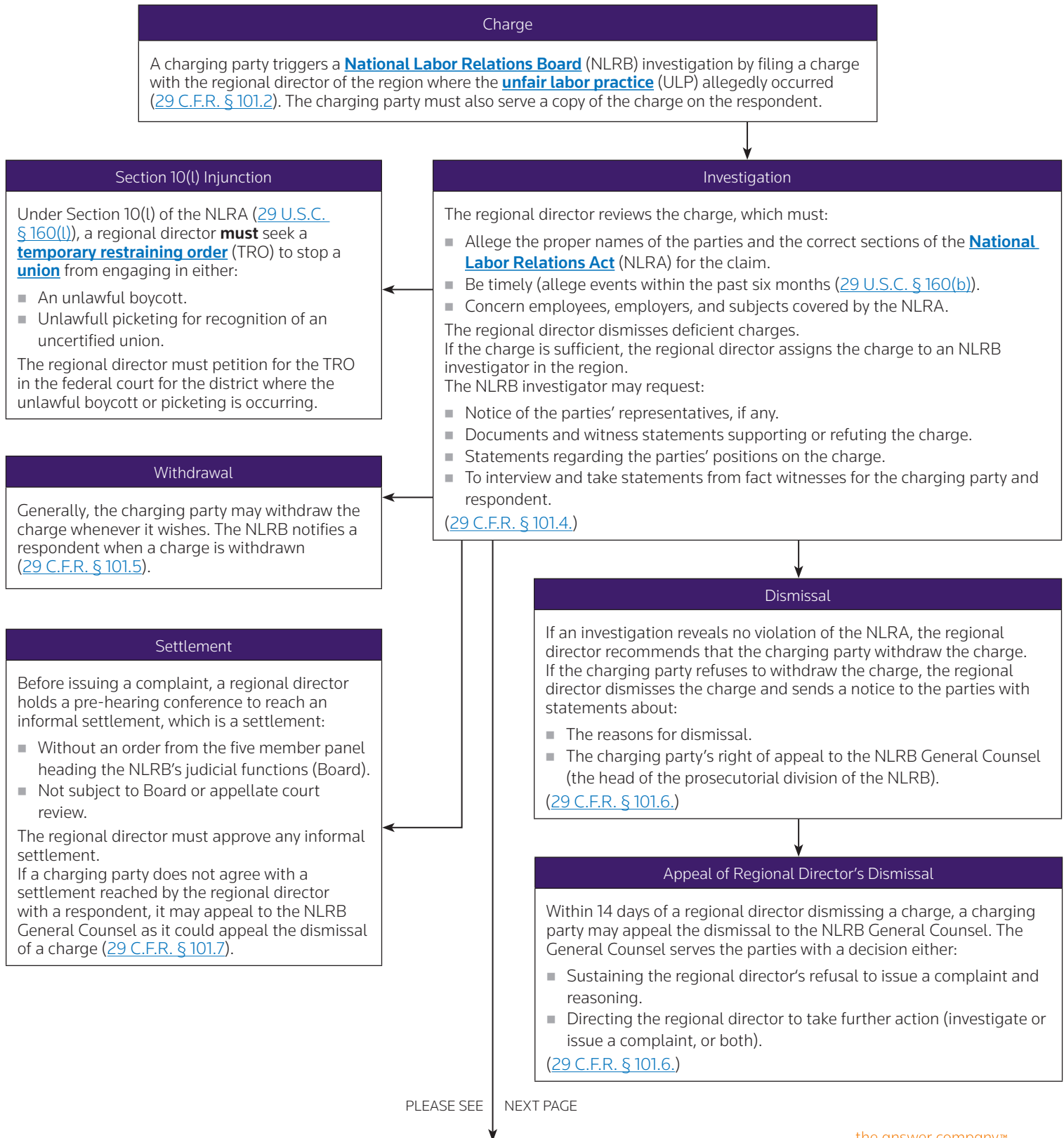


National Labor Relations Board Unfair Labor Practice Case Flowchart



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Complaint

If evidence supports a ULP charge, the regional director issues and serves a complaint in the name of the Board:

- Stating the ULP(s) that the counsel for the general counsel intends to prove.
- Setting a date for a hearing before an NLRB [administrative law judge](#) (ALJ) at least 14 days later.

([29 C.F.R. § 101.8.](#))

The complaint may be amended until the Board issues an order on the existing complaint ([29 C.F.R. § 102.17.](#))

Section 10(j) Injunction

With the Board's approval, the regional director can ask for a TRO from a federal district court against a charged employer or union where it expects that:

- The ALJ will find serious violations of the NLRA.
- A Board order will not remedy the NLRA violations.

Settlement

After issuing a complaint, a regional director holds a pre-hearing conference with the parties to settle the complaint. The regional director generally requires a formal settlement but can enter an informal settlement using informal settlement procedures. A formal settlement:

- Includes an order from the Board.
- Is subject to the approval of the Board.
- Is subject to appellate court review.

If the regional director enters a draft formal settlement with the respondent, the charging party has seven days to file objections to it with the regional director.

If the regional director approves the settlement over the charging party's objections, the NLRB General Counsel reviews the settlement and objections and either:

- Directs further action on the complaint.
- Sends the agreement and charging party's objections to the Board for final approval.

The charging party has seven days from the submission of the settlement to the Board to further state its objections ([29 C.F.R. § 101.9](#)). If the Board approves the settlement, the approval constitutes a final order of the Board that is subject to judicial review under Section 10(f) of the NLRA ([29 U.S.C. § 160\(f\)](#)).

Answer

The respondent must file an answer to the complaint within 14 days of receipt ([29 C.F.R. § 102.21](#)).

The respondent may amend its answer:

- At any time before the ALJ hearing.
- Whenever the regional director amends the complaint.
- Whenever the ALJ allows during the hearing.

([29 C.F.R. § 102.23.](#))

Hearing

An NLRB ALJ presides over the hearing on the complaint. Unlike a typical trial in federal or state court, the ALJ also examines witnesses to clarify his understanding of their testimony and to supplement the trial record he uses to write a decision and recommended order.

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ALJ Decision and Recommended Order

The ALJ's decision must contain findings of fact and conclusions of law, including references to the hearing record and Board precedent. The ALJ recommends either:

- Remedies for a ULP.
- Dismissal of the complaint.

The ALJ files his decision and recommended order with the Board (transferring jurisdiction to the Board), and the NLRB serves it on the parties.
([29 C.F.R. § 102.45.](#))

No Exceptions

If no party files exceptions:

- The ALJ's decision and recommended order is automatically adopted by the Board.
- All objections are waived.
- The parties effectively waive all rights of appeal to the US courts of appeals.
- If the ALJ recommends a remedial order, the NLRB seeks the respondent's voluntary compliance.

([29 C.F.R. § 102.45.](#))

Exceptions

Within 28 days of receiving the ALJ's recommended order, any party may file exceptions with the Board. Exceptions are an appeal to the ALJ's written decision or his rulings during the hearing. Parties typically file an exceptions document that sets out, in numbered paragraphs, errors of fact, law, or procedure with references to the hearing record. The parties also submit a brief including legal citations and argument supporting the exceptions ([29 C.F.R. § 102.46.](#))

Opposition to Exceptions/Cross-Exceptions

Within 14 days after the deadline to file exceptions:

- A party opposing exceptions can file an answering brief.
- A party that has not filed exceptions can file cross-exceptions to any part of the ALJ's decision, together with a supporting brief.

Within 14 days after the deadline to file cross-exceptions, a party opposing cross-exceptions can file an answering brief.
([29 C.F.R. § 102.46.](#))

Remedial Order

After reviewing a party's exceptions the Board may:

- Affirm or reverse the ALJ's decision to sustain a complaint in part or in whole.
- Adopt, modify, or supplement an ALJ's recommended remedial order.

If all complaint allegations are dismissed, the matter is closed unless a party moves for reconsideration, rehearing, or reopening of the record at the Board, or seeks appellate review. ([29 C.F.R. § 101.12\(a\).](#))

Dismissal

After reviewing a party's exceptions the Board may:

- Affirm the ALJ's decision to dismiss a complaint in part or in whole.
- Dismiss a complaint in part or in whole that the ALJ sustained.
- Order remedies for any allegations it sustains.

If all complaint allegations are dismissed, the matter is closed unless a party moves for reconsideration, rehearing, or reopening of the record at the Board, or seeks appellate review. ([29 C.F.R. § 101.12\(a\).](#))

Remand to ALJ for Further Action

After reviewing a party's exceptions, the Board can remand the matter to the ALJ to further develop the factual record on critical facts.

Voluntary Compliance

If the Board finds a ULP or adopts the ALJ's finding of a ULP, the regional director for the region in which the ULP occurred requests that the respondent comply with the Board's remedial order ([29 C.F.R. § 101.13](#)). If the respondent complies, the regional director informs the compliance division of the NLRB and the matter is complete.

Motions for Reconsideration, Rehearing, and Reopening the Record

Within 28 days of receiving the Board's decision, a party may move for:

- Reconsideration, describing any material error, and citing to the record for any alleged errors of fact.
- Rehearing, noting the error requiring a new hearing and the prejudice suffered because of the error.

If a party discovers evidence not previously available, it may move to reopen the record. A motion to reopen the record must state:

- The additional evidence.
- Why the evidence was not presented previously.
- How the evidence would require a different result.

([29 C.F.R. § 102.48\(d\)\(1\).](#))

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Petition for Court Review or Enforcement, or Both

Any employer or union harmed by a final order of the Board may petition for review of the order in:

- The US Court of Appeals for the District of Columbia.
- Any US court of appeals in the circuit in which:
 - the ULP in question was alleged or found to have occurred; or
 - the petitioning party resides or transacts business.

([29 U.S.C. § 160\(f\)](#)).

If the NLRB cannot obtain voluntary compliance with its order, it can petition for enforcement in the US court of appeals in the circuit where either:

- The ULP was found to have occurred.
- The respondent resides or transacts business.

([29 U.S.C. § 160\(e\)](#)).

When a union or employer files a petition for review, the NLRB may cross-petition for enforcement in the same court and the matters are consolidated. Likewise, when the NLRB files a petition for enforcement, the respondent employer or union can cross-petition for review in the same court and the matters are consolidated.

Modifying or Setting Aside a Board Order

Before the Board files an index of the agency record in the US court of appeals, the Board can modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it ([29 C.F.R. § 102.49](#)). In doing so, the Board either:

- Issues a new decision and order.
- Remands part or all of the case to the ALJ for further action.

Filing of Agency Record on Appeal

The NLRB must file an index of the agency record with the appropriate US court of appeals within 40 days after receiving a petition for review, or within 40 days after filing a petition for enforcement ([Fed. R. App. Proc. 17](#)).

US Court of Appeals Review

The US court of appeals can:

- Grant enforcement of the Board's order in its entirety.
- Grant enforcement of the Board's order as modified.
- Dismiss the complaint.
- Remand the matter to the NLRB to correct inconsistent or incomplete analysis of:
 - the facts;
 - federal court precedent; or
 - Board precedent.

Supreme Court Review

Within 90 days of a court of appeals' decision on a petition for review or petition for enforcement, or both, a party in the court of appeals proceedings can petition for a writ of certiorari from the US Supreme Court seeking review of the US court of appeals decision (U.S. Sup. Ct. R. 13). If the Supreme Court grants review, it either:

- Affirms the court of appeals' decision.
- Reverses the court of appeals' decision and remands the case to it for processing consistent with its opinion.