REPORT BY THE U.S.

General Accounting Office

Concerns Regarding Impact Of Employee Charges Against Employers For Unfair Labor Practices

GAO reviewed certain cases involving employer unfair labor practices and union election activities and the National Labor Relations Board's case processing system. GAO found that

--employers were charged slightly more often for discriminating against employees during union-organizing campaigns than after the union was recognized;

--the impact on employees fired for participating in union activity varied but most had not been involved in union activities since being fired;

--unions were more successful in campaigns in which no employee discrimination occurred;

--the Board informally resolved about 90 percent of its cases within 40 days, but delays occurred in cases which had formal complaints issued;

--the Board has been unable to hire enough administrative law judges, who hear and decide unfair labor practice cases, to timely adjudicate cases; and

--administrative law judges' productivity varied significantly and the Board has limited control over them.

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UNITED STATES GENERAL ACCOUNTING OFFICE
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HUMAN RESOURCES
DIVISION

B-207887

The Honorable Phillip Burton
Chairman, Subcommittee on
Labor-Management Relations
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

In response to the former Chairman's September 30, 1980, request, we reviewed selected National Labor Relations Board (NLRB) functions under the National Labor Relations Act of 1935, as amended (29 U.S.C. 141 et seq.). Generally, the major areas which we were asked to review focused on unfair labor practice case activity under section 8(a)(3) of the act (29 U.S.C. 158 (a)(3)) and on NLRB's efforts to maintain enough administrative law judges (ALJs) to handle its increasing caseload. Under section 8(a)(3) it is an unfair labor practice for an employer to discriminate against employees for the purpose of encouraging or discouraging membership in a labor organization.

NLRB's two principal functions are to (1) prevent and remedy unfair labor practices by either employers or unions and (2) 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. NLRB includes a five-member Board with their respective staffs and the General Counsel with his or her staff and regional offices.

Employees who believe they have been discriminated against for participating in union activities may file an unfair labor practice charge at one of NLRB's regional offices. If the regional office believes that the charge has merit (the act has

been violated), it encourages the parties to voluntarily settle in a manner that remedies the apparent violation. Formal complaints are issued on the cases which cannot be resolved by the regional offices, and failing additional settlement efforts, the cases are heard by an ALJ who submits findings and recommendations on the charges to the Board. All parties to the hearings may appeal ALJ decisions to the Board by filing exceptions. If no exceptions are filed, the ALJ decisions automatically become the orders of the Board.

To address the Subcommittee's concerns, we reviewed 8(a)(3) unfair labor practice cases which NLRB considered as having merit and union election cases handled by 11 of NLRB's 33 regional offices and examined NLRB's case processing system. Early in our review, we informed the Subcommittee that our data could not be statistically projected because of misclassifications in NLRB's case listings from which our samples were taken. The Subcommittee requested that we continue the review because our data would provide indications of conditions involving employee discrimination for union activities.

The information we obtained and the methodology used during our review are discussed in appendix I and the exhibits. A summary of that information together with suggestions for improving certain NLRB processes is presented below.

DISCRIMINATION AGAINST EMPLOYEES FOR UNION ACTIVITIES

According to NLRB data, the most frequent unfair labor practice charge filed by employees is an 8(a)(3) illegal firing or other discrimination for union involvement. Because NLRB's automated case management system does not show if the unfair labor practice violation occurred before or after union recognition, we reviewed a sample of 400 8(a)(3) cases closed during fiscal year 1979. Our sample data showed that employers were charged with unfair labor practice discrimination at a slightly greater frequency during a union-organizing campaign than after a union had been established. The data also showed that the most common form of discrimination involved employee firings. In our sample, employers were charged in 210 cases during union-organizing campaigns, and in 190 cases the charge occurred after unions had been recognized. Also, in 293 cases 698 employees were fired, and in 107 cases 340 employees were discriminated against by other actions, such as demotion, assignment to a less desirable shift or job, or withholding benefits.

EFFECT OF FIRINGS ON EMPLOYEES

Because of the Subcommittee's concern with what happens to employees fired for participating in union activities, we sent questionnaires to the fired employees in our sample cases where addresses were available. About 43 percent of the employees responded. Of these, 57 percent were fired while participating in a union-organizing campaign while the others were fired for being involved in union-related activities after the union had been recognized.

The employees were unemployed an average of 20.2 weeks before being reinstated to their previous jobs or finding new employment. Thirty-four percent of the respondents were not employed full time when they completed the questionnaire. Most of the employees responded that their former employers had not offered to rehire them. Of the employees that returned to their former employer, most were no longer working for that employer when they completed our questionnaire. Most of these individuals indicated that they either quit the old job, were laid off, or were retired or disabled. However, some said they were fired again.

Most of the employees indicated that the firing made it difficult to find new jobs. However, in comparing their former job with their current or most recent job, the majority said conditions were about the same or better with regard to such items as pay, benefits, type of work, job security, and relationship with supervisors and coworkers.

Regarding the overall effect of the firing on their lives, the majority said their relations with family and friends, their career, and emotional and physical health were no different or had improved. Over half of the employees fired for participating in activities of an established union said their financial situation had worsened.

Since being fired, most of the individuals had not been involved in union activities.

WHAT HAPPENED TO UNION-ORGANIZING CAMPAIGNS WHEN A FIRING AND/OR OTHER DISCRIMINATION OCCURRED

In our sample cases, unions were more successful in campaigns in which no employee discrimination occurred than in those which involved an unfair labor practice charge.

In our 8(a)(3) sample, if a violation occurred, the union effort was successful in 30 percent of the cases involving a union organizational campaign.

In a separate sample of union election cases, when an election was held and there was not an 8(a)(3) violation, the union was successful 45 percent of the time. However, the union success rate decreased to 38 percent in elections which involved at least one violation.

According to the Board and the General Counsel, employer unfair labor practices generally have a chilling effect on employee rights in selecting unions.

TIMELINESS OF NLRB'S CASE HANDLING PROCESS

Although the NLRB regional offices have been able to informally resolve over 90 percent of the unfair labor practice cases in about 40 days, the time to process those cases that must be scheduled for ALJ hearings has steadily increased over recent years. The increasing delays have occurred between the issuance of a formal complaint and the ALJ's decision setting forth findings and recommendations.

NLRB attributed the processing delays to its inability to hire a sufficient number of ALJs to process its increasing caseload. According to NLRB data, between fiscal years 1974 and 1981 the number of unfair labor practice cases initially scheduled for ALJ hearings increased by 85 percent while the average number of ALJs increased by only 20 percent.

NLRB officials told us that delays in the ALJ adjudication process began during the mid-1970s when it could not hire ALJs because of a Government-wide ceiling on ALJ positions. This ceiling was increased in March 1978. NLRB currently has an allocation of 125 positions and it expected to employ this number by September 30, 1981; however, NLRB had only 119 ALJs as of that date. Overall, it had increased its ALJ corps by 29 ALJs since fiscal year 1977 when 90 ALJs were employed. During this time NLRB hired a total of 65 new ALJs but lost 36 ALJs, primarily through retirements. By April 1982, the number of ALJs had dropped to 112.

NLRB officials told us that it is difficult to recruit ALJs because qualified individuals can earn higher salaries in the private sector, few individuals are willing to relocate to where the four ALJ offices are located, and the detailed application process discourages candidates from applying.

ALJ PRODUCTIVITY

While the average number of decisions by ALJs has remained fairly constant during previous years, ALJ productivity has varied significantly. Some ALJs have consistently performed below NLRB's standard of 12 decisions annually while others have consistently surpassed it. During fiscal years 1978-81, 25 ALJs (about 30 percent) prepared fewer than 12 decisions in at least 2 of the 4 years. Nine of these ALJs prepared fewer than 12 decisions in each of the 4 years and averaged 9.2 decisions each year. In contrast, during this period, an average of 20 ALJs prepared 16 or more decisions each year.

NLRB officials believe that overall ALJ performance and commitment is good and that there are only a few low producers. They told us, however, that they are limited in their efforts to motivate the few ALJs whose productivity is consistently below NLRB standards.

NLRB's inability to improve productivity is due in part to the Administrative Procedures Act of 1966, as amended, which in section 2(a)(1)(5 U.S.C. 559) provides certain statutory protection for ALJs from the possibility of undue pressure or influence from employing agencies. In so doing the act exempts ALJs from performance evaluations by their own agencies (5 U.S.C. 4301). The act does not assign this responsibility to any other organization. This omission has, in effect, prevented agencies employing ALJs from establishing effective ALJ personnel management systems. We pointed this out in two previous reports 1/ regarding management of the administrative law process and recommended that the Administrative Procedures Act be amended to assign the responsibility for periodic evaluation of ALJ performance to a specific organization. In 1980, in line with our recommendation, legislation was proposed to require formal ALJ performance evaluations; however, the legislation was not enacted.

Suggestions for possibly increasing ALJ productivity

To obtain suggestions as to how NLRB could improve the productivity of its ALJ corps, we interviewed 25 ALJs and asked

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1/The reports are "Administrative Law Process: Better Management Is Needed" (FPCD-78-25, May 15, 1978) and "Management Improvements in the Administrative Law Process: Much Remains To Be Done" (FPCD-79-44, May 23, 1979).

them to identify any steps or measures which they believed could be taken to improve the timeliness of the adjudication process. Their suggestions included:

--Allowing the ALJs discretion to issue oral rather than written decisions in simple, clear-cut cases.

--Hiring law school graduates to assist ALJs with their heavy workload.

--Opening ALJ offices in additional geographical locations to reduce travel time, thereby allowing ALJs to devote more time to preparing decisions.

--Providing ALJs additional secretarial help and word processing equipment.

--Permitting ALJs to become involved earlier with cases.

We discussed these suggestions with NLRB officials who, with the exception of hiring law clerks, generally did not agree that the suggestions would improve the process.

PERCEPTIONS OF MANAGEMENT, UNION, AND NLRB ON THE NATIONAL LABOR RELATIONS ACT

We interviewed management and labor representatives and NLRB officials to obtain their views on employer actions to prevent unionization, the adequacy and effect of the act's remedies, and suggested changes to the act to improve NLRB's effectiveness. No consensus emerged as to the need for major reform to the act.

We obtained varied views on the approach that employers most frequently take to prevent or delay union campaigns. Management representatives said employers (1) discuss the disadvantages of the union and establish good communication with employees and (2) use delaying tactics with the NLRB case processing procedure. Labor representatives said that employers use fear tactics, delay NLRB litigation, and hire consultants to advise them of measures to counter the union movement. The most frequent view provided by NLRB regional officials based upon their experience with cases they have handled was that employers fire employees involved, usually the union organizer. The Board and NLRB General Counsel said that most employers oppose unions through lawful means, such as hiring labor relations experts and attempting to persuade employees that unionization is not in their best interests.

The views varied greatly regarding the adequacy of the act's remedies as deterrents to firings and their effect on employee support for union campaigns. Management representatives believe that the remedies are effective deterrents and usually increase employee union support. Labor representatives said, however, that firings decrease union support and that the remedies do not deter future firings. NLRB officials generally agreed that the timing of remedies taken by NLRB has a bearing on employees' support for the union. Most said that the remedies have little effect if taken after the election. Most NLRB regional officials said the remedies are not effective deterrents to firings, while the Board and General Counsel said that the remedies seem to have a deterrent effect because there are relatively few instances where employers repeatedly commit firings.

Management representatives generally did not provide suggestions for changes to the act to improve NLRB's effectiveness. Most believe that the case processing time is too long and should be shorter. Labor representatives stressed the need for strengthening penalties and expediting case processing. NLRB regional officials said they would like to see stronger penalties, faster case processing, and immediate reinstatement of employees after a formal complaint is issued. The Board and the General Counsel offered no suggestions for changes to the act.

As requested by your office, we obtained oral comments from NLRB on this report. NLRB commented that it had no problems with the report's contents and the issues discussed were fairly presented. As agreed with your office, we plan no further distribution of this report until 10 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Gregory J. Ahart
Director

Contents

ABBREVIATIONS

ALJ	administrative law judge
GAO	General Accounting Office
NLRB	National Labor Relations Board
OPM	Office of Personnel Management

CONCERNS REGARDING IMPACT OF EMPLOYEE CHARGES AGAINST EMPLOYERS FOR UNFAIR LABOR PRACTICES

INTRODUCTION

On September 30, 1980, the former Chairman, Subcommittee on Labor-Management Relations, House Committee on Education and Labor, requested that we review selected National Labor Relations Board (NLRB) functions under section 8(a)(3) of the National Labor Relations Act (29 U.S.C. 158 (a)(3)). The Subcommittee's concerns focused on (1) employer discrimination against employees for participating in union organizational campaigns (union-organizing activities) or for taking part in the activity of an established union (union-related activities) and (2) the increasing time it takes NLRB to resolve unfair labor practice cases during adjudication. Early in our review, we informed the Subcommittee that our final data could not be statistically projected to the universe of cases from which our sample was drawn due to misclassifications in NLRB's listings of cases used for this review. The Subcommittee, however, requested that we continue our review because the information being requested would provide some indication of conditions involving employee discrimination for union activities.

Background

The National Labor Relations Act of 1935, as amended (29 U.S.C. 141 et seq.), created NLRB as an independent Federal agency. The act governs relations between labor and business enterprises engaged in interstate commerce. The act defines and protects the rights of employees and employers, encourages collective bargaining, and seeks to eliminate certain unfair labor practices on the part of labor and management that could cause commerce interruptions.

The act provides for employees' rights to organize and to bargain collectively with their employers through representatives of their own choosing. To ensure that employees can freely choose their own representatives for collective bargaining, the act establishes a procedure by which they can exercise their choice at a secret ballot election conducted by NLRB.

Collective-bargaining provisions of the act require employers and employee representatives to confer in good faith about certain matters, such as wages, hours, and other terms or conditions of employment. It is, therefore, an unfair labor practice for either party to refuse to bargain collectively with the other.

Section 8(a)(3) of the act is intended to protect employees from discriminatory actions by employers. It is an unfair labor practice for an employer to discriminate against employees in regard to hire or tenure of employment or any term or condition

of employment for the purpose of encouraging or discouraging membership in a labor organization. Discrimination within the meaning of the act includes such actions as refusing to hire, firing, demoting, assigning to a less desirable shift or job, or withholding benefits. The act is designed to prevent and remedy unfair labor practices and authorizes the Board to issue orders to remedy the unfair practice and to take actions, such as reinstating fired employees to their jobs. It does not provide for criminal punishment of the person responsible for an unfair practice.

Operations and funding

NLRB was established to administer and enforce the act thereby ensuring that employees could exercise their rights and receive protection from unfair labor practices. NLRB has two principal functions: (1) to prevent and remedy unfair labor practices by either employers or unions and (2) 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. In carrying out these functions, NLRB provides processes for protecting the rights of employees, employers, and unions.

NLRB includes a five-member Board with their respective staffs and the General Counsel with his or her staff and 33 regional and 19 subregional and resident offices. The Board, whose members are appointed by the President with the consent of the Senate, decides whether unfair labor practices were committed and issues orders to undo the effects of violations. The General Counsel, who is also appointed by the President with the consent of the Senate, and his or her staff in the regional and other offices, investigate and prosecute unfair labor practice charges before administrative law judges (ALJs) and conduct elections to determine employee representatives.

ALJs conduct hearings on unfair labor practice charges and submit findings and recommendations to the Board. If the Board finds that an employer or a union has committed an unfair labor practice, it is authorized to issue an order requiring the employer or union to cease and desist from the practice and to take appropriate action to remedy the violation. Board orders usually require employers or unions to post notices informing the employees that they will cease the unfair labor practice and noting any action taken, such as reinstatement and/or backpay being made to remedy the violation.

In fiscal year 1981, NLRB, with a budget of about $118.5 million and 2,797 positions in its Washington headquarters and field offices, processed 12,588 election petitions and 43,677 unfair labor practice cases. Exhibit A shows NLRB's funding, staff size, and case intake for fiscal years 1974-82.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to address the Subcommittee's specific concerns relating to unfair labor practice cases 1/ under section 8(a)(3) of the act. The concerns addressed were:

--Extent employers are charged with discriminating against employees for union-organizing or union-related activities.

--Effect on employees fired for union-organizing or union-related activities.

--Result of union-organizing efforts when a firing occurs.

--Time frame for NLRB to process unfair labor practice cases.

--Status of NLRB's efforts to hire more ALJs and the productivity of ALJs relative to hearings and decisions.

In addition, the Subcommittee was interested in obtaining employer, union, and NLRB views on the National Labor Relations Act and more specifically on the nature of 8(a)(3) discriminatory actions.

We performed work at NLRB headquarters in Washington, D.C., and at 11 of NLRB's 33 regional offices. The 11 offices included in our review (see exhibit B) were selected because (1) each had a large number of 8(a)(3) cases closed during the period covered by our review, (2) we wanted to evaluate regions from several sections of the country, and (3) NLRB officials agreed that they were representative regional offices. Our fieldwork was performed from February through September 1981.

We obtained from NLRB headquarters computerized listings of 8(a)(3) and union election (representation) cases closed during fiscal year 1979 at the 11 NLRB regional offices, and we randomly selected case samples from these data which were the latest data available at the time of selection. Structured data collection instruments were used to gather data (one for the unfair labor practice cases and another for the representation cases) to ensure obtaining similar data on the sample cases. The results of our case reviews are not projectable to the universe of NLRB's fiscal year 1979 case activity because NLRB's case listings for that fiscal year contained some misclassification of cases. NLRB officials acknowledged this problem and stated that their computer

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1/A case is the general term used in referring to a charge filed with NLRB. A charge is a document filed by employees, unions, or employers alleging that an unfair labor practice has been committed.

system was in a transition stage during fiscal year 1979. A more detailed description of the methodology used in selecting the case samples is in exhibit B.

To address the Subcommittee's first three concerns, we sampled a total of 400 8(a)(3) cases which NLRB considered as having merit, and the cases were handled by the regional offices in our review. A case is considered to have merit if NLRB investigates the unfair labor charge and finds reasonable cause to believe the act has been violated. These offices processed 2,451 (45 percent) of the 5,442 8(a)(3) cases which NLRB considered as having merit in fiscal year 1979.

Of the 400 cases, 293 involved 698 employee firings. We sent questionnaires to 621 fired employees whose addresses were available in NLRB files to further assess what happened to these employees. We mailed the questionnaires in April 1981. In May 1981, we sent a second mailing to the employees who had not responded, and we sent a mailgram in June 1981 as a final followup. We received 267 completed questionnaires between April and July 1981.

In addition, to further address the third concern which related to union-organizing efforts, we analyzed 500 representation cases at the 11 regional offices in which a union or employees alleged that employers declined to recognize their bargaining representative. These offices handled 3,874 (36 percent) of the 10,796 such representation cases processed by NLRB in fiscal year 1979. Representation case intake during that year totaled 13,648 cases. The remaining 2,852 were cases in which employees alleged that a union no longer represented a majority of the employees or in which employers alleged that representation questions existed and sought an election to determine a bargaining representative.

Regarding the other concerns, we discussed NLRB's unfair labor practice case processing system with officials from the Board, the General Counsel's office, the Division of Judges, and the regional offices. We reviewed NLRB's case processing time frame statistics and ALJ employment and productivity data. To identify causes of delays in the processing system, we interviewed ALJs in the Washington, D.C., San Francisco, and New York ALJ offices. We also asked ALJs how the timeliness of the adjudication process could be improved.

We interviewed NLRB officials and representatives of management and labor to obtain their views of the act and the nature of unfair labor practices.

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Our work was performed in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

DISCRIMINATION AGAINST EMPLOYEES FOR UNION ACTIVITIES

A major Subcommittee concern was the extent employers are charged under section 8(a)(3) with discriminating against employees for union-organizing activities and union-related activities after a union has been recognized. The data the Subcommittee desired could not be obtained readily from NLRB because NLRB statistics show only the total number of unfair labor practice charges filed, but not whether the alleged violation occurred before or after union recognition. While we could not fully answer this question because our data could not be projected due to misclassifications in NLRB's case listings, the results from our 400 sample cases provide some indication of the extent employers are charged with unfair labor practices during union-organizing campaigns or union-related activities after recognition and the number of firings during these time frames.

Our review of 400 sample 8(a)(3) cases showed that employers were charged in 190 cases for union-related activities after recognition and 439 employees were involved. In the remaining 210 sample cases, we found that the unfair labor practice charges occurred during a union-organizing campaign and a total of 545 employees were involved. The following table shows the number of firings and other discriminations (e.g., such actions as demotions, assignments to a less desirable shift or job, or withholding benefits) in our sample cases and when the unfair labor practice occurred.

	Union-related activities	Union-organizing activities	Total
Number of unfair labor practice cases	190 (47.5%)	210 (52.5%)	400
Number of cases involving firings	117 (39.9%)	176 (60.1%)	293
Number of cases involving other discriminations	73 (68.2%)	34 (31.8%)	107
Number of employees fired	304 (43.6%)	394 (56.4%)	698
Number of employees discriminated against in other ways	189 (55.6%)	151 (44.4%)	340
Total number of employees involved	493 (47.5%)	545 (52.5%)	1,038

Based on NLRB data, the most frequent unfair labor practice charge filed by employees with NLRB is an 8(a)(3) illegal firing or other discrimination against an employee for union involvement. In fiscal year 1979, NLRB reported that 8(a)(3) charges accounted for 17,220 of the total 41,259 unfair labor practice charges filed by all parties; and that 5,442 of the 17,220 cases were found to have merit. Of the other types of unfair labor practice charges,

the most common are charges against employers for refusal to bargain collectively with employee representatives, and charges against unions for either restraining or coercing employees regarding their choice of whether to support a union or participate in union activities or for encouraging employees to participate in prohibited strikes.

EFFECT OF FIRINGS ON EMPLOYEES

Because of the Subcommittee's concern with what happens to employees fired due to their participation in union activities, we followed up with a questionnaire to employees, for whom addresses were available, in our sample cases which involved firings. Notwithstanding several followup attempts, only 43 percent of the people to whom we sent questionnaires responded. Of those that did respond, 57 percent were fired while participating in a union-organizing campaign while the remainder were fired for being involved in a union-related activity after the union had been recognized.

The following table presents the response data from the fired employees in the 293 cases which involved firings in our 400 8(a)(3) cases. We did not follow up on the other 107 cases because they involved employee discriminations other than firings.

Type of activity involved	Number of employees sent questionnaires	Response rate: Number of employees returning questionnaire	Response rate: Percent relative to questionnaires sent to that group
Union organizing	366 (59%)	151 (57%)	41
Union related	255 (41%)	116 (43%)	45
Overall	a/621	267	43

a/Addresses were not available for 77 of the 698 fired employees.

The information provided by the employees is not projectable and relates only to the actual number of employees responding. The respondent questionnaires varied in the extent to which each question was answered. Therefore, we have briefly summarized the data below and included the detailed response data in exhibit C.

The majority of individuals responding to our questionnaire had been fired from full-time jobs which they had held less than 5 years. Eighty-one percent of the employees fired for union-organizing activities had worked for the employer less than 5 years, while 66 percent of those fired for participating in union activities after a union was established had been with the employer for less than 5 years.

Effect on employment opportunities

Employees in our sample fired for union-organizing activities were unemployed an average of 16 weeks, while those fired for related activities were out of work an average of 26 weeks before being reinstated to their previous jobs or finding new employment. Thirty-three percent of the union-organizing respondents and 35 percent of the union-related respondents were not employed full time when they completed the questionnaire.

Whether the employee engaged in union-organizing or union-related activities before being fired made little difference regarding whether their former employer offered to rehire them. According to the respondents, 39 percent of those involved in union-organizing efforts were offered reemployment while 35 percent of those who participated in union-related activities were offered reemployment as part of the unfair labor practice case disposition. Of those offered reemployment, 67 percent of the organizing employees and 78 percent of the union-related employees returned to their former employers. The other employees offered reemployment did not return primarily because they had already found another job or they believed the employer would be too hard on them.

In discussing the reemployment response rates with NLRB officials, they indicated that as a condition of the settlement, reemployment offers are made to all fired employees in cases which have merit unless the employee waives reinstatement or the job is no longer available. In the latter case, the employee is placed on a priority hiring list with that employer for preferential treatment when a job becomes available. Therefore, according to the officials, the employees who indicated they were not offered reemployment as part of the case disposition must not have considered waivers or hiring lists in responding to our questionnaire.

Most employees who returned to their former jobs reported no difference or improvement in working relations with coworkers and in the work assigned, advancement opportunities, and hours of employment. However, more than half of those fired for participating in union-organizing campaigns indicated that relations with supervisors and management when they returned were worse than before they were fired.

Over half (58 percent) of the employees who returned to their former employer were no longer working for that employer at the time of our review. The individuals indicated that they either quit the old job, were laid off, or were retired or disabled. Seven of 24 individuals fired for union-organizing efforts and rehired said they were fired again.

Over 60 percent of the respondents obtained jobs with new employers since their firing. Over half of the respondents indicated that their firing for union activity hindered them in finding employment in the same community. In comparing their new and old job regarding pay; benefits; location; type of work; chance for advancement; job security; and relationship with management, supervisors, and coworkers, the majority of the respondents said that their new job was about the same or better than the job they were fired from for participating in either union-organizing or union-related activities.

Effect on overall quality of life

We asked the employees how the firing for union participation affected their overall quality of life. Fifty-seven percent of the respondents fired for union-organizing activities reported that their financial situation since the firing was no different or had improved, while 54 percent of those fired for union-related activities said their financial situation had worsened. However, the majority of respondents in both categories said that their relations with family and friends, their career, and emotional and physical health were the same or had improved since their unfair labor practice firing.

Effect on employees' union involvement

Most of the employees responding to our questionnaire had not been involved in union activities since being fired. Only 31 percent of the employees who were fired for assisting in union-organizing campaigns indicated that they had participated in union activities again, while 42 percent of those fired for union-related activities said they had returned to union activities.

We asked the employees fired for union-organizing efforts if they would participate in a union campaign again. Of those responding, 57 percent said they would probably participate, 18 percent were uncertain, and 25 percent said they would probably not become involved again. The major reasons provided by the employees for not wanting to become involved with union campaigns again were that it is simply not worth the effort and concern over losing their job.

WHAT HAPPENED TO UNION-ORGANIZING CAMPAIGNS WHEN A FIRING AND/OR OTHER DISCRIMINATION OCCURRED

The act requires that an employer bargain with the representative selected by its employees, and it provides a method by which employees can select their bargaining representative by means of NLRB conducting a secret ballot election. Representation (election) petitions must (1) be supported by 30 percent of

the employees who wish to be represented and (2) state that their employer declines to recognize their representative. The NLRB regional staff investigates the petition to answer such questions as whether the employer and union are covered by the act and whether the employee group constitutes an appropriate bargaining unit. The regional director has the authority to issue an order setting the time and place of the election, to rule on objections to the election, and to certify election results. NLRB, in Washington, D.C., has review authority in election cases except in the case of elections that are held by consent of the parties, in which case the regional directors' rulings are final.

To determine what happened to union-organizing campaigns when a firing or other discrimination occurs, we determined, for the sample 8(a)(3) cases that involved organizational campaigns, whether the organizing campaign was successful (a bargaining contract was signed) when there was an 8(a)(3) case which had merit. We also used our separate representation (election) petition sample to determine, in representation cases where elections were held, if there were different results between the election cases that involved meritorious 8(a)(3) cases and those that did not. While our data are not projectable, in our sample unions were more successful in campaigns where no employee discrimination occurred than in cases where there was an unfair labor practice charge.

Results of union-organizing efforts in sample 8(a)(3) cases

In our sample of 400 8(a)(3) cases which had merit, 210 took place during a union organizational campaign, before a collective-bargaining contract was signed. In 176 of the 210 cases, there were firings and in the remaining 34 cases a form of discrimination, other than firing, took place. The union organizational effort was successful in 63 (or 30 percent) of the 210 cases. In 49 of the 63 cases with successful campaigns, there was a firing while the remaining 14 cases involved some other form of discrimination.

Results of union-organizing efforts in sample representation cases

To further determine the result of union-organizing campaigns when a firing and/or other discrimination took place, we evaluated our sample of 500 representation (election) petition cases. These cases were closed during fiscal year 1979 and were selected from the same 11 NLRB regional offices as our 8(a)(3) sample cases.

An election was held in 368 of the 500 representation petition cases. The remaining cases were either withdrawn by the petitioner or dismissed by NLRB. In 247 cases where an election was held, no 8(a)(3) violations were involved, and the union won the election in 112 (or 45 percent) of these cases. In 47 of the 368 cases, at least one 8(a)(3) violation was involved and the union won in

18 (or 38 percent) of the cases. Seventy-four of the cases with 8(a)(3) charges filed were found to be without merit, and the union won in 28 (or 38 percent) of these cases.

Views of NLRB and management and union representatives

To obtain additional indications of the impact of unfair labor practice charges on unionizing efforts, we questioned the Board, the Directors of the NLRB regional offices we visited, and management and union representatives regarding the effect of 8(a)(3) charges while a union campaign is underway.

In a written response, the Board and General Counsel told us that their experience has shown that employer unfair labor practices generally have a "chilling effect on the free exercise of employee rights to select the union." They stated that by firing a known union adherent, the employer demonstrates to his or her employees their vulnerability, and his or her ultimate power in the employment relationship against those who seek to exercise their organizational rights. In addition, NLRB regional officials told us that 8(a)(3) charges weaken the union campaign.

Management representatives we talked to generally thought that 8(a)(3) charges typically increase support for union campaigns, while union representatives said that employee discrimination decreases campaign support.

TIMELINESS OF NLRB'S CASE HANDLING PROCESS

The Subcommittee was concerned about the increasing time it takes to process unfair labor practice cases through certain NLRB processing stages. More than 90 percent of unfair labor practice cases are resolved informally within 40 days. The time to process the cases that have formal complaints issued, however, has been steadily increasing because of delays between the issuance of a formal complaint and the ALJ decision. NLRB attributes these delays to an increase in the number of unfair labor charges filed accompanied by its inability to hire a sufficient number of ALJs to hear and decide the cases.

How an unfair labor practice charge is processed through NLRB

Employees who believe that they have been discriminated against for participating in union activities may file an unfair labor practice charge at one of NLRB's regional offices. NLRB regional staff investigates the facts and surrounding circumstances of the charge to determine if reasonable cause exists to believe the National Labor Relations Act has been violated. If the investigation discloses that the charge does not have merit, the charging party can

either withdraw the charge or the regional director will dismiss it. About two-thirds of all unfair labor practice charges filed are found to be without merit.

However, if the regional director believes that the charge has merit, NLRB encourages the parties to voluntarily settle in a manner that remedies the apparent violation. If settlement efforts fail, the regional office issues a formal complaint informing the employer of the unfair labor practice charges. A hearing date before an ALJ is also scheduled and included on the complaint.

If additional settlement efforts are unsuccessful, an ALJ conducts a hearing generally in accordance with the rules of evidence and procedure that apply in the U.S. district courts. Normally, the hearing is held in the locale where the violation occurred, and an NLRB regional office attorney acts as a prosecutor of the complaint. Based upon evidence presented at the hearing, the ALJ submits findings and recommendations to the Board. All parties may appeal the ALJ's decision to the Board by filing exceptions. If no exceptions are filed, the ALJ's findings and orders automatically become the orders of the Board.

The objective of Board orders is to remedy the unfair labor practice and to undo the effects of the violation as much as possible. When the Board finds that an employer has engaged in an unfair labor practice, the Board order can require the employer to cease and desist from the practice and to take appropriate action to remedy the violation, such as reinstating fired employees to their former jobs and providing them backpay for periods they were unemployed.

NLRB does not have authority to enforce its orders. However, it may seek enforcement in the U.S. courts of appeals and parties to its cases may also seek judicial review.

NLRB's budget is predicated on the assumption that the majority of unfair labor practice cases will be voluntarily settled by the parties without going through the formal adjudication process. Since 1970, the percentage of merit cases settled has dropped below 81 percent in only 1 year. For fiscal year 1981, NLRB reported that 85.6 percent of the cases which had merit were settled by the parties without the necessity of formal ALJ decisions. NLRB has recently placed even greater emphasis on increasing the number of settlements and reported an extraordinarily high settlement rate of 96 percent during the first quarter of fiscal year 1982.

Processing time between complaint and ALJ decisions has been increasing

The median time required to process an unfair labor practice case from the filing of the charge through the Board decision stage increased from 327 days in fiscal year 1974 to 483 days in

fiscal year 1979, the latest year for which cumulative median data were available when we made our analysis. This represents a 48-percent increase in processing time. The increase in case processing time has occurred in two of the five stages (see exhibit D): from when the complaint is issued until the hearing is closed and from when the hearing is closed until the ALJ decision is issued. Subsequent to our analysis, cumulative median data for fiscal year 1980 became available and are included in the exhibit.

NLRB has established time frames for processing "average" unfair labor practice cases through each of its processing stages. The time objective for the regional offices to investigate and determine the merit of a charge is 30 days after the charge is filed. The action to implement that decision, such as dismissal, withdrawal, settlement, or complaint issuance is to be completed in an additional 15 days. NLRB statistics show that the regional offices dispose of more than 90 percent of the unfair labor practice charges informally within about 40 days without the necessity of issuing a formal complaint. In fiscal year 1979, the median time for these informal resolvements was 39 days. In that fiscal year, the median time from the filing of a charge until complaint issuance was 45 days.

According to the time frames a hearing should be scheduled within 45 days from when the complaint is issued, and the ALJ's decision should be rendered within 60 days of the close of the hearing. The Chief ALJ told us that these time frames are based on the existence of "ideal" conditions, considering such factors as hearing and decision backlogs, hearing and transcript length, case complexity, and the amount of travel time required.

According to NLRB statistics, the median time between when a complaint was issued on an unfair labor practice charge and when the ALJ hearing was closed increased by nearly 300 percent between fiscal years 1974 and 1979--from 48 to 142 days. In our 400 8(a)(3) sample of cases closed in fiscal year 1979, of the 293 cases where firings occurred, 189 cases had formal complaints issued and were either resolved during or processed through the stage beginning with the issuance of the complaint through the close of the hearing in a median time of 164 days and an average time of 215 days. In 49 cases, the elapsed time in this processing stage exceeded the median by at least 50 percent. The Chief ALJ told us that in some cases it took 9 months to schedule a hearing at the Washington, D.C., office during fiscal year 1981. Therefore, some employees had to wait about 270 days to obtain a hearing before an ALJ, in contrast to NLRB's goal of 45 days. In early 1982, the Chief ALJ said it was taking about 6 months to schedule a hearing.

After a hearing has closed, additional long delays can be encountered while the ALJ prepares a decision providing findings and recommendations regarding the unfair labor practice charge. According to NLRB statistics, in fiscal year 1974, the median and average times to prepare an ALJ decision were 69 and 68 days, respectively, and in fiscal year 1979 the times increased to 157 and 169 days, respectively. In our sample of 400 8(a)(3) cases closed in fiscal year 1979, 39 had ALJ decisions. These decisions required a median and average preparation time of 140 and 157 days, respectively. In 13 of these cases the ALJ decision preparation time exceeded the median by at least 50 percent. During fiscal year 1981, according to Division of Judges' statistics, the ALJs' average decision preparation time was 161 days. Median data for this period were not available at the time of our review.

Parties may bring cases before the five-member Board for a final NLRB decision by filing an exception to the ALJs' findings and rulings. Although only about 4 percent of all charges filed with NLRB reach this stage, about two-thirds of all ALJ decisions are appealed to the Board.

According to NLRB statistics, the median processing time for this stage (ALJ decision to Board decision) was 123 days in fiscal year 1979 as compared to NLRB's goal of 108 days, and it has remained relatively constant over the last several years. In our sample of 400 8(a)(3) cases, 39 were either resolved during, or processed through, the Board decision stage in a median and an average of 146 and 207 days, respectively. Eleven cases exceeded the median processing time by at least 50 percent, and the average processing time for the 11 cases was 337 days.

Reasons for delays in adjudication process

According to NLRB, the major factors contributing to the lengthy delays in the ALJ adjudication stages are an insufficient number of ALJs and the increasing caseload. Additional factors include increases in case length and complexity and the health and capabilities of individual ALJs.

Inability to hire ALJs

NLRB officials told us that the delays in the ALJ adjudication stages stem directly from its inability in the mid-1970s to hire additional ALJs because of a ceiling on the number of ALJs that could be employed in the Federal Government. The officials said that because the ceiling was in place during the period when NLRB's case intake increased dramatically, processing delays began occurring. According to the officials, processing delays incurred during this period accompanied by subsequent ALJ recruitment difficulties have hindered NLRB's efforts to improve the adjudication process timeliness.

Because NLRB's efforts to hire ALJs was one of the Subcommittee's concerns, a more detailed discussion of this matter is in this appendix (see pp. 16 to 19).

Increase in caseload

Between fiscal years 1974 and 1979, the number of unfair labor practice charges filed increased by 49 percent, from 27,726 to 41,259 cases annually. NLRB attributes some of its caseload growth to the public attention to the agency, the growing exercise of legal rights by individuals, and the belief of labor and management in the value and effectiveness of the Board's processes. Although NLRB screens inquiries to discourage filing of charges that are clearly without merit, it cannot prohibit parties from invoking its processes.

We interviewed several labor relations experts to obtain their views on why the number of unfair labor practice charges filed with NLRB has increased. Union and union-related organization representatives said that an antiunion climate exists and employers more freely violate the National Labor Relations Act because they feel they can "get away with it." Therefore, they claimed it is cost effective for employers to commit unfair labor practices to prevent unionization of their companies. However, the employees in management organizations claimed that the rise in caseload is due to employees' increased awareness of the act and the labor relations area.

According to Division of Judges' statistics, the number of cases initially scheduled for hearings increased from 3,135 to 5,567 (78 percent) between fiscal years 1974 and 1979 and to 5,785 (85 percent) by fiscal year 1981. According to the statistics, about 76 percent of the cases scheduled for hearings are settled or withdrawn without an ALJ having to conduct a formal hearing.

In addition to the overall rise in NLRB's caseload, we noted an additional factor which has increased the number of unfair labor practice cases scheduled for hearings. In fiscal year 1974, 31.6 percent of all charges filed were found to have merit compared to 34.2 percent in fiscal year 1981. NLRB officials told us that the increase in the merit factor does not indicate an overall increase in unfair labor practice violations. According to the officials the merit factor remained fairly constant until fiscal year 1978 when NLRB increased emphasis on its Public Information Program for screening inquiries to discourage the filing of charges that lack merit. According to NLRB statistics, during fiscal year 1981, 197,421 public information inquiries resulted in only 14,213 (7.2 percent) charges.

The increased number of cases scheduled for hearings resulted in additional hearing and decision backlogs for ALJs. The average hearing case backlog for each ALJ increased from 5.4 to 19.8 cases between fiscal years 1974 and 1979 and to 29.4 by fiscal year 1981. Also, between fiscal years 1974 and 1979 the average individual ALJ decision backlog increased from 2.6 to 6.6 cases. During fiscal year 1981, the ALJs' average decision backlog decreased to 5.3 cases. The Chief ALJ told us that this decrease was due in part to a higher settlement rate and an increase in the number of ALJs hearing the cases. The Chief ALJ explained that he had also scheduled fewer hearings per week which allowed ALJs to reduce their decision backlogs.

Although NLRB's unfair labor practice caseload has increased continuously in past years, during fiscal year 1981 the intake decreased by 0.9 percent. (See exhibit A.) Also, according to NLRB, during the first quarter of fiscal year 1982 the unfair labor practice case intake decreased by about 10 percent from the first quarter of fiscal year 1981. NLRB believes the decrease is a result of the state of the economy and expects that the caseload will increase as the economy improves.

Additional reasons obtained through analysis of sample cases and provided by ALJs

For the cases in our 8(a)(3) sample, which took a long time during the ALJ adjudication stages, we reviewed NLRB files and talked with NLRB officials to determine the reasons for the delay. Forty-nine of the sample cases exceeded the median processing time of 164 days by more than 50 percent in the processing stage from complaint issuance until close of ALJ hearings. Two primary reasons accounted for these delays--settlement efforts and amendment or consolidation of the complaints.

Also, in 13 of the 39 sample 8(a)(3) cases which had ALJ decisions, the decision preparation time exceeded the median of 140 days by at least 50 percent. We questioned the Chief and Deputy Chief ALJs to determine why these 13 decisions took so long. In seven of the cases, the judges attributed the delays to the poor health of the presiding ALJ. In two cases, they cited long hearings and hearing transcripts as the cause of delay. In another case they said that the presiding ALJ was typically slow. Reasons for the delays were not readily available for three cases. In general, the Chief ALJ said that the major factor related to the exceptionally long delays in ALJ decisions is usually the capability of the individual ALJ.

We asked NLRB to give us reasons for the delays in our sample cases which exceeded the median processing time by 50 percent in the Board decision stage. According to NLRB, the major reasons

were preparation of separate dissenting or concurring opinions by Board members, time extensions for filing exceptions to ALJ decisions, and lengthy hearing records.

Additionally, we interviewed 25 ALJs in NLRB's Washington, D.C., San Francisco, and New York offices to obtain their opinions on the factors which have led to the increased time necessary for issuing ALJ decisions. ALJs cited the following reasons: increased caseload (52 percent), longer transcripts (40 percent), more complex cases (32 percent), and more travel (32 percent). 1/

Effect of processing delays on employees in sample cases

To determine the impact of processing delays on fired employees in our sample cases, we compared employee questionnaire results received from 40 employees whose cases took over 500 days to resolve with the combined responses from all employees. These individuals, except for one who was not looking for work, were unemployed a median and an average of 12 and 22.7 weeks, respectively, before returning to their former jobs or finding new employment compared to 10.3 and 20.2 weeks, respectively, for the total respondents.

In most instances, the employees whose cases had long processing times said they were better off regarding their present circumstances than the group as a whole. A greater percentage of these employees favorably compared their current job with the job from which they were fired in relation to pay, benefits, chance for advancement, and job security. Also, regarding the firings' overall impact on their lives, a larger percentage of these employees said that their financial situation and career were no different or had improved since the firing. A greater percentage of employees fired for participating in union-organizing campaigns, however, reported that their relations with their family were worse in relation to the overall group. Also, a larger percentage of employees fired for union-related activities said that their new job location and relations with coworkers were worse in relation to the total respondents.

RECRUITMENT OF ALJS

Within NLRB's Division of Judges, ALJs function as presiding officers in NLRB's adjudicatory proceedings under the authority of the Administrative Procedures Act of 1966, as amended (5 U.S.C. 556). ALJs have two primary duties--developing complete hearing records of unfair labor practice proceedings and issuing decisions on the cases.

1/Total percentages exceed 100 percent due to multiple responses.

According to NLRB, the number of ALJs it employs is not sufficient to handle the increasing unfair labor practice charge caseload, and consequently, this understaffing causes delays in scheduling hearings and preparing decisions. NLRB has been unable to meet its ALJ employment goal and it has estimated that more ALJs will be needed to process the increased caseload.

NLRB's efforts to hire additional ALJs

NLRB's ALJ positions are classified by the Office of Personnel Management (OPM) at the GS-16 level. The total number of GS-16 ALJ positions Government-wide is limited by statute to 340, and the positions are allocated to the various Federal agencies by OPM. NLRB officials told us that delays in the ALJ adjudication stages began during the mid-1970s when it could not hire additional ALJs to process the increasing caseload. At that time, the number of GS-16 ALJ slots Government-wide was limited to 240, and according to the NLRB officials, OPM (then the Civil Service Commission) did not have additional ALJ positions to allocate to NLRB. In October 1977, NLRB cited its critical shortage of ALJs in testimony supporting legislation to increase the number of ALJ positions. Legislation increasing the number of ALJs Government-wide to the current level was passed in March 1978. NLRB currently has an allocation of 125 ALJ positions and it expected to employ this number by the end of fiscal year 1981. NLRB did not expect that 125 ALJs would allow it to appreciably reduce its hearing backlog, but believed that the number of hearings pending per judge would drop, even if the hearing backlog continued to grow slightly.

As of September 30, 1981, the Division of Judges had 119 ALJs including 2 ALJs who had retired, but were finishing work on cases assigned to them before retirement. NLRB had increased its ALJ corps by 29 ALJs since fiscal year 1977 when 90 ALJs were employed. During this time NLRB hired a total of 65 new ALJs but lost 36 ALJs, primarily through retirements. Between fiscal years 1974 and 1981 the average ALJ complement increased from 84.2 to 101.4 (20 percent). Because of budgetary restraints NLRB suspended hiring in fiscal year 1982. Therefore, because of attrition, the number of ALJs dropped to 112 by April 1982. NLRB projects a continued need for additional ALJs and expects to bring its ALJ complement up to 130 in fiscal year 1983.

NLRB officials told us that hiring new ALJs is difficult because of the limited number of qualified applicants. Reasons they mentioned that account for this situation include:

--The ceiling on Federal pay discourages labor law attorneys from applying because they can earn higher salaries in the private sector.

--Few people are willing to relocate. Until recently, the Division of Judges only had offices in Washington, D.C., and San Francisco. The opening of offices in New York City and Atlanta in 1979 and 1980, respectively, has allowed the recruitment of many ALJs who otherwise would not have relocated to accept positions with NLRB.

--OPM has extensive and detailed application procedures and qualifications which discourage candidates from applying. Applicants must have 7 years of experience in case preparation and presentation with 2 recent years in the field of administrative law or in the actual preparation and trial of cases in court. Applicants must also provide detailed listings of case involvement including full statement of the issues, summary of technical and economic data and briefs, provide 20 professional references, and demonstrate ability to write decisions--which requires about 6 hours.

In addition, NLRB's specialized qualifications for ALJs limit the potential number of applicants. There are two sources which NLRB can use for hiring judges--(1) OPM Federal employment recruiting registers and (2) transfers from other Federal agencies which use ALJs. OPM maintains a register of applicants who meet the general ALJ requirements. However, agencies, such as NLRB, which assert that their ALJs require specialized experience, in addition to the general ALJ qualifications, can impose additional requirements for their ALJs. NLRB requires that its applicants have at least 2 years of labor law experience. This requirement, which does not apply to ALJ transfers from other agencies, reduces the pool of potential applicants for NLRB. For example, in fiscal year 1981, 67 ALJ candidates were placed on the general register whereas only 11 qualified under NLRB's requirements. Since fiscal year 1977, only 49 ALJ applicants meeting NLRB's specialized requirements have been placed on the register, and at the end of fiscal year 1981, 16 qualified persons were on the register. Of the 65 ALJs hired by NLRB since the beginning of fiscal year 1977, 47 were obtained through OPM's register of NLRB applicants and 18 were previously employed as ALJs at other Federal agencies.

NLRB officials told us that they believe that previous labor law experience is important for new ALJs. They said, however, that OPM's requirement that the 2 years of labor law experience be within 7 years of the application date is too restrictive and therefore limits the number of qualified applicants.

NLRB's efforts to augment regular ALJ corps

Over the past 6 or 7 years, NLRB has augmented its ALJ corps by using rehired annuitants, who count against the ALJ position allocation ceiling, and borrowing ALJs from other agencies.

Initially, OPM allowed NLRB to rehire retirees to handle cases in the same fashion as its permanent judges. However, according to NLRB, in late 1979 OPM decided that rehired annuitants could no longer be assigned new work. Since that time, NLRB has used annuitants only to finish work on cases assigned to them before they retired and in which hearings were completed or underway at the time of retirement. NLRB officials told us that annuitants can make a significant contribution to reducing the caseload and believe that the annuitants should be assigned cases in the same manner as the regular ALJs.

NLRB has also acquired ALJs through loan from other agencies. Most of the borrowed judges come from agencies which have had slack periods of work for their ALJs and have made their judges available for use by busier agencies through OPM. However, since October 1, 1981, NLRB has not given new assignments to borrowed ALJs because of budgetary uncertainties and constraints. NLRB estimates that the rehired annuitants and borrowed ALJs represent the equivalent of having two additional full-time judges over the past 6 years.

ALJ PRODUCTIVITY

While the average number of ALJ unfair labor practice case decisions has remained fairly constant during past years, individual ALJ yearly decisional output varied significantly. NLRB officials told us that every effort is made to motivate the few ALJs whose productivity is below NLRB's standards, but not always with success. Their efforts are limited because of certain statutory protections for ALJs.

Because of this, and the fact that NLRB estimates that it will need additional ALJs to meet the increasing unfair labor practice caseload, the Subcommittee was interested in whether increasing ALJ productivity could serve as an alternative to hiring more ALJs and asked that we provide suggestions for increasing ALJ productivity. As discussed below, our work indicated that periodically evaluating ALJs' performance may serve as an incentive for them to process more cases. Additionally, many ALJs believe that allowing them to issue oral decisions and hiring law clerks to assist them could reduce NLRB's overall case processing time.

ALJ productivity varies significantly

NLRB has established a performance standard expecting ALJs to issue each fiscal year a minimum of 12 decisions in cases of average size and complexity. According to the standard, ALJs are not to consider this number a quota which when reached during a fiscal year relieves them of responsibility to dispose of additional cases by decision or settlement. The Board expects all ALJs to contribute their full efforts toward the fulfillment of the Board's mission of disposing of all unfair labor practice complaints issued by the General Counsel with the least possible

APPENDIX I

delay. The standard states that the length of hearings and records, the novelty and difficulty of issues, poor health, and other extraordinary circumstances which occur will be considered in determining whether an ALJ has met the performance standard.

ALJ productivity statistics maintained by the Division of Judges indicated that overall ALJ productivity has averaged around 13 decisions per ALJ since fiscal year 1974. The statistics also indicated, however, that some ALJs have consistently performed below the decisional standard level while others have consistently surpassed it.

The productivity records also note extenuating circumstances which would affect individual ALJ's decision outputs and performance, such as long hearing transcripts, extensive sick leave, or involvement in other administrative duties. ALJs who had not been employed for the entire fiscal year were also identified, including new hires, retirees, and ALJs on loan from another agency.

We examined the productivity records for fiscal years 1978-81 and excluded from our analysis the ALJs who had extenuating circumstances noted. During the period, the average number of remaining ALJs was 83. Of these ALJs, 25 (30.1 percent) prepared fewer than 12 decisions during at least 2 years. Nine ALJs (10.8 percent) completed fewer than 12 decisions during all 4 years. These ALJs had written an average of 9.2 decisions annually over the 4-year period. In contrast, an average of 20 ALJs prepared 16 or more decisions annually during fiscal years 1978-81.

In fiscal year 1981, when 89 ALJs without extenuating circumstances were employed, 40 ALJs wrote fewer than 12 decisions, and 49 ALJs wrote 12 or more decisions with 13 ALJs writing from 16 to 21 decisions. These 13 ALJs generally had a history of high productivity. Additionally, the 40 ALJs who had prepared fewer than 12 decisions in fiscal year 1981 settled an average of 4.7 cases without writing a decision while those who wrote 12 or more decisions settled an average of 7.5 cases.

The productivity statistics also indicate that the number of ALJ decisions issued varied widely depending upon the quarter of the fiscal year. During fiscal years 1978-81, the number of decisions in the first quarter of each fiscal year declined an average of 27 percent from those issued in the fourth quarter of the preceding fiscal year. Additionally, the statistics show that the decisional output declined an average of 39 percent between the final month of a fiscal year and the first month of the following year during this period.

The Chief ALJ told us that, although the average number of ALJ decisions remained relatively constant between fiscal years 1974 and 1981, there has been a marked improvement in ALJ productivity.

During this time the average number of cases settled by ALJs increased from 5.07 to 6.9. Also, during the period, the Chief ALJ said that the average length of hearing transcripts increased by about 50 percent.

Performance evaluations are not permitted

The primary function of the Chief ALJ, as head of the Division of Judges, is managing the Division's caseload which includes monitoring ALJ performance. However, formal performance evaluations of ALJs are not permitted.

The Chief, two Deputy, and four Associate ALJs monitor the ALJs' progress through the use of monthly status reports which list individual ALJ case workload and length of time spent on each case. This report is compiled from information provided by the ALJs through reports describing weekly activity and action on hearings completed. The reports, which include estimated time frames for disposition of each case, are used primarily by ALJ management as guidelines for assigning new cases to ALJs and distributing the workload.

Since 1975 the Division of Judges has provided each ALJ with quarterly reports listing the number of decisions issued and the average time required for writing them. Also, quarterly ALJ productivity statistics are posted in conspicuous locations so that the ALJs' efforts can be compared. One of the Deputy Chief ALJs told us that this puts subtle pressure on the ALJs to improve their productivity. The Chief ALJ said that he did not know if these reports have had any effect on productivity. He said that ALJ productivity is very difficult to measure and that individual ALJ productivity depends primarily on the length of the particular case, the size of the transcript, and the capability of the ALJ.

ALJ management officials believe that the overall performance and commitment of the ALJs is good and that there are very few low producers. They said, however, that in instances where ALJs are preparing fewer decisions than the division average, there is not much they can do other than to discuss the situation with the ALJ or perhaps send the ALJ a letter encouraging improvement. One official said that, although there are only a few low producers, an increase in their decisional output would be helpful in reducing the overall case backlog.

NLRB's inability to take more effective management action to increase ALJ productivity is due, in part, to the fact that NLRB's ALJs as well as those ALJs at the other Federal agencies who use them have an unusual Federal employment status. To insure their independence the Administrative Procedures Act of 1966, as amended, provides in section 2(a)(1)(5 U.S.C. 599) certain statutory protection for ALJs from the possibility of undue pressure or influence

from their employing agency. The act exempts ALJs from performance evaluations by their own agencies (5 U.S.C. 4301) and allows them to be removed only for cause by OPM, not the employing agency (5 U.S.C. 7521). ALJs also receive periodic pay increases without certification by their employing agency that they are performing at an acceptable level of competence (5 U.S.C. 5335).

Not only does the act preclude agency evaluation of ALJ performance, but also it does not assign this responsibility to any other organization. In two previous reports 1/ regarding management of the administrative law process, we pointed out that this omission has, in effect, prevented such agencies as NLRB from establishing effective ALJ personnel management systems. We recommended that the Administrative Procedures Act be amended to assign the responsibility for periodic evaluation of ALJ performance to a specific organization. The responsible organization could be OPM by itself or as part of an ad hoc committee composed of private attorneys, Federal judges, Chief ALJs, agency officials, and the Administrative Conference of the United States.

In 1980, in line with our recommendation, House and Senate Committees stated a need for ALJ performance evaluation in reporting out proposed legislation to reform Federal regulations which cover ALJs. However, no action was taken to require formal ALJ evaluations.

Suggestions for increasing ALJ productivity

To address the Subcommittee's request that we provide suggestions as to how NLRB could improve the productivity of its ALJ corps, we talked to 25 ALJs at the Washington, D.C., San Francisco, and New York offices. We asked these judges to identify any steps or measures which they believed could be taken to improve the timeliness of the adjudication process. Their suggestions included:

--Allowing the ALJs discretion to issue oral decisions on their findings and recommendations instead of the current requirement that written decisions be prepared on all cases.

--Hiring law school graduates as law clerks to assist the ALJs with their heavy workload.

--Opening ALJ offices in additional geographical locations to reduce travel time thereby allowing ALJs to devote more time to preparing decisions.

1/The two reports are "Administrative Law Process: Better Management Is Needed" (FPCD-78-25, May 15, 1978) and "Management Improvements in the Administrative Law Process: Much Remains To Be Done" (FPCD-79-44, May 23, 1979).

--Providing ALJs additional secretarial help and word processing equipment.

--Permitting ALJs to become involved earlier with cases.

We discussed these suggestions with officials from NLRB's Division of Operations Management, the Division of Judges, and the Executive Secretary of the Board.

Allowing ALJs to issue oral decisions

Nineteen (76 percent) of the 25 ALJs interviewed believed that ALJs should be allowed to issue oral decisions. They said that oral decisions could be used at the ALJ's discretion in the more simple, clear-cut cases. Most of them estimated that such cases would constitute about 10 to 25 percent of total unfair labor practice cases. Seventeen (68 percent) of the ALJs said that oral decisions would allow them to increase the number of decisions they are able to issue annually.

Two of the judges were uncertain as to whether oral decisions should be used and four believed that oral decisions should not be allowed. Two of the latter ALJs felt that with oral decisions, parties in the case may feel that they are deprived of due process. The other two ALJs said that although oral decisions would speed up case dispositions, ALJs' initial impressions on a case may later change after reading the hearings transcript and post-hearing briefs submitted by the parties.

We also discussed the effect of allowing ALJs to issue oral decisions with ALJ management officials. The Chief and one of the Deputy ALJs said that allowing ALJs to issue oral decisions would have little or no effect on the timeliness of the adjudication process. They said that very few unfair labor practice cases would be suitable for oral decisions and a decision on these could be written quickly. They believe that only a few ALJs would use oral decisions if they were allowed. They said that oral decisions may be more difficult to enforce and that the review burden of the Board would be increased--it would be shifting responsibility instead of decreasing the overall workload. The other Deputy ALJ and one of the Associate Chief ALJs, however, said that oral decisions could increase ALJs' productivity.

We also discussed this suggestion with the Board's Executive Secretary who explained that the Board has taken a negative view of oral decisions in the past. He pointed out two major concerns with oral decisions. First, parties to NLRB hearings have the right to file briefs subsequent to the hearing. The Secretary said that any move to eliminate this right would be very controversial. Secondly, the Board believes that oral decisions may not be well thought out. Additionally, he said the Board believes

oral decisions would make it more difficult for parties to file exceptions and also for the Board to consider appealed decisions.

Hiring law clerks to assist ALJs

Twenty (80 percent) of the NLRB's ALJs we interviewed were in favor of a law clerk program. Most of them felt that the appropriate ratio would be one clerk for every one or two judges. The clerks could research cases, proof decisions, and check citations, thereby allowing the judges more time to write decisions. All 20 ALJs favoring the law clerk program said that full-time law clerks would allow them to dispose of more cases during the year.

In line with these views, the Board authorized a pilot program of 10 to 15 law clerks for fiscal year 1982. NLRB planned to assign the law clerks to designated judges and compare the productivity of judges with clerks with those who did not have clerks. NLRB felt that the clerks would be cost effective if they reduced the ALJ's writing time for each decision by only 3 days. The program was to be implemented in fiscal year 1982. However, because of fiscal year 1982 budget limitations and a freeze on all hiring, the Board postponed the law clerk program until fiscal year 1983.

Other suggestions provided by ALJs

We discussed the other suggestions the ALJs provided for improving the timeliness of the adjudication process with cognizant NLRB officials--the Chief ALJ, Associate General Counsel for Operations Management, and the Board's Executive Secretary.

One suggestion involved opening additional ALJ offices in other geographical locations to reduce ALJ travel time thereby allowing more time for ALJs to prepare decisions. All three officials favored decentralization, especially regarding the positive impact it would have on ALJ recruitment. The Executive Secretary and Chief ALJ, however, stated that decentralization would result in larger administrative expenses. Both officials said that the current budgetary restraints prohibit any further decentralization in the foreseeable future. The Chief ALJ also pointed out that some of the most productive ALJs have the largest amounts of travel.

Another suggestion for improving the timeliness of the process regarded providing the ALJs additional secretarial and word processing equipment assistance. We discussed this suggestion with the Chief ALJ who told us that the lack of sufficient secretarial support is not a significant problem. He said that ALJs vary in the extent to which they could use secretaries. Some ALJs could keep one secretary busy while others would only need to share a secretary. The Chief ALJ told us that it is difficult to retain

experienced secretaries because of the low pay structure. The Chief ALJ also said that NLRB is in the process of acquiring additional word processing equipment.

Some of the ALJs also suggested that, if they had earlier involvement with the cases, the timeliness of the adjudication process could be improved. Currently, the regional offices maintain control of the cases until the hearing date. The Associate General Counsel for Operations Management told us that earlier case involvement by ALJs might increase informal settlements. The Chief ALJ told us that a new policy instituted in October 1981 allowing ALJs to make discretionary prehearing teleconference calls to the parties' counsels to explore settlement possibilities provides ALJs some earlier involvement. He said, however, that other than this, earlier ALJ case involvement would not be effective. According to him, because most cases scheduled for hearing will be resolved without the ALJs' participation, earlier involvement would result in the ALJs performing unnecessary work on cases which would be settled without their intervention.

PERCEPTIONS OF MANAGEMENT, UNION, AND NLRB ON THE NATIONAL LABOR RELATIONS ACT

The Subcommittee asked us to obtain views on the National Labor Relations Act in general and, more specifically, on the nature of 8(a)(3) discriminatory actions. We obtained views from management, labor, and NLRB officials, but no consensus emerged as to the need for major reforms to the act.

We obtained management views from 21 management attorneys/consultants and 4 representatives of employer associations in the cities where the NLRB regional offices we visited are located and 3 national management representatives. We also interviewed 11 union attorneys/consultants and 14 representatives of union organizations in the cities visited and 2 national union representatives. NLRB's Board and General Counsel provided written comments on our questions, and in addition, we interviewed the directors and other top-level officials at the 11 NLRB regional offices visited. NLRB's written response emphasized that the data it collects are not directly relevant to our questions. However, NLRB officials said that they could make brief observations regarding the questions based on NLRB's experience in dealing with unfair labor practice and representation case situations. The following summarizes responses to our questions.

Employer actions to prevent unionization

We obtained varied views from the representatives and NLRB officials on the approach that employers most frequently take to prevent or delay unionization when a union-organizing campaign is underway. Management representatives told us that employers

most frequently discuss the disadvantages of the union and establish good communication with their employees, develop supervisory skills, and use delaying tactics with the NLRB case processing procedure. Labor representatives, however, said that employers use fear tactics, such as firings and threats, use delaying tactics in NLRB litigation, and hire management attorneys/consultants to advise them of methods to counter the union movement.

The most frequent response provided by NLRB regional officials regarding actions to prevent unionization, based upon their experience, was that employers fire employees involved, usually the union organizer. Following this, the officials said that employers use management consulting firms to advise them of measures to counter the union and try to delay the election process.

In its written response, NLRB stated that most employers who oppose unions act lawfully. Through such means as hiring labor relations experts, employers attempt to persuade employees that unionization is not in their best interest. NLRB said employers may also take full advantage of any of the delays which are inherent in representation case procedures and thus delay the election. NLRB further stated that, while most employers bent on defeating or delaying a union act lawfully, some do not. According to NLRB, frequently, an employer who acts unlawfully will make promises of benefits to employees conditioned on the defeat of the union or threaten reprisals including discharge of union supporters and plant closure, if the union is successful. According to NLRB, such an employer may attempt to ascertain the leading union adherent by surveillance and discharge the individual on a pretext in an attempt to "nip in the bud" an organizing campaign and demoralize other union supporters.

Adequacy of act's remedies as deterrent to firings and effect on employee support for union campaigns

We questionned the labor/management representatives and NLRB officials regarding the adequacy of the act's 8(a)(3) remedies of reinstatement, backpay, and posted notice of corrective actions on employee support for union-organizing campaigns, and the adequacy of the remedies in deterring 8(a)(3) firings. The responses we received varied greatly.

The management representatives generally said that the act offers about the right amount of protection and their most frequent response was that the remedies are effective deterrents to unlawful firings for union activities. The management representatives also told us that the remedies usually increased employee support for unions.

The labor representatives, however, did not believe the act provides enough protection. These representatives told us that 8(a)(3) firings decrease support for the union-organizing campaign and that the remedies do not serve as deterrents to future firings.

Most NLRB regional officials interviewed told us that whether or not the remedies have a bearing on employees' union support depends on when they are made. Most of the officials believe that the remedies have little effect on the support if made after the election. Regional directors at 2 of the 11 regions visited said that the remedies have little or no effect regardless of when they occur. Most officials said the remedies are not very effective as deterrents to 8(a)(3) firings.

In its written response to our questions, NLRB stated that it knew of no studies which correlate the application of the act's remedies with the outcome of a union's organizing campaign. NLRB said that logic suggests that when full remedies are made promptly a return to the previolation status of the campaign is possible. NLRB speculated, however, that the remedies become more ineffective with delays in implementing them. NLRB also stated that employee reinstatements have the most impact on a union organizational campaign. However, NLRB said that while a significant percentage of 8(a)(3) cases are settled informally and expeditiously, in the absence of a speedy settlement or injunctive relief requiring reinstatement, a remedy, if it comes at all, will likely be delayed. Such a remedy will often occur after the election and have no impact on the campaign.

NLRB also stated that the remedies seem to have some deterrent effect on 8(a)(3) firings because it is relatively rare to find an employer repeatedly committing such firings. NLRB pointed out, however, that some employers may look upon the remedies as simply a cost of doing business. Therefore, to the extent that this is so, such employers would stop unfair labor practices only when it is cost beneficial to them.

Furthermore, NLRB stated that employers who are repeatedly charged with 8(a)(3) violations constitute a small portion of the total number of employers charged with unfair labor practices.

Suggested changes to act to improve NLRB's effectiveness

We asked the respondents what changes they would like to see made to the act as it relates to section 8(a)(3) to improve NLRB's effectiveness. Management representatives believe the case processing times are too long and should be speeded up. To do this, they said that more ALJs should be hired. A few management respondents also mentioned having stricter penalties.

Labor representatives stressed two primary changes: strengthen the penalties and expedite the processing of cases. Another suggestion two respondents provided was more frequent and quicker use of injunctions in the case of discharged employees.

In its formal response, NLRB offered no suggestions for changes in the act. NLRB stated that, historically, it has refused to propose or endorse changes to the act. NLRB said that due regard for its ability to enforce the statute's mandate and perform in its sensitive role as the impartial enforcer of this Nation's fundamental labor-relations law, requires that it maintain this position.

NLRB regional officials told us they would like to see stronger penalties, faster formal case processing, and immediate reinstatement of employees after a formal complaint.

EXHIBIT A

NLRB'S FUNDING, STAFF SIZE, AND CASE INTAKE FOR FISCAL YEARS 1974-82

Fiscal year	Appropriation	Full-time permanent staff at end of year	Case intake	
			Unfair labor practices	Representation
	(000 omitted)			
1974	$56,057	2,371	27,726	14,647
1975	62,669	2,349	31,253	13,670
1976	69,597	2,503	34,509	14,826
Transition quarter	17,593	2,575	9,200	3,811
1977	80,908	2,751	37,828	15,115
1978	92,508	2,849	39,652	13,609
1979	102,762	2,921	41,259	13,648
1980	112,261	2,825	44,063	13,318
1981	118,488	2,797	43,677	12,588
1982 (estimate)	117,600	2,620	45,206	13,029

EXHIBIT B

METHODOLOGY FOR CASE SELECTION AND NUMBER OF CASES REVIEWED AT NLRB REGIONAL OFFICES

To answer the Subcommittee's questions, we reviewed selected case files at 11 NLRB regional office sites. We sampled a total of 400 8(a)(3) and 500 representation (election) case files.

To identify our sample, we requested NLRB to give us a list of all 8(a)(3) cases which had merit and all representation cases closed in fiscal year 1979. We planned to verify these lists by comparing them to master lists which contained both cases which had merit and cases found to be without merit closed during fiscal year 1979. Because of misclassification of cases in the listings, we could not be sure that the case listings given to us accurately reflected the contents of NLRB's 8(a)(3) and representation cases for fiscal year 1979.

Furthermore, we were unable to conduct a reliability assessment of NLRB's case processing system because it was in a transition stage during fiscal year 1979. NLRB officials told us that efforts had been concentrated on developing the new system and not on maintaining the old one.

Because of these problems, the samples we identified and selected may not be representative of NLRB's universe of 8(a)(3) and representation cases for fiscal year 1979. Therefore, statistics developed from our sample cannot be projected and should be related only to the cases reviewed.

We totaled the cases closed for each regional office and determined the percentage of cases closed at each regional office to the total number of cases closed during fiscal year 1979. We then prorated the sample size to obtain the number of cases to be reviewed at each of the 11 NLRB regional offices included in the review. To replace invalid cases or missing files, we added reserve cases of 5 percent to the 8(a)(3) sample size of each region.

We applied a list of computer generated random numbers to the lists of closed 8(a)(3) and representation cases for each selected NLRB regional office. Our lists of random numbers included the additional numbers to be used if cases were found to be invalid. During our review, cases identified as not closed during fiscal year 1979, or as not being meritorious, were replaced using the additional random number selection process.

Two separate data collection instruments were designed to gather the information on the 8(a)(3) and representation sample cases. Data were obtained through analyses of case files and/or

EXHIBIT B

card indices, discussions with board agents, supervisors, compliance officers or union representatives, and examination of other pertinent documents.

The following table shows the number of cases reviewed at the 11 NLRB regional offices.

EXHIBIT B

NLRB region	Number of sample 8(a)(3) cases	Number of sample representation cases
Newark	27	44
Brooklyn	37	44
Cincinnati	61	59
Indianapolis	50	38
Detroit	52	65
Cleveland	29	55
Atlanta	37	47
Tampa	22	24
Memphis	22	30
Los Angeles (note a)	32	52
Los Angeles (note a)	31	42
	400	500

a/The Southern California area is served by two offices both located in Los Angeles.

EXHIBIT C

COMPARISON OF OPINIONS AND EXPERIENCES BETWEEN INDIVIDUALS FIRED FOR UNION ORGANIZING AND THOSE FIRED FOR UNION-RELATED ACTIVITY

The objective of the analysis was to assess what happens to employees fired for participating in union activities. The analysis compared opinions and experiences between the 151 individuals fired for participating in union-organizing efforts and the 116 individuals fired for their union-related activities in our sample of meritorious 8(a)(3) cases who returned our questionnaire.

EXHIBIT C

Employee Characteristics

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Age (147:112) (note a):				
Under 21	17	11.6	11	9.8
21 to 29	77	52.4	28	25.0
30 to 39	30	20.4	44	39.3
40 to 55	21	14.3	26	23.2
Over 55	2	1.4	3	2.7
Total dependents (147:112):				
1	51	34.7	33	29.5
2	24	16.3	16	14.3
3	26	17.7	20	17.9
4	29	19.7	21	18.8
5	7	4.8	7	6.3
6 or more	10	6.8	15	13.4
Sex (150:112):				
Female	37	24.7	40	35.7
Male	113	75.3	72	64.3
Ethnic or racial group (148:109):				
American Indian	2	1.4	3	2.8
Black	22	14.9	17	15.6
White, not Hispanic	104	70.3	86	78.9
Hispanic	18	12.2	2	1.8
Asian	2	1.4	1	.9
Formal education completed (147:112):				
Grade 6 or less	3	2.0	3	2.7
Grade 7 or 8	9	6.1	3	2.7
Some high school	32	21.8	37	33.0
High school graduate	63	42.9	51	45.5
Some college	30	20.4	12	10.7
2-year degree	3	2.0	1	.9
4-year degree	5	3.4	4	3.6
Graduate work	-	-	1	.9
Other	2	1.4	-	-

EXHIBIT C

Employment History

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Time employed on the job when fired (150:110) (note a):				
Under 6 months	26	17.3	25	22.7
6 months to less than 1 year	30	20.0	13	11.8
1 year to less than 3 years	47	31.3	19	17.3
3 years to less than 5 years	18	12.0	15	13.6
5 years to less than 10 years	22	14.7	30	27.3
10 years or more	7	4.7	8	7.3
Fired from full or part time job (150:110):				
Full time	143	95.3	103	93.6
Part time	7	4.7	7	6.4

EXHIBIT C

Unemployment Effect

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Weeks unemployed (138:100) (note a):				
0 to 2	28	20.3	17	17.0
3 to 6	32	23.2	9	9.0
7 to 10	18	13.0	13	13.0
11 to 20	22	15.9	19	19.0
21 to 30	13	9.4	13	13.0
31 to 40	11	8.0	6	6.0
More than 40	12	8.7	23	23.0
Still unemployed	2	1.4	-	-
Source of funds during unemployment period (110:83):				
Savings	56	50.9	37	44.6
Unemployment insurance	51	46.4	41	49.4
Family member	51	46.4	36	43.4
Food stamps	19	17.3	13	15.7
Sold personal property	16	14.5	12	14.5
Public assistance	9	8.2	5	6.0
Credit cards	8	7.3	6	7.2
Bank loan	3	2.7	7	8.4
Social Security/ pension	3	2.7	-	-
Was money spent to find another job (144:107):				
Yes	90	62.5	62	57.9
No	54	37.5	45	42.1
How was money spent (90:62):				
Job hunting trips	86	95.6	59	95.2
Employment service	24	26.7	8	12.9
Relocation	11	12.2	1	1.6
Training	4	4.4	5	8.1

EXHIBIT C

Effect on Employment Opportunities

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Did employer offer to rehire (145:107) (note a):				
Yes	57	39.3	37	34.6
No	88	60.7	70	65.4
Did employee return to job (57:36):				
Yes	38	66.7	28	77.8
No	19	33.3	8	22.2
If rehire offered, why did employee not return (note b):				
Found another job (15:6)	9	60.0	6	100.0
Employees felt coworkers would be too hard on them (15:4)	6	40.0	-	-
Employees felt employer would be too hard on them (16:4)	15	93.8	2	50.0
If returned to job, how were conditions:				
Relations with supervisor (34:27):				
Worse	20	58.9	11	40.7
No difference	10	29.4	11	40.7
Improved	4	11.8	5	18.5
Relations with management (33:27):				
Worse	20	61.0	12	44.4
No difference	8	24.2	9	33.3
Improved	5	15.2	6	22.2
Relations with coworkers (32:27):				
Worse	5	15.6	5	18.5
No difference	17	53.1	11	40.7
Improved	10	31.3	11	40.7

EXHIBIT C

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Work assigned (33:27) (note a):				
Worse	11	33.3	12	44.4
No difference	18	54.5	14	51.9
Improved	4	12.1	1	3.7
Advancement opportunity (32:26):				
Worse	16	50.0	13	50.0
No difference	12	37.5	12	46.2
Improved	4	12.5	1	3.8
Work hours (31:25):				
Worse	3	9.7	7	28.0
No difference	24	77.4	16	64.0
Improved	4	12.9	2	8.0
Returned and still working for employer (38:26):				
Yes--full time	12	31.6	10	38.5
Yes—part time	2	5.3	2	7.7
No	24	63.2	14	53.8
If returned, but not currently working for employer, why (24:11):				
Quit to take another job	8	33.3	5	45.5
Fired	7	29.2	-	-
Laid off	3	12.5	2	18.2
Employer out of business	2	8.3	1	9.1
Disabled	1	4.2	1	9.1
Retired	-	-	1	9.1
Other	3	12.5	1	9.1
If not currently working at old job, is employee working full time (137:98):				
Yes	88	64.2	60	61.2
No	49	35.8	38	38.8

EXHIBIT C

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Reason not working Full time (49:38) (note a):				
Unemployed--still looking	14	28.6	9	23.7
Laid off	11	22.4	10	26.3
Employed part time	10	20.4	9	23.7
Unemployed--not looking	4	8.2	1	2.6
Full-time student	3	6.1	1	2.6
Other	3	6.1	1	2.6
Disabled	2	4.1	4	10.5
Self-employed	2	4.1	2	5.3
Retired	-	-	1	2.6
Hindrances to finding another job (note b):				
Unavailability of jobs (132:97)	89	67.4	76	78.4
Onus of being fired (131:95)	76	58.0	53	55.8
Union involvement (131:95)	71	54.2	49	51.6
No reference from employer (127:90)	71	56.0	44	48.9
Firing hurt chances to find another job in same community (141:103):				
At least somewhat hurt	72	51.1	58	56.3
Did not hurt	44	31.2	24	23.3
No basis to judge	25	17.7	21	20.4
Comparison of conditions, new job vs. old job:				
Pay (112:78):				
Worse	24	21.4	17	21.8
No difference	22	19.6	17	21.8
Improved	66	58.9	44	56.4
Benefits (110:77):				
Worse	30	27.3	19	24.7
No difference	28	25.5	21	27.3
Improved	52	47.3	37	48.1

EXHIBIT C

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Location (108:74) (note a):				
Worse	29	26.9	13	17.6
No difference	38	35.2	32	43.2
Improved	41	38.0	29	39.2
Type of work (108:75):				
Worse	21	19.4	10	13.3
No difference	21	19.4	28	37.3
Improved	66	61.1	37	49.3
Chance for advancement (109:77):				
Worse	23	21.1	14	18.2
No difference	29	26.6	31	40.3
Improved	57	52.3	32	41.6
Security (106:75):				
Worse	28	26.4	14	18.7
No difference	20	18.9	24	32.0
Improved	58	54.7	37	49.3
Relationship with supervisor/management (108:78):				
Worse	6	5.6	2	2.6
No difference	25	23.1	20	25.6
Improved	77	71.3	56	71.8
Relationship with coworkers (107:77):				
Worse	3	2.8	3	3.9
No difference	41	38.3	28	36.4
Improved	63	58.9	46	59.8

EXHIBIT C

Effect on Overall Quality of Life

Area of concern	Number of fired union-organizing employees	Percent	Number of fired union-related employees	Percent
Overall effect of firing on aspects of life:				
Financial situation (144:110) (note a):				
Worse	62	43.1	59	53.6
No difference	30	20.8	25	22.7
Improved	52	36.1	26	23.6
Family relations (141:106):				
Worse	18	12.8	27	25.5
No difference	93	66.0	59	55.7
Improved	30	21.3	20	18.9
Relations with friends (138:105):				
Worse	12	8.7	17	16.2
No difference	97	70.3	68	64.8
Improved	29	21.0	20	19.0
Career (138:104):				
Worse	45	32.6	34	32.7
No difference	47	34.1	42	40.4
Improved	46	33.3	28	26.9
Emotional health (141:105):				
Worse	41	29.1	38	36.2
No difference	68	48.2	42	40.0
Improved	32	22.7	25	23.8
Physical health (137:104):				
Worse	20	14.6	21	20.2
No difference	92	67.2	61	58.7
Improved	25	18.2	22	21.2

EXHIBIT C

EFFECT ON UNION INVOLVEMENT

Questions Pertaining to Fired Union-Organizing Respondents Only

Area of concern	Number	Percent
Amount of support given to organizing campaign (151):		
At least some active support	142	94.0
No active support	9	6.0
If some active support, what activity (142):		
Signed union authorization card	121	85.2
Informally "talked up" union to others	100	70.4
Worked closely with union officials	65	45.8
Distributed union cards to others	65	45.8
Passed out union material	59	41.5
Wore union insignia	43	30.3
Spoke at union meetings	40	28.2
Walked picket line	35	24.6
Held union meetings in home	26	18.3
Wrote union literature	12	8.5
Since firing, have you been involved in union activities (148):		
Yes	46	31.1
No	102	68.9
Would employee participate in organizing campaign again (147):		
Yes or probably	84	57.1
Uncertain	26	17.7
No or unlikely	37	25.2
Reasons why employee would not participate (note b):		
Would not work in nonunion shop (29)	7	24.1
Not worth the effort (31)	25	80.6
Family advise against it (29)	10	34.5
Friends advise against it (29)	6	20.7
Concern for own or family safety (29)	10	34.5
Concerned would lose job again (31)	23	74.2

EXHIBIT C

Questions Pertaining to Fired Union-Organizing Respondents Only

Area of concern	Number	Percent
Types of union-related activity (116):		
Tried to make employer live up to contract	40	34.5
Picketing or handbilling	33	28.4
piled grievance(s)	32	27.6
Engaged in strike	31	26.7
Held union steward position	25	21.6
Contract negotiating committee member	18	15.5
Encouraged members to strike	7	6.0
Refused to join union	2	1.7
Since firing, have you been involved in union activities (109):		
Yes	46	42.2
No	63	57.8

a/Numbers in parentheses indicate number of employees responding to each concern. First number represents employees fired for union-organizing activities and the second represents employees fired for other union activities. The percentages were determined by dividing the individual responses in each area of concern by the total responses for that concern.

b/In responding to this area of concern, employees were instructed to indicate whether or not each potential response applied to their particular situation.

EXHIBIT D

COMPARISON OF MEDIAN DAYS ELAPSED IN NLRB'S CASE PROCESSING STAGES

	Fiscal year 1974	Fiscal year 1975	Fiscal year 1976	Transition quarter	Fiscal year 1977	Fiscal year 1978	Fiscal year 1979	Fiscal year 1980
Filing of charge to informal disposition before complaint	40	42	44	39	41	40	39	40
Filing of charge to complaint issuance	50	54	55	51	48	47	45	46
Complaint to close of ALJ hearing	48	55	75	78	90	116	142	155
Close of hearing to ALJ decision	69	72	89	94	113	140	157	158
ALJ decision to Board decision	131	134	120	112	134	128	123	133
Filing of charge to Board decision	327	332	358	374	396	429	483	484

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