery (except electrical)	97	32	31	1	0	65	6,329	5,878	2,597	2,540	20	37	3,281	1,638
Electrical and electronic machinery, equipment, and supplies	41	16	15	1	0	25	3,781	3,432	1,484	1,327	112	45	1,948	1,158
Aircraft and parts	72	35	32	2	1	37	7,530	6,932	3,201	3,114	47	40	3,731	2,826
Ship and boat building and repairing	9	5	4	0	1	4	551	428	213	168	0	45	215	311
Automotive and other transportation equipment	9	4	4	0	0	5	831	773	319	319	0	0	454	107
Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks	16	4	3	0	1	12	1,125	1,015	374	254	0	120	641	164
Miscellaneous manufacturing industries	24	8	7	0	1	16	1,819	1,671	603	552	11	40	1,068	316
Manufacturing	1,051	413	385	10	18	638	84,892	77,772	34,287	32,689	538	1,060	43,485	26,482

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1994—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	2	2	0	0	3	482	427	187	187	0	0	240	121
Coal mining	11	5	0	5	0	6	1,191	1,101	565	0	565	0	536	744
Oil and gas extraction	4	1	1	0	0	3	45	44	25	25	0	0	19	8
Mining and quarrying of nonmetallic minerals (except fuels)	10	3	3	0	0	7	265	237	99	99	0	0	138	74
Mining	30	11	6	5	0	19	1,983	1,809	876	311	565	0	933	947
Construction	320	143	133	0	10	177	11,228	8,796	3,940	3,568	7	365	4,856	3,897
Wholesale trade	207	81	77	3	1	126	10,974	9,953	4,286	3,951	250	85	5,667	3,719
Retail trade	290	131	123	2	6	159	12,188	10,659	5,141	4,813	69	259	5,518	4,959
Finance, insurance, and real estate	58	40	27	4	9	18	1,026	844	563	316	92	155	281	671
U.S. Postal Service	1	0	0	0	0	1	3	2	0	0	0	0	2	0
Local and suburban transit and interurban highway passenger transportation	106	53	50	0	3	53	8,391	7,103	3,429	3,119	85	225	3,674	3,816
Motor freight transportation and warehousing	319	139	125	0	14	180	11,311	10,036	4,545	4,291	24	230	5,491	4,213
Water transportation	6	4	4	0	0	2	259	224	84	84	0	0	140	89
Other transportation	41	25	21	0	4	16	2,748	2,269	1,124	1,085	0	39	1,145	1,452
Communication	55	26	25	1	0	29	2,610	2,368	1,032	1,025	7	0	1,336	829
Electric, gas, and sanitary services	107	49	49	0	0	58	4,060	3,472	1,616	1,615	0	1	1,856	1,870
Transportation, communication, and other utilities	634	296	274	1	21	338	29,379	25,472	11,830	11,219	116	495	13,642	12,269
Hotels, rooming houses, camps, and other lodging places	62	18	16	0	2	44	4,817	3,900	1,525	1,461	2	62	2,375	1,166
Personal services	46	22	17	0	5	24	1,680	1,558	821	620	0	201	737	888
Automotive repair, services, and garages	73	38	35	0	3	35	2,075	1,846	934	898	0	36	912	1,123
Motion pictures	10	4	3	0	1	6	434	334	164	162	0	2	170	170
Amusement and recreation services (except motion pictures)	49	23	20	0	3	26	2,922	2,481	1,123	815	23	285	1,358	973
Health services	356	218	169	18	31	138	29,112	24,934	14,098	10,519	1,550	2,029	10,836	18,443
Educational services	29	15	9	2	4	14	1,484	1,258	695	459	29	207	563	875
Membership organizations	35	18	14	1	3	17	1,242	1,078	607	406	56	145	471	614
Business services	203	124	79	29	16	79	10,476	8,860	5,008	3,716	803	489	3,852	5,719
Miscellaneous repair services	12	4	3	0	1	8	304	283	119	107	0	12	164	87
Museums, art galleries, botanical and zoological gardens	1	1	1	0	0	0	19	16	16	16	0	0	0	19

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 1994—Continued

Industrial group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Legal services	1	1	1	0	0	0	12	10	8	8	0	0	2	12
Social services	78	46	44	2	0	32	3,396	2,855	1,611	1,589	13	9	1,244	1,678
Miscellaneous services	11	6	5	1	0	5	543	458	290	274	16	0	168	401
Services	966	538	416	53	69	428	58,516	49,871	27,019	21,050	2,492	3,477	22,852	32,168
Public administration	15	12	10	0	2	3	645	576	401	336	0	65	175	491
Total, all industrial groups	3,572	1,665	1,451	78	136	1,907	210,834	185,754	88,343	78,253	4,129	5,961	97,411	85,603

[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 1994[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	188,899	3,079	100.0	—	1,298	100.0	71	100.0	128	100.0	1,582	100.0
Under 10	3,393	607	19.7	19.7	323	24.9	10	14.1	27	21.1	247	15.6
10 to 19	8,424	601	19.5	39.2	289	22.3	18	25.4	25	19.5	269	17.0
20 to 29	9,666	399	13.0	52.2	157	12.1	9	12.7	18	14.1	215	13.6
30 to 39	8,260	245	8.0	60.2	97	7.5	10	14.1	6	4.7	132	8.3
40 to 49	9,009	205	6.7	66.9	82	6.3	7	9.9	9	7.0	107	6.8
50 to 59	7,336	135	4.4	71.3	47	3.6	2	2.8	6	4.7	80	5.1
60 to 69	8,689	135	4.4	75.7	57	4.4	3	4.2	6	4.7	69	4.4
70 to 79	7,587	102	3.3	79.0	40	3.1	2	2.8	6	4.7	54	3.4
80 to 89	6,816	81	2.6	81.6	24	1.8	1	1.4	4	3.0	52	3.3
90 to 99	5,951	63	2.0	83.6	27	2.1	0	—	1	0.8	35	2.2
100 to 109	6,461	62	2.0	85.6	21	1.5	0	—	4	3.0	37	2.3
110 to 119	5,501	48	1.6	87.2	21	1.5	0	—	2	1.6	25	1.6
120 to 129	5,199	42	1.4	88.6	13	1 0	0	—	3	2.3	26	1.6
130 to 139	3,621	27	0.9	89.5	7	0.5	1	1.4	0	—	19	1.2
140 to 149	4,757	33	1.1	90.6	10	0.8	1	1.4	2	1.6	20	1.3
150 to 159	4,474	29	0.9	91.5	9	0.7	1	1.4	2	1.6	17	1.0
160 to 169	4,750	29	0.9	92.4	6	0.5	1	1.4	0	—	22	1.4
170 to 179	2,786	16	0.5	92.9	5	0 4	0	—	0	—	11	0.7
180 to 189	3,673	20	0.6	93.5	6	0.5	0	—	2	1.6	12	0.8
190 to 199	3,691	19	0.6	94.1	5	0.4	1	1.4	2	1.6	11	0.7
200 to 299	20,657	86	2.8	96.9	26	2.0	2	2.8	1	0.8	57	3.6
300 to 399	16,665	48	1.6	98.5	16	1.2	1	1.4	2	1.6	29	1.8
400 to 499	8,751	20	0.6	99.1	4	0 3	1	1.4	0	—	15	0 9
500 to 599	3,815	7	0.3	99.4	1	0.1	0	—	0	—	6	0.4
600 to 799	7,797	11	0.4	99.8	2	0.2	0	—	0	—	9	0.6
800 to 999	3,531	4	0.1	99.9	1	0.1	0	—	0	—	3	0.2
1,000 to 1,999	5,407	4	0.1	100.0	1	0 1	0	—	0	—	3	0.2
2,000 to 2,999	2,232	1	0.0	100.0	1	0.1	0	—	0	—	0	—

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 1994[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	21,935	493	100.0	—	153	100.0	7	100 0	8	100 0	325	100.0
Under 10	588	102	20.7	20.7	13	8.5	1	14.3	3	37.5	85	26.2
10 to 19	1,682	116	23.5	44.2	25	16.3	1	14.3	1	12.5	89	27.4
20 to 29	1,774	73	14.8	59.0	29	19.0	1	14.3	1	12 5	42	12.9
30 to 39	1,064	32	6.5	65.5	10	6.5	1	14.3	0	—	21	6.5
40 to 49	1,201	27	5.5	71.0	6	3.9	0	—	1	12.5	20	6.2
50 to 59	1,239	23	4.7	75.7	6	3.9	0	—	0	—	17	5.2
60 to 69	1,464	23	4.7	80.4	10	6.5	0	—	1	12.5	12	3.7
70 to 79	1,474	20	4.1	84.5	12	7.7	0	—	0	—	8	2.5
80 to 89	841	10	2 0	86.5	7	4.6	0	—	1	12.5	2	0 6
90 to 99	1,398	15	3.0	89.5	6	3.9	0	—	0	—	9	2 8
100 to 109	826	8	1.6	91.1	4	2.6	0	—	0	—	4	1.2
110 to 119	456	4	0.8	91.9	2	1.3	0	—	0	—	2	0.6
120 to 129	501	4	0.8	92.7	2	1.3	0	—	0	—	2	0.6
130 to 139	947	7	1.4	94.1	5	3.3	0	—	0	—	2	0.6
140 to 149	575	4	0 8	94.9	3	2.0	0	—	0	—	1	0 3
150 to 159	606	4	0.8	95.7	2	1.3	1	14.3	0	—	1	0.3
160 to 169	335	2	0.4	96.1	1	0.7	0	—	0	—	1	0.3
170 to 199	1,270	7	1.4	97.5	5	3.3	1	14.3	0	—	1	0.3
200 to 299	1,709	7	1.4	98.9	1	0.7	1	14.3	0	—	5	1.5
300 to 499	1,483	4	0.8	99.7	3	2.0	0	—	0	—	1	0.3
500 to 799	502	1	0.3	100.0	1	0.7	0	—	0	—	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 1994[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
				CA		CB		CC		CD		CE		CG		CP		CA–CB combinations		Other C combinations	
		Percent of all situations	Cumulative percent of all situations	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	[2]31,845	100.0	—	23,608	100.0	6,594	100.0	480	100 0	193	100 0	22	100.0	22	100.0	96	100.0	799	100.0	31	100.0
Under 10	3,648	11.5	11.5	2,678	11.3	731	11.1	94	19.6	53	27.5	10	45 5	1	4.5	20	20.8	52	6.5	9	29.0
10–19	3,083	9.7	21.2	2,390	10 1	492	7.5	81	16.9	36	18.7	1	4.5	1	4.5	24	25.0	51	6.4	7	22.6
20–29	2,480	7 8	29.0	1,984	8.4	368	5.6	49	10 2	24	12.4	1	4.5	0	—	13	13.5	35	4.4	6	19.4
30–39	1,582	5.0	34.0	1,268	5.4	235	3.6	31	6.5	10	5 2	2	9 1	0	—	10	10.4	24	3 0	2	6.5
40–49	1,245	3.9	37.9	1,015	4 3	173	2.6	18	3.8	12	6.2	1	4.5	1	4.5	7	7.3	18	2.3	0	—
50–59	1,783	5 6	43.5	1,345	5.7	353	5.4	35	7 3	10	5.2	2	9.1	1	4.5	10	10.4	26	3.3	1	3.2
60–69	893	2.8	46.3	717	3.0	144	2.2	10	2.1	4	2.1	0	—	0	—	0	—	18	2.3	0	—
70–79	820	2.6	48.9	649	2 7	127	1.9	11	2.3	8	4.1	0	—	1	4.5	2	2.1	21	2.6	1	3.2
80–89	558	1 8	50.7	444	1 9	96	1.5	7	1 5	0	—	0	—	0	—	1	1.0	10	1.3	0	—
90–99	314	1.0	51.7	258	1.1	42	0.6	6	1.3	0	—	0	—	0	—	0	—	8	1.0	0	—
100–109	2,326	7.3	59.0	1,597	6.8	599	9.1	38	7.9	4	2 1	1	4.5	4	18.2	3	3.1	78	9.8	2	6.5
110–119	246	0.8	59 8	207	0.9	36	0.5	0	—	0	—	0	—	1	4.5	1	1.0	1	0.1	0	—
120–129	545	1.7	61 5	424	1 8	99	1.5	7	1.5	1	0.5	0	—	0	—	1	1.0	12	1.5	1	3.2
130–139	238	0.7	62.2	203	0 9	29	0.4	3	0.6	0	—	0	—	0	—	0	—	3	0.4	0	—
140–149	211	0.7	62.9	178	0.8	27	0.4	3	0 6	2	1.0	0	—	0	—	0	—	1	0.1	0	—
150–159	758	2.4	65.3	571	2.4	147	2.2	11	2.3	5	2.6	0	—	1	4.5	0	—	23	2.9	0	—
160–169	148	0.5	65.8	126	0 5	18	0.3	0	—	0	—	0	—	1	4 5	0	—	3	0.4	0	—
170–179	204	0.6	66 4	173	0.7	25	0.4	2	0 4	0	—	0	—	0	—	0	—	4	0.5	0	—
180–189	148	0 5	66.9	132	0 6	15	0.2	0	—	0	—	0	—	0	—	0	—	1	0.1	0	—
190–199	64	0.2	67.1	53	0.2	9	0.1	0	—	0	—	0	—	0	—	0	—	2	0.3	0	—
200–299	2,082	6.5	73 6	1,472	6.2	506	7.7	21	4.4	5	2.6	0	—	3	13.6	1	1.0	73	9.1	1	3.2
300–399	1,271	4.0	77.6	886	3 8	317	4.8	14	2.9	0	—	1	4.5	0	—	1	1.0	52	6.5	0	—
400–499	746	2.3	79 9	551	2.3	147	2.2	7	1.5	2	1.0	0	—	2	9.1	0	—	36	4.5	1	3.2
500–599	934	2 9	82.8	586	2.5	292	4.4	2	0 4	2	1.0	1	4.5	0	—	0	—	51	6.4	0	—
600–699	451	1 4	84.2	316	1 3	117	1.8	1	0.2	0	—	0	—	2	9.1	0	—	15	1.9	0	—
700–799	267	0.8	85.0	196	0.8	63	1.0	0	—	1	0.5	0	—	0	—	0	—	7	0.9	0	—

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 1994—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
800–899	244	0.8	85.8	172	0.7	63	1.0	1	0.2	1	0.5	0	—	0	—	0	—	7	0.9	0	—
900–999	143	0.4	86.2	101	0.4	37	0.6	1	0.2	0	—	0	—	0	—	0	—	4	0.5	0	—
1,000–1,999	1,991	6.3	92.5	1,347	5.7	559	8.5	8	1.7	3	1.6	1	4.5	3	13.6	1	1.0	69	8.6	0	—
2,000–2,999	773	2.4	94.9	501	2.1	234	3.5	7	1.5	0	—	1	4.5	0	—	0	—	30	3.8	0	—
3,000–3,999	305	1.0	95.9	162	0.7	122	1.9	1	0.2	0	—	0	—	0	—	0	—	20	2.5	0	—
4,000–4,999	180	0.6	96.5	93	0.4	74	1.1	1	0.2	3	1.6	0	—	0	—	0	—	9	1.1	0	—
5,000–9,999	500	1.6	98.1	322	1.4	146	2.2	9	1.9	2	1.0	0	—	0	—	1	1.0	20	2.5	0	—
Over 9,999	664	1.9	100.0	491	2.1	152	2.3	1	0.2	5	2.6	0	—	0	—	0	—	15	1.9	0	—

[1] See Glossary of terms for definitions.

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

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 1994; and Cumulative Totals, Fiscal Years 1936 Through 1994

	Fiscal Year 1994									July 5, 1935–Sept. 30, 1994	
	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	162	145	14	2	1	—	—	—	—	—	—
On petitions for review and/or enforcement	142	128	11	2	1	100.0	100.0	100.0	—	10,659	100.0
Board orders affirmed in full	89	79	8	2	0	61.7	72.7	100.0	—	7,023	65.9
Board orders affirmed with modification	15	14	1	0	0	10.9	9.1	—	—	1,444	13.5
Remanded to Board	11	11	0	0	0	8.6	—	—	—	529	5.0
Board orders partially affirmed and partially remanded	6	6	0	0	0	4.7	—	—	—	217	2.0
Board orders set aside	21	18	2	0	1	14.1	18.2	—	—	1,446	13.6
On petitions for contempt	20	17	3	0	0	100.0	100.0	—	—	—	—
Compliance after filing of petition, before court order	3	3	0	0	0	17.6	—	—	—	—	—
Court orders holding respondent in contempt	12	11	1	0	0	64.7	33.3	—	—	—	—
Court orders denying petition	0	0	0	0	0	—	—	—	—	—	—
Court orders directing compliance without contempt adjudication	4	2	2	0	0	11.8	66.7	—	—	—	—
Contempt petitions withdrawn without compliance	1	1	0	0	0	5.9	—	—	—	—	—
Proceedings decided by U.S Supreme Court[3]	2	2	0	0	0	100.0	—	—	—	253	100.0
Board orders affirmed in full	1	1	0	0	0	50.0	—	—	—	152	60.1
Board orders affirmed with modification	0	0	0	0	0	—	—	—	—	18	7.1
Board orders set aside	1	1	0	0	0	50.0	—	—	—	45	17.8
Remanded to Board	0	0	0	0	0	—	—	—	—	19	7.5
Remanded to court of appeals	0	0	0	0	0	—	—	—	—	16	6.3
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 two case.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 1994, Compared With 5-Year Cumulative Totals, Fiscal Years 1989 Through 1993[1]

Circuit courts of appeals (headquarters)	Total fiscal year 1994	Total fiscal years 1989–1993	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal year 1994		Cumulative fiscal years 1989–1993		Fiscal Year 1994		Cumulative fiscal years 1989–1993		Fiscal Year 1994		Cumulative fiscal years 1989–1993		Fiscal Year 1994		Cumulative fiscal years 1989–1993		Fiscal Year 1994		Cumulative fiscal years 1989–1993	
			Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total all circuits	142	859	89	62.7	661	76.9	15	10 6	56	6.5	11	7.7	42	4 9	6	4.2	31	3 6	21	14.8	69	8.0
1. Boston, MA	4	20	3	75.0	13	65.0	1	25.0	1	5.0	0	—	5	25.0	0	—	0	—	0	—	1	5.0
2. New York, NY	19	94	13	68.4	77	81.9	5	26 3	6	6.4	0	—	6	6.4	0	—	0	—	1	5.3	5	5.3
3. Philadelphia, PA	14	97	8	57.1	90	92.8	1	7 1	2	2.1	3	21.4	2	2 1	1	7.1	2	2 1	1	7.1	1	1.0
4. Richmond, VA	14	59	10	71.4	39	66.1	2	14.3	6	10.2	1	7.1	3	5.1	1	7.1	2	3.4	0	—	9	15.3
5. New Orleans, LA	13	50	9	69.2	35	70.0	0	—	5	10.0	2	15.4	3	6.0	0	—	4	8.0	2	15.4	3	6 0
6. Cincinnati, OH	19	137	8	42 1	95	69.3	2	10.5	10	7.3	3	15.8	6	4.4	1	5.3	5	3.6	5	26.3	21	15.3
7. Chicago, IL	13	99	10	76.9	81	81.8	1	7.7	7	7.1	0	—	2	2.0	1	7.7	2	2.0	1	7 7	7	7.1
8. St. Louis, MO	10	47	4	40.0	32	68.1	1	10.0	6	12.8	0	—	0	—	0	—	0	—	5	50.0	9	19.1
9. San Francisco, CA	16	90	13	81.3	78	86.7	0	—	4	4.4	1	6.3	3	3.3	0	—	4	4 4	2	12.5	1	1.1
10. Denver, CO	2	34	1	50.0	26	76.5	0	—	3	8.8	0	—	0	—	0	—	1	2.9	1	50 0	4	11.8
11. Atlanta, GA	3	33	3	100.0	31	93.9	0	—	0	—	0	—	0	—	0	—	1	3.0	0	—	1	3 0
Washington, DC	15	99	7	46.7	64	64.6	2	13.3	6	6.1	1	6.7	12	12.1	2	13.3	10	10 1	3	20 0	7	7 1

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

Table 20.—Injunction Litigation Under Sections 10(e), 10(j), and 10(l), Fiscal Year 1994

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions						Pending in district court Sept. 30, 1994
		Pending in district court Oct. 1, 1993	Filed in district court fiscal year 1994		Granted	Denied	Settled	Withdrawn	Dismissed	Inactive	
Under Sec. 10(e) total	[1]0	0	0	0	0	0	0	0	0	0	0
Under Sec. 10(j) total	72	5	67	52	18	9	20	5	0	0	20
8(a)(1)	2	0	2	1	1	0	0	0	0	0	1
8(a)(1)(3)	27	0	27	15	5	4	6	0	0	0	12
8(a)(1)(5)	15	1	14	13	4	3	6	0	0	0	2
8(a)(1)(2)(3)	1	1	0	1	1	0	0	0	0	0	0
8(a)(1)(2)(3)(4)	1	0	1	1	0	0	0	1	0	0	0
8(a)(1)(3)(4)	3	0	3	2	1	1	0	0	0	0	1
8(a)(1)(3)(5)	14	2	12	12	5	1	5	1	0	0	2
8(a)(1)(2)(3)(5)	1	0	1	1	0	0	1	0	0	0	0
8(a)(1)(3)(4)(5)	1	1	0	1	1	0	0	0	0	0	0
8(a)(1)(5) 8(b)(3)	1	0	1	1	0	0	0	1	0	0	0
8(a)(1)(3)(5) 8(b)(1)(A) 8(b)(2)	1	0	1	0	0	0	0	0	0	0	1
8(b)(1)(A)	4	0	4	3	0	0	2	1	0	0	1
8(b)(3)	1	0	1	1	0	0	0	1	0	0	0
Under Sec. 10(l) total	20	5	15	15	6	0	4	3	2	0	5
8(b)(4)(B)	10	3	7	7	3	0	2	2	0	0	3
8(b)(4)(D)	5	2	3	3	1	0	1	0	1	0	2
8(b)(4)(B) 8(b)(4)(D)	1	0	1	1	0	0	1	0	0	0	0
8(b)(4)(B) 8(e)	1	0	1	1	0	0	0	1	0	0	0
8(b)(7)(A)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(C)	1	0	1	1	1	0	0	0	0	0	0
8(b)(7)(C) 8(b)(4)(D)	1	0	1	1	0	0	0	0	1	0	0

[1] In courts of appeals.

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 1994

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	27	23	4	14	12	2	12	11	1	1	0	1
NLRB-initiated actions or interventions	5	4	1	3	2	1	2	2	0	0	0	0
To enforce subpoena	0	0	0	0	0	0	0	0	0	0	0	0
To defend Board's jurisdiction	5	4	1	3	2	1	2	2	0	0	0	0
To prevent conflict between NLRA and other statutes	0	0	0	0	0	0	0	0	0	0	0	0
Action by other parties	22	19	3	11	10	1	0	0	0	0	0	0
To review nonfinal orders	2	2	0	2	2	0	0	0	0	0	0	0
To restrain NLRB from	3	3	0	0	0	0	3	0	0	0	0	0
Proceeding in R case	1	1	0	0	0	0	1	1	0	0	0	0
Proceeding in unfair labor practice case	1	1	0	0	0	0	1	1	0	0	0	0
Enforcing subpoena	0	0	0	0	0	0	0	0	0	0	0	0
Other	1	1	0	0	0	0	1	1	0	0	0	0
To compel NLRB to	14	13	1	7	7	0	7	6	1	1	0	0
Take action in "C" case	3	3	0	2	2	0	1	1	0	0	0	0
Issue complaint	4	4	0	1	1	0	3	3	0	0	0	0
Take action in R case	2	2	0	1	1	0	1	1	0	0	0	0
Comply with Freedom of Information Act (FOIA)[1]	3	2	1	1	1	0	2	1	1	1	0	0
Other—Pay fees under EAJA	2	2	0	2	2	0	0	0	0	0	0	0
Other	3	1	2	2	1	1	0	0	0	0	0	1
Objection to Board's Proof of Claim	1	0	1	1	0	0	0	0	0	0	0	0
NLRA preempts State Regulation	1	1	0	1	1	0	0	0	0	0	0	0
Backpay returned as voidable preference	1	0	1	0	0	0	0	0	0	0	0	1

[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 1994[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State boards
Pending October 1, 1993	0	0	0	0	0
Received fiscal 1994	10	10	0	0	0
On docket fiscal 1994	10	10	0	0	0
Closed fiscal 1994	10	10	0	0	0
Pending September 30, 1994	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 1994[1]

Action taken	Total cases closed
	10
Board would assert jurisdiction	8
Board would not assert jurisdiction	0
Unresolved because of insufficient evidence submitted	0
Dismissed	2
Withdrawn	0
Denied	0

[1] See Glossary for of terms definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 1994; and Age of Cases Pending Decision, September 30, 1994

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint	52
2. Complaint to close of hearing	180
3. Close of hearing to issuance of administrative law judge's decision	128
4. Administrative law judge's decision to issuance of Board decision	241
5. Filing of charge to issuance of Board decision	503
B. Age[1] of cases pending administrative law judge's decision, September 30, 1994	406
C. Age of cases pending Board decision, September 30, 1994	758
II. Representation cases:	
A. Major stages completed—	
1. Filing of petition of notice of hearing issued	7
2. Notice of hearing to close of hearing	14
3. Close of hearing to—	
Board decision issued	236
Regional Director's decision issued	23
4. Filing of petition to—	
Board decision issued	310
Regional Director's decision issued	45
B. Age[2] of cases pending Board decision, September 30, 1994	152
C. Age[2] of cases pending Regional Director's decision, September 30, 1994	131

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

Table 24.—NLRB Activity Under the Equal Access to Justice Act, Fiscal Year 1994

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	2
Denying fees	0
C. Amount of fees and expenses in cases listed in B, above:	
Claimed	$52,528.24
Recovered	$31,900.00
II. Petitions for review of Board Orders denying fees under 5 U.S.C. §504:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	1
C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount)	0
III. Applications for fees and expenses before the circuit courts of appeals under 5 U.S.C. §2412	
A. Awards granting fees (includes settlements)	2
B. Awards denying fees	2
C. Amount of fees and expenses recovered	$35,500.00
IV. Applications for fees and expenses before the district courts under 5 U.S.C. §2412:	
A. Awards granting fees (includes settlements)	0
B. Awards denying fees	0
C. Amount of fees and expenses recovered	0

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