



Successfully
Processing Your
NLRB Case

The National Labor Relations Board

The National Labor Relations Board (NLRB) is an independent federal agency, created by Congress in 1935 to administer the National Labor Relations Act (NLRA).

NLRB Case Processing



The National Labor Relations Board

The NLRB has two primary functions:

1. To investigate and prosecute unfair labor practices (ULP cases).
2. To process representation cases and conduct secret ballot elections. (R cases)

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What Will I Learn Today?

This outline and presentation will provide you with practical information to help you in processing an unfair labor practice case as the Charging Party or the Charged Party and processing a representation case as the Petitioner or other interested party.

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Case Processing Resources

The information you will learn today is drawn from three main sources:

1. The Board's Rules and Regulations;
2. The Casehandling Manuals for ULP Cases and Representation Cases (CHM)
3. Memoranda from the Division of Operations (OM) and the General Counsel (GC)

All of these resources are available online at www.nlr.gov.

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Information Officer Program(CHM 10012)

While fillable unfair labor practice charge forms and representation petition forms are available on the Board's website, it is advisable that you contact an Information Officer (IO) in the Regional Office (St. Louis), Subregional Office (Kansas City) or the Resident Office (Tulsa) to discuss your issues and seek assistance.

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Information Officer Program(CHM 10012)

The Region's Information Officer is a valuable asset and will assist you:

- In determining whether your ulp allegations or representation questions fall within the parameters of the Act
- In making sure the proper sections of the Act are set forth on the charge form or that the appropriate unit is defined in the petition
- In phrasing the allegations such that the Charged Party is given adequate notice of the basis for the charge, without specifying evidence or divulging the identity of witnesses.

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Filing a ULP Charge

ULP investigations begin with the filing of a charge.

- A charge may be filed by any person, or entity in person, by mail, or by facsimile. A charge must be filed, however, within 6 months of the alleged violation.
- Do not attach or refer to specific evidence in the charge.



Filing a Charge

Upon the receipt of the charge, the Region will send a courtesy copy of the charge to the charged party by mail or sometimes fax.

Service of the charge, however, is the responsibility of the Charging party, not the Board. Charges may be served in person, by registered, certified, or regular mail or by any other method agreed to by the Charged Party. (Rules and Regulations Section 102.14)

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The Investigation

Once a charge has been filed it will be assigned to a Board agent. The Board agent is an impartial investigator, who will:

- Seek out all material evidence, usually by taking sworn affidavit testimony and requesting documents
- Research and apply relevant case law
- Make an objective recommendation to the Regional Director concerning the merits of the charge



The Investigation

The time it takes to investigate a ulp case varies, but all investigations are time sensitive. In 2002 (GC 02-02), the General Counsel of the Board began using an “Impact Analysis” system to prioritize cases. Under this system cases are categorized by their relative impact on the public and the Agency’s mission.

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The Investigation

- Category 3 – Cases involving exceptional impact. May include issues relating to the Union's bargaining status or employee terminations. The time goals are most stringent for these types of cases.
- Category 2 – Cases involving significant impact. May include issues such as a refusal to provide information, unilateral changes or other types of discipline not involving a permanent loss of employment.
- Category 1 – Cases involving important impact, where there are alternative means of redress, i.e. through the parties' grievance procedure or the courts.



The Investigation

Under the “Impact Analysis” system. Board agents have the following number of days to complete an investigation:

- Category 3 – 35 days
- Category 2 – 49 days
- Category 1 – 70 days

Please note this is the total amount of time that a Board agent has to collect both the charged and charging parties’ evidence and make a recommendation to the Regional Director.



The Investigation

When a charge is filed the Charging Party is expected to:

- Understand the factual elements necessary to sustain their allegation.
- Be familiar with any applicable collective bargaining agreements.
- Be prepared to promptly present all of your witnesses for affidavit testimony – the cornerstone of every investigation.
- Have witnesses prepared so they understand what is expected of them. Have all relevant documents available.



The Investigation

Continued Expectations of Charging Party:

- For those witnesses you cannot present, be prepared with the names and contact information.
- Do your own legal research of the issues and share your findings with the Board Agent.
- Don't delay the investigation. Your charge can be dismissed for failure to cooperate.
- If you aren't prepared, you can withdraw and file again when you are ready, but keep your 10(b) limitation period in mind.



The Investigation

Expectations of Charged Party:

- Full and complete cooperation. Anything short of allowing Board prepared affidavits is not full and complete cooperation.
- You are not required to give affidavits and may instead submit a position statement, but it will not be given the same weight as Board prepared affidavits.
- Efforts to restrict the use of your position statements will not be honored.



The Investigation

Continued Expectations of Charged Party:

- Do not delay the investigation. Provision of a preliminary position on the issues may assist the Board Agent in focusing the evidence sought from the Charging Party.
- If asked for your position on Section 10(j) relief, please promptly provide your position.
- Don't present witnesses for group affidavits/interviews.
- Don't expect to sit in on affidavits or interviews of non-agent witnesses.



The Disposition

Upon conclusion of the investigation, the Regional Director, along with other Regional managers and agents will review the evidence presented, consider all controlling legal authority and decide whether further proceedings are warranted on some or all of the allegations.



The Disposition – No Merit

If the Regional Director concludes that further proceedings are not warranted on some or all of the allegations the charging party will:

- Be asked to withdrawal the non-meritorious allegations.
- Absent withdrawal the non-meritorious allegations will be dismissed. There are two types of dismissals:
 - Short-form
 - Long-form

Once a dismissal issues the charging party will have the right to appeal the decision to the General Counsel in Washington DC.



The Disposition – Merit

If the Regional Director concludes that further proceedings are warranted on some or all of the allegations the Regional Director may issue:

- A settlement which includes a notice posting by the charged party.
- A complaint and notice of hearing, if settlement efforts are rejected.
- A deferral of the final determination pending the outcome of alternative procedures.



The Disposition – Settlement

Settlement of a ulp charge can take several routes:

- An Informal Board Settlement, requiring make whole remedies, a notice posting, and possible enhanced remedies such as a notice reading, electronic posting, access to bulletin boards, etc.
- All parties are generally a party to an Informal Settlement, but the Regional Director may take an Informal Settlement unilaterally – without the agreement of the Charging Party – if it fully remedies the allegations found meritorious.



The Disposition – Settlement

Settlement of a ulp charge can take several routes:

- A Non-Board Settlement between the parties requiring the Charging Party to withdraw the charge upon satisfaction of the terms of the agreement.
- Terms of the agreement must comply with OM 07-27 to protect the public interest and the rights of the Charging Party, particularly individuals unrepresented by Counsel.
- Board does not police non-Board adjustments, but may revoke withdrawal of the charge if the Charged Party reneges on substantial aspects of the adjustment.



The Disposition – Deferral

If the Regional Director concludes that further proceedings are warranted on some or all of the allegations and there is a collective bargaining agreement in effect between the parties, the Regional Director may defer the charge to the parties' grievance and arbitration procedure pursuant to the policy set forth in *Collyer Insulated Wire*, 192 NLRB837, *United Technologies Corp.* 268 NLRB 557 (1984) which promotes the use of the parties grievance and arbitration procedures to foster industrial peace.



The Disposition – Deferral Cont.

Under the Board's deferral policy the parties are required to:

- Provide periodic status updates on the underlying grievances approximately every 90 days.
- Give priority to those grievances that are part of the Board deferral process, insuring their speedy resolution.
- Provide the Union with immediate notice if the underlying grievance is settled or a decision is rendered by an arbiter.
- Conclude grievance processing in less than one year from the date the charge was filed.



Litigation – Complaint and Hearing

If the parties are unable to settle the allegations found meritorious, the Regional Director will issue:

- COMPLAINT:** The complaint sets forth the allegations determined to be meritorious and sets a date for hearing before an administrative law judge (ALJ).
- ALJ DECISION:** At the end of the hearing, the judge usually invites written briefs. Sometimes the judge decides the case and announces the decision at the end of the hearing.



Litigation – ALJ Decision and Appeals

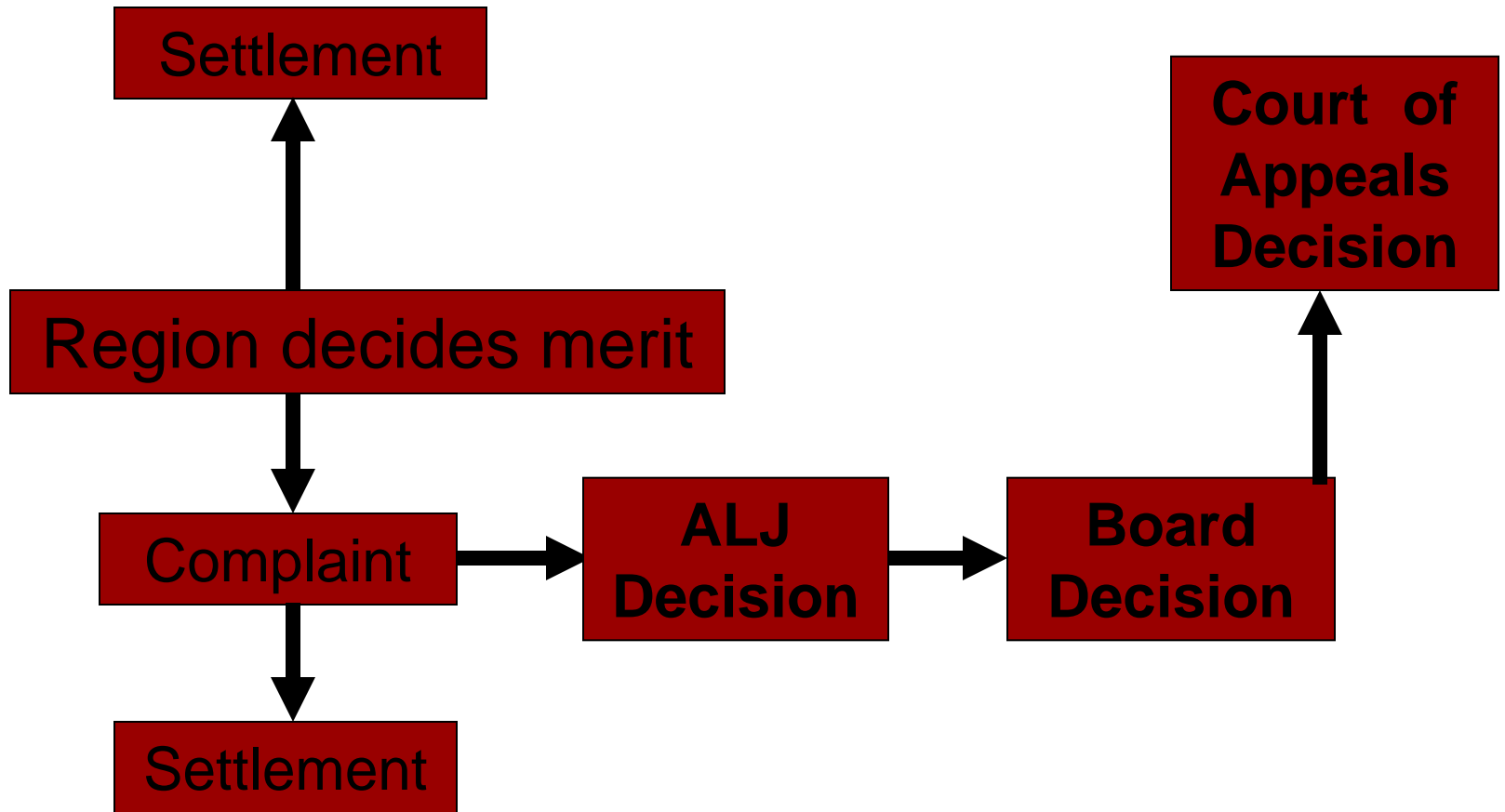
ALJ DECISION: After the judge issues a decision, the losing party can appeal to the Board.

BOARD DECISION: After the Board issues a decision, the losing party can appeal to the U.S. Circuit Courts of Appeal.

COURT OF APPEALS DECISION: After the Court of Appeals issues a decision, the losing party can appeal to the U.S. Supreme Court.



ULP LITIGATION - Summary



REPRESENTATION CASES

Six Types of Cases:

- Three types involve elections where employees vote whether they want the Union to represent them (RC, RD, RM)
- One type addresses the effectiveness of a union security clause (UD)
- One type deals with modifying the unit description (UC)
- One type amends the name in a certification (AC)



REPRESENTATION CASES

Types of Cases Resulting in Elections

RC Case: Filed by a Union seeking to represent certain employees of a particular employer.

RD Case: Filed by an individual who wants to decertify the Union that currently represents employees of a particular employer.

RM Case: Filed by an Employer who questions whether the Union should continue to be the bargaining representative of its employees.

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REPRESENTATION CASES

Types of Cases Resulting in Elections

UD Case: Filed by a individual seeking to eliminate a union security clause in a collective-bargaining agreement between the Employer and the Union.



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- Begins with filing a petition. That form includes:
 - a description of the proposed or existing bargaining unit
 - the number of employees in the unit.
- When filing an RC, RD or UD petition, the petitioner must submit a showing of interest from the employees in the proposed or existing bargaining unit.
 - The showing of interest includes cards signed and dated by the employees in the bargaining unit, or a list of signatures and dates.
 - The showing of interest must be at least 30% of the bargaining unit.

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Bargaining Unit:

- a group of two or more employees who share a community of interest and may reasonably be grouped together for purposes of collective bargaining.
- cannot include supervisors, agricultural laborers, or independent contractors.
- Usually limited to a single facility of an employer, but can include employees from more than one facility.

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Election Agreement: Board agent tries to get all parties to sign a Stipulated Election Agreement. It covers:

- Jurisdiction of the NLRB
- A description of the bargaining unit in which the election will be conducted
- Date, time and place of election (almost always the employer's facility)
- Payroll period for eligibility

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Hearing: If parties do not agree to enter into a Stipulated Election Agreement a pre-election hearing is held 7 to 14 days after the petition is filed. Issues typically addressed are:

- the bargaining unit in which the election will be conducted (single facility vs. multi-facility; inclusion of specific classifications such as quality control employees)
- whether specific classifications are excluded because they are supervisors
- jurisdiction of the NLRB

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After the hearing is held, the case is assigned to an agent to draft a decision for the Regional Director.

- Decision and Direction of Election (orders an election)
- Decision and Order (dismisses the petition)



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Election Arrangements: After a decision and direction of election issues or the parties agree to hold an election:

- Board sends out Notices of Election to be posted at the employer's facilities.
- The Employer submits a list of eligible voters to the NLRB, which provides the list to the other parties, including the Petitioner.
(Excelsior list)
- Board prepares paper ballots for use in the election.

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Conducting the Election: When the election is held the following usually occurs:

- Only the Board agent, the parties' observers and the voters are allowed in the polling area during the election.
- Voters are given a ballot and a pencil to use in the voting booth. Upon completion of the ballot, the voter folds it and places it in the ballot box.
- Voting booths are set up to ensure privacy and a box is prepared for collecting the ballots.
- Either party or the Board agent may challenge the eligibility of a person to vote. The challenged voter puts the ballot in a sealed individual envelope and dropped in the box.

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Conclusion of the Election: When the election is held the following usually occurs:

- Immediately after the end of the specified voting time, the ballots are counted by the Board agent in the presence of representatives of the parties.
- To win, a Union must receive 50% plus 1 of the total votes counted.



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Post-Election: After the election, the following may occur:

- Any party may file OBJECTIONS to conduct before or during the election. If objections are filed, either an investigation or hearing may be held to determine if a rerun election should be held.
- If the CHALLENGES do not affect the outcome of the election (if they are not determinative), they are not resolved. If the challenged ballots are determinative, either an investigation or a hearing, or both, occurs to determine if the challenged voters were eligible and the vote should be counted.

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Certifying the Election: If there are no challenges or objections, or after the challenges and objections have been resolved, a Certification is issued:

- A Certification of Representative indicates that a labor organization won the election and is being certified as the collective-bargaining representative of the unit.
- A Certification of Results indicates that no labor organization won the election.



Contact Information

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**Thank
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