



# Introduction to the NLRB



# WHAT IS THE NLRB?

- An independent federal agency
- Created by Congress in 1935 to administer the National Labor Relations Act (NLRA)



## WHAT IS THE NLRA?

- An act that defines the rights of employees to organize and bargain collectively with employers through representatives of their own choosing
- It defines practices by employers and unions that are inconsistent with those rights and are “unfair”
- It defines procedures for conducting secret-ballot elections



# THE NLRA

**Section 7 of the Act gives employees the following rights:**

- **Form, join, or assist a union;**
- **Choose representatives to bargain with their employer on the employees' behalf;**
- **Act together with other employees for their benefit and protection;**
- **Choose not to engage in any of these protected activities.**



# THE NLRA

**Section 8 of the Act sets forth unfair labor practices (Unfair Labor Practice Cases):**

- **Against Employers**
- **Against Unions**

**Section 9 of the Act deals with bargaining units and procedures for conducting elections (Representation Cases)**



# UNFAIR LABOR PRACTICES

**Section 8(a) makes it an unfair labor practice for an Employer to:**

- **8(a)(1) - interfere with, restrain or coerce employees in the exercise of their Section 7 rights**
  - Threats and coercive statements**
  - Surveillance of employees' activities**
  - Interrogation or harassment of employees**
  - Promise of benefits**
  - No-Solicitation/No-Distribution rules**
  - Discharge, suspension or layoff**
  - Disciplinary actions because of concerted protected activity**



# UNFAIR LABOR PRACTICES

**Section 8(a) It is an unfair labor practice for an Employer to:**

- **8(a)(1) - interfere with, restrain or coerce employees in the exercise of their Section 7 rights**
- **8(a)(2) – dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it**



# UNFAIR LABOR PRACTICES

**Section 8(a) It is an unfair labor practice for an Employer to:**

- **8(a)(3) - discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization**
  - **Discharge, suspension or layoff**
  - **Changes in employment/working conditions, wages or benefits**
  - **Discipline**
  - **Refusal to hire**
  - **Lockout of employees**
  - **Shutdown or relocation of facility**



# UNFAIR LABOR PRACTICES

**Section 8(a) It is an unfair labor practice for an Employer to:**

- **8(a)(4) - to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act**
- **8(a)(5) – to refuse to bargain collectively with the representatives of his employees**



# UNFAIR LABOR PRACTICES

**Section 8(a)(5) refusal to bargain includes:**

- **Bad-faith bargaining**
- **Refusal to furnish information**
- **Direct dealing with employees**
- **Unilateral changes in terms or conditions of employment**
- **Repudiation/modification of contract**
- **Refusal to recognize**
- **Failure to sign agreement**



# UNFAIR LABOR PRACTICES

**Section 8(b) It is an unfair labor practice for a Union (labor organization) to:**

- **8(b)(1) - restrain or coerce employees in the exercise of their Section 7 rights; restrain or coerce the Employer in the selection of its representatives for the purpose of collective-bargaining or grievance adjustment**
  - Breach of duty of fair representation**
  - Coercive statements, including threats**
  - Surveillance, interrogation, harassment**
  - Violence/assaults**



# UNFAIR LABOR PRACTICES

**Section 8(b) - It is an unfair labor practice for a Union (labor organization) to:**

- **8(b)(2) - to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 8(a)(3)**
- **8(b)(3) - to refuse to bargain collectively with an employer, if it is the representative of his employees**
  - **Refusal to furnish information**
  - **Repudiation/modification of contract**



# UNFAIR LABOR PRACTICES

## Section 8(b)(4) -- it is an unfair labor practice for a Union:

- (i) to induce an individual to engage in a strike or a refusal to process, transport, or handle or work on any goods or to perform any services;
- (ii) to threaten a person engaged in commerce or in an industry affecting commerce

where in either case an object thereof is among certain prohibited ones

e.g. picketing and handbilling



# UNFAIR LABOR PRACTICES

**Section 8(b) It is an unfair labor practice for a Union (labor organization) to:**

- **8(b)(5) - to require employees covered by a union security clause, an excessive membership fee**
- **8(b)(6) - featherbedding**
- **8(b)(7) - to picket or cause to be picketed, or threaten to picket an employer to force the employer to recognize or bargain with a union as the representative of his employees**



## **UNFAIR LABOR PRACTICES (ULPs)**

- **Investigations begin with filing of a charge**
  - **Charge may be filed by any person**
  - **Must be filed within 6 months (Section 10(b) of the Act)**
- **Investigated and if meritorious, are prosecuted by the NLRB**



# ULP INVESTIGATIONS

**Investigation of a case by a Board agent, usually either a Field Attorney or a Field Examiner, includes:**

- **Taking affidavits from the witnesses**
- **Gathering and reviewing evidence from both the charged party and charging party**
- **Review of positions statements from the parties**
- **Researching related cases, as well as Board and Court decisions**



# ULP INVESTIGATIONS

**DETERMINATION:** Upon completion of the investigation, a determination is made whether there is evidence of a violation.

**MERIT:** If the case is determined to be meritorious:

- A settlement is proposed – includes a notice posting
- A complaint issues setting issues for hearing



# ULP INVESTIGATIONS

**NONMERIT:** If the case is found not to be meritorious, the Charging Party is allowed to either:

- **Withdraw the charge**
- **Have the charge is dismissed. If dismissed, the Charging Party can appeal to the General Counsel in DC.**



# ULP LITIGATION

**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.



# ULP LITIGATION

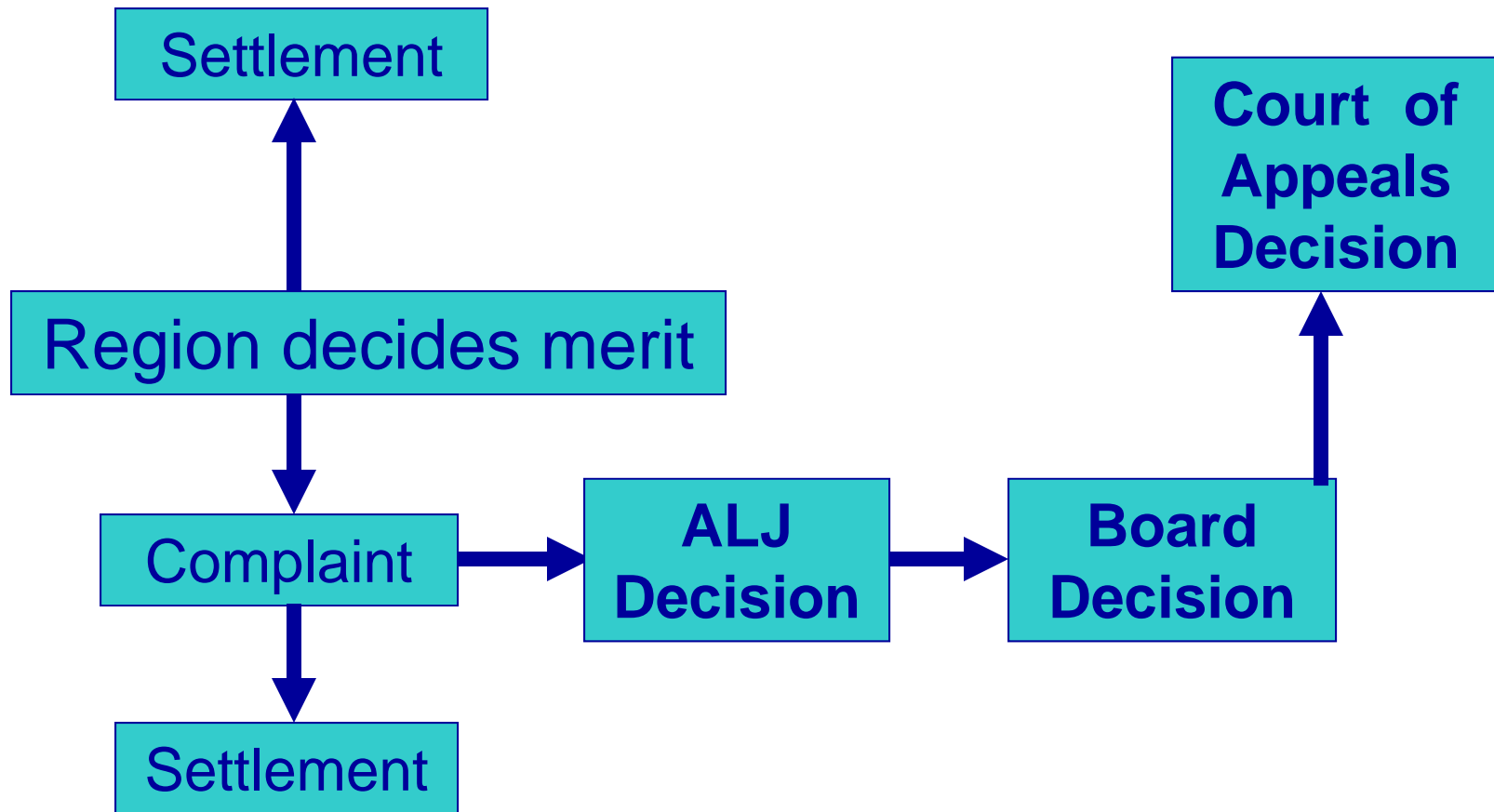
**ALJ DECISION:** After the judge issues a decision, the losing party can appeal to the Board.

**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.



# 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.



## RC CASE PROCESSING

- **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.



# R CASE PROCESSING

## **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.



# R CASE PROCESSING

**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**
  - ❑ **Place is almost always the Employer's facility**
- **Payroll period for eligibility**



## R CASE PROCESSING

**Hearing:** If parties do not agree to enter into a Stipulated Election Agreement a pre-election hearing is held 10 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



## **R CASE PROCESSING**

**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)**



# R CASE PROCESSING

**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.



# R CASE PROCESSING

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

- Voting booths are set up to ensure privacy and a box is prepared for collecting the ballots.
- 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.
- 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



# R CASE PROCESSING

**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.*



# R CASE PROCESSING

**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.



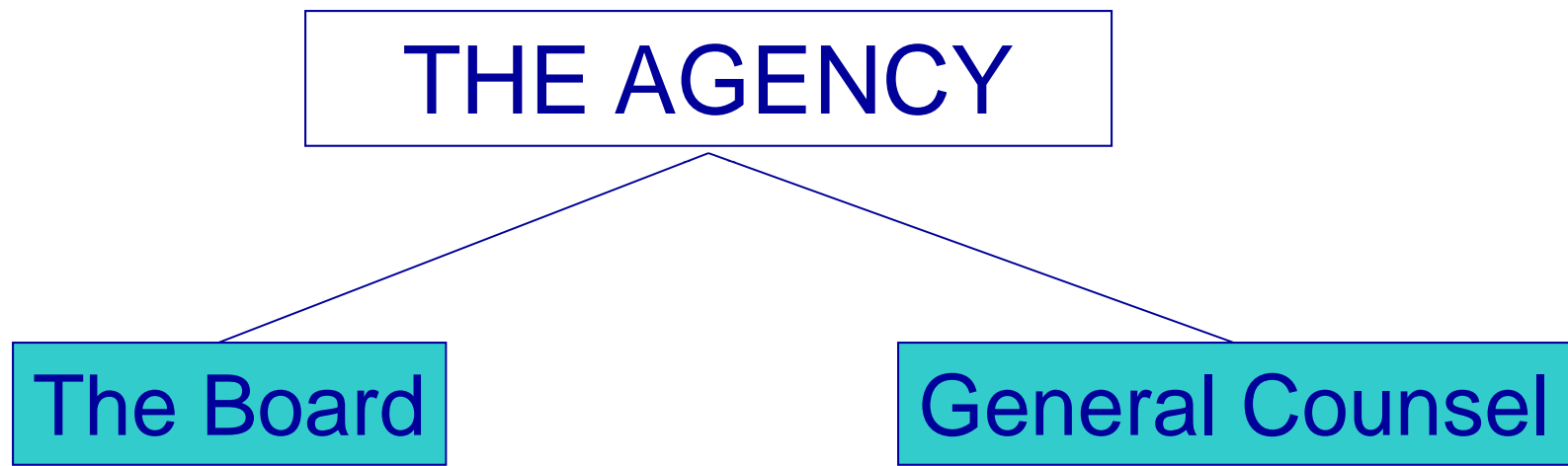
# R CASE PROCESSING

**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.



# HOW IS THE NLRB ORGANIZED?



The NLRB is divided into two separate components.



## THE BOARD

- **The five-member Board** reviews cases that have been decided by the ALJs as well as cases that go directly to the Board, in both both unfair labor practice (C cases) and representation (R cases) cases.
- **Division of Administrative Law Judges (ALJs)** hears unfair labor practice cases and, when consolidated with ULP's, representation case objections and challenges. This Division also has offices in New York, Atlanta, and San Francisco.



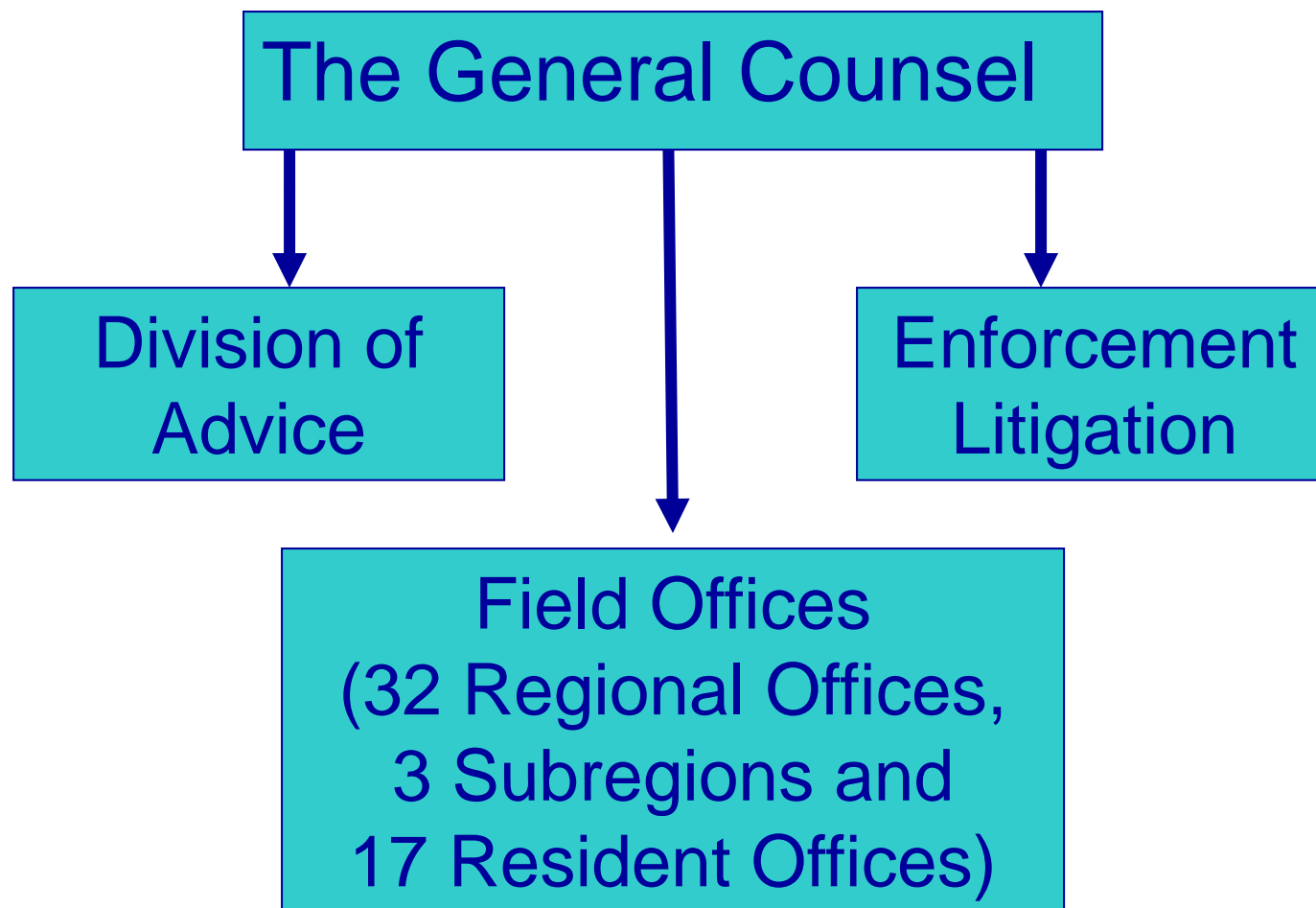
# HOW IS THE NLRB ORGANIZED?

## The General Counsel

- ❑ Appointed by the President and confirmed by the U.S. Senate
- ❑ Set term



# HOW IS THE NLRB ORGANIZED?





# HOW IS THE NLRB ORGANIZED?

## Field Offices

- Each regional and subregional office covers a defined geographic area and accepts charges and petitions filed against employers or unions in that area.
- The regions process their cases from filing to closing, with involvement by headquarters offices at certain stages.



## CASE PROCESSING

- Case processing begins with filing of a charge or petition in a Regional Office. The NLRB cannot take action on either representation or unfair labor practice issues without the filing of a petition or charge.
- Cases can be filed:
  - By mail
  - By fax
  - In person, with assistance from an Information Officer



# INFORMATION

- **Call the Regional Office and ask for the Information Officer**
- [www.nlrb.gov](http://www.nlrb.gov)