

Managing Judicial Performance: A Comparison of German Labor Court Judges with U.S. Administrative Law Judges at the NLRB

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**Presentation at the ABA meeting, April 18 2002 . Comments
are highly welcome! I'm about to finish a working paper on
the subject. Any body interested, please contact me:**

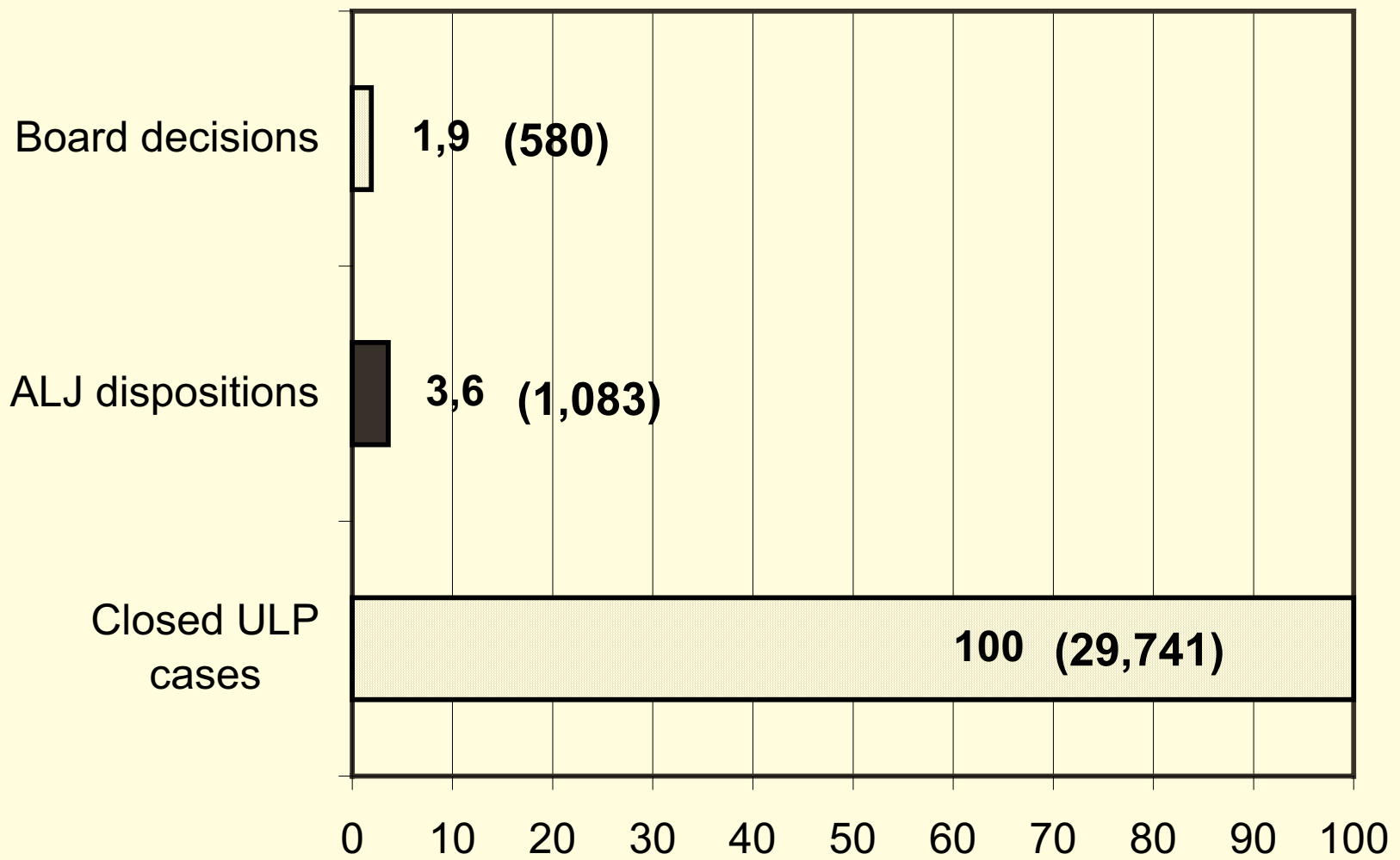
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Structure

- 1 Why the Comparison? “No Carrots, No Sticks”
- 2 Theory: Managing Organizational Culture
- 3 Case Study Results: Three Similarities in Performance Management
- 4 Implications for Improving Administrative Rules

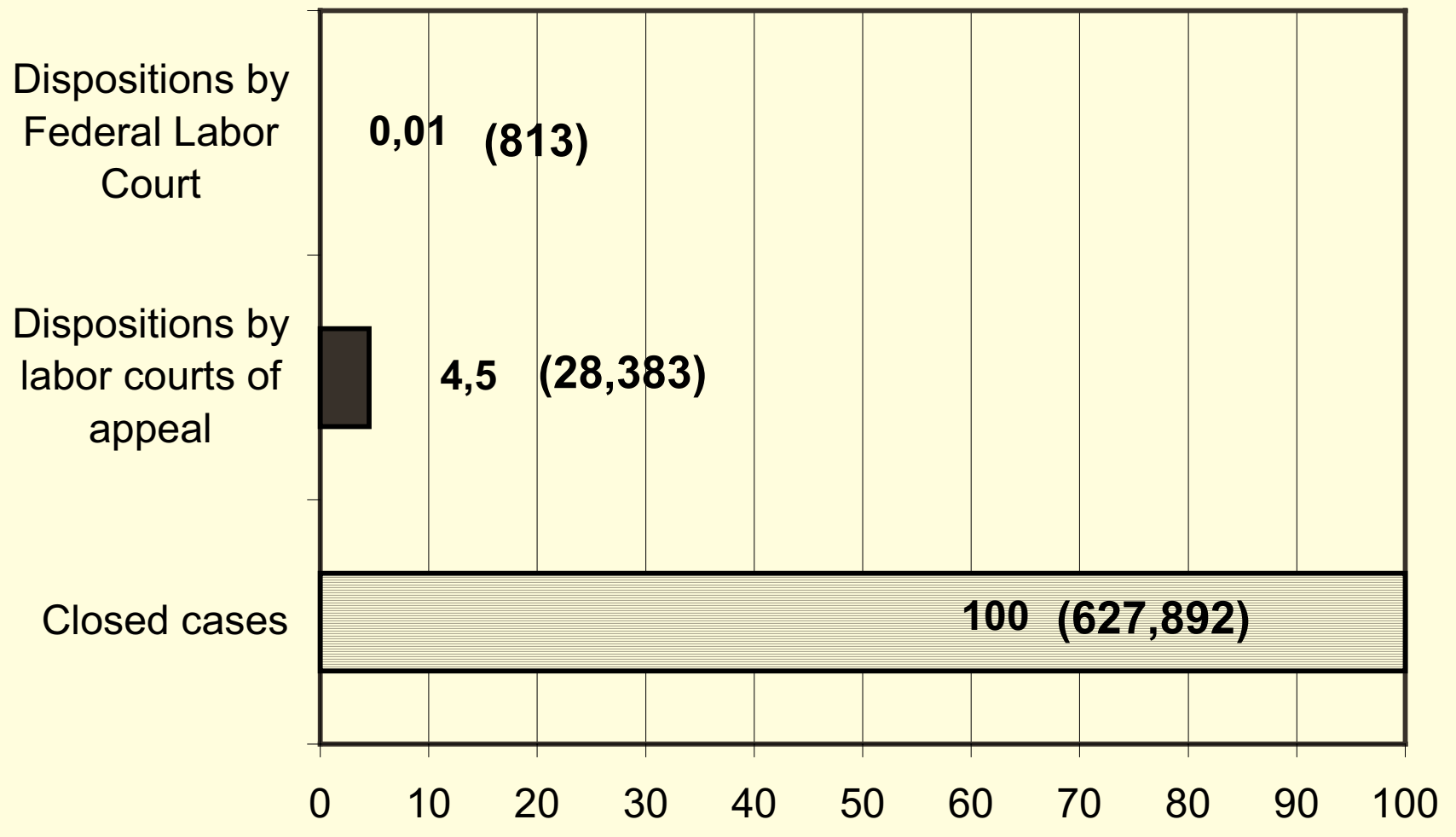
Caseload of division of judges relative to other stages of procedure (1999)

Share of all closed cases in percent (absolute)



Caseload of labor courts of appeal relative to other stages of procedure (1999)

Share of all closed cases in percent (absolute)



Labor adjudication as a professional job

Task complexity

Deciding as pigeonholing

Mediation, Timeliness

High skills

Tacit skills

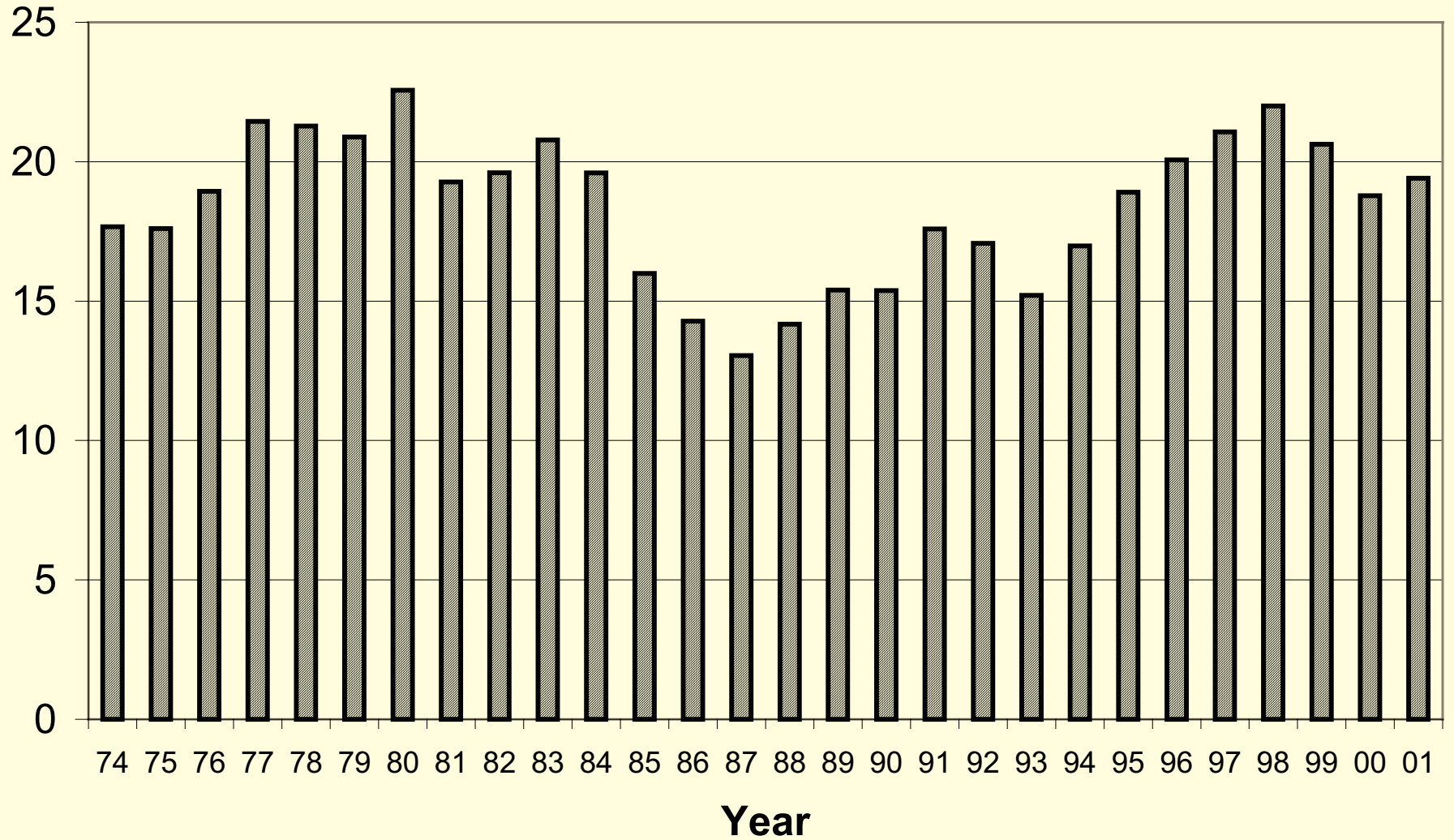
Similar entry age and experience

Autonomy (judicial independence)

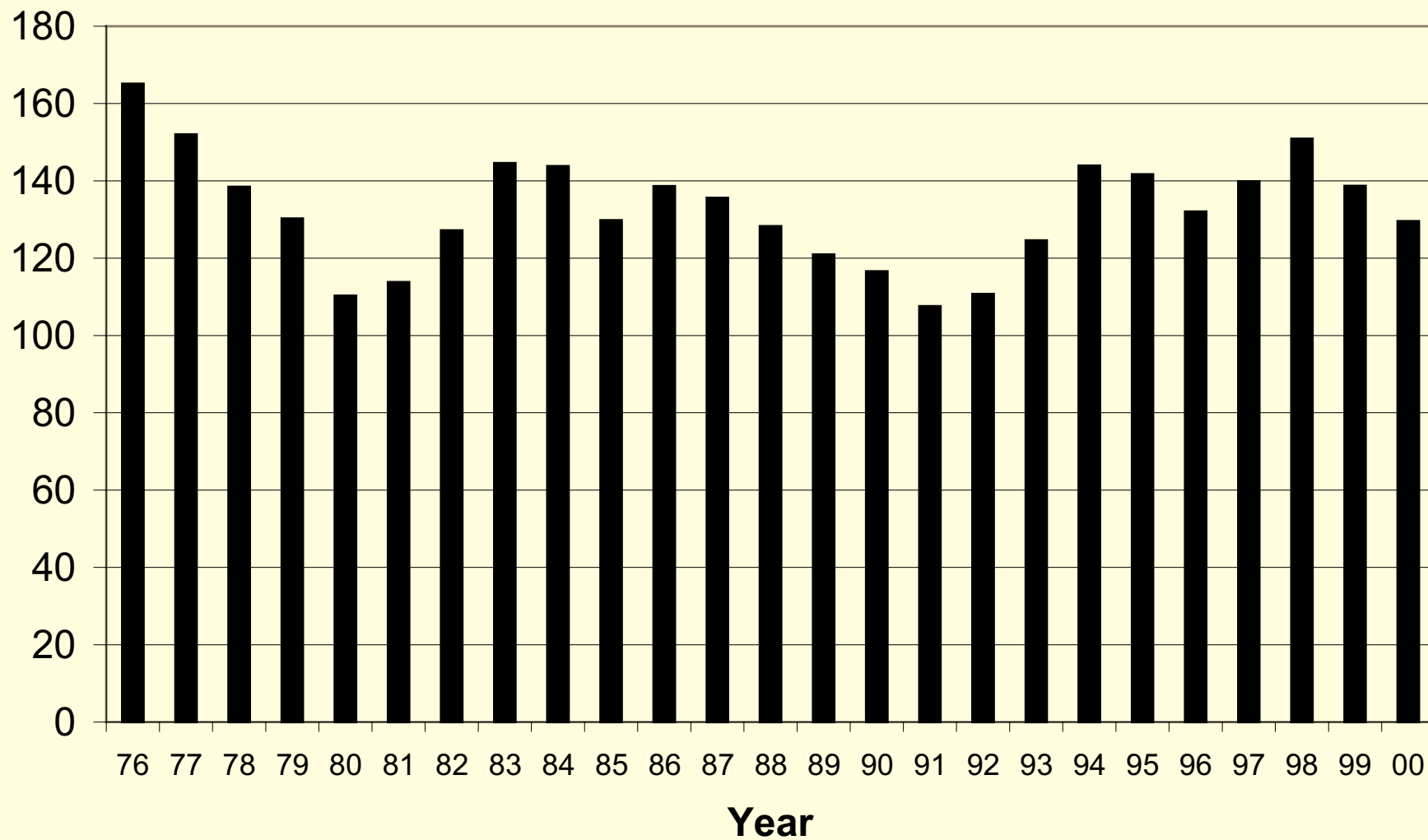
Exempt from some controls (tenure, fixed wage)

Sense of autonomy

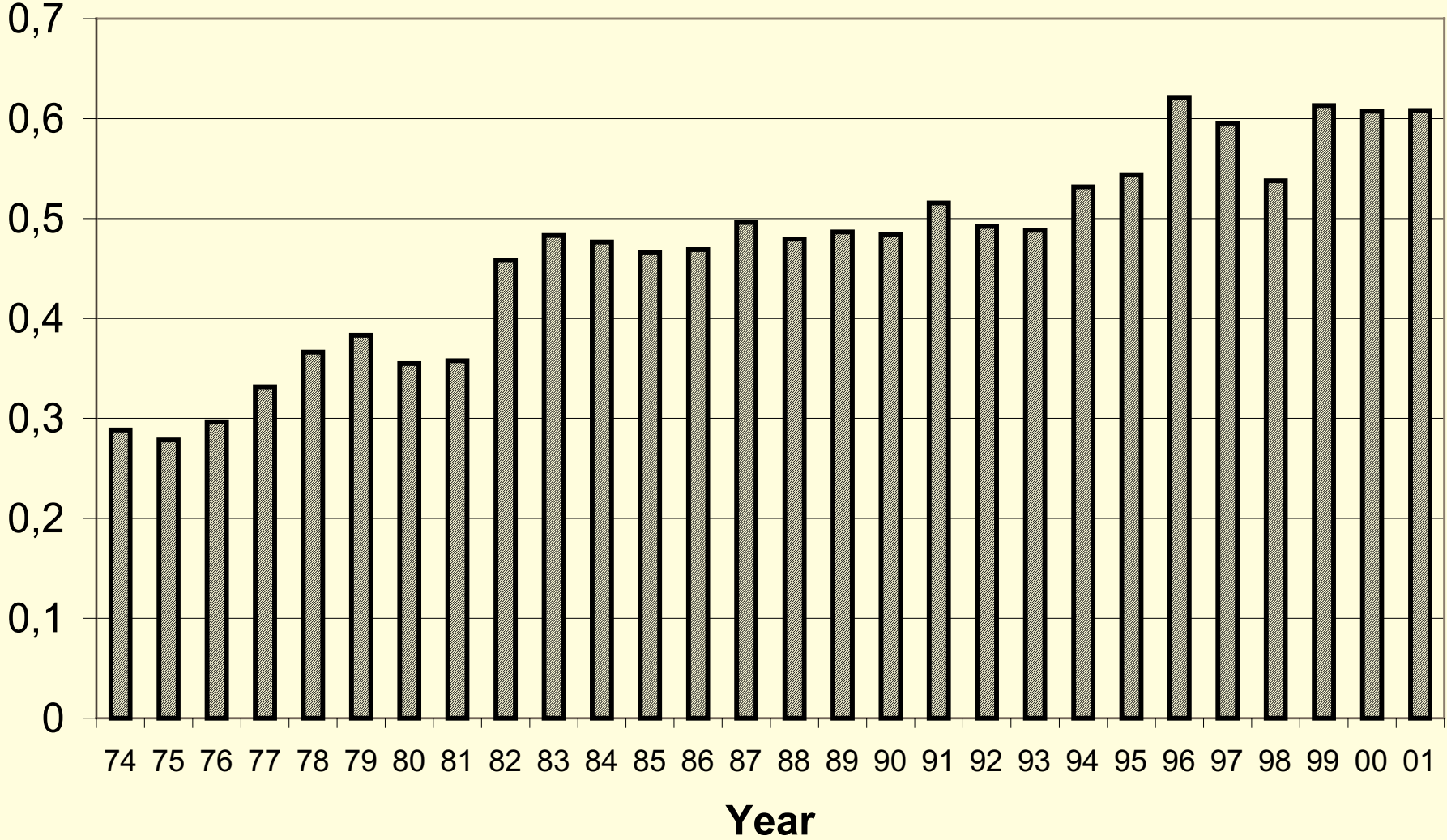
Workload per judge NLRB division of judges



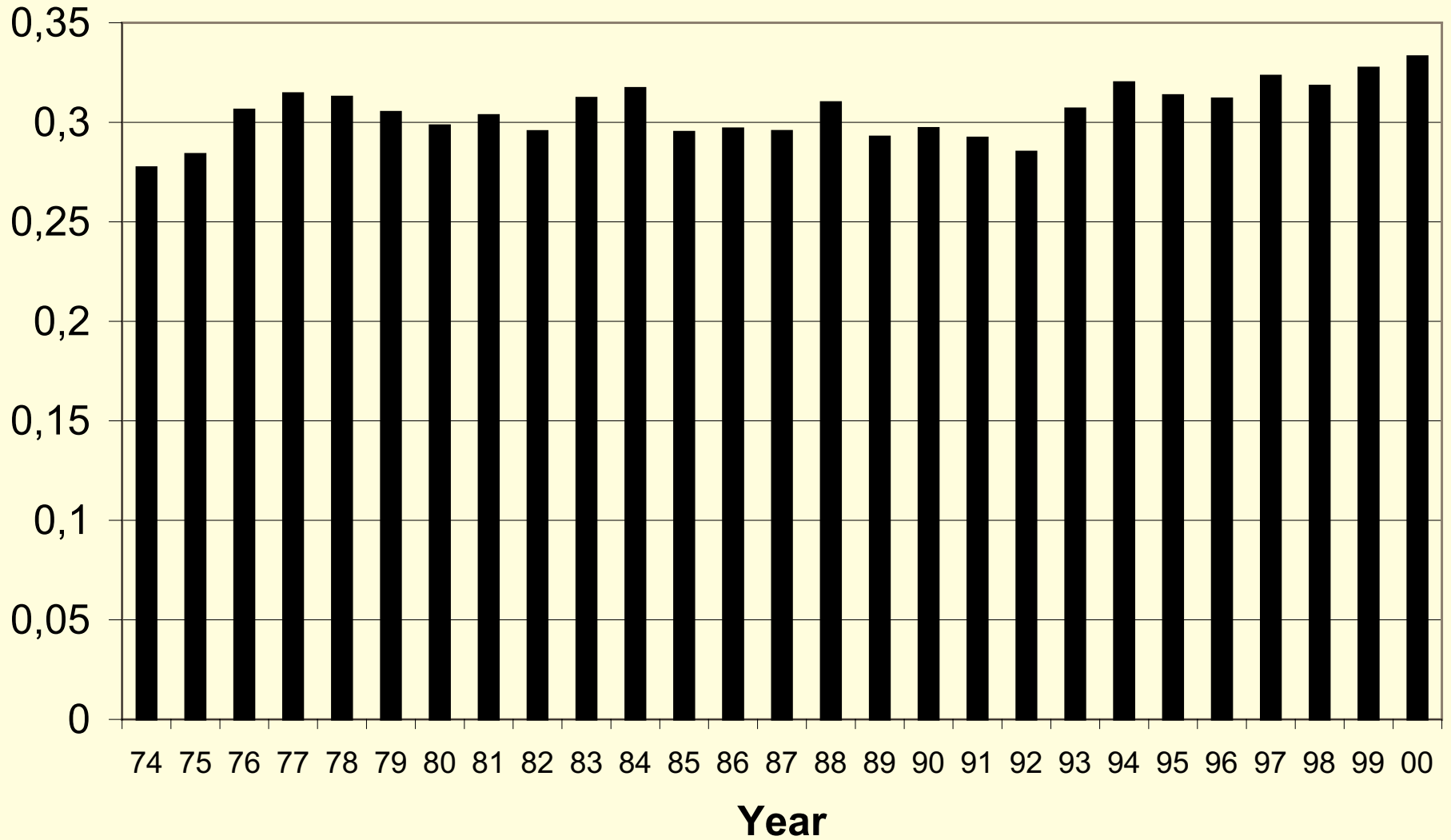
Workload per judge German labor courts of appeal



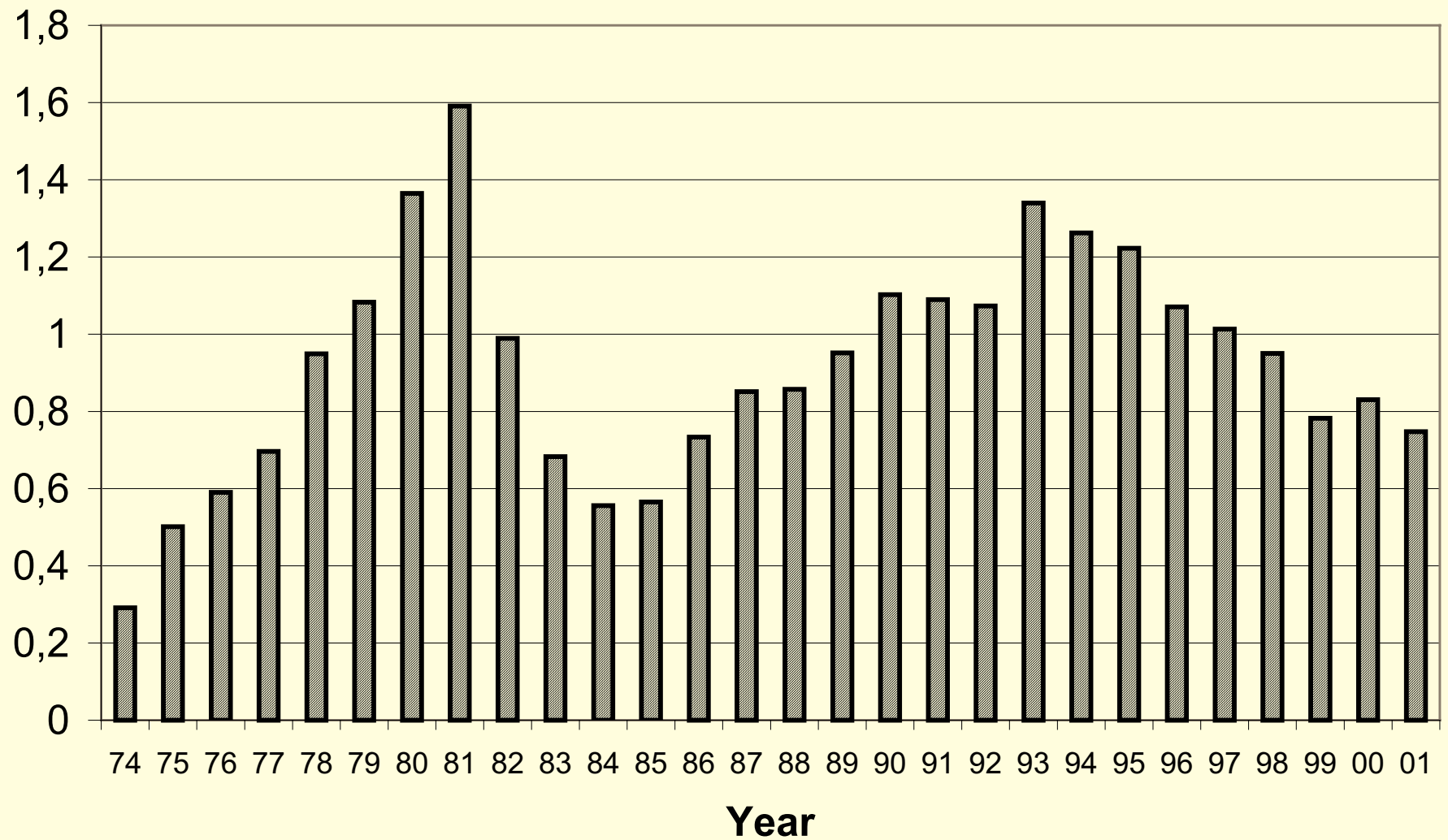
Settlement rate NLRB division of judges



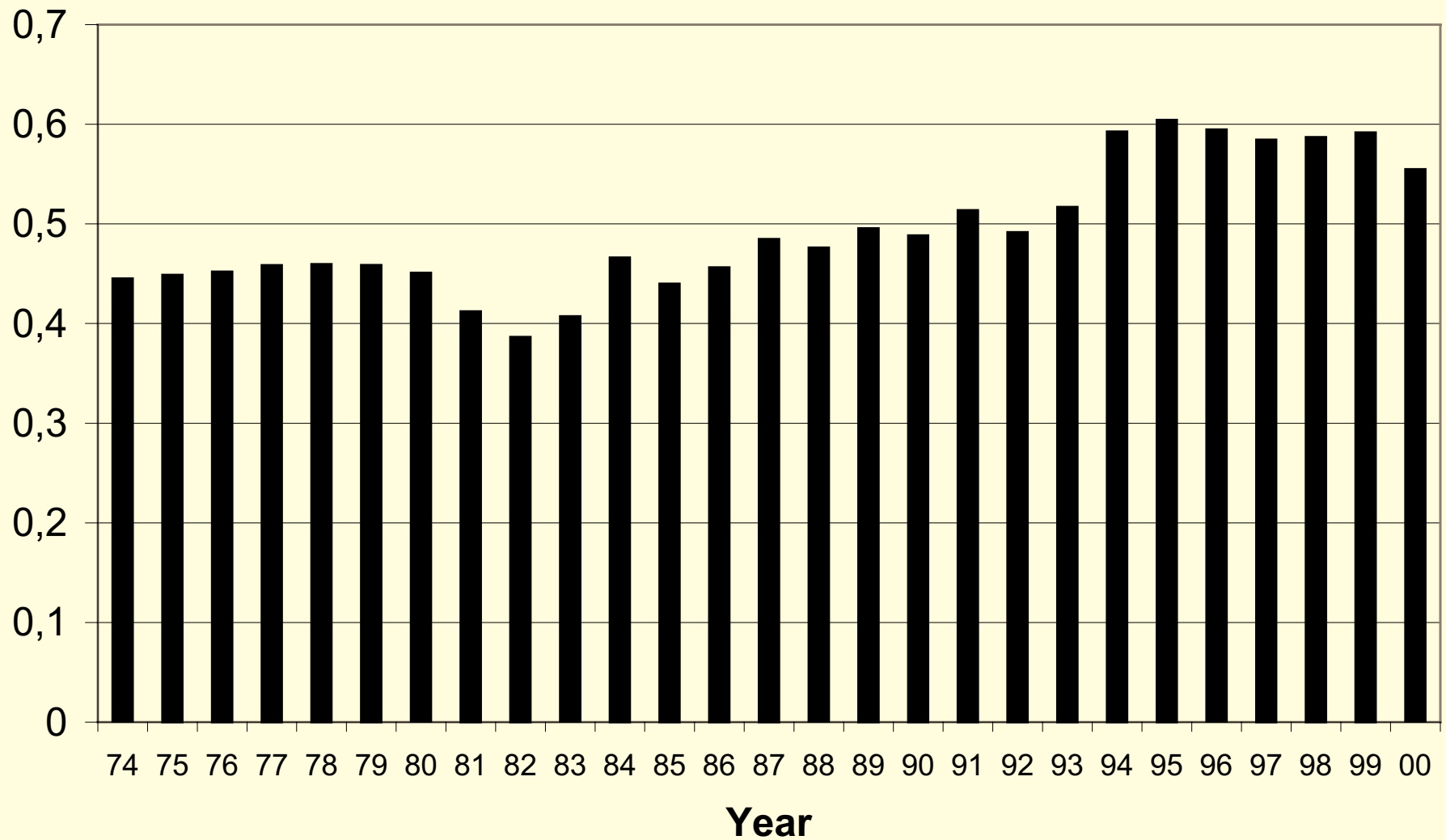
Settlement rate German labor courts of appeal



Pending cases relative to closed cases NLRB division of judges



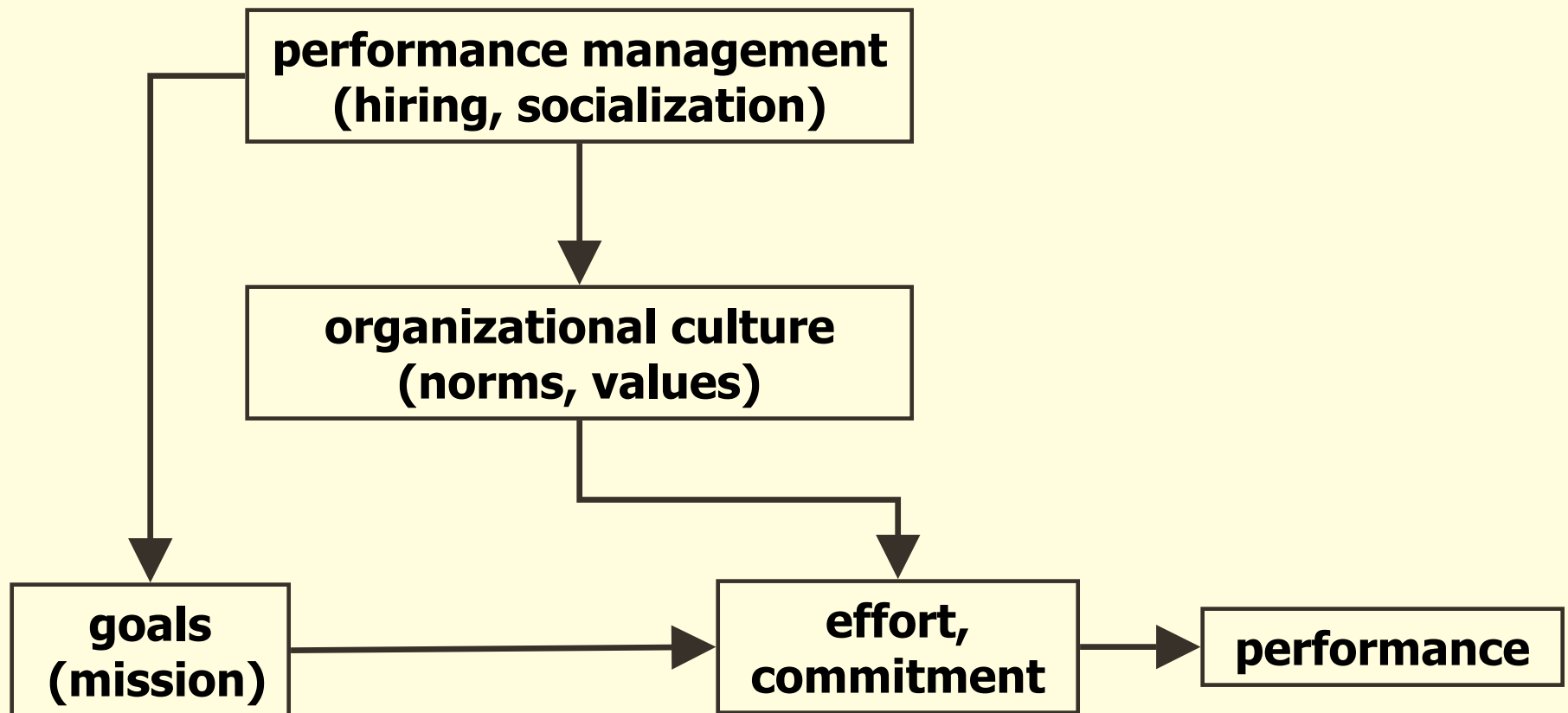
Pending cases relative to closed cases: German labor courts of appeal



How can performance be managed in the absence of high-powered incentives?

“only the powers of persuasion – and, perhaps, the benefits of peer pressure and professional education – are available” (Gellhorn et al. 1987: 868)

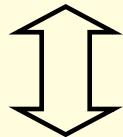
A Theory of main links between management and performance



(1) Delegation of administrative tasks to peer judges

NLRB: Board chief judges

Labor courts of appeal: Supervising ministries court presidents (*LAG-Präsidenten*)



Rationale: peer review

Knowledge of judges' work behavior

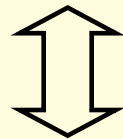
Acceptance (administrator, not supervisor)

Setting goals by symbolic management

(2) Internal recruitment

NLRB: Recruitment of judges with NLRB experience from other agencies (75 percent of judges with NLRB experience)

Labor courts of appeal: Recruitment of judges from first instance of same federal state



Rationale: sustaining cohesive organizational culture

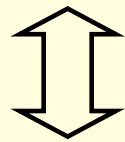
Prior knowledge of candidates and their norms and values

Socialization of judges in the NLRB prior to ALJ position

(3) Quantitative, soft benchmarking

NLRB: Report of operations to Board handed out to judges

Labor courts of appeal: Raw data gathered for statistical purposes handed out to judges



Rationales: Goal-setting and peer review

Setting of specific goals and feedback by measurement

Exposing performance differences to peers (“judge of glass”)