

# The Abruzzo-Era Backlog

How Sweeping NLRB Enforcement Guidance Stalled ULP Cases,  
Tripled the Backlog, and Left the Agency Years from Recovery

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*An analysis of 190,743 unfair labor practice charges filed  
with the National Labor Relations Board, 2016–2026*

Prepared by LRI Consulting Services, Inc.

## Executive Summary

Between 2020 and 2024 the National Labor Relations Board’s inventory of open unfair labor practice (ULP) charges against employers roughly tripled. This memorandum examines whether that growth is connected to the enforcement guidance issued to the Board’s Regional offices during the tenure of General Counsel Jennifer Abruzzo — and what the data shows about the position inherited by the current General Counsel, Crystal Carey.

**Bottom line.** The timing and structure of the backlog align closely with the Abruzzo-era guidance, and case closings recorded in 2025 are overwhelmingly the liquidation of charges that accumulated during that period. The current General Counsel is working off an inherited backlog, not a problem of her own making.

### Key findings

- **The backlog tripled during the Abruzzo era.** Open inventory of non-postal employer (CA) charges rose from roughly 5,900 at the end of 2020 to 17,409 at the end of 2024. Closures fell below new filings every year from 2022 through 2024.
- **The slowdown was a front-end collapse, timed to GC 21-04.** The share of new charges resolved within 90 days fell from roughly 55 percent to about 25 percent, beginning in the exact quarter the “Mandatory Submissions to Advice” memo issued (Q3 2021).
- **Enforcement priorities, not staffing, drove the backlog.** Median processing time for closed cases nearly doubled (66 to 131 days) while case intake grew only 13 percent, and the informal settlement rate collapsed from 8.2 percent to 3.6 percent. Applying the FY2019 baseline residual-open rate to FY2022–FY2024 filings yields about 6,700 excess open cases attributable to processing slowdown rather than intake volume or headcount.
- **The backlog falls hardest on small employers.** Sixty-one percent of the more than 23,000 currently open cases involve workplaces with 100 or fewer employees covered by the charge: the employers least equipped to absorb years of unresolved legal uncertainty and least able to negotiate the complex, extended settlements the Abruzzo-era guidance demanded.
- **Today's closures are aged Abruzzo-era cases.** Of the 12,696 CA charges closed in 2025, 69 percent were filed during the Abruzzo era. A charge settled under the current leadership is a median of 657 days old, versus 279 days before 2021.
- **Closing old cases is not the same as processing new ones faster.** Inventory began falling in 2025 for the first time since 2020, but new-charge processing speed has not recovered yet. The gain to date is backlog clearance, not restored throughput.

### What this means for the current General Counsel

The inventory the current leadership inherited (roughly 16,000 open CA charges at the start of 2026, more than half of them over a year old) is a direct product of the 2021–2024 enforcement posture, not of staffing constraints that predate it. Approximately 6,700 of those open cases sit above what the FY2019 baseline would predict, independent of the intake surge. The February 2025 rescissions and the current General Counsel's decision not to reimpose a mandatory-submission regime have removed the procedural bottleneck responsible for that hole, but clearing it is a multi-year task that the 2025–2026 numbers show is underway and incomplete.

# 1. Policy Background and Timeline

The General Counsel of the NLRB is a Senate-confirmed officer, separate from the Board itself, who supervises the Regional offices and sets the guidance under which Regions investigate, prosecute, settle, and dismiss unfair labor practice charges. Two categories of Abruzzo-era guidance are central to this analysis.

## Mandatory Submissions to Advice (GC 21-04)

Issued August 12, 2021, this memorandum directed Regional Directors to route broad categories of cases to the Division of Advice in Washington for centralized clearance before the Region could act.<sup>1</sup> The memorandum's reach was broad — it identified more than forty Board precedents and doctrines the General Counsel intended to revisit. Commentators regarded several of the targeted theories as aggressive departures from settled law, among them:

- **Handbook and work rules.** Treating routine, facially neutral policies — confidentiality, non-disparagement, social-media, civility, and "professional conduct" rules — as presumptively unlawful, by reviving the employee-friendly *Lutheran Heritage* standard that the 2017 *Boeing* decision had replaced.
- **Severance and separation agreements.** Challenging the standard confidentiality and non-disparagement clauses in severance agreements — a position the Board later adopted in *McLaren Macomb* (2023).
- **Company email systems.** Treating employees' use of an employer's email system for union organizing as protected activity, reversing recent precedent to the contrary.
- **Independent-contractor status.** Narrowing the independent-contractor exclusion so that more workers would count as statutory employees covered by the Act.
- **Union insignia and property access.** Restricting employers' ability to limit employee display of union insignia (buttons, apparel) in the workplace, and expanding union representatives' right of access to employer property and public spaces on or near it.

Critically for case processing, the memo was not confined to novel theories. It also reached the legal standards governing the highest-volume charges on the docket — the union-animus and causation test applied in every discharge and discipline case, and the surface-bargaining, information-request, and unilateral-change standards at issue in 8(a)(5) cases. In the charge data analyzed for this report, *roughly 87 percent of employer charges* allege a discharge or discipline, a work-rule violation, or a refusal to bargain.

When a charge raises an issue on the mandatory-submission list, the Region cannot independently issue a complaint, approve a settlement, or dismiss the charge until the Division of Advice responds. This adds processing time to every affected case and, in practice, freezes settlement discussions until headquarters has spoken. By extending to the doctrines that govern these everyday categories, the memorandum greatly enlarged the universe of routine charges that could require Advice clearance before a Region could act. This is what turns a submission requirement from a procedural formality into a docket-wide bottleneck. That mechanism is examined in Section 4.

## Full Remedies in Settlement Agreements (GC 21-07)

Issued September 15, 2021, this memorandum directed Regions to demand the full range of remedies as a condition of settlement and discouraged settlements offering less.<sup>2</sup> Building on GC 21-06 a week earlier, it instructed Regions to accept "no less than 100 percent of the backpay and benefits owed" and nothing short of the relief a charging party would obtain by winning at hearing.<sup>3</sup> The specific changes employers and practitioners flagged as the most consequential included:

- **No settlement discount.** Requiring the full remedy a charging party could win at trial, which removes the compromise that ordinarily induces a respondent to settle rather than litigate.
- **Consequential damages.** Adding compensation for foreseeable financial harms beyond backpay — lost health coverage and out-of-pocket medical costs, early-withdrawal penalties on retirement accounts, credit-rating damage, late fees and loan interest, and moving expenses — an open-ended and contested category that is difficult to quantify in negotiation.
- **Default language.** Settlement terms providing that, if the employer breaches, the underlying complaint is reissued with every allegation deemed admitted, producing summary judgment.
- **Restrictions on non-admission clauses.** Discouraging Regions from accepting the non-admission-of-liability clause that is standard in settlements in nearly every other area of law.
- **Enhanced non-monetary terms.** Letters of apology, notice-reading aloud by a management official, and expanded or electronic notice distribution.

Reinforced by GC 22-06 in June 2022, which encouraged Regions to seek court enforcement of settlement terms, the guidance raised the threshold every settlement had to clear before a Region could accept it.<sup>4</sup> Two of these features touched the entire settlement docket rather than a narrow set of cases. The complete-relief floor applied to every settlement negotiation, and consequential damages attached to every case involving backpay: in the data analyzed for this report, 46 percent of settled employer charges allege a discharge or discipline. By removing the settlement discount and attaching an open-ended, hard-to-value remedy to the most common case type, the memorandum made the routine settlement slower to negotiate and less attractive to the respondent — the settlement-side counterpart to the procedural bottleneck of GC 21-04, and a contributor to the rising age of settled cases documented in Section 5.

### Rescission of the Abruzzo Advice Memos (GC 25-05, GC 26-02, and GC 26-03)

Both guidance memos were rescinded together. On February 14, 2025, Acting General Counsel William Cowen issued GC 25-05, withdrawing 29 Abruzzo memoranda, including GC 21-04 and the settlement-remedy guidance.<sup>5</sup> General Counsel Carey’s subsequent guidance (GC 26-02 and GC 26-03, early 2026) reaffirmed those rescissions and prioritized settlement.<sup>6</sup> In an unprecedented move Carey also declined to issue any new mandatory-submission regime, which she explained as a deliberate step to let Regions resolve cases without the headquarters bottleneck.

Date	Action	Effect on case handling
Jul 21, 2021	Abruzzo confirmed as General Counsel	New enforcement leadership
Aug 12, 2021	GC 21-04, Mandatory Submissions to Advice	Regions must route broad case categories to headquarters before acting
Sep 15, 2021	GC 21-07, Full Remedies in Settlement Agreements	Raised the remedy threshold for an acceptable settlement
Jun 23, 2022	GC 22-06, update on full remedies	Reinforced the settlement-remedy posture
Feb 14, 2025	GC 25-05 (Acting GC Cowen)	Rescinded 29 memoranda, including GC 21-04 and the settlement-remedy guidance
Jan 7, 2026	Crystal Carey sworn in as General Counsel	New enforcement leadership
Feb 27, 2026	GC 26-03 (GC Carey)	Reaffirmed rescissions; prioritized settlement; no new mandatory-submission regime

## 2. Data and Methodology

The analysis draws on case-level records for every unfair labor practice charge filed with the NLRB from calendar year 2016 through May 18, 2026 — 190,743 charges in total. Each record carries the filing date, the closing date and reason (where closed), the Region, and the allegation codes.<sup>7</sup>

### Scope decisions

- **Postal sector excluded.** Postal workers are not covered by the National Labor Relations Act, and the NLRB processes their charges under a separate legal framework with different procedural rules and remedies. The GC memos at the center of this analysis apply to NLRA cases; including postal charges would mix two distinct legal systems in a dataset designed to measure the effect of policy changes on one of them.
- **Primary focus on CA charges.** The analysis centers on the 125,043 non-postal charges against employers (“CA” cases), the caseload most exposed to the guidance under study. Charges against unions (“CB”) are used as a comparison group.
- **Era definitions.** Cases are assigned to the pre-Abruzzo, Abruzzo, or Cowen/Carey era by date — split at the actual memo dates of August 2021 and February 2025.

### A note on terminology

A charge is dismissed when the Region finds it lacks merit. A charge is settled when the parties resolve it, typically after the Region has found or signaled merit. A charge withdrawn after the charging party obtains relief (“withdrawal-adjusted”) is also a merit-favorable outcome. “Open inventory” here means charges filed in 2016 or later that remain unresolved as of a given date; it is internally consistent but does not include pre-2016 cases, so it is read for its trajectory rather than as the agency’s all-time pending total.

#### Limitations

This dataset has no flag indicating whether a charge was routed to the Division of Advice, and the Abruzzo guidance, a surge in filings, and chronic NLRB understaffing all occurred in the same window. The analysis therefore establishes timing and structure consistent with the guidance; it does not isolate the guidance as the sole cause. Section 6 addresses this directly.

## 3. The Backlog Tripled During the Abruzzo Era

From 2017 through 2020, the Board closed charges at roughly the rate it received them, and open inventory of non-postal CA charges held near 5,800–6,000. Beginning in 2022, closures fell sharply below filings and stayed there for three consecutive years. Open inventory climbed from 6,909 at the end of 2021 to 17,409 at the end of 2024 — a 152 percent increase in three years.

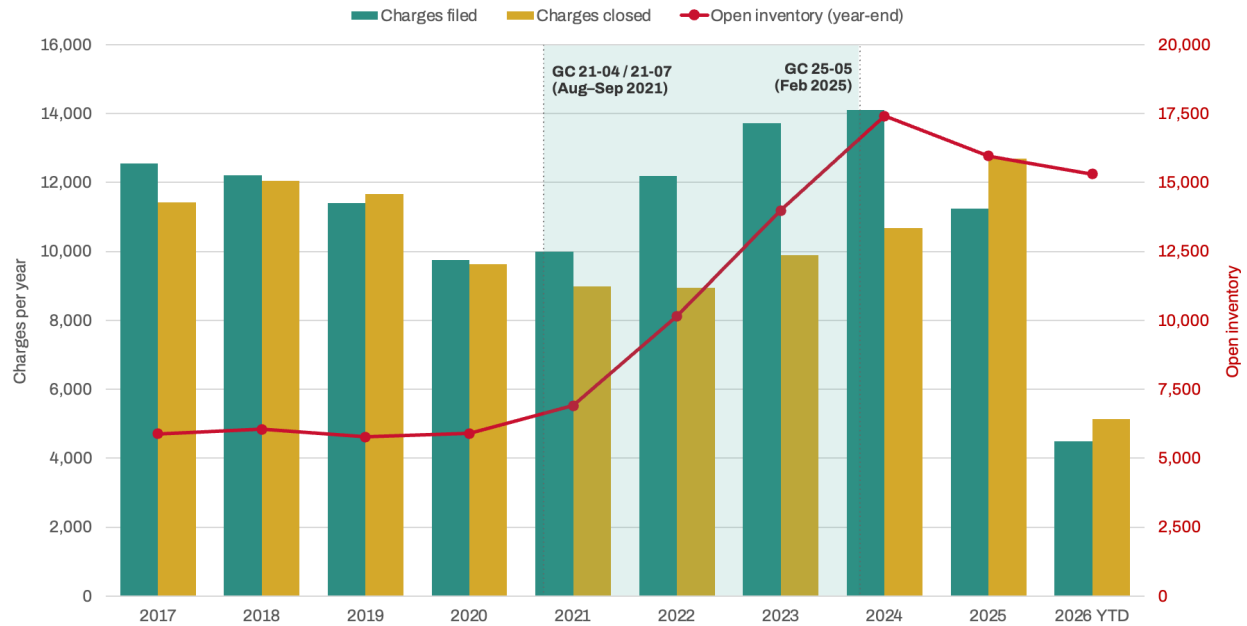


Figure 1. Non-postal CA charges filed and closed per year, with year-end open inventory. Inventory holds flat through 2020, then climbs steeply once closures fall below filings in 2022–2024.

The table below quantifies the gap. The “net change” column — filings minus closures — is positive (inventory growing) every year from 2022 through 2024, by roughly 3,200 to 3,800 charges annually. It turns negative in 2025 for the first time since 2020.

Year	Filed	Closed	Net change	Open inventory	Open >1 yr	Aged share
2017	12,553	11,429	+1,124	5,880	1,339	22.8%
2018	12,210	12,048	+162	6,042	1,783	29.5%
2019	11,399	11,664	-265	5,777	1,829	31.7%
2020	9,768	9,648	+120	5,897	2,280	38.7%
2021	9,998	8,986	+1,012	6,909	2,632	38.1%
2022	12,195	8,954	+3,241	10,150	3,630	35.8%
2023	13,728	9,898	+3,830	13,980	5,756	41.2%
2024	14,100	10,671	+3,429	17,409	8,528	49.0%
2025	11,246	12,696	-1,450	15,959	8,638	54.1%
2026 YTD	4,485	5,145	-660	15,299	8,027	52.5%

**The backlog also aged.** The inventory did not merely grow — it grew old. Charges open more than a year rose from 2,632 at the end of 2021 to 8,528 at the end of 2024, and the aged share of the open docket climbed past 50 percent. By the time the current General Counsel took office, more than half of the open employer caseload consisted of cases more than a year old.

## 4. The Slowdown Was a Front-End Collapse, Timed to GC 21-04

A backlog can grow for two reasons: more cases arrive, or each case takes longer to resolve. The data points clearly to the second. The most diagnostic measure is front-end resolution speed — the share of newly filed charges that close within 90 days, before a case can become backlog at all.

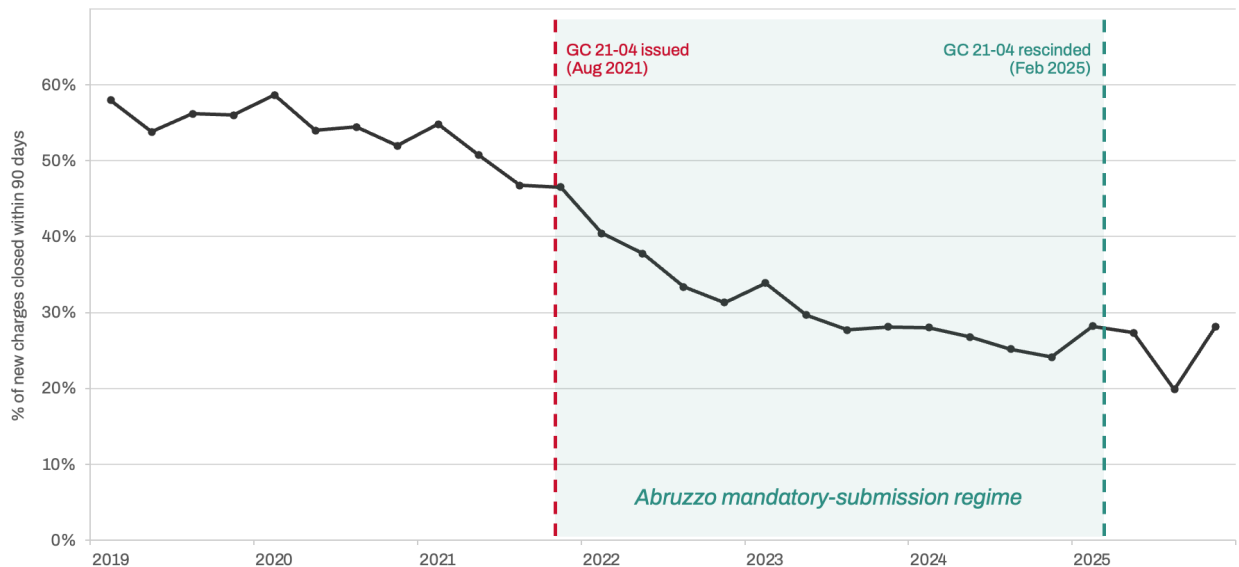


Figure 2. Share of each quarter's new CA charges resolved within 90 days of filing. The rate collapses beginning in Q3 2021 — the quarter GC 21-04 issued — and has not recovered.

Front-end resolution held steady near 55 percent from 2019 through mid-2021, then fell quarter after quarter beginning in Q3 2021, reaching roughly 25 percent by 2024. The break coincides with the issuance of GC 21-04 in August 2021.

**Why this points to the procedural bottleneck.** The measure that collapsed is fast disposition of every kind — quick dismissals and quick withdrawals, not only settlements. A settlement-remedy memo makes settlements harder to close but would not prevent a Region from quickly dismissing a meritless charge. A mandatory-submission requirement freezes all fast disposition until headquarters responds. The collapse of all front-end resolution — not settlements alone — fits the procedural bottleneck of GC 21-04 more closely than the settlement-remedy memo.

Tracking filing cohorts confirms the pattern. The table reads as the share of a year's charges resolved by a given age. Pre-Abruzzo cohorts cleared 56 percent of their charges within three months and 86 percent within a year. Abruzzo-era cohorts cleared only about a third within three months, and the gap persists even at two years.

Filing cohort	Resolved by 3 mo.	by 6 mo.	by 12 mo.	by 24 mo.
Pre-Abruzzo (2017–19)	56%	72%	86%	94%
Abruzzo era (2022–23)	33%	49%	64%	80%
2024 cohort	26%	40%	59%	—
2025 cohort (post-rescission)	26%	38%	~58% (estimate)	—

## 5. Today’s Closures Are Liquidation of the Abruzzo-Era Backlog

The closure surge of 2025 — 18,280 ULP charges closed across the docket (15,126 excluding postal cases) the highest figure since 2019 — is not a sign of faster current work. Segmenting each closed charge by the era in which it was originally filed shows that the agency is working off old inventory.

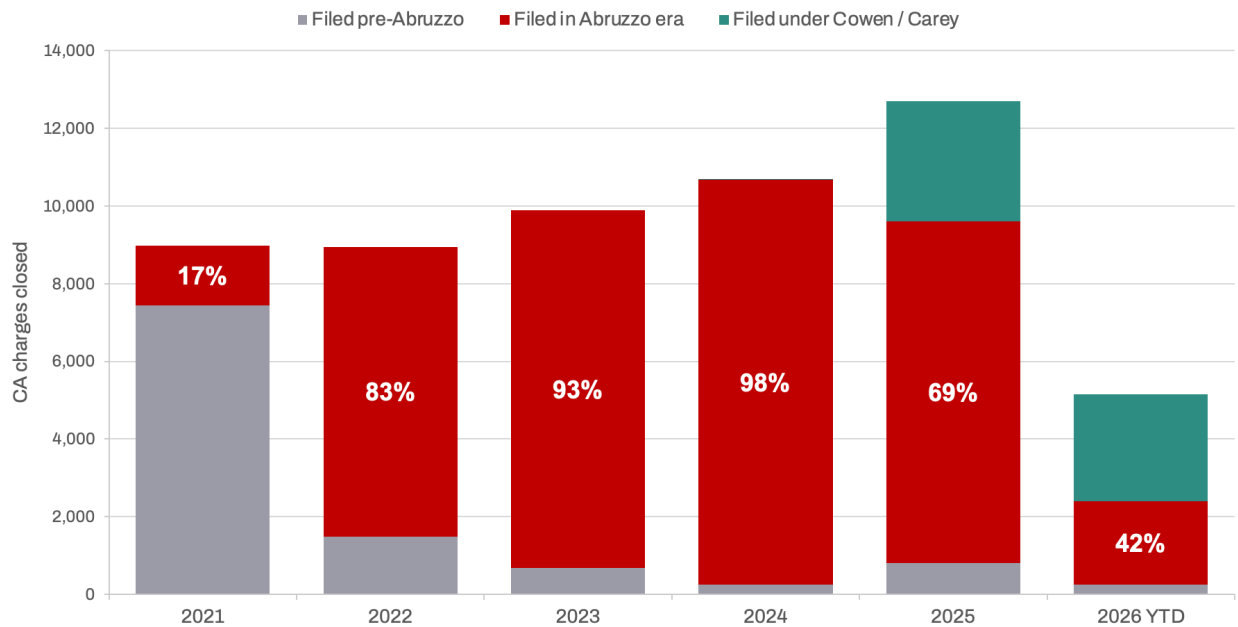


Figure 3. Non-postal CA charges closed each year, by the era in which the charge was filed. The 2025 closure volume is dominated by charges filed during the Abruzzo era.

In 2025, 69 percent of CA closures were charges filed during the Abruzzo era; only 24 percent were new charges filed under the current leadership. By 2026 year-to-date the mix has shifted as the old inventory is drawn down, but the 2025 surge is, by volume, roughly three-quarters backlog liquidation.

Charges closed in	Filed pre-Abruzzo	Filed in Abruzzo era	Filed under Cowen/Carey
2023	680 (6.9%)	9,218 (93.1%)	0
2024	255 (2.4%)	10,415 (97.6%)	1
2025	812 (6.4%)	8,796 (69.3%)	3,088 (24.3%)
2026 YTD	258 (5.0%)	2,135 (41.5%)	2,752 (53.5%)

**The cases being resolved are old.** A CA charge that settles under the current leadership is a median of 657 days old at the moment of settlement — compared with 279 days before 2021 and 368 days during the Abruzzo era. Fully 84 percent of charges settled in the Cowen/Carey period are more than a year old. The agency is resolving 2022–2023 vintage disputes, not current ones.

### The hole, quantified

When the current General Counsel took office in January 2026, the non-postal employer docket carried roughly 16,000 open charges, of which about 8,600 — 54 percent — were more than a year old. That aged inventory is the direct product of the 2021–2024 period and is the hole the current leadership is working to clear.

## 6. Enforcement Priorities, Not Staffing, Drove the Backlog

Some argue that the agency’s case backlog is straightforward arithmetic: filings surged while Congress kept the NLRB budget flat and headcount declined. On its face, the math is accurate. According to the NLRB FY2024 Performance and Accountability Report regional case intake grew roughly 47 percent between FY2021 and FY2024, while the agency’s total full-time equivalent workforce held near 1,200 — a level already 30 percent below its FY2010 peak.

But blaming the backlog on staffing requires case volume to be the only variable that changed. It was not. A parallel shift in how cases were processed, which tracks directly with the enforcement priorities of Biden-era General Counsel Jennifer Abruzzo, contributed independently and substantially to the backlog. The evidence is in the processing-time record and the collapse of informal settlements.

**What the Staffing Argument Gets Right.** NLRB staffing has declined significantly over the past decade and a half. The table below draws on NLRB budget justifications and the FY2024 Performance and Accountability Report.<sup>8</sup>

Fiscal Year	Cases Filed (Regional)	Total FTE	Median Days to Close	Informal Settle Rate
2019 (pre-Abruzzo)	20,385	~1,281	66 days	8.2%
2022 (Year 2, Abruzzo)	21,214	~1,200	102 days	9.0%
2023 (Year 3, Abruzzo)	23,077	~1,200	131 days	6.2%
2024 (Year 4, Abruzzo)	24,626	1,199	128 days	3.6%

*Sources: NLRB FY2026 Budget Justification; NLRB FY2024 Performance and Accountability Report; GAO-21-242 Informal settlement rate based on cases closed during that fiscal year.*

Staffing constraints are real. Field offices were 62 percent larger in FY2011 than in FY2024, according to the FY2024 PAR. Bloomberg Law reported in February 2026 that field operations were understaffed by 23 percent, with approximately 510 employees managing a caseload requiring roughly 670.<sup>9</sup> These numbers warrant attention. The critical question is not whether staffing matters, but whether staffing alone explains the backlog trajectory. The data shows it does not.

**The Historical Record Undermines the Staffing Explanation.** Before examining the 2019–2024 period, the longer record matters. Between FY2010 and FY2019, the NLRB’s total workforce fell from approximately 1,733 to 1,281 employees — a 26 percent decline over nine years. Regional offices absorbed most of it: GAO 21-242 found that regional staff fell 33 percent over that period, against 8 percent at headquarters.<sup>10</sup> Yet median processing time for closed cases in FY2019 was 66 days — essentially at baseline.

The 2019 baseline is not a pre-staffing-reduction benchmark. It is a post-reduction benchmark, set after the steepest workforce cuts the agency experienced in modern history. By 2019 the NLRB had

already absorbed the loss of more than one in four employees, and its case resolution time showed no material effect.

*If losing 26 percent of its workforce over nine years left processing time at 66 days, a further 6 percent decline in casehandling staff from 2019 to 2024 cannot explain a 98 percent increase in processing time.*

**The Throughput Model: How Much Can Staffing Explain?** To give the staffing explanation its maximum possible credit, we apply a linear throughput model: if cases per handler increase by X percent, resolution time increases by X percent. This is the most generous possible assumption for the staffing explanation, since it assumes processing time scales directly with caseload, with no adjustment for experience, prioritization, or the types of cases being handled. This model almost certainly overstates the impact of caseload on throughput, since a natural reaction to increased caseload is to try to settle as many cases as possible.

Using total FTE figures from GAO and NLRB budget documents, cases per employee rose from 15.9 in FY2019 to 20.5 in FY2024 — a 29 percent increase.<sup>11</sup> Applied to the 2019 median of 66 days, the model predicts the following staffing-attributable processing times:

Year	Cases per Handler	vs. 2019	Staffing-Predicted Median	Actual Median	Policy-Attributable Days	Policy Share
2022	24.9	+11%	73 days	102 days	29 days	~80%
2023	27.1	+21%	80 days	131 days	51 days	~79%
2024	28.9	+29%	85 days	128 days	43 days	~69%

*Source: LRI analysis of NLRB case records; NLRB FY2026 Budget Justification. Staffing-predicted median applies linear throughput model to 2019 baseline of 66 days.*

Under the most generous possible staffing model, staffing accounts for 20 to 30 percent of the observed processing slowdown. Enforcement priorities account for 70 to 80 percent. The staffing effect is a factor; it is not the primary explanation.

**The Processing-Time Evidence.** The table below is drawn from NLRB case records for FY2019 through FY2024. Processing-time figures reflect only cases that actually closed, not cases sitting in the open pipeline. This is the most direct measure of how long the agency took to resolve cases it completed.

Year Filed	Cases Filed	Median Days to Close	Informal Settlements	Informal Settle Rate	Cases >180 Days
2019	20,385	66	1,661	8.2%	4,554
2020	16,700	69	1,288	7.9%	3,631
2021	17,289	72	1,515	9.0%	4,106
2022	21,214	102	1,811	9.0%	6,951
2023	23,077	131	1,303	6.2%	8,980
2024	24,626	128	739	3.6%	8,464

*Highlighted rows indicate years of the Abruzzo GC tenure. Source: LRI analysis of NLRB case records.*

Between FY2019 and FY2023, regional case intake grew 13 percent. Median processing time for closed cases grew 98 percent, from 66 days to 131 days. The number of cases taking more than 180 days to close grew 97 percent over the same period. These are not proportional responses to a volume increase. They signal a structural change in how cases moved through the system.

If staffing were the sole driver, the throughput model predicts processing times would have risen to 73 to 85 days. Instead, they reached 102 to 131 days, 40 to 64 percent above even the staffing-adjusted prediction. Something changed about how cases were handled, not just how many arrived.

**The Informal Settlement Collapse — and Its Timing.** Informal settlements are the agency's most efficient resolution mechanism: cases resolved through negotiated agreements before a formal complaint is issued. Historically, informal settlements accounted for roughly 8 to 9 percent of closed cases.

Between FY2019 and FY2024, case intake increased 20 percent. Informal settlements fell 55 percent, from 1,661 to 739. The informal settlement rate dropped from 8.2 percent of closed cases in FY2019 to 3.6 percent in FY2024. If volume were the controlling variable, settlements would have grown proportionally with intake, not collapsed.

The timing of the collapse is as significant as its size. In FY2021 and FY2022, both after staffing had already reached its reduced level, the informal settlement rate was 9.0 percent in both years, above the 2019 baseline of 8.2 percent. A staffing-adjusted throughput model predicts the rate should have been approximately 7.4 percent in FY2022 given the heavier caseload per handler. Instead, it exceeded the pre-Abruzzo baseline.

If staffing were the cause of the eventual collapse, rates should have declined steadily beginning in FY2021 when staffing first hit the reduced level. They did not. They held at or above baseline through FY2022, then fell sharply in FY2023 (6.2 percent) and FY2024 (3.6 percent). The collapse tracks the policy timeline, not the staffing timeline.

The mechanism is traceable. GC Memos 21-06, 21-07, and 22-06 changed the terms on which settlement was available. Cases that previously settled quickly at modest cost now required extended negotiation over remedy scope, forcing many employers to choose litigation over accepting unprecedented and disproportionate settlement demands. The adjusted withdrawal figures (cases where a charging party withdrew after obtaining some relief) held relatively stable through FY2023, suggesting cases were still eventually resolving, just far more slowly. The informal settlement path effectively shut down.

**Distinguishing the Two Explanations.** The staffing argument and the enforcement-priority argument generate different observable predictions. On every measurable dimension, the data fits the enforcement-priority explanation and does not fit the staffing-only explanation. Even accounting for the heavier caseload per handler, the staffing model predicts medians of 73 to 85 days across 2022 to 2024 — 40 to 64 percent below what actually occurred.

Metric	Predicted by Staffing Shortage	Staffing-Adjusted Prediction	What the Data Shows
Processing time per closed case	Unchanged	73–85 days	<b>102–131 days</b>
Informal settlement rate	Proportional to intake	~7–8%	<b>Collapsed to 3.6% (2024)</b>
Cases >180 days (closed)	Grows with intake (~13%)	Grows with intake (~13%)	<b>Grew 97%</b>
Backlog growth vs. intake growth	Proportional	Proportional	<b>Backlog grew 8× faster (2019–2024)</b>

Source: LRI analysis of NLRB case records.

**Two Problems, Not One.** NLRB staffing remains a legitimate concern. Case intake grew faster than staffing could accommodate, particularly during the FY2022–FY2024 surge, and addressing intake-to-capacity ratios is a management challenge that transcends any particular administration’s enforcement philosophy. However, the bulk of the current backlog is the product of the deliberate shift in enforcement priorities during the Abruzzo era.

The push for extreme remedies untethered from the underlying charges made it impossible to resolve cases that would have settled quickly in prior administrations of either party. Average case resolution time extended from 66 days to 131 days. Cases that previously moved quickly through informal settlement channels instead required extended negotiation, additional investigation, and in some cases litigation that would not otherwise have occurred. That processing slowdown generated approximately 6,700 excess open cases above what either baseline would predict, independent of the intake surge. Section 7 examines which employers have been carrying the cost of that delay.

## 7. Who Bears the Cost: The Backlog’s Impact on Small Employers

**The Size of the Affected Workplaces.** The NLRB’s case records include a field for the number of employees covered by each charge. Of 23,628 open cases with employee count data, the distribution by workplace size is as follows.

Workplace Size (Employees on Charge)	Open Cases	Share of Docket	Cumulative Share
<b>Micro — 1 to 10 employees</b>	<b>3,047</b>	<b>12.9%</b>	12.9%
<b>Small — 11 to 50 employees</b>	<b>7,475</b>	<b>31.6%</b>	44.5%
<b>Mid-small — 51 to 100 employees</b>	<b>3,977</b>	<b>16.8%</b>	61.3%
Mid-size — 101 to 500 employees	5,096	21.6%	82.9%
Large — 501 to 1,000 employees	1,732	7.3%	90.2%
Enterprise — 1,000+ employees	2,301	9.7%	100.0%
<b>Total (≤100 employees, no large employers)</b>	<b>14,499</b>	<b>61.4%</b>	—

Source: LRI analysis of NLRB case records database. Shaded rows 100 or fewer employees covered by the charge.

Sixty-one percent of all open cases (roughly 14,500) involve workplaces with 100 or fewer employees. Forty-five percent involve workplaces with 50 or fewer. The distribution is not driven by the high-profile national campaigns. After filtering out the 1,366 open cases tied to known large national employer chains (Amazon, Starbucks, Kroger, and other comparable national employers), the sub-100 share stays essentially unchanged at 61.5 percent.

**Why the Abruzzo-Era Guidance Hit Small Employers Harder.** The enforcement-priority changes documented in Section 6 did not fall evenly. The full-remedy settlement mandate (GC Memos 21-06, 21-07, and 22-06) created structural disadvantages for small employers that larger ones could manage or absorb.

- **No settlement discount, no exit ramp.** Large employers can afford to settle cases even when the damages amount is disproportionately high. A regional distributor with 40 employees cannot. Before the Abruzzo-era guidance, a small employer facing a single-discharge charge could negotiate a practical resolution and move on. The full-remedy mandate replaced that with a take-it-or-litigate choice that small employers can't sustain.
- **Consequential damages are harder to value at small employers.** A charge involving health insurance lapse, credit-rating damage, and moving costs is more disruptive to defend and price at a single-location employer with no HR infrastructure than at a company with a dedicated legal function. The open-ended remedy categories the Abruzzo-era guidance demanded turned simple back pay cases into potentially catastrophic economic decisions for a small employer.
- **There is no legal department to hand it to.** When a large employer declines to settle, it hands the matter to its labor relations team or outside counsel and moves on operationally. When a small employer declines, the owner or a single HR generalist is managing a federal administrative proceeding while also running the business. The full-remedy mandate didn't just make settlements harder to reach; it raised the cost of the alternative in a way that falls almost entirely on the employer least able to bear it.

Of the roughly 14,500 open cases at workplaces with 100 or fewer employees, approximately 9,800 were filed during the Abruzzo era, between August 2021 and February 2025. Those are cases that entered a system that was restructured in a way that guarantees slow resolution. Most of them are still open.

*For a small employer, an open NLRB charge is not a line item in a legal budget. It is a cloud over every subsequent employment decision: whether to discipline a poor performer, whether to enforce an attendance policy, whether to hire for the position the charging party vacated. The Abruzzo-era backlog imposed that uncertainty on more than 14,000 small workplaces for two years and counting.*

## 8. Conclusion

During the Abruzzo era, the NLRB's front-end case resolution collapsed in lockstep with the August 2021 issuance of GC 21-04, and the inventory of open employer charges tripled and aged. That inventory is, in practical terms, an employer-case backlog: at the 2024 peak, employer charges were 87 percent of all open non-postal ULP cases. Cases closed since the February 2025 rescissions are, by a large margin, the liquidation of that accumulated backlog. Roughly seven in ten charges closed in 2025 were Abruzzo-era filings, and the cases being resolved are old.

The bulk of that backlog is the direct product of the prior administration's enforcement priorities, not staffing. The numbers are unambiguous on this point: processing time per closed case roughly doubled, and the informal settlement rate collapsed by more than half. Neither of these changes would be predicted by staffing shortages alone.

Applying the FY2019 baseline to FY2022–FY2024 filings yields approximately 6,700 excess open cases attributable to processing slowdown, independent of intake growth. Sixty-one percent of currently open cases involve workplaces with 100 or fewer employees: the employers least able to absorb excessive remedy demands that would otherwise resolve quickly. The current General Counsel has removed the procedural bottlenecks largely responsible for this inherited backlog, and the 2025–2026 closure numbers show the work of clearing it is underway.

Prepared by LRI Consulting Services. Analysis based on 190,743 unfair labor practice charges filed with the National Labor Relations Board, January 2016 through May 18, 2026. Figures for 2026 are year-to-date.

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<sup>1</sup> Memorandum from Jennifer Abruzzo, Gen. Counsel, Nat'l Labor Relations Bd., to All Regional Directors, Officers-in-Charge, and Resident Officers, GC 21-04, Mandatory Submissions to Advice (Aug. 12, 2021), <https://apps.nlr.gov/link/document.aspx/09031d4583506e0c> (last visited May 29, 2026), *rescinded* by Memorandum from William B. Cowen, Acting Gen. Counsel, Nat'l Labor Relations Bd., GC 25-05, Rescission of Memoranda (Feb. 14, 2025) (see *infra* note 5).

<sup>2</sup> Memorandum from Jennifer Abruzzo, Gen. Counsel, Nat'l Labor Relations Bd., to All Regional Directors, Officers-in-Charge, and Resident Officers, GC 21-07, Full Remedies in Settlement Agreements (Sept. 15, 2021), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-seeking-full-relief> (last visited May 29, 2026), *rescinded* by GC 25-05 (see *infra* note 5).

<sup>3</sup> Memorandum from Jennifer Abruzzo, Gen. Counsel, Nat'l Labor Relations Bd., to All Regional Directors, Officers-in-Charge, and Resident Officers, GC 21-06, Seeking Full Remedies (Sept. 8, 2021), <https://www.nlr.gov/news-outreach/news-story/nlr-general-counsel-jennifer-abruzzo-issues-memo-on-seeking-all-available> (last visited May 29, 2026), *rescinded* by GC 25-05 (see *infra* note 5).

<sup>4</sup> Memorandum from Jennifer Abruzzo, Gen. Counsel, Nat'l Labor Relations Bd., to All Regional Directors, Officers-in-Charge, and Resident Officers, GC 22-06, Update on Efforts to Secure Full Remedies in Settlements (June 23, 2022), <https://apps.nlr.gov/link/document.aspx/09031d45837c61b8> (last visited May 29, 2026), *rescinded* by GC 25-05 (see *infra* note 5).

<sup>5</sup> Memorandum from William B. Cowen, Acting Gen. Counsel, Nat'l Labor Relations Bd., GC 25-05, Rescission of Memoranda (Feb. 14, 2025) (rescinding twenty-nine Abruzzo-era memoranda, including GC 21-04, GC 21-06, GC 21-07, and GC 22-06), <https://apps.nlr.gov/link/document.aspx/09031d4583f3f58c> (last visited May 29, 2026).

<sup>6</sup> Memorandum from Crystal Carey, Gen. Counsel, Nat'l Labor Relations Bd., GC 26-02 (2026), <https://apps.nlr.gov/link/document.aspx/09031d45841ad163> (last visited May 29, 2026); Memorandum from Crystal Carey, Gen. Counsel, Nat'l Labor Relations Bd., GC 26-03 (Feb. 27, 2026), <https://apps.nlr.gov/link/document.aspx/09031d45841ea072> (last visited May 29, 2026).

<sup>7</sup> LRI Consulting Servs., Inc., Analysis of Non-Postal Unfair Labor Practice Charges Filed with the Nat'l Labor Relations Bd., 2016–2026 (May 18, 2026) (unpublished analysis, on file with LRI Consulting Services, Inc.) [hereinafter LRI Analysis]. Data derived from NLRB Case Activity Search, <https://www.nlr.gov/case-activity/case-search> (last visited May 18, 2026) and the LRI Consulting Services labor relations databases, <https://LRIRightnow.com> (last visited May 18, 2026). The dataset comprises 190,743 charge records; each record includes filing date, closing date and reason (where applicable), Region, case type, and allegation codes. Processing times calculated from date filed to date closed for resolved cases; records with processing times exceeding 3,650 days excluded as anomalies. Underlying data available upon request.

<sup>8</sup> Nat'l Labor Relations Bd., FY2024 Performance & Accountability Report (2024) [hereinafter FY2024 PAR], [https://www.nlr.gov/sites/default/files/attachments/pages/node-130/nlr\\_fy2024\\_par\\_508.pdf](https://www.nlr.gov/sites/default/files/attachments/pages/node-130/nlr_fy2024_par_508.pdf) (last visited May 29, 2026).

<sup>9</sup> *Labor Board Regions Struggle With Understaffing as Cases Pile Up*, Bloomberg L., Feb. 10, 2026, <https://news.bloomberglaw.com/daily-labor-report/labor-board-regions-struggle-with-understaffing-as-cases-pile-up> (subscription required). Report cites internal NLRB personnel data reviewed by Bloomberg Law.

<sup>10</sup> U.S. Gov't Accountability Off., GAO-21-242, *National Labor Relations Board: Meaningful Performance Measures Could Help Improve Case Quality, Organizational Excellence, and Resource Management* (Mar. 2021), <https://www.gao.gov/assets/gao-21-242.pdf> (last visited May 29, 2026).

<sup>11</sup> Nat'l Labor Relations Bd., FY2026 Congressional Budget Justification 14 (2025), <https://www.nlr.gov/sites/default/files/attachments/pages/node-155/performance-budget-justification-2026.pdf> (last visited May 29, 2026). FY2024 actual casehandling FTE: 853; total FTE: 1,199. The FY2019 casehandling FTE

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estimate (~911) is derived by applying the FY2024 casehandling-to-total-FTE ratio ( $853/1,199 = 71.1\%$ ) to GAO's reported FY2019 total FTE of 1,281. See *supra* note 10. This figure is an estimate, not a directly reported value.