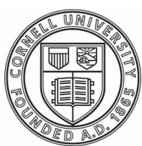

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Keywords

federal, ILR, NLRB, labor relations, law, Supreme Court, employee, employment, election, union, annual, report

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SEVENTY-FIRST

ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

FOR THE FISCAL YEAR

ENDED SEPTEMBER 30

2006

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[1] Recess appointment effective January 4, 2006.
[2] Recess appointment effective January 17, 2006.
[3] Began service on March 20, 2006.
[4] Began service on February 13, 2006.
[5] Served under a recess appointment by President Bush from January 4, 2006, until confirmed by Senate on August 3, 2006, for a 4-year term that began on August 14, 2006, when President Bush signed his commission.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. June 18, 2006

SIR: I submit the Seventy-First Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2006.

Respectfully submitted,
ROBERT J. BATTISTA, *Chairman*

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

TABLE OF CONTENTS

CHAPTER PAGE

I. Operations in Fiscal Year 2006 ... 1
A. Summary ... 1
NLRB Administration ... 3
B. Operational Highlights ... 6
1. Unfair Labor Practices ... 6
2. Representation Cases ... 13
3. Elections ... 15
4. Decisions Issued ... 18
a. The Board ... 18
b. Regional Directors ... 19
c. Administrative Law Judges ... 20
5. Court Litigation ... 20
a. Appellate Courts ... 20
b. The Supreme Court ... 21
c. Contempt Actions ... 21
d. Miscellaneous Litigation ... 22
e. Injunction Activity ... 22
C. Decisional Highlights ... 23
1. Jurisdiction Asserted Over Private Company ... 23
2. New Guidelines for Determining Supervisory Status ... 24
3. Union Photographing of Employees During Organizing Campaign Found Objectionable ... 25
4. Refusal-to-Hire Remedial Orders in Successorship Context ... 27
D. Financial Statement ... 28
II. Board Procedure ... 29
A. Effect of Settlement Agreement ... 29
B. Misconduct at Hearing Before an Administrative Law Judge ... 31
C. Waiver of Attorney-Client Privilege with Regard to Subpoenaed Files ... 32
III. NLRB Jurisdiction ... 35
A. Political Subdivision ... 35
B. Provider of Passenger and Baggage Screening Service ... 37
C. Employer Unfair Labor Practices in Mexico ... 39
IV. Representation Proceedings ... 41
A. Appropriate Unit Issues
Supervisory Status ... 41
B. Election Objections ... 45
1. Union Photographing of Employees during Organizing Activities ... 45
2. Maintenance of Overbroad Work Rules ... 47
C. Unit Clarification ... 48
1. Deferral to Arbitrator's Award ... 48
2. Waiver of Rights to File Unit Clarification Petition ... 50
V. Unfair Labor Practices
A. Employer Interference with Employee Rights ... 53
1. Promise of Benefits ... 53
2. Unprotected Employee Activities ... 54

CHAPTER .... PAGE
3. Access to Employer's Property 56
4. Poll of Employees About the Identity of the Union's Negotiator 57
B. Employer Assistance to Labor Organization 60
C. Employer Discrimination against Employees 61
1. Availability to Start Work 61
2. Reinstatement of Locked-Out Employees 63
D. Employer Bargaining Obligations 64
1. Duty to Provide Requested Information 64
2. Unilateral Changes 66
3. Continuing Obligation to Bargain at Relocated Facility 68
4. Continued Appropriateness of Certified Unit 69
5. Continuing Obligation to Bargain After Disaffiliation of Union From AFL–CIO 71
6. Mandatory Subjects of Bargaining 72
7. Withdrawal of Recognition 73
E. Union Interference with Employee Rights 75
1. Operation of Hiring Hall 75
F. Deferral to Grievance-Arbitration Procedure 76
G. Remedial Order Provisions 77
1. Piercing the Corporate Veil 77
2. Successor Employer's Bargaining Obligation 78
3. Bargaining Orders 79
4. Discrepancies in Interim Earnings Reported to Board and Other Parties 81
5. Liability for Predecessor's Unfair Labor Practices 82
VI. Supreme Court Litigation 87
VII. Enforcement Litigation 89
A. Protected Activity 89
B. Majority Status 91
C. Strikes and Lockouts 93
VIII. Injunction Litigation 95
A. Injunction Litigation Under Section 10(j) 95
B. Injunction Litigation Under Section 10(l) 97
IX. Contempt Litigation and Compliance Branch 99
X. Special Litigation 101
A. Litigation Concerning the Board and Court Jurisdiction 101
B. Litigation Concerning the Board's Subpoena Power 103
C. Preemption Litigation 104
D. Freedom of Information Act Litigation 106
Index of Cases Discussed 109
Appendix
Glossary of Terms Used in Statistical Tables 111
Subject Index to Annual Report Tables 119
Statistical Tables for Fiscal Year 2006 121

TABLES

TABLE		PAGE
1.	Total Cases Received, Closed, and Pending………………………...	121
1A.	Unfair Labor Practice Cases Received, Closed, and Pending………….	122
1B.	Representation Cases Received, Closed, and Pending………………...	123
2.	Types of Unfair Labor Practices Alleged……………………………...	124
3A.	Formal Actions Taken in Unfair Labor Practice Cases………………..	127
3B.	Formal Actions Taken in Representation and Union Deauthorization Cases…………………………………………………………….	128
3C.	Formal Actions Taken in Amendment of Certification and Unit Clarification Cases…………………………………………………	130
4.	Remedial Actions Taken in Unfair Labor Practice Cases Closed……..	131
5.	Industrial Distribution of Cases Received……………………………..	134
6A.	Geographic Distribution of Cases Received…………………………...	139
6B.	Standard Federal Administrative Regional Distribution of Cases Received……………………………………………………………	142
7.	Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed……………………………………………………………	144
7A.	Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings………………..	146
8.	Disposition by Stage of Unfair Labor Practice Cases Closed………….	147
9.	Disposition by Stage of Representation and Union Deauthorization Cases Closed……………………………………………………….	148
10.	Analysis of Methods of Disposition of Representation and Union Deauthorization Cases Closed……………………………………..	149
10A.	Analysis of Methods of Disposition of Amendment of Certification and Unit Clarification Cases Closed……………………………….	150
11.	Types of Elections Resulting in Certification in Cases Closed………..	151
11A.	Analysis of Elections Conducted in Representation Cases Closed……	152
11B.	Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed………………………	153
11C.	Objections Filed in Representation Cases Closed, by Party Filing……	154
11D.	Disposition of Objections in Representation Cases Closed……………	155
11E.	Results of Rerun Elections Held in Representation Cases Closed……..	156
12.	Results of Union-Shop Deauthorization Polls in Cases Closed………..	157
13.	Final Outcome of Representation Elections in Cases Closed………….	158
14.	Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed…………………………………………..	162
15A.	Geographic Distribution of Representation Elections Held in Cases Closed……………………………………………………………	165
15B.	Geographic Distribution of Collective-Bargaining Elections Held in Cases Closed……………………………………………………….	168
15C.	Geographic Distribution of Decertification Elections Held in Cases Closed……………………………………………………………	171
16.	Industrial Distribution of Representation Elections Held in Cases Closed……………………………………………………………	174
17.	Size of Units in Representation Elections in Cases Closed……………	180

TABLE		PAGE
18.	Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments....……………………	183
19.	Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2005; and Cumulative Totals, Fiscal Years 1936 through 2006…	184
19A.	Proceedings Decided by Circuit Courts of Appelas on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2006, Compared With 5-Year Cumulative Totals, Fiscal Years 2001 through 2006…………………………………………………….	185
20.	Injunction Litigation Under Sections 10(e), 10(j), and 10(l)…………..	186
21.	Special Litigation Involving NLRB; Outcome of Proceedings in Which Court Decisions Issued in Fiscal Year 2006………………..	187
22.	Advisory Opinion Cases Received, Closed, and Pending……………..	188
22A.	Disposition of Advisory Opinion Cases……………………………….	188
23.	Time Elapsed for Major Case Processing Stages Completed, Fiscal Year 2006; and Age of Cases Pending Decision, September 30, 2006……………………………………………………………	189
24.	NLRB Activity Under the Equal Access to Justice Act……………….	190

CHARTS IN CHAPTER I

CHART PAGE

1. Case Intake by Unfair Labor Practice Charges and Representation Petitions ... 3
2. ULP Case Intake ... 5
3. Disposition Pattern for Unfair Labor Practice Cases ... 6
3A. Disposition Pattern for Meritorious Unfair Labor Practice Cases ... 8
3B. Disposition Pattern for Unfair Labor Practice Cases After Trial ... 8
4. Number of Unfair Labor Practice Cases Pending Under Preliminary Investigation ... 9
5. Unfair Labor Practice Merit Factor ... 11
6A. Complaints Issued in Unfair Labor Practice Proceedings ... 12
6B. Median Days From Filing to Complaint ... 12
7. Unfair Labor Practice Cases Settled ... 14
8. Administrative Law Judge Hearings and Decisions ... 15
9. Amount of Backpay Received by Discriminatees ... 16
10. Time Required to Process Representation Cases From Filing of Petition to Issuance of Decision ... 17
11. Contested Board Decisions Issued ... 18
12. Representation Elections Conducted ... 20
13. Regional Director Decisions Issued in Representation and Related Cases ... 21
14. Cases Closed ... 22
15. Comparison of Filings of Unfair Labor Practice Cases and Representation Cases ... 23

I

Operations in Fiscal Year 2006

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 2006, 26,728 cases were received by the Board.

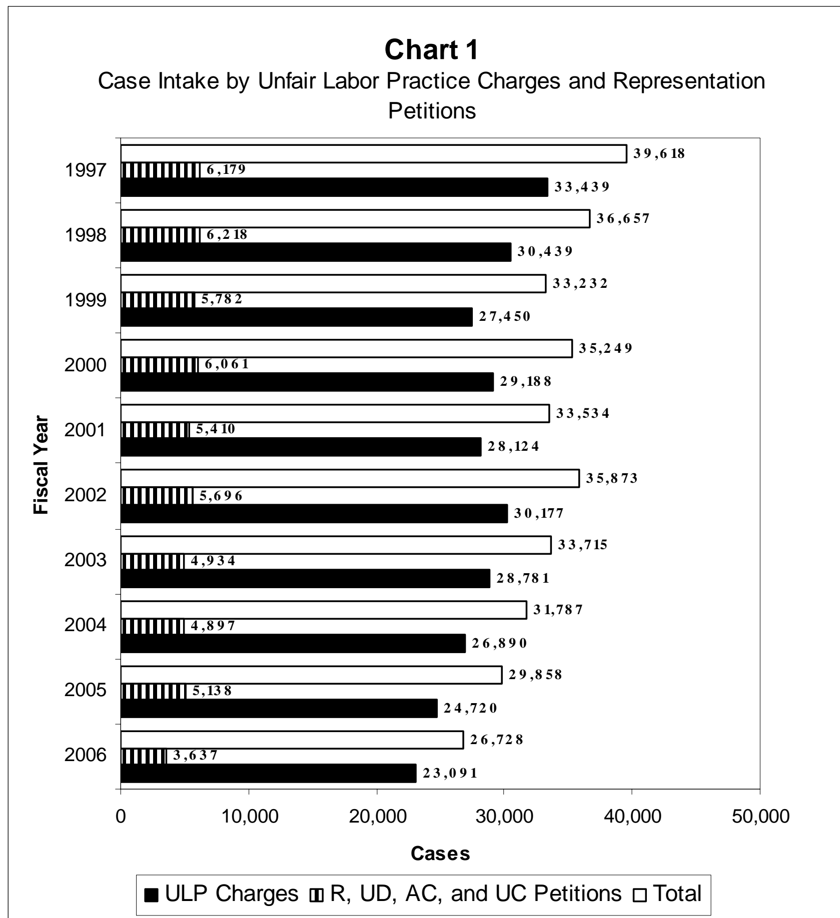
The public filed 23,091 charges alleging that employers or labor organizations committed unfair labor practices prohibited by the statute, adversely affected employees. During this period the NLRB also received 3,637 representation petitions, including 3,354 petitions to conduct secret-ballot elections in which workers in appropriate groups select or reject unions to represent them in collective bargaining with their employers as well as 119 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 10 petitions to amend the certification of existing collective-bargaining representatives and 154 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 2006, 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 2006 include:

- The NLRB conducted 2147 conclusive representation elections among some 122,730 employee voters, with workers choosing labor unions as their bargaining agents in 55.7 percent of the elections.
- Although the Agency closed 28,001 cases, 14,593 cases were pending in all stages of processing at the end of the fiscal year. The closings included 24,153 cases involving unfair labor practice charges and 3576 cases affecting employee representation and 272 related cases.
- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 8848.
- The amount of $110,921,107 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 2926 offers of job reinstatements, with 2423 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 1274 complaints, setting the cases for hearing.
- NLRB's corps of administrative law judges issued 263 decisions, of which 23 were noncomplaint election objection cases and one was a UD case.



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.

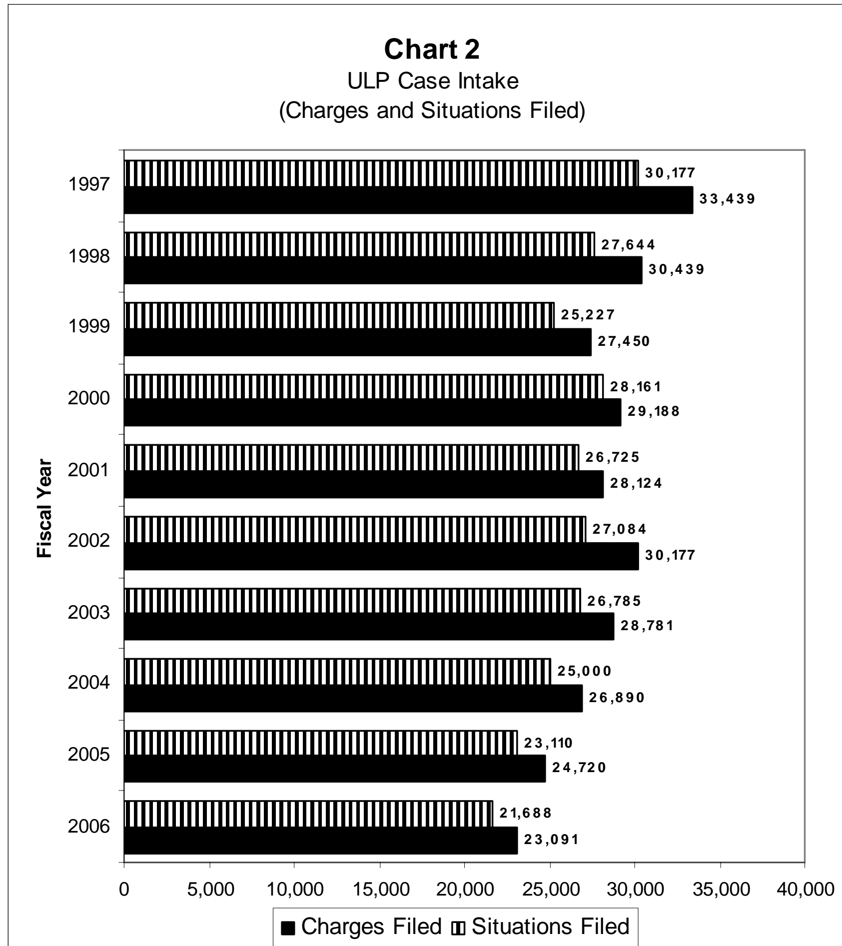
The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2006.

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.

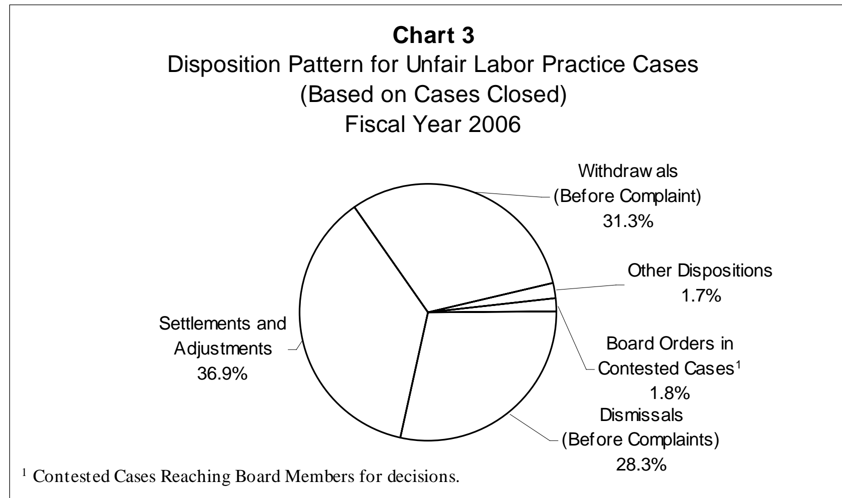
The NLRB has no independent statutory power of enforcement of its decisions and orders. It may, however, seek enforcement in the U.S. courts of appeals, and parties to its cases also may seek judicial review.

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 2006, 23,091 unfair labor practice charges were filed with the NLRB, a decrease of 7 percent from the 24,720 filed in fiscal year 2005. In situations in which related charges are counted as a single unit, there was a decrease of 6 percent from the preceding fiscal year. (Chart 2.)

Alleged violations of the Act by employers were filed in 16,887 cases, a decrease of 8 percent from the 18,304 of 2005. Charges against unions decreased 3 percent to 6172 from 6381 in 2005.

There were 32 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements. (Tables 1A and 2.)

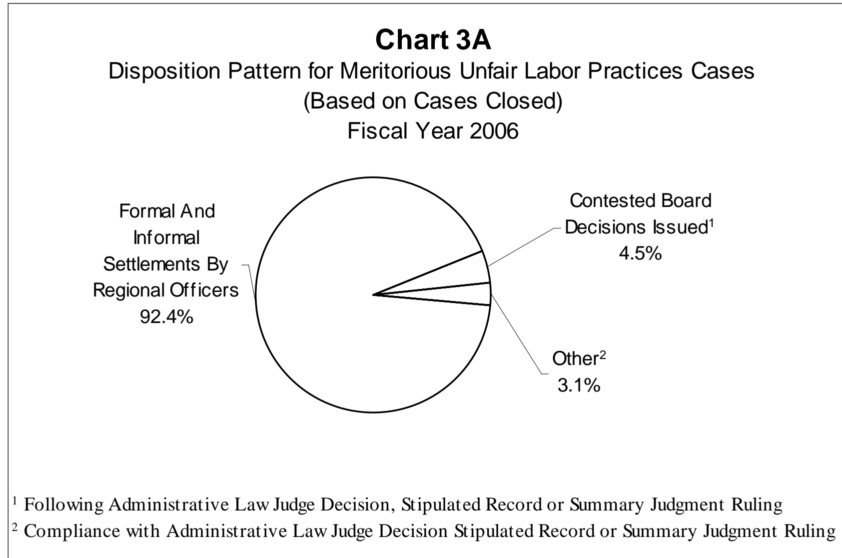
The majority of all charges against employers refusal to bargain. There were 8467 such charges in 54 percent of the total charges that employers committed violations.

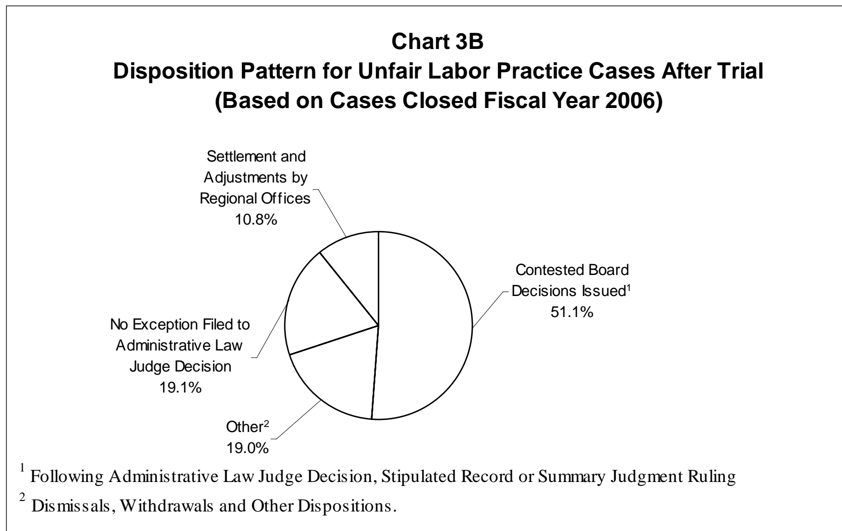
Alleged illegal discharge or other discrimination against employees was the second largest category of allegations against employers, comprising 7158 charges, in about 46 percent of the total charges. (Table 2.)

Of charges against unions, the majority (5251) alleged illegal restraint and coercion of employees, about 83 percent. There were 479 charges against unions for illegal secondary boycotts and jurisdictional disputes, a decrease of 3 percent from the 493 of 2005.

There were 549 charges (about 9 percent) of illegal union discrimination against employees, a decrease of 2 percent from the 594 of 2005. There were 74 charges that unions picketed illegally for recognition or for organizational purposes, compared with 104 charges in 2004. (Table 2.)

In charges filed against employers, unions led with about 75 percent of the total. Unions filed 12,623 charges and individuals filed 4236.





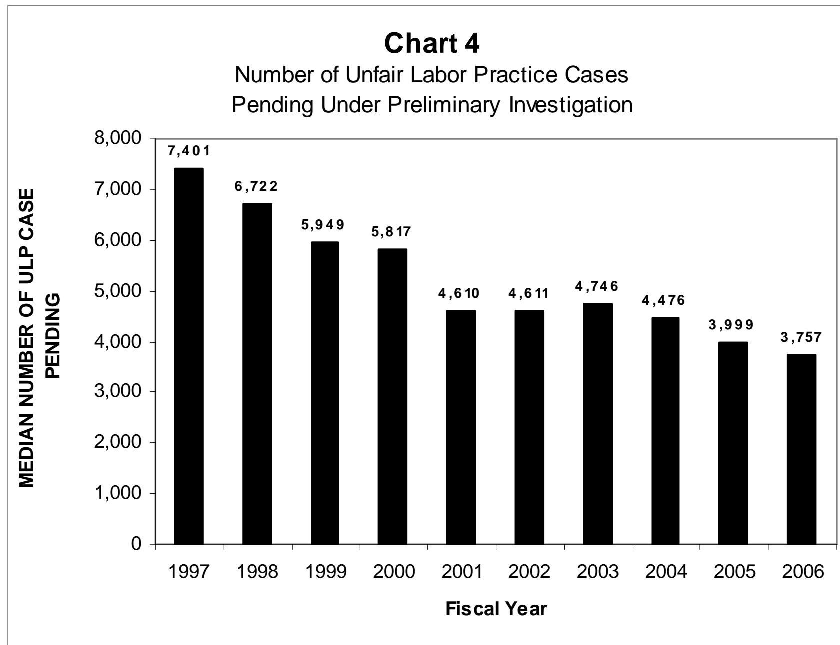
Concerning charges against unions, 5020 were filed by individuals, or 81 percent of the total of 6172. Employers filed 1085 and other unions filed the 67 remaining charges.

In fiscal year 2006, 24,153 unfair labor practice cases were closed. Some 96 percent were closed by NLRB Regional Offices, about the same as the previous year. During the fiscal year, 36.9 percent of the cases were settled or adjusted before issuance of administrative law judges'

decisions, 31.3 percent were withdrawn before complaint, and 28.3 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 2006, 43 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 2006, precomplaint settlements and adjustments were achieved in 8867 cases, or 35.2 percent of the charges. In 2005, the percentage was 30.2. (Chart 5.)

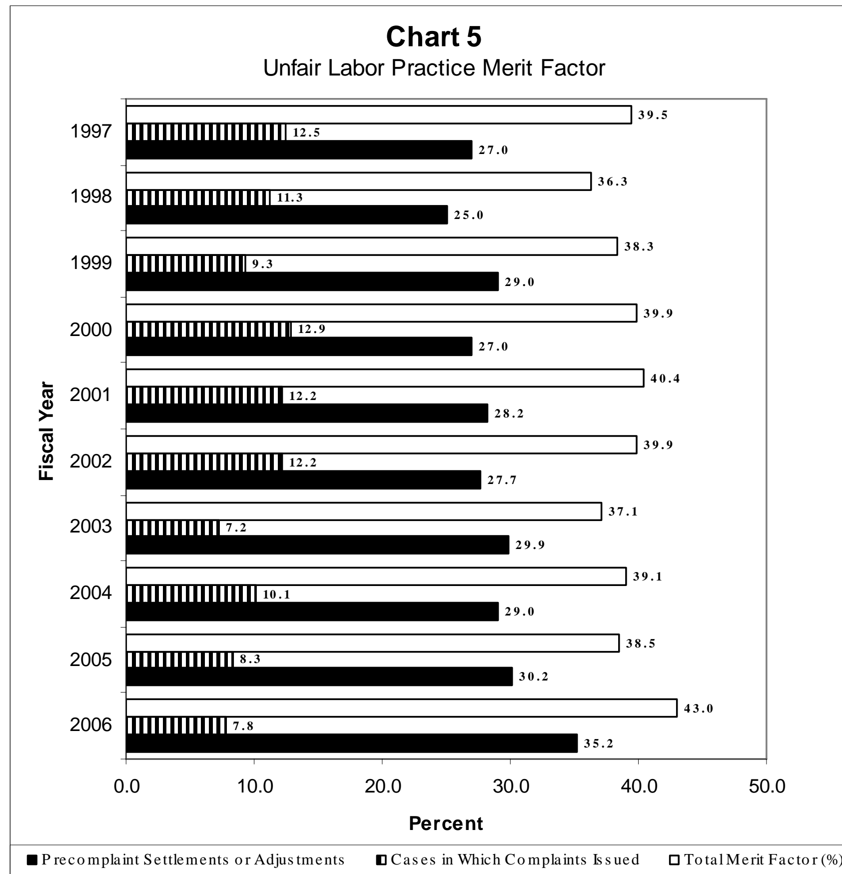


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2006, 1274 complaints were issued, compared with 1373 in the preceding fiscal year. (Chart 6A.)

Of complaints issued, 88.1 percent were against employers and 10.7 percent against unions.

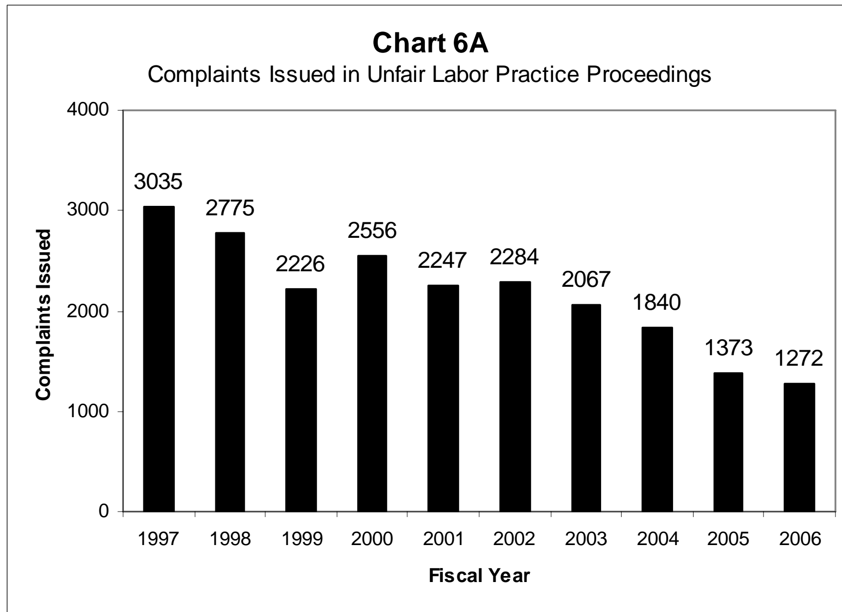
NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 93 days. The 93 days included 15 days in which parties had the opportunity to adjust charges and remedy violations without resorting to formal NLRB processes. (Chart 6B.)

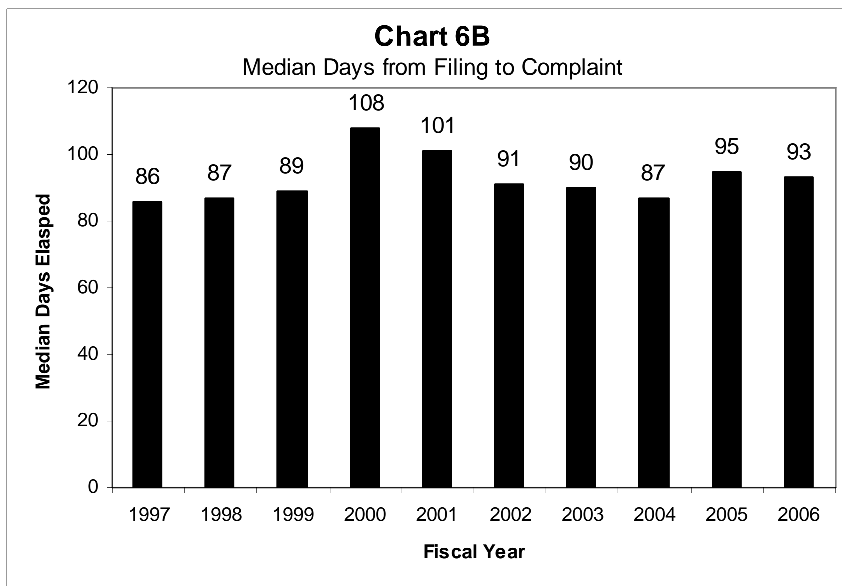
Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 239 decisions in 543 cases during 2006. They conducted 211 initial hearings, and 28 additional hearings in supplemental matters. (Chart 8 and Table 3A.)



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 2006, the Board issued 324 decisions in unfair labor practice cases contested as to the law or the facts—267 initial decisions, 13 backpay decisions, 7 determinations in jurisdictional work dispute cases, and 37 decisions on supplemental matters. Of the 267 initial decision cases, 247 involved charges filed against employers and 20 had union respondents.





For the year, the NLRB awarded backpay of $109.5 million. (Chart 9.) Reimbursement for unlawfully exacted fees, dues, and fines added about another $1,371,688. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees,

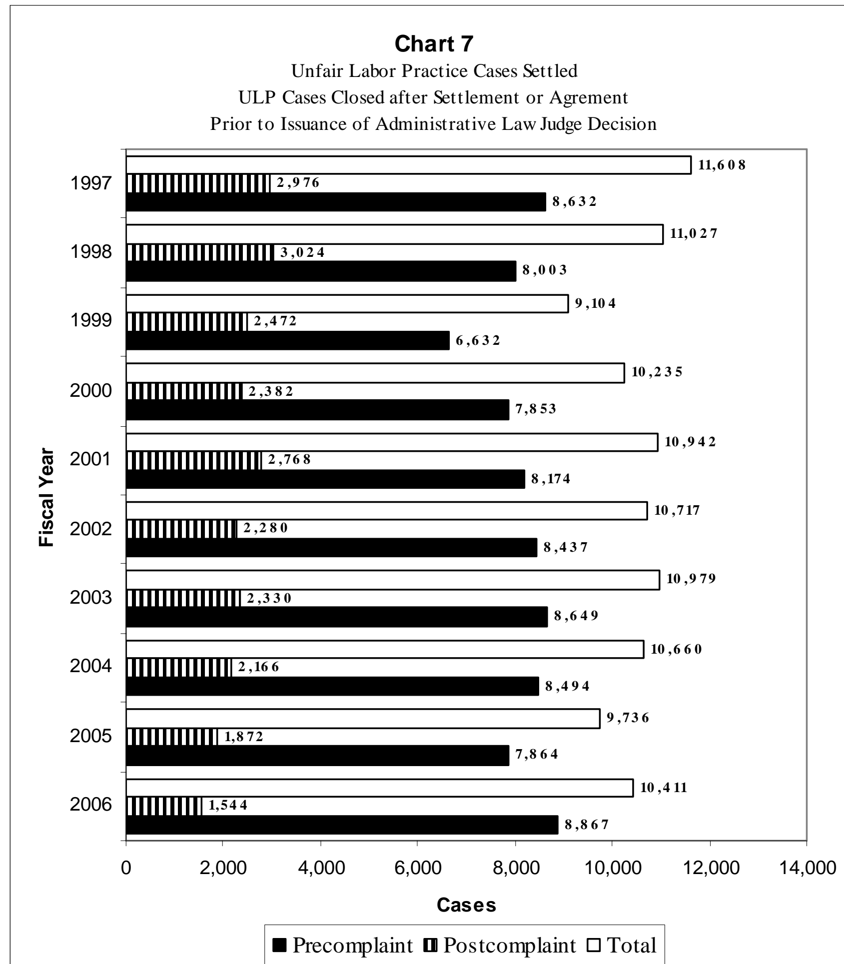
offset by earnings elsewhere after the discrimination. About 2926 employees were offered reinstatement, and 83 percent accepted.

At the end of fiscal 2006, there were 13,274 unfair labor practice cases being processed at all stages by the NLRB, compared to 14,336 cases pending at the beginning of the year.

2. Representation Cases

The NLRB received 3637 representation and related case petitions in fiscal 2006, compared to 5138 such petitions a year earlier.

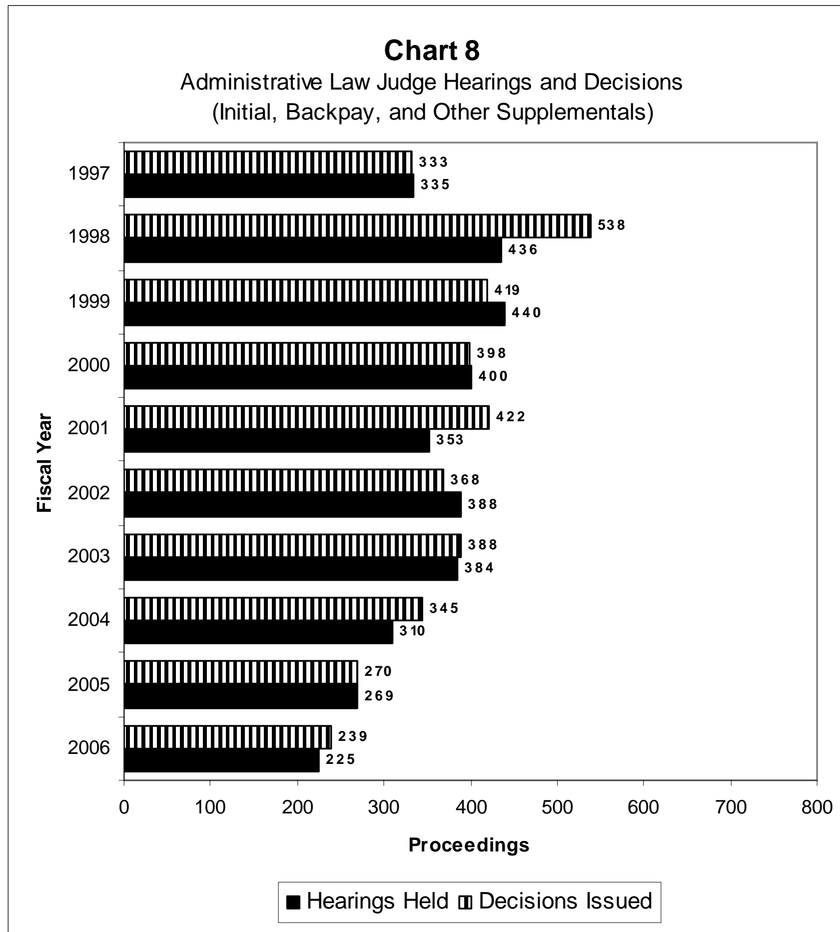
The 2006 total consisted of 2597 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 757 petitions to decertify existing bargaining agents; 119 deauthorization petitions for referendums on rescinding a union's authority to enter into union-shop contracts; and 154 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 10 amendment of certification petitions were filed.



During the year, 3848 representation and related cases were closed, compared to 5047 in fiscal 2005. Cases closed included 2823 collective-bargaining election petitions; 753 decertification election petitions; 123 requests for deauthorization polls; and 149 petitions for unit clarification and amendment of certification. (Chart 14 and Tables 1 and 1B.)

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 10.8 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 117 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.

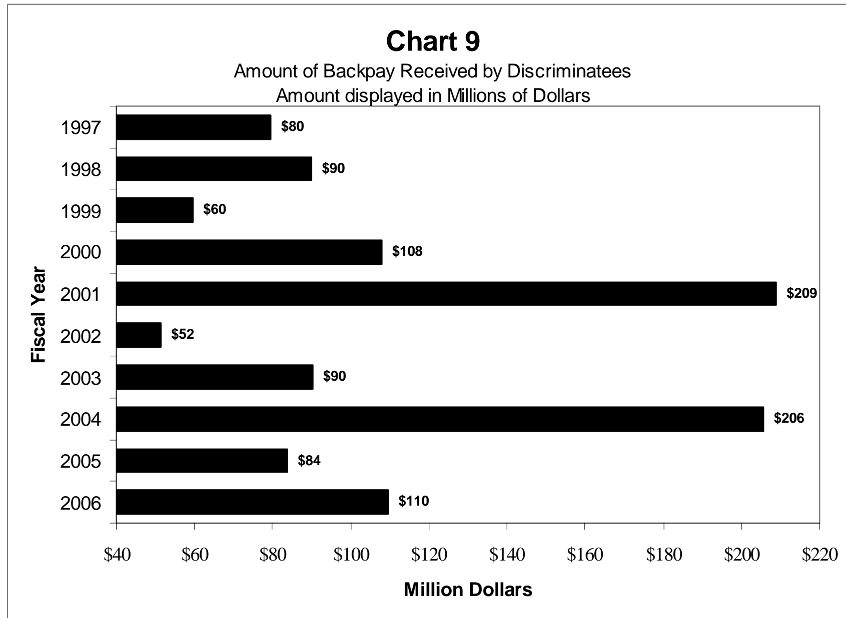


3. Elections

The NLRB conducted 2147 conclusive representation elections in cases closed in fiscal 2006, compared to the 2649 such elections a year earlier. Of 152,275 employees eligible to vote, 122,730 cast ballots, virtually 8 of every 10 eligible.

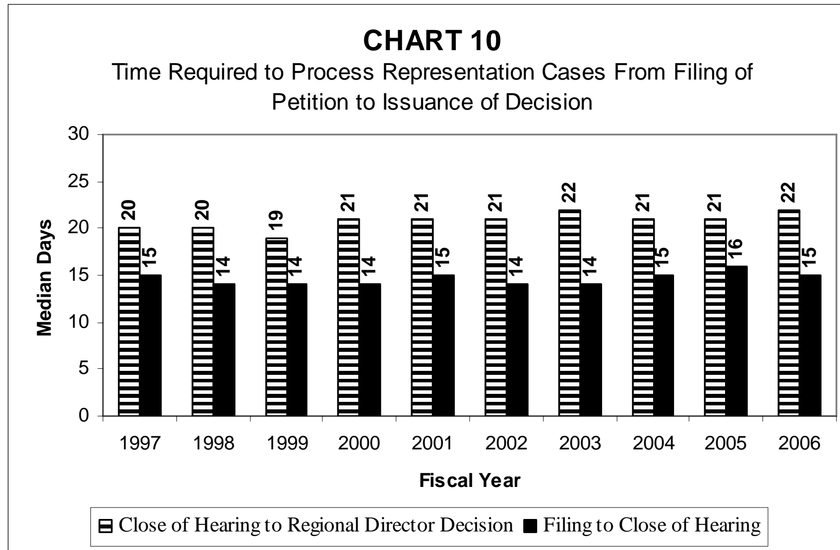
Unions won 1195 representation elections, or 55.7 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 83,764 workers. The employee vote over the course of the year was 70,057 for union representation and 52,673 against.

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 1964 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 1045, or 53.2 percent. In these elections, 51,623 workers voted to have unions as their agents, while 50,868 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 59,905 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 183 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 150 elections, or 82.0 percent.

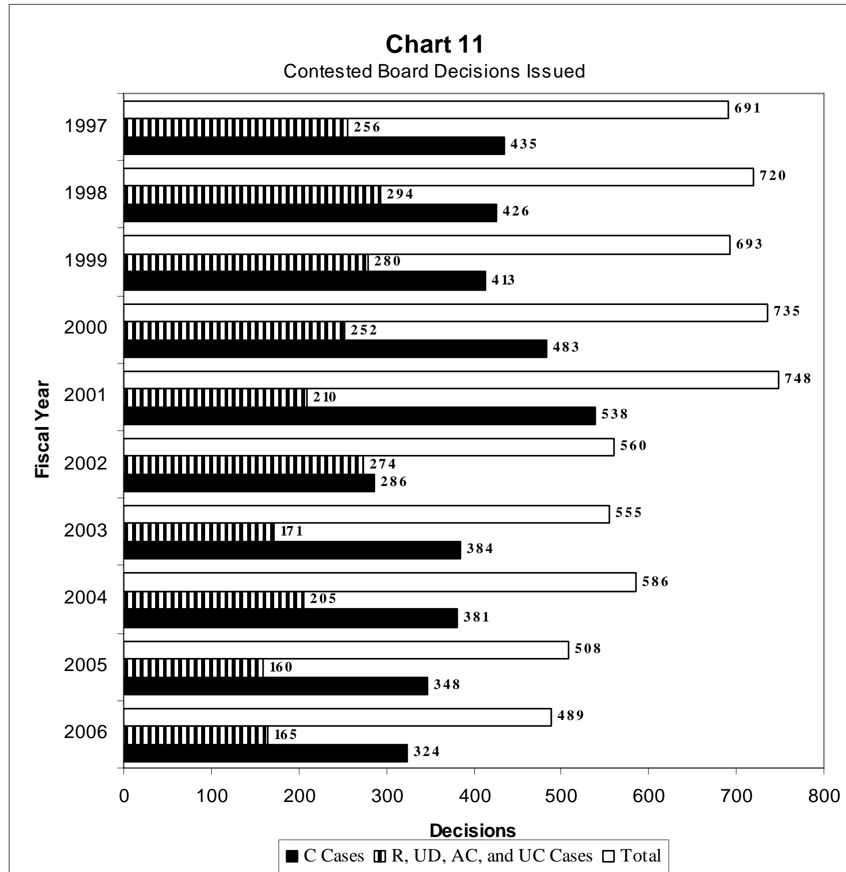


As in previous years, labor organization results brought continued representation by unions in 117 elections, or 32.5 percent, covering 15,545 employees. Unions lost representation rights for 11,932 employees in 243 elections, or 67.5 percent. Unions won in bargaining units averaging 133 employees, and lost in units averaging 49 employees. (Table 13.)

Besides the conclusive elections, there were 83 inconclusive representation elections during fiscal year 2006 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 26.2 percent, while they maintained the right in the other 48 polls which covered 4630 employees. (Table 12.)

For all types of elections in 2006, the average number of employees voting, per establishment, was 57, compared to 55 in 2005. About 75 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 705 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 769 decisions rendered during fiscal year 2005.

A breakdown of Board decisions follows:

Total Board decisions..	**705**
Contested decisions	**489**

Unfair labor practice decisions 324

Initial (includes those based on

- stipulated record)..………………..267
- Supplemental 37
- Backpay...............................…......13
- Determinations in jurisdictional disputes………………………….7

Representation decisions ....…. 149

- After transfer by Regional Directors for initial decision 2
- After review of Regional Director decisions 49
- On objections and/or challenges 98

Other decisions ....……….......................... 16

- Clarification of bargaining unit.......13
- Amendment to certification 0
- Union-deauthorization 3

Noncontested decisions...… **216**

- Unfair labor practice 123
- Representation 92
- Other 1

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.)

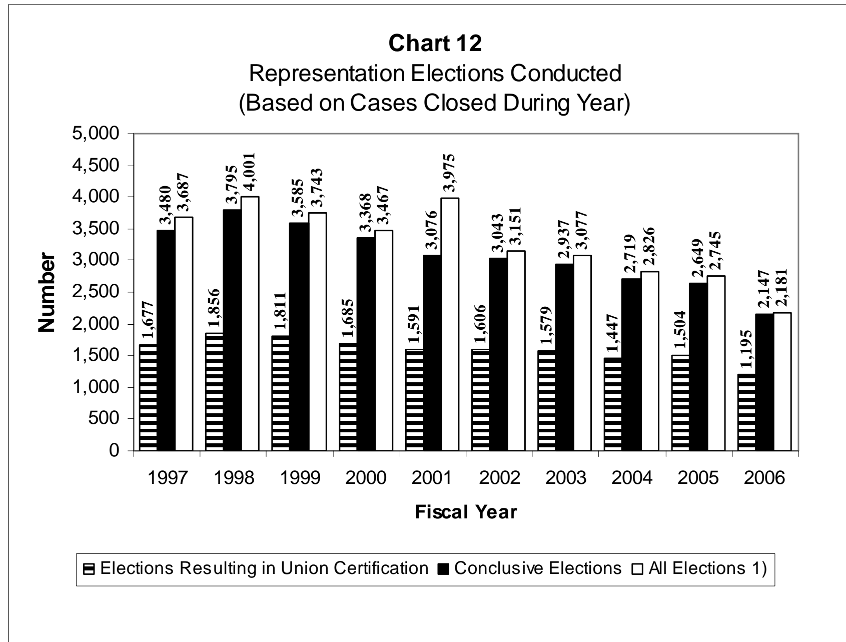
In fiscal 2006, about 4.5 percent of all meritorious charges and 51.1 percent of all cases in which a hearing was conducted reached the Board for decision. (Charts 3A and 3B.) Generally, unfair labor practice cases take about twice the time to process than representation cases.

b. Regional Directors

NLRB Regional Directors issued 541 decisions in fiscal 2006, compared to 596 in 2005. (Chart 13 and Tables 3B and 3C.)

c. Administrative Law Judges

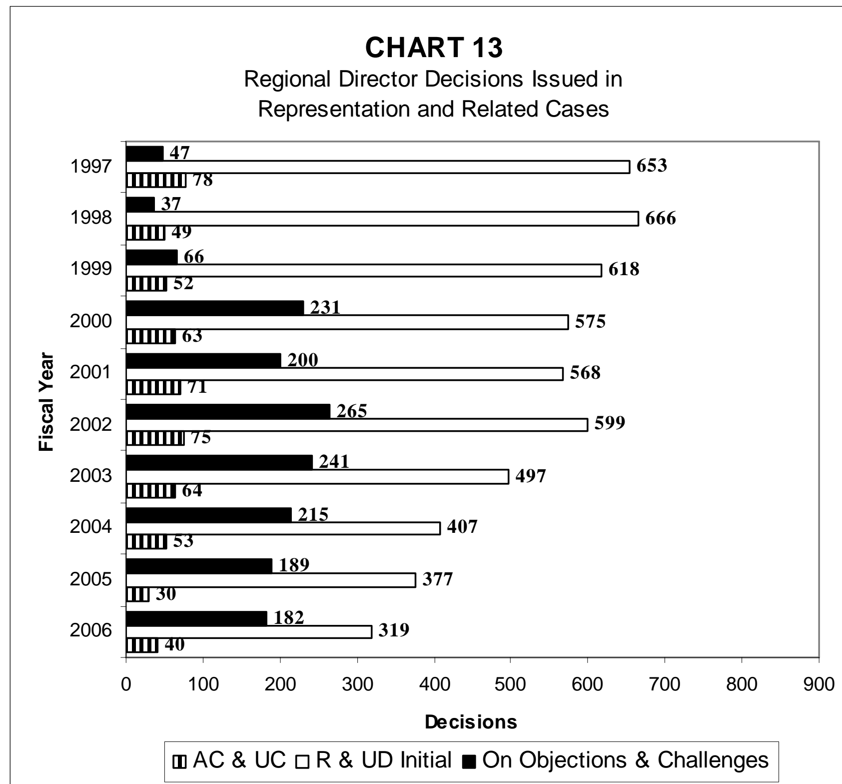
Administrative law judges issued 239 decisions and conducted 225 hearings. (Chart 8 and Table 3A.)



5. Court Litigation

a. Appellate Courts

In fiscal year 2006, 79 cases involving the NLRB were decided by the United States courts of appeals compared to 73 in fiscal year 2005. Of these, 75.9 percent were won by NLRB in whole or in part compared to 76.7 percent in fiscal year 2005; 11.4 percent were remanded entirely compared to 1.4 percent in fiscal year 2005; and 8.9 percent were entire losses compared to 2.7 percent in fiscal year 2005.



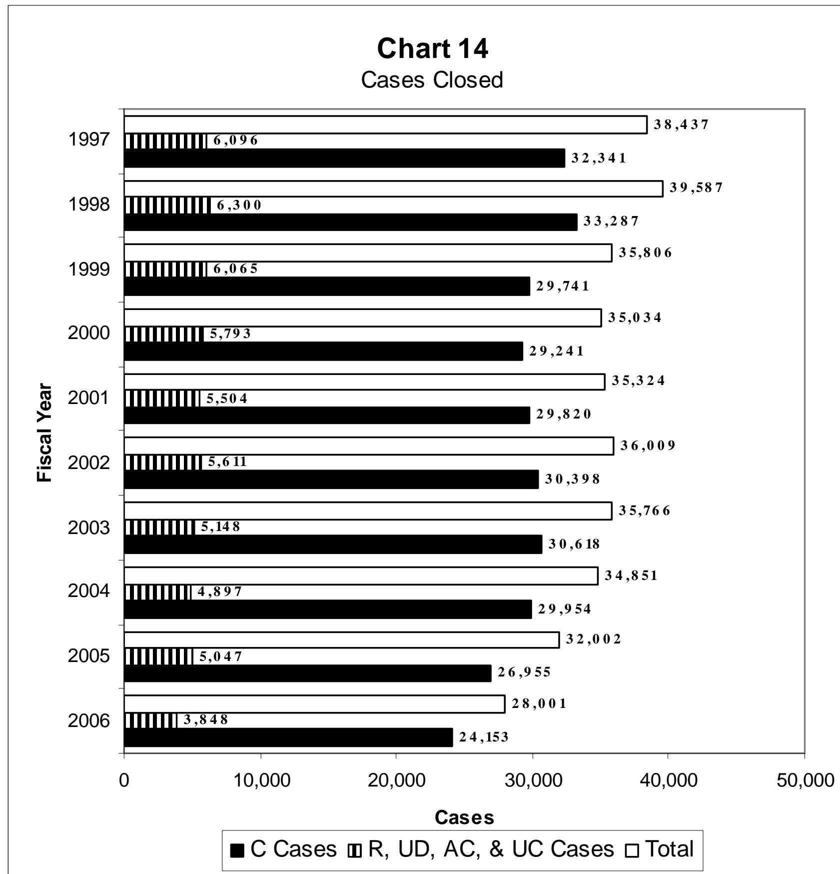
b. The Supreme Court

In fiscal 2006, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2006.

c. Contempt Actions

In fiscal 2006, 112 cases were formally referred to the Contempt Litigation and Compliance Branch for consideration of contempt or other compliance actions.[1] Eleven civil contempt or equivalent proceedings and 12 ancillary proceedings were instituted in Federal District Courts or Bankruptcy Courts. Thirteen 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.

[1] In 206 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.



d. Miscellaneous Litigation

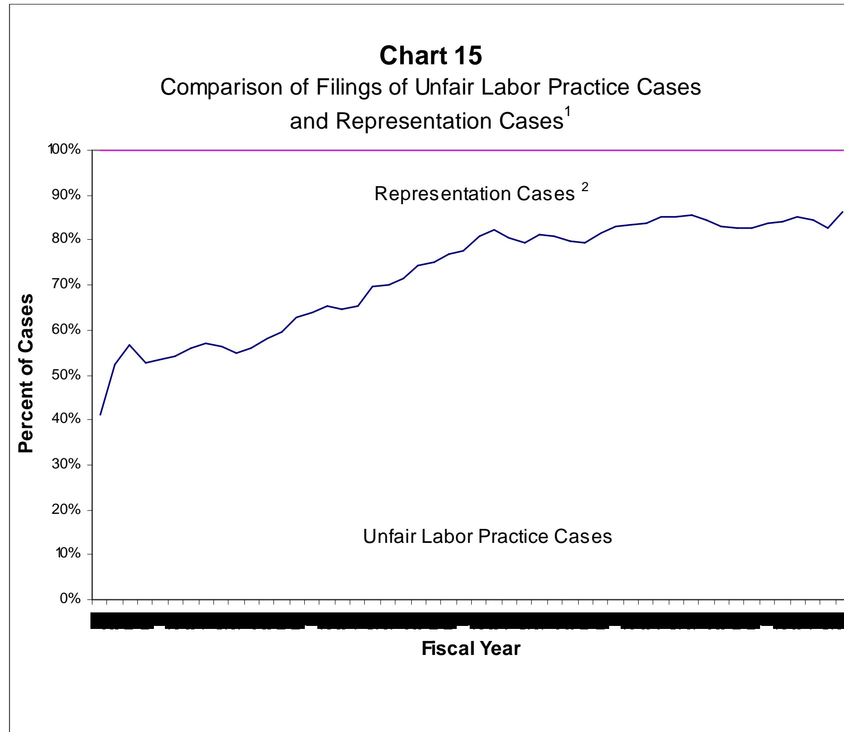
There were 14 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 13 cases. (Table 21.)

e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 25 petitions filed with the U.S. district courts, compared to 13 in fiscal year 2005. (Table 20.) Injunctions were granted in 13, or 87 percent, of the 15 cases litigated to final order.

NLRB injunction activity in district courts in 2006:

Granted…………………………………………………………....	13
Denied…………………………………………………………….	2
Withdrawn………………………………………………………...	2
Settled or placed on court's inactive lists……………….……….…...	7
Awaiting action at end of fiscal year..….……………….…..…..…….	2



C. Decisional Highlights

1. Jurisdiction Asserted Over Private Company Providing Passenger and Baggage Screening Services

In *Firstline Transportation Security*,[1] a Board majority held that it would exercise jurisdiction over Firstline Transportation Security, a private company that provides passenger and baggage screening services at an airport pursuant to a contract with the Transportation Security

[1] 347 NLRB No. 40 (Battista, Liebman, Schaumber, and Walsh; Kirsanow, dissenting)

Administration (TSA). The majority found that employees of Firstline are covered by the Act and are permitted to organize for purposes of bargaining collectively with their employer.

The majority, in considering whether to assert jurisdiction, examined the intersection of the Aviation and Transportation Security Act (ATSA), which created the TSA, and the National Labor Relations Act. The Board noted that TSA's statement to the Board provided that the ATSA does not prohibit privately employed airport screeners from engaging in collective bargaining.

The majority noted that 60 years of precedent established that the Board has not asserted national security or defense as a reason to deny employees their Section 7 rights to organize and bargain collectively. The majority found that assertion of jurisdiction is not incompatible with the maintenance of national security requirements and that unionism and collective bargaining are capable of adjustments to accommodate the special functions of security screeners. In addition, the regulations set forth in the ATSA already limit the collective-bargaining rights of security screeners. The majority concluded that the Employer's employees should be able to avail themselves of rights under the Act and the policy decision of removing privately employed screeners from the Act's coverage should be left to Congress.

Member Kirsanow, dissenting, acknowledged that the Board is not statutorily barred from asserting jurisdiction over private employers of airport security screeners but that the Board, as a matter of public policy, should decline to assert jurisdiction over such employers in the interest of national security. He noted that the Federal official at TSA entrusted with responsibility over airport security determined that national security precluded extending organizational rights to Federally-employed airport security screeners. He added that such a determination is outside the Board's expertise and that privately employed screeners perform exactly the same security functions as the Federally-employed screeners. He concluded that while Section 7 rights of employees are vitally important, the imperatives of national security are of paramount importance.

2. New Guidelines for Determining Supervisory Status

In *Oakwood Healthcare, Inc.*,[2] the Board set forth new guidelines for determining who is a supervisor under the National Labor Relations Act, and, in a 3-2 vote, found that the Employer's registered nurses (RNs) who serve as charge nurses on a permanent basis are statutory supervisors.

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[2] 348 NLRB No. 37 (Battista, Schaumber and Kirsanow; Liebman and Walsh, dissenting in part and concurring in part).

Exercising its discretion to interpret ambiguous language in the Act, and consistent with the Supreme Court's instructions in *NLRB v. Kentucky River Community Care,*[3] the Board reexamined and clarified its definitions of the terms "assign," "responsibly to direct," and "independent judgment" as those terms are used in Section 2(11) of the Act.

Applying the terms "assign," "responsibly to direct," and "independent judgment," as clarified, the majority found that the charge nurses, as a regular part of their duties, assigned nursing personnel to the specific patients for whom they would care during their shift. The majority found that such assignments, which consisted of giving "significant overall duties" to an employee, met the statutory definition of "assign" under the Act. The majority also found that the Employer established that its charge nurses exercised independent judgment in making such assignments. The majority further found, however, that the Employer failed to establish that charge nurses in the emergency room unit exercised "independent judgment" in making patient care assignments and that the rotating charge nurses exercised supervisory authority for a "substantial" part of their work time. As a result, the majority found that only the Employer's 12 permanent charge nurses were supervisors under the Act.

Dissenting, Members Liebman and Walsh disagreed with the majority's interpretations of the statutory terms "assign" and "responsibly to direct," observing that the majority's decision threatened to create a new class of workers under Federal labor law. The dissent observed that the language of the Act, its structure, and its legislative history all pointed to significantly narrower interpretations of the ambiguous statutory terms "assign ... other employees" and "responsibly to direct them" than the majority adopted.

3. Union Photographing of Employees During Organizing Campaign Found Objectionable

In *Randell Warehouse of Arizona, Inc. (Randell II*),[4] the Board, in a 3-2 decision, found that the Sheet Metal Workers Local 359 engaged in objectionable conduct when its agents photographed employees during the Union's distribution of campaign literature.

The majority found that employees have a right to accept or not accept the Union's literature, and that photographing them as they make that choice would reasonably be coercive. The Union did not provide the employees with any legitimate justification for the photographing. Thus,

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[3] 532 U.S. 706 (2001).
[4] 347 NLRB No. 56 (Battista, Schaumber and Kirsanow; Liebman and Walsh, dissenting).

the majority found that the Union's conduct tended to interfere with employee free choice in the election, and directed that a second election be held.

In a prior decision,[5] the Board found that the photographing was not objectionable because it was not accompanied by other coercive conduct. In that decision, the Board overruled precedent which had held that union photographing was objectionable even if it was not accompanied by other coercive conduct, but it retained the rule that employer photographing was presumptively coercive, even if it was not accompanied by other coercion.

The D.C. Circuit Court of Appeals[6] noted that the Board had not dealt adequately with its prior decision in *Mike Yurosek & Son, Inc.,*[7] and remanded the case for "further consideration and a reasoned opinion."[8]

Upon reconsideration, the majority concluded that the *Randell I* rationale for the different standards for employees and unions could not withstand careful scrutiny. The majority found that the rationale for finding that unexplained photographing has a reasonable tendency to interfere with employee free choice applies regardless of whether the party engaged in such conduct is a union or an employer. Thus, the disparate treatment embraced by the *Randell I* Board could not be squared with the Act's fundamental principles. A reasonable employee would anticipate that the union would not be pleased if he or she failed to respond affirmatively to the union's efforts to enlist support, just as an employee would anticipate that an employer would not be pleased if he or she rebuffed the employer's solicitation to reject union representation.

Accordingly, the majority overruled *Randell I* and found that,"[i]n the absence of a valid explanation conveyed to employees in a timely manner, photographing employees engaged in Section 7 activity constitutes objectionable conduct whether engaged in by a union or an employer."[9] Applying that principle, the majority concluded that the Union engaged in objectionable conduct by photographing employees as they were being offered literature by union representatives and that such photographing was presumptively coercive. The Union did not adequately explain its purpose for the photographing. The one explanation offered to a single employee—"It's for the Union purpose, showing transactions that are taking place. The Union could see us

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[5] *Randell Warehouse of Arizona*, 328 NLRB 1034 (1999) (*Randell I*).
[6] *Randell Warehouse of Arizona v. NLRB*, 252 F.3d 445 (D.C. Cir. 2001).
[7] 292 NLRB 1074 (1989).
[8] *Randell Warehouse of Arizona v. NLRB*, supra, 252 F.3d at 449.
[9] 347 NLRB No. 56, slip op. at 1.

handing flyers and how the Union is being run"—was ambiguous at best. It did not establish a legitimate justification for the photographing. Accordingly, the photographing reasonably tended to interfere with employee free choice, and the election must be set aside.

In dissent, Members Liebman and Walsh disagreed with the majority's overruling of *Randell I* and stated they would adhere to the Board's original decision. They noted, first, that the D.C. Circuit remanded the case to the Board for the limited purpose of considering whether certain allegedly coercive conduct by prounion employees made the Union's photographing objectionable, and thus it was unnecessary for the majority to reach out and overrule the Board's original decision. The dissent further contended that the majority failed to grasp the "very different positions that unions and employers occupy with respect to employees, in terms of campaign access, economic relationship, and potential for coercion," as well as the legitimate interests that unions have in photographing employees in order to gauge and record their interests in organizing.[10] The dissent found that employers are in a far more effective position to coerce employees than unions are and that employees likely will recognize the union's legitimate interest in photographing, in the absence of any coercive union conduct that would raise suspicion, even if the union does not provide employees with an explanation.

4. Refusal-to-Hire Remedial Orders in Successorship Context

In *Planned Building Services, Inc.*,[11] the Board unanimously clarified that the standard set forth in *Wright Line*,[12] rather than the framework of *FES*[13] should be applied in cases where an employer allegedly refuses to hire its predecessor's employees to avoid an obligation to bargain with the union that represents those workers.

The Board also refined the remedy for this type of case to strike a better balance between two principles that guide the Board's remedial discretion: placing the burden of uncertainty on the wrongdoer and avoiding a punitive remedy. The Board explained that to remedy a Section 8(a)(3) refusal to hire, the successor employer must offer reinstatement to the discriminatees and make them whole. To remedy a Section 8(a)(5) unlawful implementation of initial terms and conditions of employment, the successor must, at the union's request, rescind the unilateral changes made by the successor and restore the previous terms; recognize and bargain with the union; and make the employees whole.

[10] Id., slip op. at 10.
[11] 347 NLRB No. 64.
[12] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).
[13] 331 NLRB 9 (2000), enfd. 301 F.3d 83 (3d Cir. 2002).

The Board noted that a substantial issue exists as to how long the backpay should run at the predecessor's rate. It is difficult to know what would have occurred if the successor had fulfilled its duty to bargain instead of unilaterally imposing terms and conditions of employment. In doubt are both what terms would have been reached and when such terms would have been established. Accordingly, the Board refined its traditional make-whole relief to allow the Employer, in a compliance proceeding, to present evidence establishing that it would not have agreed to the monetary provisions of the predecessor employer's collective-bargaining agreement, and further establishing either the date on which it would have bargained to agreement and the terms of that agreement, or the date on which it would have bargained to good-faith impasse and implemented its own monetary proposals. If the Employer carries its burden of proof on these points, the Employer's make-whole obligation may be adjusted accordingly, the Board said.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2006, are as follows:

Personnel compensation	$161,590,497
Personnel benefits	37,361,472
Benefits for former personnel	5,300
Travel and transportation of persons	1,951,345
Transportation of things	291,208
Rent, communications and utilities	32,543,990
Printing and reproduction	168,070
Other services	11,147,006
Supplies and materials	1,210,137
Equipment	3,285,705
Insurance claims and indemnities	25,471
Total obligations and expenditures	$249,580,201

II

Board Procedure

A. Effect of Settlement Agreement

In *Septix Waste, Inc*.,[1] the central issue is whether the union's agreement to a settlement stipulation with the respondent constituted a waiver of the union's right to allege that certain pre-settlement conduct violated Section 8(a)(1).[2] A Board majority of Chairman Battista and Member Schaumber reversed the administrative law judge and dismissed several Section 8(a)(1) complaint allegations because they found the litigation of these allegations to be waived by the parties' stipulated agreement. Member Liebman dissented.

The stipulation, agreed to after the union filed initial unfair labor practice charges, stated that "[t]he Union by the present resigns all claims made or that could have been made to this date save for [the discharges of two named employees and a claim regarding wage negotiations]." After executing the stipulation, the union filed an amended charge containing the Section 8(a)(1) allegations at issue, all of which were based on facts in existence as of the date of the stipulation.

Under *Independent Stave Co*.,[3] the Board has the discretion to determine whether to give effect to any waiver or settlement, including private agreements. The majority emphasized the Board's longstanding and well-established policy favoring such private agreements and concluded that the union's attempts to circumvent its agreement "cannot be squared with the salutary policy of affording finality to the informal settlement of [labor] disputes."[4] Member Liebman, dissenting, questioned whether this case was within the purview of *Independent Stave* because the Section 8(a)(1) conduct was not the subject of a charge or complaint when the parties entered into the stipulation. Member Liebman reasoned that, in any event, the Board is not required by *Independent Stave* to defer to private settlement agreements simply because the parties have agreed to them, and that the Board is required to

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[1] 346 NLRB No. 50 (Chairman Battista, and Members Liebman and Schaumber).

[2] The Board also unanimously found, in agreement with the judge, that the respondent unlawfully discharged an employee for his union activities in violation of Sec. 8(a)(3) and refused to provide relevant information in violation of Sec. 8(a)(5). Chairman Battista and Member Liebman further agreed with the judge's finding that the respondent unlawfully discharged a second employee because the respondent did not meet its burden of showing it would have discharged the employee even if he had not engaged in union activity; Member Schaumber dissented, citing the employee's misconduct.

[3] 287 NLRB 740, 741 (1987).

[4] 346 NLRB No. 50, slip op. at 2, quoting *Courier-Journal,* 342 NLRB 1148, 1150 (2004).

analyze the settlement under all the factors set forth in that decision in determining whether to defer to a private settlement.

In *Diamond Electric Manufacturing Corp.*,[5] a Board majority (Chairman Battista and Member Liebman) held that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a final warning to union activist Peggy Heiden. A different majority (Chairman Battista and Member Schaumber) dismissed an allegation that the respondent had violated Section 8(a)(3) and (1) by discharging union activist Robert Bomia, found that the respondent's unlawful conduct did not warrant setting aside a prior settlement agreement, and held that a *Gissel*[6] bargaining order was not appropriate in these circumstances.[7]

On February 1, 1999, the Regional Director approved an informal settlement agreement between the respondent and the union. The agreement settled various unfair labor practice charges that the union had filed with the Board in the fall of 1998, as well as the union's objections to a representation election that was conducted on September 24, 1998.

Approximately 6 weeks after the settlement agreement was approved, the respondent disciplined Heiden, allegedly for engaging in insubordinate conduct. The Board rejected this proffered reason for the discipline as pretext, finding that the respondent demonstrated "sustained antiunion animus" against Heiden. Accordingly, the Board concluded that the respondent acted with a discriminatory motive in issuing the discipline.

About a week before Heiden was disciplined, Bomia was discharged by the respondent. The Board found that Bomia was discharged for an assembly line error and his past misconduct, and that the General Counsel had failed to establish that the discharge was motivated by antiunion animus. The Board refused to consider whether the respondent's presettlement conduct constituted evidence of antiunion animus, finding that a nonadmission clause in the settlement agreement precluded any consideration of the presettlement violations[8] and that the presettlement facts did not involve Bomia.

Citing *Coopers International Union,*[9] the Board concluded that the respondent's single unlawful disciplinary action against Heiden was insufficient to set aside the settlement agreement. The Board also

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[5] 346 NLRB No. 83 (Chairman Battista, and Members Liebman and Schaumber).
[6] *NLRB v. Gissel Packing Co.,* 395 U.S. 575 (1969).
[7] Member Schaumber found it unnecessary to pass on whether the respondent unlawfully disciplined Heiden because he found that even assuming the discipline was unlawful, he violation was insufficient to warrant setting aside the settlement agreement.
[8] See *Parker Seal Co*., 233 NLRB 332, 335 (1977); and *Steves Sash & Door Co*., 164 NLRB 468, 476 (1967).
[9] 208 NLRB 175 (1974).

concluded that this single violation was insufficient to warrant anything other than a traditional remedy, and it declined to issue a *Gissel* bargaining order.

Dissenting, Member Liebman found that Bomia was treated more harshly than other employees who had made similar or more serious production errors, and that there was no evidence that Bomia's past misconduct was a motivating factor in his discharge. Citing *Electrical Workers Local 613,*[10] Member Liebman also found it appropriate to rely on the respondent's presettlement conduct as background evidence of its antiunion animus, even though this conduct was not directed toward Bomia. Accordingly, based on these findings of animus, disparate treatment and pretext, Member Liebman concluded that Bomia's discharge was unlawful. In light of finding this additional violation, Member Liebman concluded that the respondent had breached the terms of the settlement agreement and that the agreement should be set aside. She further concluded that the respondent's persistence in violating the Act demonstrated the need for a *Gissel* bargaining order.

B. Misconduct at Hearing Before an Administrative Law Judge

In *Mail Contractors of America, Inc.,*[11] the Board majority struck the administrative law judge's issuance of a "Notice of Potential Admonishment, Reprimand or Summary Exclusion" (Notice) imposed against respondent's counsel under Section 102.177(b) of the Board's Rules and Regulations.[12] The Board found that the Notice, based on counsel's alleged misconduct at the hearing, was not warranted because counsel had received no prior notice that his acts, singularly or cumulatively, could subject him to sanctions.

In his decision, the judge held that the combined effect of various actions by the respondent's counsel at the hearing[13] constituted

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[10] 227 NLRB 1954 (1977).

[11] 347 NLB No. 88 (Chairman Battista and Member Liebman; Member Walsh dissenting).

[12] Sec. 102.177(b) states:

> Misconduct by any person at any hearing before an administrative law judge, hearing officer, or the Board shall be grounds for summary exclusion from the hearing. Notwithstanding the procedures set forth in paragraph (e) of this section for handling allegations of misconduct, the administrative law judge, hearing officer, or Board shall also have the authority in the proceeding in which the misconduct occurred to admonish or reprimand, after due notice, any person who engages in misconduct at a hearing.

[13] The judge found that the respondent's counsel spoke loudly, made exaggerated gestures, questioned a witness in an intimidating manner by standing too close to him, made inappropriate remarks, showed disdain for a ruling by laughing, made inappropriate responses to objections, ignored instructions not to address witnesses by their first names, misstated that the collective-bargaining representative was the International (not the Union), ignored instructions that only one counsel per witness make objections, repeatedly asked questions covering previous rulings,

misconduct which, if repeated in subsequent Board proceedings, would subject the respondent's counsel to possible admonishment, reprimand, or summary exclusion from a Board hearing in those proceedings. The judge stated that he did not construe Section 102.77(b) as requiring that he impose these sanctions during the hearing. Rather, he determined that they could be imposed at any stage "during the proceeding."

The Board agreed with the respondent that the Notice constituted, at a minimum, an admonishment under Section 102.177(b). Specifically, the Board observed that the Notice criticized the respondent's counsel "publicly and in writing with respect to his professionalism, which could have a negative effect on [the counsel's] reputation." In addition, the Board observed that the Notice purported to serve as the basis for future discipline against the respondent's counsel, thus affecting any future sanctions for repeated misconduct.[14]

Because the Board determined that the Notice constituted discipline, it held that the respondent's counsel was entitled to due notice before it was imposed. Because such notice was not provided, the Board struck the Notice.[15]

In dissent, Member Walsh found that the judge acted within his discretion in issuing the Notice. Member Walsh emphasized that the judge did not discipline the respondent's counsel, but merely provided the predisciplinary "notice" required by Board's Rules. Member Walsh further found that the judge permissibly provided this notice in his decision, rather than at the hearing. Finally, because he found that respondent's counsel was not disciplined, Member Walsh concluded that there was no due process problem.

C. Waiver of Attorney-Client Privilege with Regard to Subpoenaed Files

In *Wal-Mart Stores, Inc.*,[16] an unfair labor practice case involving the respondent's facility in Kingman, Arizona, the Board ordered the respondent to produce electronic files subpoenaed by the General Counsel, finding that whatever evidentiary privilege that might have shielded them from disclosure was waived by the respondent's production of the files in a concurrent state court proceeding.

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prolonged the proceedings so that he needed to be prompted to continue his examination of witnesses, and continued to argue after rulings were made on routine matters.

[14] The Board majority noted that, in a typical Board case, a warning by an employer that lays "a foundation for future disciplinary action against [the employee]" is also considered to be a disciplinary action. See, e.g., *Promedica Health Systems, Inc.*, 343 NLRB 1351 (2004), quoting *Trover Clinic*, 280 NLRB 6, 16 (1986).

[15] The Board majority declined to decide whether the admonishment or reprimand must be meted out, in all instances, during the hearing.

[16] 348 NLRB No. 46 (Chairman Battista and Members Liebman and Schaumber).

The files were part of the respondent's "Remedy System," a database developed to report, record, and track union activity at its stores. Labor managers gave advice on labor issues reported in the system. Managers had access to the system and in-house counsel reviewed every entry. The respondent argued that the files were protected from disclosure by the attorney-client privilege and the work-product privilege. The administrative law judge ruled that records were indeed cloaked by the attorney-client privilege and revoked the subpoena in pertinent part. The judge's decision and recommended order issued on February 28, 2003. While the case was pending before the Board on exceptions, the respondent notified the Board that it had disclosed the Remedy System files in an unrelated state court proceeding in Oklahoma in January 2004. The Board issued a notice to show cause why the asserted privilege should not be deemed waived. In response to the Board's notice, the respondent conceded for purposes of the unfair labor practice litigation that the disclosure of the files in state court constituted a prospective waiver with respect to future proceedings. However, it contended that because the evidentiary record in the Board proceeding closed after the judge made his ruling, and before the disclosure in state court, the disclosure did not operate as a waiver of the privilege with respect to the unfair labor practice proceeding.

The Board rejected this argument, noting that "[o]nce waived, the attorney-client privilege is lost in all forums for proceedings running concurrent with or after waiver occurs." *Genentech, Inc. v. U.S. International Trade Commission;*[17] *Centuori v. Experian Information Solutions, Inc.;*[18]

Citing the Board's Rules and Regulations, Section 102.48(a) and (b), the Board explained that in Board proceedings, a judge's decision does not become final until after the time for the filing of exceptions expires, provided that no exceptions are filed. In this proceeding, the General Counsel filed exceptions, including an exception to the judge's evidentiary ruling. The litigation of the unfair labor practice case, therefore, was an ongoing matter, running concurrently with the state court proceeding in which the respondent disclosed the files. Thus, the Board concluded that the disclosure in state court operated as a waiver of the privilege that had been asserted in the concurrent Board proceeding. Accordingly, the Board remanded the case to the judge to reopen the record to receive relevant evidence from the electronic files.

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[17] 122 F.3d 1409, 1416–1417 (Fed. Cir. 1997)
[18] 347 F. Supp. 2d 727, 729 (D. Ariz. 2004)

III

NLRB Jurisdiction

A. Political Subdivision

In *State Bar of New Mexico*,[1] the Board majority found that the State Bar of New Mexico is exempt from the Board's jurisdiction as a political subdivision under Section 2(2) of the Act because it was directly created by the State as an administrative arm of the judicial branch of the government.

The State Bar was initially created by statute in 1925 to operate as an agency of the New Mexico Supreme Court. In 1978, the New Mexico legislature repealed the statute, and replaced it by another 1978 statute, which provided that the Board of Bar Commissioners and State Board of Bar Examiners are "bodies of the judicial department and are not a state agency nor their employees public employees for purposes of workmen's compensation coverage, public employment retirement programs or social security coverage." New Mexico Statutes Annotated (N.M.S.A.) 1978, 36–2–9 (1979). The New Mexico Supreme Court simultaneously enacted Rule 24—101, which stated that "[a]cting with powers vested in it by the Constitution of this state . . . [t]he Supreme Court of New Mexico does hereby create and continue an organization known as the State Bar of New Mexico, all persons now or hereafter licensed in this state in the practice of law shall be members of the State Bar of New Mexico in accordance with the rules of this court." The Court also established the districts and number of bar commissioners to be elected from each district.

The State Bar receives the bulk of its operating revenues from the mandatory dues of its members. The Court exercises control over the mandatory dues paid by bar members by approving the fees and dues structure. The Court has retained final review authority over the financial operations of the State Bar by requiring that the Employer submit its budget for Court approval. The State Bar is also required to have an annual audit and provide a copy of the audit to the Court. Members of the Board of Bar Commissioners receive no pay from the State of New Mexico, and their travel-related expenditures are reimbursed directly by the Employer. The Employer has the authority to set the terms and conditions of employment for the petitioned-for unit of State Bar employees without any apparent oversight or approval by the Court. The Board of Bar Commissioners may select and employ an

[1] 346 NLRB No. 64 (Chairman Battista and Member Schaumber; Member Walsh dissenting).

executive director, who, among other things, serves as the chief operating officer of the State Bar and is charged with the supervision of the Employer's employees.

In finding the State Bar to be a political subdivision under prong one of *NLRB v. Natural Gas Utility District of Hawkins County,*[2] the Board reasoned that, based on the plain language of the statutes and the rules of the State of New Mexico, the State Bar was created by the New Mexico Supreme Court pursuant to its rulemaking authority, and serves as an administrative arm of the Court. The State Bar assists the judicial branch in regulating the legal profession. Moreover, the language of Rule 24–101 specifically created and continued the State Bar, which had initially been created by statute to operate as an agency of the Court, and this rule has been and may be amended by the Court. The New Mexico legislature simultaneously adopted a statute specifically defining the Board of Bar Commissioners and the State Board of Bar Examiners as "bodies of the judiciary department." The Court further reasoned that the New Mexico Supreme Court exercises substantial control over the State Bar by controlling the governing structure of the Bar and the Bar's priorities and operations. The Bar, through its authority to review and its power of final approval, exercises significant control over the Employer's budget. In addition, the State Bar fulfills regulatory functions on behalf of the Court, such as overseeing and administering committees and boards of the State Bar to ensure compliance with and enforcement of the Court's rules, and monitoring and enforcing New Mexico's requirement that licensed attorneys pay State licensing fees.

In his dissenting opinion, Member Walsh wrote that in finding the State Bar to be exempt from coverage under the Act, the majority focused on its quasi-public functions and certain indirect indices of control which the Court exercises over it. Member Walsh would focus, instead, as other Board decisions have, on the State Bar's day-to-day operations and the personnel and labor relations issues that directly affect its employees. The New Mexico Supreme Court, he reasoned, has little or no control over these matters; they are instead controlled by private actors who are acting within the structure of a private nonprofit organization. Member Walsh would also find that the State Bar is not exempt as a political subdivision under prong two of *Hawkins,* an issue not reached by the majority.

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[2] 402 U.S.600, 604–605 (1971). Under *Hawkins,* an entity is exempt from the Board's jurisdiction as a political subdivision if it was either (1) created by the State as an administrative arm of the judicial branch of government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

B. Provider of Passenger and Baggage Screening Service

The Board, in a 4–1 decision involving *Firstline Transportation Security, Inc.*, found that Firstline, a private company that provides passenger and baggage screening services at Kansas City International Airport in Kansas City, Missouri, pursuant to a contract with the Transportation Security Administration (TSA), is subject to the Board's jurisdiction.[3] Thus, the Board held that the employees are covered by the National Labor Relations Act (NLRA) and can organize for the purpose of collective bargaining.

The decision found that the Board is not statutorily barred from asserting jurisdiction over Firstline by TSA Under Secretary James Loy's determination that Federally-employed airport security screeners are not entitled to engage in collective bargaining. Further, in accordance with a long line of Board precedent, the Board would not decline to assert jurisdiction. In this regard, the Board concluded that the assertion of jurisdiction is not incompatible with the interests of national security. As the Board stated:

> The Board has been confronted with issues concerning national security and national defense since its early days. Our examination of the relevant precedent reveals that for over 60 years, in times of both war and peace, the Board has asserted jurisdiction over employers and employees that have been involved in national security and defense. We can find no case in which our protection of employees' Section 7 rights had an adverse impact on national security or defense.

In 2003, Admiral Loy issued a memorandum denying collective-bargaining rights and the right to representation to security screeners employed by the TSA. In issuing his memorandum, the under secretary relied on the annotation to Section 44935 of the Aviation and Transportation Security Act (ATSA), which vests the under secretary with the authority to set the terms and conditions of employment of screeners in the "Federal Service." The first issue confronting the Board was whether this memo applied to employees of private contractors. The Board queried the TSA, and the TSA responded that the annotation to Section 44935 applies only to security screeners employed by the TSA and not to privately-employed security screeners and, therefore, does not prohibit privately-employed screeners from engaging in collective bargaining.

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[3] 347 NLRB No. 40 (Chairman Battista and Members Liebman, Schaumber, and Walsh; Member Kirsanow dissenting).

The Board found that:

> Given this interpretation, the Memorandum issued by the Under Secretary cannot apply to privately employed security screeners because of a lack of statutory underpinning. The Under Secretary only has the statutory authority to 'fix the compensation' and the 'terms and conditions of employment' of Federally-employed screeners and can consequently use that power to prohibit them from being represented for the purposes of collective-bargaining. The annotation does not provide the Under Secretary the statutory authority to prohibit private screeners from being represented for the purposes of collective bargaining, even though those individuals carry out the same security screening function as Federally-employed screeners.

The Board in *Firstline* concluded:

> Since the TSA is the agency charged with administering the ATSA, we defer to the TSA's interpretation of that statute. Indeed, its interpretation is our primary reason for rejecting the Employer's and amici curiae's argument that Admiral Loy's Memorandum applies to privately employed screeners.

Further, after reviewing over 60 years of Board precedent, the majority rejected calls that the Board decline to assert jurisdiction in the interest of national security. The Board found that "[a]bsent both a clear statement of Congressional intent and a clear statement from the TSA that would support our refusal to exercise jurisdiction, we will not create a non-statutory, policy-based exemption for private screeners," who are otherwise entitled to the protections of the NLRB. The Board concluded that "we should leave the policy decision to Congress, since the issue is essentially not one of federal *labor* policy, but of national-security policy." [emphasis in original]

In dissent, Member Kirsanow agreed with the majority that the Board is not statutorily barred from asserting jurisdiction over private employers of airport security screeners. However, as a matter of public policy, he would decline to assert jurisdiction over such employees in the interest of national security.

Member Kirsanow stated he would:

> [D]efer to the finding of the federal official entrusted with responsibility over airport security, which is that unionization and collective bargaining are incompatible with the critical national security responsibilities of individuals carrying out the security-screening function.

Member Kirsanow stressed that his position was "based on two circumstances never before presented to the Board and unlikely ever to be presented again." First, Federal and private employees perform indistinguishable functions deemed critical to national security and second, the responsible agency head has found that these functions are incompatible with collective bargaining.

Member Kirsanow concluded:

> This is not a situation in which national security and Section 7 rights may be harmonized and reconciled. A contrary determination has been made. Thus, although I am deeply mindful of employee rights, in this highly unusual and perhaps even unique case I cannot accord them primacy.

C. Employer Unfair Labor Practices in Mexico

In *California Gas Transport, Inc.*,[4] the Board unanimously found that the respondent violated Section 8(a)(1) of the Act where the respondent's unlawful conduct occurred in Mexico.

The respondent, a U.S.-based company headquartered in El Paso, Texas, and with operations in Nogales, Arizona, and San Diego, California, transported propane gas on trucks to distribution facilities in Mexico. While the respondent's employee drivers were employed primarily in the U.S., their duties required visits to Mexico to unload propane and to perform other job-related tasks. The Board found that the respondent violated Section 8(a)(1) by threatening employees with unspecified reprisals, soliciting employees to resign, and threatening employees with discharge. The respondent committed these unfair labor practices in Mexico.

In asserting jurisdiction over these violations, the Board relied on its decision in *Asplundh Tree Expert Co.*,[5] where the Board asserted jurisdiction over a respondent because "the main effect of the respondent's actions was not extraterritorial" and because the "results of the respondent's conduct were principally felt in the United States." The Board concluded that its effects-based approach in *Asplundh* was consistent with the Supreme Court's post-*EEOC v. Arabian American Oil Co. (Aramco)*[6] decisions, in which the Court weakened its strict presumption against extraterritoriality.

Applying *Asplundh*, the Board found that the conduct of the respondent's supervisors and agents, in the form of 8(a)(1) violations,

[4] 347 NLRB No. 118 (Chairman Battista and Members Liebman and Walsh).
[5] 336 NLRB 1106 (2001), enf. denied 365 F.3d 168 (3d Cir. 2004).
[6] 499 US 244 (1991).

caused unlawful effects in the U.S., including interference with the employees' ability to exercise their Section 7 rights in the U.S. In doing so, the Board stated that the respondent should not be permitted to escape responsibility for actions directed at its American work force simply because they occurred a short distance beyond an international border. The Board also noted that asserting jurisdiction over the violations would not create a serious risk of interference with Mexico's ability to regulate its own commercial affairs.

IV

Representation Proceedings

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

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

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

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

A. Appropriate Unit Issues

Supervisory Status

In *Oakwood Healthcare, Inc.*,[1] the Board set forth guidelines for determining whether an individual is a supervisor under the National Labor Relations Act. By a 3–2 vote, the Board held that the permanent charge nurses employed by the employer, Oakwood Heritage Hospital, an acute care hospital, exercised supervisory authority in assigning employees within the meaning of Section 2(11) of the Act.

[1] 348 NLRB No. 37 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).

The Board found that the charge nurses, as a regular part of their duties, assigned nursing personnel to the specific patients for whom they would care during their shift. The Board found that such assignments, which consisted of giving "significant overall duties" to an employee, met the statutory definition of "assign" under the Act. The Board further found that the employer met its burden to show that its charge nurses exercised independent judgment in making such assignments. Finally, the Board found that the employer failed to establish that the rotating charge nurses exercised supervisory authority for a "substantial" part of their work time. As a result, the Board found that only the employer's permanent charge nurses were supervisors, rather than employees, under the Act.

In *NLRB v. Kentucky River Community Care,*[2] the Supreme Court criticized the Board's extant interpretation of the Section 2(11) term "independent judgment." As a result, the Board endeavored in its *Oakwood Healthcare* decision to reexamine and clarify its interpretations of the term "independent judgment" as well as the terms "assign" and "responsibly to direct," as those terms are set forth in Section 2(11). The Board proffered the following definitions.

The Board defined "assign" as the act of "designating an employee to a place (such as a location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee." Further, to "assign" for purposes of the Act, "refers to the . . . designation of significant overall duties to an employee, not to the . . . ad hoc instruction that the employee perform a discrete task."

The Board then defined the statutory term "responsibly to direct" as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' . . . and carried out with independent judgment." The Board held that the element of "responsible" direction involved a finding of accountability, so that it must be shown that the "employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary" and that "there is a prospect of adverse consequences for the putative supervisor" arising from his/her direction of other employees.

Finally, consistent with the Supreme Court's decision in *Kentucky River*, the Board adopted an interpretation of the term "independent judgment" that applies irrespective of the Section 2(11) supervisory

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[2] 532 U.S. 706 (2001).

function implicated, and without regard to whether the judgment is exercised using professional or technical expertise. The Board defined the statutory term “independent judgment” in relation to two concepts. First, to be independent, the judgment exercised must not be effectively controlled by another authority. Thus, where a judgment is dictated or controlled by detailed instructions or regulations, the judgment would not be found to be sufficiently “independent” under the Act. The Board further found that the degree of discretion exercised must rise above the “routine or clerical” in order to constitute “independent judgment” under the Act.

In joining the majority opinion, Member Kirsanow, in considering the element of independent judgment in conjunction with the authority to “assign,” relied on a narrower range of evidence than his colleagues in the majority. He emphasized that the charge nurses’ assignments of nursing staff to patients involved meaningful acts of discretion and reasoned determinations that went beyond the obvious routine.

In dissent, Members Liebman and Walsh disagreed with the majority’s definitions of the statutory terms “assign” and “responsibly to direct,” and further disagreed with the majority’s finding that the employer’s charge nurses exercise supervisory authority in “assigning” other employees.

The dissent contended that the majority erred in defining the term “assign” to include the act of assigning overall tasks to employees. In the dissent’s view, the assigning of tasks to employees is a “quintessential function of the minor supervisors whom Congress clearly did *not* intend to cover in Section 2(11).” Accordingly, the dissent would define “assign” under the Act as the act of determining “an employee’s position with the employer,” an employee’s “designated work site,” or an employee’s “work hours.”

The dissent also disagreed with the majority’s definition of “responsibly to direct,” contending that the drafters of Section 2(11) only intended the phrase to include “persons who were effectively in charge of a department-level *work unit*, even if they did not engage in the other supervisory functions identified in Section 2(11).” As a result, the dissent would require the following showing to establish that a putative supervisor has the authority to “responsibly direct”: The individual has been delegated substantial authority to ensure that a work unit achieves management’s objectives and is thus “in charge”; the individual is held accountable for the work of others; and the individual exercises significant discretion and judgment in directing his or her work unit.

The Board, in *Golden Crest Healthcare Center*,[3] applied the definitions for "assign" and "responsibly direct" set forth in *Oakwood Healthcare*, and found that the Golden Crest's charge nurses at a nursing home did not exercise supervisory authority under the Act.

First, the Board found that the charge nurses at issue lacked the authority to "assign" other employees under the Act, emphasizing that Golden Crest failed to establish that the charge nurses possessed the authority to require other employees to stay past the end of their shifts, to come in from off-duty status, or to shift section assignments.

The Board further found that the charge nurses at issue lacked the authority to "responsibly direct" other employees under the Act, insofar as Golden Crest failed to establish that the charge nurses were actually held accountable for the job performance of other employees. The Board found that the "accountability" requirement set forth in *Oakwood Healthcare* was not satisfied by Golden Crest's evidence that it had a practice of rating charge nurses in their annual evaluations on their performance in directing other employees. The Board found that this evidence constituted merely "paper" accountability and was insufficient to establish that there was an actual prospect that the charge nurses' terms and conditions of employment could be affected, either positively or negatively, as a result of their performance in directing other employees. Accordingly, having found that the charge nurses at issue neither "assigned" nor "responsibly directed" other employees within the meaning of Section 2(11) of the Act, the Board concluded that the Golden Crest charge nurses were statutory employees, not supervisors.

The Board issued another decision using the *Oakwood Healthcare* test for supervisory status in *Croft Metals, Inc.*[4] In *Croft*, the Board applied the definitions for "assign" and "responsibly to direct" set forth in the *Oakwood Healthcare* decision to find that the lead persons at the manufacturing facility at issue did not exercise supervisory authority under the Act.

After finding that the lead persons did not possess the authority to "assign" under the Act, the Board then found that the lead persons responsibly directed their line or crew members. The Board found that the lead persons were required to manage their assigned teams, to correct improper performance, to shift employees, and to decide the order in which work was to be performed in order to achieve production goals. The Board further found that the lead persons were held accountable for the performance of their crew or line members.

[3] 348 NLRB No. 39 (Chairman Battista and Members Schaumber and Kirsanow).
[4] 348 NLRB No. 38 (Chairman Battista and Members Schaumber and Kirsanow).

The Board then found that the Croft failed to meet its burden to establish that the lead persons exercised independent judgment in directing their crew or line members. The Board found that the lead persons' exercise of judgment was either fundamentally controlled by pre-established guidelines, such as delivery schedules, or was simply routine. Accordingly, the Board found that the lead persons did not exercise supervisory authority under the Act.

B. Election Objections

1. Union Photographing of Employees During Organizing Activities

The Board, in a 3–2 decision[5] involving *Randell Warehouse of Arizona*, found that Sheet Metal Workers Local 359 (the union) engaged in objectionable conduct when its agents photographed employees during the union's distribution of campaign literature.

The Board found that employees have a right to accept or not accept the union's literature, and that photographing them as they make that choice would reasonably be coercive. The union did not provide the employees with any legitimate justification for the photographing. Thus, the Board found that the union's conduct tended to interfere with employee free choice in the election, and directed that a second election be held.

In a prior decision *(Randell* I),[6] the Board found that the photographing was not objectionable because it was not accompanied by other coercive conduct. In that decision, the Board overruled precedent which had held that union photographing was objectionable even if it was not accompanied by other coercive conduct. The Board there articulated the rule that employer photographing was presumptively coercive, even if it was not accompanied by other coercion.

The D.C. Circuit Court of Appeals did not agree with the Board. The court noted that the Board had not dealt adequately with its prior decision in *Mike Yurosek*, 292 NLRB 1074 (1989). The court remanded the case for "further consideration and a reasoned opinion." The court did not preclude the Board from overturning precedent so as to clarify Board law.

Upon reconsideration, the Board in *Randell II* concluded that the *Randell I* rationale for the different standards for employers and unions could not withstand careful scrutiny. The Board stated:

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[5] 347 NLRB No. 56 (Chairman Battista and Members Schaumber and Kirsanow; Members Liebman and Walsh dissenting).

[6] 328 NLRB 1034 (1999).

> [T]he rationale for finding that unexplained photographing has a reasonable tendency to interfere with employee free choice applies regardless of whether the party engaged in such conduct is a union or an employer. Thus, the disparate treatment embraced by the *Randell I* Board cannot be squared with the Act's fundamental principles.

The Board further held:

> In the context of an election campaign, the union seeks to become (or remain) the representative of the unit employees. To achieve this goal, the union must convince a majority of employees to vote in its favor. A reasonable employee would anticipate that the union would not be pleased if he or she failed to respond affirmatively to the union's efforts to enlist support, just as an employee would anticipate that an employer would not be pleased if he or she rebuffed the employer's solicitation to reject union representation.

Accordingly, the Board overruled *Randell I* and found that:

> [I]n the absence of a valid explanation conveyed to employees in a timely manner, photographing employees engaged in Section 7 activity constitutes objectionable conduct whether engaged in by a union or an employer.

Applying that principle, the Board concluded that:

> [T]he Union engaged in objectionable conduct by photographing employees as they were being offered literature by Union representatives. For the reasons explained above, such photographing is presumptively coercive. Moreover, the Union did not adequately explain its purpose for the photographing. The one explanation offered to a single employee—"It's for the Union purpose, showing transactions that are taking place. The Union could see us handing flyers and how the Union is being run"—was ambiguous at best. It did not establish a legitimate justification for the photographing. Accordingly, the photographing reasonably tended to interfere with employee free choice, and the election must be set aside.

In dissent, Members Liebman and Walsh disagreed with the majority's overruling of *Randell I* and stated they would adhere to the Board's original decision. They noted, first, that the D.C. Circuit remanded the case to the Board for the limited purpose of considering whether certain allegedly coercive conduct by prounion employees made the union's photographing objectionable, and thus it was unnecessary for the majority to reach out and overrule the Board's original decision. The dissent contended further that the majority failed to grasp the "very different positions that unions and employers occupy with respect to

employees, in terms of campaign access, economic relationship, and potential for coercion," as well as the legitimate interests that unions have in photographing employees in order to gauge and record their interests in organizing.

The dissent found that employers are in a far more effective position to coerce employees than unions are, stating:

> To point out the obvious, employees are economically dependent on the employer, who controls every aspect of their working lives. The employer may fire workers, discipline them, impose harsher working conditions, cut their pay, and deny them benefits.

The dissent also contended that employees likely will recognize the union's legitimate interest in photographing, in the absence of any coercive union conduct that would raise suspicion, even if the union does not provide employees with an explanation.

The dissent defended the *Randell I* rationale for applying a different standard to union and employer photographing, stating:

> Recognizing that the realities of the workplace bear differently on employers and on unions is not disparate treatment; it is common sense and fidelity to the Act. Our original decision in this case was correct. Today's decision, in contrast, is arbitrary both in failing to see the difference between union photographing and employer photographing and in failing to see the similarity between union photographing and other, permissible organizing tools. The result places unions in a dilemma: Photographing employees is objectionable, unless a legitimate justification is communicated to the employees, but the majority implies that a central justification for photographing employees, to identify supporters and potential supporters of the union, is inherently coercive. In light of its internal contradictions, we do not see how the majority's decision can stand.

2. Maintenance of Overbroad Work Rules

In *Longs Drug Stores*,[7] the Board unanimously agreed with the administrative law judge's finding that the respondent's maintenance of overly broad confidentiality rules was unlawful. However, a Board majority of Chairman Battista and Member Schaumber reversed the judge's further findings that, by maintaining these rules and campaigning near the voting area, the Respondent engaged in objectionable conduct

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[7] 347 NLRB No. 45 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).

warranting setting aside the results of the election. Member Liebman dissented from the majority's findings that the respondent's conduct was not objectionable and did not warrant setting aside the election.

During an organizational campaign culminating in the union's loss in a Board election, the respondent concurrently maintained two employee handbooks with rules prohibiting the disclosure of confidential information, including one rule which prohibited discussion of wages. The provisions were not adopted in response to the union campaign and there is no evidence that they were ever enforced. To the contrary, there was affirmative evidence that employees openly discussed wages and other terms and conditions of employment during the campaign.

Based on these facts, and the wide margin of the union's loss in the election, the Board concluded that it was "virtually impossible" that the employee handbook confidentiality provisions could have had an effect on the results of the election. Member Liebman, dissenting, agreed that the "virtually impossible" standard is controlling in analyzing the conduct, but disagreed with the majority's conclusion. She reasoned that, "Even if mere maintenance of the rule is insufficient to set aside the election, the record here does not virtually negate the possibility that employees were affected by the rule."

The Board further found that lead employees, whether or not the respondent's nonsupervisory agents, did not engage in objectionable electioneering when they spoke among themselves while maintaining order near the voting line. The Board noted that Board law finds objectionable electioneering when parties engage in sustained conversations with voters while the voters are in the polling place waiting to vote. Concluding that the leads' conduct was not objectionable, the Board reasoned that "while employees waiting in line to vote may have overheard the statements made by the lead employees, those statements were not conversations with employees." Member Liebman disagreed, asserting that the majority's interpretation of the Board's no-electioneering rule was too narrow, because the Board previously applied the rule "in situations analogous to this case, where no actual conversations occurred but where agents nonetheless effectively communicated an antiunion message to waiting voters."

C. Unit Clarification

1. Deferral to Arbitrator's Award

In *Advanced Architectural Metals, Inc*,[8] the Board majority held that the deferral to an arbitrator's award instead of processing the petition

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[8] 347 NLRB No. 111 (Chairman Battista and Member Schaumber; Member Walsh dissenting).

was not appropriate because the issue presented by the petition turned, at least in part, on statutory policy and not solely on the interpretation of the parties' collective-bargaining agreement. The Board reinstated the petition and remanded to the case to Regional Director for further processing of the petition.

The issue deferred to the arbitrator was whether a unit of shop employees, who were covered by an expired shop agreement, constitutes a separate appropriate unit from employees working outside the shop, who were covered by an existing multiemployer agreement. The employer filed the unit clarification petition seeking to clarify whether there is a separate unit of shop employees, excluding employees working under the multiemployer agreement. The Regional Director found that the issue involved contract interpretation, and therefore he deferred the issue to the parties' grievance-arbitration procedure. An arbitrator then issued an award finding that the shop employees were covered by the multiemployer agreement upon expiration of the shop agreement. The Regional Director revoked the deferral letter and dismissed the petition, finding no basis for not deferring to the arbitrator's award.

The Board found merit to the employer's argument that deferral to the arbitrator's award is not appropriate because the findings of the arbitrator implicate Board law and policy. The Board determined that resolving the issues in this case involves "application of the Board's appropriate unit principles, community of interest criteria, and accretion standards."[9] The Board emphasized that these are the very issues emphasized in *Marion Power Shovel*[10] that require the application of statutory policy, standards, and criteria. The Board concluded that the issue of whether to clarify the shop employees unit is a determination that is solely for the Board to make.

In his dissent, Member Walsh stated that the Regional Director properly deferred to the arbitrator's award and dismissed the petition. He disagreed with the majority's claim that resolving the issue of whether the multiemployer agreement covered the shop employees required application of accretion and community of interest principles. First, the arbitrator's award made plain that the arbitrator did not resolve the case based on accretion, but addressed accretion simply because the Employer raised it. The dispostive issue in this case, and the one on which the arbitrator based his decision, was one of contract interpretation. Second, there is no basis for questioning the appropriateness of a unit that includes the shop employees. The shop employees are not part of a newly established classification. Nor is there an allegation that that their

[9] Id. at 2.
[10] 230 NLRB 576, 577–578. (1977).

duties and responsibilities have changed. Member Walsh concluded that where, as here, resolution of the issue does not implicate statutory policy, the Board's procedures need not and should not supplant the parties' contractual dispute resolution procedure.

2. Waiver of Right to File Unit Clarification Petition

In *United States Postal Service*,[11] the Board majority held that the employer was not estopped from filing a unit clarification petition to exclude employees from a bargaining unit despite the issuance of an arbitration award on the same issue. The Board found that the employer did not breach a settlement agreement between the parties because the employer did not clearly and unmistakably waive its statutory right to file the petition.

The employer and the union are parties to collective-bargaining agreement that recognizes the union as the collective-bargaining representative for a nationwide unit of employees, including postal clerks. The union filed a unit clarification petition seeking to include in the unit approximately 250 Executive and Administrative Service (EAS) classifications. The union withdrew the petition pursuant to a settlement agreement, and the parties submitted to an arbitrator the issue of whether one of the EAS classifications, Address Management System Specialists, should be included in the unit. The arbitrator issued an award that included the classification in the unit.

The settlement agreement, however, was silent regarding the rights and obligations of the parties if either of the parties disagreed with the results of the arbitration, including whether any party could file a unit clarification petition. Following the arbitration, the employer filed a unit clarification petition to exclude from the unit all EAS personnel not historically represented by any postal union.

The Board found that "there was no express agreement that the employer would refrain from exercising its right to file a petition with the Board."[12] The Board found the decision in *Verizon Information Systems*[13] was not dispostive of this case. In *Verizon Information Systems*, the union was estopped from filing a petition with the Board because it had invoked the benefits of a voluntary-recognition agreement and then sought to abandon the agreement. Unlike the union, the employer in this case carried out its obligations under the settlement agreement, including completing the arbitration process. There was no express agreement that the employer would refrain from exercising its right to file a petition, and

[11] 348 NLRB No. 3 (Chairman Battista and Member Schaumber; Member Liebman dissenting).
[12] Id. at 2.
[13] 335 NLRB 558 (2001).

therefore the employer did not clearly and unmistakably waive its right to file a petition with the Board. Because the right involved is the statutory right of access to the Board, the Board would not lightly infer an agreement to forgo that right from the withdrawal of the petition or the parties' agreement to go to arbitration. The Board pointed out that the parties could easily have provided that the employer agrees not to raise these issues before the Board, but the parties did not.

In her dissent, Member Liebman emphasized that this case is governed by *Verizon Information Systems*. Applying that case, she determined that that the Regional Director in this case properly dismissed the petition based on the parties' arbitration agreement, which the employer had first invoked and then abandoned. Member Liebman stated further:

> [T]he majority's approach is untenable. The obvious intent of the parties was to make the arbitration proceeding final and binding, which implicitly precludes the filing of a petition with the Board. By its terms, the arbitration agreement "represents an understanding between the parties to fully and completely resolve any and all issues, and all currently pending grievances regarding the [Union's] Unit Clarification petition." Insofar as the *Employer's* current petition involves the same issues as the Union's earlier petition, they, too, are necessarily covered by the arbitration agreement. Indeed, the agreement contemplates that the anticipated arbitration awards would establish controlling precedent. To the extent the waiver standard might apply (contrary to *Verizon*), it was satisfied.

Id. at 2–3 (footnotes omitted). Member Liebman concluded that the Employer had its bite of the apple and therefore she would affirm the Regional Director's dismissal of the petition.

V

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 2006 that involved novel questions or set precedents that may be of substantial importance in the future administration of the Act.

A. Employer Interference with Employee Rights

1. Promise of Benefits

In *Hampton Inn NY-JFK Airport,*[1] the Board majority found that the respondent did not violate the Act by promising new benefits in anticipation of a union organizing campaign among employees, because the General Counsel failed to establish that the respondent knew that the union had begun organizing efforts at the time the respondent promised the benefits. The Board also concluded that the respondent did not unlawfully make the promises even if it thought that such a campaign might begin at some point.

Key to this decision, the Board held that

> to find an employer's promise of economic benefits unlawful, the Board must focus on whether the respondent intended to interfere with actual union organizational activity among its employees, rather than whether the respondent wanted to stay 'one step ahead' of the union by diminishing the appeal of unionization.

The facts indicated that the respondent wanted to stay one step ahead of unionization generally and had hired a labor consultant to assist in these efforts. At the time the respondent promised improved benefits, however, the union had already started its organizing campaign.

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[1] 348 NLRB No. 2 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

Determinative in this case was the lack of evidence that the respondent was actually aware of the campaign at the time.

The Board relied on *NLRB v. Exchange Parts*,[2] where the Supreme Court held that "the conferral of employee benefits while a representation election is pending, for the purpose of inducing employees to vote against the union," interferes with the employees' protected right to organize, and *Curwood Inc.*,[3] in which the Board held that a pre-petition announcement and promise to improve pension benefits violated Section 8(a)(1) where the respondent was reacting to knowledge of union activity among its employees. The Board wrote:

> If, as the judge held, correctly anticipating union activity was sufficient to establish an 8(a)(1) violation, the result would effectively prohibit nonunion employers from improving working conditions in hopes of diminishing the appeal of unionization generally, even when no union is present and where employees have not shown any desire to bring a union onto the scene.

Dissenting, Member Liebman proposed that the Board find that an employer violates Section 8(a)(1) by promising a benefit when: (1) the employer is motivated by a desire to prevent employees from unionizing; (2) organizing activity is in fact under way; and (3) the employees reasonably would perceive a connection between the employer's promise of benefits and their protected activity. Member Liebman found all three elements are satisfied in this case and that the Respondent violated Section 8(a)(1) by promising benefits.

2. Unprotected Employee Activities

In *Phoenix Processor Limited Partnership*,[4] the Board majority reversed the judge's decision and found that fish processors working aboard the ship *Ocean Phoenix* were seamen, and thus not entitled to engage in a concerted shipboard work stoppage under *Southern Steamship Co. v. NLRB.*[5] Accordingly, the Board found that the respondent did not violate the Act when it discharged the processors after they refused to return to work.

The judge found that the processors were not seamen, and thus *Southern Steamship*'s prohibition on shipboard concerted work stoppages did not apply. The Board reversed the judge, finding that, in addition to the agreement of the parties that the processors were seamen,

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[2] 375 U.S. 405, 409 (1964).
[3] 339 NLRB 1137, 1147–1148 (2003), enfd. in pertinent part 397 F.3d 548, 553–554 (7th Cir. 2005).
[4] 348 NLRB No. 4 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).
[5] 316 U.S. 31 (1942).

the processors met the test for seaman status under *Chandris v. Latsis*[6] and other precedent.

The Board next found, rejecting the General Counsel's contention in this regard, that the processors had not been discharged before they refused to return to work. The Board found that, even though a supervisor had told the processors that they were fired for walking away from their jobs, subsequent statements from the ship's captain and production manager that they could return to work without penalty demonstrated that there was no reasonable basis for the processors to believe that they had been discharged. Accordingly, because the processors subsequently refused to return to work, the Board found that the respondent lawfully discharged them under *Southern Steamship*. In doing so, the Board distinguished other Board cases that found employees engaged in shipboard protected activity, because those cases did not involve a refusal to obey a direct order to return to work.

In dissent, Member Liebman, who agreed that the processors were seamen, asserted that *Southern Steamship* was distinguishable because the processors here were at-will employees who had not signed shipping articles like the crew in *Southern Steamship*, and had not actually refused a direct order to return to work. Member Liebman further asserted that *Southern Steamship* does not require finding that all concerted work stoppages aboard a ship are necessarily unprotected.

The Board unanimously adopted the judge's other findings, that the respondent violated the Act by discharging two employees for engaging in protected, concerted activity and by interrogating another employee about his protected, concerted activity.

In *TNT Logistics of North America,*[7] the Board majority found, contrary to the administrative law judge, that the respondent did not violate Section 8(a)(1) by discharging three employees, because the conduct for which they were discharged was not protected under the Act. Member Walsh dissented.

At issue is whether a letter sent by the employees to the respondent's corporate management and to its primary customer, with threats of further dissemination, constituted unprotected activity because it was maliciously false, warranting the employees' discharge for cause. The letter listed items that the employees believed constituted mistreatment and discrimination by two named managers. It described four particular areas of employee concern: health, funerals, insurance, and logbooks.

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[6] 515 U.S. 347, 368 (1995).

[7] 347 NLRB No. 55 (Chairman Battista and Member Schaumber, concurring in part; Member Walsh dissenting).

Regarding the last, the letter accused the respondent of asking its drivers to “fix” their logbooks so that they could make extra runs.

The Board concluded that the letter lost its protection under the Act because the statement accusing the respondent of asking employees to “fix” the logbooks was maliciously false. The Board found that the employees made this statement with knowledge of its falsity or at least with reckless disregard for its truth, citing one of the employee’s admission that management never made such a request and the lack of evidence contradicting this explicit admission. Member Schaumber additionally found the letter unprotected because it publicly disparaged the respondent.

Member Walsh, dissenting, concluded that the letter did not lose the Act’s protection. In his view, although the logbook statement may have been false, it was not unreasonable for the employees to feel, even if incorrectly, that management was at least implicitly condoning the falsification of logbooks. He concluded that the statement was, at most, an exaggeration, was not maliciously false, and thus that the respondent discharged the employees for protected concerted activity in violation of Section 8(a)(1).

3. Access to Employer’s Property

In *Salmon Run Shopping Center*,[8] the Board adopted the administrative law judge’s finding that the respondent violated the Act by discriminatorily denying access to the union, which had requested permission to engage in labor-related speech on the respondent’s property. In adopting the judge’s finding, however, the Board found it unnecessary to rely on his application of *Sandusky Mall Co.*[9] Instead, the Board found that “the Respondent’s decision to deny the Union access to its property was based not on a determination that the Union’s intended activity would negatively affect the mall or its tenants,” but was based “solely on the Union’s status as a labor organization and its desire to engage in labor-related speech.”

The respondent operates an enclosed retail shopping mall. Historically, the respondent has allowed local organizations to set up displays at the mall if one of two requirements was satisfied: If, in the view of the respondent, the requested solicitation would increase customer traffic at the mall or if the requested solicitation would enhance the mall’s reputation and public image.

[8] 348 NLRB No. 31 (Members Liebman, Kirsanow, and Walsh)

[9] 329 NLRB 618 (1999), enf. denied 242 F.3d 682 (6th Cir. 2001). Although Members Liebman and Walsh did not rely on *Sandusky Mall*, they indicated that they believed that case to have been correctly decided.

In August 2003, a union official met with the respondent's marketing director to request permission for access to the mall to distribute union literature, at which time the respondent asked the union to send a letter specifying two access dates. The union did not provide, nor did the respondent request, information pertaining to the specifics of the literature it sought to distribute. The union sent the letter requested by the respondent, but did not hear back from the respondent. For several weeks, the union made numerous follow-up inquiries regarding its request. Each time, the respondent's marketing director, as well as its general manager, made promises to "get back to" the union, but never did so. Finally, in October 2003, the respondent's general manager denied the union's request, and offered two rationales for its decision. The Board found both of these reasons to be pretextual. Several months later, the respondent proffered a third justification for its decision, but the Board discredited this rationale, since it had not been proffered until approximately 8 months after the union's initial request for access.

The Board found that the respondent's pattern of delay in responding to the union's request, its admission that the cause of the respondent's delay was the union's status as a labor organization, and its proffer of pretextual rationales in denying the union's application created the inference that the respondent's decision to deny access to the union was based solely on its status as a labor organization, rather than any nondiscriminatory rationale. As a result, the Board found that this discriminatory decision to deny access was unlawful under the "discrimination exception" set forth in *Babcock & Wilcox*.[10] The Board further found that, because the respondent had not been aware of the substance of the union literature that the union sought to distribute, it was not necessary to consider the view, urged by some courts of appeals,[11] that property owners only "discriminate" by treating would-be solicitors seeking to engage in *relevantly similar conduct* disparately.

4. Poll of Employees About the Identity of the Union's Negotiator

In *Alan Ritchey, Inc.*,[12] the Board majority found that respondent did not violate Section 8(a)(5), (2), and (1) of the Act by conducting a December 2002 poll of employees as to whether they wanted discharged employee Dave LaValley to represent them. The current contract was scheduled to expire in May 2003. However, the respondent learned in

[10] *NLRB v. Babcock & Wilcox Co*., 351 U.S. 105 (1956).
[11] See, e.g., *Four B. Corp. v. NLRB*, 163 F.3d 1177 (10th Cir. 1998); *Guardian Industries Corp. v. NLRB*, 49 F.3d 317, 319 (7th Cir. 1995)
[12] 346 NLRB No. 26 (Chairman Battista and Member Schaumber; Member Liebman dissenting)

October 2002 that the new contract had to be in place by the end of January 2003 if employees were to receive a wage increase. The respondent mistakenly believed that LaValley could no longer represent the employees because he was no longer employed by the respondent. The employees were also confused about whether LaValley could represent them, while LaValley himself continued to believe that he would be the negotiator for the new contract. However, another employee, Martin Aldrich, volunteered to represent the employees. Aldrich sent a memorandum to the respondent expressing his confusion with the situation, his desire for more formal organization in the union, his opposition to having LaValley represent the employees since LaValley did not have majority support, and his desire to have a speedy resolution to this problem because time was of the essence with respect to the negotiations for the new contract with its wage increase. LaValley also circulated a petition among the employees seeking to ascertain whether they still regarded him as their representative. However, LaValley did not present his circulated petition to the respondent or the employees, or even inform the respondent of its existence.

The respondent polled the employees on December 13, 2002, as to whether they wanted LaValley to represent them because of the importance of the upcoming negotiations for the new contract with its wage increase. The employees indicated that they did not want LaValley to represent them, and Aldrich notified the respondent that he was the employees' representative. Aldrich, with LaValley's assistance, negotiated the new contract with its wage increase.

The Board found that the poll did not violate Section 8(a)(1) of the Act. The poll was noncoercive. The respondent was anxious to begin negotiations on the new contract for the benefit of the employees and the respondent simply and legitimately wanted to know with whom to negotiate. The Board quoted the judge: "time was of the essence; the drivers were clearly involved in a intra-union dispute; the poll was conducted for a legitimate reason; it was factual and the Respondent did not indicate a preference for one negotiator over another; all the drivers were aware of the surrounding circumstances; there was no anti-union animus by the Respondent; and there were no contemporaneous unfair labor practices that would cause the Respondent's motives to be suspect."

The Board additionally found that the poll did not violate Section 8(a)(5) of the Act. The respondent engaged in no direct dealing with employees. The respondent merely communicated directly with union-represented employees. However, the respondent in no other manner undermined the union. The Board explained:

> [T]he Respondent polled the drivers only to resolve the dilemma of the identity of the drivers' representative for the forthcoming negotiations. Terms and conditions of employment were not discussed, and the Respondent in no way denigrated the union. . . the communication was not for the purpose of *excluding* the union. To the contrary, the purpose was to assure that the union, through a representative, would be involved in the bargaining. Indeed, the Respondent's memorandum to the drivers indicated that the respondent desired to begin negotiating for a successor collective-bargaining agreement. The respondent did, in fact, bargain with the Union, and the parties successfully negotiated a second agreement.

Moreover, the respondent was under no obligation to contact LaValley because he was not a disinterested observer. The respondent properly consulted the employees. As the Board stated, the respondent's poll "did not disparage LaValley; rather, it accurately stated that there was a question concerning whether employees wanted him as their negotiator, and the respondent desired to open negotiations with the union as soon as possible" because the employees' pay raise depended on this.

Finally, the Board found that the poll did not violate Section 8(a)(2) of the Act. It did not interfere with the administration of the union. The Board explained: "The Respondent was under time pressure to negotiate with *someone* from the union. It was unclear who that someone would be. The union was so loosely organized that it was virtually impossible to find out from an authorized person who the representative would be. Accordingly, on a one-time basis, the Respondent took the prudent step of letting the employees choose a representative."

In conclusion, the Board "emphasize[d] the unique facts of this case. The Respondent was 'under the gun.' It had to negotiate a contract by January 30, 2003. If it did not, the employees would be a prime loser. At the same time, it had bona fide doubts about the basic issue concerning with whom to negotiate. It turned to the employees for an answer to that question." The Board also "recognize[d] that, in general, an employer may not go to employees with respect to this matter. But, unique circumstances call for a reasonable legal result." "[W]ith no intention of upsetting general legal principles," the Board reached such a result in this case.

Member Liebman, dissenting, asserted that the respondent's polling violated both Section 8(a)(1) and (2) of the Act because "[e]mployers simply are not entitled to intermeddle in union affairs." Member Liebman noted that "[t]he Board regards employees' selection of the agents of their collective-bargaining representatives as 'purely an internal union affair' and as an exercise of Section 7 rights." Member Liebman

explained that "[t]he proper course for the Respondent . . . was to continue to bargain with LaValley unless and until he was replaced. Even if the Respondent had a legitimate interest in determining the identity of the Union's negotiator, the device it used was clearly unlawful, not least because it forced employees to disclose their individual preferences and to identify themselves to the Respondent."

Because she would find the 8(a)(2) and (1) violation, Member Liebman found it unnecessary to address the 8(a)(5) allegation.

B. Employer Assistance to Labor Organization

In *Operating Engineers Local 39*,[13] a Board majority held that the respondent union violated Section 8(a)(1) and (2) of the National Labor Relations Act by requiring its clerical employees to become and remain members of the union as a condition of employment.

The case involved the union's requirement, in its capacity as an employer, that its clerical employees become and remain members of the union as a condition of employment. The Board observed that, under the standard set forth in *Retail Store Employees Local 428*,[14] a union-employer, just as any other employer, may impose on its employees requirements reasonably related to the proper performance of their jobs, so long as those requirements are necessary for the performance of their job duties. Under *Retail Store Employees Local 428*, this standard is satisfied if the employees of the union are responsible for explaining how the union functions as a collective-bargaining representative, or why it is desirable for workers to organize.

Applying this test, the Board concluded that union membership was not necessary for the performance of the job duties of the union's clerical employees, finding: "the record clearly shows that they have no responsibility for explaining to members and others the benefits of membership or how the union functions." The Board alternatively concluded that the membership requirement was not even reasonably related to clericals' job duties, finding it "difficult to perceive any meaningful relationship between the Union's membership requirement and the clericals' proper performance of their secretarial job tasks."

Member Liebman, dissenting, found that the standard in *Retail Store Employees Local 428* was satisfied in this case. She explained that that standard requires only that it be shown that the membership requirement be "reasonably related" to the employees' job duties. Member Liebman found this standard satisfied in this case, observing that the clerical employees interact daily with members who are inquiring about dues

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[13] 346 NLRB No. 34 (Chairman Battista and Members Schaumber; Member Liebman dissenting).

[14] 163 NLRB 431, 432–433 (1967).

arrearages, and may likely face questions by members about changing membership status to reduce their dues. Member Liebman explained that it is "entirely reasonable for the union to conclude that a clerical employee who is also a dues-paying member will be better able to explain to other members the importance of timely dues payments to the accomplishment of the union's mission" as well as to persuade employees that it is to their advantage to maintain full union membership. Member Liebman concluded that the "majority's view interprets *Retail Store Employees Local 428* far too narrowly, undervaluing the clerical employees' duties as they relate to serving the membership of the Union."

C. Employer Discrimination Against Employees

1. Availability to Start Work

In *JLL Restaurant, Inc. d/b/a Smoke House Restaurant*,[15] the Board majority found that the respondent-successor lawfully refused to hire two of the predecessor's employees because they were unavailable for work when the successor commenced business, due to work place injuries. Member Liebman dissented on this issue.[16]

The predecessor operated the restaurant as a debtor in possession until April 30, 2003. In March and early April, the predecessor announced to employees that it would close the restaurant on April 30 and that the purchaser, Martha Spencer, would commence operations on May 1. In early to mid-April, while the sale was being effected, Spencer conducted employment interviews with the predecessor's employees, advising the applicants that the respondent intended to operate nonunion and that it would not offer health insurance. On April 21 and 23, a small number of employees joined in picketing by the union in front of the restaurant.[17] On April 30, as previously directed, the employees went to the restaurant to pick up their final paychecks from the predecessor and to find out whether they had been hired by the successor. Nearly all of the employees were hired; however, seven of the employees who had

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[15] 347 NLRB No. 16 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

[16] Id. at slip op. 5, fn. 11. The Board unanimously found that the respondent was liable to remedy the predecessor's unfair labor practices, and that the respondent told the predecessor's employees that it would operate nonunion and not offer health insurance, and advised a prospective employee not to speak to the union about his hire in violation of Sec. 8(a)(1), refused to hire certain of the predecessor's employees in violation of Sec. 8(a)(3) because they engaged in union activity, and refused to recognize and bargain with the union and unilaterally changed terms and conditions of employments in violation of Sec. 8(a)(5). In concluding that the refusal to recognize the union was unlawful, the Board rejected the respondent's defense that it was privileged to rely on an employee petition, finding that the petition was tainted by the respondent's unfair labor practices.

[17] The predecessor unlawfully threatened employees with job loss and closure as a result of the picketing.

picketed outside the restaurant or were otherwise involved in union activities were not offered employment.

The Board found that the judge properly undertook an *FES* analysis in determining whether the refusals to hire were discriminatory.[18] The Board unanimously agreed with the judge's finding that four of the employees were discriminatorily denied employment.[19] The Board majority also agreed with the judge's finding that the General Counsel did not meet his initial *FES* burden with respect two of the alleged discriminatees. The two employees, Hector Uribe and Alice Colon, suffered disabling injuries shortly before the sale and purchase of the restaurant and were unable to work on the day the successor commenced business (and for weeks thereafter). Although the judge reasoned that availability for work was an inherent element of the second *FES* factor enumerated above, the Board's rationale differed slightly. The Board reasoned that availability to begin work when the respondent opened its doors was a prerequisite of employment, as demonstrated by the respondent's consistent application of that requirement, in that it commenced operations on May 1 with a full complement of employees.[20] The Board disavowed any implication that the General Counsel must demonstrate an applicant's availability as of a date certain where that was not a requirement consistently imposed by the employer.[21]

The Board further found that the fact that respondent's chief operating officer, Leland Spencer, testified that the respondent would have kept a position open for predecessor employee Yvonne Crimo was not determinative. First, Crimo was available to begin working on the date the respondent opened its doors. Second, the Spencers had a pre-existing work relationship with Crimo and were personally aware of her exemplary performance. In those circumstances, the Board reasoned, Spencer's "willingness to hold open a position for a top performing, highly valued employee with whom he was personally acquainted [wa]s not incompatible with [the] finding that the respondent consistently required applicants to be available for work when it opened its doors."[22]

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[18] 331 NLRB 9 (2000). Briefly, *FES* requires the General Counsel to establish that (1) the respondent was hiring or had concrete plans to hire; (2) the applicants possessed the training and experience relevant to the announced or generally known requirements for the positions, or that the respondent did not uniformly adhere to the requirements, or the requirement were pretextual; and (3) antiunion animus contributed to the decision not to hire the applicants. Once these elements are established, the burden shifts to the respondent to show that it would not have hired the applicants even in the absence of the union activity or affiliation. Id. at p. 12 (2000).

[19] A fifth employee was found to have rejected an offer of employment.

[20] 346 NLRB No. 16, slip op. at 6.

[21] Id. at 6, fn. 10.

[22] Citing *Zurn/N.E.P.C.O.*, 345 NLRB No. 1, slip op. at 4 (2005) (hiring known quantities).

Dissenting as to Uribe and Colon, Member Liebman found that the respondent had no availability requirement. In her view, the testimony of the respondent's chief operating officer, Leland Spencer, that he would have hired employee Yvonne Crimo, who was out of work for medical reasons just prior to the purchase of the restaurant, even if she had not been "eligible" for employment, established that availability was not a prerequisite of employment. Member Liebman also relied on the fact that the respondent asserted shifting defenses for its failure to hire the discriminatees, including Uribe and Colon, and did not raise their disability status until the unfair labor practice hearing.

2. Reinstatement of Locked-Out Employees

In *Bud Antle, Inc.*,[23] the Board unanimously found that the respondent lawfully delayed reinstatement for locked-out employees for the first month after reinstatement offers were made, but that it violated Section 8(a)(3) and (1) by delaying reinstatement for an additional month after the deadline for employees to accept reinstatement. As a remedy for that violation, the Board majority ordered backpay for delayed reinstatement only for employees who actually returned to work, and further found that the respondent lawfully withheld standard overtime opportunities from the returning employees until after they received four weeks of training. Member Liebman dissented from the majority's decision to limit backpay only for employees who appeared for work and she would have found the restriction on overtime for those returning to be unlawful.

After a 14-year lockout, the respondent and the union agreed that the respondent would offer reinstatement to the locked-out employees. The respondent's reinstatement offer gave employees 5 weeks to notify it of their interest in returning to work. Twenty-four of the 133 locked-out employees requested reinstatement. At the end of this initial notification period, the respondent sent these 24 employees letters informing them of a return-to-work date one month later. The seven employees who returned to work were treated as new employees for purposes of training and orientation, and their overtime was restricted until after they finished a 4-week training period.

Applying *NLRB v. Great Dane Trailers*,[24] the Board found that the delay in reinstatement only had a "comparatively slight" impact on employee rights, and that the respondent had shown a legitimate and substantial business justification for the initial delay. The Board relied on the respondent's need to identify the identity and number of returning

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[23] 347 NLRB No. 9 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).
[24] 388 U.S. 26 (1967).

employees, to dovetail their seniority with the replacement employees, and to efficiently return a large number of returning workers at once after a prolonged lock-out to a modernized operation. The Board found no similar justification for the further 1-month delay, finding that the desire to start on a Monday was merely an administrative convenience, that the employees' asserted need to give their current employers 2-weeks notice was unsupported, and the scheduling conflict of one manager did not preclude others from being able to perform the training.

On the issue of backpay, the majority limited backpay to the 7 who appeared for work. The Board declined to assume that the other 16 employees failed to appear because of the respondent's unlawful delay. The Board found that the burden was on those who did not appear for work, who were in the best position to present this evidence, to show that this was because of the respondent's unlawful delay. The Board further found that the temporary restriction on overtime had a comparatively slight adverse impact on the returning employees. The Board found that this was adequately justified by the respondent's interest in being able to train returning employees after a 14-year absence regarding operational changes and to observe the employees' current ability to perform the work.

Member Liebman, in dissent, found that the respondent, as the wrong-doer, had the affirmative burden to establish facts that would limit its backpay liability. On this basis, she would require the respondent to prove that employees who accepted reinstatement had failed to appear for work for reasons other than the respondent's unlawful delay in their report date. She would also have found the respondent's initial limitation on overtime opportunities was unlawful, relying on the basis that returning locked-out employees must be treated as qualified to perform their job and the respondent had failed to show that the returning employees had actually demonstrated an inability to perform.

D. Employer Bargaining Obligations

1. Duty to Provide Requested Information

In *Northern Indiana Public Service Co.*,[25] a Board majority found that the respondent did not violate Section 8(a)(5) of the Act by refusing to provide the union representing its employees with requested information that the respondent considered confidential. Member Liebman dissented from the majority's conclusions.

In investigating an employee's complaint about harassment and threats by his supervisor, the respondent's EEO manager interviewed

[25] 347 NLRB No. 17 (Chairman Battista and Member Schaumber; Member Liebman dissenting).

three people, including the employee and his supervisor. She promised confidentiality to each interviewee, used a password to protect her notes of the interviews on her computer, and did not share the notes with anyone, including other managers.

The employee's union representative was dissatisfied with the respondent's resolution of the harassment complaint and filed a grievance and a request for (1) the names of all individuals involved in the incident and the investigation; and (2) copies of any notes the respondent took in investigatory meetings. The respondent provided a list of names, but declined to provide any meeting notes, stating that, "the Company maintains that such records are strictly confidential and we are under no obligation to supply such records to the Union."

Applying the framework for analysis of confidentiality defenses to information requests,[26] the Board concluded, first, that the respondent had a legitimate and substantial confidentiality interest in the notes, because "treating interview notes obtained in such circumstances as confidential serves two important purposes: (1) encouraging witnesses to participate in investigations of workplace misconduct and (2) protecting these witnesses from retaliation because of their participation." Second, the Board found that the balance of interests favored the respondent, because the union could proceed with its grievance regarding the supervisor's conduct (which it could investigate on its own) even without the interview notes. Finally, the Board concluded that the respondent met its obligation to seek an accommodation with the union by providing the union with all the information it requested other than the interview notes, and that "any further accommodation would compromise not only the pledge of confidentiality on which the interviewees relied but also their personal safety."

In dissent, Member Liebman found that the respondent lacked a legitimate and substantial confidentiality interest in the interview notes, relying on the Board's lack of knowledge of the notes' contents, the Board's past treatment of investigation notes, the rejection by several federal courts of evidentiary privileges based on similar claims of confidentiality, and the absence of evidence suggesting that providing the notes to the union—subject to protective measures ordered by the judge—posed a risk of the consequences feared by the majority. Further, Member Liebman found that, even assuming the interview notes were confidential, the balance of interests favored the union's need for the information, and the majority erred by defining too narrowly what information the union needed and by requiring the union to obtain

[26] *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

necessary information from other sources. Finally, Member Liebman found that, contrary to the majority's assertion, the respondent failed to meet its duty under settled Board law to seek an accommodation of the union's need for the notes.

2. Unilateral Changes

In *St. Mary's Hospital of Blue Springs*,[27] the Board found that an employer's unilateral implementation of changes in employees' health coverage was permissible, even though the parties were engaged in collective bargaining for a first contract and had not reached general impasse. Notwithstanding the rule that unilateral changes are barred during negotiations prior to agreement or general impasse, the changes were found permissible under the exception recognized in *Stone Container*,[28] under which changes in terms of employment that have recurred on an annual basis may be implemented where the employer is willing to bargain over them but the normal time for implementation has arrived without the parties reaching agreement.

The Board found that St. Mary's gave the union timely notice of the prospective changes and an opportunity to bargain over them, before and after implementation, and that the parties had exhausted all possibilities of reaching agreement on the changes before the normal deadline. The employer also established that the nature and time of the changes were consistent with its past practice prior to the union's certification, and that employees would have suffered a disruption of coverage if the changes were not timely made. Under these circumstances, the changes were permissible under *Stone Container* and its progeny. The Board reaffirmed that "[where] a discrete annual event . . . coincidentally occurs while contract negotiations are in progress, an employer is not required to refrain from implementing the [related] change until an impasse has been reached in bargaining for a collective-bargaining agreement as a whole."[29] Because the parties had tried but failed to reach a timely agreement on the issue, the Board did not reach the issue of whether the employer was required to negotiate to impasse on that issue.

In *Neighborhood House Association*,[30] the Board majority held that the respondent did not violate Section 8(a)(5) and (1) of the Act by withholding a regularly scheduled cost-of-living increase (COLA) from its employees and by proposing a 2.2-percent COLA increase and then

[27] 346 NLRB No. 76 (Chairman Battista and Members Liebman and Schaumber).
[28] 313 NLRB 336 (1993).
[29] 346 NLRB No. 76, slip op. at fn. 2.
[30] 347 NLRB No. 52 (Chairman Battista and Member Schaumber; Member Walsh dissenting).

conditioning implementation of that proposed COLA on the union's waiving of its right to bargain further over the COLA amount.

The union and respondent started bargaining for a first contract in June 2003. Annually, the respondent implemented a COLA in December. The union initially proposed a 3.0-percent COLA increase and a 7.5-percent across-the-board wage increase. The respondent countered with a 2.2-percent COLA increase and 2.5-percent step increase tied to performance.

At an October 2003 bargaining session, the union proposed that the respondent implement the 2.2-percent COLA in December, but reserved the right to bargain for an additional COLA amount. The respondent replied that it would not implement the 2.2-percent COLA unless the union agreed to not seek any additional COLA increase for 2003. The respondent did not condition implementation of the COLA increase on the union's agreement to forgo bargaining over all wages.

The parties exchanged letters in December 2003. In its letter, the respondent reiterated its COLA proposal of 2.2-percent and stated that if the union did not consent to its proposed increase it would implement the COLA only for its non-bargaining unit employees. The union adhered to its prior bargaining position in its reply. The respondent then implemented the COLA for non-bargaining unit employees and withheld it from the unit employees.

Contrary to the administrative law judge, the Board found that the respondent's actions were lawful under the principles set forth in *Stone Container Corp.*,[31] and *TXU Electric Co*.[32] According to the Board, in *Stone Container* the Board set forth an exception to the general rule that an employer must maintain the status quo of all mandatory subjects of bargaining absent overall impasse where parties are engaged in negotiations for a collective-bargaining agreement. Under this exception, "if a term or condition of employment concerns a discrete recurring event, such as an annually scheduled wage review, and that event is scheduled to occur during negotiations for an initial contract, the employer may lawfully implement a change in the term or condition if it provides the union with a reasonable advance notice and an opportunity to bargain about the intended change in past practice."[33]

The Board found that the COLA increase constituted a discrete recurring event that was scheduled to occur during bargaining for an initial contract and that the respondent provided the union with notice

[31] 313 NLRB 336 (1993).
[32] 343 NLRB 1404 (2004).
[33] 347 NLRB at slip op. 2, citing *TXU Electric*, supra at 1405; see also *Stone Container*, supra at 336, and *Alltel Kentucky, Inc*.[7]

and an opportunity to bargain over its COLA position. Consequently, the Board found that the respondent satisfied its bargaining obligation under *Stone Container* and was therefore privileged to implement its proposal.

The Board also found that the respondent did not violate Section 8(a)(5) by conditioning implementation of the COLA increase on the union's waiver of its right to negotiate an additional COLA amount. Rather, the respondent adopted a bargaining position that was consistent with the standard adopted by the Board in *TXU Electric* because the respondent provided the union with reasonable advance notice and an opportunity to bargain about the intended change. According to the Board, the respondent bargained in good faith over the COLA increase, did not refuse to bargain over the amount, did not refuse to hear counterproposals, and did not propose to eliminate the annual COLA.

In dissent, Member Walsh argued that the respondent violated Section 8(a)(5), (a) by conditioning the implementation of the scheduled 2003 2.2-percent COLA for unit employees on the union's waiving its right to continue to negotiate, after that implementation, for an additional .8 percent of COLA, and (b) (after the union refused to waive its negotiating right) by unilaterally withholding the scheduled 2.2-percent COLA from unit employees. Member Walsh reasoned that the annual COLA had become an established condition of employment that the respondent was not free to change unilaterally. Finally, Member Walsh, who dissented in *TXU Electric*, reiterated his belief that that case was wrongly decided and stated that, in any event, *TXU Electric* was inapposite here.

3. Continuing Obligation to Bargain at Relocated Facility

In *Siemens Building Technologies, Inc*. (Siemens II),[34] the Board adopted the judge's finding that the respondent violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the union at its Fleet facility, which the respondent began operating when its Iola plant was decommissioned.[35] The judge, applying the standard set forth in *Rock Bottom Stores*,[36] found that the respondent had a continuing obligation to recognize and bargain with the union because the operations at the Fleet facility were substantially the same as those at the Iola plant, and because

[34] 346 NLRB No. 9 (Chairman Battista and Members Liebman and Schaumber).
[35] In *Siemens Building Technologies*, 345 NLRB No. 91 (2005)(Siemens I), an earlier case involving the same parties and same bargaining unit, the Board found that the Respondent became a successor employer to Monroe County, New York when it took over the operations of the County's Iola power plant).
[36] 312 NLRB 400, 401 (1993), enfd. sub nom., *NLRB v. Rock Bottom Stores*, Inc., 51 F.3d 366, (2d Cir. 1995).

the former Iola employees constitute a substantial percentage of the Fleet facility's employees.[37]

The Board majority also found that it was appropriate for the judge to have addressed the lead building operator's ("chief stationary engineer") supervisory status and further concluded that the judge correctly found that the position was not supervisory, and should be included in the bargaining unit. The complaint did not allege that the position was included in the unit, and the respondent, in its answer denied, without explanation, the unit's appropriateness. Although the General Counsel attempted to elicit testimony to support a finding that the incumbent in the position possessed statutory supervisory authority, the respondent did not offer, at hearing, to stipulate to either the appropriateness of the alleged unit or to the incumbent's supervisory status. The Board found that under these circumstances, it was appropriate for the judge to determine whether the lead building operator should be included in the bargaining unit. The Board also observed that the position was included in the bargaining unit under the predecessor employer, and was also included in the complaint's alleged appropriate bargaining unit in *Siemens I* without challenge, and that there was no evidence that there had been any significant change in the duties attached to the position. Thus, the majority found that historically the position had been included in the bargaining unit, and that the General Counsel had not met his burden to show that the position should be excluded. Chairman Battista found that the issue was moot as it had been adjudicated in *Siemens I* and the General Counsel had not shown any substantive change in the duties of the position.

4. Continued Appropriateness of Certified Unit

In *U-Haul Company of Nevada*,[38] a refusal-to-bargain case, the Board rejected the respondent's contention that the certified unit may no longer be appropriate in light of the closure of one of the two facilities expressly included in the certified unit. The case was before the Board on the General Counsel's motion for summary judgment, which argued that the respondent's refusal to bargain with the newly-certified union was based solely on its challenge to the Board's overruling of its objections to the election in the underlying representation case. In finding no merit in the respondent's argument that it was entitled to a hearing on whether the closing of one of its facilities rendered the unit inappropriate, the Board

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[37] *In Rock Bottom*, the Board held "that an employer must apply an existing contract to a relocated facility if the operations at the new facility are substantially the same as those at the old and if the transferees from the old facility constitute a substantial percentage, defined as at least 40 percent, of the new facility's employee complement."

[38] 345 NLRB No. 118 (Chairman Battista and Members Liebman and Schaumber).

found that the respondent failed to show that with due diligence it could not have brought forth evidence pertaining to the closure of the facility (located in Henderson, Nevada) within a reasonably short time after its implementation. The Board noted that the respondent first brought the evidence to the Board's attention in March 2005, despite the fact that the closure allegedly occurred in December 2003, about 2 months before the Board certified the union.

The Board further held that, even if this contention had been timely raised, there would be no merit to it. The Board pointed out that in a separate unfair labor practice case an administrative law judge found that the respondent closed the Henderson facility in question following the election for discriminatory reasons and terminated most of the unit employees in violation of Section 8(a)(3) of the Act. The Board added that the judge also found that the respondent violated Section 8(a)(5) by closing the facility without notice to, or bargaining with, the union. As a remedy for these violations, the judge ordered the respondent to reestablish the facility, offer reinstatement to unit employees formerly employed there, and bargain with the union in the two-facility unit based on a preelection card majority.

The Board stated, that although it was expressing no opinion on the judge's findings in the separate case, "regardless of whether the Respondent will ultimately be required to restore operations at the Henderson facility, it appears that the Respondent has had, and continues to have, at a minimum, an obligation to bargain with the union over the effects of its decision to close the facility on unit employees formerly employed there," citing *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681–682 (1981). Accordingly, the Board concluded that the fact that the Henderson facility had closed did not render the certified unit inappropriate or constitute unusual circumstances justifying the respondent's refusal to bargain.

In addition, the Board rejected the respondent's contention that the General Counsel was required to consolidate this refusal-to-bargain case with the separate proceeding that was the subject of the administrative law judge's decision referred to above. The Board explained that the case before it was a test of certification arising out of a representation proceeding, while the other case was an unfair labor practice case in which the General Counsel sought a remedial *Gissel*[39] bargaining order. Thus, the Board found that the decision to separately litigate the two cases was within the discretion of the General Counsel. Finally, the Board held that the respondent had failed to show that the General

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

Counsel had abused his discretion or that the respondent was prejudiced by the failure to consolidate the two matters. Accordingly, the Board granted the General Counsel's motion for summary judgment, and ordered the respondent to bargain with the union for the employees in the certified unit.

5. Continuing Obligation to Bargain After Disaffiliation of Union from AFL–CIO

In *Laurel Baye Healthcare of Lake Lanier*,[40] the Board found that a labor organization's disaffiliation from the AFL-CIO, standing alone, is insufficient to raise a genuine issue as to the identity of the certified labor organization. Accordingly, the Board rejected the respondent's arguments that the union's certification as representative was invalid and granted the General Counsel's motion for summary judgment in this test of certification case.

Food and Commercial Workers Local 1996 won a representation election in a unit of the respondent's employees on November 26, 2004. A Certification of Representative issued by the Board on June 27, 2005. The union requested that the respondent recognize and bargain with it, and the respondent refused on July 7, 2005. On July 29, 2005, the union disaffiliated from the AFL–CIO.

In the summary judgment proceeding, the respondent contended that the union's certification was invalid because the organizational changes mandated by the disaffiliation were sufficient to destroy any substantial continuity with the previously-affiliated union, and that its disaffiliation from the AFL–CIO raised issues as to whether a disaffiliation vote was held with adequate due process safeguards. The Board disagreed, noting that in *M & M Bakeries, Inc.*,[41] the Board held that the expulsion of an international union from the AFL–CIO did not affect the status of the local union as the bargaining representative, because the relationship between the international and the local had not been changed by the split, there was no schism or other internal dispute within the local, and there was no confusion as to the identity of the organization designated by the employees to represent them. In addition, the Board relied on *Ace Folding Box Corp.*,[42] in which the Board held that the disaffiliation of the certified union from the AFL–CIO did not relieve the employer from its bargaining obligation, because "disaffiliation, unaccompanied by evidence or offer of evidence of change in organic structure,

[40] 346 NLRB No. 15 (Chairman Battista and Members Liebman and Schaumber).
[41] 124 NLRB 1596, 1602 (1958), enfd. 271 F 2d 602 (1st Cir. 1959).
[42] 124 F.2d 23, 26–27 (1959), enfd. sub nom. *NLRB v. Weyerhaeuser Co.*, 276 F.2d 865 (7th Cir. 1960).

composition, or leadership of a labor organization, does not tend to affect the identity of the organization."

Further, the Board found that disaffiliation from the AFL–CIO, by itself, is not the kind of change in circumstance that the Board has traditionally required to be subject to a vote of union members. The Board held that the respondent had failed to support its conclusory allegations that the union was a materially different organization as a result of the disaffiliation. Finally, the Board noted that the disaffiliation occurred after the respondent had refused to bargain, and, as recognized by the courts, there is "no useful purpose served by permitting the employer to defend the propriety of an earlier refusal to bargain by relying on subsequent events that had nothing to do with the refusal."[43] Accordingly, the Board granted the General Counsel's motion for summary judgment, finding that the respondent had violated Section 8(a)(5) and(1) by failing to recognize and bargain with the union, and by failing to provide requested information.

6. Mandatory Subjects of Bargaining

In *North American Pipe Corp.*[44] the Board majority determined that the respondent's unilateral grant of 100 shares of stock to each employee, including bargaining-unit employees, at its Van Buren, Arkansas facility was a gift. Accordingly, the Board held that the stock award, worth approximately $1450, was not a mandatory subject of bargaining, and affirmed the administrative law judge's dismissal of the allegation that the respondent violated Section 8(a)(5) and (1) by failing to bargain with the union prior to making the award.

On the occasion of its initial public offering, the respondent's parent company announced an award of 100 shares of common stock to each full-time, regular employee at its affiliated companies, which group included the respondent's represented employees. The announcement, which was circulated at the Van Buren facility by the respondent's human resources representatives, indicated that the award was made "in recognition of this historic company event and the significant contribution made by each of you toward the growth and success of the company." To be eligible for the award, employees needed at least 6 months of service as of the announcement date. For the award to vest, employees needed to remain regular full-time employees for an

[43] *NLRB v. Springfield Hospital*, 899 F.2d 1305, 1315 (2d Cir. 1990), *quoting NLRB v. Fall River Dyeing & Finishing Corp.,* 775 F.2d 425, 433 (1st Cir. 1985), affd. on other grounds 482 U.S. 27 (1987).

[44] 347 NLRB No. 78 (Chairman Battista and Member Schaumber; Member Walsh dissenting).

additional 6 months. Prior to making this announcement, the respondent did not notify the union or bargain with it about the stock award.

Applying the "gift" analysis from *Benchmark Industries*,[45] the Board found that the award lacked a sufficient relationship to employee remuneration because it was not tied to employment-related factors such as work performance, wages, hours worked, seniority, and production. The Board noted that "all eligible employees . . . received the same amount of stock whether they were the highest paid managers or the lowest-paid hourly employees." Also, the eligibility requirements did not tie the award to seniority or work performance: the award was not linked to seniority because seniority was not proportionately related to the amount received nor was the stock given in recognition of an employee's attaining a specific level of seniority; the award was not linked to work performance because the award was not dependent on the quality or quantity of work during the eligibility period nor was it related to any discrete and specific work performed by employees. Finally, the Board noted that the "gift" analysis applies to items regardless of their value.

Member Walsh dissented, arguing that the eligibility requirements were tied to both past and future work performance, indicating that the stock award was a form of deferred compensation. In his view, the stock award was also conditioned on the nature of an employee's service, since it was granted only to regular, full-time employees. Finally, while recognizing that the substantial economic value of the award was not determinative of its characterization as wages or as a gift, Member Walsh considered it relevant and supportive of a finding that the award constituted compensation here.

7. Withdrawal of Recognition

In *Parkwood Developmental Center, Inc.*,[46] the Board found that Parkwood Developmental Center, Inc. (the respondent) violated Section 8(a)(5) and (1) by withdrawing recognition from UFCW Local 1996 (the union) on the contract expiration date without showing that the union had actually lost majority status as of that date. To remedy the violation, the Board imposed an affirmative bargaining order.

The respondent was party to a collective-bargaining agreement (CBA) with the union, effective from March 9, 2001 through March 8, 2003. On December 2, 2002, workers presented the respondent with a petition signed by a majority of unit employees stating that they no longer wished to be represented by the union. That same day, the respondent notified

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[45] 270 NLRB 22 (1984), affd. 760 F.2d 267 (5th Cir. 1985).
[46] 347 NLRB No. 95 (Chairman Battista and Members Liebman and Kirsanow).

the union that it would withdraw recognition effective on the contract's expiration date. In response, the union gathered signatures from a majority of employees on a petition authorizing the union to act as the unit's bargaining representative, and revoking previous statements to the contrary. The union also gathered authorization cards a majority of employees, which it delivered with the petition to the respondent on March 7, 2003, as evidence of majority support. Nevertheless, the respondent withdrew recognition the next day.

To be lawful, an employer's withdrawal of recognition must be predicated on a showing that a union has actually lost its majority status at the time of withdrawal. *Levitz Furniture Co. of the Pacific*.[47] The Board found that the respondent failed to show actual loss of majority status on March 8, 2003, the date of withdrawal, in the face of the union's showing of majority support on March 7. The respondent argued that the true date of withdrawal was December 2, 2002, the day it notified the union of its planned withdrawal and claimed to be able to show an actual loss of majority support for the union based on its receipt of the first employee petition. The Board rejected that assertion, noting that a mid-contract withdrawal would have been unlawful,[48] and that the respondent affirmatively withdrew recognition on March 8, 2003. By that time, the respondent had been presented with the union's evidence of majority support, which it was not entitled to ignore. Thus, at most, the respondent could show good-faith uncertainty as to the union's majority status, which is not sufficient under *Levitz* to support a withdrawal of recognition.

Having ruled the withdrawal unlawful, the Board imposed an affirmative bargaining order as the "traditional, appropriate remedy" for an employer's refusal to bargain with a lawful representative of its employees. *Caterair International.*[49] The Board also found this remedy appropriate under the D.C. Circuit's standard articulated in *Vincent Industrial Plastics v. NLRB.*[50] Under that test, an affirmative bargaining order must be justified by a reasoned analysis that includes an explicit balancing of three considerations: "(1) the employees' Section 7 rights; (2) whether other purposes of the Act override the rights of employees to

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[47] 333 NLRB 717 (2001).

[48] It is well-established that a union enjoys a conclusive presumption of majority status during the life of a collective-bargaining agreement. *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996).

[49] 322 NLRB 64, 68 (1996). Chairman Battista noted that he did not agree with the view expressed in *Caterair* that an affirmative bargaining order is the traditional, appropriate remedy, but does accept it as extant Board law. Member Kirsanow reserved judgment on the merits of the *Caterair* doctrine, noting that no party challenged the settled board practice of imposing an affirmative bargaining order in this type of case.

[50] 209 F.3d 727 (D.C. Cir. 2000).

choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act."[51] The Board found that the Section 7 rights of employees opposed to continued union representation would not be unduly prejudiced because the duration of the order would be no longer than is reasonably necessary to remedy the ill effects of the violation. Furthermore, the order would serve the Act's purposes of promoting collective bargaining and industrial peace by removing the respondent's incentive to delay bargaining in the hope of discouraging support for the union and ensures that the union will not be pressured by the respondent's withdrawal of recognition to achieve immediate results at the bargaining table. Finally, a cease-and-desist order alone would have been an inadequate remedy here because it would allow another challenge to the union's majority status before the taint of the respondent's previous unlawful withdrawal dissipated.

E. Union Interference with with Employee Rights

1. Operation of Hiring Hall

In *Stagehands Referral Service*,[52] the Board reversed the administrative law judge's recommendation to dismiss a complaint alleging that the union violated Section 8(b)(1)(A) by failing to refer stagehand Stephen Foti to various employers, including Stagehands Referral Service (SRS), because Foti was not a union member and for arbitrary or discriminatory reasons, and Section 8(b)(2) by attempting to cause or causing employers to violate Section 8(a)(3). The complaint also alleged that SRS violated Section 8(a)(3) and (1) by discrimination in hiring to encourage union membership.

Resolution of the unfair labor practice charges turned on whether the union's failure to refer Foti was justified by his poor work, as the union argued, or was unjustified because it was based on Foti's nonmember status or on other arbitrary reasons, as the General Counsel argued. The Board found the union's failure to refer Foti unjustified, and found the violations as alleged.

The union supplied stagehands to three venues through its exclusive hiring hall, and to a casino through SRS, a limited liability corporation established to deal with the casino. Union president Charles Morris, and Business Manager Charles Buckland, were the only two officers of SRS. Buckland operated the union's hiring hall, making referrals from an employee list; SRS used the same list to dispatch employees. The union and SRS had consistently referred Foti to jobs until he applied, and was

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[51] Id at. 738.
[52] 347 NLRB No. 101 (Chairman Battista and Members Liebman and Schaumber).

voted down for, union membership. None of the venues had ever complained to the union or SRS about Foti's work, although union members registered complaints at the hearing explaining why they voted to reject Foti for membership.

The Board acknowledged that Foti's work performance may have been deficient, but held that the respondents' had the burden of showing why the union did not refer Foti and that its action was necessary to effectively represent its constituency. *Teamsters Local 519 (Rust Engineering)*;[53] *Boilermakers Local 433 (Riley Stoker Corp.).*[54] Because no employer ever complained about Foti, because Buckland and/or Morris merely assumed based on the vote and with no actual knowledge that Foti was deficient, and because respondents' own exhibits and witnesses indicated that Foti was treated differently from other similarly situated employees, the Board concluded that respondents did not carry their burden. The Board also held that SRS violated 8(a)(3) and (1), based on SRS' admission that it was a statutory employer, and because SRS, run by Buckland and Morris, could reasonably be charged with notice of the union's discrimination.

F. Deferral to Grievance-Arbitration Procedure

In *United Cerebral Palsy of New York City*,[55] the Board held that the respondent violated Sections 8(a)(1) and (5) of the Act by: (1) distributing a handbook to employees that changed their terms and conditions of employment without notifying or bargaining with the union; and (2) dealing directly with employees by requiring them to sign an acknowledgment that they had received the handbook, agreed to abide by its terms, and understand that the respondent could make future changes without advance notice. The administrative law judge found that deferral of the case to arbitration was appropriate under *Collyer Insulated Wire*,[56] because the handbook did not amount to a rejection of collective–bargaining principles.

The Board reversed the judge, finding that the respondent, by its handbook, rejected collective-bargaining principles. The Board found that the handbook stated that it supersedes all "handbooks, management memoranda and practices" on any matter covered by the handbook, including a number of mandatory subjects of bargaining. In addition, by its provision that the respondent can "change, cancel or suspend any of its personnel policies at anytime [sic] without advance notice," the

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[53] 276 NLRB 898, 908 (1985), enfd. mem. 843 F.2d 1392 (6th Cir. 1988).
[54] 266 NLRB 596 (1983).
[55] 347 NLRB No. 60 (Chairman Battista and Members Liebman and Walsh).
[56] 192 NLRB 837 (1971).

respondent effectively announced that it was no longer bound by the collective-bargaining agreement and no longer intended to bargain over terms and conditions of employment prior to making such changes. The Board then found that, given these provisions, the handbook involved more than mere changes to the collective-bargaining agreement and amounted to a repudiation of collective-bargaining principles. As such, the Board concluded that deferral under *Collyer* was not appropriate. Addressing the merits of the allegations, the Board found that the changes to a number of mandatory subjects of bargaining, such as changes to vacation policy, floating holidays, involuntary schedule changes and transfers, promotions, discipline, and grievance procedure violated Section 8(a)(5) of the Act. In addition, the Board found that requiring employees to sign an acknowledgment, agreeing to the changes, constituted unlawful direct dealing.

G. Remedial Order Provisions

1. Piercing the Corporate Veil

In *SRC Painting*,[57] the Board held that an individual's passive receipt of corporate distributions for non-corporate purposes does not satisfy the Board's *White Oak*[58] standards for imposing individual liability for the corporation's unfair labor practices.

The Board found that three corporate respondents were alter egos of each other and violated Section 8(a)(1), (3), and (5). The Board further found that the corporate identities had been commingled with the identities of six family members, that corporate assets had been distributed for noncorporate purposes, and that these distributions had diminished the corporations' ability to satisfy their obligations. On this basis, the Board pierced the corporate veil to impose personal liability on four family members (James, Eric, Erin, and Edmond Wierzbicki). However, the Board, reversing the administrative law judge, declined to impose personal liability on the two remaining family members (Karen and Constance Wierzbicki).

The four individually-liable family members had each actively participated in the business entities. Karen and Constance had each received corporate distributions for noncorporate purposes—i.e., cash payments and payments of personal expenses. However, they had not actively participated in the business entities.

The Board noted the *White Oak* standards for piercing the corporate veil—that is, the General Counsel must meet a two-prong test by proving

[57] 346 NLRB No. 67 (Chairman Battista and Members Liebman and Schaumber)
[58] *White Oak Coal Co.,* 318 NLRB 732 (1995), enfd. Mem 81 F.3d 150 (4th Cir. 1996).

(1) commingling of corporate and individual identities, and (2) that the commingling may have damaged third parties. The Board further noted that, under *White Oak*, "[t]he showing of inequity . . . must flow from misuse of the corporate form" and that "the individual alleged to be individually liable must have participated in the fraud, injustice, or inequity."

Quoting from the Tenth Circuit's decision in *NLRB v. Greater Kansas City Roofing*[59] the Board explained that "the fraud or inequity sought to be eliminated must be that of the party against whom the [piercing-the-corporate-veil] doctrine is invoked, and such party must have been an actor in the course of conduct constituting the abuse of corporate privilege." The Board further explained that, for this reason, "a person's passive receipt of benefits that derive from a diversion of corporate assets for noncorporate purposes does not, by itself, demonstrate participation in the fraud, injustice, or inequity sufficient to establish individual liability under the second prong of the *White Oak* analysis." The Board then concluded that "where the individual alleged to be liable plays no active role in the corporation's operations, that individual has not effectively become the business entity simply upon receipt of funds or other corporate assets, and accordingly cannot be held liable for the corporation's obligations."

Because neither Karen nor Constance had played an active role in the respondent corporations' operations, the Board held that they were not individually liable for the corporations' unfair labor practices.

Member Liebman additionally noted the fraudulent-transfer liability theory, that the General Counsel had not pressed this theory, and suggested that, in subsequent proceedings, Karen or Constance might be individually liable under this theory to the extent of the value of assets transferred to them without consideration.

2. Successor Employer's Bargaining Obligation

The Board in a 5-0 decision involving *Planned Building Services, Inc.*,[60] a New York City cleaning and maintenance contractor, and Service Employees Local 32B 32J, modified the appropriate remedy for a successor employer's unlawful refusal to hire the union-represented employees of its predecessor, in order to avoid a bargaining obligation with the union.

The Board affirmed a decision of an administrative law judge that Planned Building Services was a successor to various contractors and violated the National Labor Relations Act by refusing to hire the

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[59] 2 F.3d 1047 (10th Cir. 1993).
[60] 347 NLRB No. 64 (Chairman Battista and Members Liebman, Schaumber, Kirsanow, and Walsh).

employees of the predecessor. The remedy that the Board traditionally has imposed for such unlawful conduct seeks to make employees whole for the successor's violation of the law by ordering the restoration of the predecessor's terms and conditions of employment until the successor either reaches a new agreement with the union or bargains to impasse. In this case, the Board imposed the traditional remedy, affirming that it is appropriate to ensure that any uncertainty as to what would have happened, had the parties engaged in lawful bargaining, would be resolved against the successor employer, the wrongdoer. At the same time, however, the Board acknowledged concerns expressed by some federal appeals courts that the remedy should not amount to a penalty. Accordingly, the Board modified the traditional remedy to allow the successor employer to present evidence, in a compliance proceeding, that it would not have agreed to the predecessor's terms of employment, as well as evidence of the terms it would have agreed to, and the date it would have either reached agreement with the union or would have bargained to impasse.

The Board also clarified the legal framework for analyzing whether a successor employer has unlawfully refused to hire its predecessor's employees.

3. Bargaining Orders

In *Concrete Form Walls, Inc.*[61] the Board majority found that the employer's unfair labor practices warranted a *Gissel*[62] bargaining order. In granting the order, the Board also held that the status of undocumented aliens as statutory employees under the National Labor Relations Act ("the Act") remained undisturbed by the Supreme Court's holding in *Hoffman Plastic Compounds, Inc. v. NLRB*.[63]

The Board adopted the judge's findings that the employer failed to show that the four Hispanic employees it discharged after they voted in representation elections were undocumented workers, and that it discharged them for that reason. The Board also agreed with the judge's findings that a supervisor told the employees that those who voted would

[61] 346 NLRB No. 80 (Chairman Battista and Member Liebman; Member Schaumber dissenting in part).

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

[63] 535 U.S. 137 (2002). The Board understood the *Hoffman* Court as holding that a backpay award to undocumented workers would run counter to Immigration and Reform Control Act ("IRCA") policies but that "the Board has other traditional remedies at its disposal to ameliorate unfair labor practices involving undocumented workers." 346 NLRB No. 80, slip op. at 4. The Board further noted that the House Judiciary Report on the IRCA specifically stated that the IRCA's employer sanctions provisions were not intended to limit the scope of "employee" under the Act, and that no post-*Hoffman* decisions have altered long-held Board law that undocumented aliens are statutory employees under the Act. Id., slip op. at 5.

have no work with the employer, and that the employer violated Section 8(a)(1) by promising a wage increase to employees who provided sufficient employment verification documentation to be placed on a formal payroll, as opposed to being paid on a cash basis.

The Board characterized these 8(a)(1), (3), and (4) violations as striking "at the very heart of the employees' Section 7 rights."[64] The Board noted that the employer's "apparent willingness to threaten employees with termination for voting in a Board-conducted election and to follow through on those threats casts serious doubts on whether a fair second election could be held."[65] Further, the Board found that the coercive impact of the employer's unfair labor practices was significant because of the small size of the unit of 25 employees, and the start of the employer's campaign of unfair labor practices within 24 hours of the union's demand for recognition. The Board distinguished the case from previous Board decisions declining to issue a remedial bargaining order by pointing out that several hallmark violations had been committed and that the employer had not mitigated the impact of the violations.

The Board held that traditional reinstatement and notice-posting remedies would not erase the long-term effect of the employer's several hallmark violations where its work force, "comprised almost entirely of Spanish-speaking employees with questionable ability to work in the United States," received a clear message that voting in the election would subject them to the risk of being suspected of, and terminated as, an undocumented worker.[66] The Board also noted that the employer did not challenge the remedial bargaining order but argued instead that it did not violate the Act and that there was no valid card majority upon which to base the remedial bargaining order—arguments which the Board found to be without merit. According to the Board, the remedial bargaining order did not undermine the significance and force of the Board's special remedies but was an acknowledgement that "they alone cannot sufficiently remedy unfair labor practices in every case."[67] The Board found that there was "a marked difference between the type of interference with the Section 7 right caused by a preelection discharge and that caused by a discharge resulting directly from an employee's exercise of that right. The former interferes with the employee's right to make a free electoral choice, while the latter represents a full frontal assault on the right to vote at all."[68]

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[64] Id., slip op. at 10.
[65] Id.
[66] Id., slip op. at 11.
[67] Id., slip op. at 12.
[68] Id.

In his partial dissent, Member Schaumber stated that a bargaining order was not warranted in this case, noting that bargaining orders have been denied in cases where, in addition to other violations of the Act, the employer had discriminatorily discharged employees. Member Schaumber did not consider the case to be "truly extraordinary" to warrant a *Gissel* remedy. Instead of a remedy that deprived employees temporarily of their right to freely choose a representative in a secret-ballot election, he would find that the Board's traditional remedies, plus the special notice-reading remedy, would "suffice to cleanse the atmosphere for another election."[69]

4. Discrepancies in Interim Earnings Reported to Board and Other Parties

In *Cibao Meat Products*,[70] the Board majority found that discriminatee Jose Luis Mendez was entitled to a full backpay award even though there were discrepancies between earnings information he reported to the Board and to other parties. Applying extant Board law, the Board reasoned that it could not deny backpay, absent evidence that Mendez deliberately misled the Board or withheld information concerning his interim income and employers.[71]

The respondent had unlawfully discharged Mendez after a group of coworkers, including Mendez, protested the unlawful suspension of his brother.[72] During the subsequent backpay period, Mendez primarily worked as a livery cab driver. During this time, he applied for a mortgage and a credit card. In computing the amount of backpay owed to Mendez, the judge found that there was evidence that Mendez overstated his income from the livery cab in his mortgage and credit card applications. However, the judge was not persuaded that the inconsistencies in those applications as compared to information submitted to the Board established that Mendez deliberately misled the Board regarding his interim earnings and employment.

The Board agreed with the judge's conclusion and found that Mendez made a good-faith effort to accurately report his earnings during the backpay period. The Board acknowledged the obvious discrepancies between the items of evidence provided by Mendez to other parties and the Board, but did not believe that the mere existence of such discrepancies suggested willful concealment.

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[69] Id., slip op. at 16.
[70] 348 NLRB No. 5 (Chairman Battista and Member Walsh; Member Schaumber dissenting).
[71] See *Atlantic Limousine, Inc*., 328 NLRB 257 (1999).
[72] *Cibao Meat Products*, 338 NLRB 934 (2003), enfd. 84 Fed. Appx. 155 (2d Cir. 2004), cert. denied 543 U.S. 986 (2004).

Member Schaumber, dissenting in part, would have reduced Mendez' backpay award by averaging the interim income claimed by Mendez at the hearing and in the various earnings information submitted to other parties. Member Schaumber wrote: "In this way, the Board could insure that a remedy is provided for the unlawful discrimination practiced by the respondent while still accounting for the unnecessary uncertainty caused by Mendez' misrepresentations." In response, the majority noted that their dissenting colleague cited no Board precedent to support his "averaging" approach and that such an approach erodes the respondent's settled burden to prove willful concealment.

5. Liability for Predecessor's Unfair Labor Practices

In *Lebanite Corp.*,[73] the Board majority reversed the administrative law judge and found that Oregon Panel Products, LLC (Oregon Panel), was not a *Golden State*[74] successor to Lebanite Corp. and, thus, not liable for Lebanite Corp.'s unfair labor practices. In addition, the Board unanimously affirmed the judge's findings that R.E. Service Co. (Service) was a single employer with Lebanite Corp. and, thus, was jointly and severally liable for Lebanite Corp.'s violations of the Act.

Lebanite Corp. made composite hardboard. In January 2000, Service, which was 90 percent owned by its president, Mark Frater, purchased the Lebanite facility as an ongoing operation, holding it as a wholly-owned corporation. Later that year, Lebanite entered into a new collective-bargaining agreement with the union representing its production, maintenance, and transportation employees. After its purchase by Service, Lebanite's sales fell, and in 2003 it instituted various cost-cutting measures that were alleged by the General Counsel to violate Section 8(a)(5) and (1) of the Act. These measures included failing and refusing to pay employees a scheduled wage increase and vacation, holiday, and bonus pay and failing to make pension contributions and medical insurance payments. Lebanite subsequently engaged in additional alleged violations of 8(a)(5) and (1) by ceasing operations and laying off all employees in August 2003, as well as leasing its facility in October 2003, without notice to the union or providing an opportunity to engage in effects bargaining.

In late 2003, a new company, Oregon Panel Products, LLC, was formed to resume Lebanite's operations. In October 2003, Oregon Panel entered into agreements with Lebanite, its creditors, and Frater, to lease the Lebanite operation, including the plant and equipment. The lease,

[73] 346 NLRB No. 72 (Chairman Battista and Member Schaumber; Member Liebman dissenting in part).
[74] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

which provided for $38,000 in monthly rental payments—$18,500 to Lebanite and $19,500 to Lebanite's bank (which held notes on the property)—was terminable by either party on 30 days' notice. Oregon Panel began production in December 2003. However, the resumption of operations proved not economically viable, and, in April 2004, Oregon Panel laid off its employees and closed the plant.

The judge granted the General Counsel's motion for default judgment and found that Lebanite had violated Section 8(a)(5) by failing to pay various items of employee compensation and by ceasing operations, laying off its employees, and leasing its facility without notice to the union. The judge ordered Lebanite, among other things, to pay backpay totaling $231,440 to its 54 laid-off employees. No exceptions were filed to these findings.

The judge also found that Service was a single employer with Lebanite because, although Service and Lebanite had little interrelationship of operations, they shared common ownership and management, had centralized control of labor relations, and did not deal with each other on an arm's length basis. The Board agreed, except that it found that the judge erred in treating absence of an arm's-length relationship as an separate factor rather than as either synonymous with the single employer finding or as an aspect of interrelation of operations within the Board's traditional four-factor analysis. Thus, contrary to the judge, the Board found that evidence demonstrating that Service obtained products from Lebanite in non-arm's-length transactions at reduced prices or without payment was probative of the interrelation of operations factor. The Board, however, found it unnecessary to decide whether such transactions in this case were sufficient by themselves to show interrelation of operations.

With respect to Oregon Panel, the Board reversed the judge and found that Oregon Panel was not a *Golden State* successor to Lebanite. In *Golden State*, the Supreme Court upheld the Board's ruling that a purchaser who had acquired an enterprise with knowledge of the seller's unremedied unfair labor practices could be held jointly and severally liable for the seller's wrongdoing. The Court relied, in part, on the fact that the successor's "potential liability for remedying the unfair labor practices . . . [could] be reflected in the price he [paid] for the business, or . . . an indemnity clause in the sales contract which [would] indemnify him for liability arising from the seller's unfair labor practices."[75]

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[75] 414 U.S. at 185, quoting *Perma Vinyl Corp*., 164 NLRB 968, 969 (1967) (double quotation marks omitted).

In reversing the judge and finding that Oregon Panel was not a *Golden State* successor, the Board relied on its finding that Oregon Panel could not have effectively negotiated a method of insulation from liability for Lebanite's unfair labor practices. The Board found that Lebanite's unfair labor practice liability, which exceeded $231,000, was much greater than—and thus could not reasonably have been offset by—Oregon Panel's $18,500 rental payment to it, especially given that the duration of the lease agreement was uncertain, as it was terminable on 30-days' notice. The Board also emphasized, in balancing the equities, that Oregon Panel itself was entirely innocent of any unlawful conduct.

The Board found this case governed by *Hill Industries,*[76] where the Board held that BTS New York (BTS) was not a *Golden State* successor to Hill Precision (Precision). In *Hill Industries,* BTS took over Precision's lease of facilities and equipment, purchased $3,500 worth of materials from Precision, and entered into an agreement, terminable on 30 days' notice, granting BTS the use of certain other Precision equipment in exchange for Precision's being allowed to store the equipment at the BTS facility. The Board found that Precision's unfair labor practice liability far exceeded the $3,500 BTS paid to Precision, so it would have been impossible for BTS to offset its potential liability by negotiating over the purchase price of the materials, and that, in negotiating over the equipment storage agreement, BTS could not have effectively insulated itself from potential exposure to liability for Precision's unfair labor practices, given that the agreement was terminable on a month's notice.

The Board found that the present case shared key similarities with *Hill Industries,* in that, in both cases, the predecessor's unfair labor practice liability was substantially greater than the amount of the putative successor's purchase or rental payment to the predecessor and that, in each case, the predecessor had an agreement with the putative successor that was terminable on a month's notice. The Board concluded that in the present case, as in *Hill Industries,* a finding of successorship under *Golden State* would be inappropriate, because in neither case could the putative successor have negotiated a method of insulation from the predecessor's unfair labor practice liabilities.

In dissent, Member Liebman found that, based on the continuity of the enterprise between Lebanite and Oregon Panel, coupled with Oregon Panel's notice of the underlying unfair labor practices, imposing successor liability on Oregon Panel should be a straightforward matter under the applicable law. She contended that the majority's approach

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[76] 320 NLRB 1116 (1996).

was flawed and that the cases on which the majority relied, including *Hill Industries,* were distinguishable.

VI

Supreme Court Litigation

During fiscal year 2006, 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 four private party petitions for certiorari in Board cases, and granted none.

VII

Enforcement Litigation

A. Protected Activity

In *NLRB v. OPW Fueling, Inc.*,[1] the Sixth Circuit, relying on an earlier Seventh Circuit decision in *Roadmaster v. NLRB*,[2] agreed with the Board that the employer violated the Act by suspending and then discharging a union committeeman because he signed employees' names to a grievance form without their permission. The court upheld the Board's conclusion that the union committeeman did not lose the Act's protection because he acted in good faith and without an intent to deceive, explaining that the union committeeman acted "to preserve the Union's right to pursue what he believed was the correct interpretation of [a provision in the collective-bargaining agreement]," there was an absence of evidence that he would have profited or gained anything from deceiving the employer, and no one was or could have been deceived or harmed by his action.[3] The court rejected the employer's argument that the result allows employees to forge grievances and conflicts with Section 10(c) of the Act, which allows employers to discharge employees for cause, because "the mere act of signing another employee's name on a grievance form without the requisite intent to deceive does not constitute a 'forgery' and, thus, it does not constitute a 'cause' under Section 10(c)."[4]

In *Mountain Shadows Golf Resort*,[5] the Board explained that, in cases decided since *NLRB v. Electrical Workers Local 1229 ("Jefferson Standard")*,[6] it "has held that employee communications to third parties in an effort to obtain their support are protected where the communication indicated it is related to an ongoing dispute between the employees and the employer and the communication is not so disloyal, reckless or maliciously untrue as to lose the Act's protection." In *Endicott Interconnect Technologies, Inc. v. NLRB*,[7] the District of Columbia Circuit reversed the Board's finding that an employee's statements in a newspaper article and on a newspaper public-forum website were protected under that test.

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[1] 443 F.3d 490 (6th Cir. 2006), cert. denied, 75 USLW 3207 (2006).
[2] 874 F.2d 448 (7th Cir. 1989).
[3] 443 F.3d at 496–497.
[4] Id. at 501.
[5] 330 NLRB 1238, 1240 (2000).
[6] 346 U.S. 464 (1953).
[7] 453 F.3d 532 (D.C. Cir. 2006).

The court accepted the Board's two-prong test as accurately reflecting the holding in *Jefferson Standard*, but concluded that the Board "misapplied the second prong" by not considering whether the employee's statements were disloyal.[8] Specifically, the court concluded that the employee's statements—that recent layoffs had left "gaping holes" "in the critical knowledge base for the [employer's] highly technical business" and that senior management was "causing the business to be 'tanked' and was going to 'put it into the dirt'"—"constituted 'a sharp, public, disparaging attack upon the quality of the company's product and its business policies' at a 'critical time' for the company," and therefore the employer did not violate the Act when it discharged the employee for cause.[9]

Off-duty employees have a right to engage in union solicitation in nonworking areas, and employer restrictions on such activity are unlawful unless the employer can show that the restrictions are necessary to maintain production or discipline.[10] Parking lots and other exterior areas of the workplace are not working areas in which an employer may lawfully restrict such solicitation.[11] Retail employers, however, may prohibit all employee solicitation on the selling floor, as well as its adjacent aisles and corridors, at any time the store is open to the public.[12]

In *Meijer, Inc. v. NLRB*,[13] the Sixth Circuit affirmed the Board's determination that, even though the employer performed some minimal work in its parking lot, such as retrieving shopping carts and helping customers with their purchases, that work was merely incidental to the parking lot's primary function and did not render the parking lot a working area. The court noted that there was insufficient evidence to support the employer's assertion that it uses its parking lot as an extension of its interior sales floor.[14] The court also rejected the employer's assertion that either motor-vehicle safety concerns or the risk of embroiling customers in union organization activities was a sufficient basis for curtailing the right of off-duty employees to engage in union solicitation.[15]

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[8] Id. at 537.
[9] Id. at 537–538 (quoting *Jefferson Standard*, 346 U.S. at 471).
[10] *Beth Israel Hosp. v. NLRB*, 437 U.S. 483, 492–493 (1978).
[11] *Tri-County Med. Ctr.*, 222 NLRB 1089 (1976).
[12] *Marshall Field & Co.*, 98 NLRB 88 (1952), modified on other grounds and enforced, 200 F.2d 375 (7th Cir. 1953); *May Dept. Stores Co.*, 59 NLRB 976 (1944), modified and enforced, 154 F.2d 533 (8th Cir. 1946).
[13] 463 F.3d 534, 543–544 (6th Cir. 2006).
[14] Id. at 544.
[15] Id. at 544–545.

Employees have the right to protest their employer's dilatory bargaining tactics or substantive labor policies.[16] In *Englehard Corp. v. NLRB*,[17] an employer suspended employees who picketed its annual shareholders' meeting to pressure the employer to resume collective-bargaining negotiations. The employer claimed that it was entitled to suspend them because their union had waived the employees' right to engage in such picketing by agreeing, in a contract containing a no-lockout/no-strike clause, "that it will not call, participate in, or sanction . . . any . . . picketing . . . whatsoever." In rejecting the employer's claim that the clause constituted a clear and unmistakable waiver of its employees' statutory rights, the court observed that "'the extent of the waiver . . . turns upon the proper interpretation of the particular contract . . . [which] must be read as a whole and in light of the law relating to it when made.'"[18] Applying that test, the court found it "particularly relevant that the parties [had] expressly stated [in the contract] their intention to prevent the suspension of work and [had] explained that it [wa]s 'to carry out this intention' that they undertook" the no-lockout/no-picketing commitments set forth in the balance of the clause.[19] Because the picketing of the shareholders' meeting at a hotel some 50 miles away from the employer's production facilities did not, and could not reasonably have been expected to, lead to the suspension of any work at those facilities, the court held, in agreement with the Board, that the union had not waived the employees' right to engage in the picketing, and that the employer's actions aimed at preventing and punishing that protected activity were unlawful.[20]

B. Majority Status

In *Sewell Mfg. Co.*, the Board held that it would set aside representation elections where a party deliberately attempts to influence voters through appeals to racial, religious or ethnic bigotry.[21] In *Honeyville Grain, Inc. v. NLRB*,[22] the Tenth Circuit agreed with the Board that, under *Sewell Mfg. Co.*, the party challenging allegedly prejudicial remarks bears the initial burden to show that they were inflammatory or formed the core of the alleged offending party's preelection campaign.[23] The court agreed that the Board's placement of

[16] *Cordura Publications, Inc.*, 280 NLRB 230, 230–232 (1986).
[17] 437 F.3d 374 (3d Cir. 2006).
[18] Id. at 378 (citation omitted).
[19] Id. at 381.
[20] Id.
[21] *Sewell Mfg. Co.*, 138 NLRB 66, 71–72 (1962).
[22] 444 F.3d 1269 (10th Cir. 2006).
[23] Id. at 1269.

the critical burden on the challenging party accorded with the general burden-shifting regime followed by reviewing courts around the country.[24]

On the facts, the court agreed with the Board that the union's remarks—principally, that the employer was run by Mormons, that it was giving its money to the Mormon Church, that companies have a tax incentive to give profits to churches rather than to their employees, and that the employer's Mormon owners also gave money to Mormon missionaries—were neither inflammatory nor the central theme of the union's campaign.[25] The court found no inflammatory appeal because, "[p]erhaps most importantly, the union's religious comments did not explicitly disparage Mormons or reference the owner's religion in an overtly abusive or gratuitous manner," and they "were clearly outside of the core issues of the union's campaign;" indeed, the employer failed to show "any pre-election religious 'tension' between the [employer] and its employees that may have been exacerbated by the isolated religious remarks."[26]

The Act requires an employer to recognize and bargain with a labor organization selected by a majority of its employees. Employee support for a labor organization "may be eroded by changed circumstances,"[27] prompting an employer to withdraw recognition of the employees' incumbent collective-bargaining representative. Prior to 2001, when the Board issued its decision in *Levitz Furniture*,[28] an employer could lawfully withdraw recognition based on a "good-faith doubt" of the union's continuing majority status.[29] Under *Levitz*, however, an employer can lawfully withdraw recognition only by showing that the union actually lacked majority support at the time recognition was withdrawn.[30]

In *NLRB v. Seaport Printing & Ad Specialties, Inc.*,[31] the first opportunity for an appellate court to review the Board's new withdrawal-of-recognition standard, the Fifth Circuit rejected the employer's attack on the validity of *Levitz Furniture*, concluding that the Board's rule "is rational, consistent with the [Act], within the Board's authority to adopt, and adequately reasoned to withstand judicial review."[32] The court also

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[24] Id. at 1274–1275.
[25] Id. at 1275–1279.
[26] Id. at 1277–1279.
[27] *NLRB v. Financial Inst. Employees, Local 1182*, 475 U.S. 192, 198 (1986).
[28] 333 NLRB 717 (2001).
[29] *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359, 364 (1998).
[30] 333 NLRB at 717.
[31] 2006 WL 2092499 (5th Cir. 2006).
[32] Id. at 1.

enforced the Board's factual finding that the evidence presented failed to establish a lack of majority support, explaining that it was within the Board's role as factfinder to "interpret[] ambiguous facts and statements by employees differently from th[e] court."[33]

C. Strikes and Lockouts

An employer has a right to continue his business during a strike and a legal right to permanently replace economic strikers at will.[34] The Board has held that "the motive for such replacements is immaterial, absent evidence of an independent unlawful purpose."[35] The Board has not explained precisely what, if any, circumstances suffice to show that an employer's hiring of permanent replacements was motivated by an independent unlawful purpose.[36]

In *New England Health Care Employees Union, District 1199, SEIU v. NLRB (Church Homes, Inc.)*,[37] the Second Circuit remanded the case to the Board to explain why the employer's failure to give notice to the union that it was hiring permanent replacements did not establish that the employer was motivated by an independent unlawful purpose.[38] The court agreed with the Board that the Act does not obligate an employer to provide such notice, but determined that the Board should not have relied on that fact alone in concluding that an employer's decision to keep the hiring of permanent replacements secret is not probative of whether the employer harbored such an unlawful purpose.[39] The court stressed, however, that its "opinion is narrow . . . and does not preclude the Board on remand from reaching the same conclusion through adequate reasoning."[40]

Judge Posner has observed that the Act "models labor relations as tests of strength between workers and management. Workers withhold or threaten to withhold their labor in order to impose costs on management that will induce management to improve the workers' terms or conditions of employment, and employers if they don't want to knuckle under to the workers' demands can try to impose costs on the workers by locking them out . . . . "[41] In *Local 15, IBEW v. NLRB (Midwest Generation, E.M.E., LLC)*,[42] the employer refused to reinstate,

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[33] Id.
[34] *NLRB v. Mackay Radio & Telegraph Co.*, 304 U.S. 333, 345–347 (1938).
[35] *Hot Shoppes, Inc.*, 146 NLRB 802, 805 (1964).
[36] See *Church Homes, Inc.*, 343 NLRB 1301 (2004).
[37] 448 F.3d 189 (2d Cir. 2006).
[38] Id. at 196.
[39] Id. at 195.
[40] Id. at 196.
[41] *Trompler, Inc. v. NLRB*, 338 F.3d 747, 750 (7th Cir. 2003).
[42] 429 F.3d 651 (7th Cir. 2005), cert. denied, 127 S.Ct. 42 (2006).

and thereby locked out, economic strikers ("the full-term strikers") until they accepted the employer's lawful contract proposal, but did not lock out those employees who never struck ("the nonstrikers") and those employees who had abandoned the strike prior to the union's offer to return to work ("the crossovers").

The Seventh Circuit, applying the framework of *Great Dane Trailers,*[43] held, in disagreement with the Board, that the employer's lockout of only the full-term strikers was not justified by its business judgment that it did not need to place economic pressure on the nonstrikers and crossovers to achieve its bargaining goals, and therefore violated the Act.[44] In the court's view, that justification, which the Board found rendered the partial lockout lawful, rested on a "fatally flawed" assumption that "working for a struck employer may, without more, be equated with abandonment of the Union's bargaining demands."[45] In ultimately concluding that the employer demonstrated antiunion animus by locking out only the full-term strikers, the court held that, even if the employer could irrefutably prove that the crossovers and nonstrikers had abandoned the union's bargaining position, it still could not discriminate on that basis.[46] The court remanded the case to the Board to determine whether the employer's unlawful lockout coerced employees into accepting the employer's contract proposal, thereby voiding the parties' collective-bargaining agreement.[47]

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[43] *NLRB v. Great Dane Trailers, Inc.*, 388 U.S. 26 (1967).
[44] Id. at 662.
[45] Id. at 659.
[46] Id. at 660–662.
[47] Id. at 662.

VIII

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 2006, the Board filed in district courts a total of 22 petitions for temporary injunctive relief under Section 10(j). Of these petitions, all were filed against employers. One case authorized in a prior fiscal year was also pending in district court at the beginning of the fiscal year. Of these cases, six were settled or adjusted prior to court action, and two cases were withdrawn prior to court decision as moot due to the issuance of Board orders. District courts granted injunctions in 12 cases and denied an injunction in 1 case. Three cases remained pending in district court at the end of the fiscal year.

Of the 13 cases litigated to decision in Fiscal 2006, one case that involved the protection of a union's organizational campaign resulted in the entry of an injunctive decree returning 6 discriminatees to work. Four cases involved employer withdrawal of recognition from incumbent unions; injunctions were granted in three of those cases and denied in the fourth. Two cases involved the grant of interim bargaining orders where employer unfair labor practices had precluded the ability to conduct fair rerun elections. Two cases this fiscal year involved an employer's engaging in conduct allegedly designed to undermine the status of an incumbent union, such as unilaterally granting wage increases and discriminating against employees. Finally, four cases this year involved a successor employer's refusal to recognize and bargain with the incumbent union that had represented the employees of the predecessor employer.

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[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).

Gomez v. M. Mogul Enterprises, Inc., d/b/a MSK Cargo/King Express[2] and *Gomez v. Third Garage, LLC*,[3] involved two employers, each of which was awarded roughly half of the delivery service work previously handled by another company under a contract with DHL. The union had been certified recently as the collective-bargaining representative of the predecessor's employees. The Regional Director alleged that each of the respondents violated the Act by refusing to hire certain applicants who had worked for the predecessor in order to evade successorship status under *Burns*[4] and by refusing to recognize and bargain with the union. The court consolidated the two cases and concluded that there was reasonable cause to believe that each respondent had violated the Act as alleged. The court further found that injunctive relief was just and proper, and it issued interim orders requiring each respondent to hire the alleged discriminatees, recognize the union, and bargain in good faith upon request.

In *Gold v. State Plaza, Inc.*,[5] the employer allegedly withdrew recognition from the recently-certified union without evidence that an uncoerced majority of the employees no longer wished to be represented. The Regional Director further alleged, inter alia, that the employer sponsored antiunion petitions, solicited and induced employees to sign antiunion petitions, and dealt directly with employees regarding wages. The court concluded that the Regional Director had established a substantial likelihood of success in proving the violations; the employees would suffer irreparable harm absent injunctive relief; such relief would not materially harm the employer; and the public interest in furthering the purposes of the Act and protecting the Board's processes favored an interim injunction. The court also stated that an administrative law judge's findings of related violations in an earlier case indicated that, without injunctive relief, no mechanisms were in place to preserve the employees' Section 7 rights. Furthermore, the court noted that the union's recent certification and its efforts to secure a first contract made the unit highly susceptible to employer misconduct.

The petition in *Kendellen v. St. George Warehouse, Inc.*,[6] sought an injunction requiring interim restoration of a bargaining unit pending the Board's final order in a compliance proceeding. In an earlier unfair labor practice proceeding, the Board found that the Employer had violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the unit

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[2] Civil No. B-06-059 (S.D. Tex. April 28, 2006).
[3] Civil No. B-06-060 (S.D. Tex. April 28, 2006).
[4] *NLRB v. Burns International Security Services, Inc.,* 406 U.S. 272 (1972).
[5] Civil No. 06-329 (CKK) (D. D.C. June 5, 2006).
[6] Civil No. 06-cv-2518(PGS) (D. N.J. August 8, 2006).

through its practice of replacing unit employees with staffing agency employees, rather than hiring its own new employees into the unit. The Board's order requiring the Employer to restore the pre-violation ratio of unit employees to agency employees was enforced by a court of appeals, and a compliance proceeding was initiated to determine the correct ratio. In the meantime, in a related case against the Employer, the Board filed a contempt petition in the court of appeals seeking a bargaining order. Accordingly, the Board argued to the district court in the 10(j) case that restoration of the unit was essential in order for meaningful bargaining to take place when the court of appeals issued its anticipated contempt order. The district court granted an injunction requiring the Employer to submit a comprehensive plan restoring the unit to a ratio of 12 unit employees for each agency employee—the ratio stipulated to by the parties during the compliance hearing—and enjoining the Employer from violating the employees' Section 7 rights in any other manner.

Kendellen v. Evergreen America Corp.,[7] involved unfair labor practices committed during an organizing campaign in which the Union obtained authorization cards from a majority of the unit employees, but lost the Board-conducted election. The extensive violations included threats of plant closure or relocation, discharge, loss of benefits, and other reprisals; interrogations; grants of unusually high, across-the-board, wage increases and promotions; and grants of other benefits, including gift certificates, lunches, picnics, and a liberalization of attendance and dress policies. Many of the violations were committed by high-ranking Employer officials. The district court granted an interim *Gissel*[8] bargaining order, relying in part on the administrative law judge's decision and recommended order. The court concluded that such injunctive relief would be just and proper because, absent an interim bargaining order, the Union's ability to represent the employees would continue to weaken until the Board issues its final order, considering the extensive unfair labor practices, including the hallmark violations of threats of plant closure and offers of wage increases and promotions.

B. Injunction Litigation Under Section 10(1)

Section 10(l) imposes a mandatory duty on the Board to petition for "appropriate injunctive relief" against a labor organization or its agent charged with a violation of Section 8(b)(4)(A), (B), and (C),[9] or Section

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[7] 428 F. Supp. 2d 243 (D. N.J. 2006).

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

[9] Section 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

8(b)(7),[10] and against an employer or union charged with a violation of Section 8(e),[11] whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue."[12] 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.[13] 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 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 three petitions for injunctions under Section 10(l). All three cases involved secondary boycott action proscribed by Section 8(b)(4)(B). One of these cases settled after the petition was filed. During this period, two petitions went to final order, the courts granting an injunction in one case and denying injunction relief in the other.

(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, Section 8(e).

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

[11] Section 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.

[12] See generally *Pye v. Teamsters Local Union No. 122*, 61 F.3d 1013 (1st Cir. 1995); *Kinney v. International Union of Operating Engineers, Local 150*, 994 F.2d 1271 (7th Cir. 1993).

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

IX

Contempt Litigation and Compliance Branch

During fiscal year 2006, the Contempt Litigation and Compliance Branch (CLCB) provided a range of services, combining advice, training, and assistance to Regions with federal court litigation, including contempt proceedings, actions under the Federal Debt Collection Procedures Act of 1990 (FDCPA) and bankruptcy actions. A total of 318 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, 112 cases were formal submissions respecting contempt or other compliance actions; in 206 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 207 asset/entity database investigations to assist Regions in their compliance efforts, a task over and above the 318 referrals to CLCB referenced above. In addition, more than 400 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 112 contempt or other formal submissions, voluntary compliance was achieved in 24 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 34 other cases settled after the filing of a formal pleading in court but before trial. In 49 other cases, it was determined that contempt or other proceedings were not warranted.

In cases deemed to have merit, 11 civil contempt or equivalent proceedings were instituted, including 1 in which body attachment was sought. A number of ancillary compliance proceedings under FDCPA were also instituted by CLCB in FY 2006, including five proceedings to obtain post-judgment writs of garnishment; two proceedings to obtain pre-judgment writs of garnishment; two proceedings to obtain pre-judgment protective restraining orders; and one proceeding to obtain the appointment of a receiver. CLCB instituted three proceedings in bankruptcy courts, including a motion to take Section 2004 examinations, an objection to a proposed free and clear sale, and a non-dischargeability action under § 727 of the Bankruptcy Code. CLCB also instituted one subpoena enforcement action in District Court.

Thirteen civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2006, including one issuing a writ of body attachment. During FY 2006, CLCB also successfully obtained three

protective restraining orders; eight post-judgment writs of garnishment; one pre-judgment writ of garnishment; four turnover orders for garnished funds; one order appointing a receiver in an FDCPA pre-judgment garnishment action; two orders denying respondents' motions to revoke subpoenas, one sought under provisions of the Right to Financial Privacy Act; and two subpoena enforcement orders from District Courts. In bankruptcy courts, CLCB obtained three orders, one granting the Board's motion to conduct Section 2004 examinations, one granting us authority to issue subpoenas, and one protecting our claims in a free and clear sale.

During the fiscal year, CLCB collected $4,066,434 in backpay or other compensatory damages, while recouping $148,088 in court costs and attorneys' fees incurred in contempt litigation.

Two noteworthy contempt cases issued in FY 2006. In *NLRB v. St. George Warehouse* (No. 01-2215), the Third Circuit summarily adjudged Respondent in civil contempt for withdrawing recognition from the Union before remedying outstanding unfair labor practices. The Court ordered the Company, among other things, to: (1) deposit $50,000 into the registry of the Court as a fine to be remitted upon full compliance with the contempt order; (2) resume bargaining on an expedited schedule as specified in the Court's order; (3) after 9 months of bargaining, establish to the Court's satisfaction that it has met its bargaining obligation, unless a collective-bargaining agreement has been reached in the interim; and (4) continue to meet and bargain with the Union unless and until it receives express permission from the Court to withdraw recognition. It also ordered the Company to pay the Board's costs and attorneys' fees at prevailing market rates. Finally, the Court imposed substantial prospective fines against the Respondent and its officers, agents, and attorneys to assure future compliance. Respondent's petition for rehearing en banc is pending.

Similarly, in *Planned Building Services* (No. 02-4089), the Second Circuit approved a settlement against a janitorial contractor that included significant remedies. The Company was ordered to cease and desist from engaging in conduct violative of Section 8(a)(2) at all of its job sites, both current and future, and the court imposed a prospective fines schedule against the company of up to $20,000 for each future violation, and up to $3,000 against officers, employees, or agents of the Company. The Company also agreed to pay the Special Master's costs and fees (the master appointed is in private practice).

X

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 *JBM, Inc. v. National Production Workers Union, Local 707*,[1] the district court stayed an action under Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, in order to permit the Board to determine related representation issues in a pending unfair labor practice case. In the Section 301 action, the plaintiff-employer sought a declaratory judgment determining that a collective-bargaining agreement between the parties was still enforceable, despite informal Board settlement agreements that disestablished the parties' bargaining relationship and in the face of a pending unfair labor practice case involving the status of the employees' new bargaining representative. When Local 707 failed to respond to the employer's complaint, JBM moved for default judgment. The court denied the employer's motion and invited the Board, which was a nonparty to the case, to file a response to the employer's requested relief. The Board accepted the court's invitation and filed a response asking the court to either dismiss the case outright or stay further proceedings pending the outcome of the ongoing case before the Board in which the employer challenged the new bargaining agent's representational status. The Board argued that the relief JBM sought, if granted at that time, would not only interfere with the pending Board case, but would also infringe on the Board's primary jurisdiction to resolve representational matters.

The court agreed with the Board's arguments and issued an order denying once more the employer's Motion for Default Judgment, staying further proceedings in the case, and administratively closing the case pending resolution of the outstanding unfair labor practice charges. The court specifically accepted the Board's argument that the Board had to resolve the representational dispute before the court could entertain a request to grant the declaratory relief that the employer sought. Thus, "out of deference to the NLRB's expertise and primary jurisdiction to resolve representation questions,"[2] the court declined to enter a default judgment in favor of the employer and stayed the Section 301 litigation.

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[1] 454 F. Supp. 2d 680, 2006 WL 1328097, 179 L.R.R.M. (BNA) 2757 (S.D. Ohio March 16, 2006).
[2] 179 L.R.R.M. (BNA) at 2760.

In *AMERCO v. NLRB,*[3] the Ninth Circuit upheld a district court decision dismissing plaintiff AMERCO's suit seeking to enjoin an unfair labor practice proceeding. In that proceeding, AMERCO was alleged to be a single employer and single integrated enterprise with U-Haul, AMERCO's subsidiary alleged to have committed violations of the Act. After 3 weeks of testimony in an unfair labor practice hearing that proceeded against U-Haul alone, the General Counsel issued a new complaint that also included derivative liability allegations against AMERCO. In an effort to accommodate due process concerns raised by AMERCO, the administrative law judge granted AMERCO the right to recall any witnesses or challenge any evidence relating to its relationship with U-Haul, but denied AMERCO's request to recall witnesses and challenge evidence associated only with U-Haul's liability for the violations. In response, AMERCO filed an action against the Board in district court, which was dismissed. On appeal, the Ninth Circuit found that the case was squarely controlled by the Supreme Court's decision in *Myers v. Bethlehem Shipbuilding Corp.,*[4] which held, inter alia, that a district court lacks authority to enjoin an unfair labor practice hearing when an employer claims that the hearing is proceeding in violation of the Constitution. Under *Myers*, review in the courts of appeal under Section 10(f) of the Act is exclusive, including when claims of due process violations are asserted. Nor did the district court have jurisdiction over AMERCO's claims pursuant to *Leedom v. Kyne*,[5] because AMERCO could obtain meaningful judicial review pursuant to Section 10(f). Accordingly, the court affirmed the district court's dismissal of the case.

In *Ashley v. NLRB*,[6] four employees of Thomas Built Buses sued the Board in the Middle District of North Carolina alleging that the certification of the United Auto Workers, coupled with the Board's refusal to entertain their election objections which had asserted that Thomas Built's pre-election conduct tainted the election, deprived them of their liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution. The plaintiffs alleged that Thomas Built's posting of a "2005 Benefits Changes" memorandum 1 day before the union election tainted the election because the memorandum allegedly suggested that employee health care costs would increase unless employees voted for union representation. The plaintiffs previously had filed a motion to intervene in the Board's representation

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[3] 458 F.3d 883, 2006 WL 2291138 (9th Cir. Aug. 10, 2006).
[4] 303 U.S. 41 (1938).
[5] 358 U.S. 184 (1958).
[6] 2006 WL 2787405 (M.D.N.C. September 25, 2006).

proceeding and attempted to file objections to the conduct of the election. The Board certified the union and issued an order that denied the plaintiffs' motion to intervene and refused to consider their election objections because the plaintiffs were not a "party" to the representation proceeding and were thus ineligible under the Board's Rules and Regulations to file election objections. The Board moved to dismiss the district court suit on the grounds that the plaintiffs lack standing to constitutionally attack the Board's procedures and that the district court lacks subject matter jurisdiction to review the representation proceeding. The district court dismissed the complaint, finding that the plaintiffs lack standing because they failed to invoke the Board's unfair labor practice procedures, which could have remedied the conduct that the plaintiffs alleged tainted the election. "Since adequate procedural protections were available to Plaintiffs, they suffered no deprivation of due process."[7] The court also held that it lacks subject matter jurisdiction because the plaintiffs' complaint "is no more than a claim for unfair labor practices within the scope of the NLRA."[8] The case is currently pending on appeal in the Fourth Circuit.

B. Litigation Concerning the Board's Subpoena Power

In *NLRB v. American Medical Response, Inc.*,[9] the Second Circuit affirmed a district court order requiring the employer to comply with the Board's nationwide subpoena. The General Counsel investigated a charge relating to a single facility of the employer, American Medical Response, Inc. (AMR). The charge alleged that AMR violated Sections 8(a)(1)-(3) of the Act, 29 U.S.C. §§ 158(a)(1)-(3), by "offer[ing] to pay employees for participation in employee 'action teams' to improve the company."[10] During its investigation of that charge, the General Counsel learned that AMR had announced that it implemented the "action teams" at issue in all of its 55 non-unionized facilities."[11] To further its investigation, the General Counsel issued a subpoena relating to AMR's implementation and operation of the action teams at all of its non-unionized facilities across the United States. After AMR produced documents relating only to the single facility in the charge, the Board filed an application for enforcement of the subpoena, which the district court granted.

On appeal, the Second Circuit rejected AMR's argument that the nationwide subpoena was unduly burdensome and not relevant to the

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[7] Id. at 5.
[8] Id. at 6.
[9] 438 F.3d 188 (2d Cir. 2006).
[10] Id. at 191.
[11] Id.

General Counsel's investigation because the charge alleged only that AMR's action teams at one of its facilities violated the Act. Since AMR implemented the action teams in all of its non-unionized facilities, the court determined that the nationwide subpoena was relevant to the pending charge because: (1) a nationwide investigation of the action teams would shed light on whether the action teams at the charged facility violate the Act, and (2) the issue of whether the action teams at the other non-unionized facilities violate the Act is "closely related" to the charge, and therefore the General Counsel could issue a complaint as to all of AMR's non-unionized facilities.

C. Preemption Litigation

In *Metropolitan Milwaukee Association of Commerce v. Milwaukee County*,[12] the Seventh Circuit reversed the district court and found that a County ordinance requiring certain County contractors to negotiate "labor peace agreements" with unions was preempted by the Act. In 2000, Milwaukee County passed an ordinance that required certain firms that contracted with the County to negotiate labor peace agreements with any union that sought to organize the employees who worked on County contracts. The ordinance also dictated that the labor peace agreements contain several provisions, including language that would prohibit employers or labor organizations from coercing or intimidating employees in selecting or not selecting a bargaining representative. The plaintiff business association, which included contractors affected by the ordinance, alleged in district court that the ordinance was preempted by the Act. The Board filed a brief as amicus curiae arguing that the ordinance was preempted, but the district court disagreed. The Board again filed a brief as amicus curiae on appeal in the Seventh Circuit.

In reversing the lower court's decision, the Seventh Circuit highlighted that the state may intervene in the labor relations of companies from which it buys services if it is doing so to reduce the cost, or increase the quality, of those services, and not to displace the authority of the Act. However, the court noted that "the spending power may not be used as a pretext for regulating labor relations."[13] Relying on the fact that contractors which work on County contracts might also work on private contracts, the court concluded that the labor peace agreements would affect the contractors' labor relations on non-County jobs. Because of this "spillover effect," the court found the ordinance to be preempted by the Act. The court further determined that the County's

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[12] 431 F.3d 277 (7th Cir. 2005).
[13] Id. at 279 (citing *Wisconsin Dep't of Industry, Labor & Human Relations v. Gould, Inc.*, 475 U.S. 282 (1986)).

motivation in enacting the ordinance stemmed from dissatisfaction with the Act, rather than from concern with service interruptions, and thus noted that "the County is trying to substitute its own labor-management philosophy for that of the National Labor Relations Act."[14] The court further reasoned that other contractual remedies (such as imposing severe sanctions for work stoppages) would be sufficient to protect the County's interest as a buyer of services. Accordingly, the court reversed the lower court and found the ordinance preempted by the Act.

In *Chamber of Commerce v. Lockyer,*[15] the en banc Ninth Circuit, in a 12–3 decision, reversed the district court's holding that the Act preempts a California neutrality statute, Government Code Sections 16645.2 and 16645.7 ("California statute") (governing recipients of state grant funds and participants in state programs). The court agreed with the Board's position in its amicus brief that California was acting as a regulator and not a market participant in enacting the California statute. However, the Ninth Circuit held that the California statute was not preempted under either the *Machinists* or *Garmon* preemption doctrines.[16]

The Ninth Circuit concluded that *Machinists* preemption is inapplicable because the California statute only prohibits employers in California from using state money to assist, promote or deter union organizing, and does not prevent employers from using non-state funds for such purposes. Thus, the statute does not "impede the flow of information to employees by regulating employers' speech" in frustration of national labor policy.[17] The Court further found *Machinists* preemption inapplicable because *Machinists* applies only to those zones of activity that Congress intended to be left free from all regulation, and "[t]he NLRB's own extensive regulation of organizing activities demonstrates that *organizing*—and employer speech in the context of organizing—is not such a zone."[18] The court also reasoned that Congress' own similar spending restrictions found in four federal statutes was "compelling evidence" that the analogous restrictions in the California statute "do not intrude in a regulation-free area of labor relations . . . ."[19]

The Ninth Circuit also concluded that the California statute is saved from *Garmon* preemption because the statute does not intrude on "actually protected or prohibited" conduct, and because California has an

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[14] Id. at 281.
[15] 463 F.3d 1076 (9th Cir. 2006)(en banc).
[16] *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).
[17] *Lockyer*, 463 F.3d at 1088.
[18] Id.at 1089 (italics in original).
[19] Id. at 1090.

overriding interest and right to control the allocation of its scarce resources. The court also concluded that the California statute does not infringe employers' First Amendment rights, because employers retain the freedom to raise and spend their own funds to express whatever views they wish on organizing.[20] The court specifically found that "California has not 'denied' employers the 'right to engage in [union]-related activity,' but has 'merely refused to fund such activities out of the public fisc.'"[21]

The dissenting judges concluded that the California statute violates the First Amendment and is preempted under both *Garmon* and *Machinists.* The dissent reasoned that the statute "frustrates 'effective implementation of the [NLRA's] processes,'" rendering *Machinists* preemption appropriate, and that the traditional *Garmon* analysis applies to the explicitly-protected free speech rights of employers.[22]

D. Freedom of Information Act Litigation

In *O'Shea v. NLRB*,[23] the United States District Court for the District of South Carolina affirmed the report and recommendation of a magistrate judge, finding the matter to be moot and therefore warranting dismissal. The plaintiff sought under the Freedom of Information Act production of all documents in the Board's case file of an unfair labor practice case in which the plaintiff was a charging party alleging his termination from employment to be unlawful under the Act. That unfair labor practice charge was dismissed by the General Counsel of the Board, and the dismissal was upheld on appeal, after the plaintiff's termination was found to be lawful in a grievance-arbitration proceeding. Subsequently, the plaintiff filed a collateral lawsuit against his employer and union, and submitted the FOIA request for the Board's case file to support that suit. Several months later, a Regional Director responded to plaintiff's FOIA request, disclosing all documents in the file that plaintiff himself had supplied to the Board during its investigation of the charge. Plaintiff sued the Board in district court to compel production of additional documents. After receipt of the district court FOIA complaint, the Board further disclosed to plaintiff all previously-undisclosed nonexempt documents and portions of documents in the Board's case file, but the Board withheld four documents in full, and two documents in part, pursuant to the deliberative process and attorney work product privileges of FOIA Exemption 5. As a result, plaintiff amended his

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[20] Id. at 1096.
[21] Id. at 1096 (quoting *Rust v. Sullivan*, 500 U.S. 173, 198 (1991)).
[22] Id. at 1106, 1109.
[23] No. 2:05-2808-DCN-RSC, 2006 WL 1977152 (D.S.C. July 11, 2006).

complaint, alleging that the Board had unreasonably delayed producing the documents, and seeking sanctions against the Regional Director. The magistrate judge concluded, however, that because the Board had disclosed all responsive nonexempt documents to plaintiff, the case should be dismissed because no justiciable controversy still existed. The magistrate judge also refused plaintiff's request to initiate a Special Counsel investigation of the Regional Director, which plaintiff had requested based on the Region's delayed response to the initial FOIA request. The magistrate judge also denied plaintiff's request for attorneys' fees and litigation costs. The district court affirmed the magistrate judge's recommendation in full.

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2006[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	All Cases					
Pending October 1, 2005	*15,866	5,717	4,361	608	4,501	679
Received fiscal 2006	26,728	7,379	7,010	917	10,147	1,275
On docket fiscal 2006	42,594	13,096	11,371	1,525	14,648	1,954
Closed fiscal 2006	28,001	8,051	7,293	1,018	10,309	1,330
Pending September 30, 2006	14,593	5,045	4,078	507	4,339	624
	Unfair labor practice cases[2]					
Pending October 1, 2005	14,336	5,214	3,794	523	4,206	599
Received fiscal 2006	23,091	6,247	5,734	713	9,258	1,139
On docket fiscal 2006	37,427	11,461	9,528	1,236	13,464	1,738
Closed fiscal 2006	24,153	6,756	5,969	817	9,421	1,190
Pending September 30, 2006	13,274	4,705	3,559	419	4,043	548
	Representation cases[3]					
Pending October 1, 2005	1,404	476	552	79	247	50
Received fiscal 2006	3,354	1,085	1,225	177	759	108
On docket fiscal 2006	4,758	1,561	1,777	256	1,006	158
Closed fiscal 2006	3,576	1,250	1,280	179	754	113
Pending September 30, 2006	1,182	311	497	77	252	45
	Union-shop deauthorization cases					
Pending October 1, 2005	46	--	--	--	46	--
Received fiscal 2006	119	--	--	--	119	--
On docket fiscal 2006	165	--	--	--	165	--
Closed fiscal 2006	123	--	--	--	123	--
Pending September 30, 2006	42	--	--	--	42	--
	Amendment of certification cases					
Pending October 1, 2005	6	1	5	0	0	0
Received fiscal 2006	10	0	5	3	0	2
On docket fiscal 2006	16	1	10	3	0	2
Closed fiscal 2006	10	1	6	3	0	0
Pending September 30, 2006	6	0	4	0	0	2
	Unit clarification cases					
Pending October 1, 2005	74	26	10	6	2	30
Received fiscal 2006	154	47	46	24	11	26
On docket fiscal 2006	228	73	56	30	13	56
Closed fiscal 2006	139	44	38	19	11	27
Pending September 30, 2006	89	29	18	11	2	29

[1] See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.
[2] See Table 1A for totals by types of cases.
[3] See Table 1B for totals by types of cases.
* Totals for cases pending Oct. 1, 2006, 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 2006[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	CA cases					
Pending October 1, 2005	*12,022	5,193	3,753	512	2,534	30
Received fiscal 2006	16,887	6,218	5,708	697	4,236	28
On docket fiscal 2006	28,909	11,411	9,461	1,209	6,770	58
Closed fiscal 2006	17,963	6,721	5,935	798	4,478	31
Pending September 30, 2006	10,946	4,690	3,526	411	2,292	27
	CB Cases					
Pending October 1, 2005	1,991	17	33	9	1,653	279
Received fiscal 2006	5,622	15	24	12	4,989	582
On docket fiscal 2006	7,613	32	57	21	6,642	861
Closed fiscal 2006	5,603	22	31	13	4,906	631
Pending September 30, 2006	2,010	10	26	8	1,736	230
	CC Cases					
Pending October 1, 2005	214	0	5	0	7	202
Received fiscal 2006	342	5	1	1	19	316
On docket fiscal 2006	556	5	6	1	26	518
Closed fiscal 2006	329	4	1	1	17	306
Pending September 30, 2006	227	1	5	0	9	212
	CD Cases					
Pending October 1, 2005	54	3	1	2	3	45
Received fiscal 2006	109	6	1	2	7	93
On docket fiscal 2006	163	9	2	4	10	138
Closed fiscal 2006	117	6	2	4	7	98
Pending September 30, 2006	46	3	0	0	3	40
	CE Cases					
Pending October 1, 2005	19	1	1	0	1	16
Received fiscal 2006	32	3	0	1	2	26
On docket fiscal 2006	51	4	1	1	3	42
Closed fiscal 2006	40	3	0	1	2	34
Pending September 30, 2006	11	1	1	0	1	8
	CG Cases					
Pending October 1, 2005	7	0	0	0	1	6
Received fiscal 2006	32	0	0	0	0	32
On docket fiscal 2006	39	0	0	0	1	38
Closed fiscal 2006	30	0	0	0	0	30
Pending September 30, 2006	9	0	0	0	1	8
	CP Cases					
Pending October 1, 2005	29	0	1	0	7	21
Received fiscal 2006	67	0	0	0	5	62
On docket fiscal 2006	96	0	1	0	12	83
Closed fiscal 2006	71	0	0	0	11	60
Pending September 30, 2006	25	0	1	0	1	23

[1] See Glossary of terms for definitions.
* Totals for cases pending Oct. 1, 2006, 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 2006[1]

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
	RC Cases					
Pending October 1, 2005	*1,107	475	552	79	1	--
Received fiscal 2006	2,489	1,085	1,223	177	4	--
On docket fiscal 2006	3,596	1,560	1,775	256	5	--
Closed fiscal 2006	2,710	1,250	1,278	179	3	--
Pending September 30, 2006	886	310	497	77	2	--
	RM Cases					
Pending October 1, 2005	50	--	--	--	--	50
Received fiscal 2006	108	--	--	--	--	108
On docket fiscal 2006	158	--	--	--	--	158
Closed fiscal 2006	113	--	--	--	--	113
Pending September 30, 2006	45	--	--	--	--	45
	RD Cases					
Pending October 1, 2005	247	1	0	0	246	--
Received fiscal 2006	757	0	2	0	755	--
On docket fiscal 2006	1,004	1	2	0	1,001	--
Closed fiscal 2006	753	0	2	0	751	--
Pending September 30, 2006	251	1	0	0	250	--

[1] See Glossary of terms for definitions.

* Totals for cases pending Oct. 1, 2006, 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 2006

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(a): Total cases	16,887	100.0
8(a)(1)	2,561	15.2
8(a)(1)(2)	124	0.7
8(a)(1)(3)	5,097	30.2
8(a)(1)(4)	121	0.7
8(a)(1)(5)	6,807	40.3
8(a)(1)(2)(3)	100	0.6
8(a)(1)(2)(4)	3	0
8(a)(1)(2)(5)	85	0.5
8(a)(1)(3)(4)	410	2.4
8(a)(1)(3)(5)	1,386	8.2
8(a)(1)(4)(5)	28	0.2
8(a)(1)(2)(3)(4)	4	0
8(a)(1)(2)(3)(5)	65	0.4
8(a)(1)(3)(4)(5)	86	0.5
8(a)(1)(2)(3)(4)(5)	10	0.1
Recapitulation[1]		
8(a)(1)	16,887	100.0
8(a)(2)	391	2.3
8(a)(3)	7,158	42.4
8(a)(4)	662	3.9
8(a)(5)	8,467	50.1
B. Charges filed against unions under Sec. 8(b)		
Subsections of Sec. 8(b): Total cases	6,140	100.0
8(b)(1)	4,658	75.9
8(b)(2)	40	0.7
8(b)(3)	319	5.2
8(b)(4)	451	7.3
8(b)(5)	3	0
8(b)(6)	4	0.1
8(b)(7)	67	1.1

[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 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2006—Continued

	Number of cases showing specific allegations	Percent of total cases
8(b)(1)(2)	490	8.0
8(b)(1)(3)	80	1.3
8(b)(1)(5)	5	0.1
8(b)(2)(3)	2	0
8(b)(3)(5)	1	0
8(b)(3)(6)	2	0
8(b)(1)(2)(3)	14	0.2
8(b)(1)(2)(6)	3	0
8(b)(1)(3)(5)	1	0
Recapitulation[1]		
8(b)(1)	5,251	85.5
8(b)(2)	549	8.9
8(b)(3)	419	6.8
8(b)(4)	479	7.8
8(b)(5)	10	0.2
8(b)(6)	9	0.1
8(b)(7)	70	1.1
B1. Analysis of 8(b)(4)		
Total cases 8(b)(4)	451	100.0
8(b)(4)(A)	31	6.9
8(b)(4)(B)	280	62.1
8(b)(4)(C)	8	1.8
8(b)(4)(D)	109	24.2
8(b)(4)(A)(B)	14	3.1
8(b)(4)(A)(C)	1	0.2
8(b)(4)(B)(C)	3	0.7
8(b)(4)(A)(B)(C)	5	1.1
Recapitulation		
8(b)(4)(A)	51	11.3
8(b)(4)(B)	302	67.0

[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 2.–Types of Unfair Labor Practices Alleged, Fiscal Year 2006—Continued

	Number of cases showing specific allegations	Percent of total cases
8(b)(4)(C)	17	3.8
8(b)(4)(D)	109	24.2
B2. Analysis of 8(b)(7)		
Total cases 8(b)(7)	67	100.0
8(b)(7)(A)	12	17.9
8(b)(7)(B)	4	6.0
8(b)(7)(C)	48	71.6
8(b)(7)(A)(B)	1	1.5
8(b)(7)(A)(C)	2	3.0
Recapitulation[1]		
8(b)(7)(A)	15	22.4
8(b)(7)(B)	5	7.5
8(b)(7)(C)	50	74.6
C. Charges filed under Sec. 8(e)		
Total cases 8(e)	32	100.0
Against unions alone	25	78.1
Against employers alone	5	15.6
Against both	2	6.3
D. Charges filed Sec. 8(g)		
Total cases 8(g)	32	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 2006[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	12	12	--	--	--	12	--	--	--	--	--	--	--
Complaints issued	1,970	1,274	1,107	111	16	--	0	1	2	3	15	16	3
Backpay specifications issued	126	45	42	0	0	--	0	0	0	0	0	3	0
Hearings completed, total	486	225	189	22	1	0	0	1	0	0	5	7	0
Initial ULP hearings	431	205	170	22	1	0	0	0	0	0	5	7	0
Backpay hearings	21	7	7	0	0	0	0	0	0	0	0	0	0
Other hearings	34	13	12	0	0	0	0	1	0	0	0	0	0
Decisions by administrative law judges, total	543	239	207	18	1	0	0	0	0	0	5	8	0
Initial ULP decisions	467	211	181	17	1	0	0	0	0	0	5	7	0
Backpay decisions	14	6	5	1	0	0	0	0	0	0	0	0	0
Supplemental decisions	62	22	21	0	0	0	0	0	0	0	0	1	0
Decisions and orders by the Board, total	958	447	393	28	6	7	0	0	0	0	3	8	2
Upon consent of parties:													
Initial decisions	69	26	16	5	4	0	0	0	0	0	0	0	1
Supplemental decisions	11	7	5	0	0	0	0	0	0	0	0	2	0
Adopting administrative law judges' decisions (no exceptions filed):													
Initial ULP decisions	140	84	77	4	0	0	0	0	0	0	1	2	0
Backpay decisions	3	2	2	0	0	0	0	0	0	0	0	0	0
Supplemental decisions	6	4	3	0	0	0	0	0	0	0	0	1	0
Contested:													
Initial ULP decisions	584	272	246	17	2	7	0	0	0	0	0	0	0
Decisions based on stipulated record	10	2	1	1	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions	106	37	31	0	0	0	0	0	0	0	2	3	1
Backpay decisions	29	13	12	1	0	0	0	0	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 3B.-Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2006[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	410	397	321	18	58	5
Initial hearing	305	294	240	16	38	2
Hearing on objections and/or challenges	105	103	81	2	20	3
Decisions issued, total	369	355	306	18	31	15
By Regional Director	314	304	259	16	29	15
Elections directed	263	252	225	6	21	15
Dismissals on record	51	52	34	10	8	0
By Board	55	51	47	2	2	0
Transferred by Regional Directors for initial decision.	2	2	2	0	0	0
Elections directed	0	0	0	0	0	0
Dismissals on record	1	1	1	0	0	0
Other	1	1	1	0	0	0
Review of Regional Directors' decisions:						
Requests for review received	140	130	97	14	19	2
Withdrawn before request ruled upon	16	15	11	0	4	0
Board action on request ruled upon, total	127	117	89	12	16	1
Granted	21	19	12	5	2	1
Denied	100	92	73	6	13	0
Remanded	6	6	4	1	1	0
Withdrawn after request granted, before Board review	6	6	6	0	0	0
Board decision after review, total	53	49	45	2	2	0
Regional Directors' decisions:						
Affirmed	5	4	4	0	0	0
Modified	40	37	36	1	0	0
Reversed	8	8	5	1	2	0
Outcome:						
Election directed	50	46	43	2	1	0
Dismissals on record	3	3	2	0	1	0
Other	0	0	0	0	0	0
Decisions on Objections and/or Challenges, total	409	389	328	2	59	11
By Regional Directors	187	176	145	0	31	6
By Administrative Law Judges	23	23	18	0	5	1
By Board	199	190	165	2	23	4
In stipulated elections	166	159	137	1	21	2
No Exceptions to Regional Directors' reports	98	92	75	1	16	1
Exceptions to Regional Directors' reports	68	67	62	0	5	1
In directed elections (after transfer by Regional Director)	22	21	18	1	2	1
No exceptions to RDs/HOs Reports	12	11	10	1	0	0
Exceptions to RDs/HOs Reports	10	10	8	0	2	1
Review of Regional Directors' supplemental decisions:						
Request for review received	25	0	21	0	0	1
Withdrawn before request ruled upon	3	3	3	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 3B.-Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2006[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					
Board action on request ruled upon, total	21	17	17	0	0	1
Granted	3	3	3	0	0	1
Denied	17	13	13	0	0	0
Remanded	1	1	1	0	0	0
Withdrawn after request granted, before Board review	0	0	0	0	0	0
Board decision after review, total	11	10	10	0	0	1
Regional Directors' decisions:						
Affirmed	0	0	0	0	0	1
Modified	11	10	10	0	0	0
Reversed	0	0	0	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 2006[1]

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case[2]	
		AC	UC
Hearings completed	41	0	34
Decisions issued after hearing	59	2	51
By Regional Directors	46	2	38
By Board	13	0	13
Transferred by Regional Directors for initial decision	0	0	0
Review of Regional Directors' decisions:			
Requests for review received	19	0	18
Withdrawn before request ruled upon	0	0	0
Board action on requests ruled upon, total	15	0	14
Granted	2	0	2
Denied	12	0	11
Remanded	1	0	1
Withdrawn after request granted, before Board review	0	0	0
Board decision after review, total	13	0	13
Regional Directors' decisions:			
Affirmed	0	0	0
Modified	10	0	10
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 2006[1]

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved...	[2]9,757	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted ………………..	1,634	1,334	1,077	7	73	74	103	300	268	2	7	9	14
Recognition or other assistance withdrawn …...	13	13	9	0	1	0	3	--	--	--	--	--	--
Employer–dominated union disestablished ……………..	1	1	1	0	0	0	0	--	--	--	--	--	--
Employees offered reinstate-ment ……………………..….	949	949	841	5	32	29	42	--	--	--	--	--	--
Employees placed on prefe-rential hiring list ….....…..	23	23	16	2	1	2	2	--	--	--	--	--	--
Hiring hall rights restored........	12	--	--	--	--	--	--	12	11	0	0	1	0
Objections to employment withdrawn...........................	7	--	--	--	--	--	--	7	6	0	0	0	1
Picketing ended.......................	52	--	--	--	--	--	--	52	51	0	0	0	1
Work stoppage ended.............	12	--	--	--	--	--	--	12	12	0	0	0	0
Collective bargaining begun....	2,175	2,067	1,979	3	17	19	49	108	108	0	0	0	0
Backpay distributed................	1,663	1,602	1,447	7	45	44	59	61	55	0	3	1	2
Reimbursement of fees, dues, and fines..............................	139	42	38	0	0	1	3	97	91	1	0	0	5
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 2006[1]—Continued

Action taken	Total all	Employer: Total	Employer: Agreement of parties: Informal settlement	Employer: Agreement of parties: Formal settlement	Employer: Recommen-dation of administra-tive law judge	Employer: Order of–: Board	Employer: Order of–: Court	Union: Total	Union: Agreement of parties: Informal settlement	Union: Agreement of parties: Formal settlement	Union: Recommen-dation of administra-tive law judge	Union: Order of–: Board	Union: Order of–: Court
B. By number of employees affected:													
Employees offered reinstate-ment, total	2,926	2,926	2,483	0	125	75	243	--	--	--	--	--	--
Accepted	2,423	2,423	2,201	0	75	53	94	--	--	--	--	--	--
Declined	503	503	282	0	50	22	149	--	--	--	--	--	--
Employees placed on prefe-rential hiring list	193	193	114	21	40	8	10	--	--	--	--	--	--
Hiring hall rights restored	15	--	--	--	--	--	--	15	13	0	0	2	0
Objections to employment withdrawn	14	--	--	--	--	--	--	14	6	0	0	0	8
Employees receiving backpay:													
From either employer or union	30,199	26,824	22,607	38	1,041	401	2,737	3,375	2,802	0	19	6	548
From both employer and union	19	18	18	0	0	0	0	1	1	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union	842	367	367	0	0	0	0	475	467	1	0	0	7
From both employer and union	1,257	876	197	8	0	4	667	381	381	0	0	0	0

Table 4.-Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2006[1]—Continued

Action taken	Total all	Remedial action taken by–											
		Employer						Union					
		Total	Pursuant to–					Total	Pursuant to–				
			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–			Agreement of parties		Recommen-dation of administra-tive law judge	Order of–	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
C. By amounts of monetary recovery, total	110,921,107	108,681,784	83,536,591	496,139	6,552,536	4,149,878	13,946,640	2,239,323	791,834	22	6,551	22,880	1,418,036
Backpay (includes all monetary payments except fees, dues, and fines)................................	109,549,419	107,982,911	83,267,087	496,139	6,552,536	4,149,089	13,518,060	1,566,508	536,452	0	6,551	22,880	1,000,625
Reimbursement of fees, dues,and fines...................	1,371,688	698,873	269,504	0	0	789	428,580	672,815	255,382	22	0	0	417,411

[1] See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2006 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 2006[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	12	10	8	2	0	0	0	0	0	2	1	0	1	0	0	0
Animal Production	26	24	18	6	0	0	0	0	0	2	1	1	0	0	0	0
Forestry and Logging	7	6	6	0	0	0	0	0	0	1	1	0	0	0	0	0
Fishing, Hunting and Trapping	1	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
Support Activities for Agriculture and Forestry	19	14	8	6	0	0	0	0	0	4	4	0	0	0	0	1
Agriculture, Forestry, Fishing, and Hunting	65	54	40	14	0	0	0	0	0	10	7	1	2	0	0	1
Oil and Gas Extraction	39	26	20	6	0	0	0	0	0	12	11	0	1	0	1	0
Mining (except Oil and Gas)	114	96	82	13	0	1	0	0	0	17	8	1	8	1	0	0
Support Activities for Mining	24	19	19	0	0	0	0	0	0	5	3	0	2	0	0	0
Mining	177	141	121	19	0	1	0	0	0	34	22	1	11	1	1	0
Utilities	479	398	309	85	4	0	0	0	0	74	58	2	14	5	0	2
Construction of Buildings	312	280	152	63	42	14	1	0	8	30	26	1	3	0	0	2
Heavy and Civil Engineering Construction	284	242	160	46	23	9	2	0	2	40	37	0	3	2	0	0
Specialty Trade Contractors	1,895	1592	1,060	340	119	48	6	0	19	298	232	18	48	3	0	2
Construction	2,491	2114	1,372	449	184	71	9	0	29	368	295	19	54	5	0	4
Food Manufacturing	840	736	543	191	2	0	0	0	0	96	67	3	26	3	0	5
Beverage and Tobacco Product Manufacturing	192	164	133	26	2	0	3	0	0	25	15	0	10	0	0	3
Textile Mills	26	22	19	3	0	0	0	0	0	4	0	0	4	0	0	0
Textile Product Mills	24	22	17	5	0	0	0	0	0	2	2	0	0	0	0	0
Apparel Manufacturing	45	42	30	12	0	0	0	0	0	3	1	0	2	0	0	0
Leather and Allied Product Manufacturing	12	11	8	3	0	0	0	0	0	1	1	0	0	0	0	0
31-Manufacturing	1,139	997	750	240	4	0	3	0	0	131	86	3	42	3	0	8
Wood Product Manufacturing	133	108	87	21	0	0	0	0	0	24	17	1	6	1	0	0
Paper Manufacturing	347	316	245	71	0	0	0	0	0	26	12	2	12	1	0	4
Printing and Related Support Activities	113	97	77	20	0	0	0	0	0	14	7	0	7	1	0	1
Petroleum and Coal Products Manufacturing	133	113	93	17	1	1	0	0	1	15	13	0	2	0	2	3

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2006[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	309	263	212	50	0	0	0	0	1	45	33	1	11	0	0	1
Plastics and Rubber Products Manufacturing	202	175	131	44	0	0	0	0	0	24	16	0	8	2	0	1
Nonmetallic Mineral Product Manufacturing	252	220	162	53	2	2	1	0	0	31	24	1	6	0	0	1
32-Manufacturing	1,489	1292	1,007	276	3	3	1	0	2	179	122	5	52	5	2	11
Primary Metal Manufacturing	523	464	353	107	1	1	1	0	1	54	38	0	16	4	0	1
Fabricated Metal Product Manufacturing	358	309	240	60	4	2	2	0	1	47	29	3	15	1	0	1
Machinery Manufacturing	347	300	220	75	3	1	0	0	1	41	25	1	15	3	0	3
Computer and Electronic Product Manufacturing	70	59	49	8	0	0	2	0	0	11	9	0	2	0	0	0
Electrical Equipment, Appliance, and Component Manufacturing	222	200	134	62	2	2	0	0	0	20	15	1	4	1	0	1
Transportation Equipment Manufacturing	1,146	1060	679	379	0	2	0	0	0	83	55	3	25	0	0	3
Furniture and Related Product Manufacturing	94	87	61	25	1	0	0	0	0	6	3	0	3	1	0	0
Miscellaneous Manufacturing	428	355	255	87	5	6	1	0	1	68	42	0	26	4	0	1
33-Manufacturing	3,188	2834	1,991	803	16	14	6	0	4	330	216	8	106	14	0	10
Merchant Wholesalers, Durable Goods	190	142	105	35	1	1	0	0	0	47	35	0	12	1	0	0
Merchant Wholesalers, Nondurable Goods	372	290	228	58	4	0	0	0	0	78	54	4	20	1	0	3
Wholesale Electronic Markets and Agents and Brokers	7	6	5	1	0	0	0	0	0	1	1	0	0	0	0	0
Wholesale Trade	569	438	338	94	5	1	0	0	0	126	90	4	32	2	0	3
Motor Vehicle and Parts Dealers	305	243	214	22	6	0	0	0	1	57	43	1	13	4	0	1
Furniture and Home Furnishings Stores	30	23	19	3	1	0	0	0	0	7	4	1	2	0	0	0
Electronics and Appliance Stores	8	6	4	2	0	0	0	0	0	2	2	0	0	0	0	0
Building Material and Garden Equipment and Supplies Dealers	66	54	47	7	0	0	0	0	0	11	7	0	4	0	0	1
Food and Beverage Stores	559	498	315	174	4	0	2	0	3	56	36	3	17	1	0	4
Health and Personal Care Stores	87	61	44	17	0	0	0	0	0	24	19	1	4	0	0	2
Gasoline Stations	15	8	8	0	0	0	0	0	0	6	3	0	3	1	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2006[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
Clothing and Clothing Accessories Stores	30	26	18	8	0	0	0	0	0	3	2	0	1	0	0	1
44-Retail Trade	1,100	919	669	233	11	0	2	0	4	166	116	6	44	6	0	9
Sporting Goods, Hobby, Book, and Music Stores	21	20	14	1	4	0	0	0	1	1	0	0	1	0	0	0
General Merchandise Stores	108	93	71	21	0	0	1	0	0	15	11	1	3	0	0	0
Miscellaneous Store Retailers	39	31	26	4	1	0	0	0	0	7	6	0	1	0	0	1
Nonstore Retailers	36	26	22	4	0	0	0	0	0	8	7	0	1	0	0	2
45-Retail Trade	204	170	133	30	5	0	1	0	1	31	24	1	6	0	0	3
Air Transportation	41	28	23	4	1	0	0	0	0	12	10	1	1	1	0	0
Rail Transportation	18	13	11	0	1	0	0	0	1	5	3	0	2	0	0	0
Water Transportation	136	128	32	96	0	0	0	0	0	7	2	0	5	1	0	0
Truck Transportation	649	542	395	133	8	3	2	0	1	105	82	4	19	1	0	1
Transit and Ground Passenger Transportation	724	593	466	126	0	0	0	0	1	116	101	1	14	13	1	1
Pipeline Transportation	17	10	8	2	0	0	0	0	0	6	5	1	0	0	0	1
Scenic and Sightseeing Transportation	9	6	4	2	0	0	0	0	0	3	3	0	0	0	0	0
Support Activities for Transportation	363	298	179	116	2	1	0	0	0	60	52	2	6	3	1	1
48-Transportation and Warehousing	1,957	1618	1,118	479	12	4	2	0	3	314	258	9	47	19	2	4
Postal Service	2,470	2466	1,734	732	0	0	0	0	0	3	2	0	1	0	0	1
Couriers and Messengers	286	264	196	67	1	0	0	0	0	21	17	0	4	0	0	1
Warehousing and Storage	380	291	206	79	4	2	0	0	0	87	68	3	16	2	0	0
49-Transportation and Warehousing	3,136	3021	2,136	878	5	2	0	0	0	111	87	3	21	2	0	2
Publishing Industries (except Internet)	264	234	189	43	2	0	0	0	0	23	8	0	15	1	0	6
Motion Picture and Sound Recording Industries	53	50	19	31	0	0	0	0	0	3	2	0	1	0	0	0
Broadcasting (except Internet)	160	130	111	11	6	2	0	0	0	28	12	0	16	1	0	1
Internet Publishing and Broadcasting	9	6	3	3	0	0	0	0	0	2	2	0	0	0	0	1
Telecommunications	669	632	492	140	0	0	0	0	0	29	24	0	5	0	0	8
Internet Service Providers, Web Search Portals, and Data Processing Services	5	5	5	0	0	0	0	0	0	0	0	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2006[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
Other Information Services	87	75	42	30	3	0	0	0	0	8	6	0	2	0	0	4
Information	1,247	1132	861	258	11	2	0	0	0	93	54	0	39	2	0	20
Monetary Authorities - Central Bank	13	12	9	1	1	1	0	0	0	1	1	0	0	0	0	0
Credit Intermediation and Related Activities	51	43	36	5	2	0	0	0	0	6	3	1	2	2	0	0
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	4	4	4	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance Carriers and Related Activities	22	21	17	4	0	0	0	0	0	0	0	0	0	0	0	1
Funds, Trusts, and Other Financial Vehicles	12	10	8	1	1	0	0	0	0	2	2	0	0	0	0	0
Finance and Insurance	102	90	74	11	4	1	0	0	0	9	6	1	2	2	0	1
Real Estate	246	220	171	44	2	2	0	0	1	25	19	0	6	0	0	1
Rental and Leasing Services	129	94	79	14	1	0	0	0	0	32	20	2	10	1	0	2
Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	3	3	3	0	0	0	0	0	0	0	0	0	0	0	0	0
Real Estate and Rental and Leasing	378	317	253	58	3	2	0	0	1	57	39	2	16	1	0	3
Professional, Scientific, and Technical Services	259	195	157	35	2	1	0	0	0	56	43	2	11	3	0	5
Management of Companies and Enterprises	57	49	34	13	2	0	0	0	0	8	7	0	1	0	0	0
Administrative and Support Services	2,009	1719	1,202	481	23	3	2	0	8	265	214	9	42	16	3	6
Waste Management and Remediation Services	413	331	266	60	4	0	0	0	1	78	58	2	18	3	0	1
Administrative and Support and Waste Management and Remediation Services	2,422	2050	1,468	541	27	3	2	0	9	343	272	11	60	19	3	7
Educational Services	326	246	197	44	4	1	0	0	0	71	56	5	10	0	1	8
Ambulatory Health Care Services	431	320	275	40	1	0	0	4	0	103	84	1	18	2	0	6
Hospitals	1,328	1157	872	257	14	0	0	13	1	139	107	0	32	4	0	28
Nursing and Residential Care Facilities	1,411	1153	960	176	5	1	0	11	0	234	179	7	48	12	0	12
Social Assistance	267	211	179	31	1	0	0	0	0	52	36	3	13	3	0	1
Health Care and Social Assistance	3,437	2841	2,286	504	21	1	0	28	1	528	406	11	111	21	0	47

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2006[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	201	165	115	41	3	2	4	0	0	35	31	1	3	0	0	1
Museums, Historical Sites, and Similar Institutions	14	12	10	2	0	0	0	0	0	1	0	0	1	1	0	0
Amusement, Gambling, and Recreation Industries	184	165	109	56	0	0	0	0	0	16	10	0	6	1	0	2
Arts, Entertainment, and Recreation	399	342	234	99	3	2	4	0	0	52	41	1	10	2	0	3
Accommodation	616	554	416	131	4	0	1	0	2	61	43	6	12	0	0	1
Food Services and Drinking Places	437	391	284	87	7	0	1	4	8	44	31	4	9	2	0	0
Accommodation and Food Services	1,053	945	700	218	11	0	2	4	10	105	74	10	21	2	0	1
Repair and Maintenance	225	187	140	46	0	0	0	0	1	38	29	1	8	0	0	0
Personal and Laundry Services	259	215	167	45	3	0	0	0	0	41	23	0	18	1	1	1
Religious, Grantmaking, Civic, Professional, and Similar Organizations	412	376	245	127	2	0	0	0	2	35	20	0	15	1	0	0
Private Households	11	9	8	1	0	0	0	0	0	2	2	0	0	0	0	0
Other Services (except Public Administration)	907	787	560	219	5	0	0	0	3	116	74	1	41	2	1	1
Executive, Legislative, and Other General Government Support	13	12	7	5	0	0	0	0	0	0	0	0	0	0	0	1
Justice, Public Order, and Safety Activities	75	40	32	8	0	0	0	0	0	32	29	1	2	3	0	0
Administration of Human Resource Programs	16	14	11	3	0	0	0	0	0	2	1	1	0	0	0	0
Administration of Environmental Quality Programs	1	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development	7	7	7	0	0	0	0	0	0	0	0	0	0	0	0	0
Administration of Economic Programs	19	17	13	4	0	0	0	0	0	2	2	0	0	0	0	0
Space Research and Technology	1	0	0	0	0	0	0	0	0	1	0	0	1	0	0	0
National Security and International Affairs	15	11	9	2	0	0	0	0	0	4	4	0	0	0	0	0
Public Administration	147	101	79	22	0	0	0	0	0	42	36	2	4	3	0	1
Total, all industrial groups	26,728	23091	16,887	5,622	342	109	32	32	67	3354	2,489	108	757	119	10	154

[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 2006[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	1,555	1271	853	339	47	19	2	1	10	256	199	9	48	16	2	10
Indiana	800	685	518	152	9	4	2	0	0	106	86	0	20	3	0	6
Michigan	1,525	1331	905	414	6	0	2	2	2	178	125	8	45	5	0	11
Ohio	1,568	1362	1,034	295	21	7	2	1	2	188	140	7	41	7	0	11
Wisconsin	480	411	301	107	2	0	0	0	1	64	29	4	31	4	0	1
East North Central	5,928	5060	3,611	1,307	85	30	8	4	15	792	579	28	185	35	2	39
Alabama	373	342	282	60	0	0	0	0	0	31	25	1	5	0	0	0
Kentucky	372	337	263	72	1	1	0	0	0	32	27	1	4	3	0	0
Mississippi	99	88	65	23	0	0	0	0	0	10	7	0	3	0	0	1
Tennessee	359	328	222	106	0	0	0	0	0	28	21	0	7	0	0	3
East South Central	1,203	1095	832	261	1	1	0	0	0	101	80	2	19	3	0	4
Puerto Rico	417	338	269	67	0	0	0	2	0	63	47	1	15	4	0	12
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	18	15	11	4	0	0	0	0	0	3	3	0	0	0	0	0
Island Areas	435	353	280	71	0	0	0	2	0	66	50	1	15	4	0	12
New Jersey	1,156	963	669	253	24	13	2	2	0	172	120	2	50	9	1	11
New York	3,180	2771	1,807	842	65	20	3	5	29	370	304	12	54	20	5	14
Pennsylvania	1,443	1236	945	256	21	9	1	2	2	188	133	4	51	7	0	12
Middle Atlantic	5,779	4970	3,421	1,351	110	42	6	9	31	730	557	18	155	36	6	37
Arizona	300	276	215	49	7	0	1	0	4	24	18	0	6	0	0	0
Colorado	435	390	320	66	3	0	0	1	0	42	29	0	13	1	0	2
Idaho	40	30	28	2	0	0	0	0	0	10	6	1	3	0	0	0
Montana	78	58	43	9	5	0	0	0	1	20	10	1	9	0	0	0
New Mexico	125	105	96	9	0	0	0	0	0	20	17	1	2	0	0	0
Nevada	378	346	227	105	10	3	1	0	0	32	27	1	4	0	0	0
Utah	79	70	52	15	2	0	0	0	1	9	9	0	0	0	0	0

Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2006[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
Wyoming	34	28	20	8	0	0	0	0	0	6	4	0	2	0	0	0
Mountain	1,469	1303	1,001	263	27	3	2	1	6	163	120	4	39	1	0	2
Connecticut	427	368	298	69	1	0	0	0	0	56	44	2	10	1	0	2
Massachusetts	677	604	476	104	18	5	0	0	1	62	50	4	8	1	0	10
Maine	63	42	39	3	0	0	0	0	0	17	14	1	2	0	0	4
New Hampshire	65	57	49	5	3	0	0	0	0	8	8	0	0	0	0	0
Rhode Island	95	76	59	12	3	1	0	0	1	17	14	0	3	2	0	0
Vermont	26	19	16	3	0	0	0	0	0	6	3	0	3	1	0	0
New England	1,353	1166	937	196	25	6	0	0	2	166	133	7	26	5	0	16
Alaska	82	55	43	12	0	0	0	0	0	24	17	2	5	3	0	0
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	2,955	2588	1,836	689	40	5	7	8	3	347	244	15	88	9	1	10
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Hawaii	375	344	280	62	0	1	1	0	0	26	20	1	5	0	1	4
Marshall Islands	0	0	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	0	0
Oregon	277	224	181	32	8	3	0	0	0	51	31	4	16	2	0	0
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	744	602	452	142	6	2	0	0	0	130	94	5	31	5	0	7
Pacific	4,434	3813	2,792	937	54	11	8	8	3	579	407	27	145	19	2	21
District Of Columbia	174	133	93	36	2	0	2	0	0	39	30	2	7	1	0	1
Delaware	37	28	19	9	0	0	0	0	0	9	9	0	0	0	0	0
Florida	758	673	523	147	1	0	0	0	2	82	60	1	21	0	0	3
Georgia	455	419	303	109	6	0	0	1	0	36	25	2	9	0	0	0

Table 6A.-Geographic Distribution of Cases Received, Fiscal Year 2006[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
Maryland	397	304	228	76	0	0	0	0	0	88	71	4	13	4	0	1
North Carolina	361	341	266	75	0	0	0	0	0	20	16	0	4	0	0	0
South Carolina	110	98	77	21	0	0	0	0	0	12	8	0	4	0	0	0
Virginia	362	311	270	40	1	0	0	0	0	50	44	0	6	0	0	1
West Virginia	325	281	236	43	2	0	0	0	0	41	26	1	14	0	0	3
South Atlantic	2,979	2588	2,015	556	12	0	2	1	2	377	289	10	78	5	0	9
Iowa	229	189	164	20	4	1	0	0	0	38	27	0	11	0	0	2
Kansas	129	119	77	36	3	0	0	3	0	10	9	0	1	0	0	0
Minnesota	354	283	211	66	3	0	1	1	1	63	36	1	26	5	0	3
Missouri	742	643	456	146	16	15	5	2	3	95	69	3	23	4	0	0
North Dakota	22	16	14	2	0	0	0	0	0	5	5	0	0	0	0	1
Nebraska	81	52	39	13	0	0	0	0	0	29	24	1	4	0	0	0
South Dakota	9	6	6	0	0	0	0	0	0	3	3	0	0	0	0	0
West North Central	1,566	1308	967	283	26	16	6	6	4	243	173	5	65	9	0	6
Arkansas	171	159	106	51	0	0	0	0	2	12	7	2	3	0	0	0
Louisiana	190	163	119	44	0	0	0	0	0	27	19	0	8	0	0	0
Oklahoma	183	162	128	32	1	0	0	1	0	17	11	1	5	1	0	3
Texas	1,031	951	678	270	1	0	0	0	2	78	61	3	14	1	0	1
West South Central	1,575	1435	1,031	397	2	0	0	1	4	134	98	6	30	2	0	4
Total, all States and areas	26,721	23091	16,887	5,622	342	109	32	32	67	3351	2,486	108	757	119	10	150

[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 2006[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	427	368	298	69	1	0	0	0	0	56	44	2	10	1	0	2
Massachusetts	677	604	476	104	18	5	0	0	1	62	50	4	8	1	0	10
Maine	63	42	39	3	0	0	0	0	0	17	14	1	2	0	0	4
New Hampshire	65	57	49	5	3	0	0	0	0	8	8	0	0	0	0	0
Rhode Island	95	76	59	12	3	1	0	0	1	17	14	0	3	2	0	0
Vermont	26	19	16	3	0	0	0	0	0	6	3	0	3	1	0	0
Region I	1,353	1166	937	196	25	6	0	0	2	166	133	7	26	5	0	16
Delaware	37	28	19	9	0	0	0	0	0	9	9	0	0	0	0	0
New Jersey	1,156	963	669	253	24	13	2	2	0	172	120	2	50	9	1	11
New York	3,180	2771	1,807	842	65	20	3	5	29	370	304	12	54	20	5	14
Puerto Rico	417	338	269	67	0	0	0	2	0	63	47	1	15	4	0	12
Virgin Islands	18	15	11	4	0	0	0	0	0	3	3	0	0	0	0	0
Region II	4,808	4115	2,775	1,175	89	33	5	9	29	617	483	15	119	33	6	37
District Of Columbia	174	133	93	36	2	0	2	0	0	39	30	2	7	1	0	1
Maryland	397	304	228	76	0	0	0	0	0	88	71	4	13	4	0	1
Pennsylvania	1,443	1236	945	256	21	9	1	2	2	188	133	4	51	7	0	12
Virginia	362	311	270	40	1	0	0	0	0	50	44	0	6	0	0	1
West Virginia	325	281	236	43	2	0	0	0	0	41	26	1	14	0	0	3
Region III	2,701	2265	1,772	451	26	9	3	2	2	406	304	11	91	12	0	18
Alabama	373	342	282	60	0	0	0	0	0	31	25	1	5	0	0	0
Florida	758	673	523	147	1	0	0	0	2	82	60	1	21	0	0	3
Georgia	455	419	303	109	6	0	0	1	0	36	25	2	9	0	0	0
Kentucky	372	337	263	72	1	1	0	0	0	32	27	1	4	3	0	0
Mississippi	99	88	65	23	0	0	0	0	0	10	7	0	3	0	0	1
North Carolina	361	341	266	75	0	0	0	0	0	20	16	0	4	0	0	0
South Carolina	110	98	77	21	0	0	0	0	0	12	8	0	4	0	0	0
Tennessee	359	328	222	106	0	0	0	0	0	28	21	0	7	0	0	3
Region IV	2,887	2626	2,001	613	8	1	0	1	2	251	189	5	57	3	0	7
Illinois	1,555	1271	853	339	47	19	2	1	10	256	199	9	48	16	2	10
Indiana	800	685	518	152	9	4	2	0	0	106	86	0	20	3	0	6
Michigan	1,525	1331	905	414	6	0	2	2	2	178	125	8	45	5	0	11
Minnesota	354	283	211	66	3	0	1	1	1	63	36	1	26	5	0	3
Ohio	1,568	1362	1,034	295	21	7	2	1	2	188	140	7	41	7	0	11
Wisconsin	480	411	301	107	2	0	0	0	1	64	29	4	31	4	0	1
Region V	6,282	5343	3,822	1,373	88	30	9	5	16	855	615	29	211	40	2	42
Arkansas	171	159	106	51	0	0	0	0	2	12	7	2	3	0	0	0
Louisiana	190	163	119	44	0	0	0	0	0	27	19	0	8	0	0	0
New Mexico	125	105	96	9	0	0	0	0	0	20	17	1	2	0	0	0
Oklahoma	183	162	128	32	1	0	0	1	0	17	11	1	5	1	0	3

Table 6B.-Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2006[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
Texas	1,031	951	678	270	1	0	0	0	2	78	61	3	14	1	0	1
Region VI	1,700	1540	1,127	406	2	0	0	1	4	154	115	7	32	2	0	4
Iowa	229	189	164	20	4	1	0	0	0	38	27	0	11	0	0	2
Kansas	129	119	77	36	3	0	0	3	0	10	9	0	1	0	0	0
Missouri	742	643	456	146	16	15	5	2	3	95	69	3	23	4	0	0
Nebraska	81	52	39	13	0	0	0	0	0	29	24	1	4	0	0	0
Region VII	1,181	1003	736	215	23	16	5	5	3	172	129	4	39	4	0	2
Colorado	435	390	320	66	3	0	0	1	0	42	29	0	13	1	0	2
Montana	78	58	43	9	5	0	0	0	1	20	10	1	9	0	0	0
North Dakota	22	16	14	2	0	0	0	0	0	5	5	0	0	0	0	1
South Dakota	9	6	6	0	0	0	0	0	0	3	3	0	0	0	0	0
Utah	79	70	52	15	2	0	0	0	1	9	9	0	0	0	0	0
Wyoming	34	28	20	8	0	0	0	0	0	6	4	0	2	0	0	0
Region VIII	657	568	455	100	10	0	0	1	2	85	60	1	24	1	0	3
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona	300	276	215	49	7	0	1	0	4	24	18	0	6	0	0	0
California	2,955	2588	1,836	689	40	5	7	8	3	347	244	15	88	9	1	10
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Hawaii	375	344	280	62	0	1	1	0	0	26	20	1	5	0	1	4
Marshall Islands	0	0	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	0	0
Nevada	378	346	227	105	10	3	1	0	0	32	27	1	4	0	0	0
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	4,009	3554	2,558	905	57	9	10	8	7	430	310	17	103	9	2	14
Alaska	82	55	43	12	0	0	0	0	0	24	17	2	5	3	0	0
Idaho	40	30	28	2	0	0	0	0	0	10	6	1	3	0	0	0
Oregon	277	224	181	32	8	3	0	0	0	51	31	4	16	2	0	0
Washington	744	602	452	142	6	2	0	0	0	130	94	5	31	5	0	7
Region X	1,143	911	704	188	14	5	0	0	0	215	148	12	55	10	0	7
Total, all States and areas	26,721	23091	16,887	5,622	342	109	32	32	67	3351	2,486	108	757	119	10	150

[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

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Table 7.-Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2006[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	24,051	100.0	--	17,879	100.0	5,593	100.0	329	100.0	109	100.0	40	100.0	30	100.0	71	100.0
Agreement of the parties	8,848	36.8	100.0	7,497	41.9	1,134	20.3	149	45.3	21	19.3	12	30.0	12	40.0	23	32.4
Informal settlement	8,844	36.8	100.0	7,496	41.9	1,131	20.2	149	45.3	21	19.3	12	30.0	12	40.0	23	32.4
Before issuance of complaint	7,304	30.4	82.5	6,148	34.4	965	17.3	132	40.1	21	19.3	8	20.0	11	36.7	19	26.8
After issuance of complaint, before opening of hearing	1,450	6.0	16.4	1,266	7.1	158	2.8	17	5.2	0	0.0	4	10.0	1	3.3	4	5.6
After hearing opened, before issuance of administrative law judge's decision	90	0.4	1.0	82	0.5	8	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement	4	0.0	0.0	1	0.0	3	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing	3	0.0	0.0	0	0.0	3	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision	3	0.0	0.0	0	0.0	3	0.1	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
After hearing opened	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
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	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	544	2.3	100.0	473	2.6	57	1.0	5	1.5	5	4.6	2	5.0	0	0.0	2	2.8
Administrative law judge's decision	26	0.1	4.8	26	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision	294	1.2	54.0	247	1.4	42	0.8	2	0.6	0	0.0	2	5.0	0	0.0	1	1.4
Adopting administrative law judge's decision (no exceptions filed)	124	0.5	22.8	104	0.6	20	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	170	0.7	31.3	143	0.8	22	0.4	2	0.6	0	0.0	2	5.0	0	0.0	1	1.4
Circuit court of appeals decree	224	0.9	41.2	200	1.1	15	0.3	3	0.9	5	4.6	0	0.0	0	0.0	1	1.4
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 2006[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	
	Num ber	Per-cent of total closed	Per-cent of total method	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed	Num ber	Per-cent of total closed
Withdrawal	7,602	31.6	100.0	5,596	31.3	1,796	32.1	123	37.4	20	18.3	21	52.5	14	46.7	32	45.1
Before issuance of complaint	7,522	31.3	98.9	5,522	30.9	1,790	32.0	123	37.4	20	18.3	21	52.5	14	46.7	32	45.1
After issuance of complaint, before opening of hearing	54	0.2	0.7	51	0.3	3	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	8	0.0	0.1	7	0.0	1	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	8	0.0	0.1	8	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision	10	0.0	0.1	8	0.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	6,894	28.7	100.0	4,202	23.5	2,604	46.6	50	15.2	15	13.8	5	12.5	4	13.3	14	19.7
Before issuance of complaint	6,794	28.2	98.5	4,112	23.0	2,594	46.4	50	15.2	15	13.8	5	12.5	4	13.3	14	19.7
After issuance of complaint, before opening of hearing	34	0.1	0.5	33	0.2	1	0.0	0	0.0	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	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
By Board decision	60	0.2	0.9	51	0.3	9	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed)	37	0.2	0.5	32	0.2	5	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested	23	0.1	0.3	19	0.1	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree	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 Supreme Court action	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
10(k) actions (see Table 7A for details of dispositions)	48	0.2	--	0	0.0	0	0.0	0	0.0	48	44.0	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)	115	0.5	--	111	0.6	2	0.0	2	0.6	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 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2006[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	24,148	100.0	17,961	100.0	5,600	100.0	329	100.0	117	100.0	40	100.0	30	100.0	71	100.0
Before issuance of complaint	21,675	89.8	15,795	87.9	5,352	95.6	307	93.3	93	79.5	34	85.0	29	96.7	65	91.5
After issuance of complaint, before opening of hearing	1,578	6.5	1,385	7.7	162	2.9	17	5.2	5	4.3	4	10.0	1	3.3	4	5.6
After hearing opened, before issuance of administrative law judge's decision	133	0.6	121	0.7	9	0.2	0	0.0	3	2.6	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision	42	0.2	42	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	188	0.8	148	0.8	30	0.5	0	0.0	10	8.5	0	0.0	0	0.0	0	0.0
After Board decision, before circuit court decree	252	1.0	217	1.2	29	0.5	2	0.6	1	0.9	2	5.0	0	0.0	1	1.4
After circuit court decree, before Supreme Court action	277	1.1	252	1.4	16	0.3	3	0.9	5	4.3	0	0.0	0	0.0	1	1.4
After Supreme Court action	3	0.0	1	0.0	2	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 2006[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	3,542	100.0	2,682	100.0	113	100.0	747	100.0	121	100.0
Before issuance of notice of hearing	421	11.9	232	8.7	28	24.8	161	21.6	57	47.1
After issuance of notice, before close of hearing	2,595	73.3	1,997	74.5	72	63.7	526	70.4	49	40.5
After hearing closed, before issuance of decision	60	1.7	48	1.8	1	0.9	11	1.5	1	0.8
After issuance of Regional Director's decision	325	9.2	285	10.6	9	8.0	31	4.1	12	9.9
After issuance of Board decision[2]	141	4.0	120	4.5	3	2.7	18	2.4	2	1.7

[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 2006[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	3,466	100.0	2,623	100.0	110	100.0	733	100.0	114	100.0
Certification issued, total	2,048	59.1	1,666	63.5	37	33.6	345	47.1	58	50.9
After:										
Consent election	69	2.0	61	2.3	1	0.9	7	1.0	2	1.8
Before notice of hearing	5	0.1	5	0.2	0	0.0	0	0.0	0	0.0
After notice of hearing, before hearing closed	63	1.8	55	2.1	1	0.9	7	1.0	2	1.8
After hearing closed, before decision	1	0.0	1	0.0	0	0.0	0	0.0	0	0.0
Stipulated election	1,643	47.4	1,298	49.5	32	29.1	313	42.7	44	38.6
Before notice of hearing	193	5.6	134	5.1	5	4.5	54	7.4	17	14.9
After notice of hearing, before hearing closed	1,426	41.1	1,144	43.6	27	24.5	255	34.8	27	23.7
After hearing closed, before decision	24	0.7	20	0.8	0	0.0	4	0.5	0	0.0
Expedited election	2	0.1	2	0.1	0	0.0	0	0.0	0	0.0
Regional Director-directed election	217	6.3	204	7.8	3	2.7	10	1.4	11	9.6
Board-directed election	117	3.4	101	3.9	1	0.9	15	2.0	1	0.9
By withdrawal, total	1,270	36.6	904	34.5	54	49.1	312	42.6	52	45.6
Before notice of hearing	183	5.3	88	3.4	18	16.4	77	10.5	33	28.9
After notice of hearing, before hearing closed	992	28.6	736	28.1	35	31.8	221	30.2	17	14.9
After hearing closed, before decision	30	0.9	23	0.9	1	0.9	6	0.8	1	0.9
After Regional Director's decision and direction of election	56	1.6	48	1.8	0	0.0	8	1.1	0	0.0
After Board decision and direction of election	9	0.3	9	0.3	0	0.0	0	0.0	1	0.9
By dismissal, total	148	4.3	53	2.0	19	17.3	76	10.4	4	3.5
Before notice of hearing	37	1.1	3	0.1	5	4.5	29	4.0	4	3.5
After notice of hearing, before hearing closed	54	1.6	13	0.5	6	5.5	35	4.8	0	0.0
After hearing closed, before decision	2	0.1	1	0.0	0	0.0	1	0.1	0	0.0
By Regional Director's decision	40	1.2	26	1.0	6	5.5	8	1.1	0	0.0
By Board decision	15	0.4	10	0.4	2	1.8	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 2006[1]

	AC	UC
Total, all	10	139
Certification amended or unit clarified	4	7
Before hearing	4	1
By Regional Director's decision	4	1
By Board decision	0	0
After hearing	0	6
By Regional Director's decision	0	5
By Board decision	0	1
Dismissed	0	27
Before hearing	0	11
By Regional Director's decision	0	9
By Board decision	0	2
After hearing	0	16
By Regional Director's decision	0	14
By Board decision	0	2
Withdrawn	6	105
Before hearing	6	99
After hearing	0	6

[1] See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2006[1]

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed[2]	Expedited elections under 8(b)(7)(C)
All types, total:						
Elections	[3]2,194	74	1,769	0	349	2
Eligible voters	155,862	6,268	111,422	0	38,060	112
Valid votes	123,770	4,724	89,486	0	29,457	103
RC cases:						
Elections	1,736	62	1,364	0	308	2
Eligible voters	119,653	5,846	83,487	0	30,208	112
Valid votes	94,973	4,441	66,975	0	23,454	103
RM cases:						
Elections	39	1	34	0	4	0
Eligible voters	3,174	17	2,262	0	895	0
Valid votes	2,764	12	1,920	0	832	0
RD cases:						
Elections	358	8	325	0	25	0
Eligible voters	27,486	220	21,415	0	5,851	0
Valid votes	22,274	169	17,798	0	4,307	0
UD cases:						
Elections	61	3	46	0	12	--
Eligible voters	5,549	185	4,258	0	1,106	--
Valid votes	3,759	102	2,793	0	864	--

[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 2006[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	2,181	36	47	2,098	1,778	30	42	1,706	39	0	0	39	364	6	5	353
Rerun required	--	--	42	--	--	--	38	--	--	--	0	--	--	--	4	--
Runoff required	--	--	5	--	--	--	4	--	--	--	0	--	--	--	1	--
Consent elections	70	0	0	70	61	0	0	61	1	0	0	1	8	0	0	8
Rerun required	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Runoff required	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Stipulated elections	1,746	25	29	1,692	1,384	21	25	1,338	34	0	0	34	328	4	4	320
Rerun required	--	--	25	--	--	--	22	--	--	--	0	--	--	--	3	--
Runoff required	--	--	4	--	--	--	3	--	--	--	0	--	--	--	1	--
Regional Director–directed	363	11	18	334	331	9	17	305	4	0	0	4	28	2	1	25
Rerun required	--	--	17	--	--	--	16	--	--	--	0	--	--	--	1	--
Runoff required	--	--	1	--	--	--	1	--	--	--	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	2	0	0	2	0	0	0	0	0	0	0	0
Rerun required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--
Runoff required	--	--	0	--	--	--	0	--	--	--	--	--	--	--	--	--

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

Table 11B.—Representation Elections in Which Objections and/or Determinative Challenges Were Ruled On in Cases Closed Fiscal Year 2006[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	2,222	121	5.4	38	1.7	11	0.5	132	5.9	49	2.2
By type of cases:											
In RC cases	1,811	105	5.8	35	1.9	9	0.5	114	6.3	44	2.4
In RM cases	39	3	7.7	0	0.0	0	0.0	3	7.7	0	0.0
In RD cases	372	13	3.5	3	0.8	2	0.5	15	4.0	5	1.3
By type of election:											
Consent elections	71	2	2.8	0	0.0	0	0.0	2	2.8	0	0.0
Stipulated elections	1,777	44	2.5	24	1.4	7	0.4	51	2.9	31	1.7
Expedited elections	2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	372	75	20.2	14	3.8	4	1.1	79	21.2	18	4.8
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 2006[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	199	100.0	68	34.2	128	64.3	3	1.5
By type of case:								
RC cases	173	100.0	64	37.0	106	61.3	3	1.7
RM cases	4	100.0	0	0.0	4	100.0	0	0.0
RD cases	22	100.0	4	18.2	18	81.8	0	0.0
By type of election:								
Consent elections	4	100.0	2	50.0	2	50.0	0	0.0
Stipulated elections	100	100.0	26	26.0	71	71.0	3	3.0
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	95	100.0	40	42.1	55	57.9	0	0.0
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 2006[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	199	67	132	113	85.6	19	14.4
By type of case:							
RC cases	173	59	114	99	86.8	15	13.2
RM cases	4	1	3	2	66.7	1	33.3
RD cases	22	7	15	12	80.0	3	20.0
By type of election:							
Consent elections	4	2	2	1	50.0	1	50.0
Stipulated elections	100	49	51	43	84.3	8	15.7
Expedited elections	0	0	0	0	0.0	0	0.0
Regional Director-directed elections	95	16	79	69	87.3	10	12.7
Board-directed elections	0	0	0	0	0.0	0	0.0

[1] See Glossary of terms for definitions.

Table 11E.—Results of Rerun Elections Held in Representation Cases Closed, Fiscal Year 2006[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	24	100.0	7	29.2	17	70.8	7	29.2
By type of case:								
RC cases	22	100.0	6	27.3	16	72.7	6	27.3
RM cases	0	0.0	0	0.0	0	0.0	0	0.0
RD cases	2	100.0	1	50.0	1	50.0	1	50.0
By type of election:								
Consent elections	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections	16	100.0	5	31.3	11	68.8	5	31.3
Expedited elections	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections	8	100.0	2	25.0	6	75.0	2	25.0
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 2006[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	65	17	26.2	48	73.8	5,948	1,318	22.2	4,630	77.8	4,018	67.6	942	15.8
AFL-CIO unions	31	8	25.8	23	74.2	3,182	575	18.1	2,607	81.9	2,264	71.2	390	12.3
Other national unions	28	8	28.6	20	71.4	2,455	691	28.1	1,764	71.9	1,504	61.3	518	21.1
Other local unions	6	1	16.7	5	83.3	311	52	16.7	259	83.3	250	80.4	34	10.9

[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 2006[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	908	54.7	497	496	1	--	411	54,485	21,670	21,627	43	--	32,815
Other local unions	115	56.5	65	--	--	65	50	8,613	5,676	--	--	5,676	2,937
Other national unions	941	51.3	483	--	483	--	458	63,266	32,559	--	32,559	--	30,707
1-union elections	1,964	53.2	1,045	496	484	65	919	126,364	59,905	21,627	32,602	5,676	66,459
AFL-CIO v. AFL-CIO	30	56.7	17	17	--	--	13	2,310	1,362	1,362	--	--	948
AFL-CIO v. Local	45	93.3	42	31	--	11	3	1,948	1,764	678	--	1,086	184
AFL-CIO v. National	30	80.0	24	11	13	--	6	4,553	4,126	3,353	773	--	427
Local v. Local	7	100.0	7	--	--	7	0	4,381	4,381	--	--	4,381	0
National v. Local	23	87.0	20	--	17	3	3	2,525	2,476	--	2,374	102	49
National v. National	36	77.8	28	--	28	--	8	7,415	6,971	--	6,971	--	444
2-union elections	171	80.7	138	59	58	21	33	23,132	21,080	5,393	10,118	5,569	2,052
AFL-CIO v. AFL-CIO v. Local	1	100.0	1	1	--	0	0	2,205	2,205	2,205	--	0	0
AFL-CIO v. AFL-CIO v. National v. Local	1	100.0	1	0	0	1	0	92	92	0	0	92	0
AFL-CIO v. National v. National	1	100.0	1	0	1	--	0	49	49	0	49	--	0
Local v. Local v. Local	1	100.0	1	--	--	1	0	47	47	--	--	47	0
National v. Local v. Local	1	100.0	1	--	0	1	0	47	47	--	0	47	0
National v. National v. Local	1	100.0	1	--	1	0	0	93	93	--	93	0	0
National v. National v. National	2	100.0	2	--	2	--	0	82	82	--	82	--	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2006[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	
National v. National	4	100.0	4	--	4	--	0	164	164	--	164	--	0
3 (or more)-union elections	12	100.0	12	1	8	3	0	2,779	2,779	2,205	388	186	0
Total representation elections	2,147	55.7	1,195	556	550	89	952	152,275	83,764	29,225	43,108	11,431	68,511
B. Elections in RC cases													
Other national unions	741	56.7	420	--	420	--	321	48,726	24,942	--	24,942	--	23,784
AFL-CIO	733	60.6	444	444	--	--	289	42,714	17,286	17,286	--	--	25,428
Other local unions	100	59.0	59	--	--	59	41	7,684	4,977	--	--	4,977	2,707
1-union elections	1,574	58.6	923	444	420	59	651	99,124	47,205	17,286	24,942	4,977	51,919
National v. Local	21	85.7	18	--	15	3	3	1,893	1,844	--	1,742	102	49
National v. National	35	77.1	27	--	27	--	8	7,365	6,921	--	6,921	--	444
AFL-CIO v. National	29	79.3	23	11	12	--	6	4,458	4,031	3,353	678	--	427
Local v. Local	5	100.0	5	--	--	5	0	1,850	1,850	--	--	1,850	0
AFL-CIO v. AFL-CIO	29	58.6	17	17	--	--	12	2,274	1,362	1,362	--	--	912
AFL-CIO v. Local	43	93.0	40	29	--	11	3	1,906	1,722	636	--	1,086	184
2-union elections	162	80.2	130	57	54	19	32	19,746	17,730	5,351	9,341	3,038	2,016
National v. National v. Local	1	100.0	1	--	1	0	0	93	93	--	93	0	0
National v. National v. National	2	100.0	2	--	2	--	0	82	82	--	82	--	0
National v. National v. National v. National	2	100.0	2	--	2	--	0	16	16	--	16	--	0
National v. Local v. Local	1	100.0	1	--	0	1	0	47	47	--	0	47	0

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2006[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	
AFL-CIO v. AFL-CIO v. Local	1	100.0	1	1	--	0	0	2,205	2,205	2,205	--	0	0
AFL-CIO v. AFL-CIO v. National v. Local	1	100.0	1	0	0	1	0	92	92	0	0	92	0
AFL-CIO v. National v. National	1	100.0	1	0	1	--	0	49	49	0	49	--	0
Local v. Local v. Local	1	100.0	1	--	--	1	0	47	47	--	--	47	0
3 (or more)-union elections	10	100.0	10	1	6	3	0	2,631	2,631	2,205	240	186	0
Total RC elections	1,746	60.9	1,063	502	480	81	683	121,501	67,566	24,842	34,523	8,201	53,935
C. Elections in RM cases													
AFL-CIO	24	37.5	9	9	--	--	15	1,510	376	376	--	--	1,134
Other national unions	13	15.4	2	--	2	--	11	1,539	29	--	29	--	1,510
1-union elections	37	29.7	11	9	2	0	26	3,049	405	376	29	0	2,644
National v. Local	1	100.0	1	--	1	0	0	5	5	--	5	0	0
AFL-CIO v. National	1	100.0	1	0	1	--	0	95	95	0	95	--	0
2-union elections	2	100.0	2	0	2	0	0	100	100	0	100	0	0
National v. National v. National v. National	2	100.0	2	--	2	--	0	148	148	--	148	--	0
3 (or more)-union elections	2	100.0	2	0	2	0	0	148	148	0	148	0	0
Total RM elections	41	36.6	15	9	6	0	26	3,297	653	376	277	0	2,644
D. Elections in RD cases													
Other national unions	187	32.6	61	--	61	--	126	13,001	7,588	--	7,588	--	5,413
Other local unions	15	40.0	6	--	--	6	9	929	699	--	--	699	230

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2006[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	
AFL-CIO	151	29.1	44	43	1	--	107	10,261	4,008	3,965	43	--	6,253
1-union elections	353	31.4	111	43	62	6	242	24,191	12,295	3,965	7,631	699	11,896
National v. Local	1	100.0	1	--	1	0	0	627	627	--	627	0	0
National v. National	1	100.0	1	--	1	--	0	50	50	--	50	--	0
AFL-CIO v. AFL-CIO	1	0.0	0	0	--	--	1	36	0	0	--	--	36
AFL-CIO v. Local	2	100.0	2	2	--	0	0	42	42	42	--	0	0
Local v. Local	2	100.0	2	--	--	2	0	2,531	2,531	--	--	2,531	0
2-union elections	7	85.7	6	2	2	2	1	3,286	3,250	42	677	2,531	36
Total RD elections	360	32.5	117	45	64	8	243	27,477	15,545	4,007	8,308	3,230	11,932

[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 2006[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	45,146	11,540	11,540	--	--	4,840	9,995	9,995	--	--	18,771
Other local unions	6,301	2,710	--	--	2,710	1,306	770	--	--	770	1,515
Other national unions	51,044	17,334	--	17,334	--	7,678	9,274	--	9274	--	16,758
1-union elections	102,491	31,584	11,540	17,334	2,710	13,824	20,039	9,995	9274	770	37,044
AFL-CIO v. AFL-CIO	1,951	854	854	--	--	78	469	469	--	--	550
AFL-CIO v. Local	1,436	1,234	601	--	633	39	85	28	--	57	78
AFL-CIO v. National	3,471	3,028	2,069	959	--	144	119	15	104	--	180
Local v. Local	4,391	4,134	--	--	4,134	257	0	--	--	0	0
National v. Local	1,797	1,746	--	1,034	712	13	26	--	14	12	12
National v. National	4,811	4,159	--	4,159	--	133	277	--	277	--	242
2-union elections	17,857	15,155	3,524	6,152	5,479	664	976	512	395	69	1,062
AFL-CIO v. AFL-CIO v. Local	1,856	1,856	1,846	--	10	0	0	0	--	0	0
AFL-CIO v. AFL-CIO v. National v. Local	80	79	9	2	68	1	0	0	0	0	0
AFL-CIO v. National v. National	39	39	10	29	--	0	0	0	0	--	0
Local v. Local v. Local	28	28	--	--	28	0	0	--	--	0	0
National v. Local v. Local	18	16	--	2	14	2	0	--	0	0	0
National v. National v. Local	72	68	--	61	7	4	0	--	0	0	0
National v. National v. National	63	63	--	63	--	0	0	--	0	--	0
National v. National v. National v. National	226	154	--	154	--	72	0	--	0	--	0
3 (or more)-union elections	2,382	2,303	1,865	311	127	79	0	0	0	0	0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2006[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		
Total representation elections.............	122,730	49,042	16,929	23,797	8,316		14,567	21,015	10,507	9669	839		38,106
B. Elections in RC cases													
Other national unions.............................	39,024	13,420	--	13,420	--		5,452	7,367	--	7367	--		12,785
AFL-CIO..	34,962	9,216	9,216	--	--		3,231	7,748	7,748	--	--		14,767
Other local unions...................................	5,500	2,280	--	--	2,280		1,103	726	--	--	726		1,391
1-union elections.................................	79,486	24,916	9,216	13,420	2,280		9,786	15,841	7,748	7367	726		28,943
National v. Local.....................................	1,355	1,304	--	773	531		13	26	--	14	12		12
National v. National...............................	4,763	4,111	--	4,111	--		133	277	--	277	--		242
AFL-CIO v. National.............................	3,379	2,936	2,032	904	--		144	119	15	104	--		180
Local v. Local...	1,558	1,344	0	0	1,344		214	0	--	--	--		--
AFL-CIO v. AFL-CIO...........................	1,910	854	854	--	--		78	459	459	--	--		519
AFL-CIO v. Local...................................	1,396	1,194	573	--	621		39	85	28	--	57		78
2-union elections.................................	14,361	11,743	3,459	5,788	2,496		621	966	502	395	69		1,031
National v. National v. Local..................	72	68	0	61	7		4	0	--	--	--		--
National v. National v. National.............	63	63	0	63	0		0	0	--	--	--		--
National v. National v. National v. National..	10	10	0	10	0		0	0	--	--	--		--
National v. Local v. Local.......................	18	16	0	2	14		2	0	--	--	--		--
AFL-CIO v. AFL-CIO v. Local.............	1,856	1,856	1,846	0	10		0	0	--	--	--		--
AFL-CIO v. AFL-CIO v. National v. Local...	80	79	9	2	68		1	0	--	--	--		--
AFL-CIO v. National v. National...........	39	39	10	29	0		0	0	--	--	--		--
Local v. Local v. Local...........................	28	28	0	0	28		0	0	--	--	--		--
3 (or more)-union elections.................	2,166	2,159	1,865	167	127		7	0	0	0	0		0

Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed, Fiscal Year 2006[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	
Total RC elections	96,013	38,818	14,540	19,375	4,903	10,414	16,807	8,250	7762	795	29,974
C. Elections in RM cases											
AFL-CIO	1,340	211	211	--	--	120	400	400	--	--	609
Other national unions	1,285	17	--	17	--	9	491	--	491	--	768
1-union elections	2,625	228	211	17	0	129	891	400	491	0	1,377
National v. Local	5	5	0	5	0	0	0	--	--	--	--
AFL-CIO v. National	92	92	37	55	0	0	0	--	--	--	--
2-union elections	97	97	37	60	0	0	0	0	0	0	0
National v. National v. National v. National	216	144	0	144	0	72	0	--	--	--	--
3 (or more)-union elections	216	144	0	144	0	72	0	0	0	0	0
Total RM elections	2,938	469	248	221	0	201	891	400	491	0	1,377
D. Elections in RD cases											
Other national unions	10,735	3,897	--	3,897	--	2,217	1,416	--	1416	--	3,205
Other local unions	801	430	--	--	430	203	44	--	--	44	124
AFL-CIO	8,844	2,113	2,113	--	--	1,489	1,847	1,847	--	--	3,395
1-union elections	20,380	6,440	2,113	3,897	430	3,909	3,307	1,847	1416	44	6,724
National v. Local	437	437	0	256	181	0	0	--	--	--	--
National v. National	48	48	0	48	0	0	0	--	--	--	--
AFL-CIO v. AFL-CIO	41	0	--	--	--	--	10	10	0	0	31
AFL-CIO v. Local	40	40	28	0	12	0	0	--	--	--	--
Local v. Local	2,833	2,790	0	0	2,790	43	0	--	--	--	--
2-union elections	3,399	3,315	28	304	2,983	43	10	10	0	0	31
Total RD elections	23,779	9,755	2,141	4,201	3,413	3,952	3,317	1,857	1416	44	6,755

[1] See Glossary of Terms for definition.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006

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	153	94	35	58	1	59	10573	8,430	4,818	1,308	3,484	26	3,612	6919
Indiana	57	32	19	12	1	25	3197	2,816	1,484	1,130	305	49	1,332	1720
Michigan	93	44	15	27	2	49	4225	3,444	1,890	704	1,081	105	1,554	2192
Ohio	107	54	25	27	2	53	7864	6,578	4,396	3,012	1,322	62	2,182	5101
Wisconsin	40	20	10	10	0	20	2894	2,611	890	538	352	0	1,721	706
East North Central	450	244	104	134	6	206	28753	23,879	13,478	6,692	6,544	242	10,401	16638
Alabama	28	18	9	9	0	10	3211	3,240	1,755	818	937	0	1,485	1207
Kentucky	21	8	3	5	0	13	1434	1,353	654	395	245	14	699	572
Mississippi	9	6	4	2	0	3	506	437	252	157	95	0	185	362
Tennessee	19	10	5	5	0	9	1320	1,183	482	265	177	40	701	453
East South Central	77	42	21	21	0	35	6471	6,213	3,143	1,635	1,454	54	3,070	2594
Puerto Rico	49	24	1	9	14	25	3255	2,458	1,185	201	347	637	1,273	1047
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	5	1	0	0	1	4	371	252	111	0	0	111	141	54
Island Areas	54	25	1	9	15	29	3626	2,710	1,296	201	347	748	1,414	1101
New Jersey	89	46	21	21	4	43	5619	4,643	2,503	838	1,350	315	2,140	2666
New York	358	238	120	97	21	120	18749	12,835	7,749	2,190	4,810	749	5,086	12716
Pennsylvania	121	57	27	29	1	64	7981	7,395	3,502	1,871	1,591	40	3,893	3141
Middle Atlantic	568	341	168	147	26	227	32349	24,873	13,754	4,899	7,751	1,104	11,119	18523
Arizona	15	11	3	8	0	4	971	822	439	19	403	17	383	500
Colorado	32	9	6	2	1	23	1321	1,174	459	318	121	20	715	419
Idaho	4	2	1	1	0	2	2653	631	292	227	65	0	339	2311
Montana	8	4	3	1	0	4	283	285	154	76	78	0	131	47
Nevada	21	11	5	5	1	10	840	737	359	198	115	46	378	357
New Mexico	12	6	3	3	0	6	367	339	177	118	59	0	162	210
Utah	2	0	0	0	0	2	265	214	78	0	78	0	136	0
Wyoming	6	2	2	0	0	4	104	99	26	18	8	0	73	13

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Division and State[1]	Total elec- tions	Number of elections in which representation rights were won by unions				Number of elec- tions in which no rep- resenta- tive was chosen	Number of em- ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ- ees in units choos- ing rep- resentati on
		Total	AFL- CIO unions	Other national unions	Other local unions				Total	AFL- CIO unions	Other national unions	Other local unions		
Mountain	100	45	23	20	2	55	6804	4.301	1,984	974	927	83	2317	3857
Connecticut	34	21	6	13	2	13	1356	1,202	613	78	518	17	589	659
Maine	11	3	3	0	0	8	438	384	157	113	44	0	227	106
Massachusetts	37	16	1	13	2	21	6811	5,702	2,999	1,353	1,284	362	2,703	2577
New Hampshire	7	4	2	2	0	3	425	322	215	65	150	0	107	332
Rhode Island	13	7	2	3	2	6	975	862	354	58	178	118	508	400
Vermont	4	2	1	1	0	2	238	203	135	37	98	0	68	113
New England	106	53	15	32	6	53	10243	8,675	4,473	1,704	2,272	497	4,202	4187
Alaska	18	9	5	4	0	9	726	585	214	154	60	0	371	203
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	186	104	33	56	15	82	23173	18,542	13,199	1,404	6,351	5,444	5,343	14336
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	37	31	30	30	0	0	1	37
Hawaii	20	9	6	3	0	11	1171	888	453	297	156	0	435	305
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	32	19	10	7	2	13	2188	1,734	1,205	531	340	334	529	1708
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	87	58	38	20	0	29	5055	3,483	2,445	1,165	1,280	0	1,038	3633
Pacific	344	200	93	90	17	144	32350	25,263	17,546	3,581	8,187	5,778	7,717	20222
Delaware	9	5	3	2	0	4	356	265	137	87	50	0	128	124
District Of Columbia	18	14	4	3	7	4	1150	873	544	73	324	147	329	983
Florida	54	36	12	23	1	18	4349	3,680	2,065	831	1,223	11	1,615	2135
Georgia	26	9	6	3	0	17	2348	2,150	917	577	340	0	1,233	1082
Maryland	56	31	9	17	5	25	6488	5,467	3,409	1,768	1,531	110	2,058	3366
North Carolina	14	10	6	4	0	4	2790	2,551	1,113	1,013	100	0	1,438	383
South Carolina	8	3	3	0	0	5	228	212	111	98	13	0	101	43

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—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		
Virginia	22	8	5	3	0	14	1880	1,680	840	557	283	0	840	853
West Virginia	21	11	6	5	0	10	1126	1,015	565	394	171	0	450	520
South Atlantic	228	127	54	60	13	101	20715	17,893	9,701	5,398	4,035	268	8,192	9489
Iowa	29	17	8	9	0	12	1387	1,274	658	351	307	0	616	693
Kansas	8	5	2	2	1	3	143	106	71	42	9	20	35	116
Minnesota	47	21	12	8	1	26	2341	2,034	990	319	412	259	1,044	889
Missouri	49	26	13	12	1	23	2921	2,526	1,353	625	722	6	1,173	1325
Nebraska	19	12	12	0	0	7	349	305	188	152	36	0	117	207
North Dakota	3	1	1	0	0	2	56	50	35	35	0	0	15	26
South Dakota	1	0	0	0	0	1	6	4	1	0	1	0	3	0
West North Central	156	82	48	31	3	74	7203	6,299	3,296	1,524	1,487	285	3,003	3256
Arkansas	6	2	2	0	0	4	369	339	111	54	57	0	228	54
Louisiana	15	6	4	2	0	9	497	420	206	85	68	53	214	115
Oklahoma	8	6	4	2	0	2	282	245	141	125	16	0	104	104
Texas	50	25	14	11	0	25	2991	2,692	1,362	737	624	1	1,330	1946
West South Central	79	39	24	15	0	40	4139	3,696	1,820	1,001	765	54	1,876	2219
Total, all States and areas	2,162	1,198	551	559	88	964	152653	123,802	70,491	27,609	33,769	9,113	53,311	82086

[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 2006

Division and State[2]	Total elec-tions	Number of elections in which representation rights were won by unions				Number of elec-tions in which no rep-resenta-tive was chosen	Number of em-ployees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employ-ees in units choos-ing rep-resentation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	128	80	30	50	0	48	7676	5,991	3,454	1,152	2,302	0	2,537	4267
Indiana	48	27	15	11	1	21	2750	2,404	1,220	919	252	49	1,184	1317
Michigan	72	38	11	25	2	34	3182	2,675	1,492	500	887	105	1,183	1503
Ohio	85	47	22	24	1	38	6971	5,819	4,079	2,857	1,190	32	1,740	4804
Wisconsin	26	15	8	7	0	11	2303	2,117	717	497	220	0	1,400	511
East North Central	359	207	86	117	4	152	22882	19,006	10,962	5,925	4,851	186	8,044	12402
Alabama	25	17	8	9	0	8	3112	3,145	1,699	762	937	0	1,446	1119
Kentucky	17	7	3	4	0	10	1199	1,132	549	306	229	14	583	545
Mississippi	8	6	4	2	0	2	496	431	250	155	95	0	181	362
Tennessee	15	8	4	4	0	7	1200	1,071	424	238	146	40	647	378
East South Central	65	38	19	19	0	27	6007	5,779	2,922	1,461	1,407	54	2,857	2404
Puerto Rico	47	23	1	8	14	24	3222	2,427	1,166	201	328	637	1,261	1029
U.S. Minor Outlying Islands	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands	5	1	0	0	1	4	371	252	111	0	0	111	141	54
Island Areas	52	24	1	8	15	28	3593	2,679	1,277	201	328	748	1,402	1083
New Jersey	74	40	19	17	4	34	4756	3,889	2,177	748	1,118	311	1,712	2239
New York	338	235	119	96	20	103	16926	11,643	7,443	2,094	4,676	673	4,200	12330
Pennsylvania	91	51	23	27	1	40	6101	5,744	2,769	1,292	1,438	39	2,975	2220
Middle Atlantic	503	326	161	140	25	177	27783	21,276	12,389	4,134	7,232	1,023	8,887	16789
Arizona	11	8	3	5	0	3	622	503	235	14	204	17	268	164
Colorado	25	8	6	2	0	17	1193	1,051	416	297	119	0	635	404
Idaho	4	2	1	1	0	2	2653	631	292	227	65	0	339	2311
Montana	6	2	2	0	0	4	251	253	137	63	74	0	116	15
Nevada	18	9	5	3	1	9	674	606	280	195	39	46	326	214
New Mexico	11	5	3	2	0	6	328	302	156	118	38	0	146	171
Utah	1	0	0	0	0	1	168	121	32	0	32	0	89	0
Wyoming	4	2	2	0	0	2	73	68	16	8	8	0	52	13

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2006—Continued

Division and State[2]	Total elections	Number of elections in which representation rights were won by unions: Total	AFL-CIO unions	Other national unions	Other local 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	AFL-CIO unions	Other national unions	Other local unions	Total votes for no union	Eligible employees in units choosing representation
Mountain	80	36	22	13	1	44	5962	3,535	1,564	922	579	63	1,971	3292
Maine	9	3	3	0	0	6	380	334	146	107	39	0	188	106
Massachusetts	32	14	1	12	1	18	5085	4,143	2,273	714	1,276	283	1,870	2449
New Hampshire	7	4	2	2	0	3	425	322	215	65	150	0	107	332
Rhode Island	12	7	2	3	2	5	723	625	281	58	105	118	344	400
Vermont	3	2	1	1	0	1	117	98	87	37	50	0	11	113
New England	94	50	15	30	5	44	7939	6,585	3,558	1,059	2,081	418	3,027	4046
Alaska	15	9	5	4	0	6	675	542	210	154	56	0	332	203
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	148	91	31	48	12	57	16649	12,472	8,486	1,168	5,075	2,243	3,986	9565
Federated States of Micronesia	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam	1	1	1	0	0	0	37	31	30	30	0	0	1	37
Hawaii	18	9	6	3	0	9	975	712	380	224	156	0	332	305
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	21	17	9	6	2	4	1745	1,357	1,059	508	217	334	298	1576
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	71	52	35	17	0	19	3907	2,621	1,943	1,061	882	0	678	2702
Pacific	274	179	87	78	14	95	23988	17,735	12,108	3,145	6,386	2,577	5,627	14388
Delaware	9	5	3	2	0	4	356	265	137	87	50	0	128	124
District of Columbia	15	13	3	3	7	2	990	758	500	48	324	128	258	938
Florida	44	32	11	20	1	12	2975	2,416	1,495	484	1,000	11	921	1722
Georgia	21	9	6	3	0	12	2171	1,979	855	535	320	0	1,124	1082
Maryland	47	28	9	14	5	19	6027	5,071	3,192	1,729	1,353	110	1,879	3077
North Carolina	11	8	5	3	0	3	2728	2,492	1,086	993	93	0	1,406	354
South Carolina	7	3	3	0	0	4	197	185	100	87	13	0	85	43
Virginia	18	8	5	3	0	10	1623	1,447	743	514	229	0	704	853

Table 15B.—Geographic Distribution of Collective-Bargaining Elections[1] Held in Cases Closed, Fiscal Year 2006—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		
West Virginia	13	8	5	3	0	5	669	696	399	367	32	0	297	266
South Atlantic	185	114	50	51	13	71	17736	15,309	8,507	4,844	3,414	249	6,802	8459
Iowa	25	15	7	8	0	10	1313	1,205	627	338	289	0	578	638
Kansas	7	5	2	2	1	2	141	104	71	42	9	20	33	116
Minnesota	28	19	11	7	1	9	1539	1,337	680	143	278	259	657	782
Missouri	39	21	11	9	1	18	2502	2,173	1,152	526	620	6	1,021	990
Nebraska	17	12	12	0	0	5	277	245	163	152	11	0	82	207
North Dakota	3	1	1	0	0	2	56	50	35	35	0	0	15	26
South Dakota	1	0	0	0	0	1	6	4	1	0	1	0	3	0
West North Central	120	73	44	26	3	47	5834	5,118	2,729	1,236	1,208	285	2,389	2759
Arkansas	4	1	1	0	0	3	262	253	71	14	57	0	182	4
Louisiana	12	5	4	1	0	7	442	377	176	85	38	53	201	67
Oklahoma	8	6	4	2	0	2	282	245	141	125	16	0	104	104
Texas	42	22	12	10	0	20	2318	2,062	1,032	460	572	0	1,030	1349
West South Central	66	34	21	13	0	32	3304	2,937	1,420	684	683	53	1,517	1524
Total, all States and areas	1,798	1,081	506	495	80	717	125028	99,959	57,436	23,611	28,169	5,656	42,523	67146

[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 2006

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 choos-ing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois	25	14	5	8	1	11	2897	2,439	1,364	156	1,182	26	1,075	2652
Indiana	9	5	4	1	0	4	447	412	264	211	53	0	148	403
Michigan	21	6	4	2	0	15	1043	769	398	204	194	0	371	689
Ohio	22	7	3	3	1	15	893	759	317	155	132	30	442	297
Wisconsin	14	5	2	3	0	9	591	494	173	41	132	0	321	195
East North Central	91	37	18	17	2	54	5871	4,873	2,516	767	1,693	56	2,357	4236
Alabama	3	1	1	0	0	2	99	95	56	56	0	0	39	88
Kentucky	4	1	0	1	0	3	235	221	105	89	16	0	116	27
Mississippi	1	0	0	0	0	1	10	6	2	2	0	0	4	0
Tennessee	4	2	1	1	0	2	120	112	58	27	31	0	54	75
East South Central	12	4	2	2	0	8	464	434	221	174	47	0	213	190
Puerto Rico	2	1	0	1	0	1	33	31	19	0	19	0	12	18
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	2	1	0	1	0	1	33	31	19	0	19	0	12	18
New Jersey	15	6	2	4	0	9	863	754	326	90	232	4	428	427
New York	20	3	1	1	1	17	1823	1,192	306	96	134	76	886	386
Pennsylvania	30	6	4	2	0	24	1880	1,651	733	579	153	1	918	921
Middle Atlantic	65	15	7	7	1	50	4566	3,597	1,365	765	519	81	2,232	1734
Arizona	4	3	0	3	0	1	349	319	204	5	199	0	115	336
Colorado	7	1	0	0	1	6	128	123	43	21	2	20	80	15
Idaho	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Montana	2	2	1	1	0	0	32	32	17	13	4	0	15	32
Nevada	3	2	0	2	0	1	166	131	79	3	76	0	52	143
New Mexico	1	1	0	1	0	0	39	37	21	0	21	0	16	39

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2006—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		
Utah	1	0	0	0	0	1	97	93	46	0	46	0	47	0
Wyoming	2	0	0	0	0	2	31	31	10	10	0	0	21	0
Maine	2	0	0	0	0	2	58	50	11	6	5	0	39	0
Massachusetts	5	2	0	1	1	3	1726	1,559	726	639	8	79	833	128
New Hampshire	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rhode Island	1	0	0	0	0	1	252	237	73	0	73	0	164	0
Vermont	1	0	0	0	0	1	121	105	48	0	48	0	57	0
New England	12	3	0	2	1	9	2304	2,090	915	645	191	79	1,175	141
Alaska	3	0	0	0	0	3	51	43	4	0	4	0	39	0
American Samoa	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California	38	13	2	8	3	25	6524	6,070	4,713	236	1,276	3,201	1,357	4771
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	2	0	0	0	0	2	196	176	73	73	0	0	103	0
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	11	2	1	1	0	9	443	377	146	23	123	0	231	132
Palau	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington	16	6	3	3	0	10	1148	862	502	104	398	0	360	931
Pacific	70	21	6	12	3	49	8362	7,528	5,438	436	1,801	3,201	2,090	5834
Delaware	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Of Columbia	3	1	1	0	0	2	160	115	44	25	0	19	71	45
Florida	10	4	1	3	0	6	1374	1,264	570	347	223	0	694	413
Georgia	5	0	0	0	0	5	177	171	62	42	20	0	109	0
Maryland	9	3	0	3	0	6	461	396	217	39	178	0	179	289

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2006—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		
North Carolina	3	2	1	1	0	1	62	59	27	20	7	0	32	29
South Carolina	1	0	0	0	0	1	31	27	11	11	0	0	16	0
Virginia	4	0	0	0	0	4	257	233	97	43	54	0	136	0
West Virginia	8	3	1	2	0	5	457	319	166	27	139	0	153	254
South Atlantic	43	13	4	9	0	30	2979	2,584	1,194	554	621	19	1,390	1030
Iowa	4	2	1	1	0	2	74	69	31	13	18	0	38	55
Kansas	1	0	0	0	0	1	2	2	0	0	0	0	2	0
Minnesota	19	2	1	1	0	17	802	697	310	176	134	0	387	107
Missouri	10	5	2	3	0	5	419	353	201	99	102	0	152	335
Nebraska	2	0	0	0	0	2	72	60	25	0	25	0	35	0
North Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota	0	0	0	0	0	0	0	0	0	0	0	0	0	0
West North Central	36	9	4	5	0	27	1369	1,181	567	288	279	0	614	497
Arkansas	2	1	1	0	0	1	107	86	40	40	0	0	46	50
Louisiana	3	1	0	1	0	2	55	43	30	0	30	0	13	48
Oklahoma	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Texas	8	3	2	1	0	5	673	630	330	277	52	1	300	597
West South Central	13	5	3	2	0	8	835	759	400	317	82	1	359	695
Total, all States and areas	364	117	45	64	8	247	27625	23,843	13,055	3,998	5,600	3,457	10,788	14940

[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 2006

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		
Animal Production	1	0	0	0	0	1	100	75	28	28	0	0	47	0
Forestry and Logging	1	0	0	0	0	1	8	7	3	3	0	0	4	0
Support Activities for Agriculture and Forestry	2	0	0	0	0	2	109	84	19	0	19	0	65	0
Agriculture, Forestry, Fishing, and Hunting	4	0	0	0	0	4	217	166	50	31	19	0	116	0
Oil and Gas Extraction	8	4	2	2	0	4	475	380	156	114	34	8	224	110
Mining (except Oil and Gas)	11	4	4	0	0	7	285	258	118	118	0	0	140	83
Mining	19	8	6	2	0	11	760	638	274	232	34	8	364	193
Utilities	55	26	21	5	0	29	2061	1,919	982	884	98	0	937	487
Construction of Buildings	45	35	22	10	3	10	870	582	396	140	160	96	186	576
Heavy and Civil Engineering Construction	45	29	20	6	3	16	1274	551	349	175	95	79	202	989
Specialty Trade Contractors	243	162	134	26	2	81	5931	4,395	2,736	2,143	474	119	1,659	3782
Construction	333	226	176	42	8	107	8075	5,528	3,481	2,458	729	294	2,047	5347
Food Manufacturing	58	25	3	21	1	33	8639	7,505	3,715	242	3,393	80	3,790	3947
Beverage and Tobacco Product Manufacturing	16	6	1	4	1	10	3010	2,795	1,126	893	211	22	1,669	169
Textile Product Mills	1	0	0	0	0	1	54	53	25	25	0	0	28	0
Apparel Manufacturing	3	2	0	2	0	1	88	79	58	0	58	0	21	88
Leather and Allied Product Manufacturing	1	1	1	0	0	0	197	170	156	156	0	0	14	197
31-Manufacturing	79	34	5	27	2	45	11988	10,602	5,080	1,316	3,662	102	5,522	4401
Wood Product Manufacturing	14	2	1	1	0	12	861	791	303	147	156	0	488	162
Paper Manufacturing	10	4	2	2	0	6	1892	1,795	574	545	29	0	1,221	272
Printing and Related Support Activities	8	4	3	1	0	4	398	324	133	65	68	0	191	197

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Petroleum and Coal Products Manufacturing	14	8	2	3	3	6	615	614	228	113	101	14	386	100
Chemical Manufacturing	32	12	6	5	1	20	1804	1,595	725	452	230	43	870	786
Plastics and Rubber Products Manufacturing	23	15	9	3	3	8	2635	2,062	1,025	574	382	69	1,037	1172
Nonmetallic Mineral Product Manufacturing	20	8	7	1	0	12	1593	1,464	727	544	183	0	737	593
32-Manufacturing	121	53	30	16	7	68	9798	8,645	3,715	2,440	1,149	126	4,930	3282
Primary Metal Manufacturing	34	16	14	2	0	18	6278	5,533	3,784	3,617	157	10	1,749	4352
Fabricated Metal Product Manufacturing	25	13	8	5	0	12	1521	1,359	680	545	121	14	679	585
Machinery Manufacturing	20	8	7	1	0	12	1717	1,605	702	655	31	16	903	199
Computer and Electronic Product Manufacturing	4	1	1	0	0	3	283	264	116	72	44	0	148	33
Electrical Equipment, Appliance, and Component Manufacturing	15	5	5	0	0	10	1115	1,027	485	483	2	0	542	308
Transportation Equipment Manufacturing	44	23	14	7	2	21	7081	6,305	3,644	2,072	308	1,264	2,661	3704
Furniture and Related Product Manufacturing	4	3	2	1	0	1	291	251	179	110	62	7	72	271
Miscellaneous Manufacturing	43	16	9	5	2	27	2812	2,627	1,161	563	431	167	1,466	768
33-Manufacturing	189	85	60	21	4	104	21098	18,971	10,751	8,117	1,156	1,478	8,220	10220
Merchant Wholesalers, Durable Goods	29	12	9	3	0	17	823	708	313	200	113	0	395	441
Merchant Wholesalers, Nondurable Goods	51	18	4	13	1	33	1689	1,499	662	78	564	20	837	455
Wholesale Electronic Markets and Agents and Brokers	1	0	0	0	0	1	239	210	45	0	45	0	165	0
Wholesale Trade	81	30	13	16	1	51	2751	2,417	1,020	278	722	20	1,397	896
Motor Vehicle and Parts Dealers	32	20	15	4	1	12	525	482	254	213	39	2	228	238
Furniture and Home Furnishings Stores	3	0	0	0	0	3	158	142	54	9	45	0	88	0

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Electronics and Appliance Stores	2	0	0	0	0	2	45	37	14	4	10	0	23	0
Building Material and Garden Equipment and Supplies Dealers	6	5	1	4	0	1	1007	829	317	18	299	0	512	77
Food and Beverage Stores	34	11	5	6	0	23	2005	1,708	618	247	371	0	1,090	491
Health and Personal Care Stores	11	6	1	4	1	5	794	672	356	208	102	46	316	301
Gasoline Stations	4	2	0	1	1	2	142	126	108	37	8	63	18	113
Clothing and Clothing Accessories Stores	1	1	0	1	0	0	165	159	107	0	107	0	52	165
44-Retail Trade	93	45	22	20	3	48	4841	4,155	1,828	736	981	111	2,327	1385
Sporting Goods, Hobby, Book, and Music Stores	1	0	0	0	0	1	22	17	3	0	3	0	14	0
General Merchandise Stores	12	7	1	6	0	5	1260	1,151	664	5	659	0	487	877
Miscellaneous Store Retailers	6	3	0	3	0	3	219	239	99	0	99	0	140	48
Nonstore Retailers	7	3	1	2	0	4	155	143	76	32	44	0	67	109
45-Retail Trade	26	13	2	11	0	13	1656	1,550	842	37	805	0	708	1034
Air Transportation	3	2	1	1	0	1	1267	1,051	446	3	443	0	605	23
Rail Transportation	2	1	0	1	0	1	79	63	17	0	8	9	46	11
Water Transportation	4	1	1	0	0	3	138	122	36	35	0	1	86	104
Truck Transportation	60	35	7	28	0	25	3466	2,926	2,135	1,043	1,092	0	791	2470
Transit and Ground Passenger Transportation	73	43	18	23	2	30	5958	5,078	2,943	1,580	1,246	117	2,135	4032
Pipeline Transportation	2	1	0	1	0	1	24	23	14	0	14	0	9	11
Scenic and Sightseeing Transportation	1	0	0	0	0	1	43	29	13	0	13	0	16	0
Support Activities for Transportation	25	19	11	8	0	6	1696	1,490	878	576	301	1	612	778
48-Transportation and Warehousing	170	102	38	62	2	68	12671	10,782	6,482	3,237	3,117	128	4,300	7429
Postal Service	2	2	2	0	0	0	106	130	128	128	0	0	2	106
Couriers and Messengers	15	6	0	6	0	9	511	463	247	1	246	0	216	72

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Warehousing and Storage	59	26	6	20	0	33	2689	2,666	1,295	271	1,024	0	1,371	987
49-Transportation and Warehousing	76	34	8	26	0	42	3306	3,259	1,670	400	1,270	0	1,589	1165
Publishing Industries (except Internet)	12	2	1	1	0	10	602	541	203	186	17	0	338	19
Motion Picture and Sound Recording Industries	1	0	0	0	0	1	42	36	16	16	0	0	20	0
Broadcasting (except Internet)	18	4	2	1	1	14	775	697	256	226	0	30	441	166
Telecommunications	24	9	7	2	0	15	1077	1,025	420	412	8	0	605	336
Other Information Services	6	4	3	1	0	2	343	294	170	118	52	0	124	159
Information	61	19	13	5	1	42	2839	2,593	1,065	958	77	30	1,528	680
Monetary Authorities - Central Bank	2	2	1	1	0	0	253	185	161	148	13	0	24	253
Credit Intermediation and Related Activities	4	3	0	3	0	1	112	99	68	0	68	0	31	66
Funds, Trusts, and Other Financial Vehicles	4	2	0	2	0	2	59	57	35	14	21	0	22	25
Finance and Insurance	10	7	1	6	0	3	424	341	264	162	102	0	77	344
Real Estate	10	8	1	7	0	2	192	146	127	3	120	4	19	163
Rental and Leasing Services	23	9	2	7	0	14	562	417	140	27	113	0	277	145
Real Estate and Rental and Leasing	33	17	3	14	0	16	754	563	267	30	233	4	296	308
Professional, Scientific, and Technical Services	33	22	13	9	0	11	1051	914	597	328	269	0	317	609
Management of Companies and Enterprises	6	4	3	1	0	2	305	253	125	99	26	0	128	198
Administrative and Support Services	184	123	39	67	17	61	11766	7,378	4,235	1,403	2,275	557	3,143	7901
Waste Management and Remediation Services	40	13	2	11	0	27	1551	1,384	563	53	498	12	821	531

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Administrative and Support and Waste Management and Remediation Services	224	136	41	78	17	88	13317	8,762	4,798	1,456	2,773	569	3,964	8432
Educational Services	40	32	16	7	9	8	3498	2,447	1,581	439	584	558	866	3072
Ambulatory Health Care Services	60	36	10	20	6	24	11606	8,583	7,403	509	3,734	3,160	1,180	7798
Hospitals	81	52	11	23	18	29	10322	8,274	5,256	670	2,626	1,960	3,018	7521
Nursing and Residential Care Facilities	165	100	14	86	0	65	19141	14,138	8,435	1,051	7,317	67	5,703	11892
Social Assistance	34	24	7	15	2	10	1622	1,290	811	201	598	12	479	1379
Health Care and Social Assistance	340	212	42	144	26	128	42691	32,285	21,905	2,431	14,275	5,199	10,380	28590
Performing Arts, Spectator Sports, and Related Industries	18	14	12	2	0	4	426	343	236	188	48	0	107	331
Museums, Historical Sites, and Similar Institutions	1	0	0	0	0	1	10	10	2	2	0	0	8	0
Amusement, Gambling, and Recreation Industries	8	2	2	0	0	6	848	777	319	174	24	121	458	89
Arts, Entertainment, and Recreation	27	16	14	2	0	11	1284	1,130	557	364	72	121	573	420
Accommodation	39	23	9	10	4	16	2222	1,743	900	262	324	314	843	959
Food Services and Drinking Places	26	17	3	11	3	9	1373	1,015	757	119	577	61	258	1134
Accommodation and Food Services	65	40	12	21	7	25	3595	2,758	1,657	381	901	375	1,101	2093
Repair and Maintenance	21	10	6	4	0	11	1001	867	464	259	205	0	403	481
Personal and Laundry Services	19	10	2	8	0	9	688	544	310	59	251	0	234	366
Religious, Grantmaking, Civic, Professional, and Similar Organizations	21	12	6	6	0	9	1000	841	438	241	185	12	403	459
Private Households	1	0	0	0	0	1	30	24	5	0	5	0	19	0
Other Services (except Public Administration)	62	32	14	18	0	30	2719	2,276	1,217	559	646	12	1,059	1306

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2006—Continued

Industrial Group[1]	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Justice, Public Order, and Safety Activities	15	8	1	6	1	7	563	431	231	26	188	17	200	330
Administration of Human Resource Programs	2	0	0	0	0	2	101	86	29	0	29	0	57	0
Administration of Economic Programs	3	1	1	0	0	2	123	108	52	50	2	0	56	47
National Security and International Affairs	1	1	1	0	0	0	302	297	177	177	0	0	120	302
Public Administration	21	10	3	6	1	11	1089	922	489	253	219	17	433	679
Total, all industrial groups	2,168	1,203	556	559	88	965	152788	123,876	70,697	27,626	33,919	9,152	53,179	82570

[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 2006[1]

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumu-lative percent of total	Elections in which representation rights were won by: AFL-CIO unions — Number	AFL-CIO unions — Percent by size class	Other national unions — Number	Other national unions — Percent by size class	Other local unions — Number	Other local unions — Percent by size class	Elections in which no representative was chosen — Number	Elections in which no representative was chosen — Percent by size class
	A. Certification elections (RC and RM)											
Total RC and RM elections	121,064	1,774	100.0	--	500	100.0	490	100.0	76	100.0	708	100.0
Under 10	2,695	439	24.7	24.7	198	39.6	106	21.6	18	23.7	117	16.5
10 to 19	4,622	325	18.3	43.1	101	20.2	92	18.8	12	15.8	120	16.9
20 to 29	5,798	223	12.6	55.6	54	10.8	68	13.9	7	9.2	94	13.3
30 to 39	5,576	156	8.8	64.4	34	6.8	46	9.4	5	6.6	71	10.0
40 to 49	4,983	108	6.1	70.5	15	3.0	28	5.7	10	13.2	55	7.8
50 to 59	4,721	81	4.6	75.1	17	3.4	22	4.5	4	5.3	38	5.4
60 to 69	3,955	60	3.4	78.5	14	2.8	18	3.7	3	3.9	25	3.5
70 to 79	3,427	41	2.3	80.8	4	0.8	12	2.4	2	2.6	23	3.2
80 to 89	3,635	44	2.5	83.3	5	1.0	13	2.7	1	1.3	25	3.5
90 to 99	3,590	36	2.0	85.3	5	1.0	10	2.0	3	3.9	18	2.5
100 to 109	4,145	40	2.3	87.5	9	1.8	11	2.2	2	2.6	18	2.5
110 to 119	2,662	23	1.3	88.8	5	1.0	7	1.4	0	0.0	11	1.6
120 to 129	2,417	19	1.1	89.9	4	0.8	4	0.8	0	0.0	11	1.6
130 to 139	1,634	11	0.6	90.5	3	0.6	2	0.4	0	0.0	6	0.8
140 to 149	1,971	14	0.8	91.3	3	0.6	6	1.2	0	0.0	5	0.7
150 to 159	1,651	10	0.6	91.9	3	0.6	3	0.6	0	0.0	4	0.6
160 to 169	1,317	8	0.5	92.3	2	0.4	1	0.2	1	1.3	4	0.6
170 to 179	1,493	8	0.5	92.8	2	0.4	2	0.4	1	1.3	3	0.4
180 to 189	1,255	7	0.4	93.2	0	0.0	2	0.4	0	0.0	5	0.7
190 to 199	1,055	6	0.3	93.5	2	0.4	3	0.6	0	0.0	1	0.1
200 to 299	10,757	47	2.6	96.2	10	2.0	13	2.7	1	1.3	23	3.2
300 to 399	7,193	20	1.1	97.3	2	0.4	7	1.4	0	0.0	11	1.6
400 to 499	7,415	18	1.0	98.3	4	0.8	5	1.0	2	2.6	7	1.0
500 to 599	3,482	6	0.3	98.6	2	0.4	1	0.2	2	2.6	1	0.1
600 to 799	5,994	9	0.5	99.2	0	0.0	2	0.4	1	1.3	6	0.8
800 to 999	2,580	4	0.2	99.4	0	0.0	2	0.4	0	0.0	2	0.3

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2006[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumu-lative 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
1,000 to 1,999	7,054	5	0.3	99.7	0	0.0	1	0.2	1	1.3	3	0.4
2,000 to 2,999	13,987	6	0.3	100.0	2	0.4	3	0.6	0	0.0	1	0.1
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	27,418	361	100.0	--	44	100.0	63	100.0	8	100.0	246	100.0
Under 10	435	51	14.1	14.1	4	9.1	1	1.6	1	12.5	45	18.3
10 to 19	1,108	78	21.6	35.7	5	11.4	11	17.5	1	12.5	61	24.8
20 to 29	1,121	44	12.2	47.9	10	22.7	4	6.3	0	0.0	30	12.2
30 to 39	1,878	55	15.2	63.2	6	13.6	7	11.1	1	12.5	41	16.7
40 to 49	1,128	25	6.9	70.1	4	9.1	5	7.9	0	0.0	16	6.5
50 to 59	1,175	21	5.8	75.9	3	6.8	2	3.2	0	0.0	16	6.5
60 to 69	909	15	4.2	80.1	0	0.0	5	7.9	1	12.5	9	3.7
70 to 79	151	2	0.6	80.6	0	0.0	1	1.6	0	0.0	1	0.4
80 to 89	715	8	2.2	82.8	2	4.5	4	6.3	0	0.0	2	0.8
90 to 99	461	5	1.4	84.2	0	0.0	0	0.0	0	0.0	5	2.0
100 to 109	834	8	2.2	86.4	3	6.8	4	6.3	0	0.0	1	0.4
110 to 119	700	6	1.7	88.1	1	2.3	2	3.2	0	0.0	3	1.2
120 to 129	240	2	0.6	88.6	0	0.0	1	1.6	0	0.0	1	0.4
130 to 139	526	4	1.1	89.8	0	0.0	1	1.6	1	12.5	2	0.8
140 to 149	0	0	0.0	89.8	0	0.0	0	0.0	0	0.0	0	0.0
150 to 159	156	1	0.3	90.0	0	0.0	1	1.6	0	0.0	0	0.0
160 to 169	584	4	1.1	91.1	1	2.3	2	3.2	0	0.0	1	0.4
170 to 199	935	5	1.4	92.5	0	0.0	1	1.6	0	0.0	4	1.6
200 to 299	2,516	11	3.0	95.6	2	4.5	5	7.9	0	0.0	4	1.6

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2006[1]—Continued

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumu-lative 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
300 to 499	1,598	5	1.4	97.0	1	2.3	3	4.8	1	12.5	0	0.0
500 to 799	4,869	7	1.9	98.9	2	4.5	2	3.2	0	0.0	3	1.2
800 and Over	5,379	4	1.1	100.0	0	0.0	1	1.6	2	25.0	1	0.4

[1] See Glossary of terms for definition.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2006[1]

Size of establishment (number of employees)	Total number of situ-ations	Total		Type of situations																	
		Percent of all situa-tions	Cumu-lative percent of all situa-tions	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class	Num-ber of situa-tions	Percent by size class
Totals..........	21,688	100.0	--	15,673	100.0	5,228	100.0	277	100.0	96	100.0	27	100.0	23	100.0	54	100.0	270	100.0	40	100.0
Under 10................	1,514	7.0	7.0	1,101	7.0	318	6.1	53	19.1	16	16.7	4	14.8	0	0.0	5	9.3	12	4.4	5	12.5
10-19....................	1,778	8.2	15.2	1,284	8.2	398	7.6	40	14.4	15	15.6	1	3.7	3	13.0	14	25.9	16	5.9	7	17.5
20-29....................	1,789	8.2	23.4	1,297	8.3	385	7.4	47	17.0	19	19.8	3	11.1	1	4.3	5	9.3	28	10.4	4	10.0
30-39....................	893	4.1	27.5	703	4.5	159	3.0	12	4.3	4	4.2	2	7.4	0	0.0	4	7.4	8	3.0	1	2.5
40-49....................	686	3.2	30.7	535	3.4	118	2.3	11	4.0	7	7.3	0	0.0	1	4.3	4	7.4	9	3.3	1	2.5
50-59....................	1,731	8.0	38.7	1,238	7.9	417	8.0	35	12.6	11	11.5	4	14.8	2	8.7	3	5.6	20	7.4	1	2.5
60-69....................	592	2.7	41.4	448	2.9	128	2.4	4	1.4	1	1.0	0	0.0	0	0.0	1	1.9	10	3.7	0	0.0
70-79....................	496	2.3	43.7	401	2.6	86	1.6	4	1.4	0	0.0	1	3.7	0	0.0	1	1.9	2	0.7	1	2.5
80-89....................	472	2.2	45.9	364	2.3	100	1.9	3	1.1	0	0.0	0	0.0	1	4.3	0	0.0	3	1.1	1	2.5
90-99....................	258	1.2	47.1	194	1.2	61	1.2	1	0.4	0	0.0	0	0.0	1	4.3	1	1.9	0	0.0	0	0.0
100-109................	2,159	10.0	57.0	1,470	9.4	617	11.8	15	5.4	12	12.5	5	18.5	2	8.7	4	7.4	31	11.5	3	7.5
110-119................	188	0.9	57.9	153	1.0	31	0.6	2	0.7	0	0.0	0	0.0	0	0.0	1	1.9	1	0.4	0	0.0
120-129................	352	1.6	59.5	294	1.9	51	1.0	2	0.7	2	2.1	0	0.0	0	0.0	1	1.9	1	0.4	1	2.5
130-139................	178	0.8	60.3	143	0.9	33	0.6	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0	1	0.4	0	0.0
140-149................	136	0.6	61.0	109	0.7	23	0.4	1	0.4	1	1.0	0	0.0	0	0.0	2	3.7	0	0.0	0	0.0
150-159................	510	2.4	63.3	367	2.3	126	2.4	7	2.5	2	2.1	0	0.0	0	0.0	1	1.9	7	2.6	0	0.0
160-169................	114	0.5	63.8	95	0.6	16	0.3	2	0.7	0	0.0	0	0.0	0	0.0	1	1.9	0	0.0	0	0.0
170-179................	111	0.5	64.4	77	0.5	30	0.6	0	0.0	0	0.0	0	0.0	1	4.3	0	0.0	2	0.7	1	2.5
180-189................	102	0.5	64.8	83	0.5	16	0.3	1	0.4	0	0.0	0	0.0	1	4.3	0	0.0	0	0.0	1	2.5
190-199................	44	0.2	65.0	37	0.2	7	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
200-299................	1,603	7.4	72.4	1,149	7.3	422	8.1	6	2.2	2	2.1	2	7.4	0	0.0	2	3.7	20	7.4	0	0.0
300-399................	933	4.3	76.7	669	4.3	239	4.6	2	0.7	0	0.0	0	0.0	2	8.7	0	0.0	19	7.0	2	5.0
400-499................	556	2.6	79.3	385	2.5	156	3.0	5	1.8	1	1.0	0	0.0	2	8.7	2	3.7	5	1.9	0	0.0
500-599................	725	3.3	82.6	484	3.1	218	4.2	5	1.8	0	0.0	0	0.0	0	0.0	0	0.0	17	6.3	1	2.5
600-699................	264	1.2	83.8	197	1.3	57	1.1	2	0.7	0	0.0	1	3.7	0	0.0	0	0.0	4	1.5	3	7.5
700-799................	275	1.3	85.1	223	1.4	46	0.9	1	0.4	0	0.0	0	0.0	0	0.0	1	1.9	4	1.5	0	0.0
800-899................	221	1.0	86.1	166	1.1	53	1.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.4	1	2.5
900-999................	88	0.4	86.5	69	0.4	19	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
1,000-1,999..........	1,494	6.9	93.4	980	6.3	471	9.0	7	2.5	3	3.1	3	11.1	2	8.7	1	1.9	24	8.9	3	7.5
2,000-2,999..........	449	2.1	95.5	291	1.9	145	2.8	4	1.4	0	0.0	0	0.0	2	8.7	0	0.0	6	2.2	1	2.5
3,000-3,999..........	219	1.0	96.5	118	0.8	95	1.8	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	5	1.9	1	2.5
4,000-4,999..........	87	0.4	96.9	52	0.3	33	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	0.7	0	0.0
5,000-9,999..........	259	1.2	98.1	162	1.0	86	1.6	2	0.7	0	0.0	0	0.0	1	4.3	0	0.0	7	2.6	1	2.5
Over 9,999............	412	1.9	100.0	335	2.1	68	1.3	2	0.7	0	0.0	1	3.7	1	4.3	0	0.0	5	1.9	0	0.0

[1] See Glossary of terms for definition.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2006; and Cumulative Totals, Fiscal Years 1936 through 2006

	Fiscal Year 2006									July 5, 1936 Sept. 30, 2006	
	Number of proceedings[1]					Percentages					
	Total	vs. em-ployers only	vs. unions only	vs. both employ-ers and unions	Board dismis-sal[2]	vs. em-ployers only	vs. unions only	vs. both employ-ers and unions	Board dismis-sal[2]	Number	Percent
Proceedings decided by U.S. courts of appeals and other courts……….	90	88	2	0	9	97.8	2.2	--	--	--	--
On proceedings for review and/or enforcement………..……….….	79	77	2	0	9	97.5	2.5	--	100.0	11906	100.0
Board orders affirmed in full …………………………………...	60	58	2	0	3	96.7	3.3	--	33.3	7885	66.2
Board orders affirmed with modification ………………………	2	2	0	0	0	100.0	--	--	--	1555	13.1
Remanded to the Board …………………………………………	9	9	0	0	6	100.0	--	--	66.7	598	5.0
Board orders partially affirmed and partially remanded ………..	1	1	0	0	0	100.0	--	--	0.0	269	2.3
Board orders set aside …………………………………………..	7	7	0	0	0	100.0	--	--	0.0	1599	13.4
On petitions for contempt ……………………………………………	11	11	0	0	0	100.0	--	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy courts	12	12	0	0	0	100.0	--	--	--	--	--
Total Court Orders …………………………………………………..	48	47	1	0	0	97.9	2.1	--	--	--	--
Compliance after filing of petition, before court order …..….....	34	33	1	0	0	97.1	2.9	--	--	--	--
Court orders holding respondent in contempt ……………….….	8	8	1	0	0	100.0	--	--	--	--	--
Court orders denying petition or discontinuing proceedings at CLCB request……………………………………………………	1	1	0	0	0	100.0	--	--	--	--	--
Court orders directing compliance without contempt adjudication …………..…………………………………………	5	5	0	0	0	100.0	--	--	--	--	--
Proceedings decided by U.S. Supreme Court[3] …………………………	0	0	0	0	0	--	--	--	--	259	100.0
Board orders affirmed in full …………………………..………..	0	0	0	0	0	--	--	--	--	155	59.8
Board orders affirmed with modification …………………………...	0	0	0	0	0	--	--	--	--	18	6.9
Board orders set aside ……………………………………………...	0	0	0	0	0	--	--	--	--	46	17.8
Remanded to the Board …………………….…………………….	0	0	0	0	0	--	--	--	--	20	7.7
Remanded to court of appeals ……………………………...…….	0	0	0	0	0	--	--	--	--	17	6.6
Board's request for remand or modification of enforcement order denied ……….………………………...…………………….	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases remanded to court of appeals ……………………...	0	0	0	0	0	--	--	--	--	1	0.4
Contempt cases enforced …………………….…………………….	0	0	0	0	0	--	--	--	--	1	0.4

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

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2006, Compared With 5-Year Cumulative Totals, 2002 Through 2006[1]

Circuit courts of appeals (headquarters)	Total fiscal year 2006	Total fiscal years 2002-2006	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2006		Cumulative fiscal years 2002–2006		Fiscal Year 2006		Cumulative fiscal years 2002–2006		Fiscal Year 2006		Cumulative fiscal years 2002–2006		Fiscal Year 2006		Cumulative fiscal years 2002–2006		Fiscal Year 2006		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	79	478	60	75.9	331	69.2	2	2.5	35	7.3	9	11.4	35	7.3	1	1.3	22	4.6	7	8.9	55	11.5
Boston, MA……..	5	12	4	80.0	8	66.7	0	0.0	1	8.3	0	0.0	0	0.0	1	20.0	1	8.3	0	0.0	2	16.7
New York, NY….	8	29	6	75.0	25	86.2	0	0.0	1	3.4	2	25.0	1	3.4	0	0.0	1	3.4	0	0.0	1	3.4
Philadelphia, PA..	1	30	1	100.0	24	80.0	0	0.0	3	10.0	0	0.0	1	3.3	0	0.0	1	3.3	0	0.0	1	3.3
Richmond, VA….	4	48	4	100.0	30	62.5	0	0.0	5	10.4	0	0.0	5	10.4	0	0.0	3	6.3	0	0.0	5	10.4
New Orleans, LA.	3	26	3	100.0	17	65.4	0	0.0	5	19.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	15.4
Cincinnati, OH…..	16	69	14	87.5	49	71.0	1	6.3	3	4.3	0	0.0	2	2.9	0	0.0	5	7.2	1	6.3	10	14.5
Chicago, IL……..	7	39	5	71.4	29	74.4	0	0.0	3	7.7	2	28.6	1	2.6	0	0.0	3	7.7	0	0.0	3	7.7
St. Louis, MO…...	1	32	1	100.0	21	65.6	0	0.0	3	9.4	0	0.0	3	9.4	0	0.0	1	3.1	0	0.0	4	12.5
San Francisco, CA	7	25	5	71.4	20	80.0	0	0.0	0	0.0	1	14.3	2	8.0	0	0.0	1	4.0	1	14.3	2	8.0
Denver, CO…..…	2	15	2	100.0	11	73.3	0	0.0	1	6.7	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	20.0
Atlanta, GA...……	2	19	1	50.0	15	78.9	0	0.0	0	0.0	0	0.0	1	5.3	0	0.0	0	0.0	1	50.0	3	15.8
Washington, DC...	23	134	14	60.9	82	61.2	1	4.3	10	7.5	4	17.4	19	14.2	0	0.0	0	4.5	4	17.4	17	12.7

[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 2006

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in Appellate Court Sept. 30, 2006
		Pending in Appellate Court Oct. 01, 2005	Filed in Appellate Court fiscal year 2006		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, 2006
		Pending in District Court Oct. 01, 2005	Filed in District Court fiscal year 2006[1]		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total	23	1	22	21	12	1	6	2	2
8(a)(1)(3)	4	0	4	4	2	0	2	0	0
8(a)(1)(3)(5)	8	0	8	7	6	1	0	0	1
8(a)(1)(4)	1	0	1	1	0	0	1	0	0
8(a)(1)(5)	10	1	9	9	4	0	3	2	1
Under Sec. 10(l) total	3	0	3	3	1	1	1	0	0
8(b)(4)(B)	3	0	3	3	1	1	1	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 2006

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	14	13	1	7	6	1	7	7	0	0	0	0	0	0	0
NLRB-initiated actions or interventions	5	4	1	3	2	1	2	2	0	0	0	0	0	0	0
To stay district court § 301 action	1	1	0	0	0	0	1	1	0	0	0	0	0	0	0
To enjoin local ordinance as preempted	2	1	1	2	1	1	0	0	0	0	0	0	0	0	0
To enforce NLRB subpoena	2	2	0	1	1	0	1	1	0	0	0	0	0	0	0
Action by other parties	9	9	0	4	4	0	5	5	0	2	2	0	0	0	0
To review:	5	5	0	2	2	0	3	3	0	0	0	0	0	0	0
Prosecutorial discretion	3	3	0	2	2	0	1	1	0	0	0	0	0	0	0
Nonfinal/representation orders	2	2	0	0	0	0	2	2	0	0	0	0	0	0	0
To restrain NLRB from:	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
Proceeding in R case	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Proceeding in unfair labor practice case	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0
To compel NLRB to:	3	3	0	1	1	0	2	2	0	0	0	0	0	0	0
Produce records under FOIA	2	2	0	0	0	0	2	2	0	0	0	0	0	0	0
Issue decision or take specific action	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2006[1]

	Total	Number of cases			
		Identification of petitioner			
		Employer	Union	Courts	State board
Pending October 1, 2005	0	0	0	0	0
Received fiscal 2006	0	0	0	0	0
On docket fiscal 2006	0	0	0	0	0
Closed fiscal 2006	0	0	0	0	0
Pending September 30, 2006	0	0	0	0	0

[1] See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2006[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 2006; and Age of Cases Pending Decision, September 30, 2006

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed -	
1. Filing of charge to issuance of complaint	93
2. Complaint to close of hearing	105
3. Close of hearing to administrative law judge's decision	80
4. Receipt of briefs or submissions to issuance of administrative law judge's decision	31
5. Administrative law judge's decision to issuance of Board decision	470
6. Originating document to Board decision	308
7. Assignment to Board decision	248
8. Filing of charge to issuance of Board decision	739
B. Age of cases pending administrative law judge's decision, September 30, 2006	
1. From filing of charge	347
2. From close of hearing	50
C. Age of cases pending Board decision, September 30, 2006	
1. From filing of charge	1517
2. From originating document	905
3. From assignment	837
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]	105
5. Close of post-election hearing to Board's decision issued	141
6. Filing of petition to-	
a. Board decision issued	332
b. Regional Director's decision issued	42
7. Originating document to Board decision	151
8. Assignment to Board's decision	124
B. Age of cases pending Board decision, September 30, 2006	
1. From filing of petition	575
2. From originating document	444
3. From assignment	365
C. Age of cases pending Regional Director's decision, September 30, 2006	273

[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 2006

	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:	1
	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:	1
	Denying fees:	3
	C. Amount of fees and expenses in cases listed in B, above:	
	Claimed:	$104,594.86
	Recovered:	$9700.05
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:	0
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