

The Chamber of Commerce of the United States of America (the “Chamber”) submits this supplemental brief pursuant to the Board’s order dated March 15, 2011. The Chamber has reviewed the representation case data that were recently posted on the Board’s website in response to Freedom of Information Act requests. In the limited period of time (approximately two weeks) since this information was made available to the public, the Chamber has not been able to fully analyze the entire volume of data.

The analysis that the Chamber has been able to perform in this limited period of time confirms that there is no empirical basis for the Board’s suggestion that changing its longstanding standards in unit determination cases is needed to “prevent unnecessary litigation and delay” in representation cases. *Specialty Healthcare*, 356 NLRB No. 56, slip op. at 3 (Dec. 22, 2010). As we noted in our original *amicus* brief in this case, litigation concerning the scope of a bargaining unit is rare; over 90% of elections are conducted pursuant to stipulation. *See* Office of the General Counsel, *Summary of Operations (Fiscal Year 2010)*, Memorandum GC 11-03 (Jan. 10, 2011) (reporting that 92.1% of representation elections in FY 2010 were conducted pursuant to agreement of the parties, compared to a 91.9% election agreement rate in FY 2009). As we also noted, these statistics bear out in the health care industry, where the overwhelming majority of elections are conducted pursuant to stipulation in a median time period of 40 days.

The data recently posted on the Board’s website confirm that these representation statistics have not changed significantly in the last 10 years – if anything, the stipulation rate has *improved* during that period. For instance, in FY 2005, it appears that 91% of elections were conducted pursuant to the agreement of the parties, as compared to 92% in FY 2010. In FY

2002, it appears that the stipulation rate was about 86%.¹ While the Chamber has not been able to undertake an industry-specific analysis of the statistics in the limited period of time allowed for filing supplemental briefs, we believe it is reasonable to assume that the election stipulation rate in the health care industry has followed the same general pattern.

Given that the Board's data shows that issues concerning the scope of a proposed bargaining unit are resolved by agreement of the parties in 90% of elections, there is no cause for the Board to alter its current unit determination standards in the health care industry or any other industry. Accordingly, the Chamber urges the Board to adhere to its longstanding precedent in this case.

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Respectfully submitted,

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¹ The Chamber found it difficult to work with the data in the format provided on the Board's website, but the Chamber's analysis is consistent with the statistics provided in contemporaneous General Counsel memoranda. See Office of the General Counsel, *Summary of Operations (Fiscal Year 2005)*, Memorandum GC 06-01 at 7 (Nov. 28, 2005); Office of the General Counsel, *Summary of Operations (Fiscal Year 2002)*, Memorandum GC 03-01 (Feb. 4, 2003).

CERTIFICATE OF SERVICE

I certify that on March 29, 2011, after contacting each representative by phone, I caused a true and accurate copy of the foregoing to be served on the following by overnight mail:

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