

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 24-03

March 4, 2024

TO: All Division Heads, Regional Directors, Officers-In-Charge,
and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

RE: Report on the Midwinter Meeting of the Practice and Procedure Under the
National Labor Relations Act Committee of the American Bar Association
Labor and Employment Law Section

In late February 2024, the Board Members and I attended the Annual Midwinter meeting of the Practice and Procedure Under the National Labor Relations Act Committee (P&P Committee) of the American Bar Association (ABA) Labor and Employment Law Section together with several senior Agency managers.

As in years past, a primary purpose of this meeting is to discuss and respond to the P&P Committee's concerns and questions about Agency casehandling processes. While we responded to many questions at the meeting, I felt it prudent to share with you all of the P&P Committee's written questions and the Agency's written responses, as prior General Counsels have done.

As you know, maintaining productive and cooperative relationships with local practitioners throughout the country is a priority of mine. I am pleased and proud to report that many members of the P&P Committee shared their deep appreciation for the professionalism and dedication shown by Agency staff – both in the field and in Headquarters. Please continue to enhance the lines of communication with representatives of both management and labor who appear before the Agency as those exchanges inure to the benefit of the Agency and the public we serve.

Thank you for your extremely hard work and commitment to fully effectuating our statutory mission.

/s/
J.A.A.

Attachment
Release to the Public

cc: NLRBU
NLRBPA



United States Government
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20570

TO: ABA Committee on Practice and Procedure Under the National Labor Relations Act

FROM: Jennifer A. Abruzzo, General Counsel
Lauren McFerran, Chairman

DATE: March 1, 2024

We are in receipt of your letter dated January 19, 2024, in which you request information from the Agency regarding updated statistical information, updates regarding the Agency's priorities and plans, and questions and concerns raised by your member practitioners. The Agency's answers to the questions posed in the letter are below.

There are some questions that ask for statistics and/or information that the Agency does not keep, is not readily able to be compiled, and/or concerns non-public, confidential, internal or deliberative process information of the Agency, thus, the Agency is not responding to those.

I. **Updated Statistical Information**

A. **ULPs – FY 2023 C-Case Statistics**

1. For FY 2023, please provide the number of ULP charges filed, the number of CA cases filed, and the number of CB cases, together with respect to each the number and percentage of merit dismissals; the number and percentage of merit findings; the number of complaints issued; the settlement rate; and the litigation win rate.

| Disposition Type | Total/Percentage |
|-------------------------|-------------------------|
| CA Charges Filed | 16,075 |
| CB Charges Filed | 3,717 |
| Total Charges Filed | 19,869 |
| Merit Dismissals | 12 |
| Merit Factor | 41% |
| Complaints Issued | 743 |
| Settlement Rate | 96% |
| Litigation Rate | 91.9% |

2. For FY 2023, please provide the average time between charge filing and Regional disposition, broken down by Region and as a total.

| Region | FY 2023 |
|-----------------|----------------|
| 1 | 117.3 |
| 2 | 128.5 |
| 3 | 111.9 |
| 4 | 123.0 |
| 5 | 160.8 |
| 6 | 121.8 |
| 7 | 140.0 |
| 8 | 150.0 |
| 9 | 96.9 |
| 10 | 114.9 |
| 12 | 115.6 |
| 13 | 101.1 |
| 14 | 94.6 |
| 15 | 142.8 |
| 16 | 129.1 |
| 18 | 83.8 |
| 19 | 145.1 |
| 20 | 77.8 |
| 21 | 96.8 |
| 22 | 203.2 |
| 25 | 159.8 |
| 27 | 128.0 |
| 28 | 190.4 |
| 29 | 100.4 |
| 31 | 135.3 |
| 32 | 123.5 |
| National | 124.2 |

3. For FY 2023, what was the average time from complaint to hearing? What was the average time from when a hearing is closed until when a decision is issued.

For FY 2023, the average time from issuance of complaint to opening of a hearing in unfair labor practice cases was 189.2 days.

For FY 2023, the average time from when a hearing closed until issuance of an administrative law judge decision was 141 days.

4. Please provide the median time between when a case reaches the Board to the issuance of a Board Decision.

For FY 2023, the median number of days from case assignment to decision issuance for contested cases (including both C-cases and R-cases) was 117 days.

5. How many ULP cases in FY 2023 were designated as Category 1 cases, Category 2 cases, and Category 3 cases?

| IA Category | Number of Cases |
|-------------|-----------------|
| 1 | 398 |
| 2 | 13,140 |
| 3 | 6,431 |

6. Has the Board and/or the General Counsel modified the time targets for investigation and adjudication of ULP cases in FY 2023 and/or FY 2024? If so, what are the time targets for ULP cases investigated by the Regional Offices?

At this time, the General Counsel has not modified the time targets for investigations and adjudication of Unfair Labor Practice cases in FY 2023 or FY 2024. The current time targets, as set forth in GC 22-05 (Goals for Initial Unfair Labor Practice Investigations) are:

| IA Category | Time Target |
|-------------|-------------|
| 1 | 49 Days |
| 2 | 91 Days |
| 3 | 105 Days |

At this time, the Board has not modified its time targets for the adjudication of ULP cases in FY 2023 or FY 2024.

7. What are the time targets for ULP cases decided by the Board on exceptions?

For cases decided by the Board on exceptions, the Agency’s Strategic Plan for FY 2022 – FY 2026, as a part of Goal 1 for processing unfair labor practice cases, includes the goal of ensuring that the median age of all cases pending before the Board at the end of each fiscal year is 180 days or less.

8. Please provide the statistics regarding the number of non-Board settlement agreements resulting in adjusted withdrawal requests to resolve a case versus informal Board settlement agreements, and regarding the number of pre-complaint settlements versus post-complaint settlements.

| Disposition Type | Pre-Complaint | Post Complaint |
|--------------------------------|---------------|----------------|
| Non-Board Adjustments | 4,720 | 180 |
| Informal Settlement Agreements | 840 | 385 |

9. Please provide statistics on deferrals, including the number of cases deferred, the number of deferred cases that remain in deferral status, and the median length of time deferred cases have been pending.

There were 774 cases deferred in FY 2023. Out of the 774 deferred cases, 690 remain pending. The median length of time the 690 cases have been pending in deferred status is 287 days.

10. Please provide the total number of pre-trial subpoenas duces tecum and subpoenas ad testificandum issued by the General Counsel and issued by each Region for FY 2023.

| Region | Number of Investigative Subpoenas | ULP cases | R cases | Ad Testificandum | Duces Tecum |
|--------------|-----------------------------------|------------|----------|------------------|-------------|
| 1 | 5 | 1 | 4 | 0 | 5 |
| 2 | 0 | 0 | 0 | 0 | 0 |
| 3 | 4 | 3 | 1 | 1 | 3 |
| 4 | 10 | 8 | 2 | 2 | 8 |
| 5 | 0 | 0 | 0 | 0 | 0 |
| 6 | 4 | 4 | 0 | 4 | 0 |
| 7 | 8 | 8 | 0 | 0 | 8 |
| 8 | 2 | 2 | 0 | 2 | 0 |
| 9 | 9 | 9 | 0 | 4 | 5 |
| 10 | 3 | 3 | 0 | 2 | 1 |
| 12 | 15 | 15 | 0 | 3 | 12 |
| 13 | 2 | 1 | 1 | 0 | 2 |
| 14 | 4 | 4 | 0 | 3 | 1 |
| 15 | 5 | 5 | 0 | 3 | 2 |
| 16 | 9 | 9 | 0 | 9 | 0 |
| 18 | 4 | 4 | 0 | 2 | 2 |
| 19 | 3 | 2 | 1 | 1 | 2 |
| 20 | 8 | 8 | 0 | 4 | 4 |
| 21 | 1 | 1 | 0 | 0 | 1 |
| 22 | 3 | 3 | 0 | 1 | 2 |
| 25 | 1 | 1 | 0 | 0 | 1 |
| 27 | 1 | 1 | 0 | 1 | 0 |
| 28 | 7 | 7 | 0 | 3 | 4 |
| 29 | 6 | 6 | 0 | 2 | 4 |
| 31 | 5 | 5 | 0 | 3 | 2 |
| 32 | 7 | 7 | 0 | 1 | 6 |
| TOTAL | 126 | 117 | 9 | 51 | 75 |

11. Please provide the number of appeals received by the Office of Appeals; the number and percentage of cases sustained and overturned; the number of

CB cases, including the number reversed and the number remanded; the median number of days to process all such cases and those that were sustained; and the average number of days an appeal was pending.

| FY 2023 | |
|--|-----|
| Total Appeals Received | 783 |
| Appeals Sustained | 24 |
| Percentage of cases sustained | 3% |
| Number of CB cases processed | 312 |
| Number of CB cases reversed | 0 |
| Number of CB cases remanded | 2 |
| Average Processing Days from an Appeal | 41 |

12. How many ULP cases were submitted to the Division of Advice in FY 2023? What percentage of ULP cases filed in FY 2022 were formally submitted to the Division of Advice? What is the average and median length of time a case formally submitted to the Division of Advice remains there before a final determination from the Division of Advice is provided to the submitting Regional Office?

In FY 2023, the Division received 425 cases. The average length of time a case remained in the Division of Advice before a final determination was provided to the submitting Regional Office was 49.3 days; the median length of time a case remained in Division of Advice before a final determination was 15 days.

13. Please provide a list (by case name, number, and Region) of all cases during FY 2023 in which any party filed exceptions to an administrative law judge decision, and all cases remanded from a United States Circuit Court of Appeals which are pending before the Board.

Cases in Which Exceptions to ALJ Decision were Filed with the Board

| Case Number | Case Name |
|--------------|--|
| 05-CB-267953 | 1199SEIU - United Healthcare Workers East (Whitman-Walker Health) |
| 27-CA-299930 | 2H Mechanical, LLC |
| 27-CA-278463 | 3484, Inc., and 3486, Inc., as alter egos and/or a single employer |
| 29-CA-291981 | Acumen Capital Partners LLC |
| 14-CA-281518 | ADT LLC |
| 09-CA-286214 | ADT, LLC |
| 05-CB-286354 | Amalgamated Transit Union, Local 689 a/w Amalgamated Transit Union AFL-CIO, CLC (Transdev North America, Inc.) |
| 29-CA-280153 | Amazon.com Services, Inc. |
| 05-CB-241037 | American Postal Workers Union, Local 512 (USPS) |
| 02-CA-295979 | Apple Inc. |

| | |
|--------------|---|
| 07-CA-283117 | Ascension Borgess Hospital |
| 07-CA-207685 | Bannum Place of Saginaw, LLC |
| 02-CA-292782 | Blue School |
| 29-CA-299367 | Borenstein Caterers, Inc. |
| 27-CA-273705 | Catholic Health Initiatives Colorado dba Centura Health-St. Mary Corwin Medical Center |
| 03-CA-283806 | Century Linen & Uniform, Inc. |
| 19-CA-283839 | CenturyTel of Montana, Inc., a subsidiary of Lumen Technologies, Inc., f/k/a CenturyLink, Inc. |
| 07-CA-286573 | Challenge Mfg. Holdings, Inc. |
| 32-CA-282594 | Chemtrade West US LLC |
| 28-CA-285046 | Columbus Electric Cooperative, Inc. |
| 28-CA-288120 | Commercial Solar Arizona, LLC |
| 31-CA-272228 | Community Organized Relief Effort |
| 12-CA-295428 | Compañía Cervecera de Puerto Rico, Inc. |
| 01-CA-284330 | DOLGENCORP, LLC D/B/A DOLLAR GENERAL |
| 15-CA-273708 | ExxonMobil Fuels & Lubricants Co., ExxonMobil Chemical Co., ExxonMobil Corp. |
| 25-CA-132518 | FALCON TRUCKING, LLC and RAGLE, INC., A Single Employer and/or Joint Employers |
| 25-CA-292574 | Flow Service Partners Op-Co, LLC d/b/a Perfection Heating, Air Conditioning, and Refrigeration LLC |
| 02-CA-274171 | Fortune Media (USA) Corporation |
| 19-CA-272795 | Fred Meyer Stores, Inc., a subsidiary of The Kroger Company |
| 10-CA-279843 | Garten Trucking Lc |
| 09-CA-284214 | GE APPLIANCES, A HAIER COMPANY |
| 31-CA-282566 | Good Samaritan Hospital |
| 05-CB-299530 | Governed United Security Professionals (Golden SVCS, LLC) |
| 12-CA-285457 | Hospital Español Auxilio Mutuo de Puerto Rico, Inc. |
| 12-CB-285734 | ILA, Local 1526 (Florida International Terminals, LLC) |
| 19-CB-214679 | ILWU, Alaska Division, Unit 223 (Matson Navigation Co.) |
| 10-CB-266481 | International Longshoremen's Association, AFL-CIO, Local 1475 (Georgia Stevedore Association) |
| 12-CB-272549 | International Longshoremen's Association, Local 1526, AFL-CIO (Southeast Florida Employers Port Assn) |
| 07-CA-291784 | Intertape Polymer Group |
| 21-CA-289777 | J Ginger Masonry, LP, A Limited Partnership and Masonry Gen Par, Inc. and Ginger Family Trust, UTD, |
| 02-CA-286802 | John Gore Theatrical Group, Inc. |
| 12-CA-282408 | KENDALL HEALTHCARE GROUP, LTD., a limited partnership, and COLUMBIA HOSPITAL CORPORATION OF KENDALL, |
| 29-CA-270485 | Kirin Transportation Inc. d/b/a Kirin Transportation |
| 31-CA-282645 | Korean Resource Center, Inc. |

| | |
|--------------|---|
| 16-CA-273805 | Kroger Texas L.P. |
| 28-CB-267014 | Laborers' International Union of North America, Local 872 (TV Transport) |
| 19-CA-275836 | Local 242 of the Laborers International Union of North America (LIUNA!), affiliated with the Washington and Northern Idaho District Council of Laborers |
| 27-CA-291664 | Longmont United Hospital & Centura Health, as a single employer |
| 29-CA-278541 | M.J. Melo Painting Ltd. |
| 12-CA-279497 | Metro Health, Inc. d/b/a Hospital Metropolitano Rio Piedras |
| 02-CA-142626 | Michael Cetta, Inc. d/b/a Sparks Restaurant |
| 14-CA-287441 | Midwest Division - RMC, LLC, d/b/a Research Medical Center |
| 28-CA-286885 | North Mountain Foothills Apartments, LLC |
| 19-CA-230472 | Oxarc, Inc. |
| 06-CA-248017 | PG Publishing Co., Inc. d/b/a Pittsburgh Post-Gazette |
| 15-CA-263723 | Phillips 66 Company |
| 09-CA-285597 | PRYSMIAN CABLES AND SYSTEMS USA, LLC |
| 19-CA-284277 | Qwest Corporation, a subsidiary of Lumen Technologies, Inc., f/k/a CenturyLink, Inc. |
| 05-CA-280582 | RATP DEV USA, Inc. |
| 16-CA-292266 | Redi Carpet Inc. |
| 22-CA-294330 | Refresco Beverages US, Inc. |
| 12-CA-275612 | Saint Leo University Incorporated |
| 19-CA-290905 | Siren Retail Corp. d/b/a Starbucks |
| 14-CA-290968 | Starbucks Corporation |
| 07-CA-292971 | Starbucks Corporation |
| 19-CA-289275 | Starbucks Corporation |
| 21-CA-296716 | Starbucks Corporation |
| 27-CA-290551 | Starbucks Corporation |
| 07-CA-293742 | Starbucks Corporation |
| 18-CA-293653 | Starbucks Corporation |
| 03-CA-285671 | Starbucks Corporation |
| 18-CA-299560 | Starbucks Corporation |
| 13-CA-296145 | Starbucks Corporation |
| 31-CA-299257 | Starbucks Corporation |
| 12-CA-291151 | Starbucks Corporation |
| 19-CA-295850 | Starbucks Corporation |
| 03-CA-304675 | Starbucks Corporation |
| 15-CA-290336 | Starbucks Corporation |
| 14-CA-300065 | Starbucks Corporation |
| 22-CA-305726 | Starbucks Corporation |
| 02-CA-303077 | Starbucks Corporation |
| 25-CA-292501 | Starbucks Corporation |
| 03-CA-295470 | Starbucks Corporation |
| 20-CA-296184 | Starbucks Corporation |

| | |
|--------------|---|
| 20-CA-298282 | Starbucks Corporation |
| 03-CA-296757 | Starbucks Corporation |
| 06-CA-294667 | Starbucks Corporation |
| 04-CA-277775 | Stericycle, Inc. |
| 06-CA-265111 | Tecnocap LLC |
| 04-CA-244051 | Temple University Hospital, Inc. |
| 14-CA-265341 | The Riverview Nursing Facility, LLC d/b/a The Riverview Care Center |
| 16-CA-291179 | Trader Joe's |
| 28-CA-257678 | Treasure Island, LLC |
| 08-CA-240492 | Union Tank Car Company |
| 16-CA-279233 | United States Postal Service |
| 05-CA-287181 | United States Postal Service |
| 25-CA-283635 | UTC Railcar Repair Services, LLC, d/b/a Union Tank Car Company |
| 03-CA-301055 | Vermont Information Processing, Inc. (VIP) |
| 10-CA-274900 | Warrior Met Coal, Inc. |
| 15-CA-270505 | Woman's Hospital Foundation |

Pending Cases Remanded to the Board from Courts of Appeals

| Case Number | Case Number | Region |
|--------------|---|--------------------------|
| 05-CA-216482 | Universal Health Services, Inc. and George Washington University d/b/a The George Washington University | Region 5, Baltimore |
| 06-CA-233676 | PG Publishing Co., Inc., d/b/a Pittsburgh Post-Gazette | Region 6, Pittsburgh |
| 12-CA-094114 | Anheuser-Busch, LLC | Region 12, Tampa |
| 13-CA-277915 | Central States, Southeast & Southwest Areas Health & Welfare & Pension Funds | Region 13, Chicago |
| 16-CA-103387 | Oncor Electric Delivery Company, LLC | Region 16, Fort Worth |
| 20-CA-149353 | Preferred Building Services, Inc. and Rafael Ortiz d/b/a Ortiz Janitorial Services, Joint Employers | Region 20, San Francisco |
| 20-CA-255252 | Thrifty Payless, Inc. dba Rite Aid | Region 20, San Francisco |
| 21-CA-073942 | RALPHS GROCERY COMPANY, THE KROGER CO. | Region 21, Los Angeles |
| 31-CA-126475 | Grill Concepts Services, Inc. d/b/a The Daily Grill | Region 31, Los Angeles |
| 32-CA-160759 | Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery and FPR-II, LLC | Region 32, Oakland |

B. Section 10(j) and 10(l) Injunctions – FY 2023 Statistics

1. Please provide statistics concerning the number of 10(j) injunction cases submitted to the ILB by the Regions; the number submitted to the General Counsel by the ILB, the number submitted to the Board from the General Counsel; the number authorized by the Board; the number granted by the courts; the number denied by the courts; the number settled; and the number that remain pending before the courts.

| # Submitted to ILB by Regions* | # Submitted to the GC by ILB | # Submitted to the Board from the GC | # Board authorized | # Granted by courts | # Denied by courts |
|--------------------------------|------------------------------|--------------------------------------|--------------------|----------------------|--------------------|
| 81 | 15 | 15 | 14 | 1 in part; 1 in full | 0 |

As to other cases, seven cases settled and five remain pending in court.

2. Please provide statistics regarding the average time between the filing of a charge and (a) when a given Region submits a request to ILB, (b) receives Board authorization to file a 10(j) petition, (c) when the petition is filed in district court, and (d) the court issuing an injunction determination; the average time the Board took to respond to GC requests for authorization to initiate 10(j) injunction litigation; the number that settled before the petition was filed; and the number that settled after the petition was filed.

| Average Number of Days: | |
|--|----------|
| Filing of the charge to ILB submission | 294 days |
| Filing of charge to Board authorization | 363 days |
| Filing of charge to filing of petition in court | 410 days |
| Filing of charge to date of injunction determination | 494 days |
| Number settled pre-petition | 5 cases |
| Number settled post- petition | 2 cases |

In FY 2023, the Board responded to GC requests for authorization to initiate 10(j) injunction litigation in an average of 7 days.

3. What criteria are the General Counsel and/or the Regional Directors utilizing to determine whether to seek injunctive relief under Section 10(j)?

The General Counsel continues to apply historically utilized criteria to determine the propriety of seeking injunctive relief.

4. What has been the General Counsel and/or Regional Directors’ experience with respect to settlement of 10(j) components of ULP proceedings? In light of GC 23-01 (Settling the 10(j) Aspect of Cases Warranting Interim Relief), in how many cases has court litigation been avoided under this initiative?

The Agency does not maintain statistics regarding the number of cases in which litigation has been avoided under GC 23-01.

5. Have any 10(l) injunction petitions been filed in FY 2023? If so, please provide the number of merit cases where complaint issued; the number that settled after the petition; the number where the district court granted injunctive relieve; and the number where the district court denied injunctive relief.

There were no Section 10(l) injunction petitions filed by Regions in FY 2023.

C. Subpoenas – FY 2023 Statistics

1. Please provide a Region-by-Region breakdown of the number of (1) cases in which subpoenas were issued, (2) subpoenas ad testificandum issued, (3) subpoenas duces tecum issued, (4) total subpoenas, (5) cases in which an investigative subpoena was issued and there was a merit determination, (6) cases in which an investigative subpoena was issued and there was a non-merit determination, (7) cases in which an investigative subpoena was issued and there was neither a merit nor a non-merit determination, and (8) number of cases in which the Region sought enforcement of an investigative subpoena in District Court.

| Region | Number of Investigative Subpoenas | Merit Determination | Non Merit Determination | Deferral | No Determination |
|--------------|-----------------------------------|---------------------|-------------------------|----------|------------------|
| 1 | 5 | 0 | 0 | 0 | 2 |
| 2 | 0 | 0 | 0 | 0 | 0 |
| 3 | 4 | 3 | 0 | 0 | 0 |
| 4 | 10 | 4 | 2 | 0 | 2 |
| 5 | 0 | 0 | 0 | 0 | 0 |
| 6 | 4 | 3 | 1 | 0 | 0 |
| 7 | 8 | 7 | 1 | 0 | 0 |
| 8 | 2 | 0 | 0 | 0 | 2 |
| 9 | 9 | 2 | 0 | 0 | 7 |
| 10 | 3 | 3 | 0 | 0 | 0 |
| 12 | 15 | 5 | 2 | 0 | 7 |
| 13 | 2 | 0 | 0 | 0 | 1 |
| 14 | 4 | 4 | 0 | 0 | 0 |
| 15 | 5 | 4 | 0 | 0 | 1 |
| 16 | 9 | 7 | 0 | 0 | 2 |
| 18 | 4 | 3 | 1 | 0 | 0 |
| 19 | 3 | 2 | 0 | 0 | 0 |
| 20 | 8 | 3 | 2 | 0 | 3 |
| 21 | 1 | 0 | 0 | 1 | 0 |
| 22 | 3 | 1 | 0 | 1 | 1 |
| 25 | 1 | 1 | 0 | 0 | 0 |
| 27 | 1 | 1 | 0 | 0 | 0 |
| 28 | 7 | 3 | 0 | 0 | 4 |
| 29 | 6 | 6 | 0 | 0 | 0 |
| 31 | 5 | 3 | 0 | 0 | 2 |
| 32 | 7 | 6 | 1 | 0 | 0 |
| TOTAL | 126 | 71 | 10 | 2 | 34 |

Regional offices sought enforcement of investigative subpoenas in District Courts in four cases. One application to enforce an investigative subpoena was granted in full; two were granted in part and denied in part; one application to enforce was denied in full.

2. Has the General Counsel's position regarding investigative subpoenas changed in the past year? If so, how has it changed? Has there been, or will there be in the future, any formal or informal guidance provided to the Regions related thereto?

The General Counsel has not changed her position with respect to investigative subpoenas in the past fiscal year.

3. Please provide statistics for the number of petitions to revoke investigative subpoenas that were filed with the Board in FY 2023 and the number of cases in which such petitions to revoke were granted in whole, granted in part, and denied.

Three petitions to revoke investigative subpoenas were filed with the Board in FY 2023 in cases arising out of Headquarters, and all were denied.

4. Please provide statistics on the number of investigative subpoenas that were contested in a U.S. District Court and the number of such subpoenas that were revoked by the District Court, in whole or in part.

The Agency's Headquarters offices filed six petitions/applications for enforcement of investigative subpoenas in district court in FY 2023, all of which were granted.

D. RLA Cases – FY 2023 Statistics

1. Please provide the number of cases that were referred to NMB in FY 2023, if any, as well as the median and average time that the NMB retained those cases for consideration.

Two cases were referred to the NMB by the Agency during FY 2023. The NMB has not yet provided its opinion on these cases, so there is no information available on the amount of time that the NMB retained the cases for consideration.

E. Mandatory Submissions to Advice – FY 2023 Statistics

1. Since the issuance of GC Memo 21-04, are there any issues/categories identified in that memorandum for which the Division of Advice has not received Regional submissions? If so, what issues/categories?

The following is a list of GC 21-04 issues for which Advice has either not yet received a Regional Advice submission or for which guidance has not yet issued:

- Cases involving applicability of *Shamrock Foods Co.*, 369 NLRB No. 5 (2020) (distinguishing earlier Board cases, including *Clark Distribution Systems*, 336 NLRB 747, 751 (2001) and *Webel Feed Mills & Pike Transit Co.*, 229 NLRB 178, 179-80 (1977) and finding the offer of significantly more backpay than is owed in return for a waiver of reinstatement lawful).
- Cases involving the applicability of *United Nurses & Allied Professionals (Kent Hospital)*, 367 NLRB No. 94 (2019) (requiring unions to provide non-member Beck objectors with verification that the financial information disclosed to them has been independently audited and that lobbying costs are not chargeable to such objectors).
- Cases involving the applicability of *Ridgewood Health Care Center, Inc.*, 367 NLRB No. 110 (2019) (overruling *Galloway School Lines*, 321 NLRB 1422 (1996) and finding that a successor employer that discriminates in refusing to hire a certain number of the predecessor's workforce to avoid a Burns successorship bargaining obligation does not necessarily forfeit the right to set employees' initial terms).
- Cases involving the applicability of *Brevard Achievement Center, Inc.*, 342 NLRB 982 (2004) (declining to extend the Act's coverage to individuals with disabilities on grounds that these individuals, where working in a rehabilitative setting, are not employees within the meaning of Section 2(3) of the Act).
- Cases involving a refusal to furnish information related to a relocation or other decision subject to *Dubuque Packing* (see former Chairman Liebman's dissent in *Embarq Corp.*, 356 NLRB No. 125 (2011) and OM-11-58).
- Cases involving the applicability of *Cordua Restaurants, Inc.*, 368 NLRB No. 43 (2019) (Board finding, among other things, that an employer does not violate the Act by promulgating a mandatory arbitration agreement in response to employees engaging in collective action).

2. Are there any categories of ULP cases that require mandatory submission to the Division of Advice that are not identified in GC Memo 21-04, GC Memo 23-02, and GC Memo 22-04?

Pursuant to GC Memorandum 23-08, *Non-Compete Agreements that Violate the National Labor Relations Act*, dated May 30, 2023, Regions are required to submit cases involving arguably unlawful non-compete agreements, as well as arguably meritorious special circumstances defenses, to the Division of Advice. See GC 23-08 at p. 6.

In addition, GC Memorandum 24-01, *Guidance in Response to Inquiries about the Board's Decision in Cemex Construction Materials Pacific, LLC* (Nov. 2, 2023), directs Regions to submit certain cases to the Division of Advice, including situations not covered by the Board's decision in *Cemex* where an employer may

have forfeited or waived its avenue to seek a Board-conducted election, such as where an employer has “renewed on a previous agreement to recognize and bargain with a union based upon a showing of majority support” or “has independent knowledge of the union’s majority support and, yet, disputes the union’s majority support and refuses to recognize and bargain with the union.”

3. Are there any categories of issues identified for mandatory submission to the Division of Advice in GC Memo 21-04, GC Memo 23-02, and GC Memo 22-04 that no longer require submission to the Division of Advice?

- Employer handbook rules
- Confidentiality provisions/separation agreements and instructions,
- Many of the types of cases dealing with what constitutes protected concerted activity
- *Wright Line*/General Counsel’s burden
- Remedial issues involving the applicability of *UPMC*
- Union access
- Union dues cases involving the applicability of *Valley Hospital*
- Cases on employee status
- Board jurisdiction over religious institutions
- Cases involving employer duty to recognize and/or bargain
- Deferral
- *Weingarten* cases involving non-unionized settings
- Employees’ Section 7 right to strike and/or picket
- Remedies in compliance cases involving *Oil Capitol* and *St. George Warehouse*
- Cases involving employer interference with employees’ Section 7 rights involving applicability of *Tri Cast* and *Crown Bolt*
- Captive Audience Meetings; see GC 22-04

F. Representation Cases – FY 2023 R-Case Statistics

1. For FY 2023 R-cases, please provide the total number of representation petitions filed. For FY 2023, please provide the number and percentage of RC, RD, RM, UD, and UC petitions, together with the number of elections conducted in each category (where applicable) and the union win rate (where applicable).

| Representation Petition Intake FY 2023: | |
|--|-------------|
| RC | 2,115 |
| RD | 306 |
| UD | 21 |
| RM | 62 |
| AC | 9 |
| UC | 70 |
| WH | 11 |
| Total Petitions Filed | 2594 |

| Case Type | No. of Elections | Percent Won by Union |
|------------------|-------------------------|-----------------------------|
| RC | 1525 | 83% |
| RD | 168 | 43.0% |
| RM | 11 | 51.0% |
| UD | 20 | |

2. For FY 2023, please provide the average and median time between petition filing and an election, broken down by Region and as a total.

| Region | Number of Cases | Median Days |
|---------------|------------------------|--------------------|
| 1 | 100 | 37.5 |
| 2 | 57 | 34 |
| 3 | 51 | 37 |
| 4 | 70 | 35 |
| 5 | 103 | 35 |
| 6 | 30 | 40 |
| 7 | 57 | 40 |
| 8 | 31 | 37 |
| 9 | 58 | 38.5 |
| 10 | 59 | 36 |
| 12 | 42 | 35 |
| 13 | 112 | 36 |
| 14 | 69 | 39 |
| 15 | 25 | 38 |
| 16 | 52 | 37.5 |
| 18 | 77 | 38 |
| 19 | 186 | 42 |
| 20 | 70 | 36 |
| 21 | 89 | 40 |
| 22 | 24 | 34.5 |
| 25 | 55 | 34 |
| 27 | 42 | 36 |
| 28 | 72 | 36 |

| | | |
|-----------------|-------|------|
| 29 | 52 | 37.5 |
| 31 | 58 | 33.5 |
| 32 | 83 | 35 |
| National | 1,724 | 37 |

3. Please provide statistics concerning the median number and average number of days from petition to election and from petition to certification of election results for FY 2023.

| FY 2023 Statistics | Median |
|------------------------------------|---------------|
| Petition to Election* | 37 days |
| Filing to Certification of Results | 56 days |

4. Has the Board and/or the General Counsel modified the time targets for investigation and adjudication of representation cases in FY 2023 and/or FY 2024. If so, what are the time targets for representation cases / elections administered by the Regional Offices? What are the time targets for representation cases decided by the Board?

At this time, the Agency has not modified the time target for the adjudication of representation cases in FY 2023 or FY 2024. For representation cases decided by the Board, the Agency’s Strategic Plan for FY 2022 – FY 2026, as a part of Goal 2 for processing questions concerning representation, includes the goal of ensuring that the median age of all cases pending before the Board at the end of each fiscal year is 180 days or less.

5. Please provide statistics concerning the median unit size sought in RC petitions and RM petitions in FY 2023.

Median: 21-unit members in RC petitions. The Agency has not tracked the RM data.

6. Please provide statistics concerning the average unit size determined to be appropriate in RC cases in FY 2023.

Average: 68.4-unit members in RC petitions. The Agency has not tracked the RM data.

7. Please provide FY 2023 statistics on the median time for the Board to issue an order on a request for review in election cases; the number of cases in which the Board granted a request for review in a representation case; and the number of cases in which the Board, on review, overruled the Regional Director’s action in whole or in part.

The median time for the Board to issue an order on a request for review in a representation case during FY 2023 was 61 days.

The number of cases in which the Board granted a request for review in a representation case in FY 2023 was 8.

The Board, on review, reversed or overruled the Regional Director’s action in a representation case three times during FY 2023.

8. Please provide statistics concerning the use of mixed, mail, and manual ballots in FY 2023. If available, please provide a breakdown by Region, in addition to totals.

| Office | Election |
|--------------------------------|------------|
| 01 | 56 |
| Mail | 13 |
| Manual | 43 |
| 02 | 57 |
| Mail | 27 |
| Manual | 29 |
| Mixed: Mail and Manual | 1 |
| 03 Buffalo & Albany | 54 |
| Mail | 12 |
| Manual | 40 |
| Mixed: Mail and Manual | 2 |
| 04 | 70 |
| Mail | 12 |
| Manual | 58 |
| 05 | 103 |
| Mail | 48 |
| Manual | 54 |
| Mixed: Mail and Manual | 1 |
| 06 | 30 |
| Mail | 4 |
| Manual | 26 |
| 07 | 58 |
| Mail | 5 |
| Manual | 53 |
| 08 | 31 |
| Mail | 6 |
| Manual | 25 |
| 09 | 58 |
| Mail | 8 |

| | |
|------------------------------|------------|
| Manual | 50 |
| 10 | 27 |
| Mail | 8 |
| Manual | 19 |
| 10 Birmingham | 5 |
| Manual | 5 |
| 11 SR – Winston Salem | 15 |
| Mail | 4 |
| Manual | 11 |
| 12 | 6 |
| Mail | 2 |
| Manual | 4 |
| 12 Jacksonville | 10 |
| Mail | 3 |
| Manual | 7 |
| 12 Miami | 7 |
| Mail | 1 |
| Manual | 6 |
| 13 | 113 |
| Mail | 22 |
| Manual | 89 |
| Mixed: Mail and Manual | 2 |
| 14 | 41 |
| Mail | 8 |
| Manual | 33 |
| 15 | 21 |
| Mail | 4 |
| Manual | 17 |
| 16 | 33 |
| Mail | 13 |
| Manual | 20 |
| 16 Houston | 9 |
| Manual | 9 |
| 16 San Antonio | 10 |
| Mail | 1 |
| Manual | 8 |
| Mixed: Mail and Manual | 1 |
| 17 SR- Overland Park | 28 |
| Mail | 6 |

| | |
|--------------------------|------------|
| Manual | 22 |
| 18 | 55 |
| Mail | 17 |
| Manual | 36 |
| Mixed: Mail and Manual | 2 |
| 19 | 107 |
| Mail | 48 |
| Manual | 58 |
| Mixed: Mail and Manual | 1 |
| 19 Anchorage | 5 |
| Mail | 1 |
| Manual | 4 |
| 20 | 61 |
| Mail | 28 |
| Manual | 32 |
| Mixed: Mail and Manual | 1 |
| 21 | 75 |
| Mail | 24 |
| Manual | 51 |
| 21 San Diego | 14 |
| Mail | 6 |
| Manual | 8 |
| 22 | 25 |
| Mail | 7 |
| Manual | 18 |
| 24 SR-Puerto Rico | 19 |
| Mail | 7 |
| Manual | 12 |
| 25 | 37 |
| Mail | 6 |
| Manual | 31 |
| 26 Little Rock | 4 |
| Manual | 4 |
| 26 Nashville | 12 |
| Mail | 3 |
| Manual | 9 |
| 27 | 42 |
| Mail | 8 |
| Manual | 33 |

| | |
|------------------------|-----------|
| Mixed: Mail and Manual | 1 |
| 28 | 44 |
| Mail | 16 |
| Manual | 28 |
| 28 Albuquerque | 14 |
| Mail | 5 |
| Manual | 9 |
| 28 Las Vegas | 14 |
| Mail | 7 |
| Manual | 7 |
| 29 | 52 |
| Mail | 21 |
| Manual | 30 |
| Mixed: Mail and Manual | 1 |
| 30 SR-Milwaukee | 23 |
| Mail | 3 |
| Manual | 19 |
| Mixed: Mail and Manual | 1 |
| 31 | 58 |
| Mail | 28 |
| Manual | 30 |
| 32 | 83 |
| Mail | 22 |
| Manual | 58 |
| Mixed: Mail and Manual | 3 |
| 33 SR-Peoria | 18 |
| Mail | 1 |
| Manual | 17 |
| 34 SR-Hartford | 44 |
| Mail | 9 |
| Manual | 34 |
| Mixed: Mail and Manual | 1 |
| 36 SR-Portland | 76 |
| Mail | 28 |
| Manual | 47 |
| Mixed: Mail and Manual | 1 |
| 37 SR-Honolulu | 9 |
| Mail | 4 |
| Manual | 5 |

| | |
|--------------------|-------------|
| Grand Total | 1733 |
|--------------------|-------------|

9. For FY 2023, what is the median time frame from (a) filing to election overall, (b) filing to election in stipulated agreement cases, (c) filing to election in DDE cases?

| FY 2023 Statistics: | Median | Average |
|---|---------------|----------------|
| Petition to election | 37 days | 46 days |
| Filing to election in stipulated agreements | 36 days | 39 days |
| Filing to election in DDE cases | 106 days | 122 days |

10. What is the total number and percentage of stipulated elections in FY 2023?

| Total Elections | Total Election Agreements | Rate |
|------------------------|----------------------------------|-------------|
| 1,733 | 1,545 | 89.2% |

11. What is the total number and percentage of withdrawn petitions FY 2023?

| Petitions withdrawn in FY 2023 | |
|---------------------------------------|-----------------------|
| Total Number | 647 |
| Percentage | 25% of closed R Cases |

12. Has there been any change in the number of re-run elections since the issuance of *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (Aug. 25, 2023)/ since FY 2022?

There were 34 in FY 2023, none of which occurred after August 25, 2023.

G. Staffing – FY 2023 Statistics

1. How many vacancies currently existing in each of the Regional Offices, HQ offices for which the GC has responsibility, and HQ offices for which the Board has responsibility? What are the plans of the Board and/or the General Counsel to fill these vacant positions?

Presently, because the Agency is operating under a Continuing Resolution, it is backfilling only a very limited number of critical vacancies. The Agency will determine whether to do any additional hiring once it receives its appropriation for FY 2024.

2. Please identify all Regional Director and HQ-GC Division/Office Head vacancies that were filled in FY 2023. If non-Agency personnel filled any such positions, please advise. Additionally, please identify any actual or upcoming HQ-GC Division/Office Head and Regional Director vacancies that the Agency expects to fill in FY 2024.

In FY 2023, the Agency filled Regional Director vacancies in Regions 4, 9, 27 and 29.

The General Counsel and the Board will fill positions pursuant to an Operating Plan when there is an Appropriated Budget for the Agency.

3. Please identify all Board staff and HQ-Board Division/Office Head vacancies that were filled in FY 2023. If non-Agency personnel filled any such positions, please advise.

On September 11, 2023, Member Wilcox was sworn in for a second term on the Board, filling a brief vacancy in her seat that began on August 28, 2023.

The General Counsel and the Board will fill positions pursuant to an Operating Plan when there is an Appropriated Budget for the Agency.

4. Please identify any HQ-GC Division/Office Head and Regional Director vacancies that the Agency currently has, as well as those that the Agency is actively seeking to fill. What is the status of each of the efforts for each of those vacancies?

There is no Regional Director vacancy at this time.

5. Does the Board and/or the General Counsel anticipate that furloughs of any agency personnel will be necessary in FY 2024?

The Agency does not anticipate that furloughs of any Agency personnel will be necessary in FY 2024.

6. Does the Board have any plans to consolidate Regional Offices and/or downsize physical Regional office space?

At this time, the Agency has no plans to consolidate Regional Offices; however, efforts to reduce physical office space is ongoing.

7. What was the average caseload for each Board Agent during FY 2023, broken down by Region?

The Agency has not tracked this data.

H. Alternative Dispute Resolution Program – FY 2023 Statistics

1. Please identify the number of cases pending before the Board that entered the ADR Program in FY 2023 and both the number and percentage of cases

that settled through the ADR Program in FY 2023 with reference to the fiscal year that it entered the ADR program.

Fifteen cases entered the Board's ADR program during FY 2023. During FY 2023, five cases closed via successful settlement as part of the ADR Program. Of these five cases, two had entered the ADR Program during FY 2022 and three entered the ADR Program during FY 2023. In sum, 20% of the cases that entered the ADR Program during FY 2023 resulted in a successful settlement in FY 2023.

2. Practitioners have expressed interest in expanded ADR opportunities. Has the Agency given any consideration to expanding its current ADR Program? If so, please describe any contemplated changes.

The Board encourages all parties with pending cases to consider participating in the Board's ADR program.

Please see Appendix A for more information about this program.

II. Updates on Agency Priorities and Reports to the Public

A. Access to Information

1. Last year in GC Memo 23-06, the General Counsel reported that the agency expected to be able to announce changes being made to the documents and data that will be provided publicly on agency dockets. What changes can practitioners anticipate and when are those changes expected to be implemented?

In FY 2024, the Agency anticipates making additional documents available on the public website, such as Regional Director Orders, Dismissal, Deferral and Appeal letters.

B. Rulemaking

1. What is the status of the Board's Notice of Proposed Rulemaking addressing blocking charges, voluntary recognition, and construction industry bargaining relationships under the National Labor Relations Act? When does the Board anticipate that a final rule will be issued?

The comment period for this proposed rulemaking, referred to as "Fair Choice-Employee Voice," closed on March 1, 2023. Since then, the Board has been carefully considering all timely submitted comments. The Board's anticipated rulemaking plans are published in the Unified Agenda of Federal Regulatory and Deregulatory Actions, which is published semi-annually by the General Services Administration.

2. In FY 2023, the Board issued a Final Rule pertaining to the Board's joint employer standards (implementation of which is now delayed until

February 26 to facilitate resolution of legal challenges). Practitioners have expressed interest in additional guidance regarding the nature and quality of unexercised/reserved control that would be deemed sufficient to establish a joint employer relationship. Will there be any formal or informal guidance provided to the Regions and/or public related to these issues? Please also identify any pending cases in which the General Counsel has taken a position regarding these issues (if any). Can you provide any update on whether the Final Rule is expected to be further delayed?

The preamble to the Final Rule discusses reserved control in response to relevant comments submitted by the public. In addition, the Board's issuance of the Final Rule was accompanied by the posting of a Joint-Employer Fact Sheet and Small Entity Compliance Guide on the Agency's public website. The Board is also planning to issue further guidance when the Final Rule becomes effective. Currently, there are no pending cases before the Board in which the General Counsel has taken a position on the Board's recent Final Rule on the joint employer standard.

3. Is there any plan for updates to the Board's Rules on representation cases in light of *Cemex*?

The Board's rulemaking plans are published in the Unified Agenda of Federal Regulatory and Deregulatory Actions ("Unified Agenda"). The Unified Agenda is published semi-annually by GSA and lists proposed and final rules that federal agencies plan to issue in the next six to twelve months. The Board's Fall 2023 rulemaking agenda did not include any item on this topic.

C. GC and OM Memos

1. In GC Memorandum 24-01 (Guidance in Response to Inquiries about the Board's Decision in *Cemex Construction Materials Pacific, LLC*), the General Counsel identified the following mandatory submissions to the Division of Advice: cases where an employer (1) "releged on a previous agreement to recognize and bargain with a union based upon a showing of majority support," (2) "has independent knowledge of the union's majority support and, yet, disputes the union's majority support and refuses to recognize and bargain with the union," or (3) there are other "situations where an employer may have forfeited or waived its avenue to seek a Board-conducted election."

Has the Division of Advice received any Regional submissions on these issues? If so, how many C cases are pending before Advice where the/an issue is a potential *Cemex* bargaining order remedy? Are there objections that have been submitted to Advice because they raise *Cemex* bargaining order remedy issues? If so, how many?

Please also identify any pending cases in which the General Counsel has taken a position regarding any of these Cemex issues.

The Division of Advice has received a number of submissions seeking guidance concerning various aspects of *Cemex*. There are currently three ULP cases, which are pending in the Division of Advice raising *Cemex* bargaining order remedy issues.

In *Garten Trucking LLC*, 10-CA-279843 and *I.N.S.A., Inc.*, 01-CA-290558, the General Counsel is seeking a *Cemex* bargaining order.

2. Also in GC Memorandum 24-02, (Guidance in Response to Inquiries about the Board's Decision in *Cemex Construction Materials Pacific, LLC*) the General Counsel directed Regional Offices to continue to seek 10(j) relief in appropriate *Cemex*-related cases. Has the General Counsel modified its approach to seeking 10(j) injunctions in light of *Cemex*? Please identify any 10(j) proceedings that seek *Cemex* bargaining order relief.

There has been no modified approach to seeking 10(j) injunctions in light of *Cemex*. *Big Green* and *I.N.S.A., Inc.* involve *Cemex* bargaining orders.

3. In GC Memo 23-08 (Non-Compete Agreements that Violate the National Labor Relations Act) the General Counsel outlines the General Counsel's position with respect to restrictive covenant agreements in light of *Stericycle, Inc.*, 372 NLRB No. 113 (August 2, 2023). Please identify any pending cases in which the General Counsel has taken the position outlined in GC Memo 23-08? What is the status of these cases?

The case information is as follows:

- *Payroll Paycom*, 14-CA-309573 (pre-complaint)
- *Apple*, 14-CA-314841 (pre-complaint)
- *Harper Holdings, LLC d/b/a Juvly Aesthetics*, 09-CA-300329, 09-CA-301669 (post-complaint settlement)
- *N Color*, 12-CA-323365 (pre-complaint)
- *GFL Environmental*, 07-CA-322744 (post-complaint)
- *Steel and Pipes*, 12-CA-319927 (pre-complaint)
- *Franciscan Medical Group*, 19-CA-300635 and 19-CA-311831 (post-complaint settlement)
- *Securonix*, 13-CA-318160 (pre-complaint)
- *CSI, Inc.*, 12-CA-306140 (pre-complaint)

Several other cases raising these issues are currently pending in the Division of Advice.

At this time, there are no cases pending before the Board in which the General

Counsel has taken the position outlined in GC Memo 23-08 with respect to non-compete agreements or restrictive covenant agreements in light of *Stericycle, Inc.*, 372 NLRB No. 113 (2023).

4. In GC Memo 23-07 (Procedures for Seeking Compliance with and Enforcement of Board Orders) the General Counsel sets forth a procedure for the Regional Offices to ensure compliance with Board orders. Please identify any pending cases in which a Regional Office has submitted recommendations for enforcement to the Appellate and Supreme Court Litigation Branch (if any)? What is the status of these cases?

| Case Number | Case Name | Volume / Slip Op | Circuit | Date Received | Case Status |
|--------------|---|------------------|---------|---------------|------------------------|
| 10-CA-291054 | Tackl-It, LLC | 372 NLRB No.118 | 11 | 09/15/2023 | Default Motion Pending |
| 07-CA-273203 | Intertape Polymer Corp. | 372 NLRB No.133 | 06 | 09/08/2023 | Briefing |
| 03-CA-283012 | Goddard College Corporation | 372 NLRB No. 85 | 02 | 08/24/2023 | Mediation |
| 07-CA-292971 | Starbucks Corporation | 372 NLRB No.122 | 06 | 08/23/2023 | Briefing |
| 21-CA-261288 | Riverside Healthcare System, L.P., A Limited Partnership, and Columbia Riverside, Inc., The General | 372 NLRB No. 120 | 09 | 08/22/2023 | Briefing |
| 02-CA-286802 | John Gore Theatrical Group, Inc. | 372 NLRB No 114 | 02 | 08/14/2023 | Briefing |
| 05-CA-278218 | Constellis, LLC d/b/a Academi Training Center, LLC | 372 NLRB No. 81 | 04 | 08/01/2023 | Briefing |
| 04-CA-315904 | United Scrap Metal PA, LLC | 372 NLRB No. 107 | 03 | 07/28/2023 | Briefing |
| 32-CA-260614 | Tracy Auto, L.P. dba Tracy Toyota | 372 NLRB No. 101 | 09 | 07/18/2023 | Briefing |
| 07-CA-207685 | Bannum Place of Saginaw, LLC | 372 NLRB No. 97 | 06 | 07/11/2023 | Briefing |

| | | | | | |
|--------------|--------------------------|-----------------|----|------------|----------|
| 04-CA-252338 | Starbucks Coffee Company | 372 NLRB No. 50 | 03 | 05/23/2023 | Briefing |
|--------------|--------------------------|-----------------|----|------------|----------|

5. In GC Memo 20-10 (Suggested Manual Election Protocols), the General Counsel provided revised guidance regarding mail-ballot elections. What discretion do Regional Directors have to order a mail ballot election when the parties all agree to in-person manual balloting? Given the current state of the COVID-19 pandemic, do you anticipate any further changes to the practices and procedures with respect to mail ballot elections ordered due to the spread of COVID-19?

As reflected in GC Memo 20-10, Regional Directors have authority delegated by the Board to make initial decisions about when, how, and in what manner all elections are conducted. They have made, and will continue to make, these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to conduct the election, and the environment in the election locality. The Agency will continue to assess practices and procedures in this regard and make appropriate changes, as necessary.

6. If possible, please provide any data regarding the inclusion of remedies contemplated by GC 21-06 (Seeking Full Remedies), GC 21-07 (Full Remedies in Settlement Agreements) and GC 22-06 (Update on Efforts to Secure Full Remedies in Settlement Agreements) after the issuance of those memoranda and the Board’s decision in *Thryv, Inc.*, 372 NLRB No. 22 (Dec. 13, 2022). Additionally, has there been (or will there be in the future) informal or formal guidance provided to the Regional Offices regarding compliance with a management training remedy (e.g., guidance regarding the content of these trainings, the appropriate individuals to conduct these trainings, and whether union representatives may be permitted to observe these trainings). Have there been any compliance proceedings post-*Thryv* involving *Thryv* remedies? If so, can you share information about how that was handled procedurally?

The Agency has not tracked the post-issuance data sought relating to inclusion of remedies or to compliance proceedings.

The Agency has not issued specific guidance to Regional Offices, but has shared training materials for use by Regions.

III. Miscellaneous Issues Raised by Practitioners at Regional Meetings

A. Virtual Practice

1. What are the current practices and procedures with respect to taking witness affidavits in ULP cases via telephone or videoconference? Do you anticipate any changes in these practices and procedures in FY 2024?

While it is preferable to take in-person affidavits, Regions have and will continue to consider circumstances on the ground on a case-by-case basis. At this time, there are no changes to these practices and procedures anticipated in FY 2024.

2. What are the current practices with respect to video hearings in ULP cases? Do you anticipate any changes in these practices and procedures in FY 2024?

ALJs determine the format of the ULP hearing. There are no anticipated changes to these practices in FY 2024.

During FY 2023, the Division of Judges continued their return to in-person hearings. Ninety of their 150 closed hearings for the fiscal year were held as in-person, 12 were hybrid (part in-person and part Zoom), and 48 were held entirely by Zoom.

3. What are the current practices with respect to video hearings in representation cases? Do you anticipate any changes in these practices and procedures in FY 2024?

The Regional Directors determine the format of representation hearings. There are no anticipated changes in FY 2024 to the current handling of virtual hearings in representation cases.

4. What are the current practices and procedures with respect to remote work in the Regional Offices. Do you anticipate any changes in these practices and procedures in FY 2024?

Remote work for Regional Office staff is reflected in a provision of the current CBA between the Agency and the NLRB Union and is ultimately determined based on the Agency's operating needs at any given time. The Agency does not anticipate any changes in these practices and procedures in FY 2024.

5. In FY 2023, practitioners experienced an increase in manual elections as opposed to mail-ballot elections. What are the current practices and procedures with respect to securing an appropriate venue for manual

elections in the event the employer has no suitable space at its facility/facilities?

If there is no suitable space at the employer's facility/facilities, the Region, complying with the General Service Administration regulations, will seek appropriate space to conduct the election.

6. What are the current practices with respect to pre-election conferences, specifically whether they are conducted in person or virtually? Do you anticipate any changes in these practices and procedures in FY 2024?

Pursuant to the Rep-CHM Manual 11318 Preelection Conference, the Board agent(s), party representatives and observers should assemble at the polling place from 30 to 45 minutes (depending on the complexity of the election) prior to the opening of the polls. In very large elections, it has been prudent to hold the preelection conference on the preceding day. There are no changes anticipated in these practices and procedures in FY 2024.

B. Managing Increasing Caseloads

1. According to the most recent FY 2023 case handling statistics, case intake continued to increase through FY 2023. Other than efforts to fill vacancies, have there been any changes in the Regional Office practices and procedures designed to manage increasing caseloads and streamline investigations?

The General Counsel convened a Labor Management Forum on efficiency measures in FY 2023 and has implemented a number of recommendations. In FY 2023 and continuing to date, the GC-side Headquarters' offices are also assisting the field with casehandling. The General Counsel continues to assess operations and consider other measures to address the increased case load.

2. Does the Board and/or the General Counsel anticipate that the Board's new accelerated R-case procedures will cause additional pressure on staffing and caseload issues? If so, what changes (if any) can practitioners anticipate in R-case practices/procedures to address the increased time pressure as a result?

The Board's new R-case procedures just went into effect in late December 2023, so it is too early to determine the impact on staffing and caseload. The Regional Directors remain mindful of their responsibilities and obligations pursuant to the efficient handling of R-cases, including adhering to the rules set forth by the Board.

3. Practitioners report that certain Regions have implemented case handling procedures in which the Region issues fillable forms to solicit evidence from Charging Parties for common types of cases (e.g., duty of fair representation cases, unilateral change unfair labor practice charges, etc.).

In the Regions that issue these form questionnaires or similar forms, will the entire contents of those forms be provided to charged parties in response to a request for a *Jencks* statement and/or in response to a FOIA request?

Where appropriate, documents that are subject to *Jencks* will be produced unless protected by attorney-client or deliberative privilege.

4. Practitioners report that, at least in certain Regions, shortages of support staff, including administrative law judge staff, court reporters and foreign language interpreters, have impacted case handling. What (if any) efforts has the agency taken to alleviate any shortages in these areas?

In FY 2023, the Agency on-boarded 128 new hires, the great majority of which work in Regional offices.

The General Counsel is fully committed to assisting the Regional Offices, particularly as it relates to language specialists and court reporters.

C. Settlements

1. What discretion do the Regions have in approving settlements? Is it different for post-merit and pre-merit?

Regional Directors maintain discretion in approving settlement agreements, which varies depending on the circumstances. Pre-merit cases, where more discretion may be involved, are those where the evidence received and reviewed by the Region has yet to establish arguable merit to the charge allegations. Among other things, Regional Directors have been guided by the ULP CHM, as well as OM 07-27, GC 21-06, GC 21-07, GC 22-06, GC 23-01, and GC 23-05.

2. Do the Regions continue to follow OM 7-27 in reviewing non-board settlements (including for McLaren compliance?)

Regions continue to follow OM 07-27 in reviewing all non-Board settlements.

D. Miscellaneous Requests

1. Could you please reiterate to the Regions the expectation regarding notice to practitioners when matters are sent to Advice?

It has been reiterated to Regional Directors that they should ensure parties are aware when matters are forwarded to Advice.

2. Will the General Counsel be providing additional guidance to the Regions or practitioners on *Cemex R* case issues? Further guidance would be helpful as practitioners have identified additional issues since the issuance of the GC Memo on which they would like the GC's guidance and have noted

some continuing Regional differences in R case handling post-*Cemex*.

The Agency will continue to assess these cases and issue additional guidance, as deemed appropriate.

3. Have the Regions been provided guidance formally or informally regarding the application of *Intertape*, 322 NLRB No. 133 (2023) as it relates to the *prima facie* case? If so, could that guidance be shared with practitioners?

No guidance has issued or is anticipated to issue regarding *Intertape*.

APPENDIX A

NLRB ADR PROGRAM

NLRB OFFERS NO-COST MEDIATION PROGRAM FOR UNFAIR LABOR PRACTICE CASES PENDING BEFORE THE BOARD

In order to encourage speedy resolution of unfair labor practice cases pending before the Board, the NLRB ADR program provides mediation services at no cost to the parties. The Board provides a mediator to facilitate confidential settlement discussions and explore resolution options that serve the parties' interests. The program is voluntary, and the mediator has no authority to impose a settlement.

Cases can enter the ADR program whenever a case is pending before the Board.

- Any time after an Administrative Law Judge (ALJ) decision issues, parties may contact the Office of the Executive Secretary to ask, confidentially, to be included in the ADR program.
- After exceptions are filed to an ALJ decision, the Office of the Executive Secretary will identify cases pending before the Board that appear amenable to resolution through the ADR program, and may request the parties in such cases to participate in a conference call to discuss placement of their case in the program.

The NLRB ADR program provides the parties savings in time and money, greater control over the outcome of their cases, and more creative, flexible, customized, and all-encompassing resolutions.

Features of the Board's ADR program include:

- The identity of a party making a request to enter the ADR program will remain confidential unless the party agrees otherwise.
- A party who enters the program may withdraw from the program at any time.
- The Board will stay further processing of the unfair labor practice case for a reasonable period or until the parties reach a settlement, whichever occurs first.
- The preferred method of conducting settlement conferences is to have the parties and/or their representatives attend in person. Settlement conferences may be held by telephone or videoconference if necessary.
- Parties may be represented by counsel at the settlement conferences, but representation by counsel is not required. Each party must have in attendance, however, a representative who has the authority to make offers and bind the party to the terms of a settlement agreement.
- Discussions between the mediator and the participants will be confidential, and there will be no communication between the program and the Board on specific cases submitted to the ADR program, except for procedural information such as case name, number, and status.
- Nothing in the ADR program is intended to discourage or interfere with settlement negotiations that the parties wish to conduct independently outside the program.
- Settlements reached are subject to approval in accordance with the Board's existing procedures for approving settlement agreements.

More information about the NLRB's ADR Program can be found in [§102.45\(c\)](#) of the NLRB's Rules and Regulations. If you would like to participate in the program, or if you have any questions about the program, please contact the Office of the Executive Secretary at (202) 273-1940 or send an email to Roxanne Rothschild, Executive Secretary at roxanne.rothschild@nrlb.gov.