

SEVENTY FOURTH
ANNUAL REPORT
OF THE
**NATIONAL LABOR
RELATIONS BOARD**

FOR THE FISCAL YEAR
ENDED SEPTEMBER 30

2009



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¹ Three seats were vacant at time of printing. Three Board member nominations were pending consideration by the Senate.

² Designated Chairman by President Obama on January 20, 2009.

³ Designated Chairman by President Bush on March 19, 2008, and served as Chairman until January 19, 2009.

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D.C. February 23, 2010

SIR: I submit the Seventy-Fourth Annual Report of the National Labor Relations Board for the fiscal year ended September 30, 2009.

Respectfully submitted,
WILMA B. LIEBMAN, *Chairman*

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

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I

Operations in Fiscal Year 2009

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 2009, 25,855 cases were received by the Board.

The public filed 22,943 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 2,912 representation petitions, including 2,696 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 97 petitions for elections in which workers voted on whether to rescind existing union-security agreements. The NLRB also received 7 petitions to amend the certification of existing collective-bargaining representatives and 112 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 2009, the Board continued to operate with only two members, Chairman Wilma B. Liebman and Member Peter C. Schaumber. Three positions on the Board remained vacant.¹ Ronald Meisburg served as General Counsel.

Statistical highlights of NLRB's casehandling activities in fiscal 2009 include:

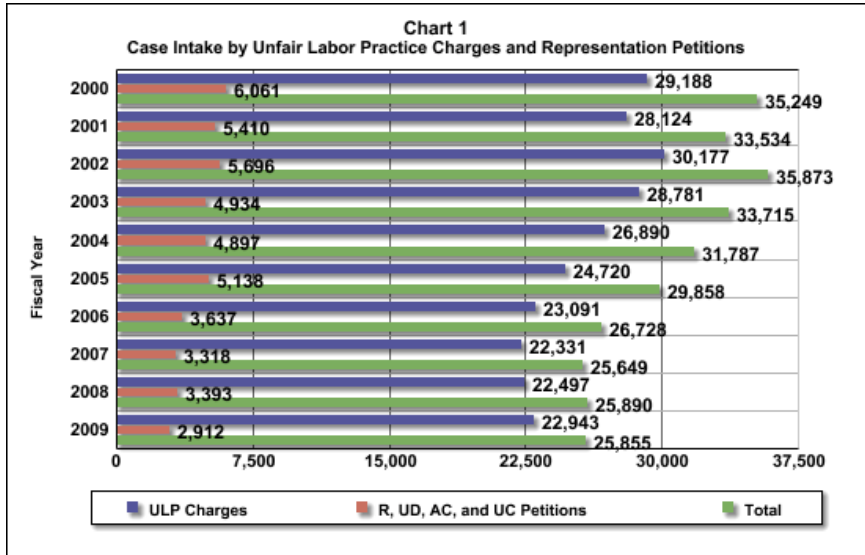
- The NLRB conducted 1,619 conclusive representation elections among some 96,964 employee voters, with workers choosing labor unions as their bargaining agents in 63.8 percent of the elections.
- Although the Agency closed 25,367 cases, 12,049 cases were pending in all stages of processing at the end of the fiscal year. The closings included 22,457 cases involving unfair

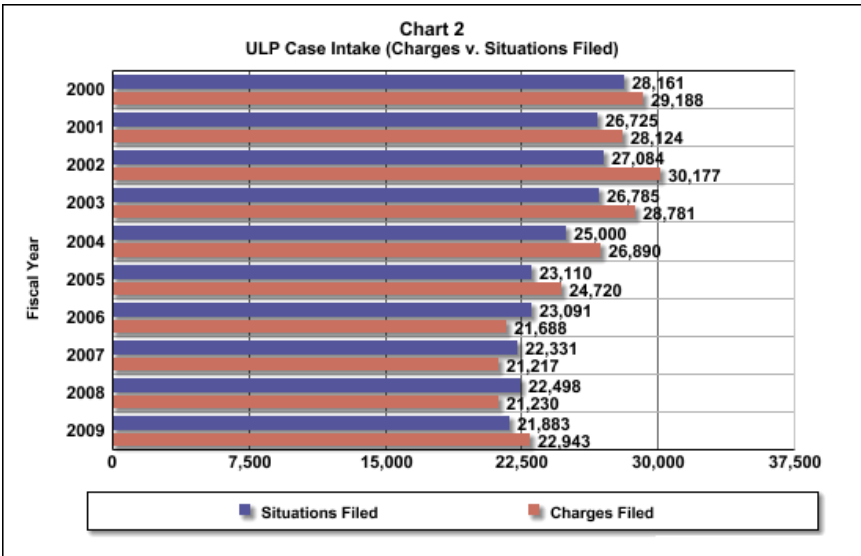
¹ See discussion *infra*, p. 57.

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labor practice charges and 2,693 cases affecting employee representation and 217 related cases.

- Settlements, avoiding formal litigation while achieving the goal of equitable remedies in unfair labor practice situations, numbered 7,795.
- The amount of \$77,611,322 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 1,549 offers of job reinstatements, with 1,214 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 1,096 complaints, setting the cases for hearing.
- NLRB’s corps of administrative law judges issued 190 decisions, of which 21 were noncompliant election objection cases.





NLRB Administration

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

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

The purpose of the Nation’s primary labor relations law is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers, and unions in their relations with one another. The overall job of the NLRB is to achieve this goal through administration, interpretation, and enforcement of the Act.

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

The NLRB does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections which are filed in the NLRB's Regional, Subregional, and Resident Offices, which numbered 51 during fiscal year 2009.

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.

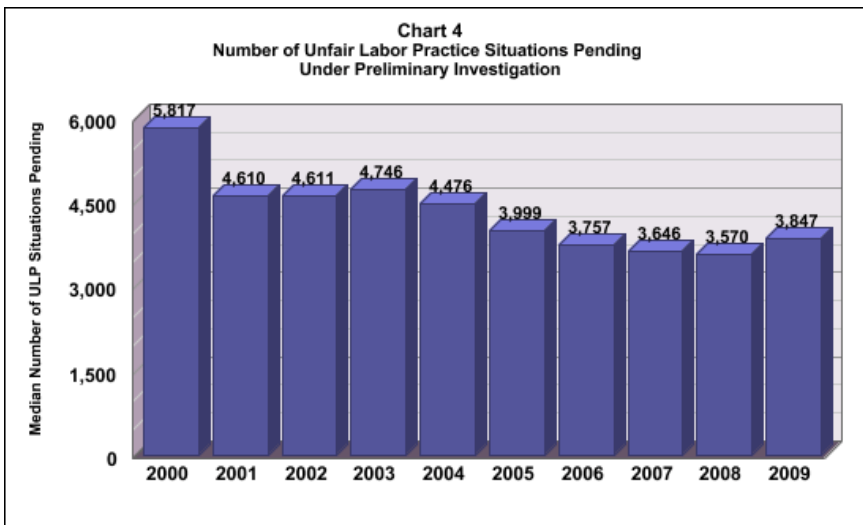
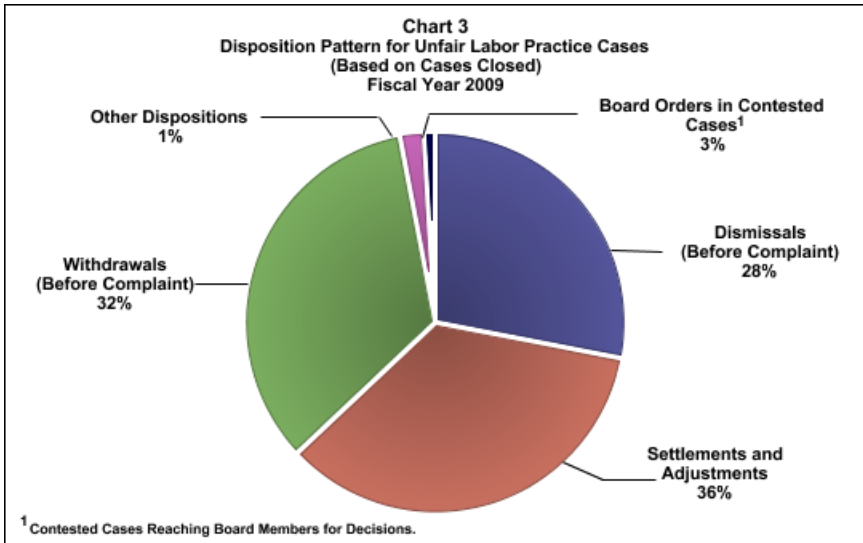
In fiscal year 2009, 22,943 unfair labor practice charges were filed with the NLRB. Alleged violations of the Act by employers were filed in 16,541 cases. Charges against unions in fiscal year 2009 numbered 6,386. There were 15 charges of violation of Section 8(e) of the Act, which bans hot-cargo agreements.

The majority of all charges against employers involved refusal to bargain. There were 8,723 such charges in 52.7 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 6,411 charges, in about 38.8 percent of the total charges.

Of charges against unions, the majority (5,017) alleged illegal restraint and coercion of employees, about 78.8 percent. There were 363 charges against unions for illegal secondary boycotts and jurisdictional disputes. There were 335 charges (about 5.3 percent) of illegal union discrimination against employees. There were 33 charges that unions picketed illegally for recognition or for organizational purposes.

In charges filed against employers, unions led with about 72.1 percent of the total. Unions filed 11,928 charges and individuals and employers filed 4,613.

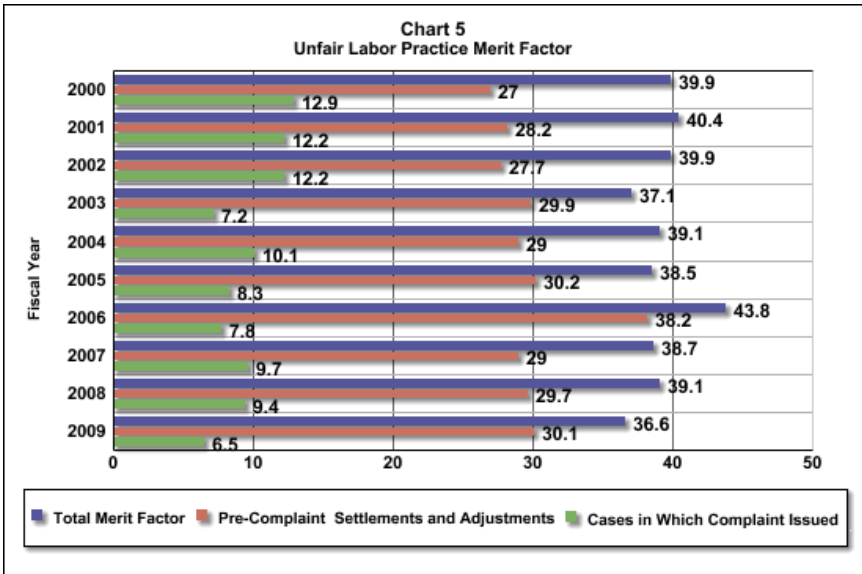


Concerning charges against unions, 5,304 were filed by individuals, or 88.0 percent of the total of 6,387. Employers filed 808 and other unions filed the 275 remaining charges.

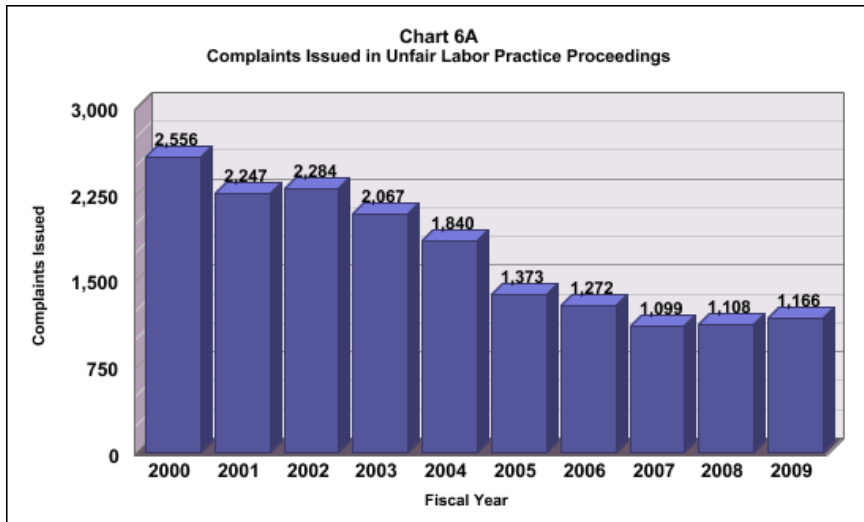
In fiscal year 2009, 22,547 unfair labor practice cases were closed. Some 97 percent were closed by NLRB Regional Offices. During the fiscal year, 34.8 percent of the cases were settled or adjusted before issuance of administrative law judges' decisions, 33.9 percent were withdrawn before complaint, and 28.4 percent were administratively dismissed.

In evaluation of the Regional workload, the number of unfair labor practice charges found to have merit is important—the higher the merit factor the more litigation required. In fiscal year 2009, 36.6 percent of the unfair labor practice cases were found to have merit.

When the Regional Offices determine that charges alleging unfair labor practices have merit, attempts at voluntary resolution are stressed—to improve labor-management relations and to reduce NLRB litigation and related casehandling. Settlement efforts have been successful to a substantial degree. In fiscal year 2009, precomplaint settlements and adjustments were achieved in 6,700 cases, or 30.1 percent of the charges.

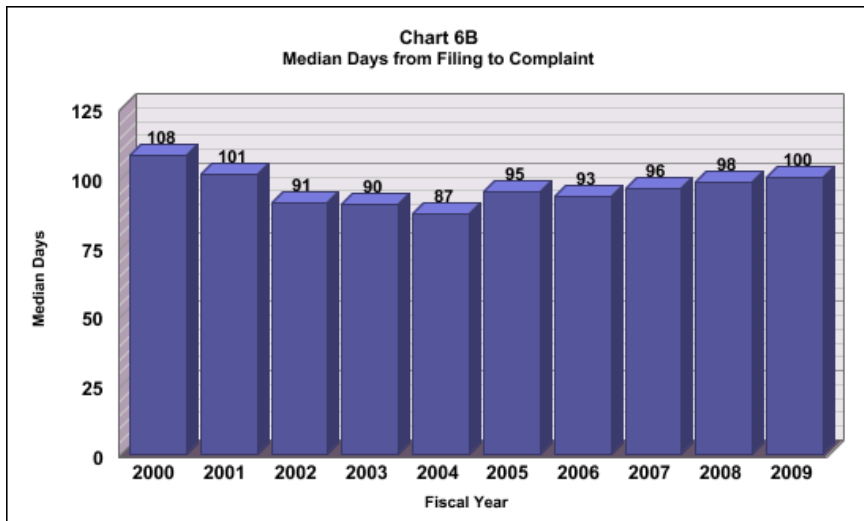


Cases of merit not settled by the Regional Offices produce formal complaints, issued on behalf of the General Counsel. This action schedules hearings before administrative law judges. During 2009, 1,166 complaints were issued.

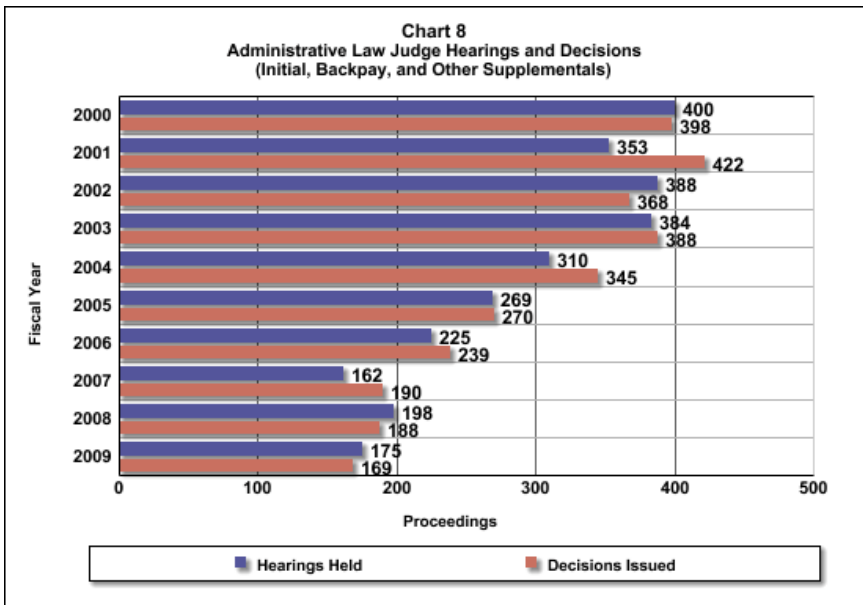
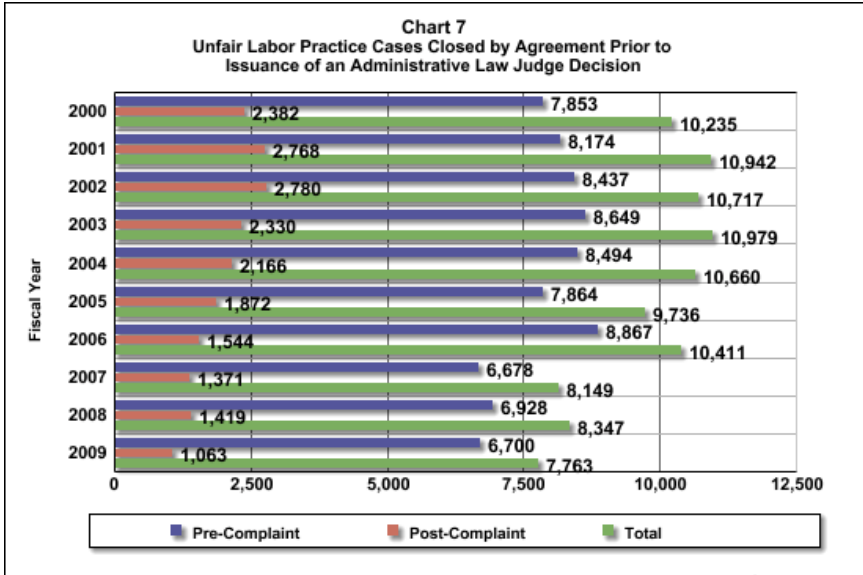


Of complaints issued, 89.1 percent were against employers and 9.8 percent against unions; 1.2 percent were against both employers and unions.

NLRB Regional Offices processed cases from filing of charges to issuance of complaints in a median of 100 days.



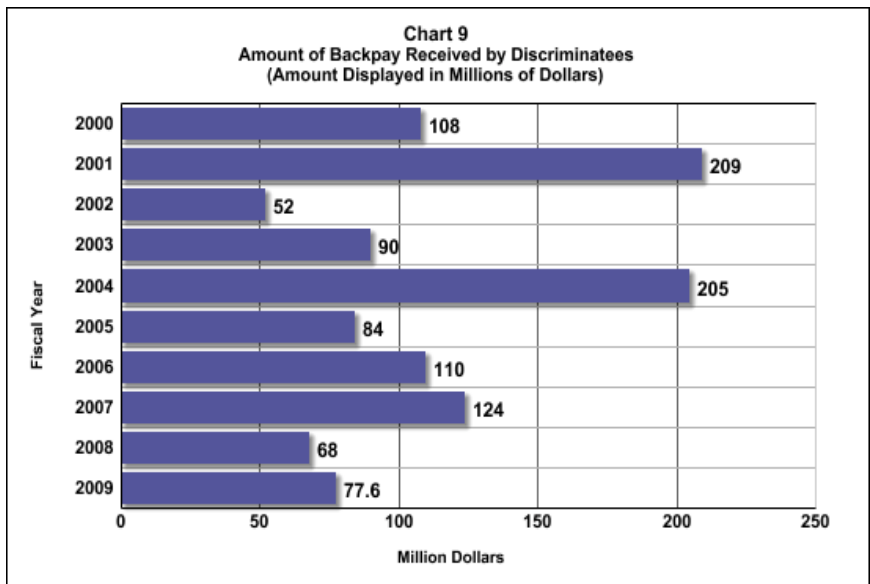
Additional settlements occur before, during, and after hearings before administrative law judges. The judges issued 169 decisions in 194 cases during 2009. They conducted 158 initial hearings, and 17 additional hearings in supplemental matters.



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 2009, the Board issued 195 decisions in unfair labor practice cases contested as to the law or the facts—159 initial decisions,

13 backpay decisions, 9 determinations in jurisdictional dispute cases, and 14 decisions on supplemental matters. Of the 159 initial decision cases, 146 involved charges filed against employers and 13 had union respondents.



For the year, the NLRB awarded backpay of \$76,337,306. Reimbursement for unlawfully exacted fees, dues, and fines added about another \$1,274,016. Backpay is lost wages caused by unlawful discharge and other discriminatory action detrimental to employees, offset by earnings elsewhere after the discrimination. About 1,549 employees were offered reinstatement, and 78 percent accepted.

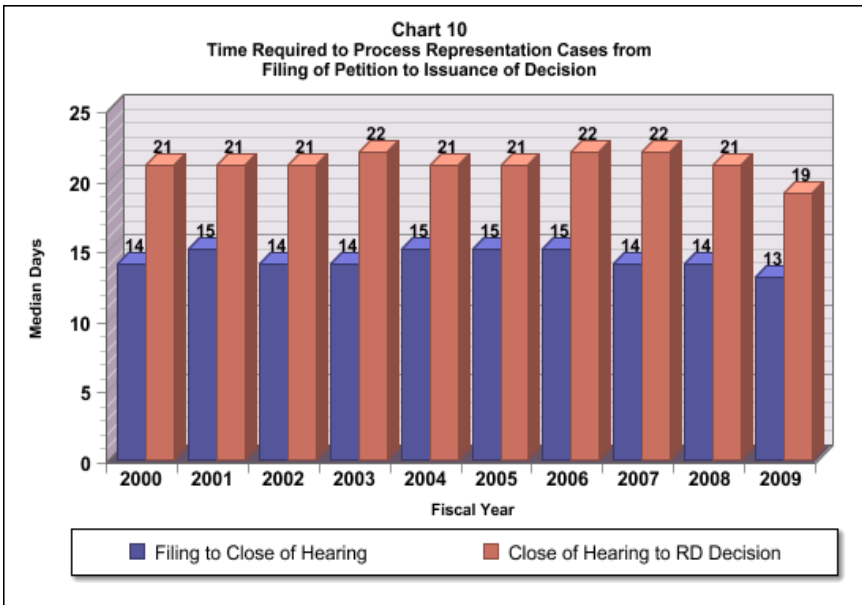
At the end of fiscal 2009, there were 11,177 unfair labor practice cases being processed at all stages by the NLRB.

2. Representation Cases

The NLRB received 2,912 representation and related case petitions in fiscal 2009. The 2009 total consisted of 2,696 petitions that the NLRB conducted secret-ballot elections where workers select or reject unions to represent them in collective bargaining; 97 deauthorization petitions for referendums on rescinding a union’s authority to enter into union-shop contracts; and 112 petitions for unit clarification to determine whether certain classifications of employees should be included in or excluded from existing bargaining units. Additionally, 7 amendment of certification petitions were filed.

During the year, 2,910 representation and related cases were closed. Cases closed included 2,100 collective-bargaining election petitions; 593 decertification election petitions; 95 requests for deauthorization polls; and 117 petitions for unit clarification and 5 petitions for amendment of certification.

The overwhelming majority of elections conducted by the NLRB resulted from some form of agreement by the parties on when, where, and among whom the voting should occur. Such agreements are encouraged by the Agency. In 4.1 percent of representation cases closed by elections, balloting was ordered by NLRB Regional Directors following hearing on points in issue. There were 64 cases where the Board directed an election after transfer of a case from the Regional Office. There were no cases that resulted in expedited elections pursuant to the Act’s 8(b)(7)(C) provisions pertaining to picketing.



3. Elections

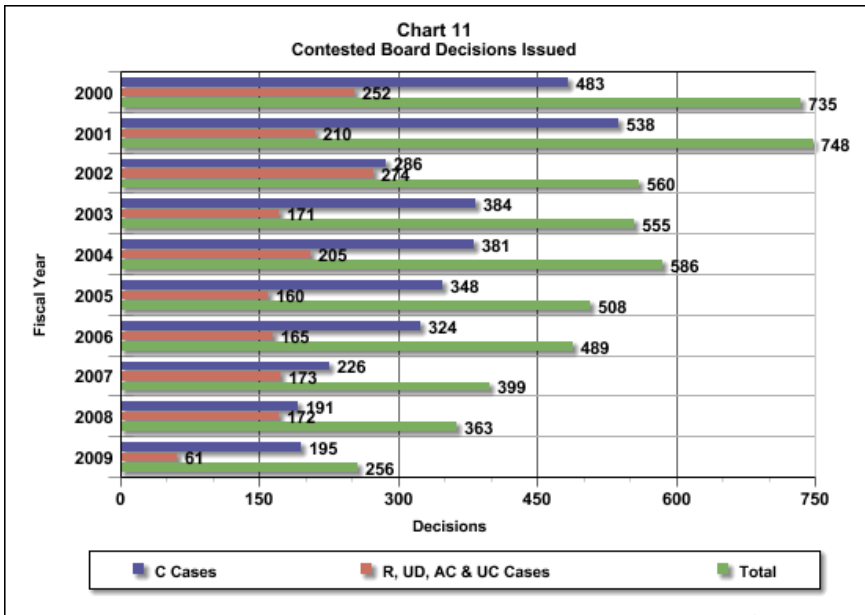
The NLRB conducted 1,619 conclusive representation elections in cases closed in fiscal 2009. Of 96,030 employees eligible to vote, 76,964 cast ballots, virtually 8 of every 10 eligible.

Unions won 1,033 representation elections, or 63.8 percent. In winning majority designation, labor organizations earned bargaining rights or continued as employee representatives for 63,167 workers.

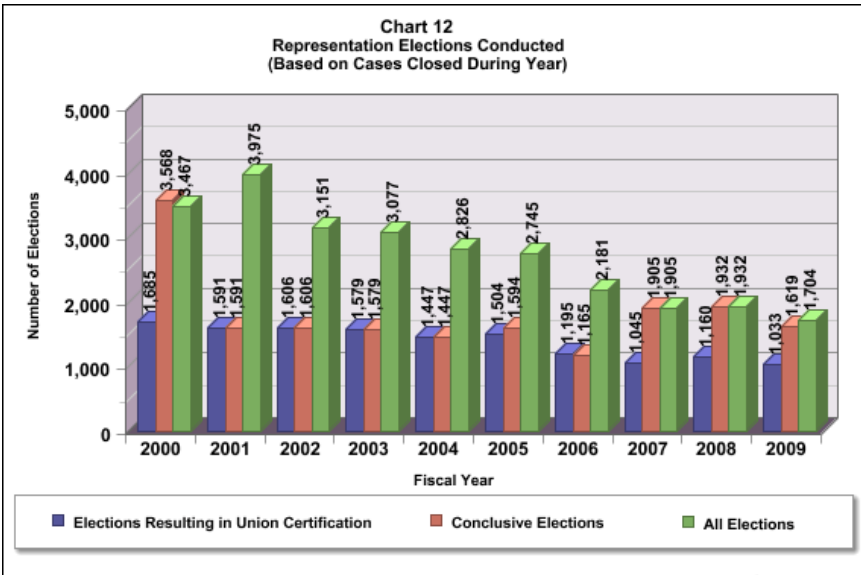
The representation elections were in two categories—the 1,635 collective-bargaining elections in which workers chose or voted down labor organizations as their bargaining agents, plus the 270 decertification elections determining whether incumbent unions would continue to represent employees.

There were 1,473 select-or-reject-bargaining-rights (one union on ballot) elections, of which unions won 903, or 61.3 percent. In these elections, 38,317 workers voted to have unions as their agents, while 30,055 employees voted for no representation. In appropriate bargaining units of employees, the election results provided union agents for 52,199 workers. In NLRB elections the majority decides the representational status for the entire unit.

There were 146 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 130 elections, or 89 percent.



In deauthorization polls, labor organizations lost the right to make union-shop agreements in 17 referendums, or 38.6 percent, while they maintained the right in the other 27 polls which covered 2,948 employees.



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 390 decisions concerning allegations of unfair labor practices and questions relating to employee representation. This total compared to the 500 decisions rendered during fiscal year 2008.

A breakdown of Board decisions follows:

Total Board decisions	<u>390</u>
Contested decisions	<u>256</u>
Unfair labor practice decisions	195
Initial (includes those based on stipulated record)	159
Supplemental	14
Backpay	13
Determinations in jurisdictional disputes ...	9
Representation decisions	58
After transfer by Regional Directors for initial decision	2

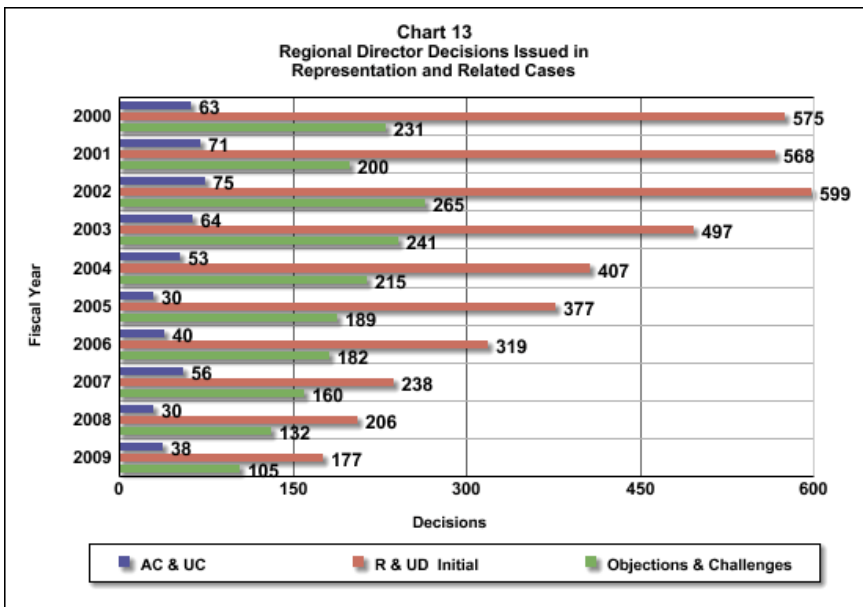
After review of Regional Director	
decisions	7
On objections and/or challenges.....	49
Other decisions	3
Clarification of bargaining unit	1
Amendment to certification	0
Union-deauthorization.....	2
Noncontested decisions	134
Unfair labor practice.....	63
Representation	71
Other	0

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 2009, 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 331 decisions in fiscal 2009.



c. Administrative Law Judges

Administrative law judges issued 169 decisions and conducted 175 hearings in unfair labor practice cases, issued 21 decisions in post-election proceedings and held 19 hearings in post-election proceedings.

5. Court Litigation

a. Appellate Courts

In FY 2009, the United States Courts of Appeals decided 61 enforcement and review cases involving the Board, compared with 72 in FY 2008. Of these cases, 88.5 percent were enforced in whole or in part in FY 2009, and 78.7 percent were won in full, compared with success rates in whole or in part and in whole in FY 2008 of 88.9 percent and 80.6 percent, respectively. In FY 2009, 6.6 percent of enforcement and review cases were remanded entirely, compared with 4.2 percent in FY 2008. Also in FY 2009, 4.9 percent of cases were lost in full; in FY 2008, 6.9 percent of cases were lost in full.

b. The Supreme Court

In fiscal 2009, the Supreme Court did not decide any Board cases. The Board did not participate as amicus in any cases in fiscal 2009.

c. Contempt Actions

In FY 2009, 282 cases were referred to the Contempt Litigation and Compliance Branch for consideration for contempt or other appropriate action to achieve compliance with the Act, compared to 277 cases in FY 2008. Of the 110 contempt or other formal submissions, voluntary compliance was achieved in 46 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 16 other cases settled after the filing of a formal pleading in court, but before trial. In 40 other cases, it was determined that contempt or other proceedings were not warranted. In FY 2008, voluntary compliance was achieved in 48 of the 135 formal submissions without the necessity of filing a contempt petition or other initiating papers, and 32 cases were settled after the filing of formal pleadings in court, but before trial. In 46 other cases, it was determined that contempt or other proceedings were not warranted.

d. Miscellaneous Litigation

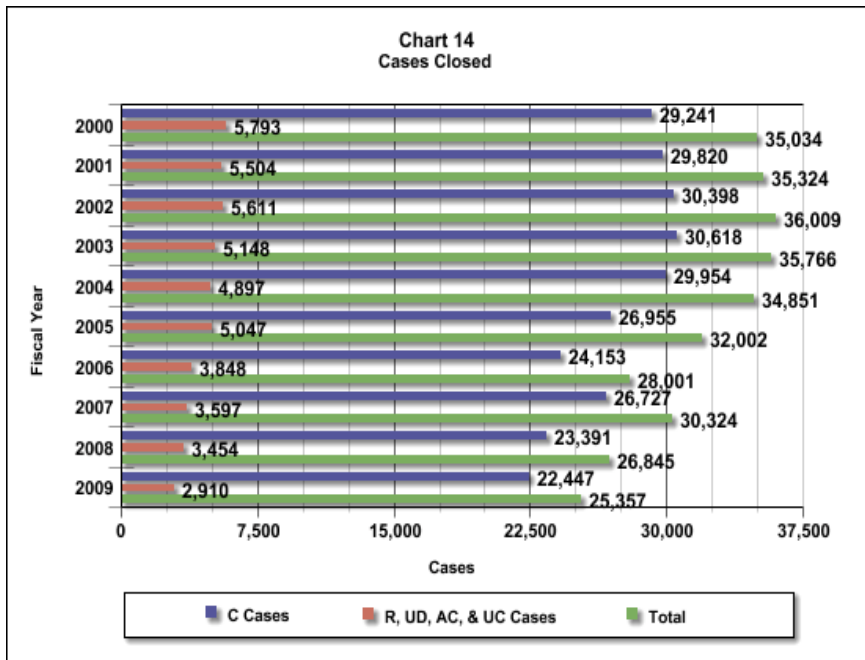
There were 13 additional cases involving miscellaneous litigation decided by appellate, district, and bankruptcy courts. The NLRB's position was upheld in 9 cases. (Table 21.)

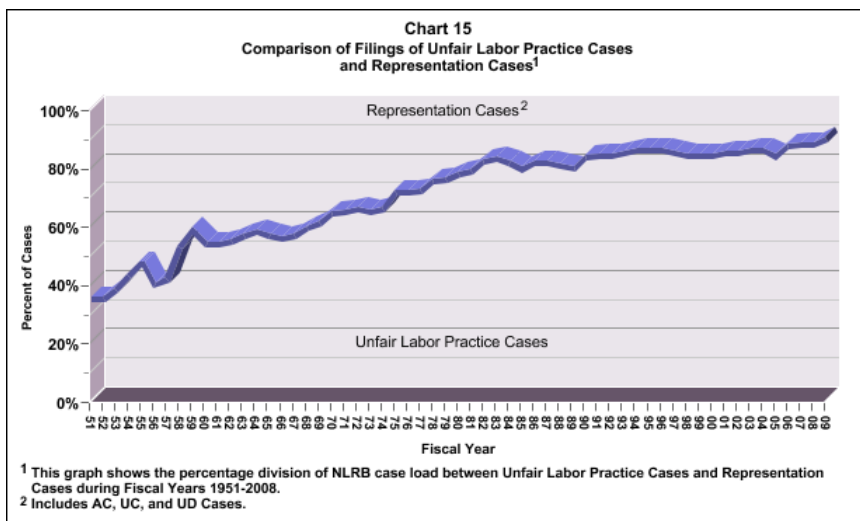
e. Injunction Activity

The NLRB sought injunctions pursuant to Sections 10(j) and 10(l) in 23 petitions filed with the U.S. district courts. Injunctions were granted in eight of 13, or 61.5 percent, of the cases litigated to final order.

NLRB injunction activity in district courts in 2009:

Granted.....	8
Denied.....	5
Withdrawn.....	2
Settled or placed on court’s inactive lists.....	8
Awaiting action at end of fiscal year.....	4





C. Decisional Highlights

This fiscal year was unusual, insofar as the Board continued to operate with only two members for the entire year. The two-member Board (Chairman Liebman and Member Schaumber) decided cases applying existing law, rather than deciding novel legal questions or reconsidering precedent. Chapter II on “Board Procedure,” Chapter III on “Representation Proceedings,” and Chapter IV on “Unfair Labor Practices” discuss some of the more significant decisions of the Board during the report period. The following summarizes briefly some of the decisions that practitioners might find of particular interest.

1. Blocking a Representation Petition

In *Sequoias Portola Valley*,² the Board reversed the Regional Director’s decision to hold a representation petition in abeyance pending the investigation of an unfair labor practice charge filed by a union other than the petitioner against an employer other than the employer in this case.

In reversing the Regional Director, the Board recognized that its general policy is to “block,” or delay, the processing of a representation petition when there is a pending unfair labor practice case, but found this case untypical because the unfair labor practice charge was filed by a union other than the petitioner against an employer other than the employer in this case. The Board found that allowing an unrelated employer-domination charge to block the representation petition, before any determination had been made with respect to either the petitioner or

² 354 NLRB No. 74 (2009) (Chairman Liebman and Member Schaumber).

current employer, would delay, for an indeterminate, and possibly lengthy amount of time, the employees' opportunity to exercise their Section 7 rights. The Board noted that if the petitioner is found, at a later date, not to be a labor organization under the Act, and if it has been certified as the unit employees' bargaining representative, the Board shall take such action as required, such as revoking the petitioner's certification. Accordingly, the petition was reinstated, and the case was remanded to the Regional Director for further processing.

2. Unit Clarification

In *Milwaukee City Center*,³ the Board, reversing the Regional Director, found that under the standard set forth in *Safeway Stores*,⁴ the employer's employees who work as baristas and head baristas at a franchise Starbucks coffee shop located in the employer's hotel cannot be accreted to the existing bargaining unit of food, beverage, and other hotel employees. In reversing the Regional Director, the Board particularly relied on the "critical" factors of lack of interchange and common day-to-day supervision between the employer's Starbucks employees and the hotel food and beverage employees.⁵ The Board also found, contrary to the Regional Director, that the absence of functional integration between the Starbucks coffee shop and the employer's other establishments, and the minimal contact between the Starbucks employees and hotel food and beverage employees, also weigh against accretion. Further, the Board found that the Starbucks Corporation exerts significant control over the baristas' terms and conditions of employment due to the requirements of the franchise relationship. Chairman Liebman and Member Schaumber agreed that the centralized control over management and labor relations, many common terms and conditions of employment, geographic proximity, similar skills and functions, and bargaining history, all relied on by the Regional Director, do not outweigh the countervailing factors (particularly lack of interchange and common day-to-day supervision).

³ 354 NLRB No. 77 (2009) (Chairman Liebman and Member Schaumber).

⁴ 256 NLRB 918 (1981).

⁵ *Frontier Telephone of Rochester*, 344 NLRB 1270, 1271 fn. 7 (2003) ("the two most important factors—indeed, the two factors that have been identified as critical to an accretion finding—are employee interchange and common day-to-day supervision," and therefore "the absence of these two factors will ordinarily defeat a claim of lawful accretion").

3. Questioning Employee's Vote During a Deposition

In *Chinese Daily News*,⁶ the Board reversed the judge's findings and held that the respondent violated Section 8(a)(1) of the Act when its attorney asked an employee union supporter during a deposition—taken in connection with the respondent's defense of a class-action wage-and-hour lawsuit brought by some of its employees—whether the employee, who was a supportive declarant in the motion for class certification, had “voted for the Union to win the election.”

Applying the three-part test set forth *Guess?, Inc.*,⁷ the Board assumed *arguendo* that the deposition question was relevant to the litigation and that the questioning did not have an illegal objective. As to the final *Guess?* prong, however, the Board found that the employee's substantial Section 7 interest in maintaining the confidentiality of his election vote outweighed the respondent's need for the information in order to develop its defense to the lawsuit, i.e., that the class should not be certified because the plaintiffs would not act in the best interests of the class, and that one of the plaintiffs and the supportive declarants, including the employee, were biased against the respondent because they were union supporters. The Board therefore concluded that the deposition question regarding how the employee voted in the election constituted an unlawful interrogation.

4. Discharge of Supervisor

In *Texas Dental Assn.*,⁸ the Board adopted the judge's finding that the respondent violated Section 8(a)(1) of the Act by discharging Supervisor Barbara Jean Lockerman for her refusal to engage in an unfair labor practice and employee Nathan Clark for engaging in protected concerted activities.

Lockerman attended a meeting of employees in which the employees, using aliases, signed a petition to the board of directors alleging management deficiencies and unfairness at the respondent's headquarters. The Board found that the employees' activities in this regard were protected and concerted under the Act. Lockerman did not disclose her attendance or the employees' activities to the respondent, despite a subsequent instruction by the respondent's executive director to employees and supervisors that they must reveal their participation in the petition as a condition of employment.

⁶ 353 NLRB No. 66 (2008) (Chairman Schaumber and Member Liebman).

⁷ 339 NLRB 432, 434 (2003), petition for review dismissed without prejudice, 2003 WL 22705744 (D.C. Cir. 2003). Under *Guess?*, the analysis is whether the questioning (1) is relevant to the lawsuit; (2) has an illegal object; and (3) if relevant, and without an illegal object, the employer's need for the information outweighs the employee's confidentiality interests.

⁸ 354 NLRB No. 57 (2009) (Chairman Liebman and Member Schaumber).

In finding Lockerman’s discharge unlawful, the Board reasoned that, even though supervisors are not covered by the protections of the Act, the termination of a supervisor violates Section 8(a)(1) in limited circumstances, including when it is based on a refusal to commit an unfair labor practice.⁹ In such cases, the Board has found that prohibiting the supervisor’s discharge is necessary to vindicate employee rights under the Act and does not unduly trench upon the employer’s legitimate interests in selecting and trusting its management team. Thus, the Board has held that an employer may not terminate a supervisor for insufficiently advancing the employer’s plan to unlawfully prevent unionization.¹⁰ Here, the Board found that Lockerman had a reasonable belief, based on statements by the respondent’s managers and corroborated by its conduct, that the respondent sought to identify and terminate employees involved in the petition. The Board concluded that the respondent discharged Lockerman for failing to cooperate with that unlawful effort.

D. Financial Statement

The obligations and expenditures of the National Labor Relations Board for the fiscal year ended September 30, 2009, are as follows:

Personnel compensation	\$164,290,847
Personnel benefits	39,055,454
Benefits for former personnel	32,678
Travel and transportation of persons	2,357,350
Transportation of things	186,796
Rent, communications, and utilities	34,657,229
Printing and reproduction	131,868
Other services	16,220,026
Supplies and materials	1,252,576
Equipment	3,202,029
Insurance claims and indemnities	7,572
Total obligations and expenditures ¹¹	\$261,394,425

The NLRB assets were approximately \$38 million as of September 30, 2009. The Fund Balance with Treasury, which was \$27 million, represents the NLRB’s largest asset. The Fund Balance consists of

⁹ *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), enfd. sub nom. *Automobile Salesmen’s Union Local 1095 v. NLRB*, 711 F.2d 383 (D.C. Cir. 1983).

¹⁰ *Talladega Cotton Factory*, 106 NLRB 295 (1953), enfd. 213 F.2d 209 (5th Cir. 1954).

¹¹ Includes \$105,460 for reimbursables from MSPB (ALJ).

Includes \$16,838 for reimbursables from IRS (ALJ).

Includes \$7,645 for reimbursables from GSA Metro Service Division (Fitness Center).

Includes \$2,975 for reimbursables from EPA (Fitness Center).

unspent appropriated and unappropriated funds from the past 6 fiscal years. The NLRB has one unusual account that it holds with Treasury to manage backpay funds that are owed to discriminatees by employers due to the filing of ULP charges with the NLRB. These funds are not included in the Agency financial statements but disclosed in the accompanying footnotes. The source of these funds is either the original employer or a bankruptcy court disposition. During the time it takes the Agency to locate discriminatees, these funds are sometimes invested in U.S. Treasury market-based securities.

The NLRB's appropriation is used to resolve representation cases or ULP charges filed by employees, employers, unions, and union members. Of the \$277 million net cost of operations in FY 2009, 16 percent was used to resolve representation cases and 84 percent was used to resolve ULP charges.

For FY 2009, the NLRB had available budgetary resources of \$267 million, the majority of which were derived from new budget authority. This represents an \$11 million increase from FY 2008, when available budgetary resources were \$256 million. For FY 2008 and FY 2009, the status of budgetary resources showed obligations of \$252 million and \$263 million, respectively, or about 98 percent of funds available in each year. Total outlays for FY 2009 were \$256 million which is a \$6 million increase from FY 2008.

Of the budget appropriation received by the NLRB, approximately 90 percent of the payments are for employees' salaries and benefits, space rent, and building security. The remaining 10 percent is utilized for expenses integral to the Agency's casehandling mission, such as casehandling travel, transcripts in cases requiring a hearing; interpreter services, reflective of a growing community of non-English speaking workers; travel; witness fees; and information technology.

II

Board Procedure

A. Setting Aside of Settlement Agreement

In *Cintas Corp.*,¹ the Board reversed the judge's finding that the Regional Director for Region 4 had properly set aside a settlement agreement concerning an allegation that the respondent had violated Section 8(a)(1) by summoning the police to one of its facilities in response to protected activity. The Board adopted the judge's findings that the respondent violated Section 8(a)(3) of the Act by issuing warnings to several employees for wearing union stickers and hats. The Board also adopted the judge's findings that the respondent violated Section 8(a)(1) by: telling one employee not to display a union hat in her work area; impliedly threatening to discharge that employee if she again wore a union hat or union sticker; directing an employee to put a union flier inside her wallet or pocketbook, take it home, and not show it to anybody; and confiscating union fliers in its break room. The Board adopted the judge's finding that the respondent had failed to effectively repudiate the unlawful confiscation. In finding those violations, the Board adopted the judge's ruling to exclude evidence of the union's nationwide, multiyear campaign against the respondent.

On January 7, 2004, the respondent signed a settlement agreement specifically covering, inter alia, the allegation that it unlawfully summoned police to its Charlotte, North Carolina facility. On January 20, the Regional Director for Region 4 approved the settlement agreement, but the union declined to sign and, thus, preserved its right to appeal the agreement to the General Counsel. On March 2, 2004, the union filed new unfair labor practice charges about events at the Charlotte facility with Board Region 11. Meanwhile, the union's appeal period for seeking review of the settlement agreement ended on March 31. On April 5, while investigation of the new Charlotte facility charge was ongoing, the Regional Director for Region 4 directed the respondent to comply with the settlement agreement. Subsequently, however, the Regional Director for Region 4 set aside the settlement agreement on the basis that the allegations in the March 2 charge involved sufficiently serious "postsettlement" violations. The judge affirmed the Regional Director in this regard.

The Board, citing *Scripps Memorial Hospital Encinitas*,² set forth the general principle that a settlement agreement may be set aside, and unfair

¹ 353 NLRB No. 81 (2009) (Chairman Liebman and Member Schaumber).

² 347 NLRB 52, 53 (2006).

labor practices found based on presettlement conduct, if, “postsettlement” unfair labor practices are committed. However, the Board explained that, in *Ventura Coastal Corp.*,³ the Board adopted a judge’s finding that certain activity was “presettlement” conduct disposed of by a settlement agreement, even though the conduct was brought to the Region’s attention after the settlement agreement had been approved and the period for filing an appeal had passed.⁴ In that case, after the Regional Director approved the settlement agreement and the appeal period had passed, the charging party informed the Region that it would shortly be filing additional unfair labor practice charges, which it later did.⁵ Applying *Ventura Coastal Corp.* and *Leeward Nursing Home*,⁶ the Board found that the newly alleged conduct on which the Regional Director had relied to set aside the settlement agreement was not truly “postsettlement” conduct, as the General Counsel’s agents were already investigating that conduct when the respondent was directed to comply with the settlement agreement. Accordingly, the Board dismissed the allegation that the respondent violated Section 8(a)(1) by calling the Charlotte police.

B. Due Process Rights

In *Quickway Transportation*,⁷ the Board reversed on due process grounds the judge’s finding that the respondent’s discharge of Angelo Jackson violated Section 8(a)(3) of the Act. In addition, the Board adopted the judge’s findings that the respondent violated Section 8(a)(1) of the Act by unlawfully engaging in surveillance of its drivers because of their union activities, by creating the impression that an employee’s union activities were under surveillance and informing him that he should not serve as a middleman between employees and management, and by twice interrogating an employee about his union activities. The Board also adopted the judge’s findings that the respondent violated Section 8(a)(3) by refusing to reinstate former unfair labor practice strikers, and by engaging in a retaliatory lockout of unit employees. Finally, the Board adopted the judge’s findings that the respondent violated Section 8(a)(5) by dealing directly with an employee about

³ 264 NLRB 291 (1982).

⁴ *Id.* at 298.

⁵ *Id.*

⁶ 278 NLRB 1058, 1085 (1986) (where a settlement was approved October 28, charge was filed on November 4, and as it was “unlikely that [r]espondent had taken any substantial action in compliance with the settlement by that November 4 date[.] . . . the settlement process had not passed any ‘fail-safe’ point as of November 4, . . . and there appears to have been no reason why the Regional Director could not have withdrawn his approval of the settlement at this point, pending investigation” into the new charges).

⁷ 354 NLRB No. 80 (2009) (Chairman Liebman and Member Schaumber).

changing his employment status from that of a company driver to an owner-operator, and by transferring unit work to owner-operators without bargaining with the union.

At the close of the General Counsel's case in chief, the General Counsel stated that he was withdrawing the allegation addressing Jackson's discharge, assured the respondent that allegations of discriminatory conduct concerning that discharge would be deleted from the complaint, and assured the judge that he was withdrawing all allegations with respect to Jackson's discharge. In response, the respondent then clarified that it was limiting its case in chief to the remaining complaint allegations.

The Board agreed with the judge that the respondent violated Section 8(a)(1) by its surveillance of Jackson but reversed the judge's further finding that the respondent's discharge of Jackson violated Section 8(a)(3) of the Act because it resulted directly from information gained by the unlawful surveillance. The Board, citing *Metropolitan Taxicab Board of Trade*,⁸ acknowledged that the General Counsel does not have unreviewable discretion to withdraw a complaint allegation after it has been fully litigated. However, the Board reasoned that the General Counsel, with the judge's apparent consent, unequivocally withdrew the complaint allegation concerning Jackson's discharge prior to the presentation of any defense by the respondent. The Board noted that neither the General Counsel nor the judge thereafter signaled the respondent that the discharge allegation remained in play or that there was any reason to defend the legality of Jackson's discharge in connection with the remaining unlawful surveillance allegation. Citing *New York Post*,⁹ the Board held that the judge's finding of a discharge violation, based on a different legal theory and contrary to the General Counsel's representations at the hearing, deprived the respondent of due process rights.

C. Petition to Revoke Subpoena

In *CNN America*,¹⁰ the Board affirmed a Special Master's Report and Recommendations in which the judge recommended that the Board accept the withdrawal by the General Counsel and the charging party of significant portions of their subpoenas and found that the respondent had failed to meet its burden of demonstrating that the information being sought pursuant to the revised subpoenas would be unduly burdensome to produce.

⁸ 342 NLRB 1300, 1300 fn. 2 (2004).

⁹ 353 NLRB No. 30, slip op. at 2-3 (2008).

¹⁰ 353 NLRB No. 94 (2009) (Chairman Liebman and Member Schaumber).

On May 30, 2008, the Board granted the respondent special permission to appeal a judge's denial of its petition to revoke subpoenas issued by the General Counsel and the charging party.¹¹ In that proceeding, the Board found that the costs and burden of producing the vast number of subpoenaed documents requested in electronic format should be balanced against the relevance of and need for the documents. The Board directed the chief administrative law judge to assign a separate judge to act as a special master and analyze these issues using the framework provided in *The Sedona Principles: Best Practices, Recommendations & Principles for Addressing Electronic Document Production*, Second Edition (The Sedona Conference Working Group Series, 2007). Accordingly, the Board remanded the proceeding to the chief administrative law judge for assignment of a judge to act as a special master to resolve the issues described above concerning the subpoenas.

On December 1, 2008, a different judge issued a Special Master's Report and Recommendations, in which he recommended that the Board accept the withdrawal by the General Counsel and the charging party of significant portions of the subpoenas and found that the respondent had failed to meet its burden of demonstrating that the information being sought pursuant to the revised subpoenas would be unduly burdensome to produce. In finding that compliance would not impose an undue burden on the respondent, the judge relied heavily on the fact that the respondent necessarily had to identify, locate, examine, evaluate, and describe the items listed in its privilege and redaction logs—the only documents being sought pursuant to the revised subpoenas. In addition, the judge rejected the respondent's position that he should address the enforceability of the subpoenas as a whole, rather than addressing only the portions that remained at issue.

The Board affirmed the Special Master's Report and Recommendations. The Board explicitly reiterated a finding that was implicit in its May 30, 2008 Order: the respondent's argument that the subpoenas must be considered as a whole and as such are invalid and unenforceable is without merit. The Board noted that the respondent continued to argue that the subpoenas should be rejected in their entirety because they were abusive, but did not provide any rationale for this argument other than asserting that the subpoena requests were overbroad and compliance would be burdensome. These arguments, the Board stated, were rejected in its May 30, 2008 Order, except with respect to the issue remanded for assignment to a special master. In addition, the Board agreed with the

¹¹ *CNN America*, 352 NLRB 675 (2008).

judge's analysis and conclusion that the remaining documents requested by subpoenas were not unduly burdensome to produce. The Board also rejected the respondent's argument that the dispute over the enforceability of the subpoenas is moot, noting that the parties would have a right to request reopening of the record in the event that the continued pursuit of allegedly privileged information yields information that the General Counsel or the charging party wished to offer into evidence to support their position, and in light of the possibility that the Board could decide not to adopt some or all of the judge's recommendations in the unfair labor practice decision, following consideration of any exceptions that might be filed.

III

Representation Proceedings

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

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

The Act also empowers the Board to conduct elections to decertify incumbent bargaining agents that have been previously certified or that are 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.

A. Appropriate Unit Issues

1. Supervisory Status

In *Rock Spring Development, Inc.*,¹ the Board reversed the hearing officer and found that the safety coordinator was neither a statutory supervisor under *Oakwood Healthcare*,² nor a managerial employee excluded from coverage under the Act.

Ernest Bartram is the employer's safety coordinator and serves as the assistant to the employer's manager of safety. Bartram assists the mine engineer in preparing ventilation plans for the mine and directs employees where to position devices to ensure proper ventilation. He performs underground safety inspections, and prepares safety talks that are given weekly by foremen to employees. During production meetings, Bartram reviews the employer's accident and safety statistics.

¹ 353 NLRB No. 105 (2009) (Chairman Liebman and Member Schaumber).

² 348 NLRB 686 (2006).

Bartram also maintains first aid equipment, helps conduct annual safety retraining, assists with employee drug testing, and prepares basic job safety analyses and submits them to the employer's main office. He is also responsible for traveling the mine with Federal and State mine safety inspectors and he may designate an employee to accompany inspectors.

Contrary to the hearing officer, the Board found that the petitioner did not establish that Bartram responsibly directs employees, because it did not show that Bartram was accountable for his actions in directing employees in safety matters. The Board reasoned that Bartram's testimony—that in the event the employer or individual employees received a citation or fine from the mine safety inspectors, it “would reflect poorly” on Bartram and he was sure he would “hear about it”—was too vague to establish that there was an actual prospect of adverse consequences for Bartram. The Board further observed that there was no evidence that Bartram ever suffered, or had been informed by the employer of the prospect of such consequences. The Board concluded that Bartram's assumption that he was accountable did not constitute the requisite evidence of actual accountability.

In contrast to the hearing officer, the Board also found that the petitioner did not establish the requisite authority to assign because there was insufficient evidence that Bartram had the authority to require that an employee accompany a mine inspector and, even assuming that Bartram had such authority, the petitioner failed to show that Bartram's designation of an employee to accompany an inspector required the use of independent judgment. The Board further found that Bartram was not a managerial employee because the petitioner did not establish that Bartram formulated the employer's safety policy or exercised discretion in the performance of his job independent of that established policy. Finally, the Board adopted the hearing officer's finding that the chief electricians were not supervisors under Section 2(11) of the Act. The Board accordingly directed that the Regional Director open and count the determinative challenged ballots of the chief electricians and safety coordinator, prepare a revised tally of ballots, and issue the appropriate certification.

2. Contingent Employee in Stipulated Unit

In *Regional Emergency Medical Services*,³ the Board reversed the hearing officer's finding that contingent emergency technician (EMT) Tara Dibler belonged in the stipulated bargaining unit and that the challenge to her ballot should be overruled.

³ 354 NLRB No. 20 (2009) (Chairman Liebman and Member Schaumber).

The employer maintained three distinct categories of EMT employees: full-time, part-time, and contingent. Contingent employees were expressly included in the union's petition but were not mentioned in the parties' unit stipulation, which expressly included only full-time and part-time EMTs. The Board, in reversing the hearing officer's finding and sustaining the challenge to Dibler's ballot, applied the three-part test set forth in *Caesar's Tahoe*,⁴ which applies to the resolution of challenged ballots in cases involving stipulated units. Under this test, if the objective intent of the parties is expressed in clear and unambiguous language in the unit stipulation, the Board will enforce the agreement. If the language of the stipulation is ambiguous with respect to an employee's eligibility, the Board will examine extrinsic evidence to interpret the stipulation. If the intent of the stipulation still cannot be determined, the Board will decide the eligibility of the challenged voter using traditional community-of-interest criteria.⁵ In this case, the Board found that the language of the parties' unit stipulation reflected their clear and unambiguous intent to exclude contingent employees. The Board noted that weight should be given to the fact that the petitioner was aware of the distinct contingent EMT classification, included that classification in the petition's unit description, but stipulated to a unit description that failed to mention contingent employees.

B. Bars to an Election

1. Blocking a Representation Petition

In *Sequoias Portola Valley*,⁶ the Board reversed the Regional Director's decision to hold a representation petition in abeyance pending the investigation of an unfair labor practice charge filed by a union other than the petitioner against an employer other than the employer in this case.

On April 1, 2009, the National Union of Healthcare Workers (the petitioner) filed a petition seeking to represent a unit of 75 healthcare employees employed by the employer. The Regional Director for Region 20 thereafter informed the employer and the petitioner that he was holding the petition in abeyance pending the outcome of an investigation of a charge filed by the Service Employees International Union (SEIU) against Clinton Reilly Holdings (Clinton Reilly), an unrelated employer. The charge alleged that Clinton Reilly violated Section 8(a)(2) of the Act by unlawfully dominating the petitioner by making in-kind and financial contributions to the petitioner. The

⁴ 337 NLRB 1096 (2002).

⁵ *Id.* at 1097.

⁶ 354 NLRB No. 74 (2009) (Chairman Liebman and Member Schaumber).

Regional Director blocked the representation petition while he investigated the 8(a)(2) allegations. The Regional Director did so because, if the relationship between the petitioner and Clinton Reilly violated Section 8(a)(2), he would have found that any petition filed by the petitioner must be dismissed because that union could no longer be certified to represent employees of any employer.

In reversing the Regional Director, the Board recognized that its general policy is to “block,” or delay, the processing of a representation petition when there is a pending unfair labor practice case, but found this case untypical because the unfair labor practice charge was filed by a union other than the petitioner against an employer other than the employer in this case. The Board found that allowing an unrelated employer-domination charge to block the representation petition, before any determination had been made with respect to either the petitioner or current employer, would delay, for an indeterminate, and possibly lengthy amount of time, the employees’ opportunity to exercise their Section 7 rights. The Board noted that if the petitioner is found, at a later date, not to be a labor organization under the Act and if it has been certified as the unit employees’ bargaining representative, the Board shall take such action as required, such as revoking the petitioner’s certification. Accordingly, the petition was reinstated, and the case remanded to the Regional Director for further processing.

C. Election Objections

1. Severe Weather Conditions

In *Goffstown Truck Center*,⁷ the Board reversed the hearing officer and sustained the employer’s election objection, which alleged that severe weather conditions on election day warranted a second election.

The employer provides schoolbus service for the Town of Londonderry, New Hampshire. The election was conducted in a unit of schoolbus drivers at the employer’s Londonderry facility. A severe ice storm hit Londonderry the night before the election and persisted throughout election day. As a result, downed trees and fallen power lines laden with ice blocked or obstructed many of Londonderry’s roads, including the two access roads leading to the polling place. Because of the severity of the ice storm, New Hampshire’s Governor declared a state of emergency on the morning of the election. Londonderry’s schools were closed and, consequently, the employees’ work was cancelled. In addition, the polling place lost its heat, electrical power, and telephone service. Despite the storm, the Region proceeded with the election as

⁷ 354 NLRB No. 49 (2009) (Chairman Liebman and Member Schaumber).

scheduled. The tally of ballots favored the union by seven votes; nine employees did not cast ballots in the election.

The hearing officer recommended overruling the employer's election objections, citing *Baker Victory Services*.⁸ In *Baker*, the Board stated that an election "should be set aside where severe weather conditions on the day of the election reasonably denied eligible voters an adequate opportunity to vote and a determinative number did not vote." The hearing officer acknowledged that the ice storm on election day was "severe and extraordinary," and that a determinative number of eligible voters did not vote. However, the hearing officer analyzed the specific reasons why the nine nonvoters did not cast ballots and found that the ice storm affected no more than five eligible employees, an insufficient number to affect the election result.

The Board reversed the hearing officer, explaining that the hearing officer erred by considering individual employees' reasons for not voting in the election. The Board reasoned that it does not analyze employees' individual reasons for not voting in an election, but rather will set aside an election whenever severe weather reasonably denies eligible employees an adequate opportunity to vote and a determinative number do not vote. Applying *Baker*, the Board sustained the employer's objection because the ice storm denied eligible employees an adequate opportunity to vote and because a determinative number of eligible voters did not vote.

2. Promise to Pay Employees to Vote

In *Tea Party Concerts*,⁹ the Board, reversing the hearing officer, sustained the union's objection alleging that the employer improperly promised 4 hours' pay to off-duty employees in exchange for voting in the representation election. The Board set aside the election result and directed a second election.

The employer promotes, stages, and presents music concerts at multiple venues, including the Tweeter Center, a summer-season facility in Mansfield, Massachusetts. The union sought to represent the employer's stagehands working at the Tweeter Center. In a preelection campaign letter to the stagehands, the employer offered 4 hours' pay to those stagehands who were "not on a call" at the Tweeter Center, i.e., off duty, if they voted in the election. Fifty-six stagehands were not on call when the election was conducted. The union lost the election, 53 votes to 48, with 2 nondeterminative challenged ballots. The union objected to the employer's offer. The hearing officer, however, concluded that it

⁸ 331 NLRB 1068, 1070 (2000).

⁹ 353 NLRB No. 130 (2009) (Chairman Liebman and Member Schaumber).

would be appropriate policy, and consistent with Section 8(c) of the Act, to permit employers to pay employees for their time spent voting, whether on duty or off. Therefore, the hearing officer recommended overruling the union's objection. The Board disagreed.

The Board stated that *Sunrise Rehabilitation Hospital*,¹⁰ is current Board law and controlled the case. Under *Sunrise*, a party's payment to employees for attending the election is objectionable conduct, unless the payment is for reimbursement of actual transportation expenses. As in *Sunrise*, the employer in this case offered additional pay to off-duty employees in return for voting; the offer was substantial; it was not linked to reimbursement for travel or other costs; and the number of employees potentially affected was significant. The Board rejected, as a post-hoc rationale, the employer's argument that the offer was intended for reimbursement purposes. The Board also noted that, in any event, this rationale had not been substantiated.

Member Schaumber added a personal footnote stating that he was applying *Sunrise* for institutional reasons, and noting that the issue of travel/expense reimbursement related to voting in representation elections should be revisited at an appropriate time.¹¹

D. Unit Clarification

In *Milwaukee City Center*,¹² the Board, reversing the Regional Director, found that under the standard set forth in *Safeway Stores*,¹³ the employer's employees who work as baristas and head baristas at a franchise Starbucks coffee shop located in the employer's hotel cannot be accreted to the existing bargaining unit of food, beverage, and other hotel employees.

The employer operates the Hilton Milwaukee City Center (Hilton). The petitioner represents all of the hotel employees who prepare and serve food and beverages located in the bars and restaurants within the Hilton. In mid-2005, the employer entered into a franchise agreement with the Starbucks Corporation to open and operate a Starbucks coffee shop located within the hotel. The Starbucks Corporation imposes strict policies on how franchisees operate their stores, including where to purchase products and supplies, where and how products should be displayed, how products should be prepared and served, how long preparation of an order should take, and how many people should be working in the store at any given time.

¹⁰ 320 NLRB 212 (1995).

¹¹ Citing *Durham School Services LP*, 353 NLRB No. 129, slip op. at 1 fn. 2 (2009) (Member Schaumber's personal footnote).

¹² 354 NLRB No. 77 (2009) (Chairman Liebman and Member Schaumber).

¹³ 256 NLRB 918 (1981).

The Board observed that, in determining whether a new operation is an accretion, it has given weight to a variety of factors including integration of operations, centralization of management and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, degree of separate daily supervision, and degree of employee interchange.¹⁴ However, the Board noted that the “‘two most important factors’—indeed, the two factors that have been identified as ‘critical’ to an accretion finding—are employee interchange and common day-to-day supervision,” and therefore “the absence of these two factors will ordinarily defeat a claim of lawful accretion.”¹⁵ In reversing the Regional Director, the Board found that there was no evidence that Starbucks employees temporarily interchanged with employees in the employer’s other establishments, or that employees from the employer’s other establishments have temporarily worked at Starbucks. Further, although permanent interchange between Starbucks and other employer establishments is allowed, there was no evidence to establish any frequency. The Board also found that there was no immediate common supervision between bargaining unit employees and the Starbucks employees. In addition, the Board noted that the absence of functional integration between the Starbucks coffee shop and the employer’s other establishments, and the minimal contact between the Starbucks employees and hotel food and beverage employees, also weighed against accretion. Further, the Board found that the Starbucks Corporation exerted significant control over the baristas’ terms and conditions of employment due to the requirements of the franchise relationship.

Chairman Liebman and Member Schaumber agreed that the centralized control over management and labor relations, many common terms and conditions of employment, geographic proximity, similar skills and functions, and bargaining history, all relied on by the Regional

¹⁴ See *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001).

¹⁵ *Frontier Telephone of Rochester*, 344 NLRB 1270, 1271 fn. 7 (2003).

Director, did not outweigh the countervailing factors (particularly lack of interchange and common day-to-day supervision).

IV

Unfair Labor Practices

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

Summarized below are significant cases of the Board during fiscal year 2009.

A. Employer Interference with Employee Rights

1. Discharge of Supervisor

In *Texas Dental Assn.*,¹ the Board adopted the judge's finding that the respondent violated Section 8(a)(1) of the Act by discharging supervisor Barbara Jean Lockerman for her refusal to engage in an unfair labor practice and employee Nathan Clark for engaging in protected concerted activities.

Lockerman attended a meeting of employees in which the employees, using aliases, signed a petition to the board of directors alleging management deficiencies and unfairness at the respondent's headquarters. The Board found that the employees' activities in this regard were protected and concerted under the Act. Lockerman did not disclose her attendance or the employees' activities to the respondent, despite a subsequent instruction by the respondent's executive director to employees and supervisors that they must reveal their participation in the petition as a condition of employment.

In finding Lockerman's discharge unlawful, the Board reasoned that, even though supervisors are not covered by the protections of the Act, the termination of a supervisor violates Section 8(a)(1) in limited circumstances, including when it is based on a refusal to commit an

¹ 354 NLRB No. 57 (2009) (Chairman Liebman and Member Schaumber).

unfair labor practice.² In such cases, the Board has found that prohibiting the supervisor's discharge is necessary to vindicate employee rights under the Act and does not unduly trench upon the employer's legitimate interests in selecting and trusting its management team. Thus, the Board has held that an employer may not terminate a supervisor for insufficiently advancing the employer's plan to unlawfully prevent unionization.³ Here, the Board found that Lockerman had a reasonable belief, based on statements by the respondent's managers and corroborated by its conduct, that the respondent sought to identify and terminate employees involved in the petition. The Board concluded that the respondent discharged Lockerman for failing to cooperate with that unlawful effort.

In *Inn at Fox Hollow*,⁴ the Board adopted the judge's finding, in his supplemental decision on remand, that the respondent violated Section 8(a)(1) of the Act by discharging an unpopular supervisor, Alicia Arvelo, in order to interfere with or coerce its employees in their choice of representative.

Although the respondent had been aware of employee complaints about abusive treatment by Arvelo since at least July 2006, it took no action against her. However, shortly after the union filed a petition on October 3 to represent the housekeeping employees, the respondent's owner informed employees that he had discharged Arvelo, stating "Well, I have done something for you. I let go of Alicia Arvelo, now I want you to help me. I do not want a Union here."

The Board rejected the respondent's affirmative defense that Arvelo's discharge was motivated by the supervisor's violation of the respondent's antiharassment policy and would have taken place even absent the union campaign. The Board found that the timing of the discharge created an inference that it was intended to interfere with or coerce employees in their choice of representative and that the respondent failed to rebut this inference. The Board observed that the respondent presented no evidence to explain why it discharged Arvelo when it did, i.e., long after employees had reported abusive treatment by Arvelo and hard on the heels of the respondent's discovery of the union campaign. The Board found that the record therefore strongly supported the conclusion that it was the arrival of the union that jolted the respondent into action. The Board found that this conclusion was reinforced by the manner in which the discharge was announced. Thus,

² *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), enfd. sub nom. *Automobile Salesmen's Union Local 1095 v. NLRB*, 711 F.2d 383 (D.C. Cir. 1983).

³ *Talladega Cotton Factory*, 106 NLRB 295 (1953), enfd. 213 F.2d 209 (5th Cir. 1954).

⁴ 353 NLRB No. 112 (2009) (Chairman Liebman and Member Schaumber).

in announcing the discharge to employees, the respondent did not state that it was based on Arvelo's alleged violation of the respondent's anti-harassment policy. Instead, Arvelo's discharge was broached entirely in the context of the respondent's opposition to the union and its desire that the employees abandon the union campaign.

2. Use of Employer's E-mail System (2007)

In *Register-Guard*,⁵ a 2007 decision, the Board majority held that a respondent did not violate Section 8(a)(1) by maintaining a policy that prohibited employees from using its e-mail system for any "nonjob-related solicitations." The Board majority also announced and applied a new standard for determining whether an employer has violated Section 8(a)(1) by discriminatorily enforcing its policies.

The respondent's written policy prohibited the use of e-mail for "non-job-related solicitations." In practice, the respondent allowed a number of nonwork-related employee e-mails, but there was no evidence that it permitted e-mails urging support for groups or organizations. The respondent issued two written warnings to employee Suzi Prozanski for sending three union-related e-mails. The complaint alleged that the respondent's maintenance of the policy and its enforcement against Prozanski were unlawful.

Addressing the maintenance of the policy, the Board majority of Chairman Battista and Members Schaumber and Kirsanow reasoned that, under Board precedent, employees have no statutory right to use an employer's equipment for Section 7 purposes. The majority found that *Republic Aviation Corp. v. NLRB*,⁶ in which the Court held that a ban on solicitation during nonworking time was unlawful absent special circumstances, was inapplicable to the use of an employer's e-mail system, because *Republic Aviation* involved only face-to-face solicitation, not the use of employer equipment. The majority noted that the use of e-mail "has not changed the pattern of industrial life at the [r]espondent's facility to the extent that the forms of workplace communication sanctioned in *Republic Aviation* have been rendered useless. . . . Consequently, we find no basis in this case to refrain from applying the settled principle that, absent discrimination, employees have no statutory right to use an employer's equipment or media for Section 7 communications." Therefore, the majority concluded, the maintenance of the policy did not violate Section 8(a)(1).

⁵ 351 NLRB 1110 (2007) (Chairman Battista and Members Liebman, Schaumber, Kirsanow, and Walsh). Note: this 2007 decision should have been summarized in the FY 2008 NLRB Annual Report but it inadvertently was not included.

⁶ 324 U.S. 793 (1945).

With respect to the alleged discriminatory application of the policy to Prozanski's e-mails, the majority clarified that "discrimination under the Act means drawing a distinction along Section 7 lines." The majority adopted the reasoning of the United States Court of Appeals for the Seventh Circuit, noting that in two cases involving the use of employer bulletin boards, the court had distinguished between personal nonwork-related postings such as for-sale notices and wedding announcements, on the one hand, and "group" or "organizational" postings such as union materials on the other.⁷ The Board majority found that the court's analysis, "rather than existing Board precedent, better reflects the principle that discrimination means the unequal treatment of equals." The majority overruled the Board's decisions in *Fleming*, *Guardian*, and other similar cases to the extent they were inconsistent with its decision here.

Applying its new standard, the majority found that the respondent had permitted a variety of personal, nonwork-related e-mails, but had never permitted e-mails to solicit support for a group or organization. Because two of Prozanski's e-mails were solicitations to support the union, the respondent did not discriminate along Section 7 lines by applying its e-mail policy to those e-mails. However, the majority found that a third e-mail by Prozanski was not a solicitation, but simply a clarification of facts surrounding a recent union event. Accordingly, the enforcement of the policy with respect to that e-mail was unlawful.

In dissent, Members Liebman and Walsh argued that "[g]iven the unique characteristics of e-mail and the way it has transformed modern communication, it is simply absurd to find an e-mail system analogous to a telephone, a television set, a bulletin board, or a slip of scrap paper." Therefore, the dissenters reasoned, Board decisions finding no Section 7 right to use such employer property are inapplicable. Rather, pursuant to *Republic Aviation*, supra, and *Beth Israel Hospital v. NLRB*,⁸ the Board's task in cases involving employee-to-employee communication in the workplace "is to balance the employees' Section 7 right to communicate with the employer's right to protect its business interests." In the dissenters' view, where an employer has given employees access to e-mail in the workplace for their regular and routine use—as the employer has done—a ban on "nonjob-related solicitations" should be unlawful absent a showing of special circumstances. Finding no proof of special

⁷ See *Fleming Companies v. NLRB*, 349 F.3d 968, 975 (7th Cir. 2003), denying enf. to 336 NLRB 192 (2001), and *Guardian Industries Corp. v. NLRB*, 49 F.3d 317, 319–320 (7th Cir. 1995), denying enf. to 313 NLRB 1275 (1994).

⁸ 437 U.S. 483 (1978).

circumstances here, the dissenters would have found that the maintenance of the policy violated Section 8(a)(1).

Regarding the alleged discriminatory enforcement of the policy, Members Liebman and Walsh stated that they would adhere to Board precedent, under which they would find a violation as to all three of Prozanski's e-mails. They contended that the "discrimination" analysis applied by the Seventh Circuit and adopted by the majority, which focused on whether the other activities permitted by the respondent were "equal" to Section 7 activity, was not appropriate in Section 8(a)(1) cases. In the dissenters' view, the essence of a discriminatory enforcement violation is interference with the employees' Section 7 rights, and "[d]iscrimination, when it is present, is relevant simply because it weakens or exposes as pretextual the employer's business justification" for prohibiting the activity.

In addition to the issues relating to maintenance and enforcement of the respondent's existing e-mail policy, the Board majority of Chairman Battista and Members Schaumber and Kirsanow also dismissed an allegation that the respondent violated Section 8(a)(5) and (1) of the Act by insisting on a bargaining proposal that would prohibit use of the e-mail system for union business. Without passing on whether the proposal was unlawful, the majority found insufficient evidence that the respondent had insisted on the proposal. In dissent, Members Liebman and Walsh found that the evidence as a whole did show insistence, and that the proposal was an illegal codification of a discriminatory practice of allowing e-mail use for a broad range of nonwork-related messages, but not for union-related messages.

The Board also unanimously affirmed the judge's finding that the respondent violated Section 8(a)(1) by maintaining an overly broad rule, in the absence of special circumstances, prohibiting employees from wearing or displaying union insignia while working with the public.

3. Questioning Employee's Vote During a Deposition

In *Chinese Daily News*,⁹ the Board reversed the judge and found that the respondent violated the Act by unlawfully interrogating an employee during his deposition. On March 5, 2004, employee Lynne Wang and two other employees brought a class-action wage-and-hour lawsuit in Federal district court against the respondent on behalf of themselves and similarly situated employees. During the depositions of the plaintiff Wang and supportive declarants, the respondent's attorney asked them questions related to their union sympathies and union-related activities.

⁹ 353 NLRB No. 66 (2008) (Chairman Schaumber and Member Liebman).

One employee, Wei, was asked whether he had voted in the Board election, and whether he had voted for the union.

The Board found that the respondent's question to Wei—" [D]id you vote for the union to win the election?"—violated Wei's Section 7 rights. In finding the violation, the Board applied the test set forth in *Guess?, Inc.*¹⁰ Under that test, the Board considers whether the questioning is relevant to the lawsuit, and, if so, whether it has an illegal objective. If the questioning is found to be relevant and without an illegal objective, the Board must then consider whether the respondent's need for the information outweighs employees' Section 7 rights.¹¹ Applying the test set forth in *Guess?*, the Board assumed *arguendo* that the deposition question at issue was relevant to the litigation and that the questioning did not have an illegal objective. As to the final *Guess?* prong, however, the Board found, contrary to the judge, that employee Wei's substantial Section 7 interest in maintaining the confidentiality of his election vote outweighed the respondent's need for the information in order to develop its defense to the lawsuit, i.e., that the class should not be certified because the plaintiffs would not act in the best interests of the class, and that one of the plaintiffs and the supportive declarants, including Wei, were biased against the respondent because they were union supporters. The Board therefore concluded that the deposition question regarding how Wei voted in the election constituted an unlawful interrogation.

4. Employer's Hiring of Former Union Organizer

In *Community Medical Center*,¹² the Board reversed, in the absence of pertinent precedent, the judge's finding that the respondent violated Section 8(a)(1) of the Act by hiring a former union organizer and assigning him to campaign against the union without providing assurances to employees that information received from the former union organizer concerning who supported the union would not be used against them. The Board adopted the judge's findings that the respondent violated Section 8(a)(1) of the Act by: (1) directing union representatives to retrieve their vehicles from its parking garage and to leave the parking garage, and (2) promising employees improved terms and conditions of employment through a 'shared governance' concept in order to discourage employees from selecting the union as their collective-bargaining representative. Based on the two 8(a)(1) violations found, the Board further adopted the judge's recommendation to set aside the

¹⁰ 339 NLRB 432, 434 (2003), petition for review dismissed without prejudice, 2003 WL 22705744 (D.C. Cir. 2003).

¹¹ *Id.* at 434.

¹² 354 NLRB No. 26 (2009) (Chairman Liebman and Member Schaumber).

election results and found it unnecessary to pass on the judge's findings regarding the union's Objections 1 through 5.

The respondent hired former union organizer Keith Peraino to work on its antiunion campaign. As a union organizer, Peraino had previously worked on the campaign to organize the respondent. In finding a violation, the judge reasoned that Peraino, through his union employment, acquired information about the organizing campaign that could be used to influence the election outcome. The Board disagreed.

The Board explained that extant Board precedent does not establish that the respondent had an affirmative duty to provide assurances to its employees regarding the hiring of a former union organizer.

B. Employer Discrimination Against Employees

1. Discriminatory Hiring Policy under *Great Dane*

In *Legacy Health System*,¹³ the Board agreed with the judge that the respondent's prohibition against employees holding dual part-time positions constituted a hiring policy that discriminated on the basis of Section 7 considerations and violated Section 8(a)(3) and (1).

The respondent operates a large health care system that employs approximately 9,000 employees at five hospitals, a research facility, and several clinics and labs. Different unions, including the Charging Party, represent various units of employees at the respondent's multiple facilities. The respondent maintained a policy that prohibited employees from holding dual part-time jobs—one job in a unit represented by a union and the other job not represented by a union. Three part-time employees covered by a collective-bargaining agreement between the Charging Party and the respondent applied for second part-time jobs outside their bargaining unit which were not union-represented positions. Each was denied the second position for the stated reason that the respondent's policy prohibited employees from holding concurrent union and nonunion jobs.

The judge found that the respondent's refusal to hire the three employees for the nonunion positions pursuant to its policy violated Section 8(a)(3) and (1) of the Act by discriminating on the basis of Section 7 considerations. The judge found the policy was "inherently destructive" of the employees' Section 7 rights under the theory of *NLRB v. Great Dane Trailers*.¹⁴ The Board adopted the judge's finding of the Section 8(a)(3) and (1) violation, but did not rely on the "inherently destructive" standard of *Great Dane*. Instead, the Board relied on the "comparatively slight" standard of *Great Dane*, which holds that if

¹³ 354 NLRB No. 45 (2009) (Chairman Liebman and Member Schaumber).

¹⁴ 388 U.S. 26, 33–34 (1967).

discriminatory conduct has a comparatively slight impact on employees' Section 7 rights, a violation will be found unless the respondent can establish a legitimate and substantial business justification for its conduct. The respondent's business justification defense was that the policy was necessary to avoid "legal uncertainties" that would arise if it permitted dual employment in a unit and nonunit position. The asserted legal uncertainties included such questions as whether an employee working both a unit and nonunit job would be covered by a particular collective-bargaining agreement's overtime, disciplinary, and grievance provisions. The Board rejected this defense based on its finding that the same legal uncertainties would arise if an employee worked two unit jobs covered by separate collective-bargaining agreements, but that the respondent does not prohibit such employment.

2. Refusal to Hire Predecessor's Employees

In *Parksite Group*,¹⁵ the Board, adopting the judge's findings, found that an employer successor violated Section 8(a)(3) of the Act by refusing to hire 10 members of the predecessor's bargaining unit.

Parksite, a wholesaler/deliverer of building materials, operates eight facilities in the eastern United States, including at South Windsor, Connecticut, the terminal at issue. For most of its history, Parksite has employed its own drivers and warehouse employees at these terminals. In 2005, however, Parksite outsourced these on-site functions to Ryder Integrated Logistics (Ryder), which hired most of Parksite's employees at that time. In June 2006, the union was certified to represent the Ryder drivers at the South Windsor facility. In the meantime, Parksite's management had reviewed Ryder's performance and, on September 26, 2007, it decided to resume direct management of the terminals. On December 11, Parksite extended its initial job offers at all eight terminals. At South Windsor, Parksite offered jobs to 15 of the 16 non-Ryder applicants, but only to 14 of the 26 Ryder employees. All 10 alleged discriminatees who were not extended offers at South Windsor were active union supporters.

In adopting the judge, the Board cited the principle from *Howard Johnson Co. v. Detroit Executive Board, Hotel & Restaurant Employees*,¹⁶ that while a successor employer is not obligated to hire the predecessor's employees, it may not discriminate against those employees on the basis of antiunion animus. The Board found sufficient evidence in the record to establish that Parksite acted with the object of avoiding a bargaining obligation, and that the successor would not have

¹⁵ 354 NLRB No. 90 (2009) (Chairman Liebman and Member Schaumber).

¹⁶ 417 U.S. 249, 262 fn. 8 (1974).

made the same hiring decisions absent the discriminatees' union affiliation.

C. Employer Bargaining Obligation

1. Unilateral Change

In *Cox Ohio Publishing*,¹⁷ the Board found, based on the stipulated record, that the respondent violated Section 8(a)(5) of the Act by failing and refusing to increase the mileage reimbursement rate for unit employees from 29 to 32 cents per mile, pursuant to article 4.01 of its posted conditions.

On January 1, 2008, after the parties reached an impasse in bargaining for a new agreement, the respondent implemented its final offer containing, among other things, the following provision (article 4.01): "Employees will be reimbursed for mileage at the rate of 29 cents per mile, or the rate generally offered to other COP newsroom employees if that rate is higher than 29 cpm." The respondent thereafter raised the mileage reimbursement rate of its nonunit employees from 29 to 32 cents without simultaneously raising the rate for the unit employees.

The Board explained that after implementation of its final offer, article 4.01 became the extant mileage reimbursement policy. The Board held that the respondent failed and refused to adhere to the terms of article 4.01 when it raised the mileage reimbursement rate of its nonunit employees without simultaneously raising the rate for the unit employees. The Board observed that the respondent's refusal to raise the rate constituted a unilateral change to the reimbursement policy. The Board found unavailing the respondent's contention that raising the mileage rate pursuant to article 4.01 would subject it to liability under *McClatchy Newspapers*.¹⁸ The Board found, instead, that the union "explicitly conveyed" its acceptance of article 4.01 and thus waived any claim that raising the rate pursuant to the provision was unlawful under *McClatchy*.

2. Bargaining Obligation Prior to Issuing Discipline

In *Alan Ritchey, Inc.*,¹⁹ the Board reversed the judge's finding that the respondent violated Section 8(a)(5) by failing to notify the union and afford it an opportunity to bargain before disciplining inspectors for failing to meet minimum efficiency standards, disciplining employees for absenteeism, and discharging certain employees. The Board adopted the judge's findings that the respondent committed numerous other

¹⁷ 354 NLRB No. 32 (2009) (Chairman Liebman and Member Schaumber).

¹⁸ 321 NLRB 1386 (1996), *enfd.* 131 F.3d 1026 (D.C. Cir. 1997), *cert. denied* 524 U.S. 937 (1998).

¹⁹ 354 NLRB No. 79 (2009) (Chairman Liebman and Member Schaumber).

violations of Section 8(a)(5) of the Act, by bargaining in bad faith, dealing directly with employees and making numerous unilateral changes. However, the Board modified some of the judge's findings concerning the respondent's unilateral changes. First, the Board agreed with the judge that the respondent unlawfully refused to bargain with the union over the effects of its unilateral reduction of the number of nonworking holidays. As to the actual reduction decision, however, the Board found that it was not subject to bargaining and reversed the judge's finding of a violation. Second, the Board agreed with the judge that the respondent's promulgation of a no union-talk rule violated Section 8(a)(5). The Board also found that the rule independently violated Section 8(a)(1), but reversed the judge's finding that the rule also violated Section 8(a)(3). The Board noted the absence of evidence that the respondent had disciplined any employee pursuant to the rule. Third, the Board reversed the judge's finding concerning the respondent's changes in welder Kevin Lynch's work assignments. The Board noted that the assignments were consistent with past practice.

The United States Postal Service (USPS) contracts with the respondent for, among other things, the inspection and repair of nonmotorized mail-handling equipment.

From the time it began operations at the Richmond facility in August 1999, the respondent maintained a five-step progressive discipline system consisting of counseling, verbal warning, written warning, suspension, and termination. On January 18—well before the April 13, 2000 election, when a majority of the respondent's employees voted for union representation—the respondent announced that inspectors would be expected to achieve a minimum performance level of 80 percent of the USPS's efficiency standard. From August 1999 until the April 13 election, the respondent issued performance-related discipline to approximately 50 inspectors. From the April 13 election to the end of September, the respondent issued performance-related discipline to approximately 41 inspectors.

The judge held that an employer's exercise of some discretion in meting out discipline imposed a duty on the employer to engage in predisciplinary bargaining, provided the union has demanded it. The judge found the violation because the union sought predisciplinary bargaining and the respondent refused. The judge relied on *Washoe Medical Center, Inc.*²⁰ In reversing the judge, the Board noted that the respondent's disciplinary policies remained unchanged, but the respondent exercised some discretion in applying those policies.

²⁰ 337 NLRB 202, 202 fn. 1 (2001).

Discipline was meted out in the context of a five-step progressive disciplinary system, which predated the union's selection as collective-bargaining representative, and there was no significant deviation in discipline before and after this event. The framework of the progressive discipline system circumscribed the respondent's exercise of discretion as it disciplined employees. The Board found that the respondent did not violate Section 8(a)(5) by failing to notify the union and bargain with it before issuing specific discipline to particular individuals. The Board relied on *Fresno Bee*.²¹ The Board noted that *Fresno Bee* issued after *Washoe Medical Center* but that the two cases were not irreconcilable. In *Washoe Medical Center*, the union had not requested before-the-fact bargaining with regard to impositions of disciplinary actions, and the footnote addressing this issue stated a necessary, but not sufficient, condition for finding the violation alleged there. The Board also adopted the judge's finding that the respondent, by engaging in the conduct at issue, did not discriminate in violation of Section 8(a)(3).

The Board remanded the allegation that the respondent violated Section 8(a)(5) by more strictly enforcing its efficiency standards for inspectors. The Board noted that the record showed that the 80 percent minimum efficiency standard and the sanctions for failing to meet that standard remained essentially unchanged after the election. The Board also noted that there is at least a question as to whether the respondent's enforcement of the efficiency standard became more stringent. The Board further noted that a violation of Section 8(a)(5) would be established, on remand, if the evidence actually proved (1) the existence of a preelection established past practice of permitting inspectors to avoid additional discipline by gradually improving their performance over time; (2) a postelection change to the practice that removed the opportunity to avoid additional discipline through graduated improvement; and (3) the change to the past practice constituted a material and substantial change in employees' terms and conditions of employment.

3. Bargaining Obligation of Successor Employer

In *Southern Power Co.*,²² the Board affirmed the judge's finding that the respondent was a successor employer that violated Section 8(a)(5) of the Act by refusing to recognize and bargain with International Brotherhood of Electrical Workers (IBEW) System Council U 19, on behalf of Local 801-1, as the exclusive bargaining representative of operation technicians in a plant previously operated by Alabama Power,

²¹ 337 NLRB 1161 (2002).

²² 353 NLRB No. 116 (2009) (Chairman Liebman and Member Schaumber).

and by refusing to recognize and bargain with IBEW Local 84 as the exclusive bargaining representative of operation technicians in three plants previously operated by Georgia Power. The Board, however, reversed the judge and found that the respondent failed to prove that a bargaining unit consisting of operation technicians at all three former Georgia Power plants was not an appropriate unit. The Board found that the judge failed to give any weight to the historical representation of employees in the three former Georgia Power plants and erred by failing to give proper consideration to the importance of multiplant bargaining history in his unit determination. The Board further found that the respondent failed to show compelling circumstances why a three-plant bargaining unit was no longer appropriate.

4. Refusal to Adhere to a Collective-Bargaining Agreement

In *Sheehy Enterprizes*,²³ the Board adopted the judge's finding that the respondent violated Section 8(a)(5) and (1) of the Act by refusing to adhere to, and by repudiating, the collective-bargaining agreement to which it agreed to be bound. In finding the violation, the judge determined that the terms of the "Acceptance of Working Agreement" and the collective-bargaining agreement executed by the respondent's owner, James Sheehy, were clear and unambiguous, and covered all of the respondent's employees and work within the union's jurisdiction. The judge thus refused to consider parol evidence, in the form of Sheehy's hearing testimony, that Sheehy believed, based on the union's alleged misrepresentation regarding the scope of the agreement, that the agreement bound him only for a single project.

The Board found no merit in the respondent's exceptions, which assert that the judge erred in refusing to consider Sheehy's testimony. According to the respondent, parol evidence is admissible in the event of fraud, mutual mistake, or duress, and thus the judge should have considered Sheehy's testimony to show that there was no meeting of the minds due to the union's alleged misrepresentation concerning the scope of the agreement. Stating that the respondent's exception amounted to a defense that the contract is void because of "fraud in the execution," the Board found it unnecessary to resolve whether parol evidence is admissible under Board law to prove that defense. The Board found that even if Sheehy's testimony concerning the union's alleged misrepresentation were considered and credited, the respondent did not establish "fraud in the execution." The Board found that Sheehy's testimony did not establish that the union misrepresented to Sheehy that the agreement covered only a single project. In addition, the Board

²³ 353 NLRB No. 84 (2009) (Chairman Liebman and Member Schaumber).

concluded that “fraud in the execution” had not been established because the respondent had the opportunity to read and consider the agreement and the union did not deprive the respondent of the opportunity to ascertain the agreement’s true nature. Alternatively, to the extent the respondent argued that the agreement should be rescinded due to Sheehy’s mistake in signing it, the Board rejected that defense because the respondent had the opportunity to read the documents, but did not do so.

D. Union Interference with Employee Rights

1. Union Request for Employee Discharge

In *Palmer House Hilton*,²⁴ the Board adopted the judge’s finding that the respondent-union violated Section 8(b)(1)(A) and (2) of the Act by continuing to seek charging party Mohamad Safavi’s discharge following resolution of his dues delinquency. On July 13, 2007, the union requested that the employer terminate on July 20, a number of unit employees, including Mohamad Safavi, if they did not pay their dues or enter into a dues payment plan by that date. Safavi did not pay his dues or enter into a payment plan by July 20, but he was not discharged at that time. On July 25, Safavi made an initial dues payment and entered into a payment plan to pay the remaining arrearages over the next 3 months. Notwithstanding Safavi’s initial payment and agreement to a payment plan, the union continued to seek Safavi’s discharge, and the employer terminated him on July 30.

Citing *Teamsters Local 200 (State Sand & Gravel Co.)*,²⁵ the Board found that the circumstances of the case established that, by accepting his partial tender of back dues and allowing Safavi to enter into a payment plan, the union waived its right to enforce the union-security agreement against Safavi and violated Section 8(b)(1)(A) and (2) by doing so. The Board also adopted the judge’s finding that the respondent-employer violated Section 8(a)(3) by discharging Safavi at the union’s request. The Board found that the employer failed to investigate the circumstances of the union’s discharge request even after it learned that Safavi had already paid a portion of his back dues and entered into a payment plan. The Board thus concluded, consistent with precedent, that the employer violated Section 8(a)(3) by discharging Safavi when it had reasonable grounds for believing that the discharge request was unlawful.

²⁴ 353 NLRB No. 90 (2009) (Chairman Liebman and Member Schaumber).

²⁵ 155 NLRB 273, 277–278 (1965), citing *Longshoremens Local 6 (Colgate-Palmolive Co.)*, 138 NLRB 1037 (1962). In *State Sand & Gravel Co.*, the Board found that the union waived its right to pursue the discharge of an employee pursuant to a union-security agreement where it agreed to a back dues payment plan with the employee and accepted one payment, prior to actual discharge.

2. Duty of Fair Representation

In *Food & Commercial Workers Local 4 (Safeway, Inc.)*,²⁶ the Board reversed the judge and found that the respondent-union violated its duty of fair representation and therefore Section 8(b)(1)(A) by failing to provide the charging party with sufficiently verified financial information.

The respondent represents a unit of retail employees at the Safeway store in Whitefish, Montana. The employees are covered by a collective-bargaining agreement that contains a union-security clause. Charging party Pamela Barrett notified the respondent that she did not want to be a union member and that she wanted to pay only the “agency fee.” She also requested a “verified financial disclosure of union expenditures.” The respondent subsequently informed Barrett that her dues would be \$31.50 per month, which represented 95 percent of the current member dues rate. As support for this reduction, the respondent provided Barrett with a 1-page financial statement, listing its chargeable and nonchargeable expenses for the year, and stating its chargeable expense rate for representational activities to be 95 percent of its total expenses. The respondent also provided Barrett with the international union’s 2005 audited financial statement, which stated the international’s chargeable expense rate to be 85 percent. The respondent thereafter provided Barrett with an “Independent Accountant’s Report,” which stated that an accountant reviewed the expenditure statement, but that the information included in the statement was based solely on the representations of the respondent’s management. The report further stated that the accountant expressed no opinion regarding the financial statement as a whole.

The Board first set forth the relevant precedent. It explained that in *Communications Workers v. Beck*,²⁷ the Supreme Court limited the dues and fees a union can collect from objecting nonmember employees under a contractual union-security clause to amounts expended on activities germane to the union’s role as collective-bargaining representative. In *California Saw & Knife Works*,²⁸ the Board held that a union breaches its duty of fair representation if it fails to inform unit employees of their *Beck* rights.²⁹ In that case, the Board also held that, once an employee objects to paying dues for nonrepresentational activities and seeks a reduction in fees for such activities, the employee must be apprised of the percentage of the reduction, the basis for the calculation, and the right

²⁶ 353 NLRB No. 47 (2008) (Chairman Schaumber and Member Liebman).

²⁷ 487 U.S. 735 (1988) (*Beck*).

²⁸ 320 NLRB 224 (1995), enf. 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

²⁹ 320 NLRB at 233.

to challenge the union's figures.³⁰ To ascertain whether the information given objectors satisfies the union's duty of fair representation, the Board assesses whether the information is sufficient to enable the objector to determine whether to challenge the dues reduction calculations.³¹ In *Television Artists AFTRA (KGW Radio)*,³² the Board required that such expenditure information be audited "within the generally accepted meaning of the term, in which the auditor independently verifies that the expenditures claimed were actually made rather than accepts the representations of the union."³³ Alternatively, the Board stated that dues reduction information provided by a local union to a charging party can be based on a "local presumption," which permits a local union to presume that its allocation of chargeable and nonchargeable expenses is the same as that of its international affiliate.³⁴

Applying its decisions in *California Saw* and *KGW Radio*, the Board explained that although the respondent-union provided the charging party with a statement of its chargeable and nonchargeable expenses that was reviewed by an accountant, there was no evidence that the accountant did more than rely on the respondent's representations in preparing the report, such as independently verify that the expenses claimed were in fact made. Thus, the Board held that, under *KGW Radio*, the respondent did not provide to Barrett sufficiently verified expenditure information.

E. Equal Access to Justice Act

In *Horizon Contract Glazing*,³⁵ the Board adopted the judge's denial of the applicant's request for attorneys' fees and expenses pursuant to the Equal Access to Justice Act (EAJA). The Board agreed with the judge that conflicting inferences about the applicant's motivation for refusing to recall alleged discriminatee Joseph Upchurch could reasonably be drawn from testimony about statements made during his November 8, 2005 conversation with the applicant's secretary-treasurer, Michelle Klein. The Board relied on the principle set forth in *Meaden Screw Products Co.*³⁶ and *Europlast, Ltd.*,³⁷ that the General Counsel's litigation position is substantially justified where it is possible to draw a set of inferences that would have supported the General Counsel's position. The Board also noted that apart from the evidence about the

³⁰ *Id.*

³¹ *Id.* at 239.

³² 327 NLRB 474 (1999), reconsideration denied 327 NLRB 802 (1999), petition for review dismissed 1999 WL 325508 (D.C. Cir. 1999).

³³ 327 NLRB at 477.

³⁴ *Id.* at 477 fn. 15.

³⁵ 353 NLRB No. 118 (2009) (Chairman Liebman and Member Schaumber).

³⁶ 336 NLRB 298, 302–303 (2001).

³⁷ 311 NLRB 1089 (1993), *affd.* 33 F.3d 16 (7th Cir. 1994).

November 8 conversation, the General Counsel presented evidence of the applicant's shifting defenses for refusing to recall Upchurch, as well as other circumstantial evidence that, if credited, might reasonably have established the animus element of the General Counsel's prima facie case. The Board noted that this evidence provided further support for finding that the General Counsel's litigation position was substantially justified. Finally, the Board, citing *Golden Stevedoring Co.*,³⁸ reasoned that it is well established that where the General Counsel is compelled by the existence of a substantial credibility issue to pursue the litigation, and thereafter presents evidence which, if credited, would constitute a prima facie case, the General Counsel's case has a reasonable basis in law and fact and is substantially justified.

F. Remedial Order Provision

1. Joint and Several Liability

In *Pavilions at Forrestal*,³⁹ the Board reversed the judge's recommendation to impose joint and several liability on the respondents where the Board found that the respondent Atrium, the successor to respondent Princeton, violated Section 8(a)(5) by failing and refusing to meet with the union for the purpose of negotiating a successor collective-bargaining agreement.⁴⁰ The Board adopted the judge's finding that respondent Princeton violated Section 8(a)(5) of the Act by bypassing the union and dealing directly with unit employees. The Board further affirmed the judge's findings that respondent Atrium violated Section 8(a)(5) by making unilateral changes and by refusing to supply information requested by the union. However, reversing the judge, the Board found that the social security numbers requested by the union were not presumptively relevant and it therefore modified the recommended order to exclude social security numbers from the information respondent Atrium was required to provide.

The Board, contrary to the judge, reasoned that the imposition of joint and several liability was unwarranted because the General Counsel did not plead in his complaint that the respondents were alter egos or joint employers, or that the respondent Atrium was liable to remedy respondent Princeton's unfair labor practices as a successor under *Golden State Bottling Co. v. NLRB*,⁴¹ and did not advance those theories

³⁸ 343 NLRB 115, 116 (2004).

³⁹ 353 NLRB No. 60 (2008) (Chairman Schaumber and Member Liebman).

⁴⁰ The Board found it unnecessary to pass on the judge's finding that Respondent Princeton also violated Sec. 8(a)(5) by failing and refusing to bargain for a successor agreement prior to the transfer of operations to respondent Atrium, as any such finding would be cumulative and would not materially affect the remedy.

⁴¹ 414 U.S. 168 (1973).

at trial. Thus, the Board held that the imposition of joint and several liability was unwarranted and required the respondents to remedy only the respective violations that they committed.

2. Broad Order

In *Regency Grande Nursing & Rehabilitation*,⁴² the Board found that a broad cease-and-desist order was warranted because the respondent had engaged in persistent attempts, by varying methods, to interfere with its employees' protected rights. In an earlier proceeding, *Regency Grande Nursing & Rehabilitation Center*,⁴³ the Board found that the respondent unlawfully recognized Local 300S when it did not represent a majority of the employees, fraudulently concealed that recognition from the employees for over 7 months, and, when Local 1199 began organizing its employees, unlawfully entered into a collective-bargaining agreement with Local 300S, containing a union-security clause. The Board observed that almost immediately after the Third Circuit Court of Appeals enforced that Board Order, the respondent renewed its unlawful conduct in support of Local 300S and against Local 1199. In this proceeding, the Board found that the respondent unlawfully interrogated employees about their support of Local 1199, created the impression that their activities in support of 1199 were under surveillance, and terminated a former Local 300S supporter because of her activities in support of Local 1199. By this continued course of unlawful conduct, the Board found that the respondent demonstrated both a general disregard for fundamental statutory rights, i.e., the right of employees to select their own representatives, and the likelihood of future and varying efforts to frustrate those rights. See *Pan American Grain Co.*⁴⁴

3. Extension of the Union's Certification

In *Spurlino Materials*,⁴⁵ the Board disagreed with the judge's recommendation for an 8-month extension of the union's certification under *Mar-Jac Poultry Co.*,⁴⁶ where it found that the respondent violated Section 8(a)(5) and (1) of the Act by unilaterally assigning unit work to nonunit employees, and by instituting a new evaluation system and aptitude testing to select portable plant drivers from among unit employees. The Board further found that the respondent violated Section 8(a)(3) and (1) by failing to select three prominent union supporters as portable batch plant drivers, and by later suspending and then discharging one of them, and the respondent also violated Section 8(a)(1)

⁴² 354 NLRB No. 75 (2009) (Chairman Liebman and Member Schaumber).

⁴³ 347 NLRB 1143 (2006), enfd. 265 Fed.Appx. 74 (3d Cir. 2008).

⁴⁴ 346 NLRB 193 fn. 4 (2005).

⁴⁵ 353 NLRB No. 125 (2009) (Chairman Liebman and Member Schaumber).

⁴⁶ 136 NLRB 785 (1962).

by failing to accord the discharged employee his union representation rights during the investigatory meeting preceding his suspension.

The Board observed that it has often granted *Mar-Jac* extensions in cases involving a complete refusal to bargain, overall bad-faith bargaining, or a breakdown in negotiations caused by unfair labor practices. The Board further reasoned that there was no allegation that the respondent engaged in a complete refusal to bargain or overall bad-faith bargaining. Furthermore, it noted that there was no showing that the respondent's unilateral changes and other unfair labor practices had any impact on the parties' ongoing contract negotiations. The Board found the case to be similar to *Southern Mail*,⁴⁷ where the Board rejected the judge's recommendation for a *Mar-Jac* extension. The Board explained that the respondent in *Southern Mail* made unlawful unilateral changes and refused to furnish requested relevant information, but the General Counsel did not contend either that the respondent had refused to recognize and negotiate in good faith with the union for a contract following its certification or that the respondent's 8(a)(5) violations had tainted those negotiations.

⁴⁷ 345 NLRB 644, 644 fn. 2 (2005).

V

Supreme Court Litigation

During fiscal year 2009, 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 three private party petitions for certiorari in Board cases, and granted none.

On November 2, 2009 (during fiscal year 2010), the Supreme Court granted certiorari in *New Process Steel, LP v. NLRB*,¹ No. 08-1457, to consider the authority of the two-member Board to issue decisions and orders.

¹ 564 F.3d 840 (7th Cir. 2009).

VI

Enforcement Litigation

A. Two-Member Board Quorum

Section 3(b) of the Act authorizes the Board “to delegate to any group of three or more members any or all of the powers which it may itself exercise,” and provides that “[a] vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group” created by delegation. Acting pursuant to Section 3(b), the four sitting members of the Board on December 28, 2007, delegated all of the Board’s powers to a three-member group. Since January 1, 2008, upon the expiration of the two other Board members’ terms, remaining members Wilma B. Liebman and Peter C. Schaumber, acting as a two-member quorum of the duly constituted three-member group, have continued to exercise the powers the Board previously delegated to the three-member group.

During the fiscal year, four courts passed on the Board’s authority to issue decisions and orders as a two-member quorum, with three of those courts upholding that authority. In *Northeastern Land Services, Ltd. v. NLRB*,¹ the First Circuit reasoned that, once the Board delegated its authority to the three-member group pursuant to Section 3(b), the subsequent “vacancy, which left the two-member quorum remaining, may not, under the terms of [S]ection 3(b), impair the right of the two-member quorum to exercise all powers of the Board.”² In *New Process Steel, LP v. NLRB*,³ the Seventh Circuit reached the same result, reasoning that Section 3(b) “accomplished two things: first, it gave the Board the power to delegate its authority to a group of three members, and second, it allowed the Board to continue to conduct business with a quorum of three members but expressly provides that two members of the Board constitutes a quorum where the Board has delegated its authority to a group of three members.”⁴ In *Snell Island SNF LLC v. NLRB*,⁵ the Second Circuit, finding the language of Section 3(b) ambiguous, deferred to the Board’s reasonable interpretation of the statutory language, commending the Board’s “conscientious efforts to

¹ 560 F.3d 36 (1st Cir. 2009).

² *Id.* at 41.

³ 564 F.3d 840 (7th Cir. 2009).

⁴ *Id.* at 845–846.

⁵ 568 F.3d 410 (2d Cir. 2009).

stay ‘open for business’ in the face of vacancies that it did not create and for which it lacked the authority to fill.”⁶ The court held “that the [Board] panel . . . was a lawfully convened panel of three members [and b]ecause of the existence of a two-member quorum, the panel continued to operate in accordance with [S]ection 3(b) . . . after one of its members ceased to serve on the Board and even though the Board itself lost a quorum.”⁷

By contrast, in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*,⁸ the District of Columbia Circuit held that, under its reading of Section 3(b), the three-member quorum requirement must be satisfied at all times for the Board to act, “regardless of whether the Board’s authority is delegated to a group of its members.”⁹ The court explained that “[r]eading [Section 3(b)’s] two quorum provisions harmoniously, the result is clear: a three-member Board may delegate its powers to a three-member group, and this delegatee group may act with two members so long as the Board [three-member] quorum requirement is, ‘at all times,’ satisfied.”¹⁰

Following the District of Columbia Circuit’s adverse decision, Chairman Liebman and Member Schaumber issued a May 18, 2009 statement in which they explained that they would continue to issue decisions and orders, explaining that “the Board has an important public duty to keep functioning and to avoid an indefinite shutdown in its decision-making, where (as here) there is a reasonable legal basis for concluding that the Board can act.”

After the end of the fiscal year, the Supreme Court granted a writ of certiorari to review the Seventh Circuit’s decision in *New Process Steel, LP*.

B. Coverage of the Act—Independent Contractor or Employee

Section 2(3) of the Act broadly defines the term “employee” but expressly excludes from the definition “any individual having the status of an independent contractor.” In *FedEx Home Delivery v. NLRB*,¹¹ the District of Columbia Circuit concluded, contrary to the Board, that the employer’s drivers were independent contractors, not statutory employees, because “the indicia favoring a finding [that] the [drivers] are employees are clearly outweighed by evidence of entrepreneurial

⁶ Id. at 424.

⁷ Id.

⁸ 546 F.3d 469 (D.C. Cir. 2009).

⁹ Id. at 472.

¹⁰ Id. at 472–473.

¹¹ 563 F.3d 492 (D.C. Cir. 2009).

opportunity.”¹² The court explained that its evolving jurisprudence had shifted the emphasis of the common-law agency test, so that “while all the considerations at common law remain in play, an important animating principle by which to evaluate those factors in cases where some factors cut one way and some the other is whether the position presents the opportunities and risks inherent in entrepreneurialism.”¹³ Applying its test, the court concluded that the drivers were independent contractors because they had “[t]he ability to operate multiple routes, hire additional drivers . . . and helpers, and to sell routes without permission.”¹⁴

C. Availability of Judicial Review

In *Oil Capitol Sheet Metal, Inc.*,¹⁵ the Board, in a 2007 decision finding that the employer had unlawfully refused to hire a union organizer, announced a new evidentiary rule to be applied to determine backpay and instatement liability in the subsequent compliance proceeding. Under that rule, where unfair labor practices are committed against “salts” (union members who apply for jobs with the short- or long-term purpose of organizing the employer’s work force), the Board’s General Counsel, as part of the existing burden to prove a reasonable amount of gross backpay due, must present affirmative evidence that the salt would have worked for the employer for the period claimed but for the employer’s unlawful discrimination.¹⁶

In *Sheet Metal Workers Local 270 v. NLRB (Oil Capitol Sheet Metal, Inc.)*,¹⁷ the District of Columbia Circuit concluded that the union’s challenges to that new rule were not ripe and dismissed the petition for review for lack of appellate jurisdiction. The court explained that “the compliance proceedings have not yet taken place, and so at this point we do not know what effect, if any, the new evidentiary rule will have on backpay and instatement remedies.”¹⁸ The court added, “if and when the compliance proceedings do result in an actual injury, the union[’s] challenge will come to us in a concrete factual context, shedding light on how the new rule operates in practice.” The court, moreover, did not perceive any hardship to the union from withholding review at this point, as it can challenge the rule in a subsequent compliance proceeding.¹⁹

¹² Id. at 504.

¹³ Id. at 497.

¹⁴ Id.

¹⁵ 349 NLRB 1348 (2007).

¹⁶ Id. at 1348 fn. 5, 1349.

¹⁷ 561 F.3d 497 (D.C. Cir. 2009).

¹⁸ Id. at 501.

¹⁹ Id. at 501–502.

D. Duty to Bargain

Section 8(a)(5) and (d) of the Act obligate an employer to bargain with the representative chosen by a majority of its employees. An employer who refuses to bargain in order to challenge the Board's certification of a union as the employees' representative in the aftermath of an election is required to bargain with the union for a reasonable time, typically 1 year, and may not withdraw recognition from the union during that certification year. In *Virginia Mason Medical Center v. NLRB*,²⁰ the Ninth Circuit approved the Board's rule that, at the conclusion of the test-of-certification proceeding, the certification year begins to run when the employer and union sit down for their first face-to-face collective-bargaining session.²¹ The court accordingly affirmed the Board's finding that the employer violated the Act by withdrawing recognition less than 1 year after the parties' first bargaining session. The court, in agreement with the Board, rejected the employer's claim that the certification year began months earlier, when it provided requested information to the union.²² If that were the rule, the court explained, "a union could, in effect, be penalized for requesting information prior to negotiations, because that could result in less time for negotiations than if the union had not requested the information."²³

An employer must continue to recognize and bargain with the majority-representative union notwithstanding its merger or affiliation with another union, unless the merger or affiliation raises a question concerning representation.²⁴ As set forth in the Board's decision in *Sullivan Brothers*, the Board had traditionally assessed the employer's continuing bargaining obligation by inquiring both whether the bargaining unit employees were afforded adequate due process in the merger or affiliation process and whether there was substantial continuity between the pre- and post-merger or post-affiliation entity.²⁵

In *Raymond F. Kravis Center for the Performing Arts, Inc. v. NLRB*,²⁶ the District of Columbia Circuit upheld the Board's decision to overrule *Sullivan Brothers'* due process requirement in light of *NLRB v. Financial Institution Employees Local 1182 (Seattle-First)*.²⁷ There, the D.C. Circuit observed, the Supreme Court held that the Board had exceeded its

²⁰ 558 F.3d 891 (9th Cir. 2009).

²¹ *Id.* at 895.

²² *Id.*

²³ *Id.* (quoting *Van Dorn Plastic Machinery Co.*, 300 NLRB 278 (1990)).

²⁴ See *NLRB v. Financial Institution Employees Local 1182 (Seattle-First)*, 475 U.S. 192, 201–204 (1986).

²⁵ *Sullivan Bros. Printers, Inc.*, 317 NLRB 561, 562 (1991).

²⁶ 550 F.3d 1183 (D.C. Cir. 2009).

²⁷ 475 U.S. 192, 201–204 (1986).

statutory authority by requiring that all bargaining unit members, including nonunion members, be allowed to vote on an affiliation, explaining that an employer's obligation to bargain with an incumbent union continues unless there is a question concerning representation.²⁸

The D.C. Circuit agreed with the Board that *Seattle-First's* rationale applied both to union affiliations and to mergers. It further agreed with the Board's determination that "when there is 'substantial continuity' between the pre-merger and post-merger union, the lack of a membership vote on the merger does not cast doubt on employee support for the union because the union is 'largely unchanged.'"²⁹

E. Discrimination Against Protected Activity

In *Register-Guard*,³⁰ a 2007 decision, the Board, "applying the settled principle that, absent discrimination, employees have no statutory right to use an employer's equipment or media for Section 7 communications," held that an employer "may lawfully bar employees' nonwork-related use of its e-mail system, unless the [employer] acts in a manner that discriminates against Section 7 activity."³¹ The Board, modifying its definition of discrimination, held that unlawful discrimination consists of "disparate treatment of activities of a similar character because of their union or other Section 7-protected status."³² Applying that definition, the Board found that the employer discriminated by disciplining an employee for sending coworkers a nonsolicitation, informational e-mail, because the employer had allowed other nonsolicitation e-mails.³³ The Board found no discriminatory discipline for the same employee's e-mails soliciting union support, because there was no evidence that the employer had allowed any organizations (except for United Way) to solicit on its e-mail system, and therefore there was no showing of similar permitted use of the system.³⁴

On review in *Guard Publishing Co. v. NLRB*,³⁵ the union did not challenge the Board's finding that an employer may bar employee use of its e-mail system for nonwork reasons. The union did challenge the Board's finding that the employer had lawfully disciplined the employee for sending e-mail solicitations, while the employer challenged the finding that it unlawfully disciplined the same employee for using its e-

²⁸ 550 F.3d at 1190.

²⁹ 550 F.3d at 1191 (quoting 351 NLRB 143, 147 (2007)).

³⁰ 351 NLRB 1110 (2007).

³¹ Id. at 1116.

³² Id. at 1118.

³³ Id. at 1119.

³⁴ Id. at 1119 & fn. 23.

³⁵ 571 F.3d 53 (D.C. Cir. 2009).

mail system to send an informational e-mail to employees. The District of Columbia Circuit found all of the discipline to be unlawful.

In upholding the Board's finding that the employer unlawfully disciplined the employee for sending the informational e-mail, the court agreed with the Board that the e-mail was not a solicitation because it did not call for action, and that the discipline was discriminatory because the employer had permitted other types of nonsolicitation, nonwork-related e-mails.³⁶

The court, however, concluded that substantial evidence did not support the Board's finding that the employer lawfully disciplined the employee for sending two union solicitation e-mails because they were organizational, not personal, solicitations. The court stated, "[w]hatever the propriety of drawing a line barring access based on organizational status," the employer never invoked that rationale. The court observed that the employer's communications policy did not draw a distinction between organizational and personal solicitations, nor did the disciplinary warnings. "In short, neither the company's written policy nor its express enforcement rationales relied on an organizational justification. . . . [I]n practice the only employee e-mails that had ever led to discipline were the union-related e-mails at issue here."³⁷

F. The Duty to Give Strike Notice Under Section 8(g)

Section 8(g) of the Act provides that "[a] labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing. . . . The notice shall state the date and time that such action will commence." Section 8(d), in turn, provides that "[a]ny employee . . . who engages in any strike within the appropriate period specified in [Section 8(g)] . . . shall lose his status as an employee of the employer engaged in the particular labor dispute." Three cases explored the contours of Section 8(d) and (g) in varying factual settings.

In *Service Employees, United Healthcare Workers-West v. NLRB (California Pacific Medical Center)*,³⁸ the Ninth Circuit agreed with the Board that Section 8(g) applied to a concerted refusal to work voluntary overtime, of which the union provided only 4 days' notice. The union claimed that, because each employee was permitted to decline overtime on an individual basis, there was no "refusal to work" within the meaning of Section 8(g). Rejecting that argument, the court emphasized

³⁶ Id. at 58–59.

³⁷ Id. at 60.

³⁸ 574 F.3d 1213 (9th Cir. 2009).

that “the members did not act on an individual basis,” but that their action was, rather, a concerted refusal to work covered by Section 8(g) because it was “orchestrated by the Union.”³⁹

In *Civil Service Employees Assn. Local 1000, AFSCME v. NLRB*,⁴⁰ the Second Circuit rejected the Board’s finding that the employer lawfully discharged five employees who participated in picketing, but did not strike, where the union that called for the picketing failed to provide the employer with 10-days’ notice of the picketing. The court emphasized that while Section 8(d) specifically sets forth sanctions for employees for participating in a strike where the union has failed to give notice, it “does not include a comparable provision about employees who participate in *picketing*” conducted by a union in violation of 8(g)’s notice requirements.⁴¹ The court determined that the absence of “picketing” from Section 8(d) reflected Congressional intent to distinguish the consequences to employees for engaging in a strike versus a picket. The court found that pursuant to the statute’s plain language “labor organizations are subject to sanction for *either* striking or picketing without observing the notice requirement specified by Section 8(g) because of the obligation that section attributes to them, [whereas] the statute specifies sanctions for employees who participate in the violation only in the case of strikes and not in the case of picketing”⁴²

The court found inapposite cases in which the Board had held employee participation in picketing that violated Section 8(b) to be unprotected. Specifically, the court noted that Section 8(b) is broader in scope, proscribing conduct by “agents” of a labor organization, whereas Section 8(g) reaches only “labor organization[s].”⁴³

NLRB v. Special Touch Home Care Services,⁴⁴ in contrast, presented a circumstance in which it was undisputed that the union calling the strike by home-health aides *had* complied with Section 8(g). The Board found that the aides who participated in that lawful strike could not lawfully be disciplined on the basis of having failed either to respond to an employer survey asking about employees’ intent to miss work during the strike, or to call in before being absent as required under the employer’s rules.⁴⁵ The court remanded the case to the Board, finding that the Board had failed to adequately analyze the intersection between

³⁹ Id at 1217.

⁴⁰ 569 F.3d 88 (2d Cir. 2009).

⁴¹ Id. at 93. (Emphasis in original.)

⁴² Id. (Emphasis in original.)

⁴³ Id. at 94.

⁴⁴ 566 F.3d 292 (2d Cir. 2009)

⁴⁵ Id. at 295.

Section 8(g)—which “places a burden only on labor organizations, not individual employees” to give the appropriate notice—and the “plant-rule doctrine,” under which an employer is entitled to neutrally enforce reasonable nondiscriminatory plant rules, such as the call-in rule here.⁴⁶ The court directed the Board, on remand, to determine “whether [the employer] may enforce its call-in rule and mandate compliance with its survey, reasonably relying on the results of both, in light of Section 8(g)’s requirement that only unions and not individual employees are required to give notice to health care employers.”⁴⁷ Ultimately, the Board “need only decide the degree to which the plant rule doctrine is affected by Section 8(g) and whether, in this case, after [the employer] was informed of the strike by the [u]nion, [the employer’s] employees are still entitled to labor law protection given their failure to comply with the call-in rule or honestly answer [the employer’s] survey.”⁴⁸

⁴⁶ Id. at 300.

⁴⁷ Id.

⁴⁸ Id. at 301.

VII

Injunction Litigation

A. Injunction Litigation Under Section 10(j)

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

In Fiscal 2009, the Board filed in district courts a total of 23 petitions for temporary injunctive relief under Section 10(j). All of these petitions were filed against employers. Four cases authorized in a prior fiscal year were also pending in district court at the beginning of the fiscal year. Of these 27 cases, 8 were settled or adjusted prior to court action. District courts granted injunctions in eight cases, and denied injunctions in five cases. One case was withdrawn prior to a court decision as moot due to the issuance of a Board order, and another was withdrawn due to changed circumstances. Four cases remained pending in district court at the end of the fiscal year.

Of the 13 cases litigated to decision in Fiscal 2009, 5 cases involved employer withdrawals of recognition from incumbent unions. Three cases involved successor employers' refusals to recognize and bargain with the incumbent union that had represented the employees of the predecessor employer. Two cases this fiscal year involved employer misconduct during bargaining negotiations. Two cases involved the discharges of union activists during organizing campaigns; one of those also involved an interim remedial bargaining order. Finally, one case involved an asset sequestration order.

One significant case during this period involved the interim reinstatement of employees discharged for engaging in union organizing activity and an interim remedial bargaining order. In *Barker v. Regal Health Care & Rehab Center*,² 11 of the approximately 13 licensed practical nurses at a skilled nursing facility signed union authorization cards. The employer responded with a massive antiunion campaign that included at least 15 incidents of threats of termination, threats to sue and blackball employees, interrogations, and the discharge of three leading

¹ See, e.g., *Ahearn v. Jackson Hospital Corp.*, 351 F.3d 226 (6th Cir. 2003); *Bloedorn v. Francisco Foods, Inc.*, 276 F.3d 270 (7th Cir. 2001).

² 632 F.Supp. 2d 817 (N.D.Ill. 2009).

union proponents, all of whom who had been either specifically targeted for discharge by name or directly threatened with discharge. The court found, largely on the basis of a favorable administrative law judge's decision, that there was a very strong likelihood that the Regional Director would succeed on the merits of the case. The court also found that injunctive relief, including an interim remedial bargaining order, was warranted despite the employer's reinstatement of the discriminatees after the administrative law judge's decision issued. The court reasoned that the passage of time threatened irreparable harm to the employees who would be deprived of union representation.

In two other cases, the Board obtained interim recognition and bargaining orders against employers that had withdrawn recognition of incumbent unions, relying on employee petitions that had been tainted either by employer assistance or by employer unfair labor practices. In *Glasser v. Heartland-University of Lovonia, MI, LLC*,³ the employer withdrew recognition from the incumbent union that represented 80 employees based on the combined number of signatures in two separate antiunion petitions. Neither petition individually contained signatures from a majority of unit employees. The court, like a prior administrative law judge's decision, concluded that the later petition had been tainted by the employer's interrogation and threats, as well as solicitation of signatures and assistance in the collection of signatures. The court concluded that the employer's actions "crossed the line" from lawful ministerial aid to employees attempting to decertify a union to active solicitation and promotion against the union. The court further found that interim relief was necessary to preserve the effectiveness of the Board's remedies. In *Osthus v. Vincent/Metro Trucking, LLC*,⁴ the employer withdrew recognition from the union representing approximately 13 unit employees during an extension of the certification year after it had refused to provide the union with information required for bargaining and after its owner had solicited employees to sign anti-union affidavits. The court found that that there was a likelihood of proving that the employer's conduct was unlawful and that interim injunctive relief was warranted. Injunctive relief would preserve the employees' free choice of the union as their bargaining representative and would preserve employee support for the union necessary for effective collective bargaining.

In two other cases, employers withdrew recognition from incumbent unions in situations where the employers could not prove that the unions had actually lost the support of a majority of unit employees. In *Norelli*

³ 632 F.Supp. 2d 659 (E.D. Mich. 2009).

⁴ 2009 WL 2516165 (D. Minn. 2009).

v. Fremont-Rideout Health Group,⁵ the employer withdrew recognition during contentious negotiations for a first contract based on an antiunion petition in a 450-person unit. The employer then made unilateral changes, including wage increases, and impliedly blamed the union for the delay in wage increases. The court concluded that there was a likelihood of successfully proving that the petition did not establish an actual loss of majority support for the union. The court relied on the fact that a sufficient number of employees revoked their signatures and signed cards reaffirming their union support before the employer's withdrawal of recognition. The court also found a fair chance of success in proving that the withdrawal of recognition was unlawful because a large number of signatures on the antiunion petition predated the employer's withdrawal by at least 7 months and were therefore stale. Similarly, in *Hubbel v. Crete Cold Storage, LLC*,⁶ the employer withdrew recognition upon expiration of its most recent collective-bargaining agreement. In doing so, the employer improperly relied on the fact that only one of three employees remaining in the unit after layoffs was a member of the union, that this employee no longer wanted to pay dues, and that employees did not talk with the union representative when she visited the facility. The court found that the withdrawal of recognition was likely unlawful and that, unless interim relief was granted, the enforcement of the Act would be thwarted.

In *Hoffman v. Parksit Group*,⁷ the employer, which sells and distributes building materials, terminated its relationship with a subcontractor, whose 27 drivers and warehouse employees were represented by the union, in order to conduct its trucking operations with its own employees. The court agreed with the Regional Director that the employer employed a substantial and representative complement of the subcontractor's employees when it commenced its own trucking operations, and that a majority of those employees were former employees of the predecessor subcontractor. The court concluded that there was reasonable cause to believe that the employer was a *Burns* successor, with an obligation to recognize and bargain with the union. In addition, the court found reasonable cause to believe that the employer had discriminatorily refused to hire 10 former employees of the predecessor. In making these reasonable cause determinations, the court relied, in part, on the administrative law judge's decision finding that the employer had violated the Act. Finally, the court concluded that temporary injunctive relief requiring recognition, bargaining, and

⁵ 2009 WL 2015061 (E.D. Cal. 2009).

⁶ 2009 WL 3152037 (D. Neb. 2009).

⁷ 596 F.Supp. 2d 416 (D. Conn. 2009).

instatement of the alleged discriminatees was just and proper in order to preserve the lawful status quo.

Also during this fiscal year, two appellate courts affirmed decisions involving interim reinstatement of large groups of employees. In *Muffley v. Spartan Mining Co.*,⁸ a successor employer discriminatorily refused to hire 85 employees who worked for the predecessor coal mine operator and refused to bargain with the union. The Fourth Circuit affirmed the district court's grant of interim reinstatement in order to prevent irreparable harm to the effectiveness of the eventual Board order and the district court's denial of an interim bargaining order. In doing so, the court rejected the employer's contentions that the passage of time since the refusal-to-hire violation or the balance of harms warranted dismissal of the injunction petition. Significantly, the court concluded that the Board lawfully had delegated its 10(j) authority to the General Counsel, pursuant to Section 3(d) of the Act, becoming the first court of appeals to so hold. In addition, the court held that the four-part traditional equity standard should apply to 10(j) cases within the Fourth Circuit.

Similarly, in *Mattina v. Kingsbridge Heights Rehabilitation & Care Center*,⁹ the Second Circuit affirmed a district court's order of interim reinstatement of a large number of unfair labor practice strikers when they unconditionally offered to return to work. The appellate court also affirmed the interim rescission of significant unilateral changes, including the employer's cessation of health insurance payments. Thus, the court held that the district court properly found reasonable cause to believe that the employer had violated the Act and that injunctive relief was necessary to prevent irreparable harm and preserve the status quo.

B. Injunction Litigation Under Section 10(l)

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

⁸ 570 F.3d 534 (4th Cir. 2009), affg. *Muffley v. Massey Energy Co.*, 547 F.Supp. 2d 537 (S.D.W.Va. 2008).

⁹ 329 Fed.Appx. 319, 2009 WL 1383330, 186 LRRM 2562 (2d Cir. 2009) (summary order).

¹⁰ Sec. 8(b)(4)(A), (B), and (C), as enacted by the Labor Management Relations Act of 1947, prohibited certain types of secondary strikes and boycotts, strikes to compel employers or self-employed persons to join labor or employer organizations, and strikes against Board certifications of bargaining representatives. These provisions were enlarged by the 1959 amendments of the Act (Title VII of Labor-Management Reporting and Disclosure Act) to prohibit not only strikes and the inducement of work stoppages for these objects but also to proscribe threats, coercion, and restraint addressed to employers for these objects, and to prohibit conduct of this nature where an object was to compel an employer to enter into a "hot cargo" agreement declared unlawful in another section of the Act, Sec. 8(e).

8(b)(7),¹¹ and against an employer or union charged with a violation of Section 8(e),¹² whenever the General Counsel's investigation reveals "reasonable cause to believe that such charge is true and a complaint should issue."¹³ 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.¹⁴ 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 four petitions for injunctions under Section 10(l). Of the total caseload, comprised of this number together with no cases pending at the beginning of the period, two cases were settled and one was withdrawn. None were pending court action at the close of the report year. One petition went to final order, with the court granting an injunction in a case involving a jurisdictional dispute in violation of Section 8(b)(4)(D).

That 8(b)(4)(D) case involved two union-initiated lawsuits in contravention of a 10(k) award assigning disputed work to one of two unions and resulted in appellate litigation during the fiscal year. In *Small v. Plasterers Local 200 (Standard Drywall, Inc.)*,¹⁵ the district court temporarily enjoined a union from continuing to prosecute two lawsuits against an employer, which allege violations of state law. The court concluded that the lawsuits had objectives that were illegal under Federal law because any resolution of those suits in favor of the union would directly conflict with the Board's determination in the 10(k) proceeding. During this fiscal year, the Ninth Circuit affirmed the district court

¹¹ Sec. 8(b)(7), incorporated in the Act by the 1959 amendments, makes organizational or recognitional picketing under certain circumstances an unfair labor practice.

¹² Sec. 8(e), also incorporated in the Act by the 1959 amendments, makes hot cargo agreements unlawful and unenforceable, with certain exceptions for the construction and garment industries.

¹³ See generally *Pye v. Teamsters Local Union 122*, 61 F.3d 1013 (1st Cir. 1995); *Kinney v. Operating Engineers Local 150*, 994 F.2d 1271 (7th Cir. 1993).

¹⁴ Sec. 8(b)(4)(D) was enacted as part of the Labor Management Relations Act of 1947.

¹⁵ 2008 WL 4447684 (C.D. Cal. 2008), aff'd. 2009 WL 689632 (9th Cir. 2009), memorandum disposition withdrawn and motion to publish granted 326 Fed.Appx. 444, 2009 WL 1513988 (9th Cir. 2009).

injunction, but later withdrew its unpublished decision when it granted the Board's motion for publication, stating that a superseding opinion will be filed at a later date.

Also during this report period, the Agency litigated in the Third Circuit a similar case from Fiscal 2008. The district court in *Moore-Duncan v. Sheet Metal Workers Local 27 (E. P. Donnelly, Inc.)*,¹⁶ denied a 10(l) petition in a similar 8(b)(4)(D) jurisdictional dispute. The district court concluded that the Board had not established reasonable cause to believe that the union's Federal court lawsuit contradicted the Board's 10(k) award because, inter alia, the court believed that certain language in the award permitted the lawsuit. The court further concluded that injunctive relief would not be just and proper because, inter alia, the disputed work had been completed. The Board's appeal is pending.

¹⁶ 624 F.Supp. 2d 367 (D. N.J. 2008).

VIII

Contempt Litigation and Compliance Branch

During fiscal year 2009, the Contempt Litigation and Compliance Branch (CLCB) provided a range of services, including advice, training, and assistance to Regions as well as conducting Federal court litigation, including contempt proceedings, actions under the Federal Debt Collection Procedures Act of 1990 (FDCPA) and bankruptcy actions. A total of 282 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, 110 cases were formal submissions respecting contempt or other compliance actions; in 172 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 144 asset/entity database investigations to assist Regions in their compliance efforts, a task over and above the 282 referrals to CLCB referenced above. In addition, over 420 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 110 contempt or other formal submissions, voluntary compliance was achieved in 46 cases during the fiscal year, without the necessity of filing a contempt petition or other initiating papers, and 16 other cases settled after the filing of a formal pleading in court but before trial. In 40 other cases, it was determined that contempt or other proceedings were not warranted.

In cases deemed to have merit, six civil contempt or equivalent proceedings were instituted, including one in which body attachment was sought. A number of ancillary compliance proceedings were also instituted by CLCB in FY 2009, including three proceedings seeking protective restraining orders; seven proceedings to obtain postjudgment writs of garnishment; four proceedings to obtain prejudgment writs of garnishment; two proceedings to obtain turnover orders for garnished funds; one execution proceeding; two motions to cause the turnover of assets subject to execution; four proceedings to freeze and/or obtain access to safe deposit boxes; one proceeding attacking the validity of liens; and one proceeding attacking fraudulent transfers. CLCB instituted five proceedings in bankruptcy courts, including one motion to take Section 2004 examinations; and four proceedings objecting, in part, to free and clear sales, or other asset sales.

Four civil contempt or equivalent adjudications were awarded in favor of the Board in FY 2009, including one assessing fines. During FY 2009, CLCB also successfully obtained five protective restraining orders; eight

postjudgment writs of garnishment; one prejudgment writ of garnishment; three turnover orders for garnished funds; one execution order; two turnover orders with regard to property subject to execution; two orders freezing respondent's access and/or granting Board access to safe deposit boxes; one subpoena enforcement order; and two orders denying respondent's motion to quash subpoenas under RFPA. In bankruptcy courts, CLCB obtained one order protecting potential successorship liability in a free and clear sale and one order approving a settlement of the Board's objection to sale.

During the fiscal year, CLCB collected \$35,000 in fines and \$4,585,089 in backpay or other compensatory damages, while recouping \$35,445 in court costs and attorneys' fees incurred in contempt litigation.

There were a number of noteworthy cases decided in FY 2009. In *Electrical Workers Local 98*, the Board litigated a civil contempt case against a recidivist secondary boycotter which once again took lightly its obligation to engage in lawful picketing. Following trial, the Special Master issued an initial report upholding all of the Board's substantive allegations and ordering a separate briefing schedule on remedies. Oral argument on the remedial issues had the effect of persuading Local 98 to begin serious settlement negotiations. The settlement terms, approved by the Special Master and the Third Circuit, included payment by Local 98 to the Board of \$90,000, representing fines, attorneys' fees and compensatory damages, to be distributed by the Board at its sole discretion; multiple prepicketing record-keeping and consultation requirements to minimize the possibility of future unlawful picketing; an increased compliance fine of up to \$40,000 per violation and up to \$5000 per day against the union; and a fine of up to \$1000 per day against individual officers or agents of the union for future violations, said amounts not to be reimbursed by Local 98.

In *Pulsar II*, the First Circuit adjudicated in civil contempt the company's sole shareholder, a joint debtor with the company, for failing to pay backpay and benefits as required by the Court's earlier Consent Order. The Court had earlier denied a motion to stay the contempt proceedings against him individually, based on the company's filing of bankruptcy, reasoning that the automatic stay provisions apply only to suits against the bankrupt debtor.

Finally, in *A. J. Mechanical*, the Eleventh Circuit granted a protective restraining order to protect the Board's backpay claims against the two shareholders of the company, who had been held responsible for the judgment debt based on a "piercing the corporate veil" theory. The restraining order was based, among other things, on the owners' prior sale of their home, accompanied by a false declaration under oath that they were not involved "in any proceedings in which a money judgment might be entered against them." This was consistent with their proven proclivity to take

actions to undermine the Board's orders—including the improper siphoning to themselves of company assets.

IX

Special Litigation

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

A. Litigation Concerning Board and Court Jurisdiction

In *Holyoke Visiting Nurses Assn. v. NLRB*,¹ the First Circuit dismissed the plaintiff health-care employer's petition appealing the Board's Section 9 representation case determination of the appropriate bargaining unit. The First Circuit noted that the method for obtaining review of an NLRB unit determination requires appeal from an unfair labor practice decision and order, and that employers cannot obtain direct judicial review of unit determinations made pursuant to Section 9 of the Act. The First Circuit rejected the contention that the employer and employees could agree to waive this jurisdictional requirement.

B. Freedom of Information Act Litigation

In *Zarcon, Inc. v. NLRB*,² the Eighth Circuit held that the OPEN Government Act of 2007—providing for attorneys fees in certain FOIA settlements—did not apply retroactively to settlements that were agreed to before the enactment of the Open Government Act. The plaintiff in *Zarcon* was a respondent in an unfair labor practice case. During the investigation of the charge, a Board employee had taken an affidavit of a supervisor, arguably in violation of the relevant legal ethics rules regarding contact with represented persons. The plaintiff later requested information about the identity of the Board employee and a copy of the affidavit. This request was denied, and the plaintiff commenced FOIA litigation seeking the document. Ultimately, the Board settled and gave the affidavit to the plaintiff. The plaintiff then sought attorneys fees under a FOIA provision authorizing such fees where the plaintiff “substantially prevailed” in FOIA litigation.³ After the settlement, but while the request for fees was still pending before the district court, Congress passed the OPEN Government Act.

Prior to the OPEN Government Act, the Supreme Court had found in its *Buckhannon* case⁴ that a settlement agreement—even an agreement

¹ 185 LRRM 3341 (1st Cir. 2009), 2009 WL 690091 (1st Cir. Feb. 26, 2009).

² 578 F.3d 892 (8th Cir. 2009).

³ 5 U.S.C. § 552(a)(4)(E)(i).

⁴ *Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 532 U.S. 598 (2001).

which gave the plaintiff much or all of what the plaintiff sought in litigation—was generally insufficient to trigger liability for fees under the Fair Housing Amendments Act and the Americans with Disabilities Act. Numerous circuit courts—but not the Eighth Circuit, which had not yet addressed the issue—had extended this holding to the FOIA context. In 2007, Congress passed the OPEN Government Act, which was designed to “clarify” that a FOIA plaintiff is entitled to fees where the plaintiff has “obtained relief through . . . a voluntary or unilateral change in position by the agency, if the complainant’s claim is not insubstantial.”⁵

The Eighth Circuit in *Zarcon* held that the OPEN Government Act “definitively established” that attorneys fees can be recovered in settlement situations. However, the court refused to apply that Act to this case because the settlement had occurred before the OPEN Government Act was passed. The court rejected an argument that the law in the Eighth Circuit prior to the OPEN Government Act had already permitted fees in settlement situations, and that the OPEN Government Act thus did not change the law in the Eighth Circuit. The court analyzed the reasoning of *Buckhannon*, and of Eighth Circuit opinions under other statutes, and held that, pre-OPEN Government Act, these decisions required that settlements would *not* create liability for fees in the FOIA context. Thus, in excluding FOIA from the reach of *Buckhannon*, Congress changed the law.

C. Litigation Concerning the Board’s Subpoena Power

In *NLRB v. Interbake Foods, LLC*,⁶ the District Court for the District of Maryland denied the Board’s application for an order requiring compliance with a subpoena to the extent that an administrative law judge ordered production of three documents for *in camera* inspection. During the unfair labor practice hearing, the ALJ ordered Interbake to produce the documents so that he could conduct an *in camera* inspection to determine whether those three documents on Interbake’s privilege log were protected by the attorney-client or work-product privileges. Interbake refused to do so, and the Board filed an application with the district court for an order compelling the *in camera* inspection before the ALJ.

The court denied the Board’s application. Rejecting the NLRB’s authority to assess whether subpoenaed documents are privileged, the court noted that under Section 11(2) of the NLRA, it is the district court that “shall have jurisdiction” to issue an order enforcing the subpoena.

⁵ 5 U.S.C. § 552(a)(4)(E)(ii).

⁶ No. RDB-09-2081, 2009 WL 3103819 (D. Md. Sept. 22, 2009).

The court relied upon, *inter alia*, *NLRB v. Detroit Newspapers*,⁷ where the Sixth Circuit held that the district court's duty to determine privilege may not be delegated to an ALJ. Thus, the district court similarly concluded that only an Article III court, not an ALJ, may make that privilege determination. However, the court also found that because Interbake met its burden of establishing that the documents were privileged, and the Board did not articulate a good-faith basis for doubting the privilege claim, it would not require the *in camera* inspection. The Board has appealed the district court's decision to the Fourth Circuit, which is now pending.

D. Litigation Concerning Court Subpoena and the Board's Touhy Requirement

In *D'Onofrio v. City of New York*,⁸ the United States District Court for the Eastern District of New York granted the Board's motion to quash a subpoena duces tecum and ad testificandum served on a Board supervisory attorney by the plaintiff in his district court litigation against his former employer and union. In support of its motion to quash, the Board had argued that the plaintiff failed to obtain the necessary authorization of the General Counsel under Section 102.118 of the Board's Rules and Regulations, 29 C.F.R. Sec. 102.118, and that any testimony that plaintiff would elicit from the Board attorney was protected by privileges, including the deliberative process, work product, informer's, and law enforcement investigatory privileges. The court noted that the General Counsel authorized the release of the requested nonprivileged documents but had refused consent to produce a Board-agent affidavit or the Board attorney's testimony. Accordingly, the court granted the Board's motion to quash the subpoena on that basis, finding that the documents and testimony were properly withheld under *United States ex rel. Touhy v. Ragen*.⁹ The court noted that pursuant to *Touhy*, an agency employee cannot be compelled to comply with a subpoena where, as here, a valid agency regulation prohibits such compliance in the absence of agency authorization and no authorization was granted.

E. Litigation Concerning Section 302 of the LMRA and RICO

In *Adcock v. Freightliner LLC*,¹⁰ the Fourth Circuit upheld the district court's dismissal of a lawsuit when employees alleged that the employer and union violated RICO by agreeing to a transaction unlawful under

⁷ 185 F.3d 602 (6th Cir. 1999).

⁸ Case 1:07-cv-00731-CAB-LB (E.D.N.Y. June 9, 2009).

⁹ 340 U.S. 462, 468 (1951).

¹⁰ 550 F.3d 369 (4th Cir. 2008), cert. denied ___ S.Ct. ___ 2009 WL 1116282 (2009).

LMRA Section 302.¹¹ Upon request from the court, the Board filed an amicus brief expressing its views. The Fourth Circuit held that Freightliner did not deliver a “thing of value” under Section 302 to the United Auto Workers (UAW) by agreeing to a neutrality card-check agreement that included (1) requiring some of its employees to attend, on paid company time, union presentations explaining the card-check agreement; (2) providing the union reasonable access to nonwork areas in company plants to allow union representatives to meet with employees; and (3) refraining from making negative comments about the union during organization campaigns.

The court reasoned that the LMRA’s “plain language” and purpose is to prevent corruption and bribery in the collective-bargaining process. The court found that the agreement, which sought to mitigate hostile organizing campaigns, did not cause a union representative to personally benefit, nor was it inimical to collective bargaining. The court noted that under Section 302, the severity of the penalty for a violation is judged by the monetary value of the thing delivered, revealing that Congress intended for a “thing of value” to carry at least some ascertainable value. The concessions allowing the UAW access to employees, the court found, carried no such monetary value. The Fourth Circuit explained that its decision squared with *Hotel Employees Local 57 v. Sage Hospitality*,¹² where the Third Circuit had similarly found no support for the “remarkable assertion that entering into a valid labor agreement governing recognition of a labor union amounts to illegal labor bribery.”¹³ Finally, the court decided that adequate remedies exist under the NLRA where it is found that employee Section 7 rights are violated, undermining the plaintiff-employees’ attempt to “stretch Section 302 beyond its limits.”¹⁴ In fact, the court explained, unfair labor practice charges under Section 8(a)(1), (2), and 8(b)(1)(A) of the NLRA, prohibiting the coercion of employees in their right to choose or reject union representation, were already filed and settled by these parties and the Board.

¹¹ 29 U.S.C. § 186.

¹² 390 F.3d 206 (3d Cir. 2004).

¹³ *Id.* at 219.

¹⁴ 550 F.3d at 377.

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APPENDIX

GLOSSARY OF TERMS USED IN STATISTICAL TABLES

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

Adjusted Cases

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

Advisory Opinion Cases

See “Other Cases—AO” under “Types of Cases.”

Agreement of Parties

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

Amendment of Certification Cases

See “Other Cases—AC” under “Types of Cases.”

Backpay

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

Backpay Hearing

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

Backpay Specification

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

Case

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

Certification

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

Challenges

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

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

Charge

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

Complaint

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

Election, Runoff

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

Election, Stipulated

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

Eligible Voters

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

Fees, Dues, and Fines

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

Fines

See "Fees, Dues, and Fines."

Formal Action

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

Formal Agreement (in unfair labor practice cases)

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

Compliance

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

Dismissed Cases

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

Dues

See "Fees, Dues, and Fines."

Election, Consent

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

Election, Directed

Board-Directed

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

Regional Director-Directed

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

Election, Expedited

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

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

Election, Rerun

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

Informal Agreement (in unfair labor practice cases)

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

Injunction Petitions

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

Jurisdictional Disputes

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

practice complaint and the processing of the case through usual unfair labor practice procedures.

Objections

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

Petition

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

Proceeding

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

Representation Cases

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

Representation Election

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

Situation

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

Types of Cases

General:

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

C Cases (unfair labor practice cases)

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

CA:

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

CB:

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

CC:

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

CD:

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

CE:

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

CG:

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

CP:

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

R Cases (representation cases)

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

RC:

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

RD:

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

RM:

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

Other Cases

AC:

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

AO:

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

UC:

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

UD:

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

UD Cases

See “Other Cases—UD” under “Types of Cases.”

Unfair Labor Practice Cases

See “C Cases” under “Types of Cases.”

Union Deauthorization Cases

See “Other Cases—UD” under “Types of Cases.”

Union-Shop Agreement

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

Unit, Appropriate Bargaining

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

Valid Vote

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

Withdrawn Cases

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

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

Table 1.—Total Cases Received, Closed, and Pending, Fiscal Year 2009¹

	Total ²	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
All Cases						
Pending October 1, 2008.....	11,551	3,935	2,997	464	3,503	652
Received fiscal 2009.....	25,855	6,762	6,559	1,026	10,529	979
On docket fiscal 2009.....	37,406	10,697	9,556	1,490	14,032	1,631
Closed fiscal 2009.....	25,367	6,861	6,432	924	10,171	979
Pending September 30, 2009.....	12,039	3,836	3,124	566	3,861	652
Unfair labor practice cases ³						
Pending October 1, 2008.....	10,691	3,651	2,722	430	3,293	595
Received fiscal 2009.....	22,943	5,971	5,448	784	9,857	883
On docket fiscal 2009.....	33,634	9,622	8,170	1,214	13,150	1,478
Closed fiscal 2009.....	22,457	6,020	5,323	756	9,480	878
Pending September 30, 2009.....	11,177	3,602	2,847	458	3,670	600
Representation cases ⁴						
Pending October 1, 2008.....	767	265	263	31	184	24
Received fiscal 2009.....	2,696	748	1,073	228	572	75
On docket fiscal 2009.....	3,463	1,013	1,336	259	756	99
Closed fiscal 2009.....	2,693	800	1,077	155	594	67
Pending September 30, 2009.....	770	213	259	104	162	32
Union-shop deauthorization cases						
Pending October 1, 2008.....	26	--	--	--	26	--
Received fiscal 2009.....	97	--	--	--	97	--
On docket fiscal 2009.....	123	--	--	--	123	--
Closed fiscal 2009.....	96	--	--	--	96	--
Pending September 30, 2009.....	27	--	--	--	27	--
Amendment of certification cases						
Pending October 1, 2008.....	4	1	3	0	0	0
Received fiscal 2009.....	7	2	4	0	0	1
On docket fiscal 2009.....	11	3	7	0	0	1
Closed fiscal 2009.....	5	3	1	0	0	1
Pending September 30, 2009.....	6	0	6	0	0	0
Unit clarification cases						
Pending October 1, 2008.....	63	18	9	3	0	33
Received fiscal 2009.....	112	41	34	14	3	20
On docket fiscal 2009.....	175	59	43	17	3	53
Closed fiscal 2009.....	116	38	31	13	1	33
Pending September 30, 2009.....	59	21	12	4	2	20

¹ See Glossary of terms for definitions. Advisory Opinion (AO) cases not included. See Table 22.

² Totals for cases pending Oct. 1, 2008 in the Table 1 series, differ from last year's annual report. Revised totals result from postreport adjustments to last year's "on docket" and/or "closed figures." Totals in Tables 5-10 are within 1-3 percent of the totals in Table 1.

³ See Table 1A for totals by types of cases.

⁴ See Table 1B for totals by types of cases.

**Table 1A.—Unfair Labor Practice Cases Received, Closed, and Pending,
Fiscal Year 2009¹**

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
CA cases						
Pending October 1, 2008.....	8,718	3,634	2,703	424	1,938	19
Received fiscal 2009.....	16,541	5,925	5,236	767	4,552	61
On docket fiscal 2009.....	25,259	9,559	7,939	1,191	6,490	80
Closed fiscal 2009.....	16,499	5,969	5,262	744	4,482	42
Pending September 30, 2009.....	8,760	3,590	2,677	447	2,008	38
CB Cases						
Pending October 1, 2008.....	1,512	13	18	5	1,331	145
Received fiscal 2009.....	6,000	26	200	15	5,277	482
On docket fiscal 2009.....	7,512	39	218	20	6,608	627
Closed fiscal 2009.....	5,509	29	49	11	4,971	449
Pending September 30, 2009.....	2,003	10	169	9	1,637	178
CC Cases						
Pending October 1, 2008.....	321	1	0	1	15	304
Received fiscal 2009.....	208	6	8	1	17	176
On docket fiscal 2009.....	529	7	8	2	32	480
Closed fiscal 2009.....	224	7	7	1	14	195
Pending September 30, 2009.....	305	0	1	1	18	285
CD Cases						
Pending October 1, 2008.....	35	3	1	0	5	26
Received fiscal 2009.....	127	12	3	1	8	103
On docket fiscal 2009.....	162	15	4	1	13	129
Closed fiscal 2009.....	119	13	4	0	8	94
Pending September 30, 2009.....	43	2	0	1	5	35
CE Cases						
Pending October 1, 2008.....	55	0	0	0	0	55
Received fiscal 2009.....	15	0	0	0	1	14
On docket fiscal 2009.....	70	0	0	0	1	69
Closed fiscal 2009.....	34	0	0	0	1	33
Pending September 30, 2009.....	36	0	0	0	0	36
CG Cases						
Pending October 1, 2008.....	18	0	0	0	1	17
Received fiscal 2009.....	19	0	0	0	0	19
On docket fiscal 2009.....	37	0	0	0	1	36
Closed fiscal 2009.....	27	0	0	0	0	27
Pending September 30, 2009.....	10	0	0	0	1	9
CP Cases						
Pending October 1, 2008.....	32	0	0	0	3	29
Received fiscal 2009.....	33	2	1	0	2	28
On docket fiscal 2009.....	65	2	1	0	5	57
Closed fiscal 2009.....	45	2	1	0	4	38
Pending September 30, 2009.....	20	0	0	0	1	19

¹ See Glossary of terms for definitions.

**Table 1B.—Representation Cases Received, Closed, and Pending,
Fiscal Year 2009¹**

	Total	Identification of filing party				
		AFL-CIO Unions	Other National Unions	Other local Unions	Individuals	Employers
RC Cases						
Pending October 1, 2008.....	557	264	262	31	0	--
Received fiscal 2009.....	2,053	748	1,073	227	5	--
On docket fiscal 2009.....	2,610	1,012	1,335	258	5	--
Closed fiscal 2009.....	2,033	799	1,076	154	4	--
Pending September 30, 2009.....	577	213	259	104	1	--
RM Cases						
Pending October 1, 2008.....	24	--	--	--	--	24
Received fiscal 2009.....	75	--	--	--	--	75
On docket fiscal 2009.....	99	--	--	--	--	99
Closed fiscal 2009.....	67	--	--	--	--	67
Pending September 30, 2009.....	32	--	--	--	--	32
RD Cases						
Pending October 1, 2008.....	186	1	1	0	184	--
Received fiscal 2009.....	568	0	0	1	567	--
On docket fiscal 2009.....	754	1	1	1	751	--
Closed fiscal 2009.....	593	1	1	1	590	--
Pending September 30, 2009.....	161	0	0	0	161	--

¹ See Glossary of terms for definitions.

**Table 2.—Types of Unfair Labor Practices Alleged,
Fiscal Year 2009—Page 1 of 2**

	Number of cases showing specific allegations	Percent of total cases
Subsections of Sec. 8(a): Total cases.....	16,541	100.0
8(a)(1).....	2,461	14.9
8(a)(1)(2).....	164	1.0
8(a)(1)(3).....	4,563	27.6
8(a)(1)(4).....	154	0.9
8(a)(1)(5).....	7,232	43.7
8(a)(1)(2)(3).....	103	0.6
8(a)(1)(2)(4).....	1	0
8(a)(1)(2)(5).....	95	0.6
8(a)(1)(3)(4).....	359	2.2
8(a)(1)(3)(5).....	1,218	7.4
8(a)(1)(4)(5).....	20	0.1
8(a)(1)(2)(3)(4).....	13	0.1
8(a)(1)(2)(3)(5).....	51	0.3
8(a)(1)(2)(4)(5).....	3	0
8(a)(1)(3)(4)(5).....	83	0.5
8(a)(1)(2)(3)(4)(5).....	21	0.1
Recapitulation ¹		
8(a)(1).....	16,541	100.0
8(a)(2).....	451	2.7
8(a)(3).....	6,411	38.8
8(a)(4).....	654	4.0
8(a)(5).....	8,723	52.7
B. Charges filed against unions under Section 8(b)		
Subsections of Sec. 8(b): Total cases.....	6,367	100.0
8(b)(1).....	5,017	78.8
8(b)(2).....	44	0.7
8(b)(3).....	281	4.4
8(b)(4).....	335	5.3
8(b)(5).....	3	0
8(b)(6).....	5	0.1
8(b)(7).....	33	0.5
8(b)(1)(2).....	467	7.3
8(b)(1)(3).....	141	2.2
8(b)(1)(5).....	2	0
8(b)(1)(6).....	13	0.2
8(b)(2)(3).....	4	0.1
8(b)(3)(5).....	1	0
8(b)(1)(2)(3).....	14	0.2
8(b)(1)(2)(5).....	1	0
8(b)(1)(2)(3)(6).....	5	0.1
8(b)(1)(3)(5)(6).....	1	0
Recapitulation		
8(b)(1).....	5,661	88.9
8(b)(2).....	535	8.4

**Table 2.—Types of Unfair Labor Practices Alleged,
Fiscal Year 2009—Page 2 of 2**

	Number of cases showing specific allegations	Percent of total cases
8(b)(3).....	447	7.0
8(b)(4).....	348	5.5
8(b)(5).....	8	0.1
8(b)(6).....	24	0.4
8(b)(7).....	33	0.5
B1. Analysis of Section 8(b)(4)		
Total cases 8(b)(4).....	335	100.0
8(b)(4)(A).....	19	5.7
8(b)(4)(B).....	165	49.3
8(b)(4)(C).....	13	3.9
8(b)(4)(D).....	127	37.9
8(b)(4)(A)(B).....	5	1.5
8(b)(4)(B)(C).....	4	1.2
8(b)(4)(A)(B)(C).....	2	0.6
Recapitulation¹		
8(b)(4)(A).....	26	7.8
8(b)(4)(B).....	176	52.5
8(b)(4)(C).....	19	5.7
8(b)(4)(D).....	127	37.9
B2. Analysis of Section 8(b)(7)		
Total cases 8(b)(7).....	33	100.0
8(b)(7)(A).....	9	27.3
8(b)(7)(B).....	1	3.0
8(b)(7)(C).....	23	69.7
Recapitulation		
8(b)(7)(A).....	9	27.3
8(b)(7)(B).....	1	3.0
8(b)(7)(C).....	23	69.7
C. Charges filed under Section 8(e)		
Total cases 8(e).....	15	100.0
Against unions alone.....	8	53.3
Against employers alone.....	4	26.7
Against both.....	3	20.0
D. Charges filed Section 8(g)		
Total cases 8(g).....	19	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 2009¹

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.....	33	30	--	--	--	30	--	--	--	--	--	--	--
Complaints issued.....	1,703	1,096	965	86	13	--	2	0	0	6	13	11	0
Backpay specifications issued.....	112	48	45	1	0	--	0	0	0	0	0	2	0
Hearings completed, total.....	176	175	162	11	2	0	0	0	0	0	0	0	0
Initial ULP hearings.....	159	158	145	11	2	0	0	0	0	0	0	0	0
Backpay hearings.....	9	9	9	0	0	0	0	0	0	0	0	0	0
Other hearings.....	8	8	8	0	0	0	0	0	0	0	0	0	0
Decisions by administrative law judges, total.....	194	169	154	11	2	0	0	1	0	0	1	0	0
Initial ULP decisions.....	164	141	127	11	2	0	0	1	0	0	0	0	0
Backpay decisions.....	7	5	4	0	0	0	0	0	0	0	1	0	0
Supplemental decisions.....	23	23	23	0	0	0	0	0	0	0	0	0	0
Decisions and orders by the Board, total.....	600	258	217	10	3	9	0	0	0	1	6	11	1
Upon consent of parties:.....													
Initial decisions.....	71	16	14	0	1	0	0	0	0	1	0	0	0
Supplemental decisions.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Adopting administrative law judges' decisions (no exceptions filed):.....													
Initial ULP decisions.....	90	47	42	4	1	0	0	0	0	0	0	0	0
Backpay decisions.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Supplemental decisions.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Contested:.....													
Initial ULP decisions.....	373	167	138	6	1	9	0	0	0	0	5	7	1
Decisions based on stipulated record.....	1	1	1	0	0	0	0	0	0	0	0	0	0
Supplemental ULP decisions.....	32	14	11	0	0	0	0	0	0	0	0	3	0
Backpay decisions.....	33	13	11	0	0	0	0	0	0	0	1	1	0

¹ See Glossary of terms for definitions.

Table 3B.—Formal Actions Taken in Representation and Union Deauthorization Cases, Fiscal Year 2009¹

Types of formal actions taken	Formal actions taken by type of case					
	Cases in which formal actions taken ²	Total formal actions taken ³	RC	RM	RD	UD
Hearings completed, total.....	260	253	206	7	40	3
Initial hearings.....	190	186	151	5	30	2
Hearings on objections and/or challenges.....	70	67	55	2	10	1
Decisions issued, total.....	194	186	140	13	33	10
By Regional Director.....	185	177	134	12	31	10
Elections directed.....	145	137	112	2	23	10
Dismissals on record.....	40	40	22	10	8	0
By Board.....	9	9	6	1	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.....	2	2	2	0	0	0
Other.....	0	0	0	0	0	0
Review of Regional Directors' decisions:						
Requests for review received.....	110	101	74	15	12	1
Withdrawn before request ruled upon.....	6	5	3	1	1	0
Board action on request ruled upon, total.....	110	100	71	16	13	2
Granted.....	9	8	7	0	1	1
Denied.....	97	88	63	15	10	1
Remanded.....	4	4	1	1	2	0
Withdrawn after request granted, before Board review.....	2	2	1	0	1	0
Board decision after review, total.....	7	7	4	1	2	0
Regional Directors' decisions:						
Affirmed.....	0	0	0	0	0	0
Modified.....	3	3	2	0	1	0
Reversed.....	4	4	2	1	1	0
Outcome:						
Election directed.....	6	6	4	1	1	0
Dismissals on record.....	0	0	0	0	0	0
Other.....	1	1	0	0	1	0
Decisions on objections and/or challenges, total.....	251	246	208	4	34	3
By Regional Directors.....	109	105	90	1	14	1
By Administrative Law Judges.....	21	21	19	0	2	0
By Board.....	121	120	99	3	18	2
In stipulated elections.....	106	105	85	3	17	2
No exceptions to Regional Directors' reports.....	63	62	50	1	11	0
Exceptions to Regional Directors' reports.....	43	43	35	2	6	2
In directed elections (after transfer by Reg. Director).....	15	15	14	0	1	0
No exceptions to RDs/HOs reports.....	9	9	9	0	0	0
Exceptions to RDs/HOs reports.....	6	6	5	0	1	0
Review of Regional Directors' supplemental decisions:...						
Request for review received.....	5	5	4	0	1	0
Withdrawn before request ruled upon.....	0	0	0	0	0	0
Board action on request ruled upon, total.....	3	3	3	0	0	0
Granted.....	0	0	0	0	0	0
Denied.....	3	3	3	0	0	0
Remanded.....	0	0	0	0	0	0
Withdrawn after request granted, before Board review.....	0	0	0	0	0	0
Board decision after review, total.....	0	0	0	0	0	0
Regional Directors' decisions:						
Affirmed.....	0	0	0	0	0	0
Modified.....	0	0	0	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 2009¹

Types of formal actions taken	Cases in which formal actions taken	Formal actions taken by type of case ²	
		AC	UC
Hearings completed.....	30	0	27
Decisions issued after hearing.....	43	4	35
By Regional Directors.....	42	4	34
By Board.....	1	0	1
Transferred by Regional Directors for initial decision.....	0	0	0
Review of Regional Directors' decisions:			
Requests for review received.....	15	0	15
Withdrawn before request ruled upon.....	0	0	0
Board action on requests ruled upon, total.....	23	0	8
Granted.....	0	0	0
Denied.....	23	0	8
Remanded.....	0	0	0
Withdrawn after request granted, before Board review.....	0	0	0
Board decision after review, total.....	1	0	1
Regional Directors' decisions:			
Affirmed.....	0	0	0
Modified.....	0	0	0
Reversed.....	1	0	1

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 2009¹—Page 1 of 2

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
A. By number of cases involved.....	8,608 ²	--	--	--	--	--	--	--	--	--	--	--	--
Notice posted	1,435	1,160	982	11	37	69	61	275	256	1	4	3	11
Recognition or other assistance withdrawn..	2	2	1	0	1	0	0	--	--	--	--	--	--
Employer-dominated union disestablished..	0	0	0	0	0	0	0	--	--	--	--	--	--
Employees offered reinstatement.....	779	779	704	2	12	34	27	--	--	--	--	--	--
Employees placed on preferential hiring list.....	29	29	25	0	2	0	2	--	--	--	--	--	--
Hiring hall rights restored.....	10	--	--	--	--	--	--	10	10	0	0	0	0
Objections to employment withdrawn.....	4	--	--	--	--	--	--	4	4	0	0	0	0
Picketing ended.....	18	--	--	--	--	--	--	18	18	0	0	0	0
Work stoppage ended.....	9	--	--	--	--	--	--	9	9	0	0	0	0
Collective bargaining begun.....	1,973	1,883	1,832	2	10	14	25	90	86	0	1	1	2
Backpay distributed.....	1,359	1,307	1,196	2	22	49	38	52	50	0	0	1	1
Reimbursement of fees, dues, and fines.....	177	57	53	0	2	1	1	120	118	0	0	0	2
Other conditions of employment improved.....	0	0	0	0	0	0	0	0	0	0	0	0	0
Other remedies.....	0	0	0	0	0	0	0	0	0	0	0	0	0
B. By number of employees affected:													
Employees offered reinstatement, total.....	1,549	1,549	1,245	0	5	160	139	--	--	--	--	--	--
Accepted.....	1,214	1,214	1,076	0	3	71	64	--	--	--	--	--	--

Table 4.—Remedial Actions Taken in Unfair Labor Practice Cases Closed, Fiscal Year 2009¹—Page 2 of 2

Action taken	Total all	Remedial action taken by—											
		Employer						Union					
		Total	Pursuant to—					Total	Pursuant to—				
			Agreement of parties		Recommendation of administrative law judge	Order of—			Agreement of parties		Recommendation of administrative law judge	Order of—	
			Informal settlement	Formal settlement		Board	Court		Informal settlement	Formal settlement		Board	Court
Informal settlement	Formal settlement												
Declined.....	335	335	169	0	2	89	75	--	--	--	--	--	--
Employees placed on preferential hiring list.....	408	408	363	0	14	0	31	--	--	--	--	--	--
Hiring hall rights restored.....	96	--	--	--	--	--	--	96	96	0	0	0	0
Objections to employment withdrawn.....	7	--	--	--	--	--	--	7	7	0	0	0	0
Employees receiving backpay:													
From either employer or union.....	14,825	14,554	10,636	6	646	942	2,324	271	147	0	0	1	123
From both employer and union.....	14	9	9	0	0	0	0	5	5	0	0	0	0
Employees reimbursed for fees, dues, and fines:													
From either employer or union.....	3,675	232	147	0	85	0	0	3,443	3,442	0	0	0	1
From both employer and union.....	1,053	1,020	757	0	0	11	252	33	33	0	0	0	0
C. By amounts of monetary recovery, total.....	77,611,322	76,640,004	30,660,482	264,598	3,151,354	6,469,505	36,094,065	971,318	901,544	0	0	38,122	31,652
Backpay (includes all monetary payments except fees, dues, and fines).....	76,337,306	75,754,271	30,077,089	264,598	2,853,948	6,465,022	36,093,614	583,035	521,681	0	0	38,122	23,232
Reimbursement of fees, dues, and fines.....	1,274,016	885,733	583,393	0	297,406	4,483	451	388,283	379,863	0	0	0	8,420

¹ See Glossary of terms for definitions. Data in this table are based on unfair labor practice cases that were closed during Fiscal Year 2009, 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 2009¹—Page 1 of 5

Industrial Group ²	All cases	Unfair labor practice cases								Representation cases				Union deauthorizations 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.....	21	19	15	4	0	0	0	0	0	2	2	0	0	0	0	0	0
Animal Production.....	28	25	22	3	0	0	0	0	0	2	2	0	0	1	0	0	0
Forestry and Logging.....	8	4	3	1	0	0	0	0	0	4	4	0	0	0	0	0	0
Fishing, Hunting and Trapping.....	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Agriculture and Forestry.....	26	26	17	9	0	0	0	0	0	0	0	0	0	0	0	0	0
Agriculture, Forestry, Fishing, and Hunting.....	84	75	58	17	0	0	0	0	0	8	8	0	0	1	0	0	0
Oil and Gas Extraction.....	37	31	26	5	0	0	0	0	0	5	4	0	1	1	0	0	0
Mining (except Oil and Gas).....	117	105	89	12	1	0	1	0	2	12	5	0	7	0	0	0	0
Support Activities for Mining.....	25	22	16	6	0	0	0	0	0	3	2	0	1	0	0	0	0
Mining, Quarrying, and Oil and Gas Extraction	179	158	131	23	1	0	1	0	2	20	11	0	9	1	0	0	0
Utilities.....	513	445	351	91	2	1	0	0	0	62	44	1	17	3	0	0	3
Construction of Buildings.....	387	329	179	92	33	19	3	0	3	56	47	3	6	0	0	0	2
Heavy and Civil Engineering Construction.....	201	181	119	45	4	10	0	0	3	19	13	2	4	0	0	0	1
Specialty Trade Contractors.....	1,511	1,327	874	328	63	46	3	0	13	176	141	9	26	6	0	0	2
Construction.....	2,099	1,837	1,172	465	100	75	6	0	19	251	201	14	36	6	0	0	5
Food Manufacturing.....	750	676	526	145	3	2	0	0	0	69	50	0	19	2	0	0	3
Beverage and Tobacco Product Manufacturing.....	198	182	135	47	0	0	0	0	0	15	11	0	4	0	0	0	1
Textile Mills.....	29	22	17	5	0	0	0	0	0	7	4	1	2	0	0	0	0
Textile Product Mills.....	26	24	19	5	0	0	0	0	0	2	1	0	1	0	0	0	0
Apparel Manufacturing.....	49	42	33	9	0	0	0	0	0	6	3	0	3	0	1	0	0
Leather and Allied Product Manufacturing.....	6	6	4	2	0	0	0	0	0	0	0	0	0	0	0	0	0
31-Manufacturing.....	1,058	952	734	213	3	2	0	0	0	99	69	1	29	2	1	0	4
Wood Product Manufacturing.....	74	70	50	14	2	4	0	0	0	3	1	0	2	0	0	0	1
Paper Manufacturing.....	310	296	212	84	0	0	0	0	0	12	10	0	2	0	0	0	2
Printing and Related Support Activities.....	145	133	95	38	0	0	0	0	0	12	11	0	1	0	0	0	0
Petroleum and Coal Products Manufacturing.....	94	87	72	14	0	0	1	0	0	6	3	0	3	0	0	0	1

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2009¹—Page 2 of 5

Industrial Group ²	All cases	Unfair labor practice cases								Representation cases				Union deauthoriza-tion cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
														UD	AC	UC
Chemical Manufacturing.....	251	219	176	41	2	0	0	0	0	28	20	1	7	2	0	2
Plastics and Rubber Products Manufacturing.....	131	116	86	28	1	1	0	0	0	14	12	0	2	1	0	0
Nonmetallic Mineral Product Manufacturing.....	233	208	142	63	2	1	0	0	0	21	15	0	6	0	0	4
32-Manufacturing.....	1,238	1,129	833	282	7	6	1	0	0	96	72	1	23	3	0	10
Primary Metal Manufacturing.....	364	339	255	84	0	0	0	0	0	24	13	2	9	1	0	0
Fabricated Metal Product Manufacturing.....	215	194	145	47	2	0	0	0	0	20	12	2	6	1	0	0
Machinery Manufacturing.....	265	253	188	63	1	1	0	0	0	11	6	0	5	0	1	0
Computer and Electronic Product Manufacturing..	44	37	23	10	4	0	0	0	0	7	7	0	0	0	0	0
Electrical Equipment, Appliance, and Component Manufacturing.....	162	139	98	41	0	0	0	0	0	21	17	0	4	1	0	1
Transportation Equipment Manufacturing.....	872	830	580	247	2	1	0	0	0	38	25	0	13	2	0	2
Furniture and Related Product Manufacturing.....	63	58	43	14	0	1	0	0	0	5	2	0	3	0	0	0
Miscellaneous Manufacturing.....	296	278	188	87	2	1	0	0	0	17	13	2	2	1	0	0
33-Manufacturing.....	2,281	2,128	1,520	593	11	4	0	0	0	143	95	6	42	6	1	3
Merchant Wholesalers, Durable Goods.....	171	147	105	36	1	2	0	1	2	23	13	2	8	1	0	0
Merchant Wholesalers, Nondurable Goods.....	325	282	224	57	1	0	0	0	0	39	23	1	15	0	0	4
Wholesale Electronic Markets and Agents and Brokers.....	6	3	3	0	0	0	0	0	0	3	2	0	1	0	0	0
Wholesale Trade.....	502	432	332	93	2	2	0	1	2	65	38	3	24	1	0	4
Motor Vehicle and Parts Dealers.....	178	149	131	17	1	0	0	0	0	28	15	1	12	0	0	1
Furniture and Home Furnishings Stores.....	24	20	19	1	0	0	0	0	0	4	3	1	0	0	0	0
Electronics and Appliance Stores.....	15	11	10	1	0	0	0	0	0	4	3	0	1	0	0	0
Building Material and Garden Equipment and Supplies Dealers.....	61	53	49	1	0	3	0	0	0	8	5	0	3	0	0	0
Food and Beverage Stores.....	608	556	399	152	4	0	0	0	1	50	33	2	15	1	0	1
Health and Personal Care Stores.....	77	69	50	19	0	0	0	0	0	8	6	0	2	0	0	0
Gasoline Stations.....	10	7	6	1	0	0	0	0	0	3	2	0	1	0	0	0
Clothing and Clothing Accessories Stores.....	42	40	33	7	0	0	0	0	0	2	2	0	0	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2009¹—Page 3 of 5

Industrial Group ²	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
		UD	AC	UC												
44-Retail Trade.....	1,015	905	697	199	5	3	0	0	1	107	69	4	34	1	0	2
Sporting Goods, Hobby, Book, and Music Stores..	9	7	5	1	0	1	0	0	0	2	1	0	1	0	0	0
General Merchandise Stores.....	88	73	64	8	1	0	0	0	0	14	13	1	0	0	0	1
Miscellaneous Store Retailers.....	24	21	19	0	0	0	2	0	0	3	2	0	1	0	0	0
Nonstore Retailers.....	30	26	17	9	0	0	0	0	0	4	3	0	1	0	0	0
45-Retail Trade.....	151	127	105	18	1	1	2	0	0	23	19	1	3	0	0	1
Air Transportation.....	33	24	17	7	0	0	0	0	0	8	7	0	1	1	0	0
Rail Transportation.....	24	18	10	8	0	0	0	0	0	6	4	0	2	0	0	0
Water Transportation.....	156	149	60	89	0	0	0	0	0	6	6	0	0	0	0	1
Truck Transportation.....	764	650	412	233	3	2	0	0	0	110	75	3	32	4	0	0
Transit and Ground Passenger Transportation.....	973	711	528	182	1	0	0	0	0	253	227	3	23	4	0	5
Pipeline Transportation.....	12	9	6	3	0	0	0	0	0	1	1	0	0	0	1	1
Scenic and Sightseeing Transportation.....	20	20	12	8	0	0	0	0	0	0	0	0	0	0	0	0
Support Activities for Transportation.....	293	249	149	97	1	2	0	0	0	39	35	0	4	2	1	2
48-Transportation and Warehousing.....	2,275	1,830	1,194	627	5	4	0	0	0	423	355	6	62	11	2	9
Postal Service.....	2,859	2,853	2,163	689	0	0	1	0	0	4	4	0	0	1	0	1
Couriers and Messengers.....	319	306	204	102	0	0	0	0	0	13	8	0	5	0	0	0
Warehousing and Storage.....	358	288	220	67	0	1	0	0	0	70	50	2	18	0	0	0
49-Transportation and Warehousing.....	3,536	3,447	2,587	858	0	1	1	0	0	87	62	2	23	1	0	1
Publishing Industries (except Internet).....	194	185	110	75	0	0	0	0	0	7	4	0	3	2	0	0
Motion Picture and Sound Recording Industries....	46	44	26	18	0	0	0	0	0	2	2	0	0	0	0	0
Broadcasting (except Internet).....	155	140	126	14	0	0	0	0	0	8	6	0	2	2	0	5
Telecommunications.....	617	590	456	134	0	0	0	0	0	24	19	0	5	0	1	2
Data Processing, Hosting, and Related Services....	9	7	5	2	0	0	0	0	0	2	2	0	0	0	0	0
Other Information Services.....	62	48	30	18	0	0	0	0	0	14	11	0	3	0	0	0
Information.....	1,083	1,014	753	261	0	0	0	0	0	57	44	0	13	4	1	7
Monetary Authorities—Central Bank.....	25	24	21	2	1	0	0	0	0	1	0	0	1	0	0	0

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2009¹—Page 4 of 5

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
Credit Intermediation and Related Activities.....	35	29	24	3	2	0	0	0	0	5	0	0	5	1	0	0
Securities, Commodity Contracts, and Other Financial Investments and Related Activities.....	13	13	10	2	1	0	0	0	0	0	0	0	0	0	0	0
Insurance Carriers and Related Activities.....	59	58	37	17	2	1	0	0	1	1	1	0	0	0	0	0
Funds, Trusts, and Other Financial Vehicles.....	6	6	4	2	0	0	0	0	0	0	0	0	0	0	0	0
Finance and Insurance.....	138	130	96	26	6	1	0	0	1	7	1	0	6	1	0	0
Real Estate.....	130	115	63	46	5	1	0	0	0	15	13	0	2	0	0	0
Rental and Leasing Services.....	101	81	58	20	3	0	0	0	0	17	8	2	7	2	0	1
Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).....	4	3	3	0	0	0	0	0	0	1	1	0	0	0	0	0
Real Estate and Rental and Leasing.....	235	199	124	66	8	1	0	0	0	33	22	2	9	2	0	1
Professional, Scientific, and Technical Services	247	197	154	35	3	4	0	0	1	47	41	0	6	0	0	3
Management of Companies and Enterprises.....	51	36	20	16	0	0	0	0	0	14	11	0	3	0	0	1
Administrative and Support Services.....	1,896	1,692	1,133	527	14	10	3	0	5	187	147	2	38	14	1	2
Waste Management and Remediation Services.....	360	291	181	101	5	4	0	0	0	68	50	1	17	1	0	0
Administrative and Support and Waste Management and Remediation Services.....	2,256	1,983	1,314	628	19	14	3	0	5	255	197	3	55	15	1	2
Educational Services.....	293	220	165	44	9	2	0	0	0	67	57	2	8	0	0	6
Ambulatory Health Care Services.....	544	454	348	100	2	0	0	4	0	82	54	4	24	3	0	5
Hospitals.....	1,612	1,390	1,036	333	8	1	0	11	1	199	169	1	29	0	0	23
Nursing and Residential Care Facilities.....	1,212	1,018	754	255	6	0	0	3	0	175	132	3	40	14	0	5
Social Assistance.....	268	231	200	31	0	0	0	0	0	32	23	0	9	1	0	4
Health Care and Social Assistance.....	3,636	3,093	2,338	719	16	1	0	18	1	488	378	8	102	18	0	37
Performing Arts, Spectator Sports, and Related Industries.....	249	221	93	126	0	2	0	0	0	25	22	0	3	0	0	3
Museums, Historical Sites, and Similar Institutions.....	16	10	8	2	0	0	0	0	0	6	5	0	1	0	0	0
Amusement, Gambling, and Recreation Industries	245	231	159	71	0	0	0	0	1	13	9	2	2	0	0	1

Table 5.—Industrial Distribution of Cases Received, Fiscal Year 2009¹—Page 5 of 5

Industrial Group ²	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clari-fication cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD	UD	AC	UC
Arts, Entertainment, and Recreation.....	510	462	260	199	0	2	0	0	1	44	36	2	6	0	0	4
Accommodation.....	728	671	516	153	2	0	0	0	0	54	36	7	11	1	1	1
Food Services and Drinking Places.....	594	537	418	118	1	0	0	0	0	55	38	2	15	1	0	1
Accommodation and Food Services.....	1,322	1,208	934	271	3	0	0	0	0	109	74	9	26	2	1	2
Repair and Maintenance.....	227	182	133	48	1	0	0	0	0	44	35	1	8	1	0	0
Personal and Laundry Services.....	242	192	141	51	0	0	0	0	0	35	22	6	7	12	0	3
Religious, Grantmaking, Civic, Professional, and Similar Organizations.....	391	366	255	104	4	2	1	0	0	22	17	0	5	0	0	3
Private Households.....	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Other Services (except Public Administration)..	861	741	530	203	5	2	1	0	0	101	74	7	20	13	0	6
Executive, Legislative, and Other General Government Support.....	28	24	17	7	0	0	0	0	0	4	4	0	0	0	0	0
Justice, Public Order, and Safety Activities.....	125	59	43	16	0	0	0	0	0	62	53	1	8	4	0	0
Administration of Human Resource Programs.....	21	19	16	3	0	0	0	0	0	2	1	0	1	0	0	0
Administration of Environmental Quality Programs.....	2	2	1	1	0	0	0	0	0	0	0	0	0	0	0	0
Administration of Housing Programs, Urban Planning, and Community Development.....	4	3	3	0	0	0	0	0	0	1	0	0	1	0	0	0
Administration of Economic Programs.....	7	6	6	0	0	0	0	0	0	1	0	0	1	0	0	0
Space Research and Technology.....	2	1	1	0	0	0	0	0	0	1	1	0	0	0	0	0
National Security and International Affairs.....	34	24	21	3	0	0	0	0	0	9	8	1	0	1	0	0
Public Administration.....	223	138	108	30	0	0	0	0	0	80	67	2	11	5	0	0
Total, all industrial groups.....	25,786	22,886	16,510	5,977	206	126	15	19	33	2,686	2,045	74	567	96	7	111

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 2009¹—Page 1 of 3

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.....	1,332	1,161	802	288	32	30	3	0	6	146	105	5	36	18	0	7
Indiana.....	515	456	338	101	6	4	2	0	5	55	36	5	14	4	0	0
Michigan.....	1,453	1,326	876	441	4	3	0	1	1	108	81	4	23	6	0	13
Ohio.....	1,289	1,192	898	278	9	5	0	1	1	90	59	5	26	4	0	3
Wisconsin.....	467	421	288	131	1	1	0	0	0	44	27	1	16	1	0	1
East North Central.....	5,056	4,556	3,202	1,239	52	43	5	2	13	443	308	20	115	33	0	24
Alabama.....	408	384	320	64	0	0	0	0	0	24	17	1	6	0	0	0
Kentucky.....	255	234	182	50	1	1	0	0	0	20	12	1	7	0	0	1
Mississippi.....	132	115	86	29	0	0	0	0	0	17	14	1	2	0	0	0
Tennessee.....	359	336	260	75	1	0	0	0	0	20	16	0	4	1	0	2
East South Central.....	1,154	1,069	848	218	2	1	0	0	0	81	59	3	19	1	0	3
Puerto Rico.....	439	396	305	89	0	0	0	2	0	40	33	1	6	1	0	2
U.S. Minor Outlying Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	27	19	17	2	0	0	0	0	0	7	5	0	2	0	0	1
Island Areas.....	466	415	322	91	0	0	0	2	0	47	38	1	8	1	0	3
New Jersey.....	1,247	1,067	777	271	10	7	0	1	1	166	120	4	42	4	0	10
New York.....	3,010	2,628	1,572	979	42	20	1	5	9	361	304	8	49	6	2	13
Pennsylvania.....	1,217	1,052	832	192	8	18	0	1	1	154	117	6	31	4	1	6
Middle Atlantic.....	5,474	4,747	3,181	1,442	60	45	1	7	11	681	541	18	122	14	3	29
Arizona.....	369	342	265	72	4	0	0	0	1	25	18	1	6	0	0	2
Colorado.....	368	340	267	71	2	0	0	0	0	28	20	0	8	0	0	0
Idaho.....	45	36	30	6	0	0	0	0	0	9	7	0	2	0	0	0
Montana.....	68	59	54	5	0	0	0	0	0	8	6	0	2	0	0	1
New Mexico.....	114	96	87	9	0	0	0	0	0	15	11	1	3	0	0	3
Nevada.....	375	339	205	110	11	6	6	1	0	33	30	3	0	0	0	3
Utah.....	95	83	55	25	2	0	1	0	0	12	6	3	3	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2009¹—Page 2 of 3

Division and State ²	All cases	Unfair labor practice cases								Representation cases				Union deauthor-ization cases	Amend-ment of certifica-tion cases	Unit clarifi-cation cases
		All C cases	CA	CB	CC	CD	CE	CG	CP	All R cases	RC	RM	RD			
		UD	AC	UC												
Wyoming.....	31	23	18	5	0	0	0	0	0	7	4	0	3	1	0	0
Mountain.....	1,465	1,318	981	303	19	6	7	1	1	137	102	8	27	1	0	9
Connecticut.....	441	383	325	58	0	0	0	0	0	57	51	2	4	1	0	0
Massachusetts.....	721	633	487	129	10	7	0	0	0	85	74	0	11	1	0	2
Maine.....	89	79	70	8	0	0	0	1	0	10	8	0	2	0	0	0
New Hampshire.....	75	65	57	6	1	1	0	0	0	9	5	0	4	0	1	0
Rhode Island.....	85	70	55	14	0	1	0	0	0	13	13	0	0	0	1	1
Vermont.....	25	21	18	3	0	0	0	0	0	4	3	0	1	0	0	0
New England.....	1,436	1,251	1,012	218	11	9	0	1	0	178	154	2	22	2	2	3
Alaska.....	81	65	58	7	0	0	0	0	0	14	13	0	1	1	0	1
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	3,681	3,279	2,123	1,100	30	16	2	2	6	361	299	11	51	23	1	17
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii.....	250	232	204	28	0	0	0	0	0	18	15	0	3	0	0	0
Marshall Islands.....	1	1	1	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.....	294	231	179	50	0	0	0	2	0	55	36	2	17	3	0	5
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	849	716	511	195	6	4	0	0	0	122	84	2	36	3	0	8
Pacific.....	5,156	4,524	3,076	1,380	36	20	2	4	6	570	447	15	108	30	1	31
District Of Columbia.....	269	214	162	52	0	0	0	0	0	52	43	0	9	2	0	1
Delaware.....	50	45	39	5	1	0	0	0	0	5	3	0	2	0	0	0
Florida.....	657	597	467	123	7	0	0	0	0	59	44	0	15	0	0	1
Georgia.....	370	335	242	89	4	0	0	0	0	34	27	0	7	1	0	0
Maryland.....	431	389	271	118	0	0	0	0	0	40	33	0	7	1	1	0
North Carolina.....	292	274	210	64	0	0	0	0	0	18	9	0	9	0	0	0

Table 6A.—Geographic Distribution of Cases Received, Fiscal Year 2009¹—Page 3 of 3

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
South Carolina.....	105	99	65	34	0	0	0	0	0	6	4	0	2	0	0	0
Virginia.....	477	430	363	67	0	0	0	0	0	46	39	2	5	1	0	0
West Virginia.....	234	225	192	33	0	0	0	0	0	8	6	0	2	1	0	0
South Atlantic.....	2,885	2,608	2,011	585	12	0	0	0	0	268	208	2	58	6	1	2
Iowa.....	128	105	84	18	1	0	0	0	2	23	13	0	10	0	0	0
Kansas.....	123	99	77	22	0	0	0	0	0	23	18	0	5	0	0	1
Minnesota.....	327	263	211	46	5	0	0	1	0	59	32	1	26	2	0	3
Missouri.....	596	532	404	118	7	3	0	0	0	59	34	3	22	4	0	1
North Dakota.....	12	11	9	2	0	0	0	0	0	1	0	0	1	0	0	0
Nebraska.....	60	49	46	3	0	0	0	0	0	11	9	0	2	0	0	0
South Dakota.....	15	11	7	4	0	0	0	0	0	4	3	0	1	0	0	0
West North Central.....	1,261	1,070	838	213	13	3	0	1	2	180	109	4	67	6	0	5
Arkansas.....	120	107	84	23	0	0	0	0	0	13	6	0	7	0	0	0
Louisiana.....	322	297	239	58	0	0	0	0	0	25	24	0	1	0	0	0
Oklahoma.....	160	144	117	26	0	0	0	1	0	16	15	0	1	0	0	0
Texas.....	883	824	621	202	1	0	0	0	0	56	41	2	13	2	0	1
West South Central.....	1,485	1,372	1,061	309	1	0	0	1	0	110	86	2	22	2	0	1
Total, all States and areas.....	25,838	22,930	16,532	5,998	206	127	15	19	33	2,695	2,052	75	568	96	7	110

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 2009¹—Page 1 of 2

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.....	441	383	325	58	0	0	0	0	0	57	51	2	4	1	0	0
Massachusetts.....	721	633	487	129	10	7	0	0	0	85	74	0	11	1	0	2
Maine.....	89	79	70	8	0	0	0	1	0	10	8	0	2	0	0	0
New Hampshire.....	75	65	57	6	1	1	0	0	0	9	5	0	4	0	1	0
Rhode Island.....	85	70	55	14	0	1	0	0	0	13	13	0	0	0	1	1
Vermont.....	25	21	18	3	0	0	0	0	0	4	3	0	1	0	0	0
Region I.....	1,436	1,251	1,012	218	11	9	0	1	0	178	154	2	22	2	2	3
Delaware.....	45	39	39	5	1	0	0	0	0	5	3	0	2	0	0	0
New Jersey.....	1,247	1,067	777	271	10	7	0	1	1	166	120	4	42	4	0	10
New York.....	3,010	2,628	1,572	979	42	20	1	5	9	361	304	8	49	6	2	13
Puerto Rico.....	439	396	305	89	0	0	0	2	0	40	33	1	6	1	0	2
Virgin Islands.....	27	19	17	2	0	0	0	0	0	7	5	0	2	0	0	1
Region II.....	4,773	4,155	2,710	1,346	53	27	1	8	10	579	465	13	101	11	2	26
District Of Columbia.....	269	214	162	52	0	0	0	0	0	52	43	0	9	2	0	1
Maryland.....	431	389	271	118	0	0	0	0	0	40	33	0	7	1	1	0
Pennsylvania.....	1,217	1,052	832	192	8	18	0	1	1	154	117	6	31	4	1	6
Virginia.....	477	430	363	67	0	0	0	0	0	46	39	2	5	1	0	0
West Virginia.....	234	225	192	33	0	0	0	0	0	8	6	0	2	1	0	0
Region III.....	2,628	2,310	1,820	462	8	18	0	1	1	300	238	8	54	9	2	7
Alabama.....	408	384	320	64	0	0	0	0	0	24	17	1	6	0	0	0
Florida.....	657	597	467	123	7	0	0	0	0	59	44	0	15	0	0	1
Georgia.....	370	335	242	89	4	0	0	0	0	34	27	0	7	1	0	0
Kentucky.....	255	234	182	50	1	1	0	0	0	20	12	1	7	0	0	1
Mississippi.....	132	115	86	29	0	0	0	0	0	17	14	1	2	0	0	0
North Carolina.....	292	274	210	64	0	0	0	0	0	18	9	0	9	0	0	0
South Carolina.....	105	99	65	34	0	0	0	0	0	6	4	0	2	0	0	0
Tennessee.....	359	336	260	75	1	0	0	0	0	20	16	0	4	1	0	2
Region IV.....	2,578	2,374	1,832	528	13	1	0	0	0	198	143	3	52	2	0	4
Illinois.....	1,332	1,161	802	288	32	30	3	0	6	146	105	5	36	18	0	7
Indiana.....	515	456	338	101	6	4	2	0	5	55	36	5	14	4	0	0
Michigan.....	1,453	1,326	876	441	4	3	0	1	1	108	81	4	23	6	0	13
Minnesota.....	327	263	211	46	5	0	0	1	0	59	32	1	26	2	0	3
Ohio.....	1,289	1,192	898	278	9	5	0	1	1	90	59	5	26	4	0	3
Wisconsin.....	467	421	288	131	1	1	0	0	0	44	27	1	16	1	0	1
Region V.....	5,383	4,819	3,413	1,285	57	43	5	3	13	502	340	21	141	35	0	27
Arkansas.....	120	107	84	23	0	0	0	0	0	13	6	0	7	0	0	0
Louisiana.....	322	297	239	58	0	0	0	0	0	25	24	0	1	0	0	0
New Mexico.....	114	96	87	9	0	0	0	0	0	15	11	1	3	0	0	3

Table 6B.—Standard Federal Administrative Regional Distribution of Cases Received, Fiscal Year 2009¹—Page 2 of 2

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
														UD	AC	UC
Oklahoma.....	160	144	117	26	0	0	0	1	0	16	15	0	1	0	0	0
Texas.....	883	824	621	202	1	0	0	0	0	56	41	2	13	2	0	1
Region VI.....	1,599	1,468	1,148	318	1	0	0	1	0	125	97	3	25	2	0	4
Iowa.....	128	105	84	18	1	0	0	0	2	23	13	0	10	0	0	0
Kansas.....	123	99	77	22	0	0	0	0	0	23	18	0	5	0	0	1
Missouri.....	596	532	404	118	7	3	0	0	0	59	34	3	22	4	0	1
Nebraska.....	60	49	46	3	0	0	0	0	0	11	9	0	2	0	0	0
Region VII.....	907	785	611	161	8	3	0	0	2	116	74	3	39	4	0	2
Colorado.....	368	340	267	71	2	0	0	0	0	28	20	0	8	0	0	0
Montana.....	68	59	54	5	0	0	0	0	0	8	6	0	2	0	0	1
North Dakota.....	12	11	9	2	0	0	0	0	0	1	0	0	1	0	0	0
South Dakota.....	15	11	7	4	0	0	0	0	0	4	3	0	1	0	0	0
Utah.....	95	83	55	25	2	0	1	0	0	12	6	3	3	0	0	0
Wyoming.....	31	23	18	5	0	0	0	0	0	7	4	0	3	1	0	0
Region VIII.....	589	527	410	112	4	0	1	0	0	60	39	3	18	1	0	1
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Arizona.....	369	342	265	72	4	0	0	0	1	25	18	1	6	0	0	2
California.....	3,681	3,279	2,123	1,100	30	16	2	2	6	361	299	11	51	23	1	17
Federated States of Micronesia.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Guam.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hawaii.....	250	232	204	28	0	0	0	0	0	18	15	0	3	0	0	0
Marshall Islands.....	1	1	1	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.....	375	339	205	110	11	6	6	1	0	33	30	3	0	0	0	3
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
U.S. Minor Outlying Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Region IX.....	4,676	4,193	2,798	1,310	45	22	8	3	7	437	362	15	60	23	1	22
Alaska.....	81	65	58	7	0	0	0	0	0	14	13	0	1	1	0	1
Idaho.....	45	36	30	6	0	0	0	0	0	9	7	0	2	0	0	0
Oregon.....	294	231	179	50	0	0	0	2	0	55	36	2	17	3	0	5
Washington.....	849	716	511	195	6	4	0	0	0	122	84	2	36	3	0	8
Region X.....	1,269	1,048	778	258	6	4	0	2	0	200	140	4	56	7	0	14
Total, all States and areas.....	25,838	22,930	16,532	5,998	206	127	15	19	33	2,695	2,052	75	568	96	7	110

¹ See Glossary of terms for definitions.

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

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2009¹—Page 1 of 2

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.....	22,292	100.0	--	16,418	100.0	5,428	100.0	224	100.0	116	100.0	34	100.0	27	100.0	45	100.0
Agreement of the parties.....	7,767	34.8	100.0	6,674	40.7	976	18.0	71	31.7	11	9.5	6	17.6	10	37.0	19	42.2
Informal settlement.....	7,763	34.8	99.9	6,670	40.6	976	18.0	71	31.7	11	9.5	6	17.6	10	37.0	19	42.2
Before issuance of complaint.....	6,700	30.1	86.3	5,742	35.0	858	15.8	58	25.9	11	9.5	5	14.7	10	37.0	16	35.6
After issuance of complaint, before opening of hearing.....	1,016	4.6	13.1	890	5.4	109	2.0	13	5.8	0	0.0	1	2.9	0	0.0	3	6.7
After hearing opened, before issuance of administrative law judge's decision.....	47	0.2	0.6	38	0.2	9	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Formal settlement.....	4	0.0	0.1	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Before opening of hearing.....	4	0.0	0.1	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision.....	3	0.0	0.0	3	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree.....	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
After hearing opened.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated decision.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Consent decree.....	0	0.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Compliance with.....	403	1.8	100.0	378	2.3	16	0.3	8	3.6	0	0.0	0	0.0	0	0.0	1	2.2
Administrative law judge's decision.....	7	0.0	1.7	7	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Board decision.....	243	1.1	60.3	235	1.4	8	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed).....	75	0.3	18.6	69	0.4	6	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested.....	168	0.8	41.7	166	1.0	2	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Circuit court of appeals decree.....	153	0.7	38.0	136	0.8	8	0.1	8	3.6	0	0.0	0	0.0	0	0.0	1	2.2
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
Withdrawal.....	7,623	34.2	100.0	5,585	34.0	1,889	34.8	82	36.6	34	29.3	6	17.6	12	44.4	15	33.3

Table 7.—Analysis of Methods of Disposition of Unfair Labor Practice Cases Closed, Fiscal Year 2009¹—Page 2 of 2

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
Before issuance of complaint.....	7,564	33.9	99.2	5,530	33.7	1,886	34.7	81	36.2	34	29.3	6	17.6	12	44.4	15	33.3
After issuance of complaint, before opening of hearing.....	31	0.1	0.4	27	0.2	3	0.1	1	0.4	0	0.0	0	0.0	0	0.0	0	0.0
After hearing opened, before administrative law judge's decision.....	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
After administrative law judge's decision, before Board decision.....	23	0.1	0.3	23	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
After Board or court decision.....	4	0.0	0.1	4	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Dismissal	6,402	28.7	100.0	3,739	22.8	2,546	46.9	63	28.1	17	14.7	22	64.7	5	18.5	10	22.2
Before issuance of complaint.....	6,332	28.4	98.9	3,681	22.4	2,534	46.7	63	28.1	17	14.7	22	64.7	5	18.5	10	22.2
After issuance of complaint, before opening of hearing.....	46	0.2	0.7	38	0.2	8	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.....	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 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.....	17	0.1	0.3	13	0.1	4	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Adopting administrative law judge's decision (no exceptions filed).....	14	0.1	0.2	11	0.1	3	0.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Contested.....	3	0.0	0.0	2	0.0	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
By circuit court of appeals decree.....	5	0.0	0.1	5	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).....	54	0.2	--	0	0.0	0	0.0	0	0.0	54	46.6	0	0.0	0	0.0	0	0.0
Otherwise (compliance with order of administrative law judge or Board not achieved—firm went out of business).....	43	0.2	--	42	0.3	1	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0

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

Table 7A.—Analysis of Methods of Disposition of Jurisdictional Dispute Cases Closed Prior to Unfair Labor Practice Proceedings, Fiscal Year 2009¹

Method and stage of disposition	Number of cases	Percent of total closed
Total number of cases closed before issuance of complaint.....	54	100.0
Agreement of the parties-informal settlement.....	28	51.9
Before 10(k) notice.....	19	35.2
After 10(k) notice, before opening of 10(k) hearing.....	6	11.1
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	1	1.9
After Board decision and determination of dispute.....	2	3.7
Compliance with Board decision and determination of dispute.....	0	0.0
Withdrawal.....	21	38.9
Before 10(k) notice.....	15	27.8
After 10(k) notice, before opening of 10(k) hearing.....	4	7.4
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	2	3.7
After Board decision and determination of dispute.....	0	0.0
Dismissal.....	5	9.3
Before 10(k) notice.....	5	9.3
After 10(k) notice, before opening of 10(k) hearing.....	0	0.0
After opening of 10(k) hearing, before issuance of Board decision and determination of dispute.....	0	0.0
By Board decision and determination of dispute.....	0	0.0

¹ See Glossary of terms for definitions.

Table 8.—Disposition by Stage of Unfair Labor Practice Cases Closed, Fiscal Year 2009¹

Stage of disposition	All C cases		CA cases		CB cases		CC cases		CD cases		CE cases		CG cases		CP cases	
	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed	Number	Per-cent of cases closed
Total number of cases closed.....	22,446	100.0	16,497	100.0	5,500	100.0	224	100.0	119	100.0	34	100.0	27	100.0	45	100.0
Before issuance of complaint.....	20,662	92.1	14,978	90.8	5,280	96.0	202	90.2	101	84.9	33	97.1	27	100.0	41	91.1
After issuance of complaint, before opening of hearing.....	1,127	5.0	975	5.9	122	2.2	14	6.3	12	10.1	1	2.9	0	0.0	3	6.7
After hearing opened, before issuance of administrative law judge's decision.....	77	0.3	53	0.3	21	0.4	0	0.0	3	2.5	0	0.0	0	0.0	0	0.0
After administrative law judge's decision, before issuance of Board decision.....	94	0.4	39	0.2	55	1.0	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.....	117	0.5	107	0.6	9	0.2	0	0.0	1	0.8	0	0.0	0	0.0	0	0.0
After Board decision, before circuit court decree.....	187	0.8	182	1.1	3	0.1	0	0.0	2	1.7	0	0.0	0	0.0	0	0.0
After circuit court decree, before Supreme Court action.....	182	0.8	163	1.0	10	0.2	8	3.6	0	0.0	0	0.0	0	0.0	1	2.2
After 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

¹ See Glossary of terms for definitions.

Table 9.—Disposition by Stage of Representation and Union Deauthorization Cases Closed, Fiscal Year 2009¹

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.....	2,690	100.0	2,031	100.0	67	100.0	592	100.0	96	100.0
Before issuance of notice of hearing.....	307	11.4	173	8.5	18	26.9	116	19.6	50	52.1
After issuance of notice, before close of hearing.....	2,074	77.1	1,615	79.5	29	43.3	430	72.6	34	35.4
After hearing closed, before issuance of decision.....	47	1.7	39	1.9	1	1.5	7	1.2	1	1.0
After issuance of Regional Director's decision.....	176	6.5	137	6.7	11	16.4	28	4.7	9	9.4
After issuance of Board decision ²	86	3.2	67	3.3	8	11.9	11	1.9	2	2.1

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 2009¹

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.....	2,655	100.0	2,002	100.0	66	100.0	587	100.0	94	100.0
Certification issued, total.....	1,586	59.7	1,302	65.0	17	25.8	267	45.5	44	46.8
After:										
Consent election.....	41	1.5	38	1.9	1	1.5	2	0.3	2	2.1
Before notice of hearing.....	9	0.3	9	0.4	0	0.0	0	0.0	2	2.1
After notice of hearing, before hearing closed..	29	1.1	27	1.3	0	0.0	2	0.3	0	0.0
After hearing closed, before decision.....	3	0.1	2	0.1	1	1.5	0	0.0	0	0.0
Stipulated election.....	1,370	51.6	1,117	55.8	10	15.2	243	41.4	31	33.0
Before notice of hearing.....	130	4.9	96	4.8	2	3.0	32	5.5	12	12.8
After notice of hearing, before hearing closed...	1,219	45.9	1,003	50.1	8	12.1	208	35.4	19	20.2
After hearing closed, before decision.....	21	0.8	18	0.9	0	0.0	3	0.5	0	0.0
Expedited election.....	2	0.1	1	0.0	1	1.5	0	0.0	0	0.0
Regional Director-directed election.....	109	4.1	93	4.6	2	3.0	14	2.4	9	9.6
Board-directed election.....	64	2.4	53	2.6	3	4.5	8	1.4	2	2.1
By withdrawal, total.....	909	34.2	654	32.7	20	30.3	235	40.0	33	35.1
Before notice of hearing.....	136	5.1	61	3.0	9	13.6	66	11.2	22	23.4
After notice of hearing, before hearing closed.....	715	26.9	544	27.2	11	16.7	160	27.3	10	10.6
After hearing closed, before decision.....	19	0.7	16	0.8	0	0.0	3	0.5	1	1.1
After Regional Director's decision and direction of election.....	33	1.2	28	1.4	0	0.0	5	0.9	0	0.0
After Board decision and direction of election.....	6	0.2	5	0.2	0	0.0	1	0.2	0	0.0
By dismissal, total.....	160	6.0	46	2.3	29	43.9	85	14.5	17	18.1
Before notice of hearing.....	30	1.1	6	0.3	6	9.1	18	3.1	14	14.9
After notice of hearing, before hearing closed.....	79	3.0	13	0.6	9	13.6	57	9.7	2	2.1
After hearing closed, before decision.....	1	0.0	0	0.0	0	0.0	1	0.2	0	0.0
By Regional Director's decision.....	34	1.3	18	0.9	9	13.6	7	1.2	1	1.1
By Board decision.....	16	0.6	9	0.4	5	7.6	2	0.3	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 2009¹

	AC	UC
Total, all.....	5	115
Certification amended or unit clarified.....	3	14
Before hearing.....	3	7
By Regional Director's decision.....	3	7
By Board decision.....	0	0
After hearing.....	0	7
By Regional Director's decision.....	0	7
By Board decision.....	0	0
Dismissed.....	0	38
Before hearing.....	0	21
By Regional Director's decision.....	0	19
By Board decision.....	0	2
After hearing.....	0	17
By Regional Director's decision.....	0	14
By Board decision.....	0	3
Withdrawn.....	2	63
Before hearing.....	2	62
After hearing.....	0	1

¹ See Glossary of terms for definitions.

Table 11.—Types of Elections Resulting in Certification in Cases Closed, Fiscal Year 2009¹

Type of case	Type of election					
	Total	Consent	Stipulated	Board-directed	Regional Director-directed	Expedited elections under Section 8(b)(7)(C)
All types, total:						
Elections.....	1,651	46	1,419	0	185	1
Eligible voters.....	99,557	3,418	77,853	0	18,283	3
Valid votes.....	78,736	2,384	62,578	0	13,771	3
RC cases:						
Elections.....	1,321	41	1,133	0	147	0
Eligible voters.....	78,584	3,194	60,530	0	14,860	0
Valid votes.....	62,209	2,209	48,806	0	11,194	0
RM cases:						
Elections.....	17	1	10	0	5	1
Eligible voters.....	487	6	286	0	192	3
Valid votes.....	438	5	242	0	188	3
RD cases:						
Elections.....	269	2	245	0	22	0
Eligible voters.....	16,340	57	14,593	0	1,690	0
Valid votes.....	13,333	54	11,942	0	1,337	0
UD cases:						
Elections.....	44	2	31	0	11	--
Eligible voters.....	4,146	161	2,444	0	1,541	--
Valid votes.....	2,756	116	1,588	0	1,052	--

¹ See Glossary of terms for definitions.

Table 11A.—Analysis of Elections Conducted in Representation Cases Closed, Fiscal Year 2009¹

Type of election	All R elections				RC elections				RM elections				RD elections			
	Elections conducted				Elections conducted				Elections conducted				Elections conducted			
	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification	Total elections	Withdrawn or dismissed before certification	Resulting in a rerun or runoff	Resulting in certification
All representation elections.....	1,691	41	44	1,606	1,395	37	38	1,320	17	0	0	17	279	4	6	269
Rerun required.....	--	--	35	--	--	--	31	--	--	--	0	--	--	--	4	--
Runoff required.....	--	--	9	--	--	--	7	--	--	--	0	--	--	--	2	--
Consent elections.....	45	1	0	44	41	0	0	41	1	0	0	1	3	1	0	2
Rerun required.....	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Runoff required.....	--	--	0	--	--	--	0	--	--	--	0	--	--	--	0	--
Stipulated elections.....	1,440	27	26	1,387	1,179	25	22	1,132	10	0	0	10	251	2	4	245
Rerun required.....	--	--	19	--	--	--	16	--	--	--	0	--	--	--	3	--
Runoff required.....	--	--	7	--	--	--	6	--	--	--	0	--	--	--	1	--
Regional Director-directed.....	205	13	18	174	175	12	16	147	5	0	0	5	25	1	2	22
Rerun required.....	--	--	16	--	--	--	15	--	--	--	0	--	--	--	1	--
Runoff required.....	--	--	2	--	--	--	1	--	--	--	0	--	--	--	1	--
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).....	1	0	0	1	0	0	0	0	1	0	0	1	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 2009¹

Type of election/case	Total elections	Objections only		Challenges only		Objections and challenges		Total objections		Total challenges ²	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
All representation elections.....	1,695	53	3.1	25	1.5	6	0.4	59	3.5	31	1.8
By type of cases:											
In RC cases.....	1,399	46	3.3	19	1.4	5	0.4	51	3.6	24	1.7
In RM cases.....	17	2	11.8	1	5.9	0	0.0	2	11.8	1	5.9
In RD cases.....	279	5	1.8	5	1.8	1	0.4	6	2.2	6	2.2
By type of election:											
Consent elections.....	47	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections.....	1,440	11	0.8	17	1.2	2	0.1	13	0.9	19	1.3
Expedited elections.....	1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections.....	207	42	20.3	8	3.9	4	1.9	46	22.2	12	5.8
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 2009¹

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.....	102	100.0	28	27.5	73	71.6	1	1.0
By type of case:								
RC cases.....	89	100.0	28	31.5	60	67.4	1	1.1
RM cases.....	2	100.0	0	0.0	2	100.0	0	0.0
RD cases.....	11	100.0	0	0.0	11	100.0	0	0.0
By type of election:								
Consent elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Stipulated elections.....	52	100.0	8	15.4	43	82.7	1	1.9
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	50	100.0	20	40.0	30	60.0	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 2009¹

Type of election/case	Objec- tions filed	Objec- tions with- drawn	Objec- tions ruled upon	Overruled		Sustained	
				Number	Percent of total ruled upon	Number	Percent of total ruled upon
All representation elections.....	102	43	59	52	88.1	7	11.9
By type of case:							
RC cases.....	89	38	51	46	90.2	5	9.8
RM cases.....	2	0	2	1	50.0	1	50.0
RD cases.....	11	5	6	5	83.3	1	16.7
By type of election:							
Consent elections.....	0	0	0	0	0.0	0	0.0
Stipulated elections.....	52	39	13	12	92.3	1	7.7
Expedited elections.....	0	0	0	0	0.0	0	0.0
Regional Director-directed elections.....	50	4	46	40	87.0	6	13.0
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 2009¹

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.....	18	100.0	10	55.6	8	44.4	10	55.6
By type of case:								
RC cases.....	16	100.0	9	56.3	7	43.8	10	62.5
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	0	0.0
By type of election:								
Consent elections.....	1	100.0	1	100.0	0	0.0	0	0.0
Stipulated elections.....	11	100.0	4	36.4	7	63.6	6	54.5
Expedited elections.....	0	0.0	0	0.0	0	0.0	0	0.0
Regional Director-directed elections....	6	100.0	5	83.3	1	16.7	4	66.7
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 2009¹

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	
		Number	Percent of total	Number	Percent of total		Resulting in deauthorization		Resulting in continued authorization				Number	Percent of total eligible
							Number	Percent of total	Number	Percent of total				
Total.....	44	17	38.6	27	61.4	4,456	1,508	33.8	2,948	66.2	3,053	68.5	1,208	27.1
AFL-CIO unions.....	14	8	57.1	6	42.9	1,021	677	66.3	344	33.7	816	79.9	532	52.1
Other national unions.....	29	9	31.0	20	69.0	3,403	831	24.4	2,572	75.6	2,231	65.6	676	19.9
Other local unions.....	1	0.0	0.0	1	100.0	32	0	0.0	32	100.0	6	18.8	0	0.0

¹ Sec. 8(a)(3) of the Act requires that to revoke a union-shop agreement a majority of the employees eligible to vote must vote in favor of deauthorization.

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2009¹—Page 1 of 3

Participating unions	Total elections ²	Elections won by unions					Elections in which no representative chosen	Employees eligible to vote					In elections where no representative chosen
		Percent won	Total won	AFL-CIO unions	Other national unions	Other local unions		Total	In elections won	In units won by			
										AFL-CIO unions	Other national unions	Other local unions	
A. All representation elections													
AFL-CIO.....	587	60.5	355	355	--	--	232	26,320	13,384	13,384	--	--	12,936
Other local unions.....	76	68.4	52	--	--	52	24	5,834	3,633	--	--	3,633	2,201
Other national unions.....	810	61.2	496	--	496	--	314	51,420	35,182	--	35,182	--	16,238
1-union elections.....	1,473	61.3	903	355	496	52	570	83,574	52,199	13,384	35,182	3,633	31,375
AFL-CIO v. AFL-CIO.....	16	75.0	12	12	--	--	4	508	358	358	--	--	150
AFL-CIO v. Local.....	19	73.7	14	11	--	3	5	1,551	797	711	--	86	754
AFL-CIO v. National.....	37	91.9	34	20	14	--	3	2,801	2,657	1,699	958	--	144
Local v. Local.....	8	87.5	7	--	--	7	1	537	423	--	--	423	114
National v. Local.....	21	95.2	20	--	9	11	1	2,566	2,494	--	934	1,560	72
National v. National.....	34	94.1	32	--	32	--	2	3,656	3,402	--	3,402	--	254
2-union elections.....	135	88.1	119	43	55	21	16	11,619	10,131	2,768	5,294	2,069	1,488
AFL-CIO v. AFL-CIO v. Local v. Local.....	2	100.0	2	1	--	1	0	10	10	5	--	5	0
AFL-CIO v. AFL-CIO v. National...	1	100.0	1	0	1	--	0	196	196	0	196	--	0
Local v. Local v. Local.....	1	100.0	1	--	--	1	0	155	155	--	--	155	0
Local v. Local v. Local v. Local.....	1	100.0	1	--	--	1	0	114	114	--	--	114	0
National v. Local v. Local.....	3	100.0	3	--	0	3	0	225	225	--	0	225	0
National v. National v. Local.....	1	100.0	1	--	0	1	0	131	131	--	0	131	0
National v. National v. National v. National.....	2	100.0	2	--	2	--	0	6	6	--	6	--	0
3 (or more)-union elections.....	11	100.0	11	1	3	7	0	837	837	5	202	630	0
Total representation elections.....	1,619	63.8	1,033	399	554	80	586	96,030	63,167	16,157	40,678	6,332	32,863
B. Elections in RC cases													
Other national unions	663	65.5	434	--	434	--	229	42,738	29,868	--	29,868	--	12,870

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2009¹—Page 2 of 3

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.....	469	65.9	309	309	--	--	160	19,536	10,308	10,308	--	--	9,228
Other local unions.....	66	77.3	51	--	--	51	15	4,937	3,561	--	--	3,561	1,376
1-union elections.....	1,198	66.3	794	309	434	51	404	67,211	43,737	10,308	29,868	3,561	23,474
National v. Local.....	20	95.0	19	--	8	11	1	2,379	2,307	--	747	1,560	72
National v. National.....	30	93.3	28	--	28	--	2	3,537	3,283	--	3,283	--	254
Local v. Local.....	7	85.7	6	--	--	6	1	497	383	--	--	383	114
AFL-CIO v. AFL-CIO.....	15	80.0	12	12	--	--	3	489	358	358	--	--	131
AFL-CIO v. Local.....	19	73.7	14	11	--	3	5	1,551	797	711	--	86	754
AFL-CIO v. National.....	33	93.9	31	19	12	--	2	2,519	2,402	1,543	859	--	117
2-union elections.....	124	88.7	110	42	48	20	14	10,972	9,530	2,612	4,889	2,029	1,442
National v. National v. Local.....	1	100.0	1	--	0	1	0	131	131	--	0	131	0
National v. National v. National v. National.....	2	100.0	2	--	2	--	0	6	6	--	6	--	0
National v. Local v. Local.....	3	100.0	3	--	0	3	0	225	225	--	0	225	0
Local v. Local v. Local.....	1	100.0	1	--	--	1	0	155	155	--	--	155	0
Local v. Local v. Local v. Local.....	1	100.0	1	--	--	1	0	114	114	--	--	114	0
AFL-CIO v. AFL-CIO v. Local v. Local.....	2	100.0	2	1	--	1	0	10	10	5	--	5	0
AFL-CIO v. AFL-CIO v. National.....	1	100.0	1	0	1	--	0	196	196	0	196	--	0
3 (or more)-union elections.....	11	100.0	11	1	3	7	0	837	837	5	202	630	0
Total RC elections.....	1,333	68.6	915	352	485	78	418	79,020	54,104	12,925	34,959	6,220	24,916
C. Elections in RM cases													
Other local unions	1	0.0	0	--	--	0	1	7	0	--	--	0	7
AFL-CIO.....	5	40.0	2	2	--	--	3	265	156	156	--	--	109

Table 13.—Final Outcome of Representation Elections in Cases Closed, Fiscal Year 2009¹—Page 3 of 3

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	
Other national unions.....	8	50.0	4	--	4	--	4	101	48	--	48	--	53
1-union elections.....	14	42.9	6	2	4	0	8	373	204	156	48	0	169
AFL-CIO v. National.....	2	50.0	1	0	1	--	1	104	77	0	77	--	27
2-union elections.....	2	50.0	1	0	1	0	1	104	77	0	77	0	27
Total RM elections.....	16	43.8	7	2	5	0	9	477	281	156	125	0	196
D. Elections in RD cases													
Other national unions	139	41.7	58	--	58	--	81	8,581	5,266	--	5,266	--	3,315
AFL-CIO.....	113	38.9	44	44	--	--	69	6,519	2,920	2,920	--	--	3,599
Other local unions.....	9	11.1	1	--	--	1	8	890	72	--	--	72	818
1-union elections.....	261	39.5	103	44	58	1	158	15,990	8,258	2,920	5,266	72	7,732
National v. Local.....	1	100.0	1	--	1	0	0	187	187	--	187	0	0
National v. National.....	4	100.0	4	--	4	--	0	119	119	--	119	--	0
Local v. Local.....	1	100.0	1	--	--	1	0	40	40	--	--	40	0
AFL-CIO v. AFL-CIO.....	1	0.0	0	0	--	--	1	19	0	0	--	--	19
AFL-CIO v. National.....	2	100.0	2	1	1	--	0	178	178	156	22	--	0
2-union elections.....	9	88.9	8	1	6	1	1	543	524	156	328	40	19
Total RD elections.....	270	41.1	111	45	64	2	159	16,533	8,782	3,076	5,594	112	7,751

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 selection 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 2009¹—Page 1 of 2**

Participating unions	Total valid votes cast	Valid votes cast in elections won					Valid votes cast in elections lost					Total votes for no union Total
		Votes for unions				Total votes for no union	Votes for unions					
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Total	AFL-CIO unions		
A. All representation elections												
AFL-CIO.....	21,910	7,365	7,365	--	--	3,195	4,049	4,049	--	--	7,301	
Other local unions.....	4,205	1,924	--	--	1,924	574	550	--	--	550	1,157	
Other national unions.....	42,257	19,488	--	19,488	--	8,604	4,941	--	4,941	--	9,224	
1-union elections.....	68,372	28,777	7,365	19,488	1,924	12,373	9,540	4,049	4,941	550	17,682	
AFL-CIO v. AFL-CIO.....	443	231	231	--	--	29	80	80	--	--	103	
AFL-CIO v. Local.....	1,057	537	353	--	184	11	283	97	--	186	226	
AFL-CIO v. National.....	2,347	1,977	1,060	917	--	158	110	49	61	--	102	
Local v. Local.....	369	336	--	--	336	3	23	--	--	23	7	
National v. Local.....	1,502	1,385	--	609	776	63	26	--	25	1	28	
National v. National.....	2,424	2,023	--	2,023	--	172	107	--	107	--	122	
2-union elections.....	8,142	6,489	1,644	3,549	1,296	436	629	226	193	210	588	
AFL-CIO v. AFL-CIO v. Local v. Local.....	10	10	5	--	5	0	0	0	--	0	0	
AFL-CIO v. AFL-CIO v. National.....	155	141	12	129	--	14	0	0	0	--	0	
Local v. Local v. Local.....	91	91	--	--	91	0	0	--	--	0	0	
Local v. Local v. Local v. Local.....	64	57	--	--	57	7	0	--	--	0	0	
National v. Local v. Local.....	76	76	--	3	73	0	0	--	0	0	0	
National v. National v. Local.....	48	48	--	20	28	0	0	--	0	0	0	
National v. National v. National v. National.....	6	6	--	6	--	0	0	--	0	--	0	
3 (or more)-union elections.....	450	429	17	158	254	21	0	0	0	0	0	
Total representation elections.....	76,964	35,695	9,026	23,195	3,474	12,830	10,169	4,275	5,134	760	18,270	
B. Elections in RC cases												
Other national unions.....	34,961	16,552	--	16,552	--	7,066	4,058	--	4,058	--	7,285	
AFL-CIO.....	16,201	5,704	5,704	--	--	2,179	2,987	2,987	--	--	5,331	
Other local unions.....	3,498	1,889	--	--	1,889	551	313	--	--	313	745	
1-union elections.....	54,660	24,145	5,704	16,552	1,889	9,796	7,358	2,987	4,058	313	13,361	
National v. Local.....	1,395	1,284	--	519	765	57	26	--	25	1	28	
National v. National.....	2,348	1,951	--	1,951	--	168	107	--	107	--	122	
Local v. Local.....	339	306	--	--	306	3	23	--	--	23	7	
AFL-CIO v. AFL-CIO.....	418	231	231	--	--	29	68	68	--	--	90	
AFL-CIO v. Local.....	1,057	537	353	--	184	11	283	97	--	186	226	
AFL-CIO v. National.....	2,099	1,757	956	801	--	157	83	31	52	--	102	
2-union elections.....	7,656	6,066	1,540	3,271	1,255	425	590	196	184	210	575	

**Table 14.—Valid Votes Cast in Representation Elections, by Final Results of Election, in Cases Closed,
Fiscal Year 2009¹—Page 2 of 2**

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
		Total	AFL-CIO unions	Other national unions	Other local unions		Total	AFL-CIO unions	Total	AFL-CIO unions	
National v. National v. Local.....	48	48	0	20	28	0	0	--	--	--	--
National v. National v. National v. National.....	6	6	0	6	0	0	0	--	--	--	--
National v. Local v. Local.....	76	76	0	3	73	0	0	--	--	--	--
Local v. Local v. Local.....	91	91	0	0	91	0	0	--	--	--	--
Local v. Local v. Local v. Local.....	64	57	0	0	57	7	0	--	--	--	--
AFL-CIO v. AFL-CIO v. Local v. Local.....	10	10	5	0	5	0	0	--	--	--	--
AFL-CIO v. AFL-CIO v. National.....	155	141	12	129	0	14	0	--	--	--	--
3 (or more)-union elections.....	450	429	17	158	254	21	0	0	0	0	0
Total RC elections.....	62,766	30,640	7,261	19,981	3,398	10,242	7,948	3,183	4,242	523	13,936
C. Elections in RM cases											
Other local unions.....	7	0	--	--	--	--	0	0	0	0	7
AFL-CIO.....	246	104	104	--	--	49	19	19	--	--	74
Other national unions.....	99	35	--	35	--	12	19	--	19	--	33
1-union elections.....	352	139	104	35	0	61	38	19	19	0	114
AFL-CIO v. National.....	103	75	36	39	--	1	27	18	9	--	0
2-union elections.....	103	75	36	39	0	1	27	18	9	0	0
Total RM elections.....	455	214	140	74	0	62	65	37	28	0	114
D. Elections in RD cases											
Other national unions.....	7,197	2,901	--	2,901	--	1,526	864	--	864	--	1,906
AFL-CIO.....	5,463	1,557	1,557	--	--	967	1,043	1,043	--	--	1,896
Other local unions.....	700	35	--	--	35	23	237	--	--	237	405
1-union elections.....	13,360	4,493	1,557	2,901	35	2,516	2,144	1,043	864	237	4,207
National v. Local.....	107	101	0	90	11	6	0	--	--	--	--
National v. National.....	76	72	0	72	0	4	0	--	--	--	--
Local v. Local.....	30	30	0	0	30	0	0	--	--	--	--
AFL-CIO v. AFL-CIO.....	25	0	--	--	--	--	12	12	0	0	13
AFL-CIO v. National.....	145	145	68	77	0	0	0	--	--	--	--
2-union elections.....	383	348	68	239	41	10	12	12	0	0	13
Total RD elections.....	13,743	4,841	1,625	3,140	76	2,526	2,156	1,055	864	237	4,220

¹ See Glossary of terms for definitions.

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 1 of 3

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.....	110	70	25	42	3	40	7,096	6,090	3,710	847	2,668	195	2,380	4,824
Indiana.....	28	14	7	6	1	14	1,567	1,258	679	437	183	59	579	901
Michigan.....	62	40	16	22	2	22	3,027	2,572	1,584	415	1,092	77	988	1,695
Ohio.....	64	34	17	16	1	30	3,315	2,946	1,612	689	899	24	1,334	1,839
Wisconsin.....	22	10	6	4	0	12	1,037	749	353	137	216	0	396	565
East North Central.....	286	168	71	90	7	118	16,042	13,615	7,938	2,525	5,058	355	5,677	9,824
Alabama.....	11	6	1	5	0	5	623	565	250	153	97	0	315	165
Kentucky.....	14	9	7	2	0	5	1,179	1,076	536	264	272	0	540	472
Mississippi.....	11	10	3	6	1	1	634	449	374	107	218	49	75	611
Tennessee.....	15	9	3	3	3	6	610	507	273	130	79	64	234	227
East South Central.....	51	34	14	16	4	17	3,046	2,597	1,433	654	666	113	1,164	1,475
Puerto Rico.....	25	19	5	6	8	6	1,470	1,179	890	188	51	651	289	1,142
U.S. Minor Outlying Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	4	2	2	0	0	2	173	141	60	30	0	30	81	27
Island Areas.....	29	21	7	6	8	8	1,643	1,320	950	218	51	681	370	1,169
New Jersey.....	99	57	17	37	3	42	4,177	3,447	1,989	553	1,346	90	1,458	2,594
New York.....	214	131	35	86	10	83	11,806	8,427	5,084	1,542	3,214	328	3,343	8,223
Pennsylvania.....	85	53	23	27	3	32	4,193	3,710	1,946	749	1,080	117	1,764	2,339
Middle Atlantic.....	398	241	75	150	16	157	20,176	15,584	9,019	2,844	5,640	535	6,565	13,156
Arizona.....	9	7	6	1	0	2	424	279	223	61	162	0	56	132
Colorado.....	13	13	10	3	0	0	636	513	341	232	109	0	172	636
Idaho.....	6	5	3	2	0	1	312	239	210	50	160	0	99	305
Montana.....	9	3	0	3	0	6	291	209	101	2	99	0	138	101
Nevada.....	19	15	5	9	1	4	2,254	1,360	1,033	354	240	439	327	1,970
New Mexico.....	7	5	2	3	0	2	156	145	90	44	46	0	55	147
Utah.....	6	4	3	1	0	2	1,247	1,128	764	103	661	0	364	1,232
Wyoming.....	2	1	1	0	0	1	9	8	5	5	0	0	3	5
Mountain.....	71	53	30	22	1	18	5,329	3,981	2,767	851	1,477	439	1,214	4,528
Connecticut.....	39	31	9	19	3	8	1,491	1,211	816	243	448	125	395	977
Maine.....	3	2	1	1	0	1	85	75	42	33	9	0	33	57
Massachusetts.....	63	42	9	30	3	21	5,155	4,034	2,398	342	1,766	290	1,636	3,164

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 2 of 3

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		
New Hampshire.....	6	6	1	5	0	0	401	344	247	6	241	0	97	401
Rhode Island.....	13	10	0	9	1	3	1,183	1,055	648	4	346	298	407	1,043
Vermont.....	5	3	1	1	1	2	420	354	227	160	32	35	127	396
New England.....	129	94	21	65	8	35	8,735	7,073	4,378	788	2,842	748	2,695	6,038
Alaska.....	13	9	5	4	0	4	428	375	276	44	224	8	99	353
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	165	112	40	66	6	53	9,482	7,359	4,675	1,140	3,023	512	2,684	5,879
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.....	16	11	8	2	1	5	558	490	316	230	73	13	174	451
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.....	38	24	4	19	1	14	1,711	1,446	861	141	626	94	585	1,105
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	72	45	18	27	0	27	2,966	2,337	1,472	465	1,007	0	865	2,337
Pacific.....	304	201	75	118	8	103	15,145	12,007	7,600	2,020	4,953	627	4,407	10,125
Delaware.....	7	5	2	3	0	2	308	266	188	29	159	0	78	214
District Of Columbia.....	27	24	4	9	11	3	1,910	1,150	949	89	462	398	201	1,688
Florida.....	44	26	17	7	2	18	2,625	2,049	1,185	431	728	26	864	1,513
Georgia.....	20	14	10	3	1	6	648	565	310	197	57	56	255	421
Maryland.....	25	16	3	3	10	9	2,718	1,657	1,035	423	403	209	622	2,367
North Carolina.....	15	8	4	4	0	7	5,519	4,797	2,421	110	2,311	0	2,376	4,794
South Carolina.....	9	7	5	1	1	2	427	401	164	146	12	6	237	114
Virginia.....	13	10	5	3	2	3	502	359	226	127	54	45	133	337
West Virginia.....	7	4	3	1	0	3	653	602	296	249	47	0	306	104
South Atlantic.....	167	114	53	34	27	53	15,310	11,846	6,774	1,801	4,233	740	5,072	11,552
Iowa.....	18	6	3	3	0	12	532	499	207	71	136	0	292	218
Kansas.....	13	10	4	6	0	3	1,577	1,355	630	24	606	0	725	657
Minnesota.....	35	16	8	8	0	19	1,631	1,394	789	97	691	1	605	872
Missouri.....	41	22	11	11	0	19	2,354	1,740	924	346	578	0	816	1,559
Nebraska.....	5	5	4	1	0	0	192	164	127	74	53	0	37	192
North Dakota.....	1	1	1	0	0	0	6	6	6	6	0	0	0	6

Table 15A.—Geographic Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 3 of 3

Division and State ¹	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
South Dakota.....	4	2	1	1	0	2	69	64	36	18	18	0	28	46
West North Central.....	117	62	32	30	0	55	6,361	5,222	2,719	636	2,082	1	2,503	3,550
Arkansas.....	10	3	2	1	0	7	711	650	300	272	28	0	350	249
Louisiana.....	19	14	3	11	0	5	975	637	420	122	298	0	217	807
Oklahoma.....	9	7	3	4	0	2	690	483	297	123	174	0	186	499
Texas.....	43	31	11	19	1	12	2,551	2,216	1,309	535	768	6	907	1,444
West South Central.....	81	55	19	35	1	26	4,927	3,986	2,326	1,052	1,268	6	1,660	2,999
Total, all States and areas.....	1,633	1,043	397	566	80	590	96,714	77,231	45,904	13,389	28,270	4,245	31,327	64,416

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 Elections¹ Held in Cases Closed, Fiscal Year 2009¹—Page 1 of 3

Division and State ²	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL-CIO unions	Other national unions	Other local unions				Total	AFL-CIO unions	Other national unions	Other local unions		
Illinois.....	87	65	24	38	3	22	5,973	5,122	3,279	735	2,349	195	1,843	4,330
Indiana.....	21	10	5	4	1	11	690	575	327	134	134	59	248	357
Michigan.....	47	32	11	19	2	15	2,164	1,838	1,158	160	921	77	680	1,067
Ohio.....	45	24	13	10	1	21	2,022	1,774	951	395	532	24	823	969
Wisconsin.....	14	8	5	3	0	6	710	479	210	118	92	0	269	329
East North Central.....	214	139	58	74	7	75	11,559	9,788	5,925	1,542	4,028	355	3,863	7,052
Alabama.....	8	5	1	4	0	3	544	494	222	146	76	0	272	136
Kentucky.....	9	5	3	2	0	4	925	850	347	139	208	0	503	239
Mississippi.....	11	10	3	6	1	1	634	449	374	107	218	49	75	611
Tennessee.....	11	8	2	3	3	3	342	284	186	52	70	64	98	224
East South Central.....	39	28	9	15	4	11	2,445	2,077	1,129	444	572	113	948	1,210
Puerto Rico.....	24	18	4	6	8	6	1,437	1,149	867	165	51	651	282	1,109
U.S. Minor Outlying Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	3	2	2	0	0	1	54	54	30	30	0	0	24	27
Island Areas.....	27	20	6	6	8	7	1,491	1,203	897	195	51	651	306	1,136
New Jersey.....	83	52	16	33	3	31	3,056	2,615	1,541	504	971	66	1,074	1,992
New York.....	194	127	35	82	10	67	10,849	7,664	4,887	1,496	3,066	325	2,777	8,079
Pennsylvania.....	72	45	19	23	3	27	3,594	3,127	1,576	577	882	117	1,551	1,865
Middle Atlantic.....	349	224	70	138	16	125	17,499	13,406	8,004	2,577	4,919	508	5,402	11,936
Arizona.....	9	7	6	1	0	2	424	279	223	61	162	0	56	132
Colorado.....	12	12	9	3	0	0	354	350	256	147	109	0	94	354
Idaho.....	5	4	3	1	0	1	249	247	178	50	128	0	69	242
Montana.....	6	3	0	3	0	3	261	219	96	0	96	0	123	101
Nevada.....	19	15	5	9	1	4	2,254	1,360	1,033	354	240	439	327	1,970
New Mexico.....	7	5	2	3	0	2	156	145	90	44	46	0	55	147
Utah.....	5	3	2	1	0	2	1,227	1,109	753	92	661	0	356	1,212
Wyoming.....	1	1	1	0	0	0	5	5	5	5	0	0	0	5
Mountain.....	64	50	28	21	1	14	4,930	3,714	2,634	753	1,442	439	1,080	4,163
Connecticut.....	38	31	9	19	3	7	1,488	1,209	816	243	448	125	393	977
Maine.....	2	1	0	1	0	1	32	24	10	1	9	0	14	4
Massachusetts.....	61	42	9	30	3	19	5,012	3,915	2,355	330	1,735	290	1,560	3,164

Table 15B.—Geographic Distribution of Collective-Bargaining Elections¹ Held in Cases Closed, Fiscal Year 2009¹—Page 2 of 3

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		
New Hampshire.....	5	5	1	4	0	0	187	163	120	6	114	0	43	187
Rhode Island.....	13	10	0	9	1	3	1,183	1,055	648	4	346	298	407	1,043
Vermont.....	3	2	1	1	0	1	343	291	190	160	30	0	101	324
New England.....	122	91	20	64	7	31	8,245	6,657	4,139	744	2,682	713	2,518	5,699
Alaska.....	11	8	5	3	0	3	398	351	264	43	213	8	87	333
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	139	100	36	58	6	39	7,483	5,770	3,852	956	2,564	332	1,918	5,068
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.....	14	11	8	2	1	3	503	443	300	214	73	13	143	451
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.....	29	21	3	17	1	8	1,364	1,121	715	110	511	94	406	897
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	62	37	16	21	0	25	2,374	1,798	1,153	445	708	0	645	1,774
Pacific.....	255	177	68	101	8	78	12,122	9,483	6,284	1,768	4,069	447	3,199	8,523
Delaware.....	7	5	2	3	0	2	308	266	188	29	159	0	78	214
District Of Columbia.....	24	22	4	7	11	2	1,654	984	810	89	334	387	174	1,501
Florida.....	35	24	16	6	2	11	1,841	1,342	842	285	531	26	500	1,409
Georgia.....	18	13	10	2	1	5	493	422	285	197	32	56	137	392
Maryland.....	20	15	3	2	10	5	2,455	1,426	932	392	331	209	494	2,363
North Carolina.....	12	5	2	3	0	7	5,439	4,726	2,378	79	2,299	0	2,348	4,714
South Carolina.....	6	5	3	1	1	1	90	88	66	48	12	6	22	65
Virginia.....	11	9	5	3	1	2	456	323	196	127	54	15	127	297
West Virginia.....	6	3	3	0	0	3	595	545	260	249	11	0	285	46
South Atlantic.....	139	101	48	27	26	38	13,331	10,122	5,957	1,495	3,763	699	4,165	11,001
Iowa.....	10	3	2	1	0	7	353	337	126	18	108	0	211	76
Kansas.....	12	10	4	6	0	2	1,570	1,349	629	23	606	0	720	657
Minnesota.....	24	12	7	5	0	12	1,260	1,083	618	74	543	1	465	658
Missouri.....	28	20	11	9	0	8	1,020	771	478	211	267	0	293	848
Nebraska.....	4	4	4	0	0	0	117	99	74	74	0	0	25	117

Table 15B.—Geographic Distribution of Collective-Bargaining Elections¹ Held in Cases Closed, Fiscal Year 2009¹—Page 3 of 3

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		
North Dakota.....	1	1	1	0	0	0	6	6	6	6	0	0	0	6
South Dakota.....	3	2	1	1	0	1	51	46	27	9	18	0	19	46
West North Central.....	82	52	30	22	0	30	4,377	3,691	1,958	415	1,542	1	1,733	2,408
Arkansas.....	5	0	0	0	0	5	197	173	50	28	22	0	123	0
Louisiana.....	18	14	3	11	0	4	969	631	420	122	298	0	211	807
Oklahoma.....	9	7	3	4	0	2	690	483	297	123	174	0	186	499
Texas.....	37	28	9	18	1	9	2,304	1,976	1,163	503	654	6	813	1,228
West South Central.....	69	49	15	33	1	20	4,160	3,263	1,930	776	1,148	6	1,333	2,534
Total, all States and areas.....	1,360	931	352	501	78	429	80,159	63,404	38,857	10,709	24,216	3,932	24,547	55,662

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 2009—Page 1 of 3

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.....	23	5	1	4	0	18	1,123	968	431	112	319	0	537	494
Indiana.....	7	4	2	2	0	3	877	683	352	303	49	0	331	544
Michigan.....	15	8	5	3	0	7	863	734	426	255	171	0	308	628
Ohio.....	19	10	4	6	0	9	1,293	1,172	661	294	367	0	511	870
Wisconsin.....	8	2	1	1	0	6	327	270	143	19	124	0	127	236
East North Central.....	72	29	13	16	0	43	4,483	3,827	2,013	983	1,030	0	1,814	2,772
Alabama.....	3	1	0	1	0	2	79	71	28	7	21	0	43	29
Kentucky.....	5	4	4	0	0	1	254	226	189	125	64	0	37	233
Mississippi.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Tennessee.....	4	1	1	0	0	3	268	223	87	78	9	0	136	3
East South Central.....	12	6	5	1	0	6	601	520	304	210	94	0	216	265
Puerto Rico.....	1	1	1	0	0	0	33	30	23	23	0	0	7	33
U.S. Minor Outlying Islands.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virgin Islands.....	1	0	0	0	0	1	119	87	30	0	0	30	57	0
Island Areas.....	2	1	1	0	0	1	152	117	53	23	0	30	64	33
New Jersey.....	16	5	1	4	0	11	1,121	832	448	49	375	24	384	602
New York.....	20	4	0	4	0	16	957	763	197	46	148	3	566	144
Pennsylvania.....	13	8	4	4	0	5	599	583	370	172	198	0	213	474
Middle Atlantic.....	49	17	5	12	0	32	2,677	2,178	1,015	267	721	27	1,163	1,220
Arizona.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Colorado.....	1	1	1	0	0	0	282	163	85	85	0	0	78	282
Idaho.....	1	1	0	1	0	0	63	62	32	0	32	0	30	63
Montana.....	3	0	0	0	0	3	30	20	5	2	3	0	15	0
Nevada.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
New Mexico.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Utah.....	1	1	1	0	0	0	20	19	11	11	0	0	8	20
Wyoming.....	1	0	0	0	0	1	4	3	0	0	0	0	3	0
Mountain.....	7	3	2	1	0	4	399	267	133	98	35	0	134	365
Connecticut.....	1	0	0	0	0	1	3	2	0	0	0	0	2	0
Maine.....	1	1	1	0	0	0	53	51	32	32	0	0	19	53
Massachusetts.....	2	0	0	0	0	2	143	119	43	12	31	0	76	0

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2009—Page 2 of 3

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		
New Hampshire.....	1	1	0	1	0	0	214	181	127	0	127	0	54	214
Rhode Island.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vermont.....	2	1	0	0	1	1	77	63	37	0	2	35	26	72
New England.....	7	3	1	1	1	4	490	416	239	44	160	35	177	339
Alaska.....	2	1	0	1	0	1	30	24	12	1	11	0	12	20
American Samoa.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
California.....	26	12	4	8	0	14	1,999	1,589	823	184	459	180	766	811
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	55	47	16	16	0	0	31	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.....	9	3	1	2	0	6	347	325	146	31	115	0	179	208
Palau.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Washington.....	10	8	2	6	0	2	592	539	319	20	299	0	220	563
Pacific.....	49	24	7	17	0	25	3,023	2,524	1,316	252	884	180	1,208	1,602
Delaware.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Of Columbia.....	3	2	0	2	0	1	256	166	139	0	128	11	27	187
Florida.....	9	2	1	1	0	7	784	707	343	146	197	0	364	104
Georgia.....	2	1	0	1	0	1	155	143	25	0	25	0	118	29
Maryland.....	5	1	0	1	0	4	263	231	103	31	72	0	128	4
North Carolina.....	3	3	2	1	0	0	80	71	43	31	12	0	28	80
South Carolina.....	3	2	2	0	0	1	337	313	98	98	0	0	215	49
Virginia.....	2	1	0	0	1	1	46	36	30	0	0	30	6	40
West Virginia.....	1	1	0	1	0	0	58	57	36	0	36	0	21	58
South Atlantic.....	28	13	5	7	1	15	1,979	1,724	817	306	470	41	907	551
Iowa.....	8	3	1	2	0	5	179	162	81	53	28	0	81	142
Kansas.....	1	0	0	0	0	1	7	6	1	1	0	0	5	0
Minnesota.....	11	4	1	3	0	7	371	311	171	23	148	0	140	214
Missouri.....	13	2	0	2	0	11	1,334	969	446	135	311	0	523	711
Nebraska.....	1	1	0	1	0	0	75	65	53	0	53	0	12	75

Table 15C.—Geographic Distribution of Decertification Elections Held in Cases Closed, Fiscal Year 2009—Page 3 of 3

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 Dakota.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
South Dakota.....	1	0	0	0	0	1	18	18	9	9	0	0	9	0
West North Central.....	35	10	2	8	0	25	1,984	1,531	761	221	540	0	770	1,142
Arkansas.....	5	3	2	1	0	2	514	477	250	244	6	0	227	249
Louisiana.....	1	0	0	0	0	1	6	6	0	0	0	0	6	0
Oklahoma.....	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Texas.....	6	3	2	1	0	3	247	240	146	32	114	0	94	216
West South Central.....	12	6	4	2	0	6	767	723	396	276	120	0	327	465
Total, all States and areas.....	273	112	45	65	2	161	16,555	13,827	7,047	2,680	4,054	313	6,780	8,754

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 2009—Page 1 of 5

Industrial Group ¹	Total elections	Number of elections in which representation rights were won by unions				Number of elections in which no representative was chosen	Number of employees eligible to vote	Total valid votes cast	Valid votes cast for unions				Total votes for no union	Eligible employees in units choosing representation
		Total	AFL–CIO unions	Other national unions	Other local unions				Total	AFL–CIO unions	Other national unions	Other local unions		
Crop Production.....	3	0	0	0	0	3	313	247	86	0	86	0	161	112
Animal Production.....	2	1	1	0	0	1	421	394	127	47	80	0	267	85
Forestry and Logging.....	1	1	1	0	0	0	115	11	11	11	0	0	0	0
Agriculture, Forestry, Fishing, and Hunting.....	6	2	2	0	0	4	849	652	224	58	166	0	428	197
Oil and Gas Extraction.....	2	2	1	1	0	0	23	22	17	6	11	0	5	23
Mining (except Oil and Gas).....	10	1	1	0	0	9	697	616	253	214	39	0	363	7
Support Activities for Mining.....	2	1	0	1	0	1	120	99	41	0	41	0	58	20
Mining, Quarrying, and Oil and Gas Extraction.....	14	4	2	2	0	10	840	737	311	220	91	0	426	50
Utilities.....	49	28	22	6	0	21	1,270	1,126	580	403	169	8	546	498
Construction of Buildings.....	23	13	7	5	1	10	816	591	378	273	92	13	213	373
Heavy and Civil Engineering Construction.....	15	3	3	0	0	12	352	292	125	113	12	0	167	131
Specialty Trade Contractors.....	92	62	46	14	2	30	2,125	1,512	1,117	829	230	58	395	1,459
Construction.....	130	78	56	19	3	52	3,293	2,395	1,620	1,215	334	71	775	1,963
Food Manufacturing.....	45	23	7	13	3	22	9,349	8,327	4,328	289	3,849	190	3,999	7,170
Beverage and Tobacco Product Manufacturing.....	13	5	1	4	0	8	581	531	233	71	126	36	298	168
Textile Mills.....	1	1	0	1	0	0	4	3	3	0	3	0	0	4
Textile Product Mills.....	1	1	0	1	0	0	214	181	127	0	127	0	54	214
Apparel Manufacturing.....	1	0	0	0	0	1	95	86	14	0	14	0	72	0
31-Manufacturing.....	61	30	8	19	3	31	10,243	9,128	4,705	360	4,119	226	4,423	7,556
Wood Product Manufacturing.....	4	1	0	1	0	3	170	147	45	39	6	0	102	9
Paper Manufacturing.....	10	6	2	4	0	4	663	642	296	180	116	0	346	295
Printing and Related Support Activities.....	7	2	1	1	0	5	102	87	27	6	21	0	60	45
Petroleum and Coal Products Manufacturing.....	7	1	0	1	0	6	834	752	268	244	24	0	484	22
Chemical Manufacturing.....	17	4	3	1	0	13	639	603	248	129	119	0	355	56

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 2 of 5

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		
Plastics and Rubber Products Manufacturing.....	9	4	4	0	0	5	308	288	172	155	17	0	116	277
Nonmetallic Mineral Product Manufacturing.....	19	8	6	2	0	11	373	387	213	119	94	0	174	139
32-Manufacturing.....	73	26	16	10	0	47	3,089	2,906	1,269	872	397	0	1,637	843
Primary Metal Manufacturing.....	16	6	5	1	0	10	759	735	383	362	21	0	352	289
Fabricated Metal Product Manufacturing.....	10	4	1	2	1	6	388	302	87	62	14	11	215	131
Machinery Manufacturing.....	12	4	3	1	0	8	514	456	251	175	76	0	205	136
Computer and Electronic Product Manufacturing.....	6	6	6	0	0	0	26	25	25	25	0	0	0	26
Electrical Equipment, Appliance, and Component Manufacturing.....	9	5	2	3	0	4	496	445	150	117	33	0	295	81
Transportation Equipment Manufacturing.....	28	14	12	2	0	14	2,149	2,011	1,024	966	58	0	987	995
Furniture and Related Product Manufacturing.....	7	5	2	2	1	2	352	305	197	61	103	33	108	251
Miscellaneous Manufacturing.....	11	5	4	1	0	6	815	613	283	252	31	0	330	153
33-Manufacturing.....	99	49	35	12	2	50	5,499	4,892	2,400	2,020	336	44	2,492	2,062
Merchant Wholesalers, Durable Goods.....	16	6	2	4	0	10	746	706	420	143	272	5	286	349
Merchant Wholesalers, Nondurable Goods.....	28	17	2	15	0	11	1,248	1,146	601	9	592	0	545	830
Wholesale Electronic Markets and Agents and Brokers.....	2	1	0	1	0	1	90	85	49	0	49	0	36	56
Wholesale Trade.....	46	24	4	20	0	22	2,084	1,937	1,070	152	913	5	867	1,235
Motor Vehicle and Parts Dealers.....	21	9	6	3	0	12	567	509	310	246	64	0	199	356
Furniture and Home Furnishings Stores.....	2	0	0	0	0	2	12	12	4	0	4	0	8	0
Electronics and Appliance Stores.....	4	1	0	1	0	3	76	75	33	18	15	0	42	17
Building Material and Garden Equipment and Supplies Dealers.....	2	2	2	0	0	0	12	11	8	8	0	0	3	12
Food and Beverage Stores.....	31	12	2	10	0	19	1,060	958	451	14	437	0	507	429
Health and Personal Care Stores.....	6	3	2	1	0	3	252	215	112	49	33	30	103	115

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 3 of 5

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		
Gasoline Stations.....	3	1	0	1	0	2	46	43	21	0	21	0	22	23
Clothing and Clothing Accessories Stores	3	2	1	1	0	1	298	253	119	4	115	0	134	24
44-Retail Trade.....	72	30	13	17	0	42	2,323	2,076	1,058	339	689	30	1,018	976
Sporting Goods, Hobby, Book, and Music Stores.....	1	0	0	0	0	1	7	7	3	0	3	0	4	0
General Merchandise Stores.....	9	4	0	4	0	5	88	72	50	0	50	0	22	68
Miscellaneous Store Retailers.....	1	1	0	1	0	0	9	9	9	0	9	0	0	9
Nonstore Retailers.....	3	1	1	0	0	2	166	154	48	6	42	0	106	7
45-Retail Trade.....	14	6	1	5	0	8	270	242	110	6	104	0	132	84
Air Transportation.....	6	6	3	1	2	0	866	765	417	387	12	18	348	866
Rail Transportation.....	6	5	1	3	1	1	216	188	102	49	38	15	86	111
Water Transportation.....	2	2	1	1	0	0	16	10	6	6	0	0	4	16
Truck Transportation.....	57	42	14	26	2	15	2,501	2,078	1,376	252	906	218	702	1,356
Transit and Ground Passenger Transportation.....	182	151	37	113	1	31	14,076	11,569	7,849	1,695	6,020	134	3,720	11,535
Pipeline Transportation.....	2	1	0	1	0	1	6	6	4	0	4	0	2	4
Scenic and Sightseeing Transportation.....	1	1	1	0	0	0	18	18	13	13	0	0	5	18
Support Activities for Transportation.....	33	27	12	13	2	6	1,489	1,203	761	246	459	56	442	1,254
48-Transportation and Warehousing.....	289	235	69	158	8	54	19,188	15,837	10,528	2,648	7,439	441	5,309	15,160
Couriers and Messengers.....	6	5	1	4	0	1	132	116	71	27	44	0	45	106
Warehousing and Storage.....	36	13	4	9	0	23	1,816	1,603	848	51	797	0	755	869
49-Transportation and Warehousing.....	42	18	5	13	0	24	1,948	1,719	919	78	841	0	800	975
Publishing Industries (except Internet).....	5	3	2	1	0	2	137	125	63	47	16	0	62	88
Motion Picture and Sound Recording Industries.....	1	0	0	0	0	1	3	2	1	1	0	0	1	0
Broadcasting (except Internet).....	6	3	2	1	0	3	296	265	125	119	6	0	140	55
Telecommunications.....	12	6	6	0	0	6	780	716	305	305	0	0	411	102
Other Information Services.....	15	10	6	3	1	5	173	164	105	74	25	6	59	135
Information.....	39	22	16	5	1	17	1,389	1,272	599	546	47	6	673	380

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 4 of 5

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		
Credit Intermediation and Related Activities.....	3	1	1	0	0	2	77	68	26	25	1	0	42	47
Finance and Insurance.....	3	1	1	0	0	2	77	68	26	25	1	0	42	47
Real Estate.....	8	6	2	3	1	2	98	87	60	19	30	11	27	74
Rental and Leasing Services.....	15	9	4	5	0	6	727	748	395	85	310	0	353	407
Lessors of Nonfinancial Intangible Assets (except Copyrighted Works).....	1	1	1	0	0	0	8	8	7	7	0	0	1	8
Real Estate and Rental and Leasing.....	24	16	7	8	1	8	833	843	462	111	340	11	381	489
Professional, Scientific, and Technical Services.....	33	17	11	6	0	16	2,106	1,471	669	598	71	0	802	1,127
Management of Companies and Enterprises.....	8	8	3	5	0	0	101	97	68	17	51	0	29	101
Administrative and Support Services.....	115	94	24	59	11	21	6,692	4,162	3,008	651	1,931	426	1,154	5,427
Waste Management and Remediation Services.....	35	18	7	11	0	17	1,399	1,281	664	191	422	51	617	761
Administrative and Support and Waste Management and Remediation Services.....	150	112	31	70	11	38	8,091	5,443	3,672	842	2,353	477	1,771	6,188
Educational Services.....	47	36	12	14	10	11	2,736	2,281	1,500	485	744	271	781	2,319
Ambulatory Health Care Services.....	56	35	9	18	8	21	2,769	2,018	1,231	193	581	457	787	1,814
Hospitals.....	93	74	25	38	11	19	11,640	8,760	5,679	1,068	3,072	1,539	3,081	8,468
Nursing and Residential Care Facilities.....	88	58	8	50	0	30	5,207	3,903	2,409	207	2,202	0	1,494	3,497
Social Assistance.....	31	21	10	11	0	10	1,900	1,434	1,019	134	883	2	415	1,682
Health Care and Social Assistance.....	268	188	52	117	19	80	21,516	16,115	10,338	1,602	6,738	1,998	5,777	15,461
Performing Arts, Spectator Sports, and Related Industries.....	9	5	4	1	0	4	496	215	109	85	0	24	106	258
Museums, Historical Sites, and Similar Institutions.....	1	0	0	0	0	1	4	3	1	1	0	0	2	0
Amusement, Gambling, and Recreation Industries.....	6	2	1	1	0	4	154	140	76	12	64	0	64	69

Table 16.—Industrial Distribution of Representation Elections Held in Cases Closed, Fiscal Year 2009—Page 5 of 5

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		
Arts, Entertainment, and Recreation.....	16	7	5	2	0	9	654	358	186	98	64	24	172	327
Accommodation.....	28	19	7	12	0	9	1,378	1,075	630	178	422	30	445	1,104
Food Services and Drinking Places.....	28	17	4	13	0	11	2,579	1,897	1,024	167	857	0	873	1,714
Accommodation and Food Services....	56	36	11	25	0	20	3,957	2,972	1,654	345	1,279	30	1,318	2,818
Repair and Maintenance.....	25	16	11	4	1	9	804	732	411	240	153	18	321	421
Personal and Laundry Services.....	18	12	2	10	0	6	513	393	222	52	170	0	171	316
Religious, Grantmaking, Civic, Professional, and Similar Organizations...	9	4	2	1	1	5	327	303	113	66	31	16	190	68
Other Services (except Public Administration).....	52	32	15	15	2	20	1,644	1,428	746	358	354	34	682	805
Executive, Legislative, and Other General Government Support.....	2	1	1	0	0	1	53	49	35	35	0	0	14	30
Justice, Public Order, and Safety Activities.....	36	34	0	14	20	2	2,715	1,233	1,176	0	607	569	57	2,701
Administration of Economic Programs.....	1	0	0	0	0	1	6	6	3	3	0	0	3	0
Space Research and Technology.....	2	0	0	0	0	2	67	65	24	24	0	0	41	0
National Security and International Affairs.....	7	7	1	6	0	0	293	176	140	2	138	0	36	293
Public Administration.....	48	42	2	20	20	6	3,134	1,529	1,378	64	745	569	151	3,024
Total, all industrial groups.....	1,639	1,047	399	568	80	592	97,134	77,524	46,092	13,462	28,385	4,245	31,432	64,685

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 2009¹—Page 1 of 2

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions		Number	Percent by size class
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class		
A. Certification elections (RC and RM)												
Total RC and RM elections.....	79,267	1,339	100.0	--	341	100.0	494	100.0	76	100.0	428	100.0
Under 10.....	1,982	320	23.9	23.9	129	37.8	101	20.4	7	9.2	83	19.4
10 to 19.....	4,002	270	20.2	44.1	66	19.4	89	18.0	15	19.7	100	23.4
20 to 29.....	3,879	155	11.6	55.6	39	11.4	50	10.1	10	13.2	56	13.1
30 to 39.....	3,112	91	6.8	62.4	24	7.0	34	6.9	4	5.3	29	6.8
40 to 49.....	3,980	89	6.6	69.1	18	5.3	37	7.5	7	9.2	27	6.3
50 to 59.....	4,107	73	5.5	74.5	12	3.5	29	5.9	10	13.2	22	5.1
60 to 69.....	2,826	43	3.2	77.7	12	3.5	19	3.8	3	3.9	9	2.1
70 to 79.....	3,362	43	3.2	81.0	3	0.9	20	4.0	2	2.6	18	4.2
80 to 89.....	3,082	34	2.5	83.5	3	0.9	17	3.4	2	2.6	12	2.8
90 to 99.....	2,057	21	1.6	85.1	4	1.2	13	2.6	2	2.6	2	0.5
100 to 109.....	1,655	18	1.3	86.4	5	1.5	5	1.0	1	1.3	7	1.6
110 to 119.....	1,733	16	1.2	87.6	2	0.6	10	2.0	1	1.3	3	0.7
120 to 129.....	2,563	20	1.5	89.1	5	1.5	9	1.8	0	0.0	6	1.4
130 to 139.....	2,222	16	1.2	90.3	1	0.3	8	1.6	1	1.3	6	1.4
140 to 149.....	1,630	11	0.8	91.1	2	0.6	5	1.0	0	0.0	4	0.9
150 to 159.....	2,053	13	1.0	92.1	2	0.6	4	0.8	1	1.3	6	1.4
160 to 169.....	1,164	9	0.7	92.8	3	0.9	3	0.6	1	1.3	2	0.5
170 to 179.....	822	5	0.4	93.1	0	0.0	3	0.6	0	0.0	2	0.5
180 to 189.....	713	4	0.3	93.4	0	0.0	3	0.6	0	0.0	1	0.2
190 to 199.....	1,264	6	0.4	93.9	1	0.3	2	0.4	1	1.3	2	0.5
200 to 299.....	8,987	43	3.2	97.1	4	1.2	17	3.4	3	3.9	19	4.4
300 to 399.....	3,774	12	0.9	98.0	2	0.6	4	0.8	0	0.0	6	1.4
400 to 499.....	3,593	8	0.6	98.6	2	0.6	3	0.6	1	1.3	2	0.5
500 to 599.....	2,321	7	0.5	99.1	0	0.0	4	0.8	2	2.6	1	0.2
600 to 799.....	3,676	6	0.4	99.6	2	0.6	2	0.4	1	1.3	1	0.2
800 to 999.....	913	1	0.1	99.6	0	0.0	0	0.0	0	0.0	1	0.2
1,000 to 1,999.....	3,271	4	0.3	99.9	0	0.0	2	0.4	1	1.3	1	0.2
2,000 to 2,999.....	0	0	0.0	99.9	0	0.0	0	0.0	0	0.0	0	0.0

Table 17.—Size of Units in Representation Elections in Cases Closed, Fiscal Year 2009¹—Page 2 of 2

Size of unit (number of employees)	Number eligible to vote	Total elections	Percent of total	Cumulative percent of total	Elections in which representation rights were won by						Elections in which no representative was chosen	
					AFL-CIO unions		Other national unions		Other local unions		Number	Percent by size class
					Number	Percent by size class	Number	Percent by size class	Number	Percent by size class		
3,000 to 9,999.....	4,524	1	0.1	100.0	0	0.0	1	0.2	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.....	15,701	265	100.0	--	43	100.0	63	100.0	2	100.0	157	100.0
Under 10.....	291	47	17.7	17.7	4	9.3	1	1.6	0	0.0	42	26.8
10 to 19.....	1,016	48	18.1	35.8	4	9.3	7	11.1	0	0.0	37	23.6
20 to 29.....	1,208	42	15.8	51.7	8	18.6	11	17.5	1	50.0	22	14.0
30 to 39.....	798	24	9.1	60.8	8	18.6	4	6.3	0	0.0	12	7.6
40 to 49.....	821	19	7.2	67.9	2	4.7	7	11.1	0	0.0	10	6.4
50 to 59.....	382	7	2.6	70.6	1	2.3	3	4.8	0	0.0	3	1.9
60 to 69.....	672	10	3.8	74.3	0	0.0	4	6.3	0	0.0	6	3.8
70 to 79.....	372	5	1.9	76.2	0	0.0	2	3.2	1	50.0	2	1.3
80 to 89.....	559	7	2.6	78.9	2	4.7	1	1.6	0	0.0	4	2.5
90 to 99.....	647	8	3.0	81.9	3	7.0	3	4.8	0	0.0	2	1.3
100 to 109.....	541	5	1.9	83.8	1	2.3	2	3.2	0	0.0	2	1.3
110 to 119.....	442	4	1.5	85.3	1	2.3	2	3.2	0	0.0	1	0.6
120 to 129.....	676	5	1.9	87.2	1	2.3	1	1.6	0	0.0	3	1.9
130 to 139.....	531	4	1.5	88.7	1	2.3	1	1.6	0	0.0	2	1.3
140 to 149.....	611	4	1.5	90.2	1	2.3	2	3.2	0	0.0	1	0.6
150 to 159.....	580	4	1.5	91.7	3	7.0	1	1.6	0	0.0	0	0.0
160 to 169.....	324	2	0.8	92.5	0	0.0	2	3.2	0	0.0	0	0.0
170 to 199.....	554	3	1.1	93.6	1	2.3	1	1.6	0	0.0	1	0.6
200 to 299.....	2,372	11	4.2	97.7	1	2.3	6	9.5	0	0.0	4	2.5
300 to 499.....	2,304	6	2.3	100.0	1	2.3	2	3.2	0	0.0	3	1.9
500 to 799.....	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0
800 and Over.....	0	0	0.0	100.0	0	0.0	0	0.0	0	0.0	0	0.0

¹ See Glossary of terms for definitions.

Table 18.—Distribution of Unfair Labor Practice Situations Received, by Number of Employees in Establishments, Fiscal Year 2009¹

Size of establishment (number of employees)	Total number of situations	Total		Type of situations																	
		Percent of all situations	Cumulative percent of all situations	CA		CB		CC		CD		CE		CG		CP		CA-CB combinations		Other C combinations	
				Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class	Number of situations	Percent by size class
Totals.....	21,895	100.0	--	15,578	100.0	5,725	100.0	182	100.0	117	100.0	11	100.0	16	100.0	26	100.0	211	100.0	29	100.0
Under 10.....	1,781	8.1		1,231	7.9	469	8.2	33	18.1	26	22.2	1	9.1	0	0.0	3	11.5	14	6.6	4	13.8
10-19.....	1,684	7.7	15.8	1,236	7.9	377	6.6	28	15.4	14	12.0	2	18.2	1	6.3	5	19.2	19	9.0	2	6.9
20-29.....	1,736	7.9	23.8	1,238	7.9	426	7.4	23	12.6	22	18.8	0	0.0	0	0.0	5	19.2	19	9.0	3	10.3
30-39.....	765	3.5	27.2	528	3.4	208	3.6	12	6.6	10	8.5	0	0.0	0	0.0	0	0.0	6	2.8	1	3.4
40-49.....	693	3.2	30.4	515	3.3	156	2.7	8	4.4	4	3.4	1	9.1	0	0.0	1	3.8	6	2.8	2	6.9
50-59.....	2,198	10.0	40.5	1,504	9.7	627	11.0	20	11.0	18	15.4	1	9.1	2	12.5	10	38.5	15	7.1	1	3.4
60-69.....	520	2.4	42.8	389	2.5	123	2.1	3	1.6	2	1.7	1	9.1	0	0.0	0	0.0	1	0.5	1	3.4
70-79.....	531	2.4	45.3	412	2.6	111	1.9	0	0.0	0	0.0	0	0.0	0	0.0	1	3.8	7	3.3	0	0.0
80-89.....	324	1.5	46.7	260	1.7	59	1.0	1	0.5	0	0.0	0	0.0	0	0.0	0	0.0	4	1.9	0	0.0
90-99.....	218	1.0	47.7	166	1.1	50	0.9	1	0.5	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
100-109.....	2,423	11.1	58.8	1,546	9.9	809	14.1	21	11.5	7	6.0	2	18.2	1	6.3	1	3.8	30	14.2	6	20.7
110-119.....	181	0.8	59.6	158	1.0	23	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
120-129.....	339	1.5	61.2	255	1.6	81	1.4	1	0.5	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	1	3.4
130-139.....	129	0.6	61.8	112	0.7	17	0.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
140-149.....	132	0.6	62.4	109	0.7	23	0.4	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
150-159.....	526	2.4	64.8	391	2.5	127	2.2	4	2.2	0	0.0	0	0.0	2	12.5	0	0.0	2	0.9	0	0.0
160-169.....	124	0.6	65.3	90	0.6	34	0.6	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
170-179.....	100	0.5	65.8	72	0.5	25	0.4	1	0.5	0	0.0	0	0.0	0	0.0	0	0.0	2	0.9	0	0.0
180-189.....	129	0.6	66.4	100	0.6	25	0.4	0	0.0	1	0.9	0	0.0	0	0.0	0	0.0	2	0.9	1	3.4
190-199.....	40	0.2	66.6	35	0.2	5	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.....	1,502	6.9	73.4	1,097	7.0	365	6.4	10	5.5	4	3.4	2	18.2	3	18.8	0	0.0	20	9.5	1	3.4
300-399.....	935	4.3	77.7	654	4.2	263	4.6	2	1.1	1	0.9	0	0.0	1	6.3	0	0.0	13	6.2	1	3.4
400-499.....	491	2.2	79.9	380	2.4	98	1.7	2	1.1	4	3.4	0	0.0	0	0.0	0	0.0	6	2.8	1	3.4
500-599.....	869	4.0	83.9	600	3.9	252	4.4	3	1.6	0	0.0	0	0.0	1	6.3	0	0.0	11	5.2	2	6.9
600-699.....	263	1.2	85.1	196	1.3	64	1.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	1.4	0	0.0
700-799.....	230	1.1	86.2	169	1.1	58	1.0	1	0.5	0	0.0	0	0.0	1	6.3	0	0.0	1	0.5	0	0.0
800-899.....	216	1.0	87.1	161	1.0	54	0.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
900-999.....	108	0.5	87.6	76	0.5	30	0.5	0	0.0	0	0.0	0	0.0	1	6.3	0	0.0	1	0.5	0	0.0
1,000-1,999.....	1,503	6.9	94.5	1,030	6.6	453	7.9	1	0.5	3	2.6	1	9.1	3	18.8	0	0.0	11	5.2	1	3.4
2,000-2,999.....	384	1.8	96.3	263	1.7	115	2.0	0	0.0	1	0.9	0	0.0	0	0.0	0	0.0	4	1.9	1	3.4
3,000-3,999.....	180	0.8	97.1	119	0.8	56	1.0	3	1.6	0	0.0	0	0.0	0	0.0	0	0.0	2	0.9	0	0.0
4,000-4,999.....	40	0.2	97.3	29	0.2	10	0.2	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	0.5	0	0.0
5,000-9,999.....	254	1.2	98.4	196	1.3	50	0.9	2	1.1	0	0.0	0	0.0	0	0.0	0	0.0	6	2.8	0	0.0
Over 9,999.....	347	1.6	100.0	261	1.7	82	1.4	2	1.1	0	0.0	0	0.0	0	0.0	0	0.0	2	0.9	0	0.0

¹ See Glossary of terms for definitions.

Table 19.—Litigation for Enforcement and/or Review of Board Orders, Fiscal Year 2009 and Cumulative Totals, Fiscal Years 1936 to 2009

	Fiscal Year 2009									July 5, 1936 to Sept. 30, 2009	
	Number of proceedings ¹					Percentages				Number	Percent
	Total	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal ²	vs. employers only	vs. unions only	vs. both employers and unions	Board dismissal ²		
Proceedings decided by U.S. Courts of Appeals and other courts.....								--	--	--	--
On proceedings for review and/or enforcement.....	61	44	6	1	10	72.1	9.8	1.6	16.4	12,107	100.0
Board orders affirmed in full	48	36	5	1	6	75.0	10.4	2.1	12.5	8,050	66.5
Board orders affirmed with modification	3	2	1	0	0	66.7	33.3	0	0	1,567	12.9
Remanded to the Board	4	1	0	0	3	25.0	0	0	75.0	607	5.0
Board orders partially affirmed and partially remanded.....	3	2	0	0	1	66.7	0	0	33.3	276	2.3
Board orders set aside	3	3	0	0	0	100.0	0	0	0	1,607	13.3
On petitions for contempt	6	6	0	0	0	100	0	--	--	--	--
Ancillary proceedings in district courts and/or bankruptcy courts.....	31	31	0	0	0	100	0	--	--	--	--
Total Court Orders.....	23	22	1	0	0	95.7	4.3	--	--	--	--
Compliance after filing of petition, before court order	16	16	0	0	0	100	0	--	--	--	--
Court orders holding respondent in contempt	3	3	0	0	0	100	0	--	--	--	--
Court orders denying petition or discontinuing proceedings at CLCB request.....	3	3	0	0	0	100	0	--	--	--	--
Court orders directing compliance without contempt adjudication	1	0	1	0	0	0	100	--	--	--	--
Proceedings decided by U.S. Supreme Court.....	0	0	0	0	0					259	100.0
Board orders affirmed in full	0									155	59.8
Board orders affirmed with modification	0									18	6.9
Board orders set aside	0									46	17.8
Remanded to the Board	0									20	7.7
Remanded to Court of Appeals	0									17	6.5
Board's request for remand or modification of enforcement order denied.....	0									1	0.4
Contempt cases remanded to Court of Appeals.....	0									1	0.4
Contempt cases enforced.....	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.

Table 19A.—Proceedings Decided by Circuit Courts of Appeals on Petitions for Enforcement and/or Review of Board Orders, Fiscal Year 2009, Compared With 5-Year Cumulative Totals, 2004 Through 2009¹

Circuit courts of appeals (headquarters)	Total fiscal year 2009	Total fiscal years 2004–2008	Affirmed in full				Modified				Remanded in full				Affirmed in part and remanded in part				Set aside			
			Fiscal Year 2009		Cumulative fiscal years 2004–2008		Fiscal Year 2009		Cumulative fiscal years 2004–2008		Fiscal Year 2009		Cumulative fiscal years 2004–2008		Fiscal Year 2009		Cumulative fiscal years 2004–2008		Fiscal Year 2009		Cumulative fiscal years 2004–2008	
			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	61	354	48	78.7	279	78.8	3	4.9	23	6.5	4	6.6	17	4.8	3	4.9	11	3.1	3	4.9	24	6.8
Boston, MA.....	2	13	2	100.0	12	92.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	7.7	0	0.0	0	0.0
New York, NY....	14	22	11	78.6	16	72.7	1	7.1	1	4.5	1	7.1	2	9.1	1	7.1	1	4.5	0	0.0	2	9.1
Philadelphia, PA..	2	15	2	100.0	12	80.0	0	0.0	1	6.7	0	0.0	1	6.7	0	0.0	0	0.0	0	0.0	1	6.7
Richmond, VA.....	1	35	0	0.0	26	74.3	0	0.0	3	8.6	0	0.0	1	2.9	0	0.0	2	5.7	1	100.0	3	8.6
New Orleans, LA..	2	19	2	100.0	16	84.2	0	0.0	2	10.5	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	1	5.3
Cincinnati, OH....	6	53	6	100.0	43	81.1	0	0.0	5	9.4	0	0.0	2	3.8	0	0.0	0	0.0	0	0.0	3	5.7
Chicago, IL.....	3	24	2	66.7	19	79.2	0	0.0	1	4.2	1	33.3	2	8.3	0	0.0	1	4.2	0	0.0	1	4.2
St. Louis, MO.....	1	16	1	100.0	12	75.0	0	0.0	3	18.9	0	0.0	0	0.0	0	0.0	1	6.3	0	0.0	0	0.0
San Francisco, CA	11	32	9	81.8	25	78.1	0	0.0	1	3.1	1	9.1	2	6.3	1	9.1	1	3.1	0	0.0	3	9.4
Denver, CO.....	0	14	0	0.0	13	92.9	0	0.0	1	7.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Atlanta, GA.....	3	16	3	100.0	14	87.5	.0	0.0	0	0.0	.0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	12.5
Washington, DC...	16	95	10	62.5	71	74.7	2	12.5	5	5.3	1	6.3	7	7.4	1	6.3	4	4.2	2	12.5	8	8.4

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 2009

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in Appellate Court Sept. 30, 2009
		Pending in Appellate Court Oct. 01, 2008	Filed in Appellate Court Fiscal Year 2009		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(e) total	0	0	0	0	0	0	0	0	0

	Total proceedings	Injunction proceedings		Total dispositions	Disposition of injunctions				Pending in District Court Sept. 30, 2009
		Pending in District Court Oct. 01, 2008	Filed in District Court Fiscal Year 2009 ¹		Granted	Denied	Settled	Withdrawn	
Under Sec. 10(j) total	27	4	23	23	8	5	8	2	4
8(a)(1)	2	0	2	2	0	1	0	1	0
8(a)(1)(3)	7	2	5	6	1	1	3	1	1
8(a)(1)(3)(5)	7	2	5	6	2	2	2	0	1
8(a)(1)(5)	11	0	11	9	5	1	3	0	2
Under Sec. 10(l) total	4	0	4	4	1	1	2	1	0
8(b)(4)(A) & 8(b)(4)(B)	1	0	1	1	0	0	0	1	0
8(b)(4)(B)	1	0	1	1	0	0	1	0	0
8(b)(4)(D)	2	0	2	2	1	0	1	0	0

¹ Totals for cases identified in this table as pending on October 1, 2008, differ from the FY 2008 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 Decision Issued in Fiscal Year 2009

Type of Litigation	Number of Proceedings											
	Total—All Courts			In Courts of Appeals			In District Courts			In Bankruptcy Courts		
	Court Determination			Court Determination			Court Determination			Court Determination		
	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position	No. Dec.	Uphold. Board Position	Contrary to Board Position
TOTALS—ALL TYPES	14	13	1	7	7	0	6	5	1	1	1	0
<u>NLRB-initiated actions or interventions</u>	2	1	1	1	1	0	1	0	1	0	0	0
To enforce subpoenas	1	0	1	0	0	0	1	0	1	0	0	0
Amicus brief re: Section 302	1	1	0	1	1	0	0	0	0	0	0	0
<u>Action by other parties</u>	12	12	0	6	6	0	5	5	0	1	1	0
To review:	6	6	0	3	3	0	3	3	0	0	0	0
Prosecutorial discretion	5	5	0	2	2	0	3	3	0	0	0	0
Nonfinal/representation case orders	1	1	0	1	1	0	0	0	0	0	0	0
To restrain NLRB from:	6	6	0	3	3	0	2	2	0	0	0	0
Proceeding in representation case	1	1	0	1	1	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
To compel NLRB to:	1	1	0	0	0	0	1	1	0	0	0	0
Respond to discovery	1	1	0	0	0	0	1	1	0	0	0	0
Other	3	3	0	1	1	0	1	1	0	1	1	0
Reject expired agreement	1	1	0	0	0	0	0	0	0	1	1	0
FOIA attorney's fees	1	1	0	1	1	0	0	0	0	0	0	0
FTCA suit alleging improper prosecution	1	1	0	0	0	0	1	1	0	0	0	0

Table 22.—Advisory Opinion Cases Received, Closed, and Pending, Fiscal Year 2009¹

	Total	Number of Cases			
		Identification of Petitioner			
		Employer	Union	Courts	State Board
Pending October 1, 2008	0	0	0	0	0
Received fiscal 2009	1	0	0	0	1
On docket fiscal 2009	1	0	0	0	1
Closed fiscal 2009	1	0	0	0	1
Pending September 30, 2009.....	0	0	0	0	0

¹ See Glossary of terms for definitions.

Table 22A.—Disposition of Advisory Opinion Cases, Fiscal Year 2009¹

Action Taken	Total Cases Closed
Total Cases	1
Board would assert jurisdiction	1
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 2009; and Age of Cases Pending Decision, September 30, 2009

Stage	Median days
I. Unfair labor practice cases:	
A. Major stages completed—	
1. Filing of charge to issuance of complaint.....	100
2. Complaint to close of hearing.....	91
3. Close of hearing to administrative law judge's decision.....	73
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.....	175
6. Originating document to Board decision.....	123
7. Assignment to Board decision.....	85
8. Filing of charge to issuance of Board decision.....	483
B. Age of cases pending administrative law judge's decision, September 30, 2009	
1. From filing of charge.....	321
2. From close of hearing.....	56
C. Age of cases pending Board decision, September 30, 2009	
1. From filing of charge.....	963
2. From originating document.....	402
3. From assignment.....	243
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.....	13
3. Close of hearing to Regional Director's decision issued.....	19
4. Close of pre-election hearing to Board's decision issued ¹	123
5. Close of post-election hearing to Board's decision issued.....	168
6. Filing of petition to-	
a. Board decision issued.....	245
b. Regional Director's decision issued.....	37
7. Originating document to Board decision.....	113
8. Assignment to Board's decision.....	82
B. Age of cases pending Board decision, September 30, 2009	
1. From filing of petition.....	440
2. From originating document.....	260
3. From assignment.....	233
C. Age of cases pending Regional Director's decision, September 30, 2009.....	103

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,
Fiscal Year 2009¹**

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

¹ Special Litigation had no EAJA claims in Fiscal Year 2009:
 Total EAJA claims paid in FY 2009 = 0.
 EAJA claims still open at the end of FY 2009 = 1 (*Raley's, et al.*, 348 NLRB 382, pending before the Board).