SEVENTY SECOND

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2007

NATIONAL LABOR RELATIONS BOARD

Members of the Board

ROBERT J. BATTISTA, *Chairman*

WILMA B. LIEBMAN — PETER C. SCHAUMBER

PETER N. KIRSANOW — DENNIS P. WALSH

Chief Counsels of Board Members

HAROLD J. DATZ[1]

JOHN F. COLWELL — TERENCE F. FLYNN

PETER CARLTON — PETER D. WINKLER

LESTER A. HELTZER, *Executive Secretary*
HENRY S. BREITENEICHER, *Acting Solicitor*
WILLIAM B. COWEN, *Solicitor*[2]
LAFE E. SOLOMON, *Director, Office of Representation Appeals*
ROBERT A. GIANNASI, *Chief Administrative Law Judge*
PATRICIA M. GILBERT, *Associate Director of Information*

Office of the General Counsel

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

RICHARD A. SIEGEL
Associate General Counsel
Division of Operations Management

JOHN H. FERGUSON
Associate General Counsel
Division of Enforcement Litigation

BARRY J. KEARNEY
Associate General Counsel
Division of Advice

GLORIA J. JOSEPH
Director
Division of Administration

[1] Retired on September 30, 2007.
[2] Began serving on January 12, 2007.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. October 16, 2008

SIR: I submit the Seventy-Second Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2007.

Respectfully submitted,
PETER C. SCHAUMBER, *Chairman*

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

TABLE OF CONTENTS

CHAPTER PAGE

I. Operations in Fiscal Year 2007 1
A. Summary 1
NLRB Administration 2
B. Operational Highlights 5
1. Unfair Labor Practices 5
2. Representation Cases 10
3. Elections 11
4. Decisions Issued 13
a. The Board 13
b. Regional Directors 14
c. Administrative Law Judges 15
5. Court Litigation 15
a. Appellate Courts 15
b. The Supreme Court 15
c. Contempt Actions 15
d. Miscellaneous Litigation 16
e. Injunction Activity 16
C. Decisional Highlights 17
1. Decertification Petition or Rival Union Petition and Voluntary Recognition Agreement 17
2. Filing and Maintenance of a Lawsuit 18
3. Salting: Refusal-to-Consider and Hire Union Applicants 19
4. Backpay Period for "Salts" 21
D. Financial Statement 22
II. Board Procedure 25
Limitation of Section 10(b) 25
III. Representation Proceedings 27
A. Bars to an Election 27
1. Decertification Petition or Rival Union Petition and Voluntary Recognition Agreement 27
2. Decertification Petition Filed After Alleged Unfair Labor Practices and Prior to Settlement of Charges 29
B. Unit Issues 30
1. Employee Status of Research Assistants 30
2. On-call and Part-time Employees 33
3. Construction Industry 35
C. Election Objections 36
1. Official Election Ballot Disclaimer Language 37
2. E-Mail Addresses of Eligible Voters 38
3. Attorney Paralegal as Employer Election Observer 41
4. Union Interruption of Employer Off-Site Employee Meeting 41
5. Statements of Labor Consultant Hired by Employer 42
6. Prounion Conduct of Supervisor 43
D. Deauthorization Petition 44
Supporting Signatures 43
IV. Unfair Labor Practices 47
A. Employer Interference with Employee Rights 47
1. Filing and Maintenance of a Lawsuit 47

2. Employer Assistance in Decertification Petition 53
3. Unprotected Employee Activities 54
B. Employer Assistance to Labor Organization 55
C. Employer Discrimination Against Employees 56
1. Permanent Replacement Status of At-Will Employees 56
2. Salting: Refusal-to-Consider and Hire Union Applicants 59
D. Employer Bargaining Obligation 62
1. Withdrawal of Recognition 63
2. Waiver of Right to Bargain 66
3. Continuing Obligation to Bargain after Union Merger 68
4. Unilateral Change During Economic Strike 70
5. Direct Dealing 72
6. Construction Industry Agreement 72
E. Union Interference with Employee Rights 73
Chargeability of Organizing Expenses 73
F. Remedial Order Provisions 75
1. Interim Employment Evidentiary Burdens 75
2. Backpay Period for "Salts" 77
3. Employee Misconduct Discovered by Employer Unlawful Conduct 79
4. Broad Order 80
V. Supreme Court Litigation 83
VI. Enforcement Litigation 85
A. Duty to Bargain 85
B. Secondary Picketing 86
C. Remedial Authority 87
1. Broad Orders 87
2. *Gissel* Bargaining Orders 88
3. Equitable Arguments Against Enforcement of Board Orders 92
D. Jurisdiction Over Tribal Casino 91
VII. Injunction Litigation 93
A. Injunction Litigation Under Section 10(j) 93
B. Injunction Litigation Under Section 10(1) 96
VIII. Contempt Litigation and Compliance Branch 99
IX. Special Litigation 101
A. Litigation Concerning Board and Court Jurisdiction 101
B. Preemption Litigation 101
C. Bankruptcy Litigation 103
D. Mandamus Petitions Seeking to Compel the Board to Issue Decisions 104
Index of Cases Discussed 107
Appendix
Glossary of Terms Used in Statistical Tables 109
Subject Index to Annual Report Tables 117
Statistical Tables for Fiscal Year 2007 119

TABLES

TABLE PAGE

1. Total Cases Received, Closed, and Pending 119
1A. Unfair Labor Practice Cases Received, Closed, and Pending 120
1B. Representation Cases Received, Closed, and Pending 121
2. Types of Unfair Labor Practices Alleged 122
3A. Formal Actions Taken in Unfair Labor Practice Cases 125
3B. Formal Actions Taken in Representation and Union Deauthorization Cases 126
3C. Formal Actions Taken in Amendment of Certification and Unit Clarification Cases 128
4. Remedial Actions Taken in Unfair Labor Practice Cases Closed 129
5. Industrial Distribution of Cases Received 132
6A. Geographic Distribution of Cases Received 137
6B. Standard Federal Administrative Regional Distribution of Cases Received 140
7. Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed 142
7A. Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings 144
8. Disposition by Stage of Unfair Labor Practice Cases Closed 145
9. Disposition by Stage of Representation and Union Deauthorization Cases Closed 146
10. Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed 147
10A. Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed 148
11. Types of Elections Resulting in Certification in Cases Closed 149
11A. Analysis of Elections Conducted in Representation Cases Closed 150
11B. Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed 151
11C. Objections Filed in Representation Cases Closed, by Party Filing 152
11D. Disposition of Objections in Representation Cases Closed 153
11E. Results of Rerun Elections Held in Representation Cases Closed 154
12. Results of Union-Shop Deauthorization Polls in Cases Closed 155
13. Final Outcome of Representation Elections in Cases Closed 156
14. Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed 159
15A. Geographic Distribution of Representation Elections Held in Cases Closed 162
15B. Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed 165

TABLE PAGE

15C. Geographic Distribution of Decertification Elections Held in Cases Closed....168
16. Industrial Distribution of Representation Elections Held in Cases Closed....171
17. Size of Units in Representation Elections in Cases Closed....176
18. Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments....178
19. Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2007; and Cumulative Totals, Fiscal Years 1936 through 2007....179
19A. Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2007, Compared With 5-Year Cumulative Totals, Fiscal Years 2002 through 2007....180
20. Injunction Litigation Under Sections 10(e), 10(j), and 10(l) 181
21. Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2007....182
22. Advisory Opinion Cases Received, Closed, and Pending....183
22A. Disposition of Advisory Opinion Cases....183
23. Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2007; and Age of Cases Pending Decision, September 30, 2007....184
24. NLRB Activity Under the Equal Access to Justice Act....185

CHARTS IN CHAPTER I

CHART PAGE

1. Case Intake by Unfair Labor Practice Charges and Representation Petitions....2
2. ULP Case Intake....4
3. Disposition Pattern for Unfair Labor Practice Cases....5
4. Number of Unfair Labor Practice Cases Pending Under Preliminary Investigation....6
5. Unfair Labor Practice Merit Factor....7

6A. Complaints Issued in Unfair Labor Practice Proceedings....8

6B. Median Days From Filing to Complaint....8

7. Unfair Labor Practice Cases Settled....9
8. Administrative Law Judge Hearings and Decisions....9
9. Amount of Backpay Received by Discriminatees....10
10. Time Required to Process Representation Cases From Filing of Petition to Issuance of Decision....11
11. Contested Board Decisions Issued....12
12. Representation Elections Conducted....13
13. Regional Director Decisions Issued in Representation and Related Cases....15
14. Cases Closed....16
15. Comparison of Filings of Unfair Labor Practice Cases and Representation Cases....17

I

Operations in Fiscal Year 2007

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 2007, 25,649 cases were received by the Board.

The public filed 22,331 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the statute, which adversely affected employees. During this period the NLRB also received 3,318 representation petitions, including 3056 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 as well as 94 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 6 petitions to amend the certification of existing collective-bargaining representatives and 162 petitions to clarify existing collective-bargaining units.

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

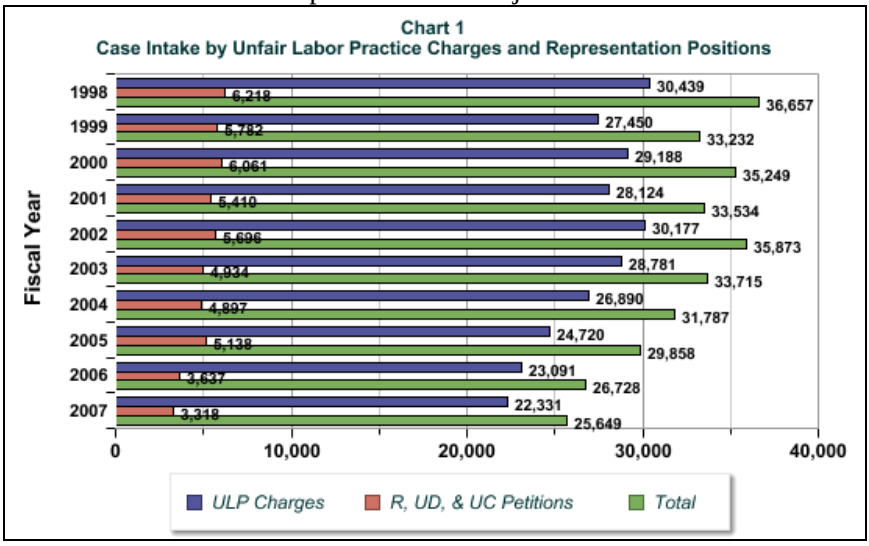
During fiscal year 2007, the five-member Board was composed of Chairman Robert J. Battista and Members Wilma B. Liebman, Peter C. Schaumber, Peter N. Kirsanow, and Dennis P. Walsh. Ronald Meisburg served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2007[1] include:

- The NLRB conducted 1,905 conclusive representation elections among some 101,551 employee voters, with workers choosing labor unions as their bargaining agents in 54.9 percent of the elections.
- Although the Agency closed 26,727 cases, 12,324 cases were pending in all stages of processing at the end of the fiscal year. The closings included 23,130 cases involving unfair labor practice charges, 3332 cases affecting employee representation, and 103 related cases.

[1] Note: The numbers in Chapter I vary slightly in some instances from equivalent numbers in the tables in the back of this report.

- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 8149.
- The amount of $124,365,988 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 1771 offers of job reinstatements, with 1273 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 1099 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 212 decisions, of which 22 were noncomplaint election objection cases.



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.

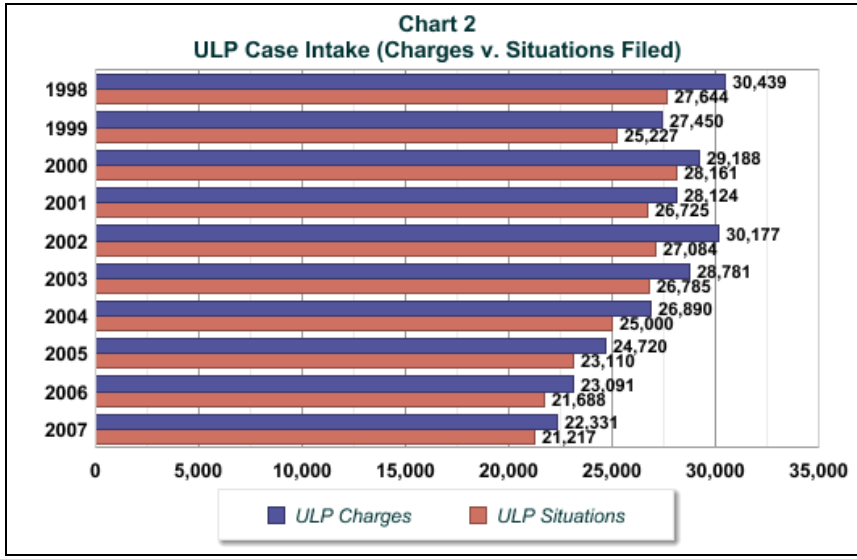
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2007.

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.

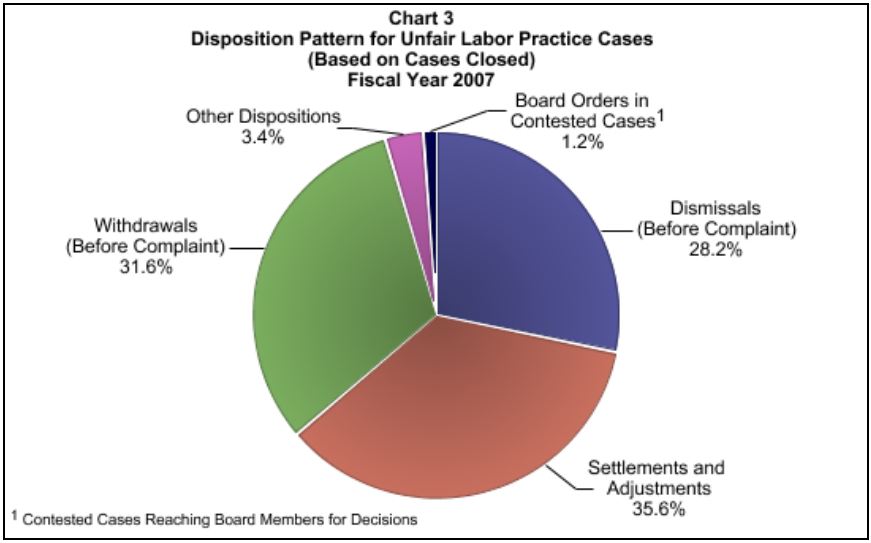
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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.

In fiscal year 2007, 22,331 unfair labor practice charges were filed with the NLRB, a decrease of 3 percent from the 23,091 filed in fiscal year 2006. In situations in which related charges are counted as a single unit, there was a decrease of 2 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 16,291 cases, a decrease of 3.5 percent from the 16,887 of 2006. Charges against unions decreased 2.9 percent to 5992 from 6172 in 2006.

There were 48 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 refusal to bargain. There were 8178 such charges in 54.4 percent of the total charges that employers committed violations.

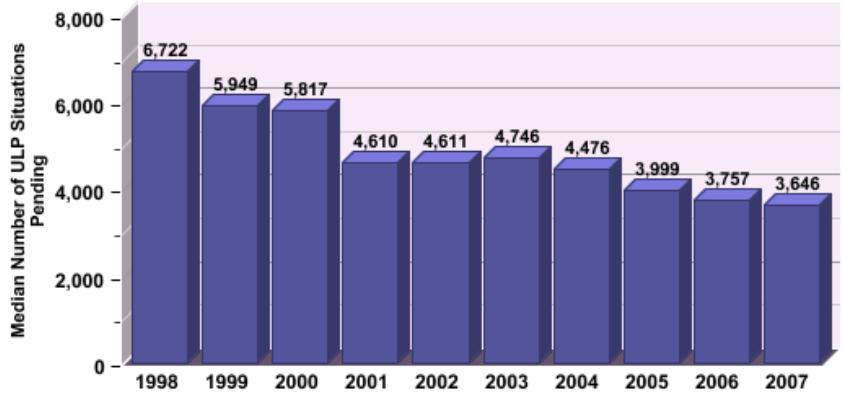
Alleged illegal discharge or other discrimination against employees was the second largest category of allegations against employers, comprising 6853 charges, in about 45.6 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5,188) alleged illegal restraint and coercion of employees, about 84.4 percent. There were 473 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 1 percent from the 479 of 2006.

There were 476 charges (about 7.7 percent) of illegal union discrimination against employees, a decrease of 13 percent from the 549 of 2006. There were 63 charges that unions picketed illegally for recognition or for organizational purposes, compared with 74 charges in 2004. (Table 2.)

In charges filed against employers, unions led with about 73.5 percent of the total. Unions filed 11,978 charges and individuals filed 4263.

Chart 4
Number of Unfair Labor Practice Situations Pending Under Preliminary Investigation



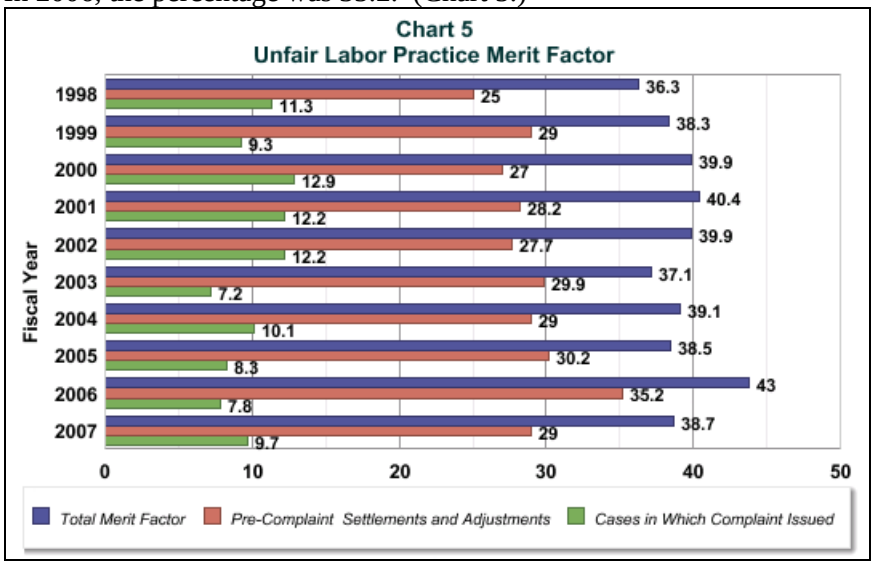
Concerning charges against unions, 4959 were filed by individuals, or 82.8 percent of the total of 5,992. Employers filed 943 and other unions filed the 90 remaining charges.

In fiscal year 2007, 23,012 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, roughly equivalent to the previous year's 96 percent. During the fiscal year, 41.4 percent of the cases were settled or adjusted before issuance of

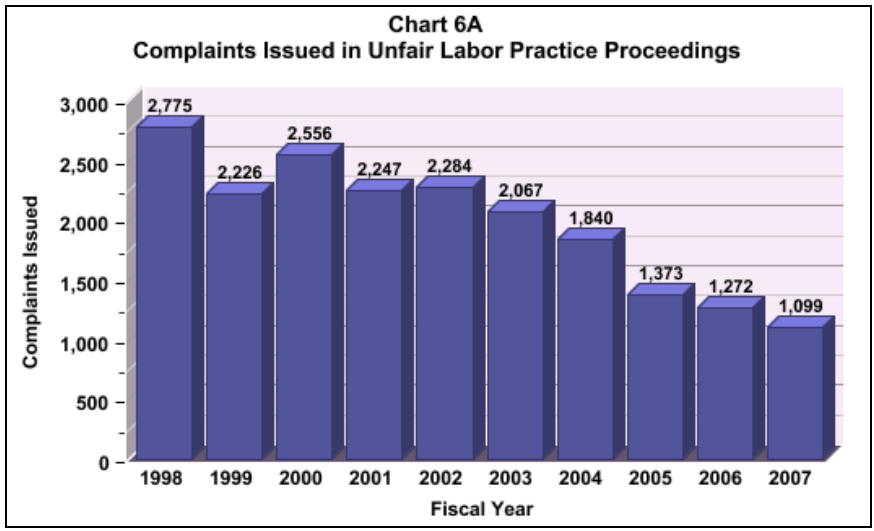
administrative law judges' decisions, 31.5 percent were withdrawn before complaint, and 29.2 percent were administratively dismissed.

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 2007, 38.7 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 2007, precomplaint settlements and adjustments were achieved in 6678 cases, or 29 percent of the charges. In 2006, the percentage was 35.2. (Chart 5.)

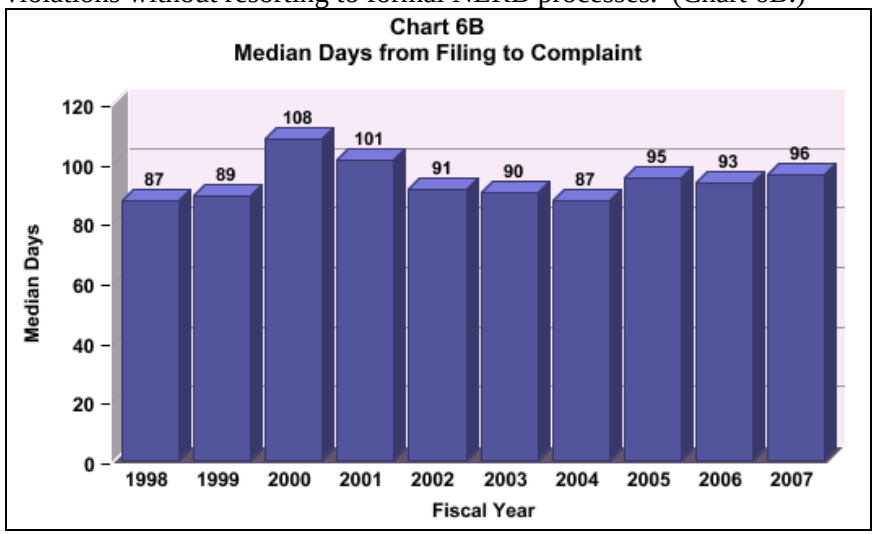


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action initiates hearings before administrative law judges. During 2007, 1099 complaints were issued, compared with 1272 in the preceding fiscal year. (Chart 6A.)

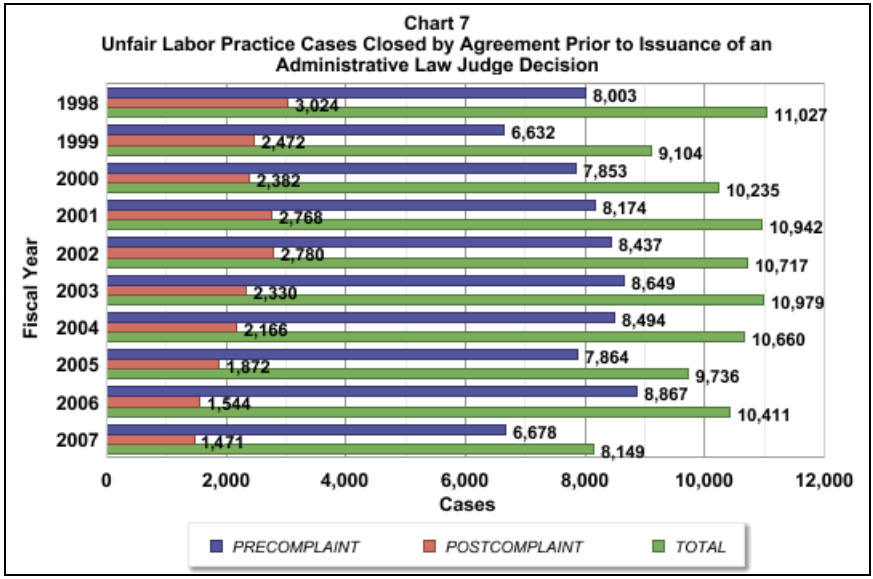


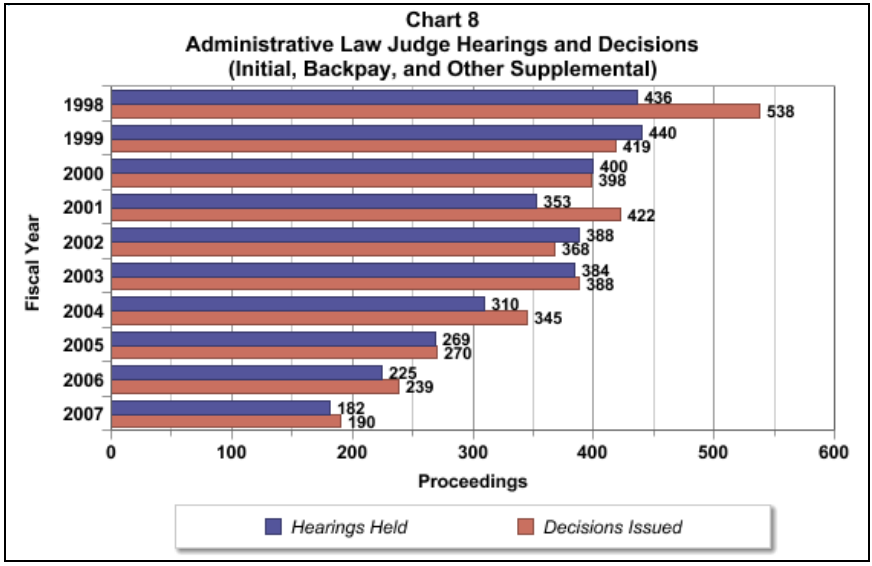
Of complaints issued, 88.4 percent were against employers and 10.6 percent against unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 96 days. The 96 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6B.)



Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 190 decisions in 361 cases during 2007. They conducted 162 initial hearings, and 20 additional hearings in supplemental matters. (Chart 8 and Table 3A.)

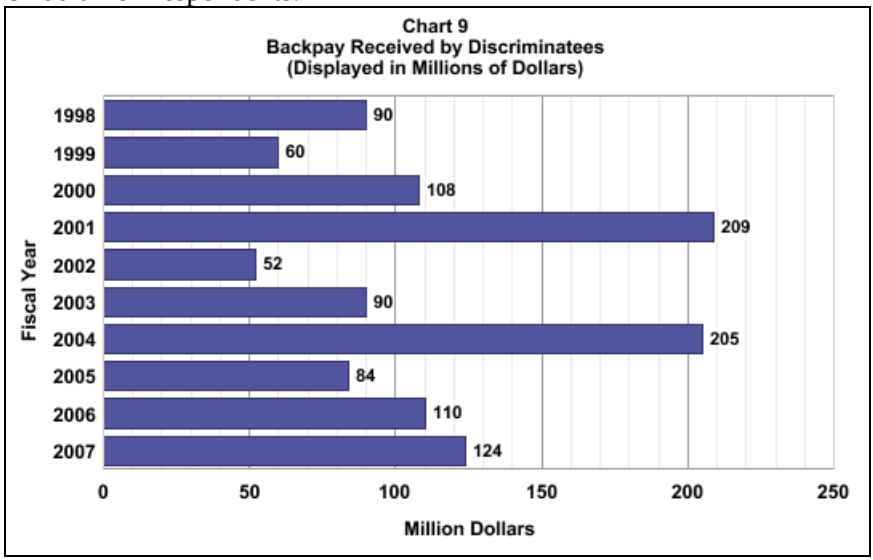




By filing exceptions to judges' findings and recommended rulings, parties may bring unfair labor practice cases to the Board for final NLRB decision.

In fiscal year 2007, the Board issued 288 decisions in unfair labor practice cases contested as to the law and/or the facts—213 initial decisions, 13 backpay decisions, 6 determinations in jurisdictional work dispute cases, and 56 decisions on supplemental matters. Of the 213

initial decision cases, 195 involved charges filed against employers and 18 had union respondents.



For the year, the NLRB awarded backpay of $117.3 million. (Chart 9) Reimbursement for unlawfully exacted fees, dues, and fines added about another $7,023,249. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 1771 employees were offered reinstatement, and 72 percent accepted.

At the end of fiscal 2007, there were 12,324 unfair labor practice cases being processed at all stages by the NLRB, compared to 13,123 cases pending at the beginning of the year.

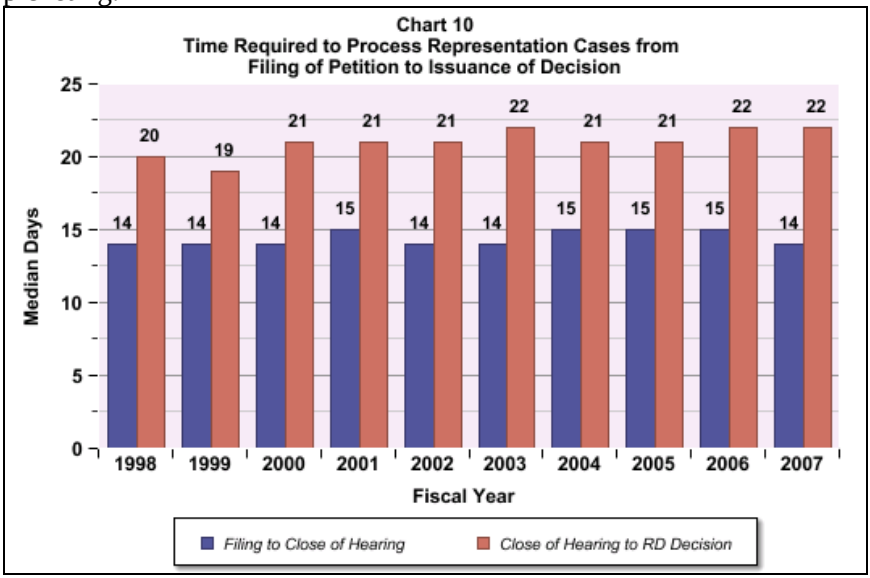
2. Representation Cases

The NLRB received 3318 representation and related case petitions in fiscal 2007, compared to 3637 such petitions a year earlier.

The 2007 total consisted of 2394 petitions pursuant to which the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 662 petitions to decertify existing bargaining agents; 94 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 162 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 6 amendment of certification petitions were filed.

During the year, 3597 representation and related cases were closed, compared to 3848 in fiscal 2006. Cases closed included 2647 collective-bargaining election petitions; 685 decertification election petitions; 103 requests for deauthorization polls; and 162 petitions for unit clarification and amendment of certification. (Tables 1 and 1B and Chart 14)

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 4.4 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following a hearing on points in issue. There were 98 cases where the Board directed an election after transfer of a case 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 1905 conclusive representation elections in cases closed in fiscal 2007, compared to the 2147 such elections a year earlier. Of 128,465 employees eligible to vote, 101,551 cast ballots, virtually 8 of every 10 eligible.

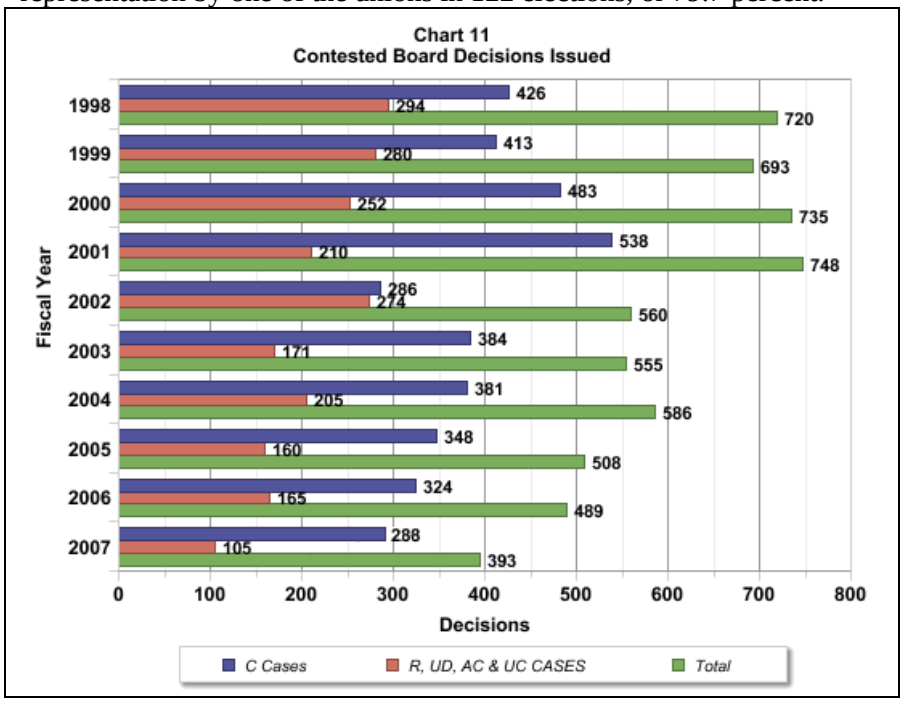
Unions won 1195 representation elections, or 55.7 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 83,764 workers. The

employee vote over the course of the year was 70,057 for union representation and 52,673 against.

The representation elections were in two categories—the 1767 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 360 decertification elections determining whether incumbent unions would continue to represent employees.

There were 1752 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 922, or 52.7 percent. In these elections, 46,120 workers voted to have unions as their agents, while 43,162 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 55,607 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 153 multiunion elections, in which two or more labor organizations were on the ballot, as well as a choice for no representation. Employees voted to continue or to commence representation by one of the unions in 122 elections, or 79.7 percent.



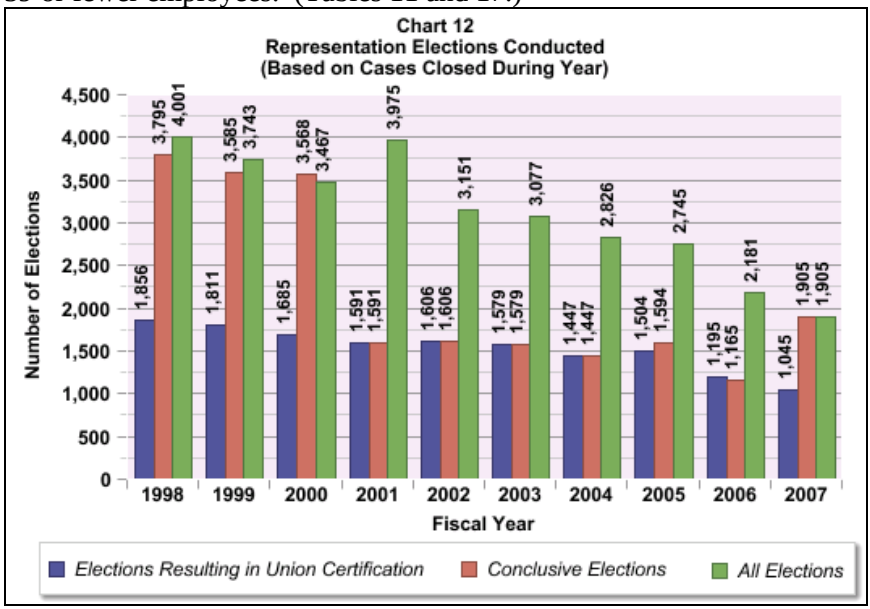
As in previous years, labor organization results brought continued representation by unions in 126 elections, or 35 percent, covering 13,978 employees. Unions lost representation rights for 12,518 employees in

234 elections, or 65 percent. Unions won in bargaining units averaging 111 employees, and lost in units averaging 53 employees. (Table 13.)

Besides the conclusive elections, there were 96 inconclusive representation elections during fiscal year 2007 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 17 referendums, or 32.7 percent, while they maintained the right in the other 35 polls which covered 3918 employees. (Table 12.)

For all types of elections in 2007, the average number of employees voting, per establishment, was 53, compared to 57 in 2006. About 74 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 592 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 705 decisions rendered during fiscal year 2006.

A breakdown of Board decisions follows:

Total Board decisions..... **592**

Contested decisions **393**

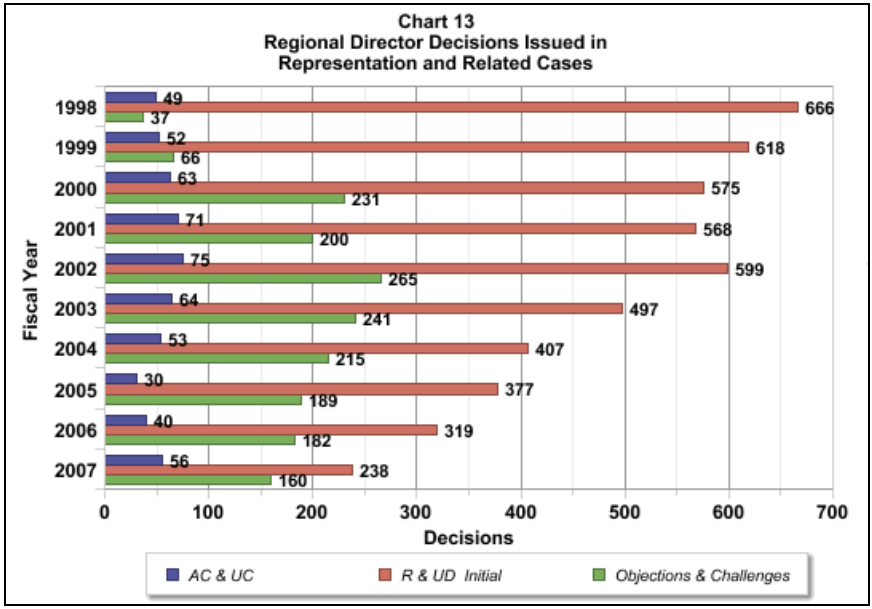
Unfair labor practice decisions 288
Initial (includes those based on stipulated record)..…….213
Supplemental 56
Backpay.....….....13
Determinations in jurisdictional disputes…….6
Representation decisions .....….. 97
After transfer by Regional Directors for initial decision 2
After review of Regional Director decisions 28
On objections and/or challenges 67
Other decisions .....……..... 8
Clarification of bargaining unit.....4
Amendment to certification 0
Union-deauthorization 4
Noncontested decisions.....…. **199**
Unfair labor practice 93
Representation 102
Other 4

The majority (71 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 2007, about 4.5 percent of all meritorious charges and 51.1 percent of all cases in which a hearing was conducted reached the Board for decision. Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 454 decisions in fiscal 2007, compared to 541 in 2006. (Chart 13 and Tables 3B and 3C.)



c. Administrative Law Judges

Administrative law judges issued 190 decisions and conducted 182 hearings. (Chart 8 and Table 3A.)

5. Court Litigation

a. Appellate Courts

In fiscal year 2007, 68 cases involving the NLRB were decided by the United States courts of appeals compared to 79 in fiscal year 2006. Of these, 97.1 percent were won by NLRB in whole or in part compared to 75.9 percent in fiscal year 2006; 2.9 percent were remanded entirely compared to 11.4 percent in fiscal year 2006; and no cases were entire losses compared to 8.9 percent in fiscal year 2006.

b. The Supreme Court

In fiscal 2007, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2007.

c. Contempt Actions

In fiscal 2007, 333 cases were formally referred to the Contempt Litigation and Compliance Branch for consideration of contempt or other compliance actions.[2] Fifteen civil contempt or equivalent proceedings and 18 ancillary proceedings were instituted in Federal District Courts or

[2] In 207 other cases, advice and/or assistance was solicited and provided to the Regions or other agency personnel and the cases returned for further administrative processing.

Bankruptcy Courts. Fourteen civil contempt or equivalent adjudications were awarded in favor of the Board as well as 24 other substantive orders in ancillary proceedings. There were 5 cases in which the court directed compliance without adjudication; and there was one case in which the court discontinued the proceeding at the CLCB's request.

d. Miscellaneous Litigation

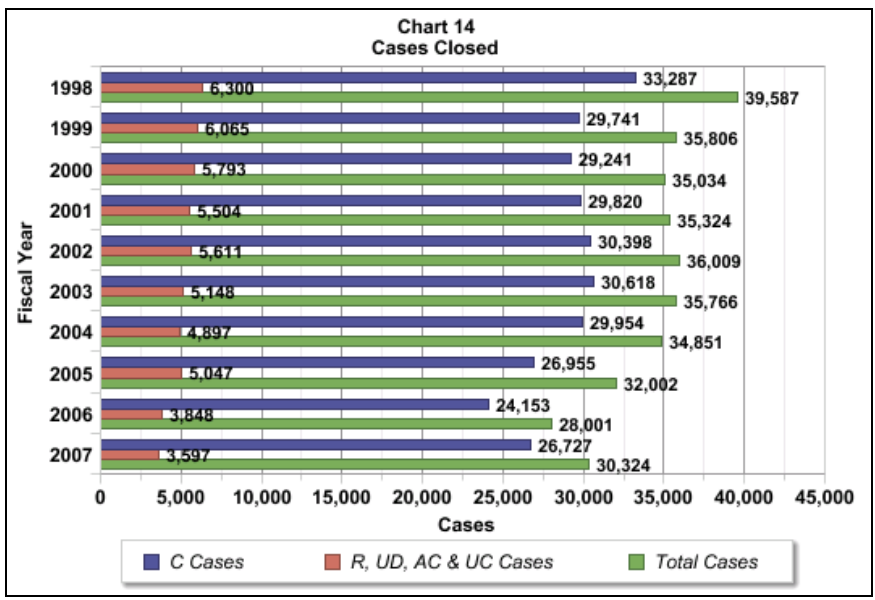
There were 13 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 9 cases. (Table 21.)

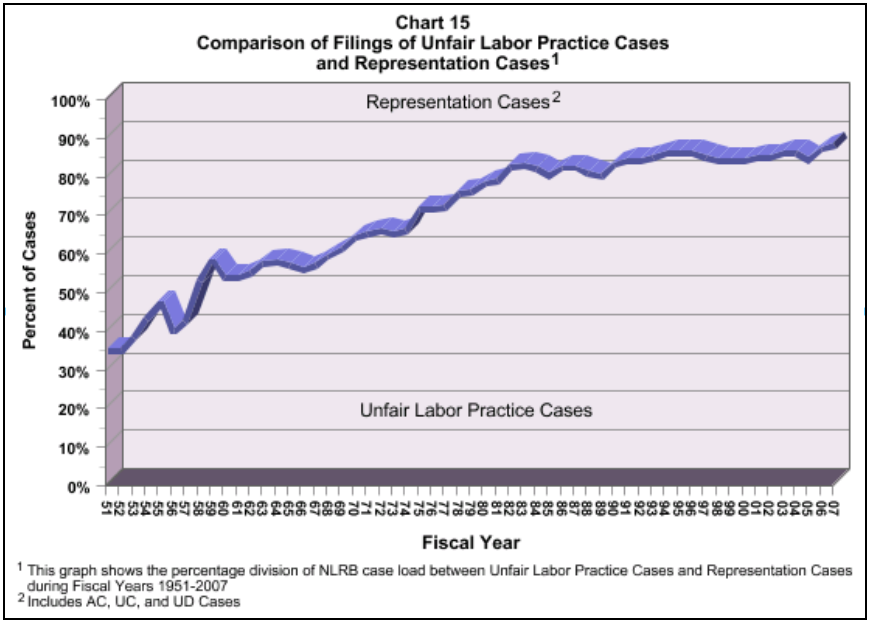
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 21 petitions filed with the U.S. district courts, compared to 25 in fiscal year 2006. (Table 20.) Injunctions were granted in 12, or 85.7 percent, of the 14 cases litigated to final order.

NLRB injunction activity in district courts in 2007:

Granted……	12
Denied……..	2
Withdrawn……	0
Settled or placed on court's inactive lists……	7
Awaiting action at end of fiscal year…..…….	3





C. Decisional Highlights

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

1. Decertification Petition or Rival Union Petition and Voluntary Recognition Agreement

In *Dana Corp.*,[3] the Board majority modified the recognition-bar doctrine, and held that an employer's voluntary recognition of a union does not bar a decertification or rival union petition that is filed within 45 days of the notice of recognition.

[3] 351 NLRB No. 28 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh, dissenting in part, but concurring in the result).

Under the Board's former policy, established in *Keller Plastics Eastern, Inc.*,[4] an employer's voluntary recognition of a union, based on a showing of the union's majority status, barred a decertification petition filed by employees or a rival union's petition for a reasonable period of time. The Board reasoned that labor-relations stability was promoted by a rule under which a voluntarily recognized union was insulated from challenge to its status while negotiating for a first collective-bargaining agreement.

In the instant case, the majority concluded that although the basic justifications for providing an insulated period were sound, they did not warrant immediate imposition of an election bar following voluntary recognition. Rather, the uncertainty surrounding voluntary recognition based on an authorization card majority and/or a neutrality agreement, as opposed to union certification after a Board election, justified delaying the election bar for a brief period during which unit employees could decide whether they preferred a Board-conducted election. Under the new policy, an employee or rival union may file a petition during a 45-day period following notice that a union has been voluntarily recognized. The petition will be processed if, like other petitions, it is supported by 30 percent of the bargaining unit. The majority stated that it would apply this modified procedure prospectively only.

Members Liebman and Walsh, dissenting in part, stated that nothing in the majority's decision justified its radical departure from the longstanding and judicially approved procedure first announced in *Keller Plastics*. In their view, prior Board law struck an appropriate balance between the Act's twin interests in promoting stable collective-bargaining relationships and employee free choice. They asserted that voluntary recognition is a favored element of national labor policy, yet the majority has relegated it to disfavored status by allowing a minority of employees to disrupt the bargaining process just as it is beginning. They stated that the majority's decision effectively discourages voluntary recognition altogether.

2. Filing and Maintenance of a Lawsuit

In *BE & K Construction Co.*,[5] the Board majority, on remand from the Supreme Court,[6] held that the filing and maintenance of a reasonably based lawsuit does not violate the Act, regardless of whether the lawsuit is ongoing or is completed, and regardless of the motive for initiating the lawsuit.

---

[4] 157 NLRB 583 (1966).

[5] 351 NLRB No. 29 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh, dissenting).

[6] *BE & K Construction Co. v. NLRB*, 536 U.S. 516 (2002).

In its prior decision in this proceeding,[7] the Board found, pursuant to *Bill Johnson's Restaurants, Inc. v. NLRB*,[8] that the Employer's unsuccessful lawsuit violated Section 8(a)(1) of the Act because it was filed to retaliate against the Union for engaging in protected concerted activity. *Bill Johnson's* held that an ongoing, reasonably based lawsuit could not be enjoined as an unfair labor practice even if the lawsuit had a retaliatory motive, in order to safeguard the fundamental First Amendment right to petition. The Board had applied a different standard to completed lawsuits, however, based on language in *Bill Johnson's* suggesting that if the employer lost the lawsuit or the lawsuit was withdrawn, the Board could proceed with the unfair labor practice case and could find that the suit violated the Act if it was deemed retaliatory. The Supreme Court in *BE & K*, however, effectively disavowed this portion of *Bill Johnson's* as dicta and refused to be bound by it, stating that the Board's standard for evaluating the lawfulness of completed, unsuccessful lawsuits raised a difficult First Amendment issue. Accordingly, the majority concluded that, just as with an ongoing lawsuit, a completed lawsuit that is reasonably based cannot be found to be an unfair labor practice, stating that the "chilling effect on the right to petition exists whether the Board burdens a lawsuit in its initial phase or after its conclusion."

Members Liebman and Walsh, dissenting, stated that the Supreme Court in *BE & K* did not hold, as the majority did, that all reasonably based lawsuits are immune from liability under the Act. In their view, such a holding goes too far in protecting potential First Amendment interests at the expense of the rights guaranteed by Federal labor law. They contend that if the *BE & K* Court intended the majority's holding, then it would have announced that rule, and not left open, as it did, the possibility that the Board could find unlawful some subset of unsuccessful, but reasonably based, lawsuits targeting conduct protected by the Act. Nor does it follow that the Board is precluded from imposing any burden on the First Amendment right to petition in order to protect Section 7 rights.

3. Salting: Refusal-to-Consider and Hire Union Applicants

In *Toering Electric Co.*,[9] the Board majority held that an applicant for employment must be genuinely interested in seeking to establish an employment relationship with an employer in order to qualify as a Section 2(3) employee and thus be protected against hiring

[7] 329 NLRB 717 (1999).
[8] 461 U.S. 731 (1983).
[9] 351 NLRB No. 18 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh, dissenting).

discrimination based on union affiliation or activity. The majority further held that the General Counsel bears the ultimate burden of proving an individual's genuine interest in seeking to establish an employment relationship with an employer.

The majority stated that the presumption that any individual who submitted an application was entitled to protection was inconsistent with the text of the Act and its basic purposes. Rather, only applicants who are statutory employees within the meaning of Section 2(3) of the Act are entitled to protection against hiring discrimination, and statutory employee status, in turn, requires the existence of at least a rudimentary economic relationship, actual or anticipated, between an employee and an employer. According to the majority, no such economic relationship is anticipated in the case of applicants with no genuine aspiration to work for an employer. Thus, job applicants without a genuine interest in an employment relationship are not employees within the meaning of Section 2(3). Although some salts, paid or unpaid, may genuinely desire to work for a nonunion employer and to proselytize coworkers on behalf of a union, other salts clearly have no such interest.

The majority also imposed on the General Counsel in all hiring discrimination cases the burden of proving that the alleged discriminatee was genuinely interested in seeking to establish an employment relationship and was thereby qualified for protection as a Section 2(3) employee. Once the General Counsel shows that an application was made, the employer may contest the genuineness of the application through evidence that creates a reasonable question as to the applicant's genuine interest in working for the employer. Assuming that an employer produces such evidence, the General Counsel will be required, as part of a prima facie case, to rebut the employer's evidence and to prove by a preponderance of the evidence that the individual was genuinely interested in an employment relationship with the employer.

Members Liebman and Walsh, dissenting, would have retained without modification the standard for litigating hiring discrimination cases set forth in *FES*.[10] In their view, the majority's new approach cannot be reconciled with the Act, its policies, or Supreme Court precedent. They noted that Sections 2(3) and 8(a)(3) of the Act make clear that an employer's motive, and not the applicant's intentions, is the proper focus in cases like this one. They further stated that the majority's new standard, even considered on its own terms, is critically flawed because it fails to provide clear guidance with respect to determining an applicant's genuine interest. Moreover, the new standard

[10] 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002).

places an unfair burden on the General Counsel by allowing an employer to first raise the genuineness issue during the unfair labor practice hearing. They argued it will both spawn and prolong the course of litigation by creating a new fact-intensive defense.

4. Backpay Period for "Salts"

In *Oil Capitol Sheet Metal, Inc.*,[11] the Board majority announced new evidentiary standards for determining the duration of the backpay period when the discriminatee is a salt.

Prior to this decision, the remedy for an unlawful discharge or refusal to hire included the employer's payment of backpay to the discriminatee from the date of the unlawful act until the employer made a valid offer of reinstatement or instatement. The Board applied a presumption that, if hired, the salt would have stayed on the job for an indefinite period. If the job was a construction job, the Board further presumed that the employer would have transferred the employee to other jobsites when the job from which he was discharged (or for which he should have been hired) ended.

In this decision, the majority held that the General Counsel can no longer rely on a presumption of indefinite employment, but instead will be required, "as part of his existing burden of proving a reasonable gross backpay amount due, to present affirmative evidence that the salt/discriminatee, if hired, would have worked for the employer for the backpay period claimed in the General Counsel's compliance specification." The majority reasoned that permitting the General Counsel to rely on a presumption of indefinite employment effectively requires the employer to produce evidence that the discriminatee would not have worked for the entire backpay period claimed. However, the majority found that experience dictates that many salts only intend to remain with the employer as long as the union finds it useful for them to do so, and that the organizer and the union, not the employer, have the ability to prove how long the organizer, if hired, would have remained with the employer.

Members Liebman and Walsh, dissenting in part, criticized the majority for overturning Board precedent endorsed by two appellate courts and rejected by none, without any party having raised the issue, without the benefit of briefing, and without any sound legal or empirical basis. They found that the majority's approach violated the well-established principle of resolving remedial uncertainties against the wrongdoer, and also treated salts as a uniquely disfavored class of

[11] 349 NLRB 1348 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh, dissenting in part).

discriminatees. They asserted that the majority failed to cite any evidence or other empirical data to support its assertion that salts do not seek employment for an indefinite time. They stated that salting campaigns vary dramatically in duration, that some campaigns can last for years, and that sometimes salts are simply assigned to work for an employer without any timeframe or campaign commitment. In their view, it is the employer's unlawful conduct that creates uncertainty about how long the salt would remain employed. Thus, allocating the burden of proof to employers is "a matter of equity," not a penalty.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2007, are as follows:

Personnel compensation	$161,965,500
Personnel benefits	37,475,644
Benefits for former personnel	3,521
Travel and transportation of persons	1,634,036
Transportation of things	160,197
Rent, communications and utilities	32,833,021
Printing and reproduction	243,874
Other services	13,377,986
Supplies and materials	813,152
Equipment	2,763,116
Insurance claims and indemnities	35,143
Total obligations and expenditures[12]	$251,305,190

The NLRB assets were approximately $32 million as of September 30, 2007. The Fund Balance with Treasury, which was $23 million, represents the NLRB's largest asset. The Fund Balance consists of unspent appropriated and unappropriated funds from the past six fiscal years and includes backpay settlement funds. The NLRB has one unusual account, Backpay Settlements Due to Others. These are backpay funds that are owed to discriminatees by employers due to the filing of ULP charges with the NLRB. The source of these funds is either the

[12] Includes $9499 reimbursables from OPM (ALJ)
Includes $10652 for reimbursables from MSPB (ALJ)
Includes $26,209 for reimursables from IRS (ALJ)
Includes $929 for reimbursables from EEOC (ALJ)
Includes $7645 for reimbursables from GSA Metro Service Division (Fitness Center)
Includes $2975 for reimbursables from EPA (Fitness Center)
Includes $856 for reimbursables from Federal Maritime Commission (Fitness Center)

original employer or a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in U.S. Treasury market-based securities.

The NLRB's appropriation is used to resolve Representation Cases or ULP Charges filed by employees, employers, unions, and union members. Of the $266 million net cost of operations in FY 2007, 16 percent was used to resolve Representation Cases and 84 percent was used to resolve ULP Charges.

For FY 2007, the NLRB had available budgetary resources of $257 million, the majority of which were derived from new budget authority. This represents a .83-percent increase over FY 2006 of available budgetary resources of $255 million. For FY 2007, the status of budgetary resources showed obligations of $252 million, or 98 percent of funds available. This is comparable to FY 2006's obligations which totaled $250 million or 98 percent of funds available. Total outlays for FY 2007 were $253 million which is a $4 million increase from FY 2006's outlays of $249 million.

Of the budget appropriation received by the NLRB, approximately 88 percent of the payments are for employees' salaries and benefits, space rent, and building security. The remaining 12 percent is utilized for expenses integral to the Agency's casehandling mission, such as casehandling travel, transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English speaking workers; travel; witness fees; and information technology.

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 upon any unfair labor practice occurring more than six months prior to the filing of the charge[.]"

Limitation of Section 10(b)

In *Carney Hospital*,[1] the Board set forth new guidelines in applying the test set forth in *Redd-I, Inc.*,[2] for determining whether unfair labor practice allegations that are otherwise time-barred by the 6-month limitations period in Section 10(b) may be litigated. The Board in *Redd-I* held that otherwise untimely allegations may be litigated if they are "closely related" to allegations in a prior timely filed charge, and set forth the following test for making that determination: (1) the otherwise untimely allegations must involve the same legal theory as the allegations in the timely charge; (2) the otherwise untimely allegations must arise from the same factual situation or sequence of events as the allegations in timely charge; and (3) the defenses raised to both the untimely and timely charged allegations may, but need not be, the same or similar. (The third part of this test is not a mandatory aspect of the *Redd-I* test.)

The Board's focus in *Carney Hospital* centered on whether the second prong of the *Redd-I* test was met. The judge, relying on the Board's decision in *Ross Stores, Inc.*,[3] found that this prong was met because the conduct alleged in the timely and otherwise untimely charges all arose out of an antiunion campaign carried on by the respondent. The Board agreed, but the D.C. Circuit disagreed, stating that the "Board's contention that the factual relationship prong can be satisfied *solely* on the basis that the separate acts arise out of the same anti-union campaign here is a deviation from the very precedent it cites." *Ross Stores, Inc. v. NLRB.*[4]

In response to this judicial criticism, the Board in *Carney Hospital* overruled its decision in *Ross Stores* and stated that it would no longer "find that the second prong [of the *Redd-I* test] is satisfied merely

---

[1] 350 NLRB 627 (Chairman Battista and Members Schaumber and Walsh).
[2] 290 NLRB 1115 (1988).
[3] 329 NLRB 573 (1999).
[4] 235 F.3d 669, 673 (2001).

because timely and untimely allegations pertain to events that occurred during or in response to the same union campaign."[5] The following new test was set forth: "where the two sets of allegations 'demonstrate similar conduct, usually during the same time period with a similar object,' or there is a causal nexus between the allegations and they are part of a chain or progression of events, or they are part of an overall plan to undermine union activity, we will find that the second prong of the *Redd-I* test has been satisfied."[6]

[5] 350 NLRB 627, 630.
[6] Id. (citations omitted).

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, 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. Bars to an Election

1. Decertification Petition or Rival Union Petition and Voluntary Recognition Agreement

In *Dana Corp.*,[1] the Board, in a 3–2 decision, modified its recognition-bar doctrine, and held that an employer's voluntary recognition of a labor organization does not bar a decertification or rival union petition that is filed within 45 days of the notice of recognition.

[1] 351 NLRB No. 28 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting in part, but concurring in the result).

In deciding this case the Board considered the positions of the parties as well as amicus submissions from various companies, organizations, and individuals, as well as members of the U.S. Senate and U.S. House of Representatives.

Under the Board's former policy, established in *Keller Plastics Eastern, Inc.*,[2] an employer's voluntary recognition of a union, based on a showing of the union's majority status, barred a decertification petition filed by employees or a rival union's petition for a reasonable period of time. The Board had reasoned that labor-relations stability was promoted by a rule under which a voluntarily recognized union was insulated from a challenge to its majority status while it negotiated for a first collective-bargaining agreement with the employer.

In *Dana*, the Board majority of Chairman Battista and Members Schaumber and Kirsanow concluded that although the basic justifications for providing an insulated period are sound, these reasons do not warrant *immediate* imposition of an election bar following voluntary recognition. The Board held that the uncertainty surrounding voluntary recognition based on an authorization card majority, as opposed to union certification after a Board election, justifies delaying the election bar for a brief period during which unit employees can decide whether they prefer a Board-conducted election. Under the Board's modified policy, an employee or rival union may file a petition during a 45-day period following notice that a union has been voluntarily recognized. The petition will be processed if, like other petitions, it is supported by 30 percent of the bargaining unit. The Board will apply this modified procedure prospectively only.

In their partial dissent, Members Liebman and Walsh stated that nothing in the majority's decision justifies its radical departure from the longstanding and judicially approved procedure first announced in *Keller Plastics*. The dissent maintains that voluntary recognition is a favored element of national labor policy, yet the majority relegates it to disfavored status by allowing a minority of employees to file a decertification petition to disrupt the bargaining process just as it is getting started. This, the dissent contends, may discourage voluntary recognition altogether.

[2] 157 NLRB 583 (1966).

2. Decertification Petition Filed After Alleged Unfair Labor Practices and Prior to Settlement of Charges

In *Truserv Corp.*,[3] the Board found, in a 3–2 decision, that a decertification petition filed after the occurrence of alleged unfair labor practices by the employer, and prior to settlement of charges pertaining to those unfair labor practices, should not be dismissed where there has been no finding or admission that the employer actually engaged in the allegedly wrongful conduct.

In reaching this conclusion, Chairman Battista and Members Schaumber and Kirsanow overturned prior decisions in *Douglas-Randall, Inc.*,[4] *Liberty Fabrics, Inc.*,[5] and *Supershuttle of Orange County*.[6] Members Liebman and Walsh dissented.

In *Douglas-Randall*, the Board held that where the parties have entered into a settlement of outstanding unfair labor practice charges, and the settlement requires recognition and bargaining with the union, any petition challenging the union's majority status that is filed after the allegedly unlawful conduct, and before the settlement, must be dismissed.

Douglas-Randall involved a Board-approved settlement of pending unfair labor practice charges. In *Liberty Fabrics*, the Board applied the *Douglas-Randall* rationale to private, non-Board settlements. In *Supershuttle*, the Board extended the reasoning of *Douglas-Randall* and *Liberty Fabrics* to a situation where the parties' negotiation of a collective-bargaining agreement was intended to resolve unfair labor practice charges. The Board in *Supershuttle* held that the collective-bargaining agreement precluded a rival union's petition that was filed after the occurrence of the alleged illegal conduct, and before the parties entered into the collective-bargaining agreement. In overruling these cases, the Board majority returned to the doctrine previously enunciated in *Passavant Health Care*.[7]

In reconsidering the *Douglas-Randall* decision and its progeny, the Board majority agreed with the reasoning of former Member Cohen in his dissent in *Douglas-Randall*, and the dissents of former Member Hurtgen in *Liberty Fabrics* and *Supershuttle*. Like them, the Board concluded that, absent a finding of a violation of the Act, or an admission by the employer of such a violation, there is no basis for dismissing a

---

[3] 349 NLRB 227 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).
[4] 320 NLRB 431 (1995).
[5] 327 NLRB 38, 39 (1998).
[6] 330 NLRB 1016, 1018–1019 (2000).
[7] 278 NLRB 483 (1986).

petition based on a settlement of alleged but unproven unfair labor practices. To do so would unfairly give determinative weight to allegations of unlawful conduct and would be in derogation of employee rights under Section 7 of the Act.

In dissent, Members Liebman and Walsh disagreed with the majority's overruling of *Douglas-Randall*, *Liberty Fabrics*, and *Supershuttle*, and stated they would adhere to the Board's decisions in those cases. They emphasized that the Board's task is to strike a balance between the establishment and maintenance of stable collective-bargaining relationships and the employees' freedom of choice in deciding whether they want to engage in collective bargaining and, if so, whom they wish to represent them. The dissent contended that the Board in *Douglas-Randall* and its progeny struck an appropriate balance between these interests, recognizing that the settlement of unfair labor practice allegations is a meaningful act, which bears consequences, and must be given due consideration when weighed against the right to choose whether to decertify a union.

B. Unit Issues

1. Employee Status of Research Assistants

In *Research Foundation of the State University of New York Office of Sponsored Programs*,[8] the Board majority of Members Kirsanow and Walsh found, contrary to the Acting Regional Director, that *Brown University*[9] was inapplicable to this employer, and that the petitioned-for Research Project Assistants (RPAs) are statutory employees. The majority reinstated the petitions and remanded them to the Regional Director for further appropriate action consistent with its Decision on Review. Chairman Battista dissented.

The petitioner filed three petitions seeking to represent RPAs at the employer's Albany, Buffalo, and Syracuse locations. The employer is a private, not-for-profit "educational corporation" established under the laws of the State of New York. The parties stipulated that the employer "is not an academic institution and therefore does not issue academic degrees." The parties also stipulated that the Board has statutory jurisdiction over the employer, and that the employer is the sole employer of the RPAs. The RPAs are enrolled as students at the State University of New York (SUNY), which is exempt from the Board's jurisdiction. In 1977, the employer entered into an agreement with

[8] 350 NLRB 197 (Members Kirsanow and Walsh; Chairman Battista dissenting).
[9] 342 NLRB 483 (2004).

SUNY assigning management and administrative authority over SUNY sponsored research programs to the employer.

The Acting Regional Director found in the supplemental decision that, like the graduate student assistants enrolled at *Brown*, the RPAs have an educational relationship with the employer because the RPAs must be enrolled at SUNY to work for the employer, their work assignments bear a substantial relationship to their dissertations, the Principal Investigator on their research project often simultaneously serves as their dissertation advisor, and they end their careers as RPAs once they receive their degrees.

Contrary to the Acting Regional Director and the dissent, the majority found that unlike *Brown*, the employer is not a university or college and does not confer degrees or admit students. Although the employer is a not-for-profit "educational corporation," the parties stipulated that the employer is "not an academic institution." In addition, the RPAs are solely employed by the employer.

Moreover, the majority found that the undisputed evidence demonstrates the existence of an economic relationship between the RPAs and the employer, rather than an educational relationship as in *Brown*. The majority stated:

> [P]ursuant to an agreement with SUNY, the Employer receives, administers, and manages government and private donor awards for SUNY's sponsored research programs. Under that agreement, the Employer employs research and other personnel, including the RPAs, "who shall be deemed to be employees of the [Employer] and not the University." The RPAs are employed and receive compensation, including benefits, under awards administered by the Employer; their compensation is subject to the Employer's compensation benchmarks; and they are placed on the Employer's payroll by the Employer's Human Resources office. In addition, the parties stipulated that the Employer's labor and employment policies apply to the RPAs.

The majority rejected the premise of the Acting Regional Director and the dissent that RPAs, like the graduate student assistants in *Brown*, have a primarily educational relationship with the employer. The majority found that the evidence cited by the Acting Regional Director in support of her finding that the RPAs have an educational relationship with the employer demonstrates the RPAs' primarily educational relationship with SUNY, not with the employer.

In dissent, Chairman Battista found that the majority overlooked the employer's integral role in the RPAs' education. Although the

relationship between the RPAs and SUNY is an educational one, that does not mean that the relationship between RPAs and the employer is an economic one. The dissent emphasized the undisputed fact that the employer is an educational corporation with a chartered mission "in keeping with the educational purposes [of SUNY]." Moreover, the dissent cited the evidence relied on by the Acting Regional Director to explain that the employer participates in the educational mission of SUNY and serves much the same function for the conduct of research at SUNY as Brown did for research by its graduate students. Based on the substantial similarities between the relationships presented in this case and *Brown*, the Chairman would have found that the RPAs are not employees within the scope of Section 2(3) of the Act.

In *Research Foundation of the City University of New York*,[10] the Board affirmed the Regional Director's finding that research assistants (RAs) are employees within the meaning of Section 2(3) of the Act. The Board reached the same result in this case as it did in *Research Foundation of SUNY* supra, for the same reason: the employer is not an educational institution, and the RAs have an economic and not an educational relationship with the employer.

Chairman Battista, concurring, agreed that the RAs are statutory employees because their relationship with the employer is primarily economic rather than educational. Noting that the instant case has some similarities to *Research Foundation of the State University of New York* because the employer is an "educational corporation," and must be "in keeping with the educational purposes and objects of [CUNY]," the Chairman nevertheless emphasized several differences between the two cases:

> [U]nlike the employer in *Research Foundation of SUNY*, some of the RAs here are enrolled at universities other than the City University of New York (CUNY). That is, status as a CUNY student is not a requisite for working for the Employer. In addition, the RAs perform administrative and editorial work that is typically unrelated to their studies. Although their work is overseen by a grant recipient on the CUNY faculty, that faculty member does not also act as the dissertation adviser. Moreover, the RAs here work with nonstudents who are assigned the same work, and they are paid on an hourly basis at a rate similar to the nonstudents. Rather than financial support for their graduate studies, their compensation thus represents payment in

[10] 350 NLRB 201 (Chairman Battista and Members Kirsanow and Walsh).

consideration for hours worked. In fact, for financial aid purposes, work as an RA is treated as outside employment.

The Board also ruled on the employer's request for review with regard to issues that were held in abeyance pending the resolution of the employee status of the RAs. The Board found that substantial issues were raised concerning the supervisory and managerial status of certain employees, but determined that those issues could be best resolved through the challenge procedure. The Regional Director's supplemental decision was amended to permit the challenged employees to vote by challenged ballot, denying the employer's request for review in this and all other respects.

2. On-call and Part-time Employees

In *Wadsworth Theatre Management*,[12] the Board held, contrary to the administrative law judge, that William Merrick is an eligible voter whose ballot should be opened and counted. The Board directed that the Regional Director open and count Merrick's ballot, along with those of three other voters, and issue a revised tally of ballots and the appropriate certification.

The tally of ballots for the election held on June 7, 2006, showed no votes for the petitioner (Treasurers and Ticket Sellers Local 857, IATSE), 2 votes against representation, and 6 challenged ballots. In the absence of exceptions, the Board adopted, pro forma, the judge's recommendation to sustain the challenges to two ballots and to overrule the challenges to three ballots.

The employer operates two professional theaters. It hired Merrick in mid-March 2006 to work in the box office for a 4-week production that ended shortly before the election. Merrick worked until late April. The judge recommended that the challenge to Merrick's ballot be sustained because he did not meet the eligibility requirements set forth in *Julliard School*.[13] Under *Julliard School*, voting eligibility is accorded to employees who have been employed by the employer (1) during two productions for a total of 5 working days over a 1-year period, or (2) for at least 15 days over a 2-year period. *Julliard School*.[14] The judge found Merrick was an ineligible voter under the first prong because he had not worked for the employer for two or more productions; and that he was ineligible under the second prong because he had not worked for the employer for 2 years.

---

[12] 349 NLRB 122 (Members Liebman, Kirsanow, and Walsh).
[13] 208 NLRB 153, 155 (1974).
[14] Supra, 208 NLRB at 155.

The Board found that the appropriate formula for determining the eligibility of part-time and on-call employees is set forth in *Davison-Paxon Co*.[15] Applying *Davison-Paxon*, the Board determined that Merrick was eligible to vote and overruled the challenge to his ballot because Merrick averaged more than 4 hours of work per week in the quarter prior to the eligibility date for the election (he worked 172 hours during that quarter). Member Liebman would have found Merrick eligible under the second prong of the formula articulated in *Julliard School*: he worked 15 days or more during the 2-year period preceding the eligibility date.

In *Columbus Symphony Orchestra, Inc.*,[16] the Board found, contrary to the Regional Director, that there were no special circumstances that would warrant deviating from applying the traditional voting eligibility formula set out in *Davison-Paxon Co.*,[17] to determine the voting eligibility of employees in the petitioned-for unit of full-time, part-time, per diem and casual stagehands. The Board remanded the proceeding to the Regional Director for further appropriate action.

The employer is a professional symphony orchestra that performs on a 46-week, year-round schedule that includes a 7-week schedule of summer performances held in a tent on the lawn of a corporate sponsor. The employer hires casual employees during the entire year, with the majority of casual employees hired in the summer to set up and take down the tent. The employer also hires one casual employee to directly assist its full-time stagehand with summer concert production work. The employer regularly hires for this position from a "pool" of four stagehands with previous experience working for the employer. In 2005, the person who filled this position worked approximately 200 hours, while the three other casual employees hired from the "pool" worked between 15 and 19 hours each. In 2006, one casual employee worked 140 hours, while three others worked between 37 and 63 hours each.

The Regional Director found that the use of an outdoor venue for summer performances and the employer's reliance on casual employees to perform a significant percentage of summer production work were "special circumstances" that warranted the application of a modified *Davison-Paxon* formula. The Regional Director further found that the employer's repeated hiring of the same four casual employees from the "pool" and the fact that they performed the same work as the full-time stagehand, showed that they had a reasonable expectation of future employment with the employer and possessed a continuing interest in the

[15] 185 NLRB 21, 24 (1970).
[16] 350 NLRB 523 (Chairman Battista and Members Liebman and Schaumber).
[17] 185 NLRB 21 (1970).

employer's terms and conditions of employment. Instead of the standard election eligibility period, which would have been the payroll period preceding the May 2007 election, the Regional Director fashioned a formula based on the number of hours that unit employees worked during the 13-week summer component of the employer's 2006 season.

The Board reversed the Regional Director's use of a modified *Davison-Paxon* voting eligibility formula. The Board reiterated that the traditional *Davison-Paxon* formula, under which a part-time or on-call employee is considered to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if that employee regularly averages 4 or more hours of work per week for the last quarter prior to the election eligibility date, is to be applied unless "special circumstances" exist. The Board has found "special circumstances" in the entertainment industry where irregular patterns of employment have required the Board to tailor eligibility formulas to meet those circumstances. However, the Board has consistently applied the standard *Davison-Paxon* formula to entertainment industry employers that operate on a regular, year-round basis. *Wadsworth Theatre Mgmt.*[18] and *Steppenwolf Theatre Co.*[19]

The Board emphasized that the employer has a regular, year-round, 46-week schedule of performances, and found, contrary to the Regional Director, that summer performances at an outdoor venue are not "special circumstances" requiring the traditional *Davison-Paxon* formula to be modified. The Board further found, unlike the Regional Director, that the irregular employment pattern experienced by casual employees during the summers of 2005 and 2006 did not show that they could reasonably expect to be employed in the summer of 2007. The Board directed that the traditional *Davison-Paxon* formula be used.

3. Construction Industry

In *Cajun Co., Inc.*,[20] the Board affirmed the Regional Director's finding that the construction industry eligibility formula as set forth in *Daniel Construction Co.*,[21] reaffirmed and further modified in *Steiny & Co.*,[22] is applicable. In his decision, the Regional Director found that the employer is engaged in the building and construction industry, and that use of the Daniel/Steiny formula is necessary to enfranchise employees who are hired intermittently for "outages" that occur during the months of January through May. He found that the "outage" employees are hired

[18] 349 NLRB 122.
[19] 342 NLRB 69 (2004).
[20] 349 NLRB 1031 (Chairman Battista and Members Liebman and Walsh).
[21] 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967).
[22] 308 NLRB 1323 (1992).

for a specific outage and not an entire outage season, rejecting the employer's contention that Daniel/Steiny should not apply in this case because the employer is a seasonal employer. The employer filed a timely request for review of the Regional Director's decision, contending that it is not an employer in the building and construction industry, and that the majority of construction tasks are performed during the outage season, and not year-round. The employer further contended that it is a seasonal employer, and thus that the Daniel/Steiny formula does not apply.

The Board found it unnecessary to pass on the issue of whether the employer is actually engaged in the building and construction industry as defined under the Act. It remanded the case to the Regional Director for further appropriate action. The Board wrote:

> In sum, the Employer performs a substantial amount of construction work during the January through May outage months (when the work force may more than double), and a smaller amount during the remainder of the year. Moreover, the total amount of construction work performed year-round is more than de minimis or incidental, and such functions are integral to the Employer's work at these plants. In addition, the Employer's employment pattern of hiring intermittent employees on an outage-by-outage basis and laying off employees at various times is similar to the hiring pattern in the construction industry. Further, the evidence does not establish that the Employer is a seasonal employer. Under these circumstances, in agreement with the Regional Director, we find that the application of the *Daniel/Steiny* formula is reasonable, regardless of whether the Employer meets the definition of construction employer under the Act.

C. Election Objections

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

Board treats each case on its facts, taking an ad hoc rather than a per se approach to resolution of the issues.

Electioneering is permissible under the Act. However, the Board may invalidate the result of a representation election if the campaign tactics adopted by a party tend to exert a coercive impact. In other words, the employer or the union may attempt to influence the votes of the employees; they may not, however, attempt to coerce the voters so as to deprive them of freedom of choice.

During an election campaign, the employer or the union might employ many forms of conduct in an attempt to influence the votes of the employees. In some election campaigns, the parties threaten the employees with reprisals; cajole them with the promise of benefits; or solicit their support through misrepresentations of law or fact. In several significant cases decided during the report year, the Board considered allegations involving each of these types of preelection conduct.

The Board evaluates the permissibility of electioneering tactics, including threats, in terms of whether the conduct tended to prevent free employee expression.

1. Official Election Ballot Disclaimer Language

In *Ryder Memorial Hospital*,[23] the Board announced the revision of its official election ballot to explicitly include language that asserts the Board's neutrality in the election process and disclaims the Board's participation in the alteration of any sample ballots. Accordingly, the official election ballot will include the following language, taken from the disclaimer language on the Notice of Election:

> The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

The disclaimer language will appear on both the actual ballots cast by employees in the election and the sample ballot contained on the Notice of Election, and is in addition to the existing disclaimer language on the bottom of the Notice of Election.

The Board indicated its position that the inclusion of this explicit disclaimer language will preclude any reasonable impression by employees that the Board endorses a particular choice in any election and, accordingly, it eliminates the need for the Board to engage in a case-by-case evaluation of allegedly objectionable altered sample ballots. Thus, in future cases, the Board will decline to set aside an election based on a party's distribution of an altered sample ballot, provided that

[23] 351 NLRB No. 26 (Chairman Battista and Members Schaumber and Walsh).

the altered sample ballot is an actual reproduction of the Board's sample ballot, i.e., it includes the new disclaimer language; if a party distributes an altered sample ballot from which the disclaimer language has been deleted, however, the Board will consider the deletion intentional, and will deem the altered ballots per se objectionable.

As the altered sample ballot alleged to be objectionable in this case did not include the Board's new disclaimer language, the Board applied extant precedent requiring a case-specific evaluation of the nature and contents, and circumstances of the distribution of, the altered sample ballot. See *3-Day Blinds;*[24] *SDC Investment*.[25] Pursuant to that analysis, a panel majority of Members Schaumber and Walsh concluded that the altered sample ballot was not objectionable. In so concluding, the majority relied on the facts that, among others, the ballot was distributed by the petitioner by the same method it used to distribute other campaign propaganda, various markings on the ballot indicated that the document was a photocopy of the Board's sample ballot, the ballot contained a portion of the disclaimer language appearing on the Board's Notice of Election, and the employer had posted copies of the Board's Notice of Election (containing disclaimer language) at various locations throughout its facility.

Chairman Battista indicated that, consistent with his dissenting opinion in *Oak Hill Funeral Home and Memorial Park,*[26] he would have found the altered sample ballot to be objectionable.

2. E-Mail Addresses of Eligible Voters

In *Trustees of Columbia University in the City of New York,*[27] the majority of Members Schaumber and Kirsanow reversed the Regional Director and overruled the petitioner's objection, which alleged that the employer's refusal to provide the petitioner with the electronic mail (e-mail) addresses of eligible voters thwarted the manifest purpose of the requirements of *Excelsior Underwear*.[28] The Board majority found that the employer fully complied with its *Excelsior* requirements as heretofore defined by the Board.

The employer operates an institute of higher learning, including a research vessel named the *R/V Maurice Ewing*. The parties stipulated that a unit of all unlicensed crew members of the *R/V Maurice Ewing* constitute an appropriate unit. The parties also stipulated to the date, time, and location of the mixed manual and mail ballot election. The

[24] 299 NLRB 110 (1990).
[25] 274 NLRB 556 (1985).
[26] 345 NLRB 532 (2005).
[27] 350 NLRB 574 (Members Schaumber, Kirsanow, and Walsh).
[28] 156 NLRB 1236 (1966)

vessel and crew are typically at sea for several days or weeks at a time. The vessel was at sea for most of the preelection period, and the manual election was held aboard the vessel. Although there is no evidence whether the vessel receives U.S. Mail, the crew did have access to the employer's e-mail system aboard the vessel for personal business. The petitioner is a longstanding maritime labor organization, and its organizing campaign began while the vessel was being repaired in Tampa, Florida.

At the preelection hearing, the petitioner requested that, in addition to providing it with the names and home addresses of eligible voters as required by *Excelsior*, the employer be required to provide petitioner with the e-mail addresses of eligible voters because of the unique circumstances of this case. The hearing officer rejected the request, and in the decision and direction of election, the Regional Director affirmed the hearing officer. The petitioner filed a request for review. The Board denied the request for review, but "without prejudice to the Petitioner's right to file an objection concerning the issue raised on review." Following the election, the petitioner filed an objection, alleging that the employer's failure to provide the e-mail addresses thwarted the manifest purpose of the *Excelsior* rule.

The Regional Director found merit in the petitioner's objection. In the supplemental decision and direction of second election, the Regional Director found that based on the unusual circumstances of this case, it would be inconsistent with the "animating principles" of *Excelsior* and its progeny to find that the employer's submission of names and home addresses to the petitioner, without the e-mail addresses, satisfied the requirements of *Excelsior*. The employer sought review, contending that it was not compelled to furnish the petitioner with the e-mail addresses at issue in this case, under *Excelsior* or otherwise, and that requiring e-mail production here would be a retroactive modification of *Excelsior* requirements, which would deprive it of due process. The petitioner urged affirmance of the Regional Director's supplemental decision.

Contrary to the Regional Director and the dissent, the majority found that the employer timely provided the Regional Director with a complete and accurate list of unit employees and their home address, and thus *fully* complied with existing Board precedent interpreting *Excelsior*. The majority emphasized that no Board case ever has held that the failure to provide the e-mail addresses of eligible voters constitutes objectionable conduct. The majority therefore could not agree with the dissent's contentions that the employer did not "substantially comply" with *Excelsior*, emphasizing that the list was both complete and accurate. In addition, the majority pointed out that the petitioner is a maritime union

with vast experience and a long history of organizing and representing employees at sea. Although its communication with many of the eligible voters may have been limited while they were at sea, the petitioner agreed to the election date and details of the election with full knowledge that the vessel would be at sea during most of the election period, and with full knowledge that no Board decision ever had required production of e-mail address in the context of a Board-conducted election.

The majority also emphasized that a "multitude of unanswered and difficult questions exist regarding the potential ramifications, for both employers and employees, of requiring employers to furnish employee e-mail addresses." The majority concluded that the Board is not in a position to extend *Excelsior*, as the Union asks it to do, without the benefit of amicus briefing and a fully developed record. Given the employer's undisputed compliance with its *Excelsior* obligations as they stood as of the date of the union's request, the majority is unwilling on the facts of this case to characterize that compliance as objectionable conduct.

In dissent, Member Walsh stated:

> In the particular circumstances of this case. . . a list of employees' home addresses failed to effectuate the purposes of the *Excelsior* rule: to facilitate an informed electorate by "giving unions the right of access to employees that employers already have." *Special Citizens Futures Unlimited*, 331 NLRB 160, 161 (2000). As the Regional Director found, mailings or visits to the employees' home addresses would have been futile. Because the Petitioner could not contact the employees using the information contained in the *Excelsior* list, the employees were prevented from receiving information with respect to one of their choices, and thereby prevented from exercising their Section 7 rights. Accordingly, the Employer has not substantially complied with the *Excelsior* requirement under the facts of this case.

Member Walsh also rejected the majority's argument that petitioner agreed to the timing of the election knowing it would be limited in its ability to communicate with the unit employees:

> This argument essentially amounts to a contention that by agreeing to the election date, the Petitioner waived its right to communicate with the voters during the preelection period. Although it is true that the Petitioner agreed to the timing of the election, the Petitioner did not know that the Employer would refuse to provide it with the employees' e-mail addresses.

3. Attorney Paralegal as Employer Election Observer

In *Detroit East, Inc.*,[29] Members Liebman and Walsh remanded the case to the hearing officer for further consideration and issuance of a supplemental report, declining to adopt the hearing officer's recommendation to overrule the union's objection alleging that the employer improperly used its attorney's paralegal as its election observer. The hearing officer found that the union waived this objection by failing to raise it during the preelection conference. Members Liebman and Walsh noted the testimony of the union's designated election observer, who testified that during the conference, she informed the Board agent that the paralegal was the employer's attorney and asked her why she was present. The union's election observer further testified that, in response, the Board agent called her supervisor at the Regional Office and thereafter pulled the paralegal aside. The majority decided that testimony of the union's election observer, if credited, would sufficiently establish that the union raised the status of the employer's observer during the preelection conference.

Chairman Battista, dissenting, concluded that the testimony of the union's election observer, even if credited, was insufficient to establish that the union raised this objection during the preelection conference and agreed with the hearing officer that the union waived this objection.

4. Union Interruption of Employer Off-Site Employee Meeting

In *Reliable Trucking, Inc.*,[30] a mail-ballot election case, the Board majority (Members Kirsanow and Walsh; Chairman Battista dissenting in part), applying the factors set forth in *Phillips Chrysler Plymouth*,[31] agreed with the administrative law judge, who served as hearing officer, that the employer did not meet its burden of showing that the election should be set aside on the basis of a single incident in which the union interrupted the employer's off-site meeting with employees. In so concluding, however, the majority disagreed with the judge's finding that the union's actions were likely to cause fear among the employees, particularly given that the union did not direct any threats towards employees, and one employee stood up and directly challenged the union.

The incident at issue took place on August 9, 2005, at a private hotel room rented by the employer to hold a meeting for 15–20 employees regarding the election that was to commence the next day. During the meeting, in a darkened room while a slide show was underway, seven or

[29] 349 NLRB 935 (Members Liebman and Walsh; Chairman Battista dissenting).
[30] 349 NLRB 812 (Members Kirsanow and Walsh; Chairman Battista dissenting in part).
[31] 304 NLRB 16 (1991)

eight union agents barged in, disrupted the meeting, yelled at, and exchanged profanities with, employees and the employer's representatives. In his dissenting opinion, Chairman Battista, explaining why he would find the union's conduct objectionable, noted: "The union agents' belligerent conduct conveyed to the employees at the meeting that the Employer was powerless to enforce its own right to conduct the meeting and to control the premises. Even the hotel's agents were unable to enforce the hotel's property rights. The union agents left only after the police arrived and led them out."

5. Statements of Labor Consultant Hired by Employer

In *Medieval Knights, LLC*,[32] a Board majority found, contrary to the hearing officer, that statements made by labor consultant Peter List to unit employees 1 week before the election were not objectionable. Consequently, Members Schaumber and Kirsanow certified the election results, in which the joint petitioners did not receive a majority of the valid ballots cast.

The employer's business involves staging medieval events. The joint petitioners filed a petition to represent a unit of show employees at the employer's Lyndhurst, New Jersey facility. In August 2006, about 1 month before the election, the employer hired labor consultants Peter List and James Hulsizer to educate employees and management about the election and bargaining processes. At meetings held with employees 1 week before the election, the consultants conducted a collective-bargaining exercise involving hypothetical employers and employees. During the presentation, List stated, among other things, that an employer did not have to agree on any specific proposals, that all negotiations were different, and that the bargaining process could take weeks, months, or more than a year. According to credited testimony, List said that an employer could "stall out" the negotiations by "giving in to lesser items or addendums . . . but not really getting anything done." Witnesses could not remember List's exact words, but it was undisputed that List's presentation was about a hypothetical employer, and at no time did he say that Medieval Knights would engage in any particular bargaining conduct.

Members Schaumber and Kirsanow found that List's statements about a hypothetical employer merely described "the possible pitfalls for employees of the collective-bargaining process." *Standard Products Co.*[33] Employees could understand that the presentation described a hypothetical employer's bargaining strategy, and List did not state or

[32] 350 NLRB 194 (Members Schaumber and Kirsanow; Member Walsh dissenting).
[33] 281 NLRB 141, 163 (1986) (citations omitted).

imply that the employer in this case would engage in the same conduct. In similar situations, the Board has found such statements unobjectionable.[34]

In dissent, Member Walsh found that, under the circumstances, the employees would consider List's statements within the context of their own employment and infer that, if the unions won the election, the employer would rely on the strategy List described to avoid coming to terms. Member Walsh stated that List's hypothetical exercise described sham bargaining whereas the cases relied on by the majority described good faith bargaining or factually accurate events. Thus, Member Walsh would set aside the election.

6. Prounion Conduct of Supervisor

In *Madison Square Garden Ct, LLC,*[35] the Board majority of Chairman Battista and Member Schaumber reversed the Regional Director's finding that supervisors' prounion conduct, including their solicitation of union authorization cards, did not constitute objectionable conduct under *Harborside Health Care, Inc.*[36] Applying *Harborside* to the facts of this case, the majority found that the supervisors held meaningful authority over event staff employees; that the supervisors' conduct, including their soliciting union authorization cards from their direct subordinates, was inherently coercive absent mitigating circumstances; that there were no mitigating circumstances; and that the supervisors' prounion conduct materially impacted the election's outcome. Accordingly, the majority reversed the Regional Director's decision to overrule the employer's objections, and directed a second election.

In her dissent, Member Liebman noted that *Harborside Healthcare* was "wrongly decided," and that it should not be applied retroactively to conduct that was lawful at the time it occurred. Moreover, Member Liebman found that even applying the *Harborside* standard to the present case, the card solicitations herein were not objectionable because mitigating circumstances tempered any possible impact of the solicitations.

D. Deauthorization Petition

Supporting Signatures

In *Covenant Aviation Security, LLC,*[37] considering an issue of first impression, Chairman Battista and Member Kirsanow decided that the

---

[34] See, e.g., *Manhattan Crowne Plaza*, 341 NLRB 619 (2004).
[35] 350 NLRB 117 (Chairman Battista and Member Schaumber; Member Liebman dissented.)
[36] 343 NLRB 906 (2004).
[37] 349 NLRB 699 (Chairman Battista and Member Kirsanow; Member Walsh dissenting).

individual petitioner's deauthorization petition must be processed even though the supporting signatures predate the execution of a contract containing a union-security provision. The majority reinstated the petition and remanded the proceeding to the Regional Director for further appropriate action. Member Walsh, dissenting, explained that Section 9(e)(1) of the Act "for sound policy reasons, clearly contemplates that the signatures gathered in support of a deauthorization petition may be collected only after the effective date of a collective-bargaining agreement containing a union-security clause."

The Regional Director dismissed the petitioner's deauthorization petition as premature because the supporting signatures predated an effective union-security clause. The Board in May 2006 granted the petitioner's request for review. In this decision on review, the majority held that based on the language of Section 9(e)(1), its legislative history, and Board precedent on deauthorization elections, "requiring the signatures underlying the showing of interest to postdate the effective union-security provision here would unjustly impede the right of employees to deauthorize a union shop."

Section 9(e)(1) provides:

> Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3), of a petition alleging the desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

Chairman Battista and Member Kirsanow observed that, contrary to the dissent's contention, the "plain meaning" of Section 9(e)(1) does not resolve the question at issue and it is unclear as to whether the showing of interest in support of a deauthorization petition may be gathered in advance of an agreement containing a union-security clause. They wrote:

> Although it is clear from the statutory language that, *when filed*, a deauthorization petition must be supported by at least 30 percent of employees "covered by" a contract containing a union-security provision, Section 9(e)(1) is devoid of language as to *when* the showing of interest must be gathered. The employees in the instant case are "covered by an agreement" containing a union-security clause, and 30 percent of the employees so covered have supported a petition to get rid of

> that clause. The fact that the 30 percent expressed their desire prior to the coverage does not clearly invalidate their desire.

The majority reasoned that either Congress did not contemplate the question of whether the signatures supporting a showing of interest in a deauthorization petition may predate an effective contract containing a union-security clause, or that Congress did consider the question but left it to the Board, saying: "Either way, the fact of the matter is that the statutory language is inconclusive, thus it falls to the Board as the agency charged with administering the Act to fill in the statutory gap." The majority pointed out that although the Act does not conclusively resolve the issue, it is consistent with processing a Section 9(e)(1) petition supported by preagreement signatures. It wrote:

> Section 9(e)(1) reflects Congress's intent to subject union-security arrangements to employee veto. Our holding here clears away a perceived procedural obstacle to a timely election in which employees may decide whether to cast that veto.
>
> Like the statutory language, the legislative history behind the 1951 amendments to the Act does not speak directly to the issue before us but it is certainly consistent with our holding that the "covered by" language of Section 9(e)(1) applies only to the filing of a deauthorization petition and not to the dates of the signatures gathered for a showing of interest to support such a petition.

Accordingly, the majority found Congress's purpose of protecting employee free choice best effectuated by processing the instant petition, saying: "If we were to dismiss the petition on the basis of an assertedly premature showing of interest, we would effectively require these employees to engage in the essentially ministerial task of reiterating their already expressed desire to secure a deauthorization vote."

Dissenting Member Walsh stated:

> Sound policy considerations underlie the statute's requirement that the showing of interest supporting a deauthorization election must be collected after the employees are subject to a union-security clause. An employee's decision regarding whether or not to financially support a union is certainly related to the benefits the employee believes are achieved though union representation. A showing of interest obtained before employees know what contractual benefits a union has

> negotiated on their behalf is therefore a very poor indicator of the employees' interest in deauthorization.

Member Walsh believes that "[u]sing Board resources to conduct an election when the majority of the signatures supporting the petition were collected before the parties even began negotiating a contract exemplifies the kind of inefficiency that Congress sought to eliminate in doing away with authorization elections." He added that "a deauthorization election here will undoubtedly involve a substantial expenditure of Board resources given the varied hours and locations of bargaining unit members. Such an expenditure is unwise where employees signed the petition before they even had a reasonable chance to evaluate the benefits of the collective-bargaining agreement and the union-security clause contained in it."

IV

Unfair Labor Practices

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

This chapter deals with decisions of the Board during fiscal year 2007 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

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

1. Filing and Maintenance of a Lawsuit

In *BE & K Construction Co.*,[1] the Board, in a 3–2 decision, held that the filing and maintenance of a reasonably based lawsuit does not violate the Act regardless of the motive for bringing the suit.

BE & K filed a lawsuit against several unions in federal district court in California. The suit alleged that the unions were engaged in activities violating both the Act and antitrust laws. The district court granted the unions' motions for summary judgment and dismissed the employer's

[1] 351 NLRB No. 29 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).

suit. The United States Court of Appeals for the Ninth Circuit affirmed the district court's decision.

The unions filed unfair labor practice charges alleging that the lawsuit was unlawful because it was retaliatory, and the General Counsel issued a complaint. In an earlier decision in this proceeding, the Board found, pursuant to *Bill Johnson's Restaurants, Inc. v. NLRB*,[2] that the employer's unsuccessful suit violated Section 8(a)(1) because it was filed to retaliate against the exercise of activities protected by the Act. *BE & K Construction Co.*[3] The United States Court of Appeals for the Sixth Circuit enforced the Board's decision. *BE & K Construction Co. v. NLRB.*[4]

The Supreme Court, however, rejected the Board's analysis on First Amendment grounds. *BE & K Construction Co. v. NLRB.*[5] The Court first evaluated its relevant precedent concerning the First Amendment right to petition the government through the courts, most of which had been developed in antitrust cases. The Court found that the threat of an NLRB adjudication amounted to a burden on such petitioning. It also found that the Board's standard for evaluating the lawfulness of completed, unsuccessful lawsuits raised a difficult First Amendment issue. The Court adopted a limiting construction of Section 8(a)(1) to avoid this constitutional issue, and it invalidated the Board's legal standard because it did not comport with that limited construction. The Court remanded the case to the Board for further proceedings consistent with its opinion.

On remand, the question presented was whether the Board may impose liability on an employer for filing a losing retaliatory lawsuit, even if the employer could show that the suit was not objectively baseless under *Professional Real Estate Investors, Inc. v. Columbia Picture Industries, Inc.*, 508 U.S. 49 (1993). The Board majority of Chairman Battista and Members Schaumber and Kirsanow noted, first, that in *Bill Johnson's*, the Court had held that, in order to protect the First Amendment right to petition, an *ongoing*, reasonably based lawsuit could not be enjoined as an unfair labor practice even if its motive was to retaliate against the exercise of rights protected by the Act. After setting out the considerations that led to the Court's holding, the Board found:

> These principles, in our view, are equally applicable to both *completed* and ongoing lawsuits. . . .

---

[2] 461 U.S. 731 (1983).
[3] 329 NLRB 717 (1999).
[4] 246 F.3d 619 (2001).
[5] 536 U.S. 516 (2002).

> [The] chilling effect on the right to petition exists whether the Board burdens a lawsuit in its initial phase or after its conclusion. Indeed, the very prospect of liability may deter prospective plaintiffs from filing legitimate claims. Thus, the same weighty First Amendment considerations catalogued by the Court in *Bill Johnson's* with respect to ongoing lawsuits apply with equal force to completed lawsuits. In sum, we see no logical basis for finding that an ongoing, reasonably-based lawsuit is protected by the First Amendment right to petition, but that the same lawsuit, once completed, loses that protection solely because the plaintiff failed to ultimately prevail. Nothing in the Constitution restricts the right to petition to winning litigants.
>
> . . . Accordingly, we find that, just as with an ongoing lawsuit, a completed lawsuit that is reasonably based cannot be found to be an unfair labor practice. In determining whether a lawsuit is reasonably based, we will apply the same test as that articulated by the Court in the antitrust context: a lawsuit lacks a reasonable basis, or is "objectively baseless," if "no reasonable litigant could realistically expect success on the merits." *Professional Real Estate Investors*, 508 U.S. at 60.

In applying its new standard to the facts of the case, the Board found that it was bound by the Court's view that the employer's lawsuit was reasonably based, but it reached the same conclusion based on its own analysis of the suit. Although the suit ultimately was unsuccessful, it was not shown to lack a reasonable basis. Accordingly, the Board dismissed the complaint without evaluating the employer's motive for filing the suit.

In dissent, while Members Liebman and Walsh concurred with the majority that the suit at issue must be treated as reasonably based, they disagreed with the breadth of the majority's decision. In their view, the Supreme Court did not hold that all reasonably based suits are constitutionally immune from liability under the Act, and the majority went too far in protecting First Amendment interests at the expense of rights protected by the Act. The dissent stated:

> What the *BE & K* decision leaves open is convincingly described by the concurring opinion of Justice Breyer in *BE & K*, which was joined by Justices Stevens, Souter, and Ginsburg: The Board may *not* "rest its finding of

> 'retaliatory motive' almost exclusively upon the simple fact that the employer filed a reasonably based but unsuccessful lawsuit and the employer did not like the union." 536 U.S. at 539. Left open, in contrast, is the possibility of imposing unfair labor practice liability in "other circumstances in which the evidence of 'retaliation' or antiunion motive might be stronger or different." Id.
>
> One example, as Justice Breyer's concurrence observes, is the situation expressly referred to by the Court's opinion: a case involving "an employer, indifferent to outcome, who intends the reasonably based but unsuccessful lawsuit simply to impose litigation costs on the union." Id. A second example is the lawsuit brought by an employer "as part of a broader course of conduct aimed at harming the unions and interfering with employees' exercise of their rights under" the Act. Id.

In the dissent's view, *Bill Johnson's* requires the Board to balance the need to protect Section 7 rights from incursion by lawsuits against the need to safeguard the constitutional right of access to the courts. Although the *BE & K* Court distanced itself from *Bill Johnson's*, the dissent asserts that it did not reject this balancing principle, or preclude the Board from imposing a measured burden on the right to petition in order to protect rights under the Act.

The dissent would have remanded the case for further litigation to evaluate whether the employer's suit was retaliatory because, for example, it was brought to impose litigation costs on the unions or as part of a broader pattern of conduct unlawful under the Act.

In *Ray Angelini, Inc.*,[6] the Board, in a supplemental decision and order, found that the respondent's lawsuit was reasonably based, and that therefore, under the test set forth in the Board's supplemental decision in *BE & K*,[7] the filing and maintenance of the lawsuit did not violate the Act. The Board dismissed the complaint.

The lawsuit arose out of the City of Philadelphia's (City) bid process for electrical work at the Philadelphia International Airport (Airport). The City notified the respondent that it was the lowest bidder. However, the charging party union (union) notified the City that the respondent had violated prevailing-wage regulations on jobs it performed for the State of

[6] 351 NLRB No. 24 (Chairman Battista and Members Schaumber and Kirsanow).
[7] 351 NLRB No. 29.

New Jersey. The City made inquiries and then notified the respondent that it was disqualified from receiving the Airport contract. The respondent requested a disqualification hearing. The hearing panel included the City director of procurement. The respondent's disqualification was upheld and the City awarded the Airport contract to another company. The respondent filed suit in state court against the City and the other company. The respondent also made inquiries and, as a result, informed the City that it had awarded contracts to other bidders with much more serious prevailing-wage violations than those alleged to have been committed by the respondent. Also, the respondent's attorney happened to encounter the City's director of procurement who stated, according to the attorney, that the City's political obligations to the union's business agent were involved in the Airport contract. (The union had a convention coming to the City and it would not look good if a nonunion contractor, such as the respondent, was working on the Airport contract.) Thereafter, the respondent dropped its state court action and filed suit in federal district court—the lawsuit at issue in this case—against the City, the company awarded the Airport contract, and the union. The respondent alleged that the defendants had acted in concert, under color of state law, to deprive the respondent of its 14th Amendment right to substantive due process. The respondent alleged that the defendants conspired to have the respondent, a nonunion contractor, disqualified from the Airport contract and divested of its bid in favor of a union contractor. The respondent relied heavily on its attorney's conversation with the City's director of procurement and the respondent's information about the City's awarding contracts to other bidders with much more serious prevailing-wage violations than those alleged to have been committed by the respondent.

The union filed a motion to dismiss the complaint for failure to state a claim on which relief may be granted. The court denied this motion, without opinion, and also denied a similar motion filed by other defendants. The union next filed a motion for summary judgment which the court denied, again without opinion. The court then conducted a 5-day bench trial after which the court dismissed the respondent's complaint in its entirety, with prejudice. The respondent failed to prove the existence of a conspiracy between the union and the City. The court required the respondent to pay the cost of the proceeding, but it denied the union's request for attorneys' fees. The respondent did not appeal the court's decision.

Meanwhile, the union filed a charge alleging that the respondent's lawsuit was filed in retaliation against the union's exercise of Section 7 rights and thus violated Section 8(a)(1). The Board's administrative law

judge found the violation. She applied *Bill Johnson's Restaurants v. NLRB*,[8] and reasoned that because the respondent's lawsuit was "unsuccessful," it was unlawful if filed in retaliation against the exercise of Section 7 rights. The administrative law judge so found, citing the respondent's opposition to the union's having reported its prevailing-wage violations to City officials, to the union's lobbying those officials in an effort to obtain City contracts for union contractors, and to the union's business agent's efforts to ingratiate himself with potential voters. The Board adopted the administrative law judge's decision.

The General Counsel and the respondent urged the Board to dismiss the complaint in light of the Supreme Court's decision in *BE & K Construction Co. v. NLRB*.[9] They argued that the lawsuit had a reasonable basis and did not violate the Act. The union urged the Board to find the violation because it was not objectively reasonable given the union's evidence.

In this supplemental decision, the Board cited its recent *BE & K* decision for the principles that: "the filing and maintenance of a reasonably based lawsuit does not violate the Act, regardless of whether the lawsuit is ongoing or completed, and regardless of the motive for initiating the lawsuit," and that "a lawsuit lacks a reasonable basis, or is 'objectively baseless,' if 'no reasonable litigant could reasonably expect success on the merits.'" The Board also cited the Supreme Court's decision in *Bill Johnson's Restaurant*,[10] for the principles that: "if there is a genuine issue of material fact that turns on the credibility of witnesses or on the proper inferences to be drawn from undisputed facts, it cannot, in our view, be concluded that the suit should be enjoined," and that the Board should "stay its hand" unless "the plaintiff's position is plainly foreclosed as a matter of law or is otherwise frivolous."

The Board applied these principles here and found that the respondent's lawsuit was reasonably based. The Board inferred from the district court's denial of the union's motions to dismiss and for summary judgment first, that the respondent's complaint stated a claim upon which relief could be granted, and second, that disputed issues of material fact existed precluding judgment as a matter of law in the union's favor. Thus, the Board could not say that the respondent could not have reasonably expected to succeed on the merits. Indeed, the Board noted that the union wanted the Board to readjudicate its motion for summary judgment, i.e., to have the Board find no factual dispute as to the existence of a conspiracy. However, the court found to the contrary. The

[8] 461 U.S. 731 (1983).
[9] 536 U.S. 516 (2002).
[10] Supra.

Board declined the union's invitation to second-guess the court in this regard. The Board found the Respondent's lawsuit was reasonably based and dismissed the complaint.

In *Postal Service*,[11] the Board affirmed the finding of the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by threatening an employee with a lawsuit and unspecified reprisals because he had filed an unfair labor practice charge with the Board.

In determining that the threat to sue violated the Act, the Board "assume[d] arguendo, without deciding, that the principles of *BE & K* [*BE & K Construction v. NLRB*, 536 U.S. 516 (2002)] are to be applied to a situation where a threat to file a lawsuit is 'incidental' to a lawsuit." The Board found, however, "that where, as here, no actual lawsuit was filed, the threat was not 'incidental'" and, thus, the threat to sue the employee for filing an unfair labor practice charge violated Section 8(a)(1) of the Act. Because no lawsuit had been filed against the employee, the Board found that the threat to sue in this case "was not preliminary to, or intertwined with, protected litigation or petitioning activity" and was therefore "not entitled to immunity." The Board affirmed the judge's finding that the threat to sue the employee for filing an unfair labor practice charge had the reasonable tendency to restrain employees in the exercise of their right to file charges under the Act and accordingly violated Section 8(a)(1).

2. Employer Assistance in Decertification Petition

In *Mickey's Linen & Towel Supply, Inc.*,[12] the Board reversed the administrative law judge and found that the Respondent violated Section 8(a)(1) of the Act by assisting employees in their attempts to decertify the union when it performed translations for an employee who was soliciting signatures for a decertification petition.

In early February 2006, unit employee Judy Wickhorst began soliciting signatures from coworkers to decertify the union. Because two of her coworkers spoke only Spanish, Wickhorst asked David Cerda, a bilingual supervisor, to translate for her. Cerda initially responded that he could not assist her in the decertification process because he was a member of management. Moments later, however, Cerda changed his mind and agreed to translate. Through Cerda, Wickhorst asked the two employees whether they wanted to pay union dues, and told them that they could do better than the union. After Cerda translated for Wickhorst,

[11] 350 NLRB 125 (Chairman Battista and Members Liebman and Walsh) reconsideration denied 351 NLRB No. 23 (Chairman Battista and Members Liebman and Walsh).
[12] 349 NLRB 790 (Chairman Battista and Members Liebman and Walsh).

the two employees signed the decertification petition in the presence of Cerda and Wickhorst.

The Board found, contrary to the judge, that the respondent's conduct constituted more than mere ministerial aid, and that the respondent, through Cerda, provided unlawful assistance to the decertification effort. It wrote: "Cerda translated for Wickhorst, who was soliciting signatures for a decertification petition, moments after he served as a translator for the Respondent at a mandatory employee meeting that concerned union matters, in particular, the ongoing collective-bargaining negotiations. In addition to simply translating, Cerda stood with Wickhorst while the employees made their decisions and signed the decertification petition. In these circumstances, the employees could reasonably feel coerced into signing the decertification petition." Contrary to the judge, the Board found immaterial the fact that Wickhorst alone initiated the decertification effort. Further, although Cerda initially declined Wickhorst's request to translate for her, it did not shield his later actions.

3. Unprotected Employee Activities

In *Fineberg Packing Co.*,[13] the complaint alleged that the respondent violated Section 8(a)(1) of the Act by discharging 32 unit employees because of their participation in a work stoppage. Chairman Battista and Member Schaumber reversed the administrative law judge's findings that (1) the work stoppage at issue constituted protected concerted activity, notwithstanding a no-strike clause in the parties' collective-bargaining agreement, and (2) even assuming the work stoppage was unprotected, the respondent condoned the employees' conduct and therefore could not discipline them for that conduct. Member Liebman dissented.

In the early morning of February 14, 2001, a group of employees, who were concerned about rumors of a reduction in their hours, left their work stations and walked out of the plant to wait for plant manager Richard Freudenberg. When Freudenberg arrived, employees Kathy Furlong and Billy Exum informed Freudenberg that the employees wanted to speak to him about the rumored work hour reduction. Freudenberg responded that it would be unlawful for him to meet with the employees as a group, but that he could meet with them individually. Freudenberg then ordered the employees to return to work or, alternatively, to leave the premises. In response to employee questions if they were fired, Freudenberg assured them that he was not firing anyone, and told them to come back the next day. Some employees returned to work and others left the plant. The next morning several employees attempted to return to work, but were denied access to the respondent's

[13] 349 NLRB 294 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).

premises. The following day, when the employees returned to the plant to pick up their paychecks, Freudenberg gave them separation notices, which stated that the employees had "voluntarily quit."

Chairman Battista and Member Schaumber noted that the General Counsel expressly conceded that the work stoppage was unprotected and litigated the case consistent with that position. Thus, the respondent was neither put on notice that the nature of the work stoppage would be considered by the judge nor provided the opportunity to litigate the issue. Chairman Battista and Member Schaumber said it was not appropriate for the judge to make a finding that the work stoppage constituted protected concerted activity, and declined to adopt her finding in that regard. They also found that the evidence was insufficient to establish that the respondent intended to condone the employees' continuation of the work stoppage after giving the employees the choice of returning to work or leaving.

Member Liebman agreed with the majority that the judge's finding concerning the nature of the work stoppage should be reversed and that the General Counsel apparently conceded that the work stoppage was unprotected. She would affirm, however, the judge's finding that the respondent acted unlawfully in discharging the employees when they returned to work. Contrary to the majority's finding, Member Liebman found that there was nothing ambiguous about Freudenberg's statements, which clearly demonstrated an intent to overlook the employees' misconduct and to allow them to return to work.

B. Employer Assistance to Labor Organization

The central issue in *Syracuse University*[14] was whether the respondent's employee complaint procedure, the staff complaint process (SCP), is a labor organization within the meaning of Section 2(5) of the Act. Chairman Battista and Member Schaumber reversed the administrative law judge and found that the SCP is not a labor organization. Accordingly, Chairman Battista and Member Schaumber found that the respondent did not violate Section 8(a)(2) and (1) of the Act by establishing and maintaining the SCP nor Section 8(a)(1) by interfering with employee rights to refrain from supporting a labor organization. The complaint was dismissed.

Chairman Battista and Member Schaumber concluded that the SCP is not a labor organization because it does not "deal with" the employer on terms and conditions of employment. Rather, they found that the SCP is limited to an adjudicative function, similar to the entities found not to be

[14] 350 NLRB 755 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

labor organizations in *Mercy-Memorial Hospital*[15] and *John Ascuaga's Nugget*.[16] Member Liebman, dissenting, found that the SCP is a dispute resolution mechanism that fulfills the characteristics of a Section 2(5) labor organization.

C. Employer Discrimination Against Employees

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

1. Permanent Replacement Status of At-Will Employees

In *Jones Plastic & Engineering Co.*,[17] the Board announced that at-will employment status does not detract from an employer's otherwise valid showing that it has permanently replaced striking employees. The Board overruled *Target Rock*[18] to the extent it is inconsistent with that principle.

An economic striker who unconditionally offers to return to work is entitled to immediate reinstatement unless the employer has hired a permanent replacement for the striker in order to continue its business operations during the strike. *Mackay Radio & Telegraph Co. v. NLRB.*[19] Thus, at the conclusion of a strike, an employer is not bound to discharge those hired permanently to fill the places of economic strikers, but permanent replacement status is an affirmative defense, with the burden on the employer to show a mutual understanding with the replacements that they are permanent.

Many employers hire employees on an "at-will" basis, meaning that they can be discharged at any time, with or without cause. In *Target Rock*, the Board opined that statements advising replacement employees of their at-will status "obviously do not support the [r]espondent's position that the striker replacements were permanent." In *Jones Plastic*, the General Counsel asserted that because *Target Rock* could be read to deprive at-will replacement employees of permanent status, the law

---

[15] 231 NLRB 1108 (1977).
[16] 230 NLRB 275 (1977), enfd. in pertinent part 623 F.2d 571 (9th Cir. 1980), cert denied 451 U.S. 906 (1981).
[17] 351 NLRB No. 11 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).
[18] 324 NLRB 373, 374 (1997), enfd. 172 F.3d 921 (D.C. Cir. 1998).
[19] 304 U.S. 333, 345–346 (1938).

should be changed to make clear that at-will employment does not foreclose a finding of permanent replacement status.

A Board majority (Chairman Battista and Members Schaumber and Kirsanow) concluded that at-will employment status does not detract from permanent replacement status, stating that

> we view as untenable any implication in *Target Rock* that conditions on hiring other than those enumerated in *Belknap* [*v. Hale, 463 U.S. 491 (1983),*] detract from a finding of permanent replacement status. Instead, we find that the status of the replacements hired by the Respondent in this case is indistinguishable from the status of probationary employees found to be permanent replacements in *Kansas Milling*, [97 NLRB 219, 225–226 (1951)], and its progeny. In those cases, the probationary employees were subject to discharge without cause, and their postprobation employment was subject to their satisfaction of the employer's standards. As a matter of law, then, equivalent conditions imposed by the Respondent through its at-will disclaimers do not detract from other evidence proving the replacements' status as "permanent employees" for the purpose of Federal labor law.

Applying those principles, the Board found that the respondent's issuance of at-will disclaimers informing employees that their employment was for "no definite period" and could be terminated for "any reason" and "at any time, with or without cause" did not detract from its showing of permanent replacement status. In reaching this conclusion, the Board noted that the respondent was following its normal employment practices because the strikers as well as the replacements were employed on an at-will basis.

The Board found that the other evidence in the case supported a finding of permanent replacement status. The respondent issued to the replacement employees forms stating that they were permanent replacements, in many cases naming the striker whom the individual was hired to permanently replace. The respondent also told striking employees that it had begun to hire permanent replacements and that they risked permanent replacement if they did not return to work. The respondent's human resource manager also told one replacement that he was a permanent employee. On these facts, the Board concluded that the respondent established a mutual understanding with its replacement

employees that they would not be displaced by returning strikers at the end of the strike, which is the meaning of "permanence" in this context.

Members Liebman and Walsh dissented. In their view, Board precedent established that at-will employment was not incompatible with permanent replacement status, and nothing in *Target Rock* required the overruling of that case. What is required to show permanent status, in their view, is "the promise to the replacements of some right vis-à-vis the strikers"—"'strikers . . . are entitled to reinstatement' unless the employer has made a commitment to the replacements that would be breached if the employer 'discharg[ed] them to make way for selected strikers . . . .' [*Belknap*, supra, 463 U.S. at 503-504]."

The dissent noted that the respondent had advised the replacements that their employment "may be terminated as a result of a strike settlement agreement . . . or by order the National Labor Relations Board" and stated that

> [h]ad the Respondent made only the latter statement, a finding that the replacements were permanent would follow. But the Respondent did not so limit itself. Rather, it told the employees not only that they could be displaced as a result of a strike settlement or Board order, but, *additionally*, that they could be discharged at any time for any reason. Taken together—and absent any other evidence of mutual understanding of permanence—the Respondent's statements did not reflect any commitment by the Respondent to the replacements. Certainly, the statements did not reflect a commitment that the Respondent would refuse, in the absence of a strike settlement, to reinstate strikers if it meant terminating replacements. Although the Respondent used the term "permanent replacement," it then undercut that statement by failing to give the replacements any assurance that they had rights vis-à-vis the strikers.

Because the dissent concluded that a mutual understanding of permanent employment was not established, in their view the respondent violated Section 8(a)(3) and (1) of the Act by refusing to reinstate the strikers upon their unconditional offer to return to work.

2. Salting: Refusal-to-Consider and Hire Union Applicants

In *Toering Electric Co.*,[20] the Board, in a 3–2 decision, ruled that an applicant for employment must be genuinely interested in seeking to establish an employment relationship with the employer in order to qualify as a Section 2(3) employee and thus be protected against hiring discrimination based on union affiliation or activity. The Board explained that "one cannot be denied what one does not genuinely seek." The Board further held that the General Counsel bears the ultimate burden of proving an individual's genuine interest in seeking to go to work for the employer.

The Board majority of Chairman Battista and Members Schaumber and Kirsanow held in *Toering* that the presumption that any individual who submitted an application was entitled to protection was inconsistent with the text of the Act and its basic purposes. Only applicants who are statutory employees within the meaning of Section 2(3) are entitled to protection against hiring discrimination, and statutory employee status, in turn, requires the existence of "at least a rudimentary economic relationship, actual or anticipated, between employee and employer." *WBAI Pacifica Foundation*.[21] No such economic relationship is anticipated in the case of applicants with no genuine aspiration to work for an employer. Thus, job applicants without a genuine interest in an employment relationship are not employees within the meaning of Section 2(3).

Although some salts, paid or unpaid, may genuinely desire to work for a nonunion employer and to proselytize coworkers on behalf of a union, other salts clearly have no such interest. According to the Board, "submitting applications with no intention of seeking work but rather to generate meritless unfair labor practice charges is not protected activity. Indeed, such conduct manifests a fundamental conflict of interests ab initio between the employer's interest in doing business and the applicant's interest in disrupting or eliminating this business." Such conduct, the Board observed, also collides with the employer's right, recognized by the Supreme Court, to insist on employee loyalty and on a cooperative employee-employer relationship. *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard)*.[22]

For these reasons, the Board imposed on the General Counsel in all hiring discrimination cases the burden of proving that the alleged discriminatee was genuinely interested in seeking to establish an

[20] 351 NLRB No. 18 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).
[21] 328 NLRB 1273, 1274 (1999).
[22] 346 U.S. 464, 472 (1953).

employment relationship and was thereby qualified for protection as a Section 2(3) employee. The Board explained that this requirement embraces two components:

> (1) there was an application for employment, and (2) the application reflected a genuine interest in becoming employed by the employer. As to the first component, the General Counsel must introduce evidence that the individual applied for employment with the employer or that someone authorized by that individual did so on his or her behalf. . . . .
>
> As to the second component (genuine interest in becoming employed), the employer must put at issue the genuineness of the applicant's interest through evidence that creates a reasonable question as to the applicant's actual interest in going to work for the employer. In other words, while we will no longer conclusively presume that an applicant is entitled to protection as a statutory employee, neither will we presume, in the absence of contrary evidence, that an application for employment is anything other than what it purports to be.

The Board concluded that although some evidence in *Toering* suggested the alleged discriminatees' genuine interest in seeking employment, other evidence suggested the opposite. In these circumstances, the Board remanded the case to the judge in order to apply the new analytical framework.

Members Liebman and Walsh, dissenting, would have retained without modifications the standard for litigating hiring discrimination cases set forth in *FES*.[23] They commented that the Board's decision in *Toering*, reached without the benefit of briefs, oral argument, or even a request to reconsider precedent, "continues the Board's roll-back of statutory protections for union salts who seek to uncover hiring discrimination by nonunion employers and to organize their workers" by legalizing hiring discrimination in some, perhaps many, cases involving salts.

In the dissent's view, the majority's new approach cannot be reconciled with the Act, its policies, or Supreme Court precedent. They pointed out that in *Phelps Dodge*, the Supreme Court stated that:

---

[23] 331 NLRB 9 (2000), supplemented 333 NLRB 66 (2001), enfd. 301 F.3d 83 (3d Cir. 2002).

> Discrimination against union labor in the hiring of men is a dam to self organization at the source of supply. *The effect of such discrimination is not confined to the actual denial of employment*; it inevitably operates against the whole idea of the legitimacy of organization. In a word, it undermines the principle which . . . is recognized as basic to the attainment of industrial peace.

According to the dissent, the Act's aims are, therefore, furthered by finding unlawful an employer's refusal to hire or consider an applicant because of his union affiliation, even where it cannot be established that an applicant would have accepted a job if offered.

The dissent noted that Sections 2(3) and 8(a)(3) make clear that the employer's motive, and not the applicant's intentions, is the proper focus in cases like this one. If Congress had intended to exclude "non-genuine" job applicants, they argued, it presumably would have done so. Instead, Congress has repeatedly declined to enact numerous anti-salting bills in the 12 years since the Supreme Court decided *NLRB v. Town & Country Electric, Inc.*[24] (unanimously approving Board's holding that paid union organizers who seek employment are statutory employees).

The dissent further stated that the majority's new standard, even considered on its own terms, is critically flawed because it fails to provide clear guidance with respect to determining an applicant's genuine status. Moreover, they observe that the new standard places an unfair burden on the General Counsel by allowing an employer to first raise the genuineness issue during the unfair labor practice hearing. And, they argued, it will both spawn and prolong the course of litigation by creating a new fact-intensive defense.

The dissenters summarized their disagreement with the majority in the following terms:

> By any measure, today's decision represents a failure in the administration of the National Labor Relations Act. The majority unnecessarily overturns carefully considered precedent and implements an untenable approach that will not even accomplish the majority's professed goals. Worse, the Board now creates a legalized form of hiring discrimination, a step that would have been considered unthinkable by the *Phelps Dodge* Court when it held that the prevention of hiring discrimination against union members was "the driving

[24] 516 U.S. 85 (1995).

> force behind the enactment of the National Labor Relations Act." 313 U.S. at 186. Because we still believe that it is crucial to the Act's basic mandate to uncover and redress discrimination against union members, we dissent.

In *Innes Construction Co.*,[25] the Board majority of Members Schaumber and Kirsanow reversed the administrative law judge's finding that the respondent unlawfully refused to hire or consider for hire 12 union applicants. Contrary to the judge, the majority found that the respondent would have refused to consider or hire the applicants even in the absence of their union affiliation. The majority analyzed the case under *FES*,[26] finding that, even assuming that the General Counsel established his prima facie case, the respondent established that it would have refused to hire or consider the applicants even in the absence of their union affiliation.

The majority found that the respondent's vice president, Jeff Johnson, had a reasonable belief that the applicants were not willing to work for the wages offered by the respondent. The majority found that union organizer Chad Miller spoke on behalf of the applicants during the application process, and attempted to persuade Johnson to sign a union contract. When Johnson refused, neither Miller nor the other applicants indicated that they were willing to work for the respondent without a union contract. Consequently, the respondent was privileged to refuse to hire or consider the applicants with these conditions attached.

Member Liebman dissented, arguing that the respondent's purported reason for refusing to hire or consider the applicants was an after-the-fact justification. Member Liebman argued that Miller told Johnson that the applicants' intent was to organize the respondent, a task that could only be accomplished by obtaining jobs with the respondent. Member Liebman also argued that Johnson could have dispelled any doubts as to the motivations of the applicants by making employment offers or asking the applicants what wages they were willing to work for.

D. Employer Bargaining Obligation

An employer and the representative of its employees, as designated or selected by a majority of employees in an appropriate unit pursuant to Section 9(a), have a mutual obligation to bargain in good faith about wages, hours, and other terms and conditions of employment. An

[25] 351 NLRB No. 34 (Members Schaumber and Kirsanow; Member Liebman dissenting).
[26] 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002).

employer or labor organization, respectively, violates Section 8(a)(5) or Section 8(b)(3) of the Act if it does not fulfill its bargaining obligation.

1. Withdrawal of Recognition

In *Shaw's Supermarkets, Inc.*,[27] the Board addressed an issue of first impression, whether an employer may rely on evidence of actual loss of majority support to withdraw recognition from a union after the third year of a contract of longer duration. The majority found that the respondent lawfully withdrew recognition from United Food and Commercial Workers Local 1445 after the third year of a 5-year contract.

The case was before the Board on competing motions for partial summary judgment on the issue of whether the withdrawal of recognition was unlawful. The General Counsel contended that an employer should not be allowed to withdraw recognition during the term of a contract. The General Counsel noted that in *General Cable Corp.*,[28] the Board held that a union's majority status cannot be questioned during the term of a 3-year contract. Citing *Montgomery Ward & Co.*,[29] and *Northern Pacific Sealcoating*,[30] the General Counsel observed that when a contract is for a term longer than 3 years, it bars for its full term an election petition filed by the employer or by an incumbent union (though not one filed by an employee or another union). The General Counsel contended that a contract of more than 3 years' duration should continue to act as a bar for its entire term with respect to a withdrawal of recognition. The General Counsel submitted that it would be unreasonable to allow an employer to withdraw recognition at a time when it would not be allowed to file an RM petition and that, as to the effectuation of the employees' right to free choice, the appropriate method would be to hold an election after employees filed a timely decertification petition, as the employees did here.

The respondent argued that it met the criterion of *Levitz Furniture Co. of the Pacific*,[31] in that it had been presented with actual proof of loss of majority support when it withdrew recognition.

Relying on the Board's distinction in *Levitz* between the showing required for a withdrawal of recognition and that required to obtain an RM election, Chairman Battista and Member Schaumber found that "an employer, as here, in possession of facts showing an actual loss of majority support for an incumbent union should have wider freedom of

---

[27] 350 NLRB 585 (Chairman Battista and Member Schaumber; Member Liebman dissenting).
[28] 139 NLRB 1123 (1962).
[29] 137 NLRB 346 (1962).
[30] 309 NLRB 759 (1992).
[31] 333 NLRB 717 (2001).

action than an employer lacking such knowledge." Stating that it should fix the parameters of this wider freedom of action "at a point where the policy goals of stability in labor relations and employee freedom of choice . . . can best be satisfied and reconciled," the majority found that in the present case both these policy goals could be effectively accommodated by permitting the respondent, who was in possession of untainted evidence of the union's actual loss of majority support, to withdraw recognition from the union after the third year of a contract of longer duration (in this case, a 5-year contract). Dissenting, Member Liebman argued that it was anomalous to permit the respondent to withdraw recognition at a time when it would not have been permitted to file an election petition, and that *Hexton Furniture Co.*,[32] stood for the principle that when an employer may not file an election petition, it is also prohibited from unilaterally withdrawing recognition.

In *Badlands Golf Course*,[33] the Board, in a 3–2 decision, found that the respondent lawfully withdrew recognition from Laborers Local 872 a little more than 6 months after resuming bargaining pursuant to an Order of the Board, which had found that the respondent's previous withdrawal of recognition was unlawful.

The majority reversed a 2004 decision of an administrative law judge that found that the second withdrawal violated Section 8(a)(5) of the Act. Applying the factors identified in *Lee Lumber & Building Material Corp.*,[34] the majority found that a reasonable period of time for bargaining had elapsed after the resumption of negotiations pursuant to the Board's November 2002 Order. The majority found it relevant that the parties had bargained for 8 months before the first withdrawal of recognition. Dissenting, Members Liebman and Walsh stated that the majority had misapplied *Lee Lumber*, in part by improperly relying on the earlier period of bargaining.

In *Young Women's Christian Association of Western Massachusetts*,[35] Members Liebman and Walsh affirmed the administrative law judge's findings that the respondent violated Section 8(a)(5) and (1) of the Act by failing to reduce to writing and sign a contract reached with Auto Workers Local 2322 and ratified by employees on April 20, 2005, and by withdrawing recognition from the union when it received evidence that the union had lost majority support after the parties had reached a final agreement.

---

[32] 111 NLRB 342 (1955).
[33] 350 NLRB 264 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).
[34] 334 NLRB 399 (2001).
[35] 349 NLRB 762 (Members Liebman and Walsh; Chairman Battista dissenting).

Chairman Battista, dissenting, found that the April 20 agreement did not render unlawful the withdrawal of recognition. Citing *Appalachian Shale Products Co.*,[36] he noted that the Board has held that a document containing substantial terms and conditions of employment can serve as a contract bar only if it is signed by the parties. The Chairman decided that the contract-bar principles are applicable to this case, saying if there is no signed contract as a bar, an employer can withdraw recognition based upon the union's loss of majority status. He acknowledged that an oral agreement followed by an uncertainty or doubt as to the union's majority status, will not privilege a refusal to sign a contract. Chairman Battista pointed out however that in this case, the oral agreement was followed by the fact of loss of the union's majority status and that under *Levitz Furniture*,[37] an employer can withdraw recognition based on the fact of loss of majority status. The only exception is that majority status cannot be challenged during the term of a signed contract, which is not applicable here.

Members Liebman and Walsh rejected their colleague's contention, also advanced by the respondent, that because, under *Appalachian Shale*, an unwritten, unsigned agreement does not bar the Board from processing an employee decertification petition, such an agreement should not preclude an employer's unilateral withdrawal of recognition, based on evidence of the union's actual minority status. They explained:

> The Respondent and the dissent fail to recognize the crucial distinction between employees challenging a union's representational status by asking the Board to hold an election and an employer withdrawing recognition from a union unilaterally. The Board, with court approval, has repeatedly stated that the decertification election process, with the safeguards for Section 7 rights, is the preferred method of resolving questions regarding employees' support for an incumbent union. See *Levitz*, supra at 723, 727. Employer self-help, by contrast, has always been judged by different standards. As the judge pointed out, the distinction that the Board makes between the effect of an unwritten, unsigned agreement concerning, on the one hand, the processing of a decertification election petition, and, on the other, an employer's withdrawal of recognition, is fully consistent with the Board's duty to balance stability in

[36] 121 NLRB 1160, 1161 (1958).
[37] 333 NLRB 717 (2001).

collective-bargaining relationships against the effectuation of employees' representational desires.

2. Waiver of Right to Bargain

In *Provena St. Joseph Medical Center*,[38] a Board panel majority of Members Liebman and Walsh affirmed the administrative law judge's application of the "clear and unmistakable standard waiver" standard for determining whether an employer has fulfilled its statutory bargaining obligation and found that the respondent, Provena St. Joseph Medical Center, violated Section 8(a)(5) of the Act by unilaterally and without notice to the union (Illinois Nurses Association) implementing a staff incentive policy, but reversed the judge and dismissed another Section 8(a)(5) allegation with respect to the respondent's unilaterally implementing a new attendance and tardiness policy.

Admitting that it acted unilaterally with respect to both matters, the respondent asserted that it was privileged to do so because the union had waived its right to bargain about these matters and, alternatively, that the "contract coverage" standard should be followed rather than the "clear and unmistakable waiver" standard applied by the judge.

In explaining its reasons for adhering to the waiver standard, the majority acknowledged that "contract coverage" has been endorsed by the Seventh and D.C. Circuits, and specifically addressed those courts' concerns. The majority pointed to the approval by many courts, including the Supreme Court, of the Board's long-established waiver analysis, the Board's unique responsibility of ensuring that the mandates of the Act are carried out, and the likelihood of complicating the collective-bargaining process by switching to a different analytical approach.

Applying the Board's traditional "clear and unmistakable waiver" test, the majority determined that because (1) the parties' collective-bargaining agreement did not contain an express provision regarding incentive pay, and (2) there was no evidence that during the course of negotiations the subject of incentive pay was consciously explored or that the union intentionally relinquished its right to bargain over the topic, the respondent was not privileged to act unilaterally on the matter. With respect to the attendance and tardiness policy, however, the majority determined that several parts of the contract's management rights clause, read together, explicitly authorized the respondent to take unilateral action.

In dissent, Chairman Battista embraced contract coverage, stating that it would eliminate the conflict between the Board and certain courts as

[38] 350 NLRB 808 (Members Liebman and Walsh; Chairman Battista dissenting).

well as harmonize the Board's views with the grievance-arbitration process. He stated that under contract coverage, where there is a clause relevant to the dispute within the collective-bargaining agreement, it can reasonably be said that the parties *have bargained* about the subject, not that there has been a refusal to bargain. Applied to the instant case, he determined that the respondent acted lawfully in both matters because (1) the management rights clause contained several provisions relevant to time and attendance and (2) a provision relating to "extraordinary pay" as well as language in the management rights section arguably permitted the respondent to act unilaterally with respect to incentive pay.

In *Baptist Hospital of East Tennessee*,[39] a Board majority of Chairman Battista and Member Schaumber, affirming the administrative law judge, found that the respondent did not violate Section 8(a)(5) and (1) of the Act by unilaterally implementing a change on January 1, 2002, concerning the scheduling of holiday shift work for unit employees assigned to the respondent's in-patient radiology unit, of the hospital's imaging department.

The majority determined initially that the General Counsel's theory of the case involved solely a unilateral-change violation, noting that the General Counsel never clearly asserted an alternative Section 8(d) contract-modification theory.

The respondent had argued that, through the management-rights clause of the parties' collective-bargaining agreement, the union waived its right to bargain over the scheduling change. The majority agreed with the respondent and the judge that the evidence showed a clear and unmistakable waiver. They found, in particular, that the language in the management-rights clause giving the respondent the right "to determine and change starting times, quitting times and shifts," to "assign" employees, and to "change methods and means by which its operations are to be carried on" provided the respondent with the fundamental right to schedule employees. The respondent's unilateral change in scheduling employees for holiday-shift work was consistent with this right. Accordingly, the majority affirmed the judge's recommended dismissal of the complaint.

In a footnote, Chairman Battista, citing his dissent in *Provena St. Joseph Medical Center*,[40] wrote that his conclusion that dismissal of the complaint was appropriate would be the same under a "contract coverage" test accepted by several circuit courts of appeal. Member

[39] 351 NLRB No. 12 (Chairman Battista and Member Schaumber; Member Liebman dissenting).
[40] 350 NLRB 808.

Schaumber agreed, citing his dissenting position in *California Offset Printers*[41] that application of that test reaches the same outcome.

Member Liebman, dissenting, would have reversed the judge's dismissal of the complaint. Citing her dissent in *Bath Iron Works Corp.*,[42] she observed that her "clear and unmistakable waiver" analysis would be the same whether the General Counsel's refusal-to-bargain theory was "unilateral change" under Section 8(a)(5) or "contract modification" under Section 8(d). In her view, the management-rights clause language relied on by her colleagues did not establish a clear and unmistakable waiver, because language in the collective-bargaining agreement separate from the management-rights clause appeared to prohibit the respondent from making the scheduling change—just the opposite of what is required to find a waiver.

3. Continuing Obligation to Bargain after Union Merger

In *Raymond F. Kravis Center for the Performing Arts*,[43] the Board modified its standard for determining under what circumstances a union merger or affiliation may relieve an employer of its obligation to recognize and bargain with an incumbent union. Reversing precedent, the Board determined that an employer could not withdraw recognition after a merger or affiliation merely because the merger or affiliation was not conducted with adequate "due process." Rather, the Board held that the employer's obligation to recognize the union continues unless the merger or affiliation resulted in changes so significant as to alter the identity of the bargaining representative.

The Board affirmed the administrative law judge's finding that the respondent violated Section 8(a)(5) and (1) of the Act by unilaterally withdrawing recognition from the International Alliance of Theatrical Stage Employees and Moving Picture Technicians and Allied Crafts of the United States, its Territories and Canada, Local 623 (Local 623) on September 11, 2000. On February 1, 2002, shortly before the hearing in this case began, Local 623 merged with five other locals to form Local 500. Applying existing Board law, the judge rejected the General Counsel's contention that Local 500 was the successor to Local 623, finding that the merger had occurred without due process because union members had not been provided the opportunity to vote on the merger. Accordingly, the judge found that the respondent had no obligation to recognize and bargain with Local 500, and that any bargaining obligation

[41] 349 NLRB 732.
[42] 345 NLRB 499 (2005), affd. sub nom. *Bath Marine Draftsmen's Assn. v. NLRB*, 475 F.3d 14 (1st. Cir.).
[43] 351 NLRB No. 19 (Chairman Battista and Members Liebman and Kirsanow).

the respondent had with Local 623 terminated as of the date of the merger.

Having determined that the due process requirement was no longer viable in light of the Supreme Court's decision in *NLRB v. Financial Institution Employees of America Local 1182 (Seattle-First)*,[44] the Board examined whether the merger resulted in such a dramatic change to the union as to alter its identity as the bargaining representative of the respondent's employees. Because the Board found no such change had occurred, it reversed the judge and found that the respondent's obligation to recognize and bargain with the union continued after the merger.

The Board affirmed the judge's finding that the respondent violated Section 8(a)(5) and (1) by unilaterally changing terms and conditions of employment, including eliminating department head positions and refusing to use the union's hiring hall, without complying with the requirements of Section 8(d)(3) and without having first lawfully bargained to impasse with respect to those terms and conditions. The Board also affirmed the judge's finding that the respondent violated Section 8(a)(5) and (1) by declaring impasse over a change in the scope of the bargaining unit.

In *Allied Mechanical Services*,[45] the Board unanimously reversed the administrative law judge and found that the respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the union, refusing to furnish information, and unilaterally revising its job application procedure to require applicants to apply in person at its Kalamazoo office.

The Board granted the General Counsel's and union's motions for reconsideration of the Board's prior decision,[46] in which the Board had adopted the judge's dismissal of the Section 8(a)(5) allegations. Contrary to its prior decision, the Board found that the lack of a membership vote on a union merger did not relieve the respondent of its obligation to recognize and bargain with the union. In so finding, the Board applied its decision in *Kravis Center for the Performing Arts*,[47] which overruled the Board's "due process" requirement for union mergers or affiliations, i.e., the rule that, following a union merger or affiliation, an employer's obligation to recognize and bargain with the union ended if the union's members had not been afforded an opportunity to vote, with adequate due process safeguards, regarding the merger or affiliation. The Board thus found that lack of a membership

[44] 475 U.S. 192 (1986).
[45] 351 NLRB No. 5 (Chairman Battista and Members Schaumber and Walsh).
[46] 341 NLRB 1084 (2004).
[47] 351 NLRB No. 19.

vote on the union merger was not a defense to the Section 8(a)(5) allegations against the respondent.

The Board then addressed the judge's two other rationales for his dismissal of the Section 8(a)(5) allegations. Contrary to the judge, the Board found that the General Counsel established that the respondent and the union had a Section 9(a) bargaining relationship, not a Section 8(f) relationship. The parties' bargaining relationship originated in a 1991 settlement of an unfair labor practice complaint. The Board found that the settlement, under which the respondent agreed to recognize and bargain with the union, coupled with the Board's finding in a 2001 case that the respondent had violated Section 8(a)(5) at a time when it did not have a collective-bargaining agreement with the union, together showed that the respondent and the union had a Section 9(a) bargaining relationship.

The Board also rejected the judge's rationale that the respondent was relieved of its bargaining obligation because the parties had bargained for a reasonable period of time. Rather, under the applicable law at the time that the respondent withdrew recognition, the respondent could lawfully withdraw recognition only by showing either that the union had actually lost the support of a majority of the bargaining unit employees or that the employer had good-faith doubt or uncertainty, based on objective considerations, of the union's continued majority status.

The Board rejected the respondent's contention that it had reasonable, good-faith doubt or uncertainty of the union's majority status. The Board found that the fact that the only employees who engaged in union activities were "salts" did not support good-faith doubt or uncertainty regarding the union's continued majority status. The Board found inapposite the respondent's argument that the union had never demonstrated majority support, because a presumption of majority support was created by the respondent's recognition of the union under the 1991 settlement agreement. Having rejected all of the respondent's defenses, the Board found that the General Counsel established that the respondent violated Section 8(a)(5) and (1) by withdrawing recognition from the union, refusing to furnish information, and unilaterally revising its job application procedure.

4. Unilateral Change During Economic Strike

In *Finch, Pruyn & Co.*,[48] the Board found that the respondent did not violate Section 8(a)(5) and (1) of the Act by unilaterally subcontracting during an economic strike for the pulp needed for its papermaking operation, agreeing with the administrative law judge that the

[48] 349 NLRB 270 (Chairman Battista and Member Schaumber; Member Walsh dissenting in part).

respondent's subcontracting was a lawful temporary measure to maintain its operations during the strike. Accordingly, it affirmed the judge's findings that the subcontracting did not convert the economic strike to an unfair labor practice strike, and that the strikers remained economic strikers. The Board also found that the respondent did not violate the Act by continuing its unilateral subcontracting after the strike had ended because the union never made a request to bargain about the poststrike subcontracting.

Member Walsh, dissenting in part, agreed that the respondent was not obliged to bargain with the union over its temporary means to maintain its papermaking operation during the strike. He concluded, however, that the respondent violated Section 8(a)(5) and (1) by failing to bargain over its mid-strike decision to subcontract for pulp "for an indefinite period not to terminate at the expiration of the strike," that the violation converted the economic strike to an unfair labor practice strike, and that the respondent thus violated Section 8(a)(3) and (1) when it failed to immediately reinstate the Local 18 strikers at the conclusion of the strike.

On other alleged violations, the Board reversed the judge's findings (1) that the respondent did not violate Section 8(a)(5) and (1) by refusing to provide Local 18 with copies of the respondent's subcontracts for pulp; and (2) that the respondent violated Section 8(a)(5) and (1) by refusing to provide information, requested by both Local 18 and Local 155, regarding the preemployment drug testing of permanent replacement workers without offering to bargain over its asserted confidentiality concerns. The Board found that Local 18 satisfied its burden of establishing that copies of the pulp contracts were relevant and necessary to Local 18's ability to assess and enforce the unit employees' recall rights. The Board determined, however, that the union failed to demonstrate the probable relevancy of the information regarding the prehire drug testing of applicants. In doing so, the Board rejected the union's contention that it had safety concerns and believed that the respondent failed to uniformly require screening.

Contrary to the judge, the Board found that the respondent violated Section 8(a)(5) and (1) by unilaterally eliminating employee Bernard Palmer's prestrike "pcc oiler" position. It agreed, however, with the judge that the respondent did not violate Section 8(a)(3) and (1) by eliminating the "pcc oiler" position or by failing to recall Palmer to another available position.

5. Direct Dealing

In *Boehringer Ingelheim Vetmedica, Inc.*,[49] the Board, in a 2–1 decision, found that the respondent lawfully locked out employees and presented them with individual no-strike forms that they would have to sign before being permitted to return to work. The Board reversed a 2005 decision of an administrative law judge that found that, although the lockout was initially lawful, the respondent's presentation of no-strike forms to individual employees constituted direct dealing and, from that time forward, the lockout violated Section 8(a)(1), (3), and (5) of the Act. The Board majority found that the respondent timely informed the union of its intentions, giving it the option of ending the lockout by providing assurances that there would not be a strike, either by providing such assurance on behalf of bargaining unit employees or by providing no-strike assurances from individual employees.

Dissenting, Member Walsh found that the respondent violated the Act by dealing directly with locked-out bargaining unit employees. He found that the respondent bypassed the union by failing to inform it specifically of the respondent's intent to present the no-strike forms to individual employees.

6. Construction Industry Agreement

In *Madison Industries, Inc.*,[50] Chairman Battista and Member Schaumber found, contrary to the administrative law judge, that the parties' relationship was governed by Section 8(f) of the Act, rather than by Section 9(a), and that the respondent lawfully repudiated its relationship with, and lawfully refused to provide requested information to, the union following the expiration of their bargaining agreement. The majority dismissed the complaint in its entirety.

In dissent, Member Liebman found that the respondent violated Section 8(a)(5) and (1) , as alleged, by refusing to bargain and to provide information relevant to bargaining. She found that the language of the recognition clause in the parties' contract met the requirements of *Staunton Fuel & Material*,[51] for establishing a relationship under Section 9(a) (as opposed to Sec. 8(f)), and the respondent's repudiation of that relationship thus was unlawful.

The majority, applying the *Staunton Fuel* standard, examined the parties' entire agreement to determine whether a Section 9(a) relationship was intended. They concluded that the General Counsel did not establish that the Agreement reflects a 9(a) relationship:

---

[49] 350 NLRB 678 (Members Schaumber and Kirsanow; Member Walsh dissenting).
[50] 349 NLRB 1306 (Chairman Battista and Member Schaumber; Member Liebman dissenting).
[51] 335 NLRB 717 (2001).

"Specifically, the Agreement contains a provision waiving the Respondent's right to file a petition for an election with the Board during the term of the Agreement. If the agreement were a 9(a) agreement, there would be no need for such a provision. That is, an agreement governed by Section 9(a) bars an employer from filing a petition for an election during its term. By contrast, a petition can be processed during the life of an 8(f) contract. Thus, it would appear that the parties contemplated an 8(f) contract, and yet wished to waive the Respondent's right to file a petition during the term of the Agreement." Absent extrinsic evidence to clarify the ambiguity of the contractual language, the General Counsel has not rebutted the 8(f) presumption, the majority held.

Member Liebman said her colleagues' approach "stretches the entire-agreement rule too far." She explained: "This is not a dispute over a single term that could arguably be interpreted in two different ways. Where, as here, a contract provision clearly addresses an issue with an unambiguous meaning, there can be no ambiguity unless another provision squarely contradicts it. The recognition clause in this contract states categorically that the Union is the 'majority representative' and that the Employer recognizes it as such. A separate clause that only waives the Respondent's right to file a Board petition—which would merely be consistent with the Union's having Section 8(f) status—simply does not negate or contradict the recognition clause in a manner that creates a genuine ambiguity."

E. Union Interference with Employee Rights

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

Chargeability of Organizing Expenses

In *Teamsters Local 75 (Schreiber Foods)*,[52] the Board affirmed the administrative law judge's supplemental decision to the extent that it held that the respondent union did not unlawfully charge the charging party objectors, bargaining unit employees who are nonmembers of the

[52] 349 NLRB 77 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

respondent, for expenses incurred in organizing employees working in the public sector.

Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge and held that the respondent violated Section 8(b)(1)(A) of the Act and its duty of fair representation by charging the charging parties for expenses incurred organizing the employees of other employers within the dairy and cheese processing industry, which is the competitive market of Schreiber Foods, the charging parties' employer. The majority held, contrary to the judge, that the respondent failed to present sufficient evidence to support a finding under *Food & Commercial Workers Locals 951, 7, & 1036 (Meijer, Inc.)*[53] that its organizing expenses are chargeable to objectors because they are germane to its role as collective-bargaining representative and ultimately inure to the benefit of the objectors' bargaining unit.

In *Meijer*, the Board held that the evidence presented by the unions established that the expenses they incurred in organizing employees employed in the retail grocery business in the same metropolitan area ("the same competitive market") as the bargaining unit employees were lawfully charged to the objectors. In so holding, the Board found that the testimony of experts in the field of economics and the direct observations and experience of the union representatives established a clear linkage between organizing in the retail grocery business in the same metropolitan area and wages for employees in the bargaining units at issue in *Meijer*.

Chairman Battista and Member Schaumber wrote in this supplemental decision:

> In our view, then, *Meijer* permits a union to demonstrate, as the unions did in *Meijer* for the highly competitive retail grocery business located in the same metropolitan area, that "there is a direct, positive relationship between the wage levels of union-represented employees and the level of organization of employees of employers in the same competitive market." Id. If this same showing is made under analogous factual settings, then under *Meijer* the union may lawfully charge objectors for organizing expenditures.
>
> In the instant case, the evidence advanced by the Respondent failed to meet the standard set in *Meijer*.

[53] 329 NLRB 730 (1999), enf. denied in relevant part sub nom. *Food & Commercial Workers v. NLRB*, 284 F.3d 1099 (9th Cir. 2002), modified and superseded 307 F.3d 760 (2002), cert. denied 537 U.S. 1024 (2002).

Member Schaumber, dissenting in part, believes that *Meijer* was wrongly decided. In the absence of a Board majority to overrule *Meijer*, he recognized it as controlling Board law and joined Chairman Battista in its application to this case. Member Schaumber said the Board failed to address the broader and recurring question, one specifically raised and briefed by the parties, namely, whether such expenses are *ever* properly chargeable to *Beck*[54] objectors. He noted that the issue was previously considered and erroneously decided by a divided Board in *Meijer*, a decision "repeatedly criticized by other Board members as utterly inconsistent with Supreme Court precedent." Member Schaumber believes his colleagues compounded the error by finding it unnecessary to pass on the judge's unprecedented and unwarranted extension of *Meijer* in this case. He would reach and address both issues.

Member Liebman, in her partial dissent, found that the union acted lawfully in charging the objectors *their fair share* of the union's expenses in organizing employees of Schreiber's competitors. She said that her colleagues, in finding to the contrary, hold "in effect, that no matter how much theoretical and empirical evidence has been introduced showing that increased union organizing helps to increase and protect union wage rates, no union may charge *Beck* objectors for such expenses unless it hires a labor economist to prove that such a relationship exists in the particular industry in which the union is the objectors' bargaining agent." Member Liebman believes her colleagues reached their result "despite controlling Board and court precedent to the contrary, and on a theory that is at odds with accepted economic theory, empirical evidence, practical experience, and common sense."

F. Remedial Order Provisions

1. Interim Employment Evidentiary Burdens

In *St. George Warehouse*,[55] the Board, by a 3–2 vote, modified its procedures in backpay cases. Under the new rule, the General Counsel will have the burden of producing evidence concerning employees' efforts to find interim employment after an unlawful discharge.

In a prior proceeding, the Board found that St. George Warehouse, which operates a warehousing facility in Kearney, New Jersey, violated the Act by discharging two employees because of their union activities. The Board ordered St. George Warehouse to remedy those unfair labor practices by reinstating the two employees and paying them back wages

[54] *Communication Workers v. Beck*, 487 U.S. 735 (1988).
[55] 351 NLRB No. 42 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).

and benefits. An administrative law judge then conducted a compliance, or backpay, proceeding to determine the amount of backpay owing.

In a backpay proceeding, the burden to prove a reasonable amount of gross backpay is on the Board's General Counsel, who prosecutes cases before the Board. That amount is then reduced by the employees' interim earnings from the time of their discharge to the date the employer offered them reinstatement, a figure usually derived from social security data. The employer may seek to reduce that net backpay amount further by showing, among other things, that the employees had not sought to mitigate damages by making reasonable efforts to find interim employment. Under prior Board law, the employer bore the burden of production and persuasion with respect to that affirmative defense.

In its decision in this case, the Board reaffirmed the principle that the employer bears the ultimate burden of persuasion concerning whether an unlawfully discharged employee made an adequate search for interim employment. But the Board determined that, once the employer shows that there were comparable jobs available in the relevant geographic area, the burden of production "is properly on the discriminatee and the General Counsel . . . to show that the discriminatee took reasonable steps to seek those jobs." To meet this burden of production, the General Counsel must produce the employee to testify or offer other competent evidence of the employee's interim job search.

The Board majority (Chairman Battista and Members Schaumber and Kirsanow) based their decision on the "mixed" reception the Board's prior rule received in the courts of appeals and on the General Counsel's superior access to discharged employees and information regarding their job searches. The majority observed that its new rule is not burdensome to the General Counsel, who under existing internal guidelines routinely gathers evidence of job searches in employment discrimination cases likely to result in backpay.

The dissenters (Members Liebman and Walsh) asserted that the majority offered no persuasive reason for modifying the current procedure, which placed all aspects of the burden of proof to reduce backpay upon the wrongdoer. The dissenters observed that the existing rule had been followed for more than 40 years and that it was supported by the weight of judicial authority. In a separate dissent, Member Liebman called the majority's action an "unfortunate" continuation of "the Board's recent trend of weakening the backpay remedy under the National Labor Relations Act."

2. Backpay Period for "Salts"

In *Oil Capitol Sheet Metal, Inc.*,[56] the Board announced new evidentiary standards for determining the duration of the backpay period when the discriminatee is a "salt."

In cases of this kind, a union has sent members to seek employment from a nonunion employer with the intent of obtaining employment and then organizing the employer's employees. Those members are commonly referred to as "salts." Under the law, if the employer discharges or refuses to hire the salt because of his union affiliation or activity, the employer's conduct is unlawful.

In this decision, the Board found unanimously that the respondent violated Section 8(a)(3) and (1) of the Act by refusing to hire a salt. The Board split, however, over the remedy for this violation.

The remedy for an unlawful discharge or refusal to hire includes the employer's payment of backpay to the employee for the period from the unlawful act until the employer makes a valid offer of reinstatement (or instatement, in the case of an unlawful refusal to hire). In determining the duration of the backpay period, the Board applies a presumption that, if hired, the discriminatee would stay on the job for an indefinite period. If the job is a construction job, the Board applies a further presumption that the employer would transfer the discriminatee to other jobsites when the job from which he was discharged (or for which he should have been hired) came to an end.

Chairman Battista and Members Schaumber and Kirsanow declined to continue to apply those presumptions in cases where the discriminate is a salt. The majority reasoned that they are inconsistent with the reality of salting because salts, when hired, stay on the job only until they succeed in their organizational effort or reach the point where such efforts are unsuccessful. In either situation the union typically then sends the salt to seek to organize the employees of another nonunion employer.

The majority recognized that this will not always be the case and that there may be instances where the union will permit a member to work for the targeted employer for an indefinite period. However, the majority's view was that the union and the salt/discriminatee were in the better position to explain their intentions, and thus the burden to establish the duration of the backpay period should be on them, rather than the respondent employer, "to prove the reasonableness of the claimed backpay period by presenting, through the General Counsel, evidence

[56] 349 NLRB 1348 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting in part).

readily available to them." The burden should not be on the employer to prove the contrary.

In its opinion, the majority stated:

> [T]he traditional presumption that the backpay period should run from the date of discrimination until the respondent extends a valid offer of reinstatement loses force both as a matter of fact and as a matter of policy in the context of a salting campaign. Indeed, as discussed below, rote application of the presumption has resulted in backpay awards that bear no rational relationship to the period of time a salt would have remained employed with a targeted nonunion employer. In this context, the presumption has no validity and creates undue tension with well-established precepts that a backpay remedy must be sufficiently tailored to expunge only actual, not speculative, consequences of an unfair labor practice, and that the Board's authority to command affirmative action is remedial, not punitive.

The majority also held that instatement to the job would not be ordered where the "salt" would have left the job prior to the Board's decision.

In reaching its conclusions, the majority relied in part on the Fourth Circuit's decision in *Aneco v. NLRB*,[57] where the court deemed "indefensible" the Board's assumption that the hired salt would have worked for the respondent employer for 5 years.

The majority acknowledged that the parties to the case before it had not sought a reversal of Board law. However, the Board said that it was its responsibility to ensure that its remedies are compensatory and not punitive.

In dissent, Members Liebman and Walsh criticized the majority for overturning Board precedent endorsed by two appellate courts and rejected by none, without any party having raised the issue, without the benefit of briefing, and without any sound legal or empirical basis. The dissent would have continued to treat salts as the Board treats all other employees who are subjected to employment discrimination. The dissent stated that, in backpay cases, it is fundamental that the Board resolves factual uncertainties against the wrongdoer, the employer. This approach is not unique to the Board. Rather, as the Supreme Court stated in *Bigelow v. RKO Radio Pictures*,[58] the "most elementary conceptions of

[57] 285 F.3d 326 (2002).
[58] 327 U.S. 251, 265 (1946).

justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created." In the view of the dissenting members, the majority's new approach not only violates that well-established principle of resolving remedial uncertainties against the wrongdoer, but it treats salts "as a uniquely disfavored class of discriminatees, notwithstanding the Supreme Court's ruling that salts are protected employees under the National Labor Relations Act. *NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85 (1995)."

The dissent also stated that the majority's reasons for adopting its new evidentiary approach were "dubious at best," and that it was unreasonable to presume that salts would leave employment at some fixed point in time, known by a union in advance. For those same reasons, the dissenters found that there was no justification for the majority's departure from the presumption that a salt, like any other employee at a construction site, would have been transferred to one of the employer's other projects upon completion of the project at the site where the discrimination occurred.

3. Employee Misconduct Discovered by Employer Unlawful Conduct

In *Anheuser-Busch, Inc.*,[59] the Board, by a 3–2 vote, reaffirmed its 2004 holding that the Act prohibits the Board from granting a make-whole remedy to employees disciplined or discharged for misconduct discovered as a result of unlawful conduct by their employer.

Without bargaining with the union that represents the employees at its St. Louis facility, Anheuser-Busch installed hidden surveillance videocameras. Through use of the cameras, Anheuser-Busch learned that certain employees were engaged in misconduct, and it disciplined or discharged 16 of them.

In its initial decision, the Board found the installation and use of the cameras to be an unlawful unilateral change, and it issued a cease-and-desist order against Anheuser-Busch. But by a 2–1 decision, the Board declined to order reinstatement or backpay for the employees. The Board held that it lacked authority to order reinstatement or backpay because the employees were disciplined for cause, regardless of the fact that their employer learned of their misconduct only as a result of its own unfair labor practice. On petition for review to the United States Court of Appeals for the District of Columbia Circuit, the court affirmed the Board's unfair labor practice finding, but found that the Board had not

[59] 351 NLRB No. 40 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).

adequately reconciled with existing caselaw its decision to withhold a reinstatement and backpay remedy from the employees.

On remand, the Board majority (Chairman Battista and Members Schaumber and Kirsanow) reviewed the NLRA and its legislative history and determined that the statute and compelling policy considerations bar the Board from granting a remedy to employees who have been disciplined or discharged for cause. In particular, the majority was guided by the principle that employees should not benefit from their misconduct through a windfall award of reinstatement and backpay. The Board overruled cases previously identified by the court as inconsistent with that holding.

In dissent, Members Liebman and Walsh stated that the court's decision precluded the Board from deciding this case on purely statutory grounds. In their view, neither the statutory language relied on by the majority nor the legislative history addresses the issue presented. The dissent emphasized that a make-whole remedy for the employees is necessary to repair the damage that Anheuser-Busch's unlawful unilateral changes caused to the union's status as the employees' bargaining representative and to deter future unlawful unilateral changes.

4. Broad Order

In *Five Star Mfg., Inc.*,[60] the Board adopted the administrative law judge's finding that the respondent violated Section 8(a)(3) and (1) of the Act by discharging employee and union supporter David Tanksley on Feb. 11, 2004, and by discharging him for a second time on April 26, 2005; violated Section 8(a)(3), (5), and (1) by confiscating employees' keys to its facility and changing employees' work schedules on February 12, 2004; violated Section 8(a)(3), (4), and (1) by reassigning Tanksley to different and more difficult work on April 19, 2004; and violated Section 8(a)(5) and (1) by continuing to award or deny discretionary bonuses and vacation pay after the union's certification.

The Board amended the judge's recommended narrow cease-and-desist order, finding that a broad order was appropriate despite the fact that the Respondent did not have a prior history of violations of the Act. It focused on the egregious and widespread nature of the respondent's misconduct, saying: "The mere fact that the Respondent has no prior history of violations does not, in and of itself, undermine the necessity for a broad order."

The Board noted that when the respondent was initially informed of its employees' efforts in the union's organizing campaign, Jim Woodward, the Respondent's president, predicted that the employees

[60] 348 NLRB 1301 (2006).

were "finding themselves a way out of there." In response to the union's successful organizing campaign, the respondent engaged in a wide variety of egregious unfair labor practices, most of which were committed by Woodward, who followed through on his earlier prediction by discriminatorily discharging Tanksley on the day of the election, within minutes of the close of balloting. The morning after the election, the respondent changed the locks on its facility, denying employees the early morning access that they had enjoyed for many years prior to the election, and Woodward demanded that employees return their keys to the building and unilaterally changed employees' work schedules and breaktimes, all without bargaining with the union and in retaliation for the employees' selection of the union as their bargaining representative. Woodward also made statements to employees implying that the union's election victory had caused the respondent to confiscate their keys and that rejection of the union would improve working conditions. Following the union's certification, Woodward continued awarding and denying employees discretionary bonuses and vacation pay without bargaining with the union.

Although the respondent later reinstated Tanksley to his former position, it did so only after Tanksley filed a charge of discrimination with the Board. Upon Tanksley's reinstatement, Woodward discriminatorily reassigned him to more onerous work and to a different work location, both in retaliation for his prior union activity and because he filed a charge with the Board. The respondent also began recording any infraction by Tanksley in order to find some reason to discharge him. The respondent then began discriminatorily playing games with Tanksley's paychecks, which precipitated his telling another employee to "shut up," which led to Tanksley's second discriminatory discharge.

V

Supreme Court Litigation

During fiscal year 2007, the Supreme Court decided, on the merits, no cases involving the Board as a party. The Board did not participate as amicus in any cases before the Court. The Court denied seven private party petitions for certiorari in Board cases, and granted none.

VI

Enforcement Litigation

A. Duty to Bargain

Section 8(a)(5) and (d) of the Act obligate an employer to bargain with its employees' representative regarding wages, hours, and other terms and conditions of employment unless the representative has clearly and unmistakably relinquished its statutory rights to bargain over the mandatory subject at issue.[1] Section 8(d) also provides that during the term of a collective-bargaining agreement neither party shall unilaterally modify its terms and conditions if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.[2]

In *Bath Marine Draftsmen's Association v. NLRB*,[3] the First Circuit affirmed the Board's conclusion that the employer did not violate Section 8(a)(5) of the Act by unilaterally merging an employee pension plan with its parent company's pension plan.[4] The Board found that the issue was whether the merger in fact unlawfully modified the governing collective-bargaining agreements, not whether the unions clearly and unmistakably waived their right to bargain over the merger. Without passing on whether the unions' or the employer's reasonable but conflicting interpretations of the collective-bargaining agreements and pension plan documents was the better view, the Board dismissed the General Counsel's complaint because the employer had a "sound arguable basis for ascribing a particular meaning to his contract," "his action [wa]s in accordance with the terms of the contract as he construe[d] it," and he acted in good faith without any antiunion animus.[5]

The court approved the Board's "sound arguable basis" standard, as modified, noting that the choice of analytical framework is often very clear depending "upon whether the union alleges a unilateral change without bargaining to impasse or a modification in violation of an existing contract without union consent," but "is not as straightforward when the union alleges a . . . unilateral change and the employer defends with a claim of contractual privilege to act unilaterally."[6] In the latter

---

[1] See *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991); *Trojan Yacht*, 319 NLRB 741, 742 (1995).
[2] See *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 186 (1971).
[3] 475 F.3d 14 (1st Cir.).
[4] 345 NLRB 499 (2005).
[5] Id.
[6] 475 F.3d at 22.

instance, the court explained, the threshold inquiry is whether the parties bargained over the mandatory subject at issue and memorialized their bargain in the collective-bargaining agreement, such that the subject is "covered by" the contract.[7] "If so, the waiver standard is meaningless [because the union has exercised its statutory bargaining rights]. The unfair labor practice determination depends solely on the interpretation of the contract in place, and the appropriate standard for the Board to apply is the sound arguable basis standard."[8] Applying its standard, the court found that the pension plan documents were "specifically identified in each of the" contracts, such that the employer could rely on them as a basis for authority to merge the pension plans, and that "[i]t is a sound and arguable interpretation of those [contracts] that the [employer] had the authority to unilaterally change the Plan sponsor, whether or not the argument is correct."[9]

B. Secondary Picketing

Section 8(b)(4)(ii)(B) of the Act makes it unlawful for a labor organization "to threaten, coerce, or restrain any person . . . where . . . an object thereof is . . . forcing or requiring any person . . . to cease doing business with any other person . . . ." In *Sheet Metal Workers, Local 15, AFL–CIO (Brandon Regional Medical Center)*,[10] the union held a "mock funeral procession" in furtherance of a primary dispute with a nonunion contractor performing construction work at the Medical Center and an agency that provided employees to the contractor. The union patrolled on the public sidewalk in front of the Medical Center, a neutral site, while carrying a faux casket and accompanied by a union member dressed as the Grim Reaper. The Board found the union's conduct unlawful coercion because it constituted picketing.[11]

In *Sheet Metal Workers, Local 15, v. NLRB*,[12] the District of Columbia Circuit rejected the Board's finding that the union's conduct violated Section 8(b)(4)(ii)(B).[13] The court explained that "the mock funeral was not the functional equivalent of picketing as a means of persuasion because it had none of the coercive character of picketing . . . .: Union members did not physically or verbally interfere with or confront [Medical Center] patrons coming and going; nor . . . did the mock funeral participants 'patrol' the area in the sense of creating a

[7] 475 F.3d at 23–25.
[8] 475 F.3d at 25.
[9] 475 F.3d at 28.
[10] 346 NLRB 199 (2006).
[11] Id.
[12] 491 F.3d 429 (D.C. Cir.).
[13] 491 F.3d at 439.

symbolic barrier to those who would enter the [Medical Center]." Having determined that the mock funeral "lies somewhere between . . . lawful handbilling . . . and unlawful picketing or patrolling," the court concluded that "the ultimate question[—]whether the means by which the [u]nion delivered its message was coercive[—] . . . must be answered consistent with developments in the Supreme Court's [F]irst [A]mendment jurisprudence."[14] Applying the Supreme Court's "abortion protest cases," the "sources of constitutional guidance with which the [u]nion quite obviously complied," the court held, contrary to the Board, that "the mock funeral was not 'threaten[ing], coerc[ive], or restrain[ing],' in violation of Section 8(b)(4)(ii)(B)."[15]

C. Remedial Authority

1. Broad Orders

Where it is "essential to accomplish the purposes of the [A]ct," the Board may issue a broad cease-and-desist order, in which it proscribes the offending party from violating the Act in *any* manner.[16] In *Hickmott Foods, Inc.*,[17] the Board held that a broad order is warranted where "a[n offending party] is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' fundamental statutory rights."[18] In two cases involving the United States Postal Service, the Fifth and Tenth Circuits reached different conclusions about whether a broad order was warranted.

In the first case, *NLRB v. USPS,*[19] the Fifth Circuit disagreed with the Board[20] that the Postal Service's repeated violations of its statutory duty to provide relevant information requested by a union at its Waco, Texas facility demonstrated a proclivity to violate the Act. The Board had relied on several grounds to justify the broad order: (1) supervisors committed the same unfair labor practices twice in 2 years; (2) the unfair labor practices violated a narrow cease-and-desist order issued in 2002; (3) the refusals to provide information could mask other unlawful conduct; (4) the Postal Service's defenses had been rejected previously by the Board; (5) the Postal Service was engaged in a nationwide pattern

---

[14] 491 F.3d at 438.
[15] 491 F.3d at 438–439.
[16] *May Department Stores Co. v. NLRB*, 326 U.S. 376, 391–392 (1945). See also *NLRB v. Cheney California Lumber Co.*, 327 U.S. 385, 387 (1946); *NLRB v. Express Pub. Co.*, 312 U.S. 426, 437 (1941).
[17] 242 NLRB 1357 (1979).
[18] Id. at 1357.
[19] 477 F.3d 263, 271 (5th Cir.).
[20] *Postal Service*, 345 NLRB 409 (2005).

of refusing to provide such information; (6) the Board had simultaneously issued a broad order against the Postal Service for a series of unfair labor practices in Albuquerque, New Mexico, in retaliation for information requests; and (7) the Fifth Circuit had recently enforced three other broad orders against the Postal Service.[21] The court, stating that those factors "pale in comparison" to prior cases in which it had refused to enforce broad orders, specifically rejected the Board's view that the Postal Service's conduct could mask other unfair labor practices, because there was "no evidence . . . that there have ever been any unfair labor practices at [the Waco] facility beyond information request violations."[22] The court entered a narrow "in any like or related manner" cease-and-desist order, stating that "[g]iven the sheer size of the Postal Service, the evidence relied upon by the Board shows that violations are relatively isolated incidents and rarely flagrant."[23]

Conversely, in *NLRB v. USPS*,[24] the Tenth Circuit upheld the Board's broad cease-and-desist order,[25] agreeing with the Board that the Postal Service demonstrated a proclivity to violate the Act through its actions at three Albuquerque facilities. The court "easily" distinguished the Fifth Circuit's Waco case, on the ground that while the only violations in Waco were refusals to provide information, the Postal Service's violations in Albuquerque began with information requests but "did not end there."[26] Thus, less than a year after voluntarily agreeing to remedy information-request violations at three other Albuquerque postal facilities with an identically-worded broad cease-and-desist order, the Postal Service not only refused to provide information to the union, but also discharged the union official who had requested the information and then threatened employees with discipline or discharge if they engaged in the same "self-destructive behavior" as the union official.[27] The court found the Board's decision to issue a broad remedial order justified because the Postal Service's unfair labor practices demonstrated "an attitude of opposition to the purposes of the Act."[28]

2. *Gissel* Bargaining Orders

In *NLRB v. Gissel Packing Co.*,[29] the Supreme Court upheld the Board's authority to order an employer to bargain with a union as a

---

[21] 477 F.3d at 270.
[22] Id. at 270–271.
[23] Id. at 271.
[24] 486 F.3d 683, 684–685 (10th Cir.).
[25] *Postal Service*, 345 NLRB 409 (2005).
[26] 486 F.3d at 689.
[27] Id. at 685, 688.
[28] Id. at 688 (quoting *May Dep't Stores*, 326 U.S. at 392).
[29] 395 U.S. 575 (1969).

remedy where the union at one time had authorization cards from a majority of the employees in the bargaining unit, but the employer's unfair labor practices had a reasonable tendency to undermine that majority support and to preclude a fair election.[30] In two of the three *Gissel* bargaining order cases before the courts in 2007, the courts affirmed the Board's decision to enter a bargaining order, and in the third case the court upheld the Board's decision to order an election rather than bargaining.

In *Center Construction Co. v. NLRB*,[31] where the employer's top officials committed various unfair labor practices, including discharging half of the bargaining unit, the Sixth Circuit observed that the "number, gravity, and type of the unfair labor practices," including the "hallmark" discharge violation, "together with the small size of the bargaining unit and the involvement of the highest management," supported the Board's findings that the employer had dissipated the union's majority status and that a fair election would be unlikely.[32] Accordingly, the court held, the Board did not abuse its remedial discretion by ordering the employer to bargain with the union.[33]

In *NLRB v. National Steel Supply, Inc.*,[34] the Second Circuit agreed with the Board that a *Gissel* bargaining order was warranted where the employer's highest-ranking official unlawfully interrogated and threatened the leader of the union organizing effort, the employer thereafter unlawfully terminated that union supporter, and the employer ultimately unlawfully refused to reinstate 27 of the 31 bargaining unit employees who had engaged in an unfair labor practice strike.[35] The court focused on the "swift and severe" nature of the employer's unlawful conduct, the fact that 85 percent of the unit employees were affected, the likelihood that the unfair labor practices would have a lasting impact on the employees, and the promptness with which the Board issued the bargaining order.[36]

By contrast, in *Steelworkers v. NLRB*,[37] the Ninth Circuit upheld the Board's refusal to impose a *Gissel* bargaining order. Notwithstanding the employer's commission of several unfair labor practices and the union's loss of the Board-conducted election, the Board concluded that its "traditional remedies" and the holding of a rerun election "will

---

[30] Id. at 614–615.
[31] 482 F.3d 425 (6th Cir.).
[32] Id. at 434–438.
[33] Id. at 438.
[34] 207 Fed.Appx. 9 (2d Cir. 2006).
[35] *National Steel Supply, Inc.*, 344 NLRB 973 (2005).
[36] 207 Fed.Appx. at 12.
[37] 482 F.3d 1112 (9th Cir.).

satisfactorily protect and restore employees' Section 7 rights."[38] Before the court, the union argued that the Board should have provided the same "clearly articulated reasoning" for rejecting the bargaining-order remedy as it must provide when imposing the same remedy. Acknowledging that the courts require the Board to clearly articulate why the "extreme" remedy of a bargaining order is warranted, the court held that the need for a detailed, clear articulation is absent when the Board chooses to enter the "preferred," standard remedy of a rerun election.[39] In other words, the court explained, "the Board's decision to order an unextraordinary remedy does not merit an extraordinary explanation."[40]

3. Equitable Arguments Against Enforcement of Board Orders

A court may decline to enforce a Board order if it would be inequitable to grant enforcement.[41] In two cases, courts rejected employers' equitable arguments against enforcement. In *NLRB v. King Soopers, Inc.*,[42] the Tenth Circuit enforced two Board orders entered in 2005 remedying the employer's refusals to provide requested information in 2000.[43] The employer provided the information pursuant to the Board orders, but in 2006 the Board sought a court judgment enforcing the orders. The court rejected the employer's arguments that its compliance with the orders rendered enforcement unnecessary and that it was too late for the Board to seek enforcement, because a Board order "imposes a continuing obligation; and the Board is entitled to have the resumption of the unfair labor practice barred by an enforcement decree."[44] The court focused on "the factual circumstances surrounding the original dispute between King Soopers and the unions" not having changed "in any material fashion such that enforcement is obsolete."[45]

In *NLRB v. Harding Glass Co.*,[46] the First Circuit enforced a backpay order the Board entered in 2006 to remedy the employer's 1993 unfair labor practices.[47] The court had enforced the Board's underlying make-whole order in 1996.[48] Despite its dismay at the ensuing delay, occasioned in part by the employer's own conduct, the court enforced the

---

[38] *Allied Mechanical, Inc.*, 343 NLRB 631, 631–632 (2004).
[39] 482 F.3d at 1116–1118.
[40] Id. at 1117–1118.
[41] *Continental Web Press, Inc. v. NLRB*, 742 F.2d 1087, 1095 (7th Cir. 1984).
[42] 476 F.3d 843 (10th Cir.).
[43] *King Soopers, Inc.*, 344 NLRB 838 (2005), and *King Soopers, Inc.*, 344 NLRB 842 (2005).
[44] 476 F.3d at 846 (quoting *NLRB v. Mexia Textiles*, 339 U.S. 563, 567 (1950)).
[45] Id.
[46] 500 F.3d 1 (1st Cir.).
[47] 347 NLRB 1112 (2006).
[48] *NLRB v. Harding Glass Co.*, 80 F.3d 7 (1st Cir. 1996).

backpay order essentially because those primarily hurt by the delay were the employees who were entitled to a monetary remedy for the employer's unlawful conduct, and because the employer itself was responsible for some of the delay and, in any event, had use of its money for the entire time.[49]

D. Jurisdiction Over Tribal Casino

In *San Manuel Indian Bingo & Casino v. NLRB,*[50] the District of Columbia Circuit upheld the Board's assertion of jurisdiction over a casino owned by an Indian tribe and located on the tribal reservation. The Board, overruling prior decisions which had held that it lacked jurisdiction over on-reservation tribal enterprises,[51] held that such commercial enterprises are "employers" within the meaning of Section 2(2) of the Act and are not exempt as political subdivisions of states, and that nothing in federal Indian law or policy precludes the Board's assertion of jurisdiction.[52]

The court noted that the Supreme Court has held that general statutes applying in terms to all persons include Indians.[53] However, the Supreme Court has also held that ambiguities in a federal statute are to be resolved in favor of Indians[54] and that a statute will not be read as impairing tribal sovereignty absent a clear expression of Congressional intent to do so.[55] The court also noted that the cases calling for construction of ambiguous statutes in favor of Indians all involved statutes designed specifically to benefit or regulate Indians, rather than statutes of general application.[56]

The court noted that not every statute that constrains the actions of a tribal government impairs tribal sovereignty. Tribal sovereignty is not absolute; it is at its strongest when explicitly established by treaty or when a tribal government acts within its reservation on matters of concern only to members of the tribe. In other cases, the inquiry is not dependent on a mechanical conception of tribal sovereignty, but requires consideration of the specific nature of the state, federal, and tribal interests at stake. The critical factor is the extent to which application of

---

[49] 500 F.3d at 10.
[50] 475 F.3d 1306 (D.C. Cir.).
[51] *Southern Indian Health Council*, 290 NLRB 436 (1988); *Fort Apache Timber Co.*, 226 NLRB 503 (1976).
[52] *San Manuel Indian Bingo & Casino*, 341 NLRB 1055 (2005), 69th Annual Report (2004), p. 32.
[53] *FPC v. Tuscarora Indian Nation*, 362 U.S. 99 (1960).
[54] See, e.g., *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).
[55] See, e.g., *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).
[56] 475 F.3d at 1312.

the general law would constrain the tribe with respect to its governmental functions—that is, acts traditionally performed by government.[57]

Here, the court concluded, application of the Act to the tribal casino would not interfere with the tribe's sovereignty to a sufficient extent to require explicit Congressional sanction. The operation of the casino was not a traditional attribute of self-government; the casino was virtually identical to casinos operated by private entities for purely commercial purposes. Moreover, its operation was not a purely internal affair, since most of the casino's employees and customers were not members of the tribe and lived off its reservation. Finally, the governmental actions which the Act would displace—enactment of a tribal labor relations ordinance and execution of a compact with the state governing operation of the casino—were incidental to the commercial activity of operating the casino.[58]

Finally, the court held that the Board reasonably concluded that the tribe, in operating the casino, was an "employer" within the meaning of Section 2(2) of the Act. The tribe was clearly an "employer" in the ordinary sense of the term, and it did not fall within the statutory exemption for "any state or political subdivision thereof."[59] In addition, while the Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d), requires tribes engaging in high-stakes gaming to enter into a compact with the State where the gaming will occur, and permits such compacts to address labor relations, it does not indicate that Congress thereby intended to preclude federal agencies from regulating employment issues arising in the context of tribal gaming.[60]

[57] Id. at 1312–1313.
[58] Id. at 1314–1315.
[59] Id. at 1316–1317.
[60] Id. at 1317–1318.

VII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

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

In fiscal 2007, the Board filed in district courts a total of 20 petitions for temporary injunctive relief under Section 10(j). Of these petitions, all were filed against employers. Five cases authorized in a prior fiscal year were also pending in district court at the beginning of the fiscal year. Of these 25 cases, six were settled or adjusted prior to court action, and one case was withdrawn prior to a court decision as moot due to the issuance of a Board order. District courts granted injunctions in eight cases, granted partial injunctions in two cases, and denied injunctions in three cases. Five cases remained pending in district court at the end of the fiscal year.

Of the 13 cases litigated to decision in fiscal 2007, four cases involved employer withdrawals of recognition from incumbent unions. Two cases involved successor employers' refusal to recognize and bargain with the incumbent union that had represented the employees of the predecessor employer. Three cases this fiscal year involved employer conduct designed to undermine the status of incumbent unions. Similarly, other cases involved employer misconduct during bargaining negotiations and the creation of alter ego entities to avoid a bargaining obligation. Finally, one case involved the discharge of a union activist during an organizing campaign, and another case involved the discharge of 20 employees who engaged in protected, concerted activity.

One case decided during the fiscal year involved a single employer/alter ego's efforts to remove a longstanding union from the shop. In *Overstreet v. Advanced Architectural Metals*,[2] the employer refused to recognize and bargain with the incumbent union, made unilateral changes, refused to apply the collective-bargaining agreement,

---

[1] See, e.g., *Ahearn v. Jackson Hospital Corp.*, 351 F.3d 226 (6th Cir. 2003), which was discussed in the fiscal 2004 Annual Report; *Bloedorn v. Francisco Foods, Inc.*, 276 F.3d 270 (7th Cir. 2001).

[2] Civil No. S-07-00781-PMP-LRL (D.Nev.).

repeatedly threatened picketers with physical harm, discharged 17 strikers, and granted recognition to a union representing only a minority of the employees. The district court concluded that there was a likelihood of success in proving that the companies constituted alter egos of the original employer and a single employer and that the employer's conduct was unlawful. Given these serious unfair labor practices and their continuing impact on the unit employees, the court concluded that the balance of harms and the public interest warranted interim injunctive relief.

Another district court granted an injunction to protect bargaining for a first collective-bargaining agreement. In *Chester v. Whitesell Corporation*[3], the employer was seeking concessions in order to have the employees' terms and conditions of employment similar to those of its nonunion facilities. At the first bargaining session, the employer announced that it intended to present its final proposal to the union in two weeks. After those 2 weeks the employer declared impasse, despite unfilled union information requests and despite the union disagreeing that the parties were at impasse, and the employer implemented its last offer. The court concluded that the employer's conduct had a "clear and natural tendency to undermine the union's strength and the Board's remedial powers" and, without interim relief, would further erode employee support for the union and impede the union's ability to represent employees because the employer "ha[d] subverted the bargaining process and ignored the most basic statutory rights" of employees. The court ordered the employer to bargain in good faith with the union; to rescind, upon the union's request, any unilateral changes; and to provide the union with requested information relevant to bargaining.

A similar case involved an employer's unlawful withdrawal of recognition from an incumbent union. In *Calatrello v. Carriage Inn of Cadiz,*[4] during negotiations for a successor collective-bargaining agreement, the union made a wage proposal it stated was calculated on the wages of the 24 employees among the 82-employee unit who paid union dues through checkoff. The employer told the union that, if it only represented 24 employees, it did not represent a majority of the bargaining unit, and withdrew recognition. The union responded that it continued to represent all employees in the unit. The Regional Director alleged, inter alia, that the employer unlawfully withdrew recognition when there was not an actual loss of majority employee support for the union. The court found that there was reasonable cause to believe that

[3] 2007 WL 2780348 (S.D. Iowa March 16, 2007).
[4] 180 LRRM 3236, 2006 WL 3230778 (S.D. Ohio, November 6, 2006).

the employer unlawfully withdrew recognition where, inter alia, the court did not characterize the union's statement concerning the basis for the calculation of its wage proposal as an admission, and because an employee's refusal to be a union member and/or authorize dues checkoff is not sufficient to show a lack of support for the union. The court concluded that it was "just and proper" to require the employer to recognize and bargain with the union where there was evidence that a loss of employee support for the union "may have occurred and/or is occurring."

In another withdrawal of recognition case, *Norelli v. SFO Good-Nite Inn*,[5] the successor employer assumed the parties' collective-bargaining agreement covering about 22 employees. While bargaining for a new agreement during a period that the contract was extended, the employer threatened employees, made promises of benefits, and discharged two employees in an effort to solicit employee support for antiunion petitions. The employer then withdrew recognition from the union while the contract was still in effect, relying on an antiunion petition supported by a majority of employees. The court found that the Board was likely to prevail on the withdrawal of recognition allegation because the contract, which had been extended during negotiations for a successor agreement, barred withdrawal of recognition, and because the employer's unfair labor practices tainted the antiunion petition. The court also found that the Board had established irreparable harm to employee rights. The court ordered the employer to offer interim reinstatement to two employees who were discharged for refusing to sign an anti-union petition and to recognize and bargain with the union. Since the parties had been engaged in lengthy good faith negotiations before the withdrawal of recognition, the court limited the employer's obligation to bargain for a "reasonable period of time, not to exceed 90 days."

Finally, in *Holiday Inn Express*,[6] a successor employer tried to avoid its bargaining obligation by discriminatorily refusing to hire 19 hotel housekeeping and maintenance employees who worked for the predecessor employer. The court agreed with the Board's argument that injunctive relief was necessary to prevent irreparable injury, and rejected the employer's defense that the 10(j) petition was untimely filed. The court concluded that there was no undue delay resulting from the Board's decision to await completion of the administrative hearing and that it was possible to restore the status quo ante through interim injunctive relief. Furthermore, the court rejected the employer's argument that the balance of harms weighed against interim relief due to the displacement of

[5] No. C06-07335 MJJ (N.D. Ca.).
[6] Civil No. 07-2530, 2007 WL 1994045 (D.Minn.).

employees it had hired in place of the discriminatees. Finally, the court determined that the public interest favored issuance of an injunction because such relief will preserve the Board's remedial power and safeguard the collective-bargaining process, while sending the important and public message that employers may not displace employees by refusing to hire them because of their union affiliation. The court ordered the employer to, inter alia, offer jobs at the hotel to employees it had refused to hire; recognize and bargain with the union; and rescind all unilateral changes implemented by the employer when it took over operations at the hotel.

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), or (C),[7] or Section 8(b)(7),[8] and against an employer or union charged with a violation of Section 8(e),[9] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and that a complaint should issue."[10] 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.[11] In addition, under Section 10(l) a temporary restraining order pending the hearing on the petition for an injunction may be obtained, without notice to the employer, upon a showing that "substantial and irreparable injury to the

---

[7] 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).

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

[9] 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.

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

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

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 six petitions for injunctions under Section 10(l). No petitions were pending court action at the beginning of the period. One of the six petitions was settled prior to adjudication by the court. During this period, five petitions went to final order, with the courts granting injunctions in five cases. None were denied. Injunctions were issued in three cases involving secondary boycott action proscribed by Section 8(b)(4)(B), as well as in instances involving a violation of Section 8(b)(4)(A), which proscribes certain conduct to obtain hot cargo agreements barred by Section 8(e). Injunctions were also issued in two cases to proscribe alleged recognitional or organizational picketing in violations of Section 8(b)(7).

VIII

Contempt Litigation and Compliance Branch

During fiscal year 2007, the Contempt Litigation and Compliance Branch (CLCB) provided a range of services, including advice, training, and assistance to Regions as well as conducting Federal court litigation, including contempt proceedings, actions under the Federal Debt Collection Procedures Act of 1990 (FDCPA) and bankruptcy actions. A total of 333 cases were referred to CLCB during the fiscal year for advice and/or assistance, or for consideration of contempt proceedings or other appropriate action to achieve compliance with the Act. Of this total, 132 cases were formal submissions respecting contempt or other compliance actions; in 201 other cases, advice and/or assistance was solicited and provided to the Regions or other agency personnel and the cases returned for further administrative processing. CLCB also conducted 161 asset/entity database investigations to assist Regions in their compliance efforts, a task over and above the 333 referrals to CLCB referenced above. In addition, nearly 350 hours were devoted by CLCB staff to training Regional and other agency personnel and members of the private sector bar on contempt and compliance issues.

Of the 132 contempt or other formal submissions, voluntary compliance was achieved in 27 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 18 other cases settled after the filing of a formal pleading in court but before trial. In 39 other cases, it was determined that contempt or other proceedings were not warranted.

In cases deemed to have merit, 15 civil contempt or equivalent proceedings were instituted, including two in which body attachment was sought. A number of ancillary compliance proceedings under FDCPA were also instituted by CLCB in FY 2007, including seven proceedings to obtain subpoena enforcement orders; five proceedings to obtain post-judgment writs of garnishment; three proceedings to obtain prejudgment writs of garnishment; and three proceedings to obtain prejudgment protective restraining orders. CLCB instituted two proceedings in bankruptcy courts, including a motion to take Section 2004 examinations, and a motion to give Board's claims administrative priority.

Fourteen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2007, including four assessing fines and one issuing a writ of body attachment. During FY 2007, CLCB also successfully obtained three protective restraining orders; nine post-

judgment writs of garnishment; four pre-judgment writs of garnishment; five turnover orders for garnished funds; and nine subpoena enforcement orders from District Courts. In bankruptcy courts, CLCB obtained two orders, one granting in part and denying in part the Board's claim for administrative priority, and one denying individual debtors' requests for discharge based on §727 of the Bankruptcy Code.

During the fiscal year, CLCB collected $34,250 in fines and $17,945,292 in backpay or other compensatory damages, while recouping $320,481 in court costs and attorneys' fees incurred in contempt litigation.

There were a number of noteworthy cases decided in FY 2007. In *NLRB v. Electrical Workers Local 3,* 471 F.3d 399 (2d Cir. 2006), the Second Circuit adopted a Special Master's report adjudging Local 3 in further civil contempt for failing to distribute copies of the court's prior orders to business representatives and engaging in unlawful secondary picketing and threats. The court ordered that Local 3 pay compliance fines, the Board's costs and attorneys' fees (at the prevailing private practice market rate) and the costs and attorneys' fees of the Special Master. It also increased substantially prospective compliance fines against Local 3 for future violations.

Several collection/bankruptcy cases were also favorably resolved this year. In *Kaiser Aluminum*, the United States Bankruptcy Court for the District of Delaware, in Case No. 02-10429 (JKF), had previously approved settlement of the Board's backpay claims (which were calculated based on a statistical sampling). That settlement resulted in a distribution of Kaiser stock to employees worth nearly $12 million. In *Korns Bakery*, a protective restraining order and a contingent receivership order entered by the United States District Court for the Eastern District of New York under the FDCPA (Misc. 06-50 (FJD)) led to a backpay settlement in excess of $2 million. In *M&M Backhoe*, the CLCB, pursuant to Section 10(e) of the Act, obtained an emergency order from the D.C. Circuit (Case No. 05-1378) freezing the proceeds of an auction sale which threatened to undermine Respondent's ability to pay backpay. The order ultimately led to a settlement of $250,000 payment for backpay. Finally, in *HH3* (William Hudson and Gretchen Hudson), the CLCB, for the first time, obtained an order from the bankruptcy court rejecting individual debtors' request for a Chapter 7 discharge due to fraudulent conduct, under Section 727 of the Bankruptcy Code (N.D. Ill, Bankruptcy Case No. 05-73899).

IX

Special Litigation

The Board participates in a number of cases that fall outside the normal process of statutory enforcement and review. The following represent the most significant cases decided this year.

A. Litigation Concerning Board and Court Jurisdiction

In *Service Employees Local 790 v. Norelli et al.*,[1] the United States District Court for the Northern District of California denied SEIU's motion to enjoin a union-security deauthorization election and granted the Board's motion to dismiss the complaint, based on lack of subject matter jurisdiction.[2] In the Board's underlying *Covenant Aviation Security, LLC* decision,[3] the panel majority (Chairman Battista and Member Kirsanow; Member Walsh dissenting) had found that Section 9(e)(1) of the Act permits the gathering of signatures for the statutorily-required showing of interest to occur prior to the signing of a collective-bargaining agreement. In district court SEIU argued that the Board's decision violated a "clear and mandatory" provision of the Act, thus satisfying the narrow *Leedom v. Kyne*[4] exception to the rule precluding district court jurisdiction. The district court rejected this argument, and found that, "[g]iven, therefore, that the language of section 9(e)(1) does not facially address the question of timing regarding the signatures necessary to support a petition filed pursuant to that provision, and that legislative history also fails to provide a clear answer to the question, the court concludes that the statute fails to set forth a 'clear and mandatory' provision that the Board has violated in allowing the instant petition to go forward."[5]

B. Preemption Litigation

In *NLRB v. State of North Dakota*,[6] the Board obtained a declaratory judgment that North Dakota Century Code § 34-01-14.1, a statutory provision requiring nonunion members to pay the union for the costs of processing their grievances, is preempted by the Act. The district court concluded that § 34-01-14.1 is in actual conflict with the Act and thus preempted by the Supremacy Clause as a matter of law. The Board

---

[1] No. C 07-2766 PJH, 2007 WL 1880373 (N.D. Cal.).
[2] Id. at *5–7.
[3] 349 NLRB 699.
[4] 358 U.S. 184, 188 (1958).
[5] 2007 WL 1880373.
[6] 504 F.Supp. 2d 750 (D.N.D.).

argued, among other things, that Section 34-01-14.1 of the North Dakota Century Code alters the considerations underlying an employee's choice of whether to join or refrain from joining a union by requiring nonmembers—those employees who choose not to join a union that represents them—to pay the union for any expenses incurred representing them under the contractual grievance and arbitration procedures. The court agreed with the Board that charging nonunion members the cost of providing a service that union members get free (even though they pay dues) has a coercive effect on non-members in the exercise of their Section 7 right to join or refrain from joining a union. Emphasizing that the purpose of the Act was to obtain a uniform application of its substantive rules and avoid conflicts likely to result from a variety of local procedures and attitudes towards labor disputes, the court found that Section 34-01-14.1 stands as an obstacle to these congressional objectives. Thus, the court concluded that the statutory provision is in actual conflict with Sections 7 and 8 of the Act because North Dakota law requires unions in that State to engage in conduct that is prohibited by Section 8(b)(1)(A) of the Act.

In *Healthcare Assn. of N.Y. State, Inc. v. Pataki*,[7] the Second Circuit reversed a district court decision that had determined a New York neutrality statute was preempted under the *Machinists* doctrine.[8] The State statute at issue prohibited the use of State funds, including Medicaid, for encouraging or discouraging union organization. A majority of the Second Circuit concluded that Section 8(c) of the Act not only protects the constitutional free-speech rights of employers but also embodies a congressional policy designed to preserve employers' ability to participate in union organizing campaigns.[9] The majority acknowledged that *Garmon* preemption[10] potentially applies to the State statute at issue.[11] However, the court found the record to contain an insufficient factual basis upon which it could determine whether the State was either impermissibly restricting the plaintiffs' exercise of their NLRA free speech rights or merely refusing to subsidize that exercise with State monies.[12] Moreover, the court concluded that resolution of these factual issues would also determine the applicability of the *Garmon* factor of interests "deeply rooted in local feeling and responsibility" and the general proprietary interest exception to NLRA preemption.[13]

---

[7] 471 F.3d 87 (2d Cir. 2006).
[8] *Machinists Local 76 v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976).
[9] 471 F.3d at 100.
[10] *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).
[11] 471 F.3d at 100.
[12] Id. at 105.
[13] Id. at 106–107.

Further, all three judges agreed that *Machinists* preemption could apply to the extent that the New York statute interferes with employers' use of free speech as a lawful "weapon" to respond to union organizing campaigns, but concluded that the answer to the *Machinists* question also turned on the factors identified as determinative in deciding *Garmon* preemption: whether the statute burdens monies that cannot properly be said to belong to the State and whether the State can accomplish its goal of saving money by limiting certain reimbursement costs.[14] Accordingly, the court remanded the case for resolution of disputed factual issues.

C. Bankruptcy Litigation

In *In re Pan American Hospital Corp.*,[15] the United States Bankruptcy Court for the Southern District of Florida held that the Board violated the automatic stay provision of the Bankruptcy Code[16] by filing with the court and serving on potential purchasers of the debtor a *Golden State Bottling*[17] notice of pending unfair labor practice charges after the court had issued an order authorizing the debtor to sell its assets free and clear of all liens, claims, and encumbrances.[18] The court found that the Board filed and served the notice on potential purchasers for the improper purpose of "attempting to enforce its pecuniary interest in property of the Debtor by asserting successor liability onto the purchaser."[19] The court specifically found that the notice "was not only intended to chill the bidding process, but it inferred [sic] that potential successor liability existed and should be considered when bidding."[20] Accordingly, the court held that it was improper for the Board to attempt to collect its claim against the debtor from a free and clear sale purchaser of the debtor's assets in a manner which was unavailable to other similarly situated creditors and which may have "thrown ice water on a pending sale to the detriment of all creditors[,] including the specific creditor community [the Board] is representing."[21]

In *In re Wallace Packaging Corp.*,[22] the United States Bankruptcy Court for the Eastern District of New York denied the trustee's motion to disallow and expunge the Board's claim. The Board had filed its claim to protect its ability to collect potential backpay liability arising in a pending Board case as a result of the debtor's alleged failure to bargain

---

[14] Id. at 107–108.
[15] 364 B.R. 832 (Bankr. S.D. Fla.).
[16] 11 U.S.C. § 362(a).
[17] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).
[18] 11 U.S.C. § 363(f).
[19] 364 B.R. at 837.
[20] Id.
[21] Id. at 838.
[22] No. 04-86203 (E.D. Bankr.).

over the effects of the debtor's plant closing. The bankruptcy court rejected the trustee's argument that the claim should be expunged on grounds that the debtor did not engage in unlawful conduct under the Act. In agreement with the Board's position, the bankruptcy court ruled that the Board has exclusive jurisdiction to determine whether there has been an NLRA violation.

D. Mandamus Petitions Seeking to Compel the Board to Issue Decisions

In two separate actions filed in the United States Court of Appeals for the District of Columbia Circuit, petitioners sought writs of mandamus to compel the Board to issue decisions in pending unfair labor practice cases. The petitioners in both mandamus actions claimed that the Board's adjudication of the cases to which they were parties had been unreasonably delayed. The D.C. Circuit issued the writ in one case, but denied mandamus relief in the other.

In re Pirlott[23] was brought in June 2006 by the charging parties to *Teamsters Local 75 (Schreiber Foods)*,[24] a case raising many issues, including the chargeability of extra-unit organizing expenses to *Beck* objectors. *Schreiber Foods* originated with the filing of an unfair labor practice charge in November 1989 and had been pending before the Board on postremand exceptions since March 2002. The Board filed a substantive opposition to the mandamus petition and communicated its intention to issue a decision by November 30, 2006. When it became apparent that the Board would not be able to meet its self-imposed deadline, the Board sought a 2-month extension. In a short, per curiam order denying the Board's request and granting the mandamus petition, the court stated that "the delay in this case and the important interests at stake warrant issuance of the writ."[25]

In the other mandamus case, *In re Gally*, the D.C. Circuit denied the mandamus petition.[26] As in *In re Pirlott*, the petitioner in *In re Gally* was the charging party in a Board case dealing with the rights and obligations of *Beck* objectors, but the underlying Board case *(Auto Workers Local 376 (Colt's Mfg. Co.))*,[27] had been pending before the Board for a little over 2 years. The D.C. Circuit found that the delay in *Colt's Mfg.* was neither so "egregious" nor so "unreasonable as to warrant the extraordinary remedy of mandamus."[28] Shortly thereafter,

[23] No. 06-1188 (D.C. Cir.).
[24] 329 NLRB 28 (1999), modified 349 NLRB 77.
[25] No. 06-1188, slip op. at 1.
[26] No. 07-1023 (D.C. Cir.).
[27] 34–CB–2631 (NLRB) (unpublished).
[28] No. 07-1023, slip op. at 1.

the Board issued an order remanding *Colt's Mfg.* with instructions to schedule a hearing to be conducted "expeditiously" before an administrative law judge.[29]

[29] 34–CB–2631, slip op. at 6 fn. 3.

INDEX OF CASES DISCUSSED

Page
Allied Mechanical Services, Inc., 351 NLRB No. 5 69
Anheuser-Busch, Inc., 351 NLRB No. 40 79
Auto Workers Local 376 (Colt's Mfg. Co.), 34–CB–2631 (NLRB) (unpublished) 104
Badlands Golf Course, 350 NLRB 264 64
Baptist Hospital of East Tennessee, 351 NLRB No. 12 67
Bath Marine Draftsmen's Assn. v. NLRB, 475 F.3d 14 (1st. Cir.) 68, 85
BE & K Construction Co., 351 NLRB No. 29 ..... 18, 47, 50
Boehringer Ingelheim Vetmedica, Inc., 350 NLRB 678 72
Cajun Co., Inc., 349 NLRB 1031 35
California Offset Printers, 349 NLRB 732 68
Carney Hospital, 350 NLRB 627 25
Center Construction Co. v. NLRB, 482 F.3d 425 (6th Cir.) 89
Columbus Symphony Orchestra, Inc., 350 NLRB 523 34
Covenant Aviation Security, LLC, 349 NLRB 699 43
Dana Corp., 351 NLRB No. 28 ..... 17, 27
Detroit East, Inc., 349 NLRB 935 41
Finch, Pruyn & Co., Inc., 349 NLRB 270 70
Fineberg Packing Co., Inc., 349 NLRB 294 54
Holiday Inn Express, Civil No. 07-2530, 2007 WL 1994045 (D.Minn.) 95
In re Gally, No. 07-1023 (D.C. Cir.) 104
In re Pan American Hospital Corp., 364 B.R. 832 (Bankr. S.D. Fla.) 103
In re Pirlott, No. 06-1188 (D.C. Cir.) 104
In re Wallace Packaging Corp., No. 04-86203 (E.D. Bankr.) 103
Innes Construction Co., Inc., 351 NLRB No. 34 62
Jones Plastic & Engineering Co., 351 NLRB No. 11 56
King Soopers, Inc.; NLRB v., 476 F.3d 843 (10th Cir.) 90
Kravis Center for the Performing Arts, 351 NLRB No. 19 69
Madison Industries, Inc., 349 NLRB 1306 72
Madison Square Garden, Ct, LLC, 350 NLRB 117 43
Medieval Knights, LLC, 350 NLRB 194 42
Mickey's Linen & Towel Supply, Inc., 349 NLRB 790 53
Norelli v. SFO Good-Nite Inn, No. C06-07335 MJJ (N.D. Ca.) 95
Oil Capitol Sheet Metal, Inc., 349 NLRB 1348 ..... 21, 77
Overstreet v. Advanced Architectural Metals, Civil No. S-07-00781-PMP-LRL (D.Nev.) 93
Postal Service, 350 NLRB 125 53
Provena St. Joseph Medical Center, 350 NLRB 808 ..... 66, 67
Ray Angelini, Inc., 351 NLRB No. 24 50
Raymond F. Kravis Center for the Performing Arts, 351 NLRB No. 19 68
Reliable Trucking, Inc., 349 NLRB 812 41

Research Foundation of the City University of New York,
350 NLRB 201 32
Research Foundation–SUNY, 350 NLRB 197 ..... 30, 32
Ryder Memorial Hospital, 351 NLRB No. 26 37
San Manuel Indian Bingo & Casino v. NLRB, 475 F.3d 1306 (D.C. Cir.). 91
Security, LLC, 349 NLRB 699 101
Service Employees Local 790 v. Norelli et al., No. C 07-2766 PJH,
2007 WL 1880373 (N.D. Cal.) 101
Shaw's Supermarkets, Inc., 350 NLRB 585 63
Sheet Metal Workers, Local 15, v. NLRB, 491 F.3d 429 (D.C. Cir.) 86
St. George Warehouse, 351 NLRB No. 42 75
State of North Dakota; NLRB v., 504 F.Supp. 2d 750 (D.N.D.) 101
Steelworkers v. NLRB, 482 F.3d 1112 (9th Cir.) 89
Syracuse University, 350 NLRB 755 55
Teamsters Local 75 (Schreiber Foods), 349 NLRB 77 ..... 73, 104
Toering Electric Co., 351 NLRB No. 18 ..... 19, 59
Truserv Corp., 349 NLRB 227 29
Trustees of Columbia University in the City of New York,
350 NLRB 574 38
USPS; NLRB v.
477 F.3d 263, 271 (5th Cir.) 87
486 F.3d 683, 684–685 (10th Cir.) 88
Wadsworth Theatre Management, 349 NLRB 122 33
Wadsworth Theatre Mgmt., 349 NLRB 122 35
Young Women's Christian Association of Western Massachusetts, 349 NLRB
762 64

APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

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

Agreement of Parties

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

Amendment of Certification Cases

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

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

An election held by the Regional Director pursuant to an agreement signed by all the parties concerned. The agreement provides for the waiving of hearing and the

establishment of the appropriate unit by mutual consent. Postelection rulings are made by the Board.

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

Controversies between unions or groupings of employees as to which employees will perform specific work. Cases involving jurisdictional disputes are received by the Board through the filing of charges alleging a violation of Section 8(b)(4)(D). They are

initially processed under Section 10(k) of the Act which is concerned with the determination of the jurisdictional dispute itself rather than with a finding as to whether an unfair labor practice has been committed. Therefore, the failure of a party to comply with the Board's determination of dispute is the basis for the issuance of an unfair labor practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

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

Unfair Labor Practice Cases

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

Union Deauthorization Cases

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

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

SUBJECT INDEX TO ANNUAL REPORT TABLES

All Cases

Received-Closed-Pending..... 1
Distribution of Intake**:**
by Industry 5
Geographic..... 6A,B

Court Litigation

Appellate Decisions.....19A
Enforcement and Review.....19
Injunction Litigation 20
Miscellaneous Litigation 21

Representation and Union Deauthorization Cases General

Received-Closed-Pending..... 1,1B
Disposition:
by Method 10
by Stage.....9
Formal Action Taken..... 3B
Processing Time 23

Elections

Final Outcome 13
Geographic Distribution 15A,B
Industrial Distribution.....16
Objections/Challenges:
Elections Conducted 11A
Disposition.....11D
Party Filing 11C
Rerun Results..... 11E
Ruled on..... 11B
Size of units.....17
Types of Elections 11
Union-Shop Deauthorization
Polls Results of 12
Valid Votes Cast.....14

Unfair Labor Practice Cases

Received-Closed-Pending.....1, 1A
Allegations, Types of.....2
Disposition**:**
by Method 7
by Stage.....8
Jurisdictional Dispute Cases
(Before Complaint) 7A
Remedial Actions Taken.....4
Size of Establishment
(Number of Employees).....18
Processing Time 23

Amendment of Certification and Unit Clarification Cases

Received-Closed-Pending.....1
Disposition by Method 10A
Formal Actions Taken 3C

Advisory Opinions

Received-Closed-Pending.....22
Disposition by Method 22A

Editor's Note: The information contained in the Annual Report tables is chiefly derived from the NLRB's case-tracking database. Notes have been inserted to identify minor inconsistencies between tables caused by differences in coding. Questions or comments about the Annual Report should be directed to the NLRB Division of Information, Washington, DC or to the Agency's web site at www.nlrb.gov.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2007[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2006	14,398	5,001	4,036	500	4,257	604
Received fiscal 2007	25,649	6,950	6,683	851	9,983	1,182
On docket fiscal 2007	40,047	11,951	10,719	1,351	14,240	1,786
Closed fiscal 2007	26,727	7,387	7,228	905	10,089	1,118
Pending September 30, 2007	13,320	4,564	3,491	446	4,151	668
	Unfair labor practice cases[2]					
Pending October 1, 2006	13,123	4,668	3,534	416	3,969	536
Received fiscal 2007	22,331	5,914	5,479	680	9,226	1,032
On docket fiscal 2007	35,454	10,582	9,013	1,096	13,195	1,568
Closed fiscal 2007	23,130	6,298	5,848	707	9,295	982
Pending September 30, 2007	12,324	4,284	3,165	389	3,900	586
	Representation cases[3]					
Pending October 1, 2006	1,157	310	484	73	248	42
Received fiscal 2007	3,056	991	1,156	158	659	92
On docket fiscal 2007	4,213	1,301	1,640	231	907	134
Closed fiscal 2007	3,332	1,047	1,333	180	685	87
Pending September 30, 2007	881	254	307	51	222	47
	Union-shop deauthorization cases					
Pending October 1, 2006	38	--	--	--	38	--
Received fiscal 2007	94	--	--	--	94	--
On docket fiscal 2007	132	--	--	--	132	--
Closed fiscal 2007	103	--	--	--	103	--
Pending September 30, 2007	29	--	--	--	29	--
	Amendment of certification cases					
Pending October 1, 2006	5	0	3	0	0	2
Received fiscal 2007	6	0	3	3	0	0
On docket fiscal 2007	11	0	6	3	0	2
Closed fiscal 2007	7	0	2	3	0	2
Pending September 30, 2007	4	0	4	0	0	0
	Unit clarification cases					
Pending October 1, 2006	75	23	15	11	2	24
Received fiscal 2007	162	45	45	10	4	58
On docket fiscal 2007	237	68	60	21	6	82
Closed fiscal 2007	155	42	45	15	6	47
Pending September 30, 2007	82	26	15	6	0	35

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1Afor totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Totals for cases pending Oct. 1, 2007, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending, Fiscal Year 2007[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	CA cases					
Pending October 1, 2006	*10,804	4,653	3,501	408	2,215	27
Received fiscal 2007	16,291	5,887	5,441	650	4,263	50
On docket fiscal 2007	27,095	10,540	8,942	1,058	6,478	77
Closed fiscal 2007	17,058	6,269	5,806	680	4,254	49
Pending September 30, 2007	10,037	4,271	3,136	378	2,224	28
	CB Cases					
Pending October 1, 2006	2,006	10	26	8	1,739	223
Received fiscal 2007	5,523	18	27	26	4,932	520
On docket fiscal 2007	7,529	28	53	34	6,671	743
Closed fiscal 2007	5,624	18	32	25	5,014	535
Pending September 30, 2007	1,905	10	21	9	1,657	208
	CC Cases					
Pending October 1, 2006	226	1	5	0	9	211
Received fiscal 2007	306	2	5	0	18	281
On docket fiscal 2007	532	3	10	0	27	492
Closed fiscal 2007	246	3	3	0	15	225
Pending September 30, 2007	286	0	7	0	12	267
	CD Cases					
Pending October 1, 2006	43	3	0	0	3	37
Received fiscal 2007	88	4	4	1	5	74
On docket fiscal 2007	131	7	4	1	8	111
Closed fiscal 2007	101	4	4	1	4	88
Pending September 30, 2007	30	3	0	0	4	23
	CE Cases					
Pending October 1, 2006	11	1	1	0	1	8
Received fiscal 2007	48	2	1	2	4	39
On docket fiscal 2007	59	3	2	2	5	47
Closed fiscal 2007	30	3	1	0	5	21
Pending September 30, 2007	29	0	1	2	0	26
	CG Cases					
Pending October 1, 2006	9	0	0	0	1	8
Received fiscal 2007	13	0	0	0	0	13
On docket fiscal 2007	22	0	0	0	1	21
Closed fiscal 2007	12	0	0	0	0	12
Pending September 30, 2007	10	0	0	0	1	9
	CP Cases					
Pending October 1, 2006	24	0	1	0	1	22
Received fiscal 2007	62	1	1	1	4	55
On docket fiscal 2007	86	1	2	1	5	77
Closed fiscal 2007	59	1	2	1	3	52
Pending September 30, 2007	27	0	0	0	2	25

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2007, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 1B.—Representation Cases Received, Closed, and Pending, Fiscal Year 2007[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	RC Cases					
Pending October 1, 2006	*868	309	484	73	2	--
Received fiscal 2007	2,302	990	1,153	156	3	--
On docket fiscal 2007	3,170	1,299	1,637	229	5	--
Closed fiscal 2007	2,560	1,046	1,331	179	4	--
Pending September 30, 2007	610	253	306	50	1	--
	RM Cases					
Pending October 1, 2006	42	--	--	--	--	42
Received fiscal 2007	92	--	--	--	--	92
On docket fiscal 2007	134	--	--	--	--	134
Closed fiscal 2007	87	--	--	--	--	87
Pending September 30, 2007	47	--	--	--	--	47
	RD Cases					
Pending October 1, 2006	247	1	0	0	246	--
Received fiscal 2007	662	1	3	2	656	--
On docket fiscal 2007	909	2	3	2	902	--
Closed fiscal 2007	685	1	2	1	681	--
Pending September 30, 2007	224	1	1	1	221	--

[1] See Glossary of terms for definitions.
* Totals for cases pending Oct. 1, 2007, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures."

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2007

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(a): Total cases	16,291	100.0
8(a)(1)	2,468	15.1
8(a)(1)(2)	167	1.0
8(a)(1)(3)	4,899	30.1
8(a)(1)(4)	113	0.7
8(a)(1)(5)	6,586	40.4
8(a)(1)(2)(3)	87	0.5
8(a)(1)(2)(4)	2	0
8(a)(1)(2)(5)	77	0.5
8(a)(1)(3)(4)	362	2.2
8(a)(1)(3)(5)	1,320	8.1
8(a)(1)(4)(5)	24	0.1
8(a)(1)(2)(3)(4)	15	0.1
8(a)(1)(2)(3)(5)	64	0.4
8(a)(1)(2)(4)(5)	1	0
8(a)(1)(3)(4)(5)	99	0.6
8(a)(1)(2)(3)(4)(5)	7	0
Recapitulation[1]		
8(a)(1)	16,291	100.0
8(a)(2)	420	2.6
8(a)(3)	6,853	42.1
8(a)(4)	623	3.8
8(a)(5)	8,178	50.2
B. Charges filed against unions under Sec. 8(b)[1]		
Subsections of Sec. 8(b): Total cases	5,979	100.0
8(b)(1)	4,672	78.1
8(b)(2)	32	0.5
8(b)(3)	290	4.9
8(b)(4)	394	6.6
8(b)(5)	4	0.1
8(b)(6)	3	0.1

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2007—Continued

	Number of cases showing specific allegations	Percent of total cases
8(b)(7)	62	1.0
8(b)(1)(2)	417	7.0
8(b)(1)(3)	72	1.2
8(b)(1)(5)	3	0.1
8(b)(1)(6)	3	0.1
8(b)(2)(3)	6	0.1
8(b)(1)(2)(3)	18	0.3
8(b)(1)(2)(5)	2	0
8(b)(1)(2)(3)(5)(6)	1	0
Recapitulation[1]		
8(b)(1)	5,188	86.8
8(b)(2)	476	8.0
8(b)(3)	387	6.5
8(b)(4)	422	7.1
8(b)(5)	10	0.2
8(b)(6)	7	0.1
8(b)(7)	63	1.1
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	394	100.0
8(b)(4)(A)	25	6.3
8(b)(4)(B)	249	63.2
8(b)(4)(C)	7	1.8
8(b)(4)(D)	88	22.3
8(b)(4)(A)(B)	20	5.1
8(b)(4)(B)(C)	2	0.5
8(b)(4)(A)(B)(C)	3	0.8
Recapitulation		
8(b)(4)(A)	48	12.2
8(b)(4)(B)	274	69.5
8(b)(4)(C)	12	3.0
8(b)(4)(D)	88	22.3

Table 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2007—Continued

	Number of cases showing specific allegations	Percent of total cases
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	62	100.0
8(b)(7)(A)	13	21.0
8(b)(7)(B)	2	3.2
8(b)(7)(C)	46	74.2
8(b)(7)(A)(C)	1	1.6
Recapitulation[1]		
8(b)(7)(A)	14	22.6
8(b)(7)(B)	2	3.2
8(b)(7)(C)	47	75.8
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	48	100.0
Against unions alone	40	83.3
Against employers alone	7	14.6
Against both	1	2.1
D. Charges filed Sec. 8(g)		
Total cases 8(g)	13	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 2007[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	17	16	--	--	--	16	--	--	--	--	--	--	--
Complaints issued	1,779	1,099	947	90	14	--	1	1	0	5	11	25	5
Backpay specifications issued	154	61	55	3	0	--	0	0	0	0	2	1	0
Hearings completed, total	470	182	152	11	2	0	1	1	1	1	3	10	0
Initial ULP hearings	436	162	10	2	2	0	1	1	1	1	3	10	0
Backpay hearings	5	4	4	0	0	0	0	0	0	0	0	0	0
Other hearings	29	16	15	1	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total	361	190	163	13	2	0	0	0	1	1	2	8	0
Initial ULP decisions	283	156	132	12	2	0	0	0	1	1	2	6	0
Backpay decisions	11	5	5	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	67	29	26	1	0	0	0	0	0	0	0	2	0
Decisions and orders by the Board, total	849	381	335	25	1	6	0	3	1	0	3	7	0
Upon consent of parties:													
Initial decisions	37	16	14	1	0	0	0	0	0	0	0	1	0
Supplemental decisions	11	3	2	0	0	0	0	0	0	0	1	0	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	135	65	55	7	0	0	0	0	0	0	1	2	0
Backpay decisions	12	7	7		0	0	0	0	0	0	0	0	0
Contested:	2	2	2	0	0	0	0	0	0	0	0	0	0
Initial ULP decisions	443	216	192	14	1	6	0	1	1	0	1	0	0
Decisions based on stipulated record	3	3	3	0	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	170	56	49	3	0	0	0	2	0	0	0	2	0
Backpay decisions	36	13	11	0	0	0	0	0	0	0	0	2	0

[1] See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2007[1]

Types of formal actions taken	Cases in which formal actions taken[2]	Total formal actions taken[3]	RC	RM	RD	UD
	Formal actions taken by type of case					
Hearings completed, total	357	343	281	3	59	3
Initial hearing	262	255	214	3	38	2
Hearing on objections and/or challenges	95	88	67	0	21	1
Decisions issued, total						
By Regional Director	242	237	194	4	39	8
Elections directed	211	200	166	2	32	7
Dismissals on record	31	37	28	2	7	1
By Board	35	30	14	4	12	2
Transferred by Regional Directors for initial decision.	2	2	2	0	0	0
Elections directed	1	1	1	0	0	0
Dismissals on record	1	1	1	0	0	0
Other	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	121	103	75	8	20	0
Withdrawn before request ruled upon	11	10	9	0	1	0
Board action on request ruled upon, total	96	80	59	5	16	0
Granted	13	12	9	1	2	0
Denied	78	63	46	4	13	0
Remanded	5	5	4	0	1	0
Withdrawn after request granted, before Board review	5	5	2	3	0	0
Board decision after review, total	33	28	12	4	12	2
Regional Directors' decisions:						
Affirmed	14	12	3	3	6	1
Modified	1	1	1	0	0	0
Reversed	18	15	8	1	6	1
Outcome:						
Election directed	25	21	12	1	8	2
Dismissals on record	7	6	0	2	4	0
Other	1	1	0	1	0	0
Decisions on Objections and/or Challenges, total						
By Regional Directors	175	160	134	1	25	6
By Administrative Law Judges	24	22	21	0	1	0
By Board	178	169	142	0	27	6
In stipulated elections	143	140	115	0	25	3
No Exceptions to Regional Directors' reports	87	87	67	0	20	2
Exceptions to Regional Directors' reports	56	53	48	0	5	1
In directed elections (after transfer by Regional Director)	24	20	18	0	2	3
No exceptions to RDs/HOs Reports	18	15	14	0	1	2
Exceptions to RDs/HOs Reports	6	5	4	0	1	1
Review of Regional Directors' supplemental decisions:						
Request for review received	28	24	21	0	3	0
Withdrawn before request ruled upon	0	0	0	0	0	0
Board action on request ruled upon, total	24	20	18	1	1	0
Granted	5	5	4	1	0	0

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2007[1] —Continued

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken[2]	Total formal actions taken[3]	RC	RM	RD	UD
Denied	17	13	12	0	1	0
Remanded	2	2	2	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	11	9	9	0	0	0
Regional Directors' decisions:						
Affirmed	1	1	1	0	0	0
Modified	1	1	1	0	0	0
Reversed	9	7	7	0	0	0

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

Table 3C.—Formal Actions Taken in Amendment of Certification and Unit Clarification Cases, Fiscal Year 2007[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case[2]	
		AC	UC
Hearings completed	39	1	37
Decisions issued after hearing			
By Regional Directors	58	4	51
By Board	4	0	4
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	39	2	21
Withdrawn before request ruled upon	1	1	0
Board action on requests ruled upon, total	20	1	19
Granted	7	0	7
Denied	13	1	12
Remanded	0	0	0
Withdrawn after request granted, before Board review	1	0	1
Board decision after review, total	4	0	4
Regional Directors' decisions:			
Affirmed	10	0	1
Modified	0	0	0
Reversed	3	0	3

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

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2007[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]9,187	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted	1,569	1,330	1,042	15	59	103	111	239	205	5	9	13	7
Recognition or other assistance withdrawn	12	12	11	0	0	0	1	--	--	--	--	--	--
Employer–dominated union disestablished	2	2	2	0	0	0	0	--	--	--	--	--	--
Employees offered reinstatement	920	920	786	3	27	50	54	--	--	--	--	--	--
Employees placed on preferential hiring list	20	20	18	0	2	0	0	--	--	--	--	--	--
Hiring hall rights restored	8	--	--	--	--	--	--	8	6	0	0	2	0
Objections to employment withdrawn	8	--	--	--	--	--	--	8	4	0	0	4	0
Picketing ended	46	--	--	--	--	--	--	46	43	1	0	0	2
Work stoppage ended	6	--	--	--	--	--	--	6	6	0	0	0	0
Collective bargaining begun	2,342	2,217	2,077	5	18	75	42	125	123	0	0	1	0
Backpay distributed	1,699	1,627	1,461	6	34	69	67	62	53	0	4	4	1
Reimbursement of fees, dues, and fines	132	59	55	0	1	3	0	73	67	1	0	4	1
Other conditions of employment improved	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2007[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	1,771	1,771	1,408	1	77	116	169	--	--	--	--	--	--
Accepted	1,273	1,273	1,124	0	45	51	53	--	--	--	--	--	--
Declined	498	498	284	1	32	65	116	--	--	--	--	--	--
Employees placed on preferential hiring list	65	65	63	0	2	0	0	--	--	--	--	--	--
Hiring hall rights restored	8	--	--	--	--	--	--	8	6	0	0	2	0
Objections to employment withdrawn	10	--	--	--	--	--	--	10	4	0	0	6	0
Employees receiving backpay:													
From either employer or union	29,821	29,559	19,820	15	562	7,552	1,610	262	250	0	6	6	0
From both employer and union	64	63	63	0	0	0	0	1	0	0	0	0	1
Employees reimbursed for fees, dues, and fines:													
From either employer or union	1,978	1,410	1,407	0	2	1	0	568	163	233	0	1	171
From both employer and union	1,063	828	480	0	0	348	0	235	234	0	0	1	0

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2007[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	124,365,988	123,526,342	76,473,076	96,096	1,624,943	27,212,309	18,119,918	839,646	301,564	28,000	7,249	413,263	89,570
Backpay (includes all monetary payments except fees, dues, and fines)	117,342,739	116,798,126	69,788,428	96,096	1,606,938	27,151,746	18,119,918	544,613	200,418	0	7,249	334,371	2,575
Reimbursement of fees, dues,and fines	7,023,249	6,728,216	6,684,648	0	18,005	25,563	0	295,033	101,146	28,000	0	78,892	86,995

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2007 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 2007[1]

Industrial Group[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Crop Production	19	14	8	6	0	0	0	0	0	4	4	0	0	0	0	1
Animal Production	22	16	14	2	0	0	0	0	0	6	6	0	0	0	0	0
Forestry and Logging	4	3	2	1	0	0	0	0	0	1	1	0	0	0	0	0
Fishing, Hunting and Trapping	2	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry	13	9	6	3	0	0	0	0	0	4	4	0	0	0	0	0
Agriculture, Forestry, Fishing, and Hunting	60	44	31	13	0	0	0	0	0	15	15	0	0	0	0	1
Oil and Gas Extraction	23	19	15	4	0	0	0	0	0	4	1	0	3	0	0	0
Mining (except Oil and Gas)	167	152	102	24	6	0	20	0	0	13	10	0	3	1	0	1
Support Activities for Mining	24	21	18	3	0	0	0	0	0	3	1	0	2	0	0	0
Mining, Quarrying, and Oil and Gas Extraction	214	192	135	31	6	0	20	0	0	20	12	0	8	1	0	1
Utilities	463	381	276	101	2	1	0	0	1	73	57	4	12	2	0	7
Construction of Buildings	379	330	145	74	78	14	5	0	14	48	43	1	4	0	0	1
Heavy and Civil Engineering Construction	180	160	105	34	12	5	4	0	0	19	15	1	3	0	0	1
Specialty Trade Contractors	1,604	1370	910	314	82	41	2	0	21	211	168	9	34	0	1	22
Construction	2,163	1860	1,160	422	172	60	11	0	35	278	226	11	41	0	1	24
Food Manufacturing	753	666	515	146	5	0	0	0	0	78	62	2	14	1	0	8
Beverage and Tobacco Product Manufacturing	190	162	125	37	0	0	0	0	0	26	14	0	12	1	0	1
Textile Mills	28	24	19	5	0	0	0	0	0	4	2	0	2	0	0	0
Textile Product Mills	21	18	14	4	0	0	0	0	0	3	1	0	2	0	0	0
Apparel Manufacturing	36	31	22	9	0	0	0	0	0	4	3	0	1	1	0	0
Leather and Allied Product Manufacturing	9	8	8	0	0	0	0	0	0	1	0	0	1	0	0	0
31-Manufacturing	1,037	909	703	201	5	0	0	0	0	116	82	2	32	3	0	9
Wood Product Manufacturing	101	89	68	21	0	0	0	0	0	11	7	0	4	1	0	0
Paper Manufacturing	332	315	241	74	0	0	0	0	0	15	11	0	4	1	0	1
Printing and Related Support Activities	88	72	54	17	0	1	0	0	0	16	10	0	6	0	0	0
Petroleum and Coal Products Manufacturing	135	111	83	17	5	4	1	0	1	24	17	3	4	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2007[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
Chemical Manufacturing	308	255	214	40	1	0	0	0	0	46	33	1	12	2	0	5
Plastics and Rubber Products Manufacturing	253	228	186	42	0	0	0	0	0	25	14	2	9	0	0	0
Nonmetallic Mineral Product Manufacturing	301	235	187	31	9	4	1	0	3	63	53	4	6	1	0	2
32-Manufacturing	1,518	1305	1,033	242	15	9	2	0	4	200	145	10	45	5	0	8
Primary Metal Manufacturing	536	484	365	112	3	2	2	0	0	48	28	4	16	3	0	1
Fabricated Metal Product Manufacturing	285	254	179	72	3	0	0	0	0	30	17	0	13	0	0	1
Machinery Manufacturing	304	274	205	64	2	3	0	0	0	29	19	3	7	1	0	0
Computer and Electronic Product Manufacturing	69	59	49	10	0	0	0	0	0	10	7	0	3	0	0	0
Electrical Equipment, Appliance, and Component Manufacturing	191	160	113	46	1	0	0	0	0	29	21	1	7	1	0	1
Transportation Equipment Manufacturing	1,131	1047	673	368	3	2	1	0	0	80	54	4	22	1	0	3
Furniture and Related Product Manufacturing	68	58	49	9	0	0	0	0	0	9	8	0	1	0	0	1
Miscellaneous Manufacturing	349	302	230	64	4	0	2	0	2	44	29	1	14	3	0	0
33-Manufacturing	2,933	2638	1,863	745	16	7	5	0	2	279	183	13	83	9	0	7
Merchant Wholesalers, Durable Goods	160	135	100	34	1	0	0	0	0	23	11	0	12	2	0	0
Merchant Wholesalers, Nondurable Goods	321	246	199	47	0	0	0	0	0	68	53	3	12	0	0	7
Wholesale Electronic Markets and Agents and Brokers	8	5	5	0	0	0	0	0	0	3	3	0	0	0	0	0
Wholesale Trade	489	386	304	81	1	0	0	0	0	94	67	3	24	2	0	7
Motor Vehicle and Parts Dealers	253	190	154	33	2	0	1	0	0	63	41	0	22	0	0	0
Furniture and Home Furnishings Stores	26	22	21	0	1	0	0	0	0	4	1	0	3	0	0	0
Electronics and Appliance Stores	16	11	9	2	0	0	0	0	0	5	5	0	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers	56	42	40	1	1	0	0	0	0	13	10	0	3	0	0	1
Food and Beverage Stores	587	532	356	174	0	0	0	0	2	49	34	5	10	5	0	1
Health and Personal Care Stores	113	99	82	15	2	0	0	0	0	14	8	2	4	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2007[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
Gasoline Stations	18	15	13	2	0	0	0	0	0	3	2	0	1	0	0	0
Clothing and Clothing Accessories Stores	20	17	14	3	0	0	0	0	0	2	1	0	1	0	0	1
44-Retail Trade	1,089	928	689	230	6	0	1	0	2	153	102	7	44	5	0	3
Sporting Goods, Hobby, Book, and Music Stores	10	9	6	3	0	0	0	0	0	1	1	0	0	0	0	0
General Merchandise Stores	106	98	79	18	1	0	0	0	0	6	5	0	1	2	0	0
Miscellaneous Store Retailers	63	49	40	7	1	0	1	0	0	13	6	1	6	1	0	0
Nonstore Retailers	31	24	20	3	0	1	0	0	0	5	5	0	0	2	0	0
45-Retail Trade	210	180	145	31	2	1	1	0	0	25	17	1	7	5	0	0
Air Transportation	43	19	14	4	1	0	0	0	0	24	21	1	2	0	0	0
Rail Transportation	44	41	33	8	0	0	0	0	0	3	2	1	0	0	0	0
Water Transportation	138	129	49	80	0	0	0	0	0	8	6	0	2	0	0	1
Truck Transportation	620	506	380	118	6	1	1	0	0	111	89	0	22	2	0	1
Transit and Ground Passenger Transportation	672	527	388	138	0	0	1	0	0	143	126	0	17	1	0	1
Pipeline Transportation	13	9	7	2	0	0	0	0	0	4	4	0	0	0	0	0
Scenic and Sightseeing Transportation	21	15	6	3	4	0	0	0	2	5	2	0	3	1	0	0
Support Activities for Transportation	356	290	162	126	2	0	0	0	0	65	56	1	8	1	0	0
48-Transportation and Warehousing	1,907	1536	1,039	479	13	1	2	0	2	363	306	3	54	5	0	3
Postal Service	2,654	2653	1,884	768	0	0	1	0	0	0	0	0	0	0	0	1
Couriers and Messengers	249	230	146	84	0	0	0	0	0	19	16	0	3	0	0	0
Warehousing and Storage	418	329	261	66	2	0	0	0	0	86	69	3	14	3	0	0
49-Transportation and Warehousing	3,321	3212	2,291	918	2	0	1	0	0	105	85	3	17	3	0	1
Publishing Industries (except Internet)	202	191	147	40	3	0	0	0	1	9	6	0	3	1	0	1
Motion Picture and Sound Recording Industries	43	37	20	17	0	0	0	0	0	4	4	0	0	0	0	2
Broadcasting (except Internet)	153	131	109	22	0	0	0	0	0	17	9	0	8	1	0	4
Telecommunications	665	639	487	151	1	0	0	0	0	24	15	0	9	0	0	2

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2007[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
Data Processing, Hosting, and Related Services	11	8	7	1	0	0	0	0	0	2	2	0	0	0	0	1
Other Information Services	67	53	40	13	0	0	0	0	0	10	6	2	2	1	0	3
Information	1,141	1059	810	244	4	0	0	0	1	66	42	2	22	3	0	13
Monetary Authorities - Central Bank	15	14	13	0	0	1	0	0	0	1	1	0	0	0	0	0
Credit Intermediation and Related Activities	51	37	28	8	1	0	0	0	0	11	3	1	7	3	0	0
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	13	11	9	2	0	0	0	0	0	1	0	0	1	1	0	0
Insurance Carriers and Related Activities	40	36	25	11	0	0	0	0	0	2	1	0	1	0	0	2
Funds, Trusts, and Other Financial Vehicles	6	6	4	2	0	0	0	0	0	0	0	0	0	0	0	0
Finance and Insurance	125	104	79	23	1	1	0	0	0	15	5	1	9	4	0	2
Real Estate	174	144	97	40	4	1	1	0	1	29	20	1	8	1	0	0
Rental and Leasing Services	127	95	76	18	1	0	0	0	0	32	27	0	5	0	0	0
Real Estate and Rental and Leasing	301	239	173	58	5	1	1	0	1	61	47	1	13	1	0	0
Professional, Scientific, and Technical Services	246	219	159	51	6	1	0	0	2	24	17	0	7	0	0	3
Management of Companies and Enterprises	47	41	30	11	0	0	0	0	0	5	4	0	1	1	0	0
Administrative and Support Services	1,972	1723	1,281	421	11	0	2	0	8	224	182	4	38	17	2	6
Waste Management and Remediation Services	365	277	211	60	6	0	0	0	0	80	57	1	22	4	0	4
Administrative and Support and Waste Management and Remediation Services	2,337	2000	1,492	481	17	0	2	0	8	304	239	5	60	21	2	10
Educational Services	284	232	179	51	2	0	0	0	0	42	34	0	8	1	0	9
Ambulatory Health Care Services	429	362	321	41	0	0	0	0	0	58	42	1	15	1	1	7
Hospitals	1,436	1268	980	276	2	2	0	8	0	152	116	7	29	0	0	16
Nursing and Residential Care Facilities	1,149	930	781	144	0	0	0	5	0	195	133	9	53	11	1	12
Social Assistance	231	170	135	33	1	0	1	0	0	55	36	2	17	3	0	3
Health Care and Social Assistance	3,245	2730	2,217	494	3	2	1	13	0	460	327	19	114	15	2	38

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2007[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
Performing Arts, Spectator Sports, and Related Industries	170	143	80	54	7	2	0	0	0	26	22	0	4	0	1	0
Museums, Historical Sites, and Similar Institutions	22	19	14	5	0	0	0	0	0	3	2	0	1	0	0	0
Amusement, Gambling, and Recreation Industries	289	245	172	73	0	0	0	0	0	43	41	0	2	1	0	0
Arts, Entertainment, and Recreation	481	407	266	132	7	2	0	0	0	72	65	0	7	1	1	0
Accommodation	581	514	367	140	6	1	0	0	0	63	56	1	6	2	0	2
Food Services and Drinking Places	385	336	241	90	5	0	0	0	0	45	34	2	9	0	0	4
Accommodation and Food Services	966	850	608	230	11	1	0	0	0	108	90	3	15	2	0	6
Repair and Maintenance	220	176	133	41	2	0	0	0	0	41	28	0	13	2	0	1
Personal and Laundry Services	284	238	174	60	4	0	0	0	0	42	27	3	12	0	0	4
Religious, Grantmaking, Civic, Professional, and Similar Organizations	407	365	231	128	3	0	0	0	3	36	27	0	9	1	0	5
Other Services (except Public Administration)	911	779	538	229	9	0	0	0	3	119	82	3	34	3	0	10
Executive, Legislative, and Other General Government Support	10	8	3	5	0	0	0	0	0	2	2	0	0	0	0	0
Justice, Public Order, and Safety Activities	106	57	43	13	0	0	1	0	0	47	43	1	3	2	0	0
Administration of Human Resource Programs	11	8	7	0	0	0	0	0	1	3	2	0	1	0	0	0
Administration of Environmental Quality Programs	3	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development	4	3	2	1	0	0	0	0	0	1	0	0	1	0	0	0
Administration of Economic Programs	13	12	9	3	0	0	0	0	0	1	1	0	0	0	0	0
Space Research and Technology	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
National Security and International Affairs	10	6	6	0	0	0	0	0	0	4	4	0	0	0	0	0
Public Administration	158	97	70	25	0	0	1	0	1	59	53	1	5	2	0	0
Total, all industrial groups	25,646	22,328	16,290	5,523	305	87	48	13	62	3,056	2,302	92	662	94	6	162

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

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2007[1]

Division and State[2]	All cases	Unfair labor practice cases								Representation cases				Union deauthorization cases	Amendment of certification cases	Unit clarification cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Illinois	1,546	1295	871	342	50	18	2	0	12	232	186	7	39	11	0	8
Indiana	654	575	443	113	7	7	2	0	3	71	49	0	22	6	0	2
Michigan	1,528	1366	883	468	11	3	0	0	1	147	98	3	46	7	0	8
Ohio	1,503	1319	997	306	10	2	2	0	2	169	105	7	57	9	1	5
Wisconsin	451	373	277	93	3	0	0	0	0	73	55	1	17	1	0	4
East North Central	5,682	4928	3,471	1,322	81	30	6	0	18	692	493	18	181	34	1	27
Alabama	354	322	273	49	0	0	0	0	0	31	25	0	6	0	0	1
Kentucky	376	342	290	49	0	0	1	2	0	34	26	0	8	0	0	0
Mississippi	101	90	74	16	0	0	0	0	0	10	9	0	1	0	0	1
Tennessee	347	318	244	73	1	0	0	0	0	28	21	1	6	0	0	1
East South Central	1,178	1072	881	187	1	0	1	2	0	103	81	1	21	0	0	3
Puerto Rico	416	370	274	96	0	0	0	0	0	35	29	0	6	2	0	9
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	25	15	12	3	0	0	0	0	0	10	9	0	1	0	0	0
Island Areas	441	385	286	99	0	0	0	0	0	45	38	0	7	2	0	9
New Jersey	1,077	894	671	197	16	9	0	1	0	165	129	2	34	12	1	5
New York	2,761	2409	1,547	755	55	26	7	3	16	309	249	11	49	11	1	31
Pennsylvania	1,292	1079	864	193	14	7	0	0	1	199	151	3	45	4	0	10
Middle Atlantic	5,130	4382	3,082	1,145	85	42	7	4	17	673	529	16	128	27	2	46
Arizona	293	266	204	58	4	0	0	0	0	26	17	1	8	0	0	1
Colorado	446	418	337	81	0	0	0	0	0	25	21	1	3	0	0	3
Idaho	30	25	17	6	1	0	1	0	0	5	0	2	3	0	0	0
Montana	99	67	50	16	0	0	0	0	1	25	11	2	12	6	0	1
New Mexico	134	103	72	31	0	0	0	0	0	29	26	3	0	0	0	2
Nevada	499	430	308	104	14	0	2	0	2	66	54	3	9	0	0	3

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2007[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
Utah	70	62	52	10	0	0	0	0	0	7	5	2	0	0	0	1
Wyoming	15	12	10	2	0	0	0	0	0	3	2	0	1	0	0	0
Mountain	1,586	1383	1,050	308	19	0	3	0	3	186	136	14	36	6	0	11
Connecticut	372	316	251	58	3	0	0	1	3	55	42	2	11	0	0	1
Massachusetts	720	643	513	107	14	4	3	0	2	67	54	1	12	2	1	7
Maine	55	46	44	2	0	0	0	0	0	6	5	0	1	0	0	3
New Hampshire	68	59	51	7	1	0	0	0	0	8	6	0	2	1	0	0
Rhode Island	126	109	74	26	9	0	0	0	0	16	14	0	2	0	0	1
Vermont	30	28	23	5	0	0	0	0	0	2	1	0	1	0	0	0
New England	1,371	1201	956	205	27	4	3	1	5	154	122	3	29	3	1	12
Alaska	111	78	73	5	0	0	0	0	0	27	25	1	1	0	0	6
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	3,326	2991	2,096	819	52	4	7	0	13	312	231	13	68	6	0	17
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	266	232	187	44	0	0	0	1	0	34	27	0	7	0	0	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	257	198	160	33	5	0	0	0	0	51	39	0	12	3	0	5
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	736	596	435	149	8	1	1	0	2	131	98	2	31	4	0	5
Pacific	4,697	4096	2,951	1,051	65	5	8	1	15	555	420	16	119	13	0	33
District Of Columbia	158	120	87	33	0	0	0	0	0	38	33	2	3	0	0	0
Delaware	51	39	30	8	1	0	0	0	0	11	8	0	3	0	0	1
Florida	721	641	467	168	4	0	0	0	2	75	59	2	14	1	1	3

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2007[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
Georgia	370	337	241	94	2	0	0	0	0	32	24	2	6	0	0	1
Maryland	435	369	256	113	0	0	0	0	0	62	46	2	14	0	0	4
North Carolina	369	345	240	104	1	0	0	0	0	24	16	1	7	0	0	0
South Carolina	106	94	75	17	0	0	0	2	0	12	11	0	1	0	0	0
Virginia	360	322	251	71	0	0	0	0	0	37	30	3	4	0	1	0
West Virginia	231	206	176	30	0	0	0	0	0	21	13	0	8	2	0	2
South Atlantic	2,801	2473	1,823	638	8	0	0	2	2	312	240	12	60	3	2	11
Iowa	146	117	94	21	1	1	0	0	0	29	21	1	7	0	0	0
Kansas	124	110	77	31	1	1	0	0	0	14	11	0	3	0	0	0
Minnesota	383	311	250	49	11	0	0	0	1	69	42	3	24	1	0	2
Missouri	522	445	328	108	4	3	0	1	1	68	47	3	18	4	0	5
North Dakota	23	15	13	2	0	0	0	0	0	7	6	0	1	0	0	1
Nebraska	38	28	20	8	0	0	0	0	0	9	8	0	1	0	0	1
South Dakota	15	14	12	2	0	0	0	0	0	1	1	0	0	0	0	0
West North Central	1,251	1040	794	221	17	5	0	1	2	197	136	7	54	5	0	9
Arkansas	150	142	105	37	0	0	0	0	0	8	5	0	3	0	0	0
Louisiana	206	184	138	46	0	0	0	0	0	22	17	0	5	0	0	0
Oklahoma	127	112	86	22	2	2	0	0	0	13	11	0	2	1	0	1
Texas	1,028	933	668	242	1	0	20	2	0	95	74	4	17	0	0	0
West South Central	1,511	1371	997	347	3	2	20	2	0	138	107	4	27	1	0	1
Total, all States and areas	25,648	22,331	16,291	5,523	306	88	48	13	62	3,055	2,302	91	662	94	6	162

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

Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2007[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	372	316	251	58	3	0	0	1	3	55	42	2	11	0	0	1
Massachusetts	720	643	513	107	14	4	3	0	2	67	54	1	12	2	1	7
Maine	55	46	44	2	0	0	0	0	0	6	5	0	1	0	0	3
New Hampshire	68	59	51	7	1	0	0	0	0	8	6	0	2	1	0	0
Rhode Island	126	109	74	26	9	0	0	0	0	16	14	0	2	0	0	1
Vermont	30	28	23	5	0	0	0	0	0	2	1	0	1	0	0	0
Region I	1,371	1201	956	205	27	4	3	1	5	154	122	3	29	3	1	12
Delaware	51	39	30	8	1	0	0	0	0	11	8	0	3	0	0	1
New Jersey	1,077	894	671	197	16	9	0	1	0	165	129	2	34	12	1	5
New York	2,761	2409	1,547	755	55	26	7	3	16	309	249	11	49	11	1	31
Puerto Rico	416	370	274	96	0	0	0	0	0	35	29	0	6	2	0	9
Virgin Islands	25	15	12	3	0	0	0	0	0	10	9	0	1	0	0	0
Region II	4,330	3727	2,534	1,059	72	35	7	4	16	530	424	13	93	25	2	46
District Of Columbia	158	120	87	33	0	0	0	0	0	38	33	2	3	0	0	0
Maryland	435	369	256	113	0	0	0	0	0	62	46	2	14	0	0	4
Pennsylvania	1,292	1079	864	193	14	7	0	0	1	199	151	3	45	4	0	10
Virginia	360	322	251	71	0	0	0	0	0	37	30	3	4	0	1	0
West Virginia	231	206	176	30	0	0	0	0	0	21	13	0	8	2	0	2
Region III	2,476	2096	1,634	440	14	7	0	0	1	357	273	10	74	6	1	16
Alabama	354	322	273	49	0	0	0	0	0	31	25	0	6	0	0	1
Florida	721	641	467	168	4	0	0	0	2	75	59	2	14	1	1	3
Georgia	370	337	241	94	2	0	0	0	0	32	24	2	6	0	0	1
Kentucky	376	342	290	49	0	0	1	2	0	34	26	0	8	0	0	0
Mississippi	101	90	74	16	0	0	0	0	0	10	9	0	1	0	0	1
North Carolina	369	345	240	104	1	0	0	0	0	24	16	1	7	0	0	0
South Carolina	106	94	75	17	0	0	0	2	0	12	11	0	1	0	0	0
Tennessee	347	318	244	73	1	0	0	0	0	28	21	1	6	0	0	1
Region IV	2,744	2489	1,904	570	8	0	1	4	2	246	191	6	49	1	1	7
Illinois	1,546	1295	871	342	50	18	2	0	12	232	186	7	39	11	0	8
Indiana	654	575	443	113	7	7	2	0	3	71	49	0	22	6	0	2
Michigan	1,528	1366	883	468	11	3	0	0	1	147	98	3	46	7	0	8
Minnesota	383	311	250	49	11	0	0	0	1	69	42	3	24	1	0	2
Ohio	1,503	1319	997	306	10	2	2	0	2	169	105	7	57	9	1	5
Wisconsin	451	373	277	93	3	0	0	0	0	73	55	1	17	1	0	4
Region V	6,065	5239	3,721	1,371	92	30	6	0	19	761	535	21	205	35	1	29
Arkansas	150	142	105	37	0	0	0	0	0	8	5	0	3	0	0	0

Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2007[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
Louisiana	206	184	138	46	0	0	0	0	0	22	17	0	5	0	0	0
New Mexico	134	103	72	31	0	0	0	0	0	29	26	3	0	0	0	2
Oklahoma	127	112	86	22	2	2	0	0	0	13	11	0	2	1	0	1
Texas	1,028	933	668	242	1	0	20	2	0	95	74	4	17	0	0	0
Region VI	1,645	1474	1,069	378	3	2	20	2	0	167	133	7	27	1	0	3
Iowa	146	117	94	21	1	1	0	0	0	29	21	1	7	0	0	0
Kansas	124	110	77	31	1	1	0	0	0	14	11	0	3	0	0	0
Missouri	522	445	328	108	4	3	0	1	1	68	47	3	18	4	0	5
Nebraska	38	28	20	8	0	0	0	0	0	9	8	0	1	0	0	1
Region VII	830	700	519	168	6	5	0	1	1	120	87	4	29	4	0	6
Colorado	446	418	337	81	0	0	0	0	0	25	21	1	3	0	0	3
Montana	99	67	50	16	0	0	0	0	1	25	11	2	12	6	0	1
North Dakota	23	15	13	2	0	0	0	0	0	7	6	0	1	0	0	1
South Dakota	15	14	12	2	0	0	0	0	0	1	1	0	0	0	0	0
Utah	70	62	52	10	0	0	0	0	0	7	5	2	0	0	0	1
Wyoming	15	12	10	2	0	0	0	0	0	3	2	0	1	0	0	0
Region VIII	668	588	474	113	0	0	0	0	1	68	46	5	17	6	0	6
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	293	266	204	58	4	0	0	0	0	26	17	1	8	0	0	1
California	3,326	2991	2,096	819	52	4	7	0	13	312	231	13	68	6	0	17
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	266	232	187	44	0	0	0	1	0	34	27	0	7	0	0	0
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	1	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Nevada	499	430	308	104	14	0	2	0	2	66	54	3	9	0	0	3
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX	4,385	3920	2,795	1,026	70	4	9	1	15	438	329	17	92	6	0	21
Alaska	111	78	73	5	0	0	0	0	0	27	25	1	1	0	0	6
Idaho	30	25	17	6	1	0	1	0	0	5	0	2	3	0	0	0
Oregon	257	198	160	33	5	0	0	0	0	51	39	0	12	3	0	5
Washington	736	596	435	149	8	1	1	0	2	131	98	2	31	4	0	5
Region X	1,134	897	685	193	14	1	2	0	2	214	162	5	47	7	0	16
Total, all States and areas	25,648	22,331	16,291	5,523	306	88	48	13	62	3,055	2,302	91	662	94	6	162

[1] See Glossary of terms for definitions.

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

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2007[1]

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Total number of cases closed	23,012	100.0	--	16,983	100.0	5,591	100.0	246	100.0	91	100.0	30	100.0	12	100.0	59	100.0
Agreement of the parties	8,149	35.4	100.0	7,051	41.5	947	16.9	106	43.1	18	19.8	2	6.7	7	58.3	18	30.5
Informal settlement	8,131	35.3	99.8	7,035	41.4	945	16.9	106	43.1	18	19.8	2	6.7	7	58.3	18	30.5
Before issuance of complaint	6,678	29.0	81.9	5,710	33.6	837	15.0	89	36.2	18	19.8	2	6.7	6	50.0	16	27.1
After issuance of complaint, before opening of hearing	1,394	6.1	17.1	1,268	7.5	106	1.9	17	6.9	0	0.0	0	0.0	1	8.3	2	3.4
After hearing opened, before issuance of administrative law judge's decision	59	0.3	0.7	57	0.3	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement	18	0.1	0.2	16	0.1	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	18	0.1	0.2	16	0.1	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	17	0.1	0.2	15	0.1	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with	642	2.8	100.0	608	3.6	28	0.5	4	1.6	0	0.0	0	0.0	0	0.0	2	3.4
Administrative law judge's decision	2	0.0	0.3	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	433	1.9	67.4	407	2.4	23	0.4	1	0.4	0	0.0	0	0.0	0	0.0	2	3.4
Adopting administrative law judge's decision (no exceptions filed)	117	0.5	18.2	106	0.6	11	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	316	1.4	49.2	301	1.8	12	0.2	1	0.4	0	0.0	0	0.0	0	0.0	2	3.4
Circuit court of appeals decree	207	0.9	32.2	199	1.2	5	0.1	3	1.2	0	0.0	0	0.0	0	0.0	0	0.0
Supreme Court action	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2007[1]—Continued

Method and stage of disposition	All C cases			CA cases		CB cases		CC cases		CD cases[2]		CE cases		CG cases		CP cases	
	Number	Percent of total closed	Percent of total method	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed	Number	Percent of total closed
Withdrawal	7,359	32.0	100.0	5,438	32.0	1,765	31.6	89	36.2	21	23.1	21	70.0	4	33.3	21	35.6
Before issuance of complaint	7,239	31.5	98.4	5,323	31.3	1,760	31.5	89	36.2	21	23.1	21	70.0	4	33.3	21	35.6
After issuance of complaint, before opening of hearing	60	0.3	0.8	55	0.3	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	11	0.0	0.1	11	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before Board decision	24	0.1	0.3	24	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	25	0.1	0.3	25	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	6,713	29.2	100.0	3,791	22.3	2,844	50.9	47	19.1	5	5.5	7	23.3	1	8.3	18	30.5
Before issuance of complaint	6,625	28.8	98.7	3,718	21.9	2,831	50.6	46	18.7	5	5.5	6	20.0	1	8.3	18	30.5
After issuance of complaint, before opening of hearing	32	0.1	0.5	28	0.2	3	0.1	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision	2	0.0	0.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By administrative law judge's decision	3	0.0	0.0	3	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Board decision	46	0.2	0.7	35	0.2	10	0.2	0	0.0	0	0.0	1	3.3	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	23	0.1	0.3	17	0.1	6	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	23	0.1	0.3	18	0.1	4	0.1	0	0.0	0	0.0	1	3.3	0	0.0	0	0.0
By circuit court of appeals decree	4	0.0	0.1	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By Supreme Court action	1	0.0	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	47	0.2	--	0	0.0	0	0.0	0	0.0	47	51.6	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business)	102	0.4	--	95	0.6	7	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Table 8 for summary of disposition of 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 2007[1]

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint	47	100.0
Agreement of the parties-informal settlement	26	55.3
Before 10(k) notice	15	31.9
After 10(k) notice, before opening of 10(k) hearing	6	12.8
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	4	8.5
After Board decision and determination of dispute	1	2.1
Compliance with Board decision and determination of dispute	2	4.3
Withdrawal	13	27.7
Before 10(k) notice	11	23.4
After 10(k) notice, before opening of 10(k) hearing	2	4.3
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute	0	0.0
After Board decision and determination of dispute	0	0.0
Dismissal	6	12.8
Before 10(k) notice	6	12.8
After 10(k) notice, before opening of 10(k) hearing	0	0.0
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 2007[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	23,131	100.0	17,058	100.0	5,625	100.0	246	100.0	101	100.0	30	100.0	12	100.0	59	100.0
Before issuance of complaint	20,586	89.0	14,760	86.5	5,430	96.5	224	91.1	77	76.2	29	96.7	11	91.7	55	93.2
After issuance of complaint, before opening of hearing	1,520	6.6	1,368	8.0	123	2.2	18	7.3	8	7.9	0	0.0	1	8.3	2	3.4
After hearing opened, before issuance of administrative law judge's decision	100	0.4	91	0.5	5	0.1	0	0.0	4	4.0	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	35	0.2	35	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board order adopting administrative law judge's decision in absence of exceptions	189	0.8	161	0.9	17	0.3	0	0.0	11	10.9	0	0.0	0	0.0	0	0.0
After Board decision, before circuit court decree	411	1.8	380	2.2	26	0.5	1	0.4	1	1.0	1	3.3	0	0.0	2	3.4
After circuit court decree, before Supreme Court action	289	1.2	262	1.5	24	0.4	3	1.2	0	0.0	0	0.0	0	0.0	0	0.0
After Supreme Court action	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2007[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	3,327	100.0	2,556	100.0	87	100.0	684	100.0	103	100.0
Before issuance of notice of hearing	372	11.2	220	8.6	22	25.3	130	19.0	60	58.3
After issuance of notice, before close of hearing	2,524	75.9	1,992	77.9	49	56.3	483	70.6	32	31.1
After hearing closed, before issuance of decision	63	1.9	46	1.8	1	1.1	16	2.3	1	1.0
After issuance of Regional Director's decision	225	6.8	185	7.2	11	12.6	29	4.2	2	1.9
After issuance of Board decision[2]	143	4.3	113	4.4	4	4.6	26	3.8	8	7.8

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

Table 10 – Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed, Fiscal Year 2007[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	3,276	100.0	2,513	100.0	86	100.0	677	100.0	102	100.0
Certification issued, total	1,851	56.5	1,477	58.8	22	25.6	352	52.0	56	54.9
After:										
Consent election	87	2.7	71	2.8	0	0.0	16	2.4	2	2.0
Before notice of hearing	29	0.9	29	1.2	0	0.0	0	0.0	1	1.0
After notice of hearing, before hearing closed	53	1.6	41	1.6	0	0.0	12	1.8	1	1.0
After hearing closed, before decision	5	0.2	1	0.0	0	0.0	4	0.6	0	0.0
Stipulated election	1,521	46.4	1,213	48.3	15	17.4	293	43.3	41	40.2
Before notice of hearing	157	4.8	107	4.3	3	3.5	47	6.9	25	24.5
After notice of hearing, before hearing closed	1,333	40.7	1,079	42.9	12	14.0	242	35.7	16	15.7
After hearing closed, before decision	31	0.9	27	1.1	0	0.0	4	0.6	0	0.0
Expedited election	2	0.1	1	0.0	1	1.2	0	0.0	0	0.0
Regional Director-directed election	143	4.4	116	4.6	5	5.8	22	3.2	7	6.9
Board-directed election	98	3.0	76	3.0	1	1.2	21	3.1	6	5.9
By withdrawal, total	1,299	39.7	996	39.6	43	50.0	260	38.4	37	36.3
Before notice of hearing	147	4.5	76	3.0	10	11.6	61	9.0	22	21.6
After notice of hearing, before hearing closed	1,045	31.9	827	32.9	31	36.0	187	27.6	12	11.8
After hearing closed, before decision	24	0.7	16	0.6	1	1.2	7	1.0	1	1.0
After Regional Director's decision and direction of election	52	1.6	48	1.9	1	1.2	3	0.4	0	0.0
After Board decision and direction of election	31	0.9	29	1.2	0	0.0	2	0.3	2	2.0
By dismissal, total	126	3.8	40	1.6	21	24.4	65	9.6	9	8.8
Before notice of hearing	36	1.1	6	0.2	8	9.3	22	3.2	8	7.8
After notice of hearing, before hearing closed	49	1.5	14	0.6	6	7.0	29	4.3	1	1.0
After hearing closed, before decision	1	0.0	0	0.0	0	0.0	1	0.1	0	0.0
By Regional Director's decision	26	0.8	12	0.5	4	4.7	10	1.5	0	0.0
By Board decision	14	0.4	8	0.3	3	3.5	3	0.4	0	0.0

[1] See Glossary of terms for definitions.

Table 10A.—Analysis of Methods of Disposition of Amendment of Certification And Unit Clarification Cases Closed, Fiscal Year 2007[1]

	AC	UC
Total, all	7	155
Certification amended or unit clarified	2	19
Before hearing	1	2
By Regional Director's decision	1	2
By Board decision	0	0
After hearing	1	17
By Regional Director's decision	1	13
By Board decision	0	4
Dismissed	1	35
Before hearing	1	12
By Regional Director's decision	1	11
By Board decision	0	1
After hearing	0	23
By Regional Director's decision	0	19
By Board decision	0	4
Withdrawn	4	101
Before hearing	4	95
After hearing	0	6

[1] See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2007[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed[2]	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	[3]1,938	92	1,588	0	256	2
Eligible voters	135,519	8,825	100,585	0	26,036	73
Valid votes	105,977	6,436	82,043	0	17,426	72
RC cases:						
Elections	1,500	74	1,233	0	192	1
Eligible voters	101,934	8,035	72,709	0	21,120	70
Valid votes	80,071	5,850	60,386	0	13,766	69
RM cases:						
Elections	23	0	15	0	7	1
Eligible voters	1,004	0	830	0	171	3
Valid votes	831	0	715	0	113	3
RD cases:						
Elections	358	16	299	0	43	0
Eligible voters	25,611	617	21,347	0	3,647	0
Valid votes	21,012	489	17,809	0	2,714	0
UD cases:						
Elections	57	2	41	0	14	--
Eligible voters	6,970	173	5,699	0	1,098	--
Valid votes	4,063	97	3,133	0	833	--

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

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2007[1]

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	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All representation elections	1,973	58	38	1,877	1,583	53	33	1,497	22	0	0	22	368	5	5	358
Rerun required	--	--	36	--	--	--	31	--	--	--	0	--	--	--	5	--
Runoff required	--	--	2	--	--	--	2	--	--	--	0	--	--	--	0	--
Consent elections	95	2	3	90	77	1	2	74	0	0	0	0	18	1	1	16
Rerun required	--	--	3	--	--	--	2	--	--	--	--	--	--	--	1	--
Runoff required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	0	--
Stipulated elections	1,594	26	25	1,543	1,274	22	22	1,230	15	0	0	15	305	4	3	298
Rerun required	--	--	23	--	--	--	20	--	--	--	0	--	--	--	3	--
Runoff required	--	--	2	--	--	--	2	--	--	--	0	--	--	--	0	--
Regional Director–directed	282	30	10	242	231	30	9	192	6	0	0	6	45	0	1	44
Rerun required	--	--	10	--	--	--	9	--	--	--	0	--	--	--	1	--
Runoff required	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Board–directed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	--	--	--	--	--	--	--	--	--	--
Expedited–Sec. 8(b)(7)(C)	2	0	0	2	1	0	0	1	1	0	0	1	0	0	0	0
Rerun required	--	--	0	--	--	--	0	--	--	--	0	--	--	--	--	--
Runoff required	--	--	0	--	--	--	0	--	--	--	0	--	--	--	--	--

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed Fiscal Year 2007[1]

Type of election/case	Total elections	Objections only		Challenges only		Objections and challenges		Total objections		Total challenges[2]	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections	1,981	99	5.0	22	1.1	9	0.5	108	5.5	31	1.6
By type of cases:											
In RC cases	1,589	75	4.7	18	1.1	9	0.6	84	5.3	27	1.7
In RM cases	22	1	4.5	0	0.0	0	0.0	1	4.5	0	0.0
In RD cases	370	23	6.2	4	1.1	0	0.0	23	6.2	4	1.1
By type of election:											
Consent elections	96	3	3.1	0	0.0	0	0.0	3	3.1	0	0.0
Stipulated elections	1,602	37	2.3	14	0.9	5	0.3	42	2.6	19	1.2
Expedited elections	2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	281	59	21.0	8	2.8	4	1.4	63	22.4	12	4.3
Board-directed elections	0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11C.—Objections Filed in Representation Cases Closed, by Party Filing Fiscal Year 2007[1]

Type of election/case	Total		By employer		By union		By both parties[2]	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	163	100.0	50	30.7	109	66.9	4	2.5
By type of case:								
RC cases	133	100.0	46	34.6	84	63.2	3	2.3
RM cases	1	100.0	0	0.0	1	100.0	0	0.0
RD cases	29	100.0	4	13.8	24	82.8	1	3.4
By type of election:								
Consent elections	3	100.0	1	33.3	2	66.7	0	0.0
Stipulated elections	92	100.0	27	29.3	63	68.5	2	2.2
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	68	100.0	22	32.4	44	64.7	2	2.9
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 11D.—Disposition of Objections in Representation Cases Closed, Fiscal Year 2007[1]

Type of election/case	Objections filed	Objections withdrawn	Objections ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections	163	55	108	97	89.8	11	10.2
By type of case:							
RC cases	133	49	84	74	88.1	10	11.9
RM cases	1	0	1	1	100.0	0	0.0
RD cases	29	6	23	22	95.7	1	4.3
By type of election:							
Consent elections	3	0	3	3	100.0	0	0.0
Stipulated elections	92	50	42	35	83.3	7	16.7
Expedited elections	0	0	0	0	0.0	0	0.0
Regional Director-directed elections	68	5	63	59	93.7	4	6.3
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed Fiscal Year 2007[1]

Type of election/case	Total rerun elections		Union certified		No Union chosen		Outcome of original election reversed	
	Number	Percent by type	Number	Percent by type	Number	Percent by type	Number	Percent by type
All representation elections	25	100.0	11	44.0	14	56.0	5	20.0
By type of case:								
RC cases	22	100.0	11	50.0	11	50.0	5	22.7
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	3	100.0	0	0.0	3	100.0	0	0.0
By type of election:								
Consent elections	2	100.0	0	0.0	2	100.0	0	0.0
Stipulated elections	14	100.0	8	57.1	6	42.9	5	35.7
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	9	100.0	3	33.3	6	66.7	0	0.0
Board-directed elections	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 12.—Results of Union-Shop Deauthorization Polls in Cases Closed, Fiscal Year 2007[1]

Affiliation of union holding union-shop contract	Number of polls					Employees involved (number eligible to vote)					Valid votes cast			
	Total	Resulting in deauthorization		Resulting in continued authorization		Total eligible	In polls				Total	Percent of total eligible	Cast for deauthorization	
							Resulting in deauthorization		Resulting in continued authorization					
		Number	Percent of total	Number	Percent of total		Number	Percent of total	Number	Percent of total			Number	Percent of total eligible
Total	52	17	32.7	35	67.3	6,531	2,613	40.0	3,918	60.0	3,757	57.5	1,999	30.6
AFL-CIO unions	16	6	37.5	10	62.5	2,095	390	18.6	1,705	81.4	902	43.1	308	14.7
Other national unions	33	9	27.3	24	72.7	3,979	1,773	44.6	2,206	55.4	2,559	64.3	1,402	35.2
Other local unions	3	2	66.7	1	33.3	457	450	98.5	7	1.5	296	64.8	289	63.2

[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 2007[1]

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by AFL-CIO unions	In units won by Other national unions	In units won by Other local unions	
A. All representation elections													
AFL-CIO	735	56.1	412	411	1	--	323	44,360	22,439	22,312	127	--	21,921
Other local unions	82	48.8	40	--	--	40	42	3,711	1,847	--	--	1,847	1,864
Other national unions	935	50.4	471	--	471	--	464	60,078	31,321	--	31,321	--	28,757
1-union elections	1,752	52.7	923	411	472	40	829	108,149	55,607	22,312	31,448	1,847	52,542
AFL-CIO v. AFL-CIO	17	76.5	13	13	--	--	4	532	453	453	--	--	79
AFL-CIO v. Local	6	66.7	4	1	--	3	2	531	400	11	--	389	131
AFL-CIO v. National	29	69.0	20	8	12	--	9	3,057	2,012	380	1,632	--	1,045
Local v. Local	13	76.9	10	--	--	10	3	950	874	--	--	874	76
National v. Local	38	92.1	35	--	14	21	3	8,748	8,731	--	1,951	6,780	17
National v. National	38	76.3	29	--	29	--	9	5,602	3,028	--	3,028	--	2,574
2-union elections	141	78.7	111	22	55	34	30	19,420	15,498	844	6,611	8,043	3,922
AFL-CIO v. AFL-CIO v. AFL-CIO	3	100.0	3	3	--	--	0	87	87	87	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1	--	--	0	6	6	6	--	--	0
AFL-CIO v. AFL-CIO v. National v. National	2	100.0	2	1	1	--	0	8	8	4	4	--	0
AFL-CIO v. National v. National	2	50.0	1	0	1	--	1	310	162	0	162	--	148
Local v. Local v. Local	1	100.0	1	--	--	1	0	24	24	--	--	24	0
National v. National v. Local	3	100.0	3	--	0	3	0	461	461	--	0	461	0
3 (or more)-union elections	12	91.7	11	5	2	4	1	896	748	97	166	485	148
Total representation elections	1,905	54.9	1,045	438	529	78	860	128,465	71,853	23,253	38,225	10,375	56,612

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2007[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	584	61.8	361	360	1	--	223	34,617	16,609	16,482	127	--	18,008
Other local unions	53	56.6	30	--	--	30	23	2,221	1,325	--	--	1,325	896
Other national unions	745	54.8	408	--	408	--	337	47,009	24,264	--	24,264	--	22,745
1-union elections	1,382	57.8	799	360	409	30	583	83,847	42,198	16,482	24,391	1,325	41,649
National v. Local	35	91.4	32	--	12	20	3	8,633	8,616	--	1,861	6,755	17
National v. National	32	81.3	26	--	26	--	6	2,862	2,301	--	2,301	--	561
Local v. Local	13	76.9	10	--	--	10	3	950	874	--	--	874	76
AFL-CIO v. Local	6	66.7	4	1	--	3	2	531	400	11	--	389	131
AFL-CIO v. National	27	66.7	18	8	10	--	9	2,907	1,862	380	1,482	--	1,045
AFL-CIO v. AFL-CIO	17	76.5	13	13	--	--	4	532	453	453	--	--	79
2-union elections	130	79.2	103	22	48	33	27	16,415	14,506	844	5,644	8,018	1,909
National v. National v. Local	3	100.0	3	--	0	3	0	461	461	--	0	461	0
AFL-CIO v. AFL-CIO v. AFL-CIO	3	100.0	3	3	--	--	0	87	87	87	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	1	100.0	1	1	--	--	0	6	6	6	--	--	0
AFL-CIO v. AFL-CIO v. National v. National	2	100.0	2	1	1	--	0	8	8	4	4	--	0
Local v. Local v. Local	1	100.0	1	--	--	1	0	24	24	--	--	24	0
AFL-CIO v. National v. National	1	0.0	0	0	0	--	1	148	0	0	0	--	148
3 (or more)-union elections	11	90.9	10	5	1	4	1	734	586	97	4	485	148
Total RC elections	1,523	59.9	912	387	458	67	611	100,996	57,290	17,423	30,039	9,828	43,706

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2007[1]—Continued

Participating unions	Total elections[2]	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by AFL-CIO unions	In units won by Other national unions	In units won by Other local unions	
C. Elections in RM cases													
Other local unions	2	50.0	1	--	--	1	1	40	38	--	--	38	2
Other national unions	10	40.0	4	--	4	--	6	796	493	--	493	--	303
AFL-CIO	7	14.3	1	1	--	--	6	106	29	29	--	--	77
1-union elections	19	31.6	6	1	4	1	13	942	560	29	493	38	382
National v. National	3	33.3	1	--	1	--	2	31	25	--	25	--	6
2-union elections	3	33.3	1	0	1	0	2	31	25	0	25	0	6
Total RM elections	22	31.8	7	1	5	1	15	973	585	29	518	38	388
D. Elections in RD cases													
AFL-CIO	144	34.7	50	50	--	--	94	9,637	5,801	5,801	--	--	3,836
Other national unions	180	32.8	59	--	59	--	121	12,273	6,564	--	6,564	--	5,709
Other local unions	27	33.3	9	--	--	9	18	1,450	484	--	--	484	966
1-union elections	351	33.6	118	50	59	9	233	23,360	12,849	5,801	6,564	484	10,511
National v. National	3	66.7	2	--	2	--	1	2,709	702	--	702	--	2,007
National v. Local	3	100.0	3	--	2	1	0	115	115	--	90	25	0
AFL-CIO v. National	2	100.0	2	0	2	--	0	150	150	0	150	--	0
2-union elections	8	87.5	7	0	6	1	1	2,974	967	0	942	25	2,007
AFL-CIO v. National v. National	1	100.0	1	0	1	--	0	162	162	0	162	--	0
3 (or more)-union elections	1	100.0	1	0	1	0	0	162	162	0	162	0	0
Total RD elections	360	35.0	126	50	66	10	234	26,496	13,978	5,801	7,668	509	12,518

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

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2007[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	36,760	12,642	12,642	--	--	5,525	6,299	6,299	--	--	12,294
Other local unions	2,956	1,032	--	--	1,032	355	522	--	--	522	1,047
Other national unions	49,506	16,946	--	16,946	--	7,664	8,679	--	8679	--	16,217
1-union elections	89,222	30,620	12,642	16,946	1,032	13,544	15,500	6,299	8679	522	29,558
AFL-CIO v. AFL-CIO	426	332	332	--	--	12	28	28	--	--	54
AFL-CIO v. Local	288	214	34	--	180	1	73	26	--	47	0
AFL-CIO v. National	2,423	1,443	541	902	--	101	344	271	73	--	535
Local v. Local	780	706	--	--	706	7	21	--	--	21	46
National v. Local	3,305	3,084	--	1,514	1,570	214	7	--	2	5	0
National v. National	4,349	2,043	--	2,043	--	62	873	--	873	--	1,371
2-union elections	11,571	7,822	907	4,459	2,456	397	1,346	325	948	73	2,006
AFL-CIO v. AFL-CIO v. AFL-CIO	67	66	66	--	--	1	0	0	--	--	0
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	9	9	9	--	--	0	0	0	--	--	0
AFL-CIO v. AFL-CIO v. National v. National	4	4	2	2	--	0	0	0	0	--	0
AFL-CIO v. National v. National	295	161	0	161	--	1	30	26	4	--	103
Local v. Local v. Local	24	24	--	--	24	0	0	--	--	0	0
National v. National v. Local	359	352	--	104	248	7	0	--	0	0	0
3 (or more)-union elections	758	616	77	267	272	9	30	26	4	0	103
Total representation elections	101,551	39,058	13,626	21,672	3,760	13,950	16,876	6,650	9631	595	31,667
B. Elections in RC cases											
AFL-CIO	29,011	9,544	9,544	--	--	3,990	5,231	5,231	--	--	10,246
Other local unions	1,768	780	--	--	780	238	238	--	--	238	512
Other national unions	38,613	13,093	--	13,093	--	5,662	6,995	--	6995	--	12,863
1-union elections	69,392	23,417	9,544	13,093	780	9,890	12,464	5,231	6995	238	23,621

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2007[1]—Continued

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost				
		Votes for unions				Total votes for no union	Votes for unions				Total votes for no union
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Other national unions	Other local unions	
National v. Local	3,207	2,987	--	1,438	1,549	213	7	--	2	5	0
National v. National	2,143	1,557	--	1,557	--	59	186	--	186	--	341
Local v. Local	780	706	--	--	706	7	21	--	--	21	46
AFL-CIO v. Local	288	214	34	--	180	1	73	26	--	47	0
AFL-CIO v. National	2,298	1,333	531	802	--	86	344	271	73	--	535
AFL-CIO v. AFL-CIO	426	332	332	--	--	12	28	28	--	--	54
2-union elections	9,142	7,129	897	3,797	2,435	378	659	325	261	73	976
National v. National v. Local	359	352	0	104	248	7	0	--	--	--	--
AFL-CIO v. AFL-CIO v. AFL-CIO	67	66	66	0	0	1	0	--	--	--	--
AFL-CIO v. AFL-CIO v. AFL-CIO v. AFL-CIO	9	9	9	0	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO v. National v. National	4	4	2	2	0	0	0	--	--	--	--
Local v. Local v. Local	24	24	0	0	24	0	0	--	--	--	--
AFL-CIO v. National v. National	133	0	--	--	--	--	30	26	4	0	103
3 (or more)-union elections	596	455	77	106	272	8	30	26	4	0	103
Total RC elections	79,130	31,001	10,518	16,996	3,487	10,276	13,153	5,582	7260	311	24,700
C. Elections in RM cases											
Other local unions	35	18	--	--	18	15	0	--	--	0	2
Other national unions	652	215	--	215	--	190	64	--	64	--	183
AFL-CIO	91	14	14	--	--	9	15	15	--	--	53
1-union elections	778	247	14	215	18	214	79	15	64	0	238
National v. National	27	23	--	23	--	0	0	--	0	--	4
2-union elections	27	23	0	23	0	0	0	0	0	0	4
Total RM elections	805	270	14	238	18	214	79	15	64	0	242

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2007[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	7,658	3,084	3,084	--	--	1,526	1,053	1,053	--	--	1,995
Other national unions	10,241	3,638	--	3,638	--	1,812	1,620	--	1620	--	3,171
Other local unions	1,153	234	--	--	234	102	284	--	--	284	533
1-union elections	19,052	6,956	3,084	3,638	234	3,440	2,957	1,053	1620	284	5,699
National v. National	2,179	463	--	463	--	3	687	--	687	--	1,026
National v. Local	98	97	0	76	21	1	0	--	--	--	--
AFL-CIO v. National	125	110	10	100	0	15	0	--	--	--	--
2-union elections	2,402	670	10	639	21	19	687	0	687	0	1,026
AFL-CIO v. National v. National	162	161	0	161	0	1	0	--	--	--	--
3 (or more)-union elections	162	161	0	161	0	1	0	0	0	0	0
Total RD elections	21,616	7,787	3,094	4,438	255	3,460	3,644	1,053	2307	284	6,725

[1] See Glossary of Terms for definition.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	132	65	27	37	1	67	5486	4,399	2,193	912	1,198	83	2,206	2054
Indiana	44	27	16	11	0	17	3284	2,913	2,003	989	1,008	6	910	2688
Michigan	103	52	28	22	2	51	5131	4,172	2,195	858	1,205	132	1,977	2714
Ohio	99	48	27	21	0	51	5069	4,224	2,328	1,424	893	11	1,896	3117
Wisconsin	34	19	9	8	2	15	1234	1,121	515	128	364	23	606	498
East North Central	412	211	107	99	5	201	20204	16,829	9,234	4,311	4,668	255	7,595	11071
Alabama	19	12	7	5	0	7	1087	1,029	465	234	227	4	564	419
Kentucky	19	8	4	4	0	11	1763	1,359	876	445	431	0	483	1121
Mississippi	8	5	5	0	0	3	595	544	362	362	0	0	182	360
Tennessee	12	6	3	3	0	6	548	436	207	96	111	0	229	323
East South Central	58	31	19	12	0	27	3993	3,368	1,910	1,137	769	4	1,458	2223
Puerto Rico	32	15	0	7	8	17	1868	1,429	831	35	242	554	598	919
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	4	2	0	1	1	2	113	96	65	21	8	36	31	51
Island Areas	36	17	0	8	9	19	1981	1,525	896	56	250	590	629	970
New Jersey	93	46	14	30	2	47	7598	6,774	4,072	2,399	1,580	93	2,702	4975
New York	218	133	40	66	27	85	10509	7,783	5,021	829	2,925	1,267	2,762	6947
Pennsylvania	128	54	22	30	2	74	8182	7,001	3,534	1,370	1,904	260	3,467	3858
Middle Atlantic	439	233	76	126	31	206	26289	21,558	12,627	4,598	6,409	1,620	8,931	15780
Arizona	13	8	5	3	0	5	580	498	212	146	63	3	286	182
Colorado	21	10	7	3	0	11	1056	769	464	338	126	0	305	716
Idaho	5	1	1	0	0	4	102	91	20	18	2	0	71	24
Montana	15	10	4	6	0	5	351	275	107	65	42	0	168	126
Nevada	25	15	8	7	0	10	1300	1,175	772	564	208	0	403	973
New Mexico	10	6	2	4	0	4	478	396	224	168	56	0	172	375
Utah	5	5	3	2	0	0	97	55	48	13	35	0	7	97
Wyoming	2	2	2	0	0	0	20	20	18	18	0	0	2	20
Mountain	96	57	32	25	0	39	3984	3,279	1,865	1,330	532	3	1,414	2,513

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—Continued

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Connecticut	37	19	3	15	1	18	1744	1,557	812	126	661	25	745	843
Maine	7	6	3	3	0	1	613	375	248	45	203	0	127	588
Massachusetts	50	33	9	22	2	17	2757	2,138	1,365	191	813	361	773	1809
New Hampshire	3	2	2	0	0	1	26	26	15	15	0	0	11	14
Rhode Island	9	7	3	3	1	2	364	295	207	17	160	30	88	342
Vermont	2	1	0	1	0	1	61	55	27	0	27	0	28	22
New England	108	68	20	44	4	40	5565	4,446	2,674	394	1,864	416	1,772	3618
Alaska	17	8	2	6	0	9	824	768	363	134	229	0	405	322
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	186	105	35	62	8	81	12859	10,400	6,127	1,095	4,475	557	4,273	7362
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	15	10	4	6	0	5	485	378	178	69	109	0	200	257
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	34	20	5	15	0	14	1742	1,469	845	138	705	2	624	1036
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	83	50	29	20	1	33	4927	3,723	2,066	592	1,354	120	1,657	3060
Pacific	335	193	75	109	9	142	20837	16,738	9,579	2,028	6,872	679	7,159	12037
Delaware	13	5	3	2	0	8	731	655	191	20	171	0	464	54
District Of Columbia	17	16	5	6	5	1	674	364	282	94	95	93	82	624
Florida	54	41	14	27	0	13	7419	5,215	3,159	987	2,172	0	2,056	5873
Georgia	22	13	6	6	1	9	2530	2,186	1,301	132	1,152	17	885	1743
Maryland	51	25	7	9	9	26	3509	2,635	1,570	691	548	331	1,065	2292
North Carolina	15	9	7	0	2	6	2858	2,540	872	456	338	78	1,668	606
South Carolina	9	6	2	3	1	3	5418	987	801	74	536	191	186	5264
Virginia	15	8	3	5	0	7	340	319	196	54	137	5	123	207

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—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		
West Virginia	13	3	0	3	0	10	925	814	308	225	83	0	506	62
South Atlantic	209	126	47	61	18	83	24404	15,715	8,680	2,733	5,232	715	7,035	16725
Iowa	16	8	3	5	0	8	817	737	371	110	261	0	366	549
Kansas	12	6	3	3	0	6	3809	3,323	1,107	978	129	0	2,216	128
Minnesota	46	22	10	12	0	24	4021	3,339	1,690	470	1,220	0	1,649	2108
Missouri	43	19	9	10	0	24	4832	4,116	1,895	232	1,663	0	2,221	1137
Nebraska	7	1	1	0	0	6	514	447	127	50	77	0	320	17
North Dakota	6	4	2	2	0	2	366	368	150	41	109	0	218	83
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central	130	60	28	32	0	70	14359	12,330	5,340	1,881	3,459	0	6,990	4022
Arkansas	6	2	1	1	0	4	1221	930	501	334	167	0	429	926
Louisiana	13	7	2	5	0	6	1189	818	490	62	406	22	328	689
Oklahoma	10	6	6	0	0	4	362	296	160	140	20	0	136	233
Texas	70	43	23	18	2	27	5495	4,352	2,232	1,418	745	69	2,120	2732
West South Central	99	58	32	24	2	41	8267	6,396	3,383	1,954	1,338	91	3,013	4580
Total, all States and areas	1,922	1,054	436	540	78	868	129,883	102,184	56,188	20,422	31,393	4,373	45,996	73,539

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

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2007

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	113	65	27	37	1	48	4833	3,877	2,044	884	1,077	83	1,833	2054
Indiana	36	24	15	9	0	12	2041	1,794	1,226	909	311	6	568	1586
Michigan	71	38	20	17	1	33	3699	3,047	1,638	623	960	55	1,409	2072
Ohio	77	42	22	20	0	35	3122	2,722	1,447	599	837	11	1,275	1560
Wisconsin	22	15	9	5	1	7	429	370	207	113	91	3	163	298
East North Central	319	184	93	88	3	135	14124	11,810	6,562	3,128	3,276	158	5,248	7570
Alabama	17	11	6	5	0	6	1003	971	436	215	217	4	535	391
Kentucky	17	7	3	4	0	10	1511	1,144	825	435	390	0	319	1107
Mississippi	8	5	5	0	0	3	595	544	362	362	0	0	182	360
Tennessee	9	5	3	2	0	4	426	367	206	95	111	0	161	233
East South Central	51	28	17	11	0	23	3535	3,026	1,829	1,107	718	4	1,197	2091
Puerto Rico	24	15	0	7	8	9	1400	1,008	694	35	194	465	314	919
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	4	2	0	1	1	2	113	96	65	21	8	36	31	51
Island Areas	28	17	0	8	9	11	1513	1,104	759	56	202	501	345	970
New Jersey	78	43	13	28	2	35	7161	6,408	3,875	2,362	1,425	88	2,533	4757
New York	186	118	38	60	20	68	8569	6,268	4,282	783	2,522	977	1,986	5766
Pennsylvania	101	48	19	27	2	53	6375	5,532	2,854	1,154	1,440	260	2,678	3139
Middle Atlantic	365	209	70	115	24	156	22105	18,208	11,011	4,299	5,387	1,325	7,197	13662
Arizona	11	8	5	3	0	3	545	463	196	133	63	0	267	182
Colorado	17	9	6	3	0	8	778	587	308	182	126	0	279	458
Idaho	3	0	0	0	0	3	31	24	3	2	1	0	21	0
Montana	9	7	4	3	0	2	181	166	77	56	21	0	89	87
Nevada	23	15	8	7	0	8	1212	1,100	746	564	182	0	354	973
New Mexico	10	6	2	4	0	4	478	396	224	168	56	0	172	375
Utah	5	5	3	2	0	0	97	55	48	13	35	0	7	97
Wyoming	2	2	2	0	0	0	20	20	18	18	0	0	2	20
Mountain	80	52	30	22	0	28	3342	2,811	1,620	1,136	484	0	1,191	2192
Connecticut	30	16	2	13	1	14	1333	1,177	611	56	530	25	566	638

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2007—Continued

Division and State[2]	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	6	6	3	3	0	0	588	350	242	39	203	0	108	588
Massachusetts	43	29	9	19	1	14	2317	1,775	1,157	151	665	341	618	1531
New Hampshire	3	2	2	0	0	1	26	26	15	15	0	0	11	14
Rhode Island	8	6	3	2	1	2	128	119	74	17	27	30	45	106
Vermont	2	1	0	1	0	1	61	55	27	0	27	0	28	22
New England	92	60	19	38	3	32	4453	3,502	2,126	278	1,452	396	1,376	2899
Alaska	16	8	2	6	0	8	787	732	348	134	214	0	384	322
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	154	90	29	53	8	64	10093	8,253	4,609	736	3,316	557	3,644	5324
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	12	7	2	5	0	5	437	339	154	50	104	0	185	209
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	27	17	4	13	0	10	1011	847	519	66	451	2	328	658
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	68	43	25	17	1	25	3589	2,669	1,447	424	903	120	1,222	1946
Pacific	277	165	62	94	9	112	15917	12,840	7,077	1,410	4,988	679	5,763	8459
Delaware	11	4	3	1	0	7	701	626	176	19	157	0	450	32
District Of Columbia	17	16	5	6	5	1	674	364	282	94	95	93	82	624
Florida	48	36	11	25	0	12	6597	4,634	2,647	536	2,111	0	1,987	5062
Georgia	17	12	6	5	1	5	2151	1,858	1,134	82	1,035	17	724	1661
Maryland	44	24	7	8	9	20	3347	2,509	1,516	689	496	331	993	2275
North Carolina	12	7	5	0	2	5	2474	2,166	680	264	338	78	1,486	264
South Carolina	6	5	2	2	1	1	5307	883	762	49	522	191	121	5237
Virginia	13	8	3	5	0	5	326	309	193	54	134	5	116	207
West Virginia	9	2	0	2	0	7	763	700	259	220	39	0	441	10
South Atlantic	177	114	42	54	18	63	22340	14,049	7,649	2,007	4,927	715	6,400	15372
Iowa	9	5	3	2	0	4	297	242	124	94	30	0	118	137

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2007—Continued

Division and State[2]	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		
Kansas	8	4	2	2	0	4	2816	2,504	720	617	103	0	1,784	86
Minnesota	32	17	8	9	0	15	3294	2,722	1,377	366	1,011	0	1,345	1679
Missouri	30	17	9	8	0	13	2533	2,141	1,092	227	865	0	1,049	1100
Nebraska	6	1	1	0	0	5	486	427	123	46	77	0	304	17
North Dakota	5	4	2	2	0	1	345	351	147	41	106	0	204	83
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central	90	48	25	23	0	42	9771	8,387	3,583	1,391	2,192	0	4,804	3102
Arkansas	2	0	0	0	0	2	243	232	106	0	106	0	126	0
Louisiana	10	6	2	4	0	4	916	647	418	62	336	20	229	653
Oklahoma	9	5	5	0	0	4	324	262	140	120	20	0	122	195
Texas	59	39	22	15	2	20	4727	3,670	1,903	1,307	560	36	1,767	2383
West South Central	80	50	29	19	2	30	6210	4,811	2,567	1,489	1,022	56	2,244	3231
Total, all States and areas	1,559	927	387	472	68	632	103,310	80,548	44,783	16,301	24,648	3,834	35,765	59,548

[1] Does not include decertification (RD) elections.
[2] The States are grouped according to the method used by the Bureau of the Census, U.S. Department of Commerce

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2007

Division and State[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	19	0	0	0	0	19	653	522	149	28	121	0	373	0
Indiana	8	3	1	2	0	5	1243	1,119	777	80	697	0	342	1102
Michigan	32	14	8	5	1	18	1432	1,125	557	235	245	77	568	642
Ohio	22	6	5	1	0	16	1947	1,502	881	825	56	0	621	1557
Wisconsin	12	4	0	3	1	8	805	751	308	15	273	20	443	200
East North Central	93	27	14	11	2	66	6080	5,019	2,672	1,183	1,392	97	2,347	3501
Alabama	2	1	1	0	0	1	84	58	29	19	10	0	29	28
Kentucky	2	1	1	0	0	1	252	215	51	10	41	0	164	14
Mississippi	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tennessee	3	1	0	1	0	2	122	69	1	1	0	0	68	90
East South Central	7	3	2	1	0	4	458	342	81	30	51	0	261	132
Puerto Rico	8	0	0	0	0	8	468	421	137	0	48	89	284	0
U.S. Minor Outlying Islands	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
Island Areas	8	0	0	0	0	8	468	421	137	0	48	89	284	0
New Jersey	15	3	1	2	0	12	437	366	197	37	155	5	169	218
New York	32	15	2	6	7	17	1940	1,515	739	46	403	290	776	1181
Pennsylvania	27	6	3	3	0	21	1807	1,469	680	216	464	0	789	719
Middle Atlantic	74	24	6	11	7	50	4184	3,350	1,616	299	1,022	295	1,734	2118
Arizona	2	0	0	0	0	2	35	35	16	13	0	3	19	0
Colorado	4	1	1	0	0	3	278	182	156	156	0	0	26	258
Idaho	2	1	1	0	0	1	71	67	17	16	1	0	50	24
Montana	6	3	0	3	0	3	170	109	30	9	21	0	79	39
Nevada	2	0	0	0	0	2	88	75	26	0	26	0	49	0
New Mexico	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Utah	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Wyoming	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mountain	16	5	2	3	0	11	642	468	245	194	48	3	223	321
Connecticut	7	3	1	2	0	4	411	380	201	70	131	0	179	205

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2007—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		
Maine	1	0	0	0	0	1	25	25	6	6	0	0	19	0
Massachusetts	7	4	0	3	1	3	440	363	208	40	148	20	155	278
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rhode Island	1	1	0	1	0	0	236	176	133	0	133	0	43	236
Vermont	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New England	16	8	1	6	1	8	1112	944	548	116	412	20	396	719
Alaska	1	0	0	0	0	1	37	36	15	0	15	0	21	0
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	32	15	6	9	0	17	2766	2,147	1,518	359	1,159	0	629	2038
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii	3	3	2	1	0	0	48	39	24	19	5	0	15	48
Marshall Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Northern Mariana Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon	7	3	1	2	0	4	731	622	326	72	254	0	296	378
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	15	7	4	3	0	8	1338	1,054	619	168	451	0	435	1114
Pacific	58	28	13	15	0	30	4920	3,898	2,502	618	1,884	0	1,396	3578
Delaware	2	1	0	1	0	1	30	29	15	1	14	0	14	22
District Of Columbia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Florida	6	5	3	2	0	1	822	581	512	451	61	0	69	811
Georgia	5	1	0	1	0	4	379	328	167	50	117	0	161	82
Maryland	7	1	0	1	0	6	162	126	54	2	52	0	72	17
North Carolina	3	2	2	0	0	1	384	374	192	192	0	0	182	342
South Carolina	3	1	0	1	0	2	111	104	39	25	14	0	65	27
Virginia	2	0	0	0	0	2	14	10	3	0	3	0	7	0
West Virginia	4	1	0	1	0	3	162	114	49	5	44	0	65	52
South Atlantic	32	12	5	7	0	20	2064	1,666	1,031	726	305	0	635	1353
Iowa	7	3	0	3	0	4	520	495	247	16	231	0	248	412

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2007—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		
Kansas	4	2	1	1	0	2	993	819	387	361	26	0	432	42
Minnesota	14	5	2	3	0	9	727	617	313	104	209	0	304	429
Missouri	13	2	0	2	0	11	2299	1,975	803	5	798	0	1,172	37
Nebraska	1	0	0	0	0	1	28	20	4	4	0	0	16	0
North Dakota	1	0	0	0	0	1	21	17	3	0	3	0	14	0
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central	40	12	3	9	0	28	4588	3,943	1,757	490	1,267	0	2,186	920
Arkansas	4	2	1	1	0	2	978	698	395	334	61	0	303	926
Louisiana	3	1	0	1	0	2	273	171	72	0	70	2	99	36
Oklahoma	1	1	1	0	0	0	38	34	20	20	0	0	14	38
Texas	11	4	1	3	0	7	768	682	329	111	185	33	353	349
West South Central	19	8	3	5	0	11	2057	1,585	816	465	316	35	769	1349
Total, all States and areas	363	127	49	68	10	236	26,573	21,636	11,405	4,121	6,745	539	10,231	13,991

[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 2007

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		
Crop Production	1	0	0	0	0	1	9	9	4	4	0	0	5	0
Forestry and Logging	1	0	0	0	0	1	30	18	8	0	8	0	10	0
Fishing, Hunting and Trapping	1	0	0	0	0	1	3	2	0	0	0	0	2	0
Support Activities for Agriculture and Forestry	1	0	0	0	0	1	18	8	4	4	0	0	4	0
Agriculture, Forestry, Fishing, and Hunting	4	0	0	0	0	4	60	37	16	8	8	0	21	0
Oil and Gas Extraction	2	1	1	0	0	1	21	21	12	12	0	0	9	13
Mining (except Oil and Gas)	6	1	1	0	0	5	404	382	138	130	8	0	244	4
Support Activities for Mining	1	0	0	0	0	1	15	14	2	0	2	0	12	0
Mining, Quarrying, and Oil and Gas Extraction	9	2	2	0	0	7	440	417	152	142	10	0	265	17
Utilities	45	21	17	4	0	24	2770	2,573	1,078	1,035	43	0	1,495	778
Construction of Buildings	22	14	5	4	5	8	888	532	364	68	62	234	168	520
Heavy and Civil Engineering Construction	16	6	1	3	2	10	104	78	36	7	15	14	42	44
Specialty Trade Contractors	122	71	47	20	4	51	4014	2,693	1,335	1,001	274	60	1,358	1634
Construction	160	91	53	27	11	69	5006	3,303	1,735	1,076	351	308	1,568	2198
Food Manufacturing	53	28	10	18	0	25	7647	6,754	2,400	783	1,617	0	4,354	1487
Beverage and Tobacco Product Manufacturing	20	7	1	6	0	13	2277	1,726	1,223	37	1,186	0	503	1579
Textile Mills	3	0	0	0	0	3	19	18	0	0	0	0	18	0
Textile Product Mills	2	0	0	0	0	2	105	99	26	0	26	0	73	0
Apparel Manufacturing	1	1	0	1	0	0	116	110	57	0	57	0	53	116
31-Manufacturing	79	36	11	25	0	43	10164	8,707	3,706	820	2,886	0	5,001	3182
Wood Product Manufacturing	14	3	2	1	0	11	1099	1,009	485	286	199	0	524	290
Paper Manufacturing	11	3	2	1	0	8	779	710	291	159	132	0	419	134
Printing and Related Support Activities	9	2	0	2	0	7	289	286	127	5	122	0	159	112

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—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
Petroleum and Coal Products Manufacturing	13	8	4	3	1	5	251	236	133	108	22	3	103	162
Chemical Manufacturing	36	14	6	7	1	22	1710	1,529	785	387	355	43	744	804
Plastics and Rubber Products Manufacturing	19	6	4	2	0	13	1741	1,593	666	335	331	0	927	334
Nonmetallic Mineral Product Manufacturing	37	19	10	7	2	18	1428	1,329	660	407	230	23	669	611
32-Manufacturing	139	55	28	23	4	84	7297	6,692	3,147	1,687	1,391	69	3,545	2447
Primary Metal Manufacturing	27	14	11	2	1	13	3245	2,955	1,583	858	591	134	1,372	1492
Fabricated Metal Product Manufacturing	18	7	5	2	0	11	1138	1,065	547	188	353	6	518	579
Machinery Manufacturing	20	10	8	1	1	10	1156	1,118	622	195	422	5	496	816
Computer and Electronic Product Manufacturing	8	6	4	2	0	2	322	276	152	148	4	0	124	231
Electrical Equipment, Appliance, and Component Manufacturing	14	4	4	0	0	10	945	846	354	164	144	46	492	57
Transportation Equipment Manufacturing	51	22	15	6	1	29	5846	4,887	2,696	1,559	1,133	4	2,191	2735
Furniture and Related Product Manufacturing	2	1	1	0	0	1	74	68	20	4	0	16	48	6
Miscellaneous Manufacturing	28	11	5	4	2	17	2043	1,811	1,030	168	309	553	781	977
33-Manufacturing	168	75	53	17	5	93	14769	13,026	7,004	3,284	2,956	764	6,022	6893
Merchant Wholesalers, Durable Goods	22	8	4	4	0	14	845	792	327	238	89	0	465	239
Merchant Wholesalers, Nondurable Goods	43	22	5	17	0	21	2488	2,245	1,087	384	703	0	1,158	1075
Wholesale Electronic Markets and Agents and Brokers	2	2	1	1	0	0	9	9	7	5	2	0	2	9
Wholesale Trade	67	32	10	22	0	35	3342	3,046	1,421	627	794	0	1,625	1323
Motor Vehicle and Parts Dealers	26	9	8	1	0	17	399	323	141	94	46	1	182	165
Furniture and Home Furnishings Stores	3	1	0	1	0	2	354	251	152	0	152	0	99	293
Electronics and Appliance Stores	1	1	0	1	0	0	8	8	5	0	5	0	3	8

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—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
Building Material and Garden Equipment and Supplies Dealers	8	3	1	1	1	5	916	838	365	4	336	25	473	37
Food and Beverage Stores	30	17	3	14	0	13	1064	870	370	15	355	0	500	296
Health and Personal Care Stores	12	4	1	3	0	8	277	254	117	33	84	0	137	81
Gasoline Stations	2	1	0	1	0	1	29	25	11	0	11	0	14	7
44-Retail Trade	82	36	13	22	1	46	3047	2,569	1,161	146	989	26	1,408	887
General Merchandise Stores	5	4	0	4	0	1	416	375	292	0	240	52	83	360
Miscellaneous Store Retailers	4	1	1	0	0	3	272	250	67	2	65	0	183	3
Nonstore Retailers	3	0	0	0	0	3	115	110	37	0	37	0	73	0
45-Retail Trade	12	5	1	4	0	7	803	735	396	2	342	52	339	363
Air Transportation	21	16	10	5	1	5	993	843	493	440	47	6	350	929
Rail Transportation	1	1	0	1	0	0	46	41	24	0	24	0	17	46
Water Transportation	5	1	0	0	1	4	73	60	21	9	2	10	39	0
Truck Transportation	73	31	8	23	0	42	2070	1,723	817	169	648	0	906	844
Transit and Ground Passenger Transportation	102	67	16	48	3	35	10187	8,195	5,563	1,412	3,937	214	2,632	6953
Pipeline Transportation	5	3	3	0	0	2	299	287	102	102	0	0	185	24
Scenic and Sightseeing Transportation	2	2	0	1	1	0	182	108	62	0	38	24	46	182
Support Activities for Transportation	43	24	17	6	1	19	1742	1,551	669	466	186	17	882	522
48-Transportation and Warehousing	252	145	54	84	7	107	15592	12,808	7,751	2,598	4,882	271	5,057	9500
Couriers and Messengers	16	7	0	7	0	9	545	512	252	10	205	37	260	294
Warehousing and Storage	54	21	2	18	1	33	3479	3,029	1,404	104	1,272	28	1,625	1473
49-Transportation and Warehousing	70	28	2	25	1	42	4024	3,541	1,656	114	1,477	65	1,885	1767
Publishing Industries (except Internet)	10	5	0	4	1	5	762	671	482	99	349	34	189	661
Motion Picture and Sound Recording Industries	3	1	1	0	0	2	41	35	17	17	0	0	18	10
Broadcasting (except Internet)	15	4	3	0	1	11	664	594	242	212	0	30	352	147
Telecommunications	18	9	9	0	0	9	611	616	333	333	0	0	283	231

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—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
Data Processing, Hosting, and Related Services	1	1	1	0	0	0	9	7	7	7	0	0	0	9
Other Information Services	4	2	0	1	1	2	211	169	89	21	47	21	80	58
Information	51	22	14	5	3	29	2298	2,092	1,170	689	396	85	922	1116
Credit Intermediation and Related Activities	9	6	5	1	0	3	185	174	101	74	13	14	73	133
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	1	0	0	0	0	1	29	28	2	2	0	0	26	0
Insurance Carriers and Related Activities	1	0	0	0	0	1	8	8	4	4	0	0	4	0
Finance and Insurance	11	6	5	1	0	5	222	210	107	80	13	14	103	133
Real Estate	19	12	3	9	0	7	250	202	155	12	142	1	47	214
Rental and Leasing Services	18	10	8	2	0	8	253	237	114	46	65	3	123	89
Real Estate and Rental and Leasing	37	22	11	11	0	15	503	439	269	58	207	4	170	303
Professional, Scientific, and Technical Services	24	12	9	3	0	12	1559	936	500	385	84	31	436	399
Management of Companies and Enterprises	2	2	2	0	0	0	286	94	66	66	0	0	28	286
Administrative and Support Services	119	88	25	53	10	31	10213	4,358	3,258	651	1,991	616	1,100	9060
Waste Management and Remediation Services	51	19	6	12	1	32	1929	1,605	740	210	509	21	865	880
Administrative and Support and Waste Management and Remediation Services	170	107	31	65	11	63	12142	5,963	3,998	861	2,500	637	1,965	9940
Educational Services	27	19	10	6	3	8	1212	1,048	696	360	212	124	352	890
Ambulatory Health Care Services	43	25	6	15	4	18	3508	2,334	1,598	100	980	518	736	2860
Hospitals	118	82	17	57	8	36	18233	13,886	7,726	1,505	5,605	616	6,160	12593
Nursing and Residential Care Facilities	129	89	21	67	1	40	10991	7,991	4,784	1,321	3,431	32	3,207	8547
Social Assistance	38	25	11	11	3	13	2021	1,505	900	412	353	135	605	1227

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2007—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
Health Care and Social Assistance	328	221	55	150	16	107	34753	25,716	15,008	3,338	10,369	1,301	10,708	25227
Performing Arts, Spectator Sports, and Related Industries	18	15	12	1	2	3	462	366	264	205	4	55	102	410
Museums, Historical Sites, and Similar Institutions	2	2	1	1	0	0	51	48	35	12	23	0	13	51
Amusement, Gambling, and Recreation Industries	20	10	6	4	0	10	2971	2,773	1,805	1,583	222	0	968	1883
Arts, Entertainment, and Recreation	40	27	19	6	2	13	3484	3,187	2,104	1,800	249	55	1,083	2344
Accommodation	28	18	12	6	0	10	1645	1,555	949	811	138	0	606	1008
Food Services and Drinking Places	29	9	2	7	0	20	1468	1,218	541	93	403	45	677	460
Accommodation and Food Services	57	27	14	13	0	30	3113	2,773	1,490	904	541	45	1,283	1468
Repair and Maintenance	24	14	10	4	0	10	588	541	275	236	39	0	266	326
Personal and Laundry Services	21	12	1	10	1	9	863	635	422	32	207	183	213	528
Religious, Grantmaking, Civic, Professional, and Similar Organizations	18	15	10	1	4	3	331	306	223	151	16	56	83	276
Private Households	1	0	0	0	0	1	51	46	2	0	2	0	44	0
Other Services (except Public Administration)	64	41	21	15	5	23	1833	1,528	922	419	264	239	606	1130
Justice, Public Order, and Safety Activities	26	23	0	14	9	3	1773	1,067	756	0	473	283	311	1397
Administration of Human Resource Programs	2	0	0	0	0	2	69	58	17	7	10	0	41	0
Space Research and Technology	1	1	1	0	0	0	4	4	4	4	0	0	0	4
National Security and International Affairs	2	2	2	0	0	0	16	14	14	14	0	0	0	16
Public Administration	31	26	3	14	9	5	1862	1,143	791	25	483	283	352	1417
Total, all industrial groups	1,929	1,058	438	542	78	871	130,581	102,583	56,344	20,524	31,447	4,373	46,239	74,008

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

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2007[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	103,471	1,542	100.0	--	371	100.0	472	100.0	66	100.0	633	100.0
Under 10	2,402	391	25.4	25.4	147	39.6	118	25.0	14	21.2	112	17.7
10 to 19	4,579	300	19.5	44.8	75	20.2	94	19.9	9	13.6	122	19.3
20 to 29	4,776	189	12.3	57.1	47	12.7	55	11.7	6	9.1	81	12.8
30 to 39	3,668	106	6.9	63.9	17	4.6	29	6.1	6	9.1	54	8.5
40 to 49	3,730	83	5.4	69.3	9	2.4	25	5.3	5	7.6	44	7.0
50 to 59	4,182	76	4.9	74.3	12	3.2	23	4.9	4	6.1	37	5.8
60 to 69	2,619	42	2.7	77.0	13	3.5	13	2.8	2	3.0	14	2.2
70 to 79	4,055	51	3.3	80.3	10	2.7	19	4.0	4	6.1	18	2.8
80 to 89	3,402	35	2.3	82.6	4	1.1	12	2.5	3	4.5	16	2.5
90 to 99	2,702	26	1.7	84.2	3	0.8	8	1.7	1	1.5	14	2.2
100 to 109	3,396	31	2.0	86.3	3	0.8	9	1.9	2	3.0	17	2.7
110 to 119	1,837	16	1.0	87.3	3	0.8	4	0.8	1	1.5	8	1.3
120 to 129	2,647	20	1.3	88.6	3	0.8	5	1.1	0	0.0	12	1.9
130 to 139	2,449	18	1.2	89.8	2	0.5	4	0.8	0	0.0	12	1.9
140 to 149	1,729	11	0.7	90.5	1	0.3	2	0.4	1	1.5	7	1.1
150 to 159	2,030	15	1.0	91.4	3	0.8	3	0.6	0	0.0	9	1.4
160 to 169	1,389	8	0.5	92.0	0	0.0	2	0.4	0	0.0	6	0.9
170 to 179	1,186	6	0.4	92.3	0	0.0	3	0.6	0	0.0	3	0.5
180 to 189	767	4	0.3	92.6	0	0.0	1	0.2	0	0.0	3	0.5
190 to 199	779	4	0.3	92.9	0	0.0	1	0.2	1	1.5	2	0.3
200 to 299	11,706	49	3.2	96.0	6	1.6	16	3.4	3	4.5	24	3.8
300 to 399	6,624	19	1.2	97.3	5	1.3	8	1.7	0	0.0	6	0.9
400 to 499	10,896	14	0.9	98.2	1	0.3	8	1.7	3	4.5	2	0.3
500 to 599	3,864	8	0.5	98.7	1	0.3	5	1.1	0	0.0	2	0.3
600 to 799	7,778	12	0.8	99.5	2	0.5	5	1.1	0	0.0	5	0.8
800 to 999	2,098	3	0.2	99.7	2	0.5	0	0.0	0	0.0	1	0.2
1,000 to 1,999	3,715	4	0.3	99.9	2	0.5	0	0.0	1	1.5	1	0.2
2,000 to 2,999	2,466	1	0.1	100.0	0	0.0	0	0.0	0	0.0	1	0.2

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2007[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions			
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class	Number	Percent by size class
3,000 to 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Over 9,999	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
	B. Decertification elections (RD)											
Total RD elections	26,588	361	100.0	--	49	100.0	69	100.0	10	100.0	233	100.0
Under 10	765	72	19.9	19.9	5	10.2	5	7.2	1	10.0	61	26.2
10 to 19	1,070	69	19.1	39.1	6	12.2	9	13.0	1	10.0	53	22.7
20 to 29	1,192	48	13.3	52.4	8	16.3	6	8.7	1	10.0	33	14.2
30 to 39	1,004	30	8.3	60.7	3	6.1	7	10.1	3	30.0	17	7.3
40 to 49	1,053	25	6.9	67.6	5	10.2	4	5.8	2	20.0	14	6.0
50 to 59	1,012	18	5.0	72.6	2	4.1	6	8.7	0	0.0	10	4.3
60 to 69	493	8	2.2	74.8	3	6.1	1	1.4	0	0.0	4	1.7
70 to 79	585	8	2.2	77.0	0	0.0	3	4.3	0	0.0	5	2.1
80 to 89	852	10	2.8	79.8	3	6.1	1	1.4	0	0.0	6	2.6
90 to 99	907	10	2.8	82.5	1	2.0	3	4.3	0	0.0	6	2.6
100 to 109	850	8	2.2	84.8	0	0.0	2	2.9	1	10.0	5	2.1
110 to 119	429	4	1.1	85.9	1	2.0	1	1.4	0	0.0	2	0.9
120 to 129	687	6	1.7	87.5	2	4.1	2	2.9	0	0.0	2	0.9
130 to 139	609	5	1.4	88.9	1	2.0	2	2.9	0	0.0	2	0.9
140 to 149	575	4	1.1	90.0	1	2.0	3	4.3	0	0.0	0	0.0
150 to 159	287	2	0.6	90.6	0	0.0	2	2.9	0	0.0	0	0.0
160 to 169	167	1	0.3	90.9	1	2.0	0	0.0	0	0.0	0	0.0
170 to 199	780	4	1.1	92.0	2	4.1	1	1.4	1	10.0	0	0.0
200 to 299	4,472	17	4.7	96.7	2	4.1	7	10.1	0	0.0	8	3.4
300 to 499	2,231	6	1.7	98.3	1	2.0	2	2.9	0	0.0	3	1.3
500 to 799	697	1	0.3	98.6	0	0.0	1	1.4	0	0.0	0	0.0
800 and Over	5,871	5	1.4	100.0	2	4.1	1	1.4	0	0.0	2	0.9

[1] See Glossary of terms for definition.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2007[1]

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals	21,217	100.0	--	15,293	100.0	5,216	100.0	258	100.0	78	100.0	44	100.0	11	100.0	52	100.0	226	100.0	39	100.0
Under 10	1,376	6.5	6.5	950	6.2	326	6.3	37	14.3	19	24.4	8	18.2	0	0.0	19	36.5	11	4.9	6	15.4
10-19	1,669	7.9	14.4	1,242	8.1	336	6.4	47	18.2	13	16.7	1	2.3	0	0.0	9	17.3	15	6.6	6	15.4
20-29	1,697	8.0	22.4	1,240	8.1	362	6.9	47	18.2	12	15.4	3	6.8	0	0.0	3	5.8	26	11.5	4	10.3
30-39	786	3.7	26.1	616	4.0	142	2.7	13	5.0	4	5.1	0	0.0	0	0.0	1	1.9	5	2.2	5	12.8
40-49	658	3.1	29.2	516	3.4	127	2.4	7	2.7	4	5.1	0	0.0	0	0.0	1	1.9	3	1.3	0	0.0
50-59	1,702	8.0	37.2	1,213	7.9	408	7.8	42	16.3	9	11.5	4	9.1	1	9.1	6	11.5	14	6.2	5	12.8
60-69	555	2.6	39.8	429	2.8	113	2.2	4	1.6	1	1.3	0	0.0	0	0.0	0	0.0	7	3.1	1	2.6
70-79	425	2.0	41.8	333	2.2	80	1.5	3	1.2	2	2.6	0	0.0	0	0.0	0	0.0	5	2.2	2	5.1
80-89	407	1.9	43.7	314	2.1	79	1.5	6	2.3	1	1.3	0	0.0	0	0.0	3	5.8	4	1.8	0	0.0
90-99	362	1.7	45.4	306	2.0	51	1.0	0	0.0	2	2.6	0	0.0	1	9.1	2	3.8	0	0.0	0	0.0
100-109	2,188	10.3	55.7	1,386	9.1	745	14.3	18	7.0	4	5.1	4	9.1	1	9.1	1	1.9	28	12.4	1	2.6
110-119	162	0.8	56.5	133	0.9	24	0.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	1.8	1	2.6
120-129	321	1.5	58.0	255	1.7	59	1.1	0	0.0	1	1.3	0	0.0	0	0.0	0	0.0	6	2.7	0	0.0
130-139	133	0.6	58.6	108	0.7	23	0.4	2	0.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
140-149	106	0.5	59.1	94	0.6	12	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
150-159	502	2.4	61.5	382	2.5	109	2.1	1	0.4	1	1.3	0	0.0	0	0.0	1	1.9	7	3.1	1	2.6
160-169	115	0.5	62.0	97	0.6	16	0.3	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	1	0.4	0	0.0
170-179	97	0.5	62.5	78	0.5	15	0.3	4	1.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
180-189	116	0.5	63.0	102	0.7	12	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.9	0	0.0
190-199	59	0.3	63.3	55	0.4	3	0.1	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299	1,463	6.9	70.2	1,046	6.8	393	7.5	6	2.3	2	2.6	0	0.0	2	18.2	3	5.8	9	4.0	2	5.1
300-399	1,013	4.8	75.0	728	4.8	266	5.1	2	0.8	0	0.0	0	0.0	0	0.0	1	1.9	13	5.8	3	7.7
400-499	531	2.5	77.5	396	2.6	124	2.4	3	1.2	0	0.0	0	0.0	0	0.0	0	0.0	7	3.1	1	2.6
500-599	911	4.3	81.8	623	4.1	275	5.3	0	0.0	2	2.6	0	0.0	0	0.0	0	0.0	11	4.9	0	0.0
600-699	328	1.5	83.3	233	1.5	86	1.6	1	0.4	0	0.0	1	2.3	2	18.2	0	0.0	5	2.2	0	0.0
700-799	230	1.1	84.4	189	1.2	39	0.7	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	1	0.4	0	0.0
800-899	182	0.9	85.3	121	0.8	55	1.1	4	1.6	0	0.0	1	2.3	0	0.0	0	0.0	1	0.4	0	0.0
900-999	117	0.6	85.8	96	0.6	20	0.4	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	0	0.0	0	0.0
1,000-1,999	1,555	7.3	93.2	1,010	6.6	489	9.4	7	2.7	1	1.3	21	47.7	1	9.1	2	3.8	24	10.6	0	0.0
2,000-2,999	448	2.1	95.3	294	1.9	147	2.8	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	6	2.7	0	0.0
3,000-3,999	243	1.1	96.4	154	1.0	85	1.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	1.8	0	0.0
4,000-4,999	96	0.5	96.9	60	0.4	33	0.6	0	0.0	0	0.0	1	2.3	1	9.1	0	0.0	1	0.4	0	0.0
5,000-9,999	268	1.3	98.1	185	1.2	81	1.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.9	0	0.0
Over 9,999	396	1.9	100.0	309	2.0	81	1.6	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	4	1.8	1	2.6

[1] See Glossary of terms for definition.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2007; and Cumulative Totals, Fiscal Years 2001 through 2007

	Fiscal Year 2007									July 5, 1936 Sept. 30, 2007	
	Number of proceedings[1]					Percentages					
	Total	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal[2]	Number	Percent
Proceedings decided by U.S. courts of appeals and other courts	83	78	5	0	5	94.0	6.0	--	--	--	--
On proceedings for review and/or enforcement	68	64	4	0	5	94.1	5.9	--	100.0	11974	100.0
Board orders affirmed in full	59	56	3	0	4	94.9	5.1	--	80.0	7944	663
Board orders affirmed with modification	5	5	0	0	0	100.0	0.0	--	0.0	1560	130
Remanded to the Board	2	1	1	0	1	50.0	50.0	--	20.0	600	5.0
Board orders partially affirmed and partially remanded	2	2	0	0	0	100.0	0.0	--	0.0	271	2.3
Board orders set aside	0	0	0	0	0	0.0	0.0	--	0.0	1599	13.4
On petitions for contempt	15	14	1	0	0	93.3	6.7	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy courts	18	18	0	0	0	100.0	0.0	--	--	--	--
Total Court Orders	33	32	1	0	0	97.0	3.0	--	--	--	--
Compliance after filing of petition, before court order	18	18	0	0	0	100.0	0.0	--	--	--	--
Court orders holding respondent in contempt	9	8	1	0	0	88.9	11.1	--	--	--	--
Court orders denying petition or discontinuing proceedings at CLCB request	1	1	0	0	0	100.0	0.0	--	--	--	--
Court orders directing compliance without contempt adjudication	5	5	0	0	0	100.0	0.0	--	--	--	--
Proceedings decided by U.S. Supreme Court[3]	0	0	0	0	0	--	--	--	--	259	100.0
Board orders affirmed in full	0	0	0	0	0	--	--	--	--	155	59.8
Board orders affirmed with modification	0	0	0	0	0	--	--	--	--	18	6.9
Board orders set aside	0	0	0	0	0	--	--	--	--	46	17.8
Remanded to the Board	0	0	0	0	0	--	--	--	--	20	7.7
Remanded to court of appeals	0	0	0	0	0	--	--	--	--	17	6.6
Board's request for remand or modification of enforcement order denied	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases remanded to court of appeals	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases enforced	0	0	0	0	0	--	--	--	--	1	0.4

[1] "Proceedings" are comparable to "cases" reported in annual reports prior to fiscal 1964. This term more accurately describes the data inasmuch as a single "proceeding" often includes more than one "case." See Glossary of terms for definitions.
[2] A proceeding in which the Board had entered an order dismissing the complaint and the charging party appealed such dismissal in the courts of appeals.
[3] The Board appeared as "amicus curiae" in 0 cases.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2007, Compared With 5-Year Cumulative Totals, 2002 Through 2007[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2007	Total fiscal years 2002-2006	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2007		Cumulative fiscal years 2002–2006		Fiscal Year 2007		Cumulative fiscal years 2002–2006		Fiscal Year 2007		Cumulative fiscal years 2002–2006		Fiscal Year 2007		Cumulative fiscal years 2002–2006		Fiscal Year 2007		Cumulative fiscal years 2002–2006	
			Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent	Num-ber	Per-cent
Total all circuits	68	440	59	86.8	318	72.2	5	7.4	28	6.4	2	2.9	28	6.4	2	2.9	17	3.9	0	0.0	49	11.1
Boston, MA	4	11	4	100.0	8	72.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	9.1	0	0.0	2	18.2
New York, NY	1	24	1	100.0	20	83.3	0	0.0	1	4.2	0	0.0	2	8.3	0	0.0	0	0.0	0	0.0	1	4.2
Philadelphia, PA	3	24	3	100.0	19	79.1	0	0.0	2	8.3	0	0.0	1	4.2	0	0.0	1	4.2	0	0.0	1	4.2
Richmond, VA	9	37	9	100.0	23	62.2	0	0.0	3	8.1	0	0.0	4	10.8	0	0.0	3	8.1	0	0.0	4	10.8
New Orleans, LA	5	25	4	80.0	19	76.0	1	20.0	3	12.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	12.0
Cincinnati, OH	9	76	7	77.8	61	80.4	2	22.2	3	3.9	0	0.0	1	1.3	0	0.0	3	3.9	0	0.0	8	10.5
Chicago, IL	1	37	1	100.0	28	75.7	0	0.0	2	5.4	0	0.0	2	5.4	0	0.0	3	8.1	0	0.0	2	5.4
St. Louis, MO	0	27	0	0.0	18	66.7	0	0.0	4	14.8	0	0.0	1	3.7	0	0.0	1	3.7	0	0.0	3	11.1
San Francisco, CA	5	26	4	80.0	20	77.0	0	0.0	0	0.0	0	0.0	2	7.7	1	20.0	1	3.8	0	0.0	3	11.5
Denver, CO	5	14	5	100.0	11	78.6	0	0.0	1	7.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	14.3
Atlanta, GA	5	15	5	100.0	12	80.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	20.0
Washington, DC	21	124	16	76.2	79	63.7	2	9.5	9	7.3	2	9.5	15	12.1	1	4.8	4	3.2	0	0.0	17	13.7

[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 2007

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in Appellate Court Sept. 30, 2007
		Pending in Appellate Court Oct. 01, 2006	Filed in Appellate Court fiscal year 2007		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(e) total	3	0	3	3	3	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in District Court Sept. 30, 2007
		Pending in District Court Oct. 01, 2006	Filed in District Court fiscal year 2007[1]		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total		2	19	18	10	2	6	0	3
8(a)(1)(3)		0	4	3	1	1	1	0	1
8(a)(1)(3)(5)		1	8	8	5	1	2	0	1
8(a)(1)(5)		1	7	7	4	0	3	0	1
Under Sec. 10(l) total		0	3	3	2	0	1	0	0
8(b)(4)(B)		0	1	1	0	0	1	0	0
8(b)(7)(C)		0	2	2	2	0	0	0	0

[1] Totals for cases identified in this table as pending on October 1, 2005, differ from the FY 2006 Annual Report due to postreport adjustments to last year's "on docket" and/or "closed figures."

Table 21.—Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2007

Type of Litigation	Number of Proceedings														
	Total -- all courts			In courts of appeals			In district courts			In bankruptcy courts			In State Courts		
		Court Determination			Court Determination			Court Determination			Court Determination			Court Determination	
	Number Decided	Upholding Board position	Contrary to Board position	Number Decided	Upholding Board Position	Contrary to Board Position	Number Decided	Upholding Board Position	Contrary to Board Position	Number Decided	Upholding Board Position	Contrary to Board Position	Number Decided	Upholding Board	Contrary to Board Position
Totals – all types	13	9	4	5	3	2	6	5	1	2	1	1	0	0	0
NLRB-initiated actions or interventions	2	1	1	1	0	1	1	1	0	0	0	0	0	0	0
To enjoin local ordinance as preempted	2	1	1	1	0	1	1	1	0	0	0	0	0	0	0
Action by other parties	11	8	3	4	3	1	5	4	1	2	1	1	0	0	0
To review:	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Prosecutorial discretion	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0
Nonfinal/representation orders	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To restrain NLRB from:	2	1	1	0	0	0	2	1	1	0	0	0	0	0	0
Proceeding in R case	2	1	1	0	0	0	2	1	1	0	0	0	0	0	0
Proceeding in unfair labor practice case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
To compel NLRB to:	7	9	1	4	3	1	3	3	0	0	0	0	0	0	0
Issue complaint	5	5	0	3	3	0	2	2	0	0	0	0	0	0	0
Respond to discovery	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Issue decision or take specific action	2	1	1	1	0	1	1	1	0	0	0	0	0	0	0
Other	2	1	1	0	0	0	0	0	0	2	1	1	0	0	0
Motion to disallow Bd's proof of claim	1	1	0	0	0	0	0	0	0	1	1	0	0	0	0
Suit for violation of 11 USC § 362	1	0	1	0	0	0	0	0	0	1	0	1	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2007[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2006	0	0	0	0	0
Received fiscal 2007	0	0	0	0	0
On docket fiscal 2007	0	0	0	0	0
Closed fiscal 2007	0	0	0	0	0
Pending September 30, 2007	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2007[1]

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

[1] See Glossary of terms for definitions.

Table 23.—Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2007; and Age of Cases Pending Decision, September 30, 2007

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed -	
1. Filing of charge to issuance of complaint	96
2. Complaint to close of hearing	104
3. Close of hearing to administrative law judge's decision	69
4. Receipt of briefs or submissions to issuance of administrative law judge's decision	29
5. Administrative law judge's decision to issuance of Board decision	840
6. Originating document to Board decision	610
7. Assignment to Board decision	517
8. Filing of charge to issuance of Board decision	1173
B. Age of cases pending administrative law judge's decision, September 30, 2007	
1. From filing of charge	296
2. From close of hearing	52
C. Age of cases pending Board decision, September 30, 2007	
1. From filing of charge	829
2. From originating document	282
3. From assignment	213
II. Representation cases:	
A. Major stages completed -	
1. Filing of petition to notice of hearing issued	1
2. Notice of hearing to close of hearing	14
3. Close of hearing to Regional Director's decision issued	22
4. Close of pre-election hearing to Board's decision issued[1]	695
5. Close of post-election hearing to Board's decision issued	102
6. Filing of petition to-	
a. Board decision issued	365
b. Regional Director's decision issued	39
7. Originating document to Board decision	186
8. Assignment to Board's decision	131
B. Age of cases pending Board decision, September 30, 2007	
1. From filing of petition	318
2. From originating document	159
3. From assignment	97
C. Age of cases pending Regional Director's decision, September 30, 2007	91

[1] This median does not include cases in which the Board denied requests for review.

Table 24.—NLRB Activity Under the Equal Access to Justice Act, FY 2007

	Action taken	Cases/ Amount
I.	Applications for fees and expenses filed with the Board under 5 U.S.C. § 504 during this fiscal year:	
	A. Number of applications filed:	2
	B. Decisions in EAJA cases ruled on by the Board during this fiscal year (includes ALJ awards adopted by the Board, and settlements):	
	Granting fees:	0
	Denying fees:	2
	C. Amount of fees and expenses in cases listed in B, above:	
	Claimed:	$227,643
	Recovered:	0
II.	Petitions for Review of Board Orders denying fees under 5 U.S.C. § 504:	
	A. Awards granting fees (includes settlements):	0
	B. Awards denying fees:	0
	C. Amount of fees and expenses recovered pursuant to court award or settlement (includes fees recovered in cases in which court finds merit to claim but remands to Board for determination of fee amount):	0
III.	Applications for fees and expenses before Circuit Courts of Appeals under 28 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements):	0
	B. Awards denying fees:	0
	C. Amount of fees and expenses recovered:	$10,000,00
IV.	Applications for fees and expenses before District Courts under 28 U.S.C. § 2412:	
	A. Awards granting fees (includes settlements):	0
	B. Awards denying fees:	0
	C. Amount of fees and expenses recovered:	0