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1937

SECOND ANNUAL REPORT

OF THE

NATIONAL LABOR RELATIONS BOARD

For the Fiscal Year Ended

June 30, 1937

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PROPERTY OF THE UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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NATIONAL LABOR RELATIONS BOARD

J. WARREN MADDEN, *Chairman*

DONALD WAKEFIELD SMITH EDWIN S. SMITH

BENEDICT WOLF, *Secretary*
BEATRICE M. STERN, *Assistant Secretary*

CHARLES FAHY, *General Counsel*
ROBERT B. WATTS, *Associate General Counsel*
NATHAN WITT, *Assistant General Counsel*

DAVID J. SAPOSS, *Chief Economist*

MALCOM ROSS, *Director of Publications*

LETTER OF TRANSMITTAL

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., Jan. 4, 1938.

SIR:

I have the honor to submit to you the Second Annual Report of the National Labor Relations Board, for the fiscal year ended June 30, 1937, in compliance with the provisions of section 3 (c) of the National Labor Relations Act, approved July 5, 1935.

J. WARREN MADDEN, *Chairman.*

The PRESIDENT OF THE UNITED STATES,
The PRESIDENT OF THE SENATE,
The SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

CONTENTS

	Page
I. Introduction	1
II. The National Labor Relations Act	4
III. The National Labor Relations Board	7
A. The Board	7
B. Organization—Washington office	7
C. Organization—Regional offices	8
D. Regional offices—Location, territory, and personnel	9
IV. Procedure of the Board	12–13
A. Rules and regulations	12–13
1. Procedure under section 10 of the act	12–13
2. Procedure under section 9 (c) of the act	12–13
V. Work of the Board	14
A. Statistical summary	14
B. Settlements	16
C. Informal activities	17
VI. Complaint cases	18
A. Analysis of charges received	18
B. Disposition of complaint cases	20
1. Cases closed before issuance of complaint	20
2. Cases disposed of after issuance of complaint	21
3. Cases pending	22
C. Hearings and intermediate reports	23
VII. Representation cases	25
A. Disposition of cases received	25
1. Cases closed before hearing	26
2. Cases closed after hearing	26
3. Cases pending	27
B. Elections	29
VIII. Litigation	31
A. Injunction proceedings	31
B. Enforcement litigation	32
C. Cumulative summary of injunction litigation	36
IX. Division of Economic Research	41
X. Publications Division	48
A. Public relations problems	48
B. Board policy in its public relations	48
C. Activities of Publications Division	49
XI. Jurisdiction	52
XII. Principles established	58
A. Interference, restraint, and coersion in the exercise of the rights guaranteed in section 7 of the act	58
B. Encouragement and discouragement of membership in a labor organization by discrimination	69
C. Collective bargaining	79
D. Domination and interference with the formation or administration of a labor organization and contribution of financial or other support to it	94
E. Investigation and certification of representatives	104
F. The unit appropriate for the purposes of collective bargaining	122
G. Administrative remedies	140
XIII. List of cases heard and decisions rendered	157
XIV. Fiscal affairs	168
Appendix. List of references on National Labor Relations Board	169

SECOND ANNUAL REPORT OF THE NATIONAL LABOR RELATIONS BOARD

I. INTRODUCTION

The First Annual Report of the National Labor Relations Board contained an account of the events leading to the passage of the National Labor Relations Act and the creation of the Board, as well as a detailed statement of the work done by the Board in the first year of its existence. Since the issuance of that report, public interest in labor relations has been greatly stimulated by a number of important developments. Before proceeding to a full statement of the Board's activities during the period from July 1, 1936, through June 30, 1937, we shall review briefly some of the major occurrences affecting the work of the Board during that period.

The situation existing at the end of June 1936 continued unchanged for several months. The volume of cases received showed neither increase nor decrease. The number of cases adjusted by the regional offices comprised a large percentage of the cases closed, and this phase of the Board's work, though little publicized, contributed greatly to the maintenance of industrial peace. The litigation staff of the Board devoted the major portion of its time to the injunction litigation and to preparation of the five cases to be argued before the Supreme Court, and in the early part of 1937 these cases were presented to the Court, the chairman of the Board and its general counsel joining with representatives of the Department of Justice in this presentation.

On April 12, 1937, the Supreme Court issued its decisions in the five cases pending before it involving the validity and scope of the National Labor Relations Act. In each instance the decision of the Court affirmed the decisions previously rendered by the Board, thus unequivocally and effectively answering the widespread propaganda that the act was unconstitutional, and that even if basically constitutional, it was narrowly limited in scope. These decisions by the Court were a complete justification of the Board's right to exercise jurisdiction over employer-employee relations in manufacturing plants, insofar as these relations touched matters covered by the act

The effect of the action of the Supreme Court was instantaneous. An overwhelming number of charges and petitions were filed in the various regional offices, a number far greater than the small staff of the Board could handle. The rate of increase was approximately 1,000 percent. Because of lack of funds the Board was unable to increase its staff sufficiently to handle all this work adequately, despite the valiant and untiring efforts of every member of the Board's staff. As a result, the number of cases pending at the end

for the Board. Under the terms of the act, an employer may not discharge employees because they join a labor organization of their own choice, nor can he force his employees to join any particular labor organization. The act contains an exception to this rule; the exception providing that nothing in the act shall prevent an employer from making a closed-shop contract with a legitimate labor organization, if the labor organization at the time the contract is made represents a majority of the employees.

In a number of instances, a union filed a charge with the Board alleging that while it was organizing the employees in a plant, and in some cases after it had secured the affiliation of a majority of the employees, the employer had invited a rival labor organization to organize the plant. Such invitation, according to the charge, was accompanied by the employer's active aid, by preferentially making plant facilities available to the organizers of the rival union, or by clear indications to the employees of the employer's preference with regard to the two unions.[2] Such action by an employer is clearly illegal under the act; and when it is followed by the consummation of a closed-shop contract, either before the second union had secured a majority or after the majority had been secured as a result of the employer's illegal acts, the existence of such a pretended contract does not give the employer the right to discharge employees for refusal to join the union of the employer's choice.

When such cases were presented to the Board, it was its duty to make a thorough investigation, and determine, among other things, whether the closed-shop contract was legal under the act. The Board's inquiry was directed solely to the ascertainment of whether the employer had violated the act, and was not directed against the union which had benefited from the employer's acts except insofar as a determination that the closed-shop contract was invalid would deprive that union of an advantage it had secured as a result of the employer's illegal actions. Invariably the Board's actions in such cases were bitterly resented by the union which had been the beneficiary of the employer's violation of the law.

Since the validity of the act and its wide applicability have been determined by the courts, acceptance of the principles of the act is bound to become more widespread. The beneficial effect of such acceptance has become apparent to an increasing number of employers of labor; and as resistance decreases and its work is speeded up, the Board expects that formal proceedings, now necessary in many cases, will be replaced by informal and rapid adjustment of complaints. The achievement of this end, with its attendant lessening of industrial strife and increased harmony in the field of industrial relations, is the Board's primary objective.

There follows a detailed review of the Board's work during the past fiscal year.

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[2] Cf. *In the Matter of National Electric Products Co.*, 3 N. L. R. B., No. 47.

II. THE NATIONAL LABOR RELATIONS ACT

The enactment of the National Labor Relations Act followed the best traditions of preventive legislation. The act was carefully thought out in advance, upon the basis of reason and experience, was considered by committees, debated through two sessions of Congress, and finally approved on July 5, 1935.[3] In signing the measure, the President summarized its purpose in these terms:[4]

> This act defines, as a part of our substantive law, the right of self-organization of employees in industry for the purpose of collective bargaining, and provides methods by which the Government can safeguard that legal right. It establishes a National Labor Relations Board to hear and determine cases in which it is charged that this legal right is abridged or denied, and to hold fair elections to ascertain who are the chosen representatives of employees.
>
> A better relationship between labor and management is the high purpose of this act. By assuring the employees the right of collective bargaining it fosters the development of the employment contract on a sound and equitable basis. By providing an orderly procedure for determining who is entitled to represent the employees, it aims to remove one of the chief causes of wasteful economic strife. By preventing practices which tend to destroy the independence of labor it seeks, for every worker within its scope, that freedom of choice and action which is justly his.

The storm which has raged around this act, and the added difficulties presented by the conflict within the labor movement itself concerning the appropriate unit for collective bargaining, should not obscure the fact that the law's essential purpose is to protect commerce by insuring to employees freedom in the exercise of their right to choose representatives for the advancement of their interests. The act gives employees the opportunity to vindicate this right by resort to legal processes rather than economic force, with its accompanying strife, suffering, and wasteful injury to the Nation's commerce. While the act imposes no limitations on the right to strike, limitations which would no doubt be unconstitutional, its provisions are designed to eliminate the causes of the large proportion of strikes waged to establish recognition of the practice and procedure of collective bargaining and the rights of self-organization; and by fostering collective bargaining, the act provides for the peaceful adjustment of controversies over wages, hours, and working conditions.

The soundness of this policy has been completely recognized by the Supreme Court in its recent decisions upholding this act. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, Chief Justice Hughes, after setting forth the provisions of sections 7, 8 (1), and 8 (3) there involved, stated:

> Thus, in its present application, the statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer.

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[3] First Annual Report (1936), p. 9.
[4] Ibid., p. 9, footnote 1.

That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents. Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority. Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. We reiterated these views when we had under consideration the Railway Labor Act of 1926. Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife. We said that such collective action would be a mockery if representation were made futile by interference with freedom of choice. Hence the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." *Texas & N. O. R. Co.* v. *Railway Clerks, supra.* We have reasserted the same principle in sustaining the application of the Railway Labor Act as amended in 1934. *Virginian Railway Co.* v. *System Federation, No. 40, supra* (pp. 33–4).

The Chief Justice further stated:

Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. The opinion in the case of *Virginian Railway Co.* v. *System Federation, No. 40, supra,* points out that, in the case of carriers, experience has shown that before the amendment, of 1934, of the Railway Labor Act "when there was no dispute as to the organizations authorized to represent the employees and when there was a willingness of the employer to meet such representative for a discussion of their grievances, amicable adjustment of differences had generally followed and strikes had been avoided." That, on the other hand, "a prolific source of dispute had been the maintenance by the railroad of company unions and the denial by railway management of the authority of representatives chosen by their employees." The opinion in that case also points to the large measure of success of the labor policy embodied in the Railway Labor Act. But with respect to the appropriateness of the recognition of self-organization and representation in the promotion of peace, the question is not essentially different in the case of employees in industries of such a character that interstate commerce is put in jeopardy from the case of employees of transportation companies. And of what avail is it to protect the facility of transportation, if interstate commerce is throttled with respect to the commodities to be transported!

These questions have frequently engaged the attention of Congress and have been the subject of many inquiries.[5] The steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point. The Government aptly refers to the steel strike of 1919–20 with its far-reaching consequences.[6] The fact that there

[5] See, for example, Final Report of the Industrial Commission (1902), vol. 19, p. 844; Report of the Anthracite Coal Strike Commission (1902), Sen. Doc. No. 6, 58th Cong., spec. sess.; Final Report of Commission on Industrial Relations (1916), Sen. Doc. No. 415, 64th Cong., 1st sess., vol. I; National War Labor Board, Principles and Rules of Procedure (1919), p. 4; Bureau of Labor Statistics, Bulletin No. 287 (1921), pp. 52–64; History of the Shipbuilding Labor Adjustment Board, U. S. Bureau of Labor Statistics Bulletin No. 283.

[6] See Investigating Strike in Steel Industries, Sen. Rep. No. 289, 66th Cong., 1st sess.

appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall (pp. 42–3).

In these terms, the Supreme Court joined Congress and the President in approving the National Labor Relations Act.

Notwithstanding its simple and just provisions, this act, as in the case of almost all other important legislation enacted under the present administration, was declared "unconstitutional" immediately upon its enactment by nearly everyone except those authorized to pass upon the question. The consequence has been that in actuality the statute has not represented the law of the land during most of the 2 years that have intervened since its passage. The Supreme Court decisions upholding its provisions were rendered on April 12, 1937,[7] close to the end of this fiscal year. The experience of the Board even prior to these decisions demonstrated the beneficial consequences to the commerce and well being of the Nation of the acceptance and effectuation of the policies underlying the act.[8] Experience since those decisions during this fiscal year [9] has only begun to indicate the salutary results which will be increasingly achieved under it in the future. These results have been achieved notwithstanding the concurrence of such unusual factors as the increasing expansion of industrial activity, which is always accompanied by an increase in labor disputes, the most extensive organizational activity in the history of the country, and the major conflict within the labor movement itself.

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[7] *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *N. L. R. B.* v. *Freuhauf Trailer Co.*, 301 U. S. 49; *N. L. R. B.* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58; *The Associated Press* v. *N. L. R. B.*, 301 U. S. 103; *Washington, Virginia and Maryland Coach Co.* v. *N. L. R. B.*, 301 U. S. 142. The full texts of these decisions are printed separately in Sen. Doc. No. 51, 75th Cong., 1st sess.

[8] First Annual Report (1936) pp. 29–32.

[9] Ch. V, pp. 14–17, post.

III. THE NATIONAL LABOR RELATIONS BOARD

A. THE BOARD

At the beginning of the fiscal year 1937, the members of the Board were J. Warren Madden of Pennsylvania, chairman; John M. Carmody of New York, member; and Edwin S. Smith of Massachusetts, member. On August 31, 1936, Mr. Carmody resigned, and his successor, Mr. Donald Wakefield Smith of Pennsylvania, was appointed on September 23, 1936, by the President after confirmation by the Senate, to serve the unexpired term of Mr. Carmody.

B. ORGANIZATION—WASHINGTON OFFICE

The Board has created the following divisions in its Washington office: Legal, Administrative, Trial Examiner, Economic, and Publications. Certain functions and activities are assigned to each of these divisions.

The Legal Division, under the supervision of the General Counsel, has charge of the legal work involved in the administration of the National Labor Relations Act. This work falls into two main sections, Litigation and Review.

The Litigation Section, headed by the Associate General Counsel, is responsible for the conduct of hearings before the Board and advises the regional attorneys in their conduct of hearings before the agents of the Board in the field. It represents the Board in judicial proceedings seeking to enjoin the Board from holding hearings and taking other action in cases before it, and also represents the Board in proceedings brought by it in the United States circuit courts of appeals for the enforcement of its orders, and proceedings brought by parties for the review of the Board's orders. It collaborates with the Department of Justice in the presentation of arguments before the Supreme Court of the United States. It prepares briefs for presentation to the courts in all judicial proceedings brought by or against the Board.

The Review Section, headed by the Assistant General Counsel, assists in the analysis of the records of hearings in the regions and before the Board in Washington. It submits to the Board opinions and advice on general questions of law and problems of interpretations of the act and the Board's rules and regulations, and in response to inquiries from the regional offices submits to the regional attorneys opinions on the interpretation of the act as applied to specific facts. In collaboration with other divisions it prepares, for submission to the Board, orders, forms, rules, and regulations, and it engages in the research incidental to the formulation of legal opinions.

In addition to the foregoing, the Legal Division exercises supervision over the legal work of the regional attorneys in the field.

The Administrative Division, under the general supervision of the Secretary, is responsible for the operation of the administrative, clerical, and fiscal activities of the Board, both in Washington and in the regional offices. The administrative work is under the direct supervision of a chief clerk and is performed by the following sections: Accounts, Personnel, Docket, Files and Mails, Purchase and Supply, and Stenographic.

The Secretary, together with the Assistant Secretary and an administrative staff, directs and supervises all case development in the field to the point where hearings are held, and specializes in the labor relations phases of these problems as well as the more formal procedures under the act. The executive office conducts liaison activities with other Government agencies and establishments in matters germane to the handling of the Board's cases.

The Trial Examiners' Division, under the supervision of the Chief Trial Examiner,[10] holds hearings on behalf of the Board. Members of this Division are assigned to preside over hearings on formal complaints and petitions for certification of representatives, to make rulings on motions, to prepare intermediate reports containing findings of fact and recommendations for submission to the parties, and to prepare informal reports to the Board.

The Economics Division, under the supervision of the Chief Economist, prepares the economic material necessary for use as evidence in the Board's cases, covering both the business of the particular employer involved in a case before the Board and at times the industry of which this business is a part. It also makes general studies of the economic aspects of labor relations for use of the Board in its formulation of policy and prepares the economic material needed for inclusion in briefs for the courts in cases where the Board is a litigant.

The Publications Division, under the supervision of the Director of Publications, makes available to the public information regarding the activities of the Board, through releases and answers to oral and written inquiries. Copies of the Board's decisions and orders, rules and regulations, statements concerning the status of cases before the Board and its regional offices, and similar information are sent out in the form of releases issued to the press and through mailing lists.

C. ORGANIZATION—REGIONAL OFFICES

No substantial modification has been made of the organizational or functional character of the Board's regional offices within the fiscal year. The enormous increase in the volume of work which came as a result of the Supreme Court decisions on April 12, 1937, made it necessary for the Board to augment its field staff materially.

The regional director is the administrative head of each regional office, under the supervision of the Secretary's office in Washington. He is also in charge of the labor relations work, investigating charges of commission of unfair labor practices and petitions for certification of representatives, attempting to secure compliance with the law without formal procedure, issuing complaints, or refusing to issue

[10] During the period covered by this report, the Secretary of the Board was also the Chief Trial Examiner.

complaints, after advising with the regional attorney, and conducting elections as agent of the Board.

The field examiners aid the regional director in his investigations and efforts to secure compliance, in holding elections as agents of the Board, and in other nonadministrative duties.

The regional attorney is the legal officer in the regional office and acts as counsel to the regional director and as counsel for the Board in the conduct of hearings. The regional attorney is assisted in his duties by other attorneys attached to the regional office. He is subject to the supervision of the General Counsel and the Associate General Counsel in Washington, and of the regional director in administrative problems.

D. REGIONAL OFFICES—LOCATION, TERRITORY, AND PERSONNEL[1]

Region 1, Old South Building, Boston, Mass.	Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Windham, New London, Tolland, Hartford, and Middlesex Counties in Connecticut.	A. Howard Myers, Director; Edward Schneider, Attorney.
Region 2, 560 Woolworth Building, New York City.	Litchfield, New Haven, and Fairfield Counties in Connecticut; Clinton, Essex, Washington, Warren, Saratoga, Schenectady, Albany, Rensselaer, Columbia, Greene, Dutchess, Ulster, Sullivan, Orange, Putnam, Rockland, Westchester, Bronx, New York, Richmond, Kings, Queens, Nassau, and Suffolk Counties in New York State; Sussex, Passaic, Bergen, Warren, Morris, Essex, Hudson, Union, Middlesex, Somerset, Monmouth, and Hunterdon Counties in New Jersey.	Elinore M. Herrick, Director; David A. Moscovitz, Attorney.
Region 3, Federal Building, Buffalo, N. Y.	New York State, except for those counties included in the Second Region.	Henry J. Winters, Director; Edward D. Flaherty, Attorney.
Region 4, Bankers Securities Building, Philadelphia, Pa.	Mercer, Ocean, Burlington, Atlantic, Camden, Gloucester, Salem, Cumberland, and Cape May Counties in New Jersey; New Castle County in Delaware; all of Pennsylvania lying east of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties.	Stanley W. Root, Director; Samuel G. Zack, Attorney.
Region 5, 32 South Street, Baltimore, Md.	Kent and Sussex Counties in Delaware; Maryland; District of Columbia; Virginia; North Carolina; Jefferson, Berkeley, Morgan, Mineral, Hampshire, Grant, Hardy, and Pendleton Counties in West Virginia.	Bennet F. Schauffler, Director; Jacob Blum, Attorney.

[1] As of November 22, 1937.

Region 6, Post Office Building, Pittsburgh, Pa.	All of Pennsylvania lying west of the eastern borders of Potter, Clinton, Centre, Mifflin, Huntingdon, and Franklin Counties; Hancock, Brooke, Ohio, Marshall, Wetzel, Monongalia, Marion, Harrison, Taylor, Doddridge, Preston, Lewis, Barbour, Tucker, Upshur, Randolph, Webster, and Pocahontas Counties in West Virginia.	Charles T. Douds, Director; Robert H. Kleeb, Attorney.
Region 7, National Bank Building, Detroit, Mich.	Michigan, exclusive of Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties.	Frank H. Bowen, Director; Harold Cranefield, Attorney.
Region 8, Guarantee Title Building, Cleveland, Ohio.	Ohio, north of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties.	James P. Miller, Director; Harry L. Lodish, Attorney.
Region 9, Enquirer Building, Cincinnati, Ohio.	West Virginia, west of the western borders of Wetzel, Doddridge, Lewis, and Webster Counties and southwest of the southern and western borders of Pocahontas County; Ohio, south of the southern borders of Darke, Miami, Champaign, Union, Delaware, Licking, Muskingum, Guernsey, and Belmont Counties; Kentucky, east of the western borders of Hardin, Hart, Barren, and Monroe Counties.	Philip G. Phillips, Director; Leonard Shore, Attorney.
Region 10, Ten Forsyth Street Building, Atlanta, Ga.	South Carolina; Tennessee; Georgia; Alabama, north of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.	Charles N. Feidelson, Director; Mortimer Kollender, Attorney.
Region 11, Architects Building, Indianapolis, Ind.	Indiana, except for Lake, Porter, La Porte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and De Kalb Counties; Kentucky, west of the western borders of Hardin, Hart, Barren, and Munroe Counties.	Robert H. Cowdrill, Director; George Rose, Attorney.
Region 12, Madison Building, Milwaukee, Wis.	Wisconsin, except for Douglas County; Gogebic, Ontonagon, Houghton, Keweenaw, Baraga, Iron, Dickinson, Marquette, Menominee, Delta, Alger, Schoolcraft, Luce, Chippewa, and Mackinac Counties in Michigan.	Nathaniel S. Clark, Director; Robert R. Rissman, Attorney.

Region 13, 20 North Wacker Drive, Chicago, Ill.	Iowa; Lake, Porter, LaPorte, St. Joseph, Elkhart, Lagrange, Noble, Steuben, and DeKalb Counties in Indiana; Illinois, north of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties.	Leonard C. Bajork, Director; Isaiah S. Dorfman, Attorney.
Region 14, United States Court and Customhouse, St. Louis, Mo.	Illinois, south of the northern borders of Edgar, Coles, Shelby, Christian, Montgomery, Macoupin, Greene, Scott, Brown, and Adams Counties; Missouri, east of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties.	Miss Dorothea de Schweinitz, Acting Director; Joseph Hoskins, Acting Attorney.
Region 15, Hibernia Bank Building, New Orleans, La.	Louisiana; Arkansas; Mississippi; Florida; Alabama, south of the northern borders of Choctaw, Marengo, Dallas, Lowndes, Montgomery, Macon, and Russell Counties.	Charles H. Logan, Director; Samuel Lang, Attorney.
Region 16, Federal Court Building, Fort Worth, Tex.	Oklahoma; Texas.	Edwin A. Elliott, Director; Elmer P. Davis, Attorney.
Region 17, Scarritt Building, Kansas City, Mo.	Missouri, west of the western borders of Scotland, Knox, Shelby, Monroe, Audrain, Callaway, Osage, Maries, Phelps, Dent, Shannon, and Oregon Counties; Kansas; Nebraska.	Elwyn J. Eagen, Director; Paul Broderick, Attorney.
Region 18, New Post Office Building, Minneapolis, Minn.	Minnesota: Douglas County, Wisconsin; North Dakota; South Dakota.	Robert J. Wiener, Acting Director; Thurlow Smoot, Attorney.
Region 19, Dexter Horton Building, Seattle, Wash.	Washington; Oregon; Idaho; Territory of Alaska.	Charles W. Hope, Director; Garnet L. Patterson, Attorney.
Region 20, 1095 Market Street, San Francisco, Calif.	Nevada; California, north of the southern borders of Monterey, Kings, Tulare, and Inyo Counties; Territory of Hawaii.	Mrs. Alice M. Rosseter, Director; Bertram Edises, Attorney.
Region 21, Pacific Electric Building, Los Angeles, Calif.	Arizona; California, south of the southern borders of Monterey, Kings, Tulare, and Inyo Counties.	Towne J. Nylander, Director; William R. Walsh, Attorney.
Region 22, Central Savings Bank Building, Denver, Colo.	Montana; Utah; Wyoming; Colorado; New Mexico.	Aaron W. Warner, Director; Charles Graham, Acting Attorney.

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IV. PROCEDURE OF THE BOARD

The procedure of the Board, as set forth in the act and elaborated in the Rules and Regulations made and published thereunder,[11] was considered at length in the First Annual Report.[12] This procedure has stood the test of time and experience. It has not been found necessary to amend the Board's Rules and Regulations during the present fiscal year in any respect; and in no decided case under the act has the Board's procedure been successfully challenged. Indeed, this fiscal year has seen the Board's procedure fully approved as constitutional by the Supreme Court. In *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 46–47, Chief Justice Hughes said:

> The procedural provisions of the act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See *Interstate Commerce Comm'n v. Louisville & Nashville R. Co.*, 227 U. S. 88, 91. The act establishes standards to which the Board must conform. There must be complaint, notice, and hearings. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation.

During the period preceding this and other decisions of the Supreme Court under this act on April 12, 1937, many respondents failed to avail themselves of their opportunity to adduce evidence by way of defense, and merely stood on their constitutional objections. The Board, on its part, has at all times proceeded on the sound principle that the statute under which it was created was valid. It is apparent that our governmental system would break down if the view prevailed that a statute enacted by Congress could be disregarded at will until the Supreme Court put its stamp of approval upon it. At the same time the Board, foreseeing the possibility of numerous constitutional objections, expressly provided in its Rules and Regulations that no objections to rulings on motions or to the conduct of hearings should be deemed waived by the filing of an answer or by other participation in the proceedings before the Board.[13] Such provisions have been in effect since the beginning of the Board's operation under the act.[14] In this way the Board

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[11] Series I, as amended, April 27, 1936; published in *Federal Register*, vol. 1, No. 32, April 28, 1936.

[12] Ch. III, pp. 9–13.

[13] National Labor Relations Board Rules and Regulations, series I, as amended April 27, 1936, art. II, secs. 18, 28.

[14] National Labor Relations Board Rules and Regulations, series I, art. II, secs. 17, 27.

sought to eliminate any belief or possibility that a party defending on the merits could be understood to waive his constitutional rights.

In the *Jones & Laughlin* decision, the Supreme Court condemned the practice of those respondents who, while criticizing the evidence and the attitude of the Board, failed to avail themselves of the opportunity to defend on the merits. Chief Justice Hughes stated:

> While respondent criticises the evidence and the attitude of the Board, which is described as being hostile toward employers and particularly toward those who insisted upon their constitutional rights, respondent did not take advantage of its opportunity to present evidence to refute that which was offered to show discrimination and coercion. In this situation, the record presents no ground for setting aside the order of the Board so far as the facts pertaining to the circumstances and purpose of the discharge of the employees are concerned. Upon that point it is sufficient to say that the evidence supports the findings of the Board that respondent discharged these men "because of their union activity and for the purpose of discouraging membership in the union" (301 U. S. at 29).
>
> * * * Respondent was notified and heard. It had opportunity to meet the charge of unfair labor practices upon the merits, and by withdrawing from the hearing it declined to avail itself of that opportunity. The facts found by Board support its order and the evidence supports the findings. Respondent has no just ground for complaint on this score (301 U. S. at 47).

V. WORK OF THE BOARD

A. STATISTICAL SUMMARY

On June 30, 1936, 286 cases involving 68,761 workers were pending before the Board, these together with 44 cases, involving 27,792 workers, in which the courts had issued orders restraining the Board from further action. Therefore, there were 330 cases, involving 96,553 workers, carried over on July 1, 1936, from the previous year. During the period July 1, 1936, to June 30, 1937, the regional offices received 4,059 charges and petitions involving a total of 1,307,293 workers, and 9 charges and petitions, involving 90,989 employees, were filed directly with the Board. Thus a total of 4,398 cases, involving 1,494,835 workers, was handled during the period covered by this report.

Two thousand and fifty-four of the total number of cases handled, in which 1,027,028 workers were involved, were pending on June 30, 1937. This number includes 6 injunction cases and 24 cases pending in circuit courts of appeal on petitions of the Board for enforcement of its orders or on petition for review of such orders. The remaining 2,344 cases, involving 467,807 workers and amounting to 53.3 percent of the total, had been disposed of in one of several ways.

Upon receipt of a charge or a petition, the regional director, after appropriate investigation, had to determine whether the unfair labor practice or the question concerning representation affected commerce sufficiently to warrant his issuing a complaint, where a charge had been filed, or, in a representation case, to warrant his recommending to the Board that an investigation and hearing pursuant to section 9 (c) of the act be ordered. The director also had to determine, in complaint cases, whether the facts alleged by the party filing the charge constituted an unfair labor practice within the meaning of section 8 of the act, and in representation cases, whether a question or controversy existed within the meaning of section 9 (c). If the director decided that the facts revealed by his investigation did not warrant the institution of formal proceedings under the act, he so informed the party filing the charge or petition, and gave such party an opportunity to request its withdrawal. Besides the withdrawals occurring in such cases, some charges and petitions were withdrawn as a result of a settlement of the issues in dispute reached directly by the parties without the intervention of the regional office. In a few instances withdrawals of charges or petitions resulted from the transfer of the cases to other agencies of the Government in whose jurisdiction the matters more properly belonged. Five hundred thirty-nine cases, almost one-eighth of the total number of cases handled, and involving 73,040 workers, were closed as a result of such withdrawal of charges or petitions by the parties filing them.

If the parties filing the charges or petitions did not choose to withdraw them when informed by the regional directors that in

their opinion no further action was warranted, the directors issued orders formally refusing to issue complaints, or recommended to the Board, in representation cases, that no order for investigation and hearing be made. As a result of such action by the regional directors, 254 cases, involving 37,355 workers, were closed. In this manner 5.7 percent of the total charges and petitions received were disposed of. An additional five cases, involving 3,774 workers, were closed by dismissal of the complaints or petitions after formal action.

In some instances charges or petitions involving the same employer were filed in more than one regional office. Most often such charges or petitions were transferred from one regional office to another or were consolidated with other cases in order that one agency handle matters involving the same employers or groups of employers, in cases of a similar nature, thus securing a more expeditious or expert handling of a particular case. Thirteen cases, involving 3,486 workers, were transferred from one regional office to another before formal action, and 38 cases were consolidated after formal action.

The cases discussed above, with the exception of the 5 dismissals and 38 consolidations, were closed before formal action was taken. The Board issued decisions in 152 cases and trial examiners filed intermediate reports in 49 cases. Of the group of cases closed after formal action, 2, involving 21 workers, were closed by the intermediate report finding no violation; 6, involving 604 workers, were closed as a result of compliance with the recommendations of the trial examiner's intermediate report, and a total of 58 cases, involving 23,629 workers, were closed after the issuance of Board orders or decisions. Of this number 43, involving 18,249 workers, were closed on the basis of certifications of representatives for collective bargaining and 3, involving 3,961 workers, were closed by compliance. In 11 cases, involving 1,369 workers, in which decisions and orders were issued, the complaints or petitions were dismissed, and in the remaining case of the group closed by the issuance of decision or order, the Board refused to certify representatives. This case involved 50 workers.

Table I shows the disposition of all charges and petitions received by the Board during the period ending June 30, 1937.

TABLE I.—*Disposition of all charges and petitions handled*

	Number of—		Percentage of—	
	Cases	Workers involved [1]	Total cases	Cases closed
Cases pending June 30, 1936	330	96,553	7.5	
Cases received July 1, 1936–June 30, 1937	4,068	1,398,282	92.5	
Total cases handled	4,398	1,494,835	100.0	
Before formal action:				
By settlement	1,429	325,898	32.5	60.9
By withdrawal of charge or petition	539	73,040	12.2	22.9
By dismissal of petition or refusal to issue complaint	254	37,355	5.7	10.8
By transfer to other agencies	13	3,486	.3	.5

[1] In a number of cases, charges and petitions were filed relating to the same group of employees. In those cases where the number of employees involved has been included to the amount involved in complaint cases, this number has been omitted from the total of those involved in representation cases, and vice versa.

TABLE 1.—*Disposition of all charges and petitions handled*—Continued

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases closed
After formal action:				
By consolidation	38		.8	1.6
By intermediate report finding no violation	2	21	(2)	(2)
By compliance with intermediate report	6	604	(2)	.2
By dismissal of complaint or petition	5	3,774	(2)	.2
By issuance of decisions or orders:				
Certifications	43	18,249	.9	1.8
Compliance	3	3,961	(2)	.1
Dismissal of complaint or petition	11	1,369	.2	.4
Refusal to certify	1	50	(2)	(2)
Total cases closed	2,344	467,807	53.3	
Cases pending	2,054	1,027,028	46 7	

[2] Less than 0.1 percent.

B. SETTLEMENTS

Over 60 percent of all the cases disposed of were closed as a result of settlement of the disputes involved. One thousand four hundred and twenty-nine, or about one-third of all the cases handled and involving 325,898 workers, were closed in this manner. In all of these cases a member of the Board's staff participated directly in securing the settlement, and the terms of settlement were in conformity with the provisions and policy of the act. In effect, substantial compliance with the act was secured by the settlements in these cases.

There is no way of avoiding a certain amount of delay in the formal procedure before the Board and the courts required under the act. The Board has attempted in every way possible to reduce the time element in the procedure before it to a minimum, but it has no control over the time which elapses as a result of the review of its orders by the courts. Therefore the ability of the regional offices to secure settlements before formal action became necessary has meant the rapid removal from the area of possible industrial conflict certain disputes which, by their nature, are likely to lead to economic strife. The benefits of such settlements have accrued to the employers and the employees directly involved, as well as to the general public. There is no need to argue the value of such settlements as alternatives to strikes or other forms of industrial warfare, with consequent burdens upon commerce, nor to point out the elimination of economic waste, of privation and suffering, and of inconvenience and loss, to the public as well as to the parties directly and indirectly affected, which is achieved by the substitution of peaceful settlements for strikes.[15]

In some of the settlements secured by the Board during the period ending June 30, 1937, intervention by the Board took place before the disputes involved had advanced to the stage of strikes or threatened strikes. However, the issues in these disputes, discrimination and union recognition and collective bargaining, were the same issues

[15] The word "strike" is used to include both strikes and lockouts.

which have caused a large percentage of strikes in the United States for many years, and we may safely assume that a large proportion of these disputes would have resulted in strikes but for the intervention of the Board. In 446 of the cases in which settlements were secured, strikes were actually in progress, in 254 cases strikes had been threatened and were averted; in the remaining cases the disputes had not reached the stage of strike or threatened strike.

Table II shows the types of settlement reached in these cases.

TABLE II.—*Nature of settlements reached between workers and employers in National Labor Relations Board cases*

	Number of cases	Number of workers involved
Recognition of workers' representatives	739	156,388
Reinstatement	335	22,046
Reinstatement and recognition	46	4,115
Reinstatement and improved working conditions	31	5,590
Consent election	194	127,213
Arbitration	5	5,020
Other [1]	25	5,526
Total	1,429	325,898

[1] This includes abolition of company unions, agreements to cease interference with employees' exercise of freedom or right of self-organization, posting of notices to this effect, placement of workers on preferential lists for employment, cash settlements of payment of back wages, increase in wages and improvement of working conditions, etc.

C. INFORMAL ACTIVITIES

The regional directors, as a result of their position in the territories within which they operated, have been frequently consulted by employers and employees regarding labor relations problems, and have thus been able to prevent many labor disturbances or violations of the act which might otherwise have occurred. In addition, many labor disputes which never became formal cases, have been adjusted by the regional directors. Sometimes this necessitated nothing more than a telephone call, or the arranging of a conference between the parties. At other times, it involved persuading the parties to arbitrate their disputes or to accept some other solution of their problems. In many of the cases disposed of in this manner, the jurisdiction of the Board was doubtful, and therefore no formal charges were filed, but the value to the community of a settlement of the dispute was clear. This work has been an important contribution to the industrial peace of the various regions involved, and has effected considerable savings, in terms of industrial wealth. No statistical record has been kept of this phase of the Board's work, and it is not reflected in the statistics set forth above.

VI. COMPLAINT CASES

A. ANALYSIS OF CHARGES RECEIVED

Complaint cases are those cases which are instituted by the filing of charges that employers have engaged in unfair labor practices affecting commerce within the meaning of sections 8 and 10 of the act. In the fiscal year 1936–37, 3,124 charges, involving 944,606 workers,[16] were filed with the regional offices or directly with the Board.[17]

Section 8 of the act lists five types of employer activity which are designated as unfair labor practices. Subsection 1 of this section so designates employer activity which interferes, restrains, or coerces employees in the exercise of the rights enumerated in section 7 of the act, and the Board has ruled that an employer who engages in any of the unfair labor practices described in subsections 2, 3, 4, or 5 of section 8, has by so doing, interfered with, restrained, or coerced his employees in the exercise of their rights as defined in section 7, and has thus engaged in an unfair labor practice within the meaning of section 8 (1). Therefore, all 3,124 of the charges received by the Board alleged an unfair labor practice within the meaning of section 8 (1), but in only 79 cases was this the sole allegation.

Section 8 (3), which prohibits discrimination because of union activity, was joined with section 8 (1) in 1,372 cases; section 8 (5), which deals with refusal to bargain collectively, was joined with 8 (1) in 622 cases; section 8 (2) which prohibits domination or interference with the formation or administration of labor organizations (the "company union" section), was joined with 8 (1) in 177 cases; section 8 (4), which prohibits discrimination because of the filing of charges or testifying under the act, was joined with 8 (1) in four cases. There were many cases in which allegations were made that employers had engaged in more than one unfair labor practice in addition to that described in section 8 (1). Thus, in 407 cases, subsections (1), (2), and (3) of section 8 were involved; in 201 cases, subsections (1), (2), and (3) were involved; in 139 cases, subsections (1), (2), (3), and (5) were involved; in 114 cases subsections (1), (2), and (5) were involved; subsections (1), (3), and (4) were involved in two cases; subsections (1), (2), (3), and (4) were involved in three cases; subsections (1), (3), (4), and (5) were combined in one case, and three cases involved all five subsections.

Of the total number of 3,124 charges, 2,130 contained allegations that employers were engaged in unfair labor practices within the meaning of section 8 (3) of the act. Similarly, 1,291 of the charges contained allegations directed to section 8 (5) of the act. Section 8 (2) is involved in 616 of the charges, and 13 charges allege violation of section 8 (4) of the act.

Table III shows the various subsections of section 8 of the act set forth in the charges arising in the different regional offices.

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[16] See footnote 1, page 15, *supra*.

[17] Four charges were filed directly with the Board, the Board having granted special permission, under the rules and regulations, for such filing.

TABLE III.—*Analysis of charges*

	Number of cases	Subsections of section 8 involved					Subsections of section 8 involved						"Other" analyzed							
		1	2	3	4	5	1 and 3	1 and 5	1, 3, and 5	1, 2, and 3	1, 2, 3, and 5	Other	1	1 and 2	1 and 4	1, 2, and 5	1, 3, and 4	1, 2, 3, and 4	1, 3, 4, and 5	1, 2, 3, 4, and 5
Board	4	4	3	3		1		1		3										
Region:																				
1	298	298	56	193		118	130	64	41	13	9	41	7	30		4				
2	408	408	81	292		199	166	86	70	27	29	30	5	11		14				
3	99	99	15	70		39	40	16	15	2	4	13	4	5		4				
4	150	150	44	103		60	63	21	19	12	9	26	3	12		11				
5	99	99	25	76	3	19	57	7	7	8	2	18	2	10	1	3		2		
6	84	84	13	65		27	48	15	8	5	2	6		4		2				
7	89	89	31	56		42	24	14	16	10	6	19	4	9		6				
8	103	103	20	71	1	30	55	19	6	5	4	14	3	10						1
9	200	200	33	152		61	111	27	20	10	11	21	9	9		3				
10	130	130	18	98	5	47	67	25	14	7	7	10	2	3	2		1	1	1	
11	147	147	47	96		54	65	20	10	15	6	31	5	8		18				
12	47	47	11	39		17	23	6	7	5	4	2		2						
13	346	346	29	227		181	143	97	63	13	8	22	3	11		8				
14	73	73	22	50		30	30	13	8	6	6	10		7		3				
15	50	50	7	44		18	28	2	13	1	2	4		3		1				
16	94	94	18	76		28	54	7	13	6	3	11	2	4		5				
17	109	109	52	86	2	31	45	6	4	23	12	19	2	8		7				2
18	83	83	8	19		60	12	56	3	3	1	8	4	4						
19	88	88	20	69	1	35	40	13	13	7	8	7	1	4		1	1			
20	184	184	24	113	1	101	56	50	48	8	1	21	5	13	1	2				
21	239	239	49	132		93	106	57	9	12	5	50	18	10		22				
Total	3,124	3,124	616	2,130	13	1,291	1,372	622	407	201	139	383	79	177	4	114	2	3	1	3

B. DISPOSITION OF COMPLAINT CASES

These cases fall into three main categories—cases closed before the issuance of complaints, cases disposed of after the issuance of complaints, and cases pending. It will be noted that of the total number of complaint cases filed, 1,762, or 56.3 percent, were closed during the year and that of the number closed, almost 95 percent fall into the category of cases disposed of before the issuance of complaint, so that only in about 5 percent of the cases closed was formal action necessary. The fact that so many cases were closed in the early stages and before the delays necessarily attendant on the prosecution of formal action indicates an important trend in the effectiveness of the Board's work. Table IV shows in detail the subdivisions within these categories.

1. *Cases closed before issuance of complaint.*—Of the 3,124 complaints handled during the year ending June 30, 1937, 1,668, or more than one-half, involving 232,265 workers, were closed before formal complaints were issued. About 60 percent of this number were closed by settlement, one-quarter were closed by withdrawal of the charges by the parties filing them, and about a seventh were closed by the refusal of the regional director or the Board to issue complaints. The balance was closed by transfer or consolidation.

TABLE IV.—*Disposition of all complaint cases*

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases in category
Cases disposed of before issuance of complaint:				
By settlement	[1] 1,003	147,596	32.1	60.1
By withdrawal of charge	422	55,734	13.5	25.3
By refusal to issue complaint	234	26,309	7.4	14.0
By transfer	9	2,626	.2	(2)
Total disposed of before issuance of complaint	1,668	232,265	53.3	100.0
Cases disposed of after issuance of complaint:				
By consolidation	31	----------	(2)	33.0
By settlement before hearing	15	972	(2)	16.0
By settlement during hearing	11	907	(2)	11.7
By settlement after hearing	15	8,979	(2)	16.0
By dismissal after hearing by Board or trial examiners	8	850	(2)	8.5
By withdrawal of charges after hearing	3	1,327	(2)	3.1
By intermediate report finding no violation	2	21	(2)	2.1
By compliance with intermediate report	6	604	(2)	6.4
By compliance with decision or order	3	3,961	(2)	3.1
Total disposed of after issuance of complaint	94	17,621	3.0	100.0
Cases pending:				
Before hearing	1,276	662,880	40.8	93.6
After hearing:				
Awaiting intermediate report	19	8,796	(2)	1.4
Awaiting decision	31	8,689	(2)	2.3
Awaiting compliance with cease and desist orders	36	14,335	1.0	2.6
Total cases pending	1,362	694,720	43.6	100.0
Total complaint cases	3,124	944,606	100.0	----------

[1] Includes 12 cases in which consent elections were held.
[2] Less than 0.1 percent.

Settlements before issuance of complaints, accounted for the closing of 1,003, or 32.1 percent, of the complaint cases, involving 147,596

workers. Most of these settlements provided for recognition of the representatives of the employees, or reinstatement of discharged employees, or a combination of these two. Such settlements had the direct effect of securing compliance with the act and removed from the area of dispute two of the most frequent causes of strikes. Some of the settlements provided for reinstatements of discharged employees plus improved working conditions; some provided for cash payments in lieu of back wages lost, and a few others provided for arbitration of the issues. Some of the disputes were settled by agreement to have an agent of the Board conduct a consent election, and others were settled by agreement to cease interfering with the employees' right of self-organization, or the abolition of company unions. From the nature of the settlements, it can be seen that no compromise was made with the provisions of the act in order to settle the disputes which were involved in the cases brought before the Board.

In 422, or 13.5 percent, of the cases in which charges were filed, these charges were withdrawn before formal action was taken by the Board or its agents. In a few cases, the parties settled their controversies without the intervention of the Board. In most of these cases, the charges were withdrawn upon the advice of the regional directors, because of the lack of jurisdiction. This group of cases, involving 55,734 workers, amounted to 25.3 percent of the cases closed before issuance of complaints.

Of the remaining 243 cases in this category, 234 or 7.4 percent of all complaint cases were closed by the formal refusal of the regional directors to issue complaints. Such refusals were based upon the absence of jurisdiction of the Board because the unfair labor practices did not affect commerce within the meaning of the act, or because the facts alleged were not unfair labor practices within the meaning of section 8 of the act. In each of these cases, which together amounted to 14 percent of the cases closed before issuance of complaints and involved 26,309 workers, the parties filing the charges were advised by the regional director that they could secure a review of his action by the Board simply by sending to the Board a request for such review.

Nine cases, involving 2,626 workers, were closed by transfer to other agencies or by consolidation with other cases.

2. *Cases disposed of after issuance of complaint.*—Ninety-four, or 3 percent of the complaint cases received, involving 17,621 workers, fall within this category. More than two-fifths of this number were closed by settlement either after hearings were scheduled, during the hearings, or after the hearings were concluded and before decisions were rendered. In an additional 10 percent of the cases in this category, compliance was had with the intermediate report of the trial examiner or with the decision or order of the Board. The remaining one-third of the cases in this group were closed by consolidation. In 41 of these cases, involving 10,858 workers, settlements were reached. The same principles which controlled the regional directors in their efforts to secure settlement before complaints were issued prevailed in these cases. Fifteen of the cases were settled after the regional directors had issued complaints but before hearings were actually held; 11 of the cases were adjusted during hearings, and 15 were settled after conclusion of

the hearings. In six cases there was compliance with the intermediate report and in three additional cases compliance was had with the Board's decision and order.

In 2 of the 10 cases dismissed after hearing, the trial examiners issued intermediate reports finding that the employer had not engaged in any unfair labor practices within the meaning of section 8 of the act. The parties who filed the charges in these cases did not avail themselves of their right to file exceptions to the intermediate reports, and the cases were therefore closed. In the other eight cases, the Board issued decisions dismissing them. In each of these cases the question involved related to the right to represent certain employees, and the Board, for reasons set forth in the decisions, refused to take jurisdiction over the controversies. There were 871 employees involved in these 10 cases.

There were 3 cases, involving 1,327 workers, in which the parties filing the charges decided to withdraw these charges after hearings had been held and before decisions had been rendered. As a result of these withdrawals the cases were closed. Thirty-two cases, involving the members of an industrial association and the association itself, were consolidated into 1 case so that 31 cases were closed by consolidation. There were no workers affected by this consolidation since they were still involved in the case which resulted from the consolidation.

In 39 cases, involving 18,316 workers, the Board has issued decisions finding that the respondents had engaged in one or more unfair labor practices affecting commerce and ordered them to cease and desist from such practices. Of this number, as was noted above, compliance was had with the Board's orders in three cases. As a result of the Supreme Court's decisions upholding the act in April of this year and in the light of the already noticeable increase in the disposition of cases before issuance of complaints as against the need for such formal action, it is to be expected that there will continue to be a mounting increase in the number of the cases in which compliance with the Board's orders is had in the future.

3. *Cases pending.*—On June 30, 1937, there were pending 1,362 cases, 43.6 percent of all complaint cases received, involving 694,720 workers. The great increase in these figures over those reported in the First Anual Report is, to a large extent, to be accounted for by the overwhelming increase in the number of charges and petitions which were filed with the Board immediately after the Supreme Court's decisions in April. Since the Board's staff was not increased during the period it remained literally impossible for the Board to handle expeditiously the pressure of work that came to it with its limited staff. These cases were in various stages of development. The largest group, listed in table IV as "Pending before hearing," consisted of 1,276 cases, in which 662,880 were involved. This group of cases amounted to 40.8 percent of the total number of complaint cases received and about 93.6 percent of the pending cases. Most of these cases fall into the category of those which had been filed with the regional offices subsequent to the Supreme Court's decisions. Many of these were in the process of investigation, which it is to be expected would, in a large proportion, ultimately result in final disposition without recourse to formal action. In 11 of these cases,

the respondents had prevented the hearings by court action and 6 of these injunction cases were pending on July 30, 1937, the others having been decided in favor of the Board.[18]

On June 30, intermediate reports were in the course of preparation in 19 cases involving 8,796 workers which had been heard by trial examiners before that date, and 31 cases involving 8,689 workers were awaiting decision by the Board. In addition to these 50 cases awaiting intermediate reports and Board decisions, there were also awaiting compliance 36 of the 39 cases in which cease and desist orders had been issued. This final group constituted less than one percent of all complaint cases and of all such cases pending.

C. HEARINGS AND INTERMEDIATE REPORTS

As in the previous period, most of the hearings held during the current year were conducted by trial examiners. In all of the complaint cases so heard, intermediate reports were issued except where the Board issued orders transferring the cases to itself before hearings were held, or after hearings, but before intermediate reports were issued. In such cases the trial examiners hearing the cases did not issue intermediate reports except by express direction of the Board. During the period ending June 30, 1937, trial examiners conducted 151 of the 153 hearings held in complaint cases. The trial examiners issued intermediate reports in 49 of the cases heard by them, and 19 such reports were pending on June 30, 1937.

When cases arose in the regional offices, they came before the Board either by its order transferring the cases, by the filing of exceptions to the intermediate report of the trial examiners by any of the parties to the proceedings, or by the failure of the respondents to comply with the recommendations contained in the intermediate reports. There was a total of 100 cases thus transferred to the Board, 53 of these by Board order, 37 by exceptions to intermediate reports, and 10 by respondents' failure to comply with the trial examiners' recommendations.

Table V is a regional break-down of the disposition of complaint cases and hearings held.

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[18] A detailed discussion of these cases will be found in Chapter IX, *infra*.

TABLE V.—*Complaint cases by regions*

Origin of cases	Number of cases	Number of workers [1]	Disposition before issuance of complaint				Settlement after issuance of complaint and before hearing	Cases in which hearings were held 1936–37		Intermediate reports issued	Cases transferred to Board				Disposition of cases heard							Cease and desist order	Cases pending				
															Settled										After hearing		
			Settlement	Withdrawal of charge	Refusal to issue complaint	Transferred and consolidated		Trial examiner	Board		Total	On exception	No compliance	Board order	During hearing	After hearing	Intermediate report finding no violation	Compliance with intermediate report	Compliance with Board order or decision	Dismissed	Withdrawn		Total	Before hearing	Awaiting intermediate report	Awaiting decision	Awaiting compliance
Board	4	81,315							1														4	4			
Region:																											
1	298	31,923	120	75	27			20		6	8	6	1	1	5			1		2		4	68	63	1		4
2	408	67,130	111	23	[2] 51	1	3	24		13	13	8	1	4	2	1		2	1	3	1	7	209	193	8	2	6
3	99	15,172	41	5	15	1		2		1	2		1	1								3	37	34			3
4	150	64,468	32	16	2	2		8		3	6	3	1	2	1	2	1					3	94	90		1	3
5	99	17,177	14	11	3			13		9	11	5	3	3	1	1	1					5	68	55	1	7	5
6	84	352,874	30	13	2	1		2		1	1			1				1					37	36	1		
7	89	14,735	10	7	[2] 6	1		2														1	65	63	1		1
8	103	20,275	31	24	5			6		1	1			1									43	40	2	1	
9	200	28,068	75	10	2			3		3	3	3			1	1							111	109		2	
10	130	23,227	23	25	3			2		2	4	3		1		1		2			1	4	75	65		6	4
11	147	40,111	48	13	8		4	1								1						1	73	70	1	1	1
12	47	16,787	14	4	10		4	2								1							14	14			
13	346	56,675	134	100	22			3			3	2	1		1					1			88	84	1	3	
14	73	15,708	19	5	4	2		4								4							39	39			
15	50	5,459	9	12	1		1	3			1			1					1			1	26	24		2	
16	94	5,332	22	13	8			6		3	4	3		1						1		2	50	46	1	1	2
17	109	10,019	22	11	7			1												1		1	68	67			1
18	83	7,948	63		2		1																17	17			
19	88	21,324	20	22	11		2	6	1	4	5	3	1	1							1	5	32	25		2	5
20	184	25,518	59	11	13	31		35		1	32		1	31								1	70	66	2	1	1
21	239	23,361	106	22	32	1		8		2	6	1		5		3			1			1	74	72		2	
Total	3,124	944,606	1,003	422	234	40	15	151	2	49	100	37	10	53	11	15	2	6	3	8	3	39	1,362	1,276	19	31	36

[1] See footnote 1, p. 15, *supra*.
[2] Including 2 cases and 1 case, respectively, dismissed after formal action.

VII. REPRESENTATION CASES

All cases initiated by the filing of a petition, pursuant to section 9 (c) of the act, requesting an investigation and certification of representatives of employees, are called representation cases. During the period ending June 30, 1937, 1,268 petitions, involving 535,755 workers [19] were filed with the regional offices, and six petitions, involving 14,474 workers, were filed directly with the Board in Washington, special permission for such filing having been granted pursuant to the Board's rules and regulations.

A. DISPOSITION OF CASES RECEIVED

The representation cases are divided into "closed" and "pending" cases, and the "closed" cases are divided into two groups—those closed before hearing and those closed after hearing. Of the closed cases, almost 90 percent were finally disposed of before hearings were necessary, while only 10 percent were closed after hearings. The remaining 54.4 percent of the representation cases were pending on June 30, 1937. Table VI sets forth the disposition of these cases in detail, and shows the number of workers involved in each group of cases.

TABLE VI.—*Disposition of all representation cases*

	Number of—		Percentage of—	
	Cases	Workers involved	Total cases	Cases in category
Cases disposed of before hearing:				
By withdrawal of petition	107	15,718	8.3	20.8
By dismissal of petition	22	14,688	1.7	4.2
By transfer and consolidation	11	860	.8	2.1
By settlement:				
(a) Consent elections	179	109,139	14.0	34.9
(b) Recognition of representatives	194	47,994	15.2	38.0
Total cases closed before hearing	513	188,399	40.2	100.0
Cases closed after hearing:				
By withdrawal of petition	7	261	.5	10.0
By dismissal of petition	6	651	.4	8.7
By settlement	[1] 12	10,311	.9	17.4
By issuance of certification without election	6	628	.4	8.7
By certification after election	37	17,623	2.8	53.6
By refusal of certification after election	1	50	(2)	1.5
Total cases closed after hearing	69	29,522	5.4	100.0
Cases pending:				
Before hearing	580	304,391	45.5	83.8
After hearing:				
Awaiting decision or order, including certification	52	18,977	4.1	7.5
Awaiting compliance with orders or decisions issued	60	8,940	4.7	8.7
Total cases pending	692	332,308	54.4	100.0
Total representation cases	1,274	550,229	100.0	

[1] Includes three cases in which consent elections were held.
[2] Less than 0.1 percent.

[19] See footnote 1, p. 15 *supra*.

1. *Cases closed before hearing.*—Of the 1,274 representation cases handled by the Board during the year, 513, involving 188,399 workers, were closed before hearings were held. Thus in 40.2 percent of the representation cases it was not necessary to take formal action. In almost one-fifth of the cases thus closed, or about 8½ percent of all representation cases, the petitioners withdrew their petitions. In this group there were 107 cases, involving 15,718 workers. In some cases the withdrawals resulted from adjustments of the controversies between the parties directly; in some cases they occurred after the petitioners learned that the Board had no jurisdiction over the particular controversy, in others they were withdrawn and charges were filed.

By far the largest number of cases in this category were closed as a result of settlements secured with the aid of the regional directors. In representation cases the chief purpose was to determine which person or organization the employees within a proper unit wanted as their representative in collective bargaining negotiations with their employer. A regional director, upon the filing of a petition, would always attempt to secure the consent of all parties involved to an election to determine this issue. In a consent election the terms and conditions of the election were usually the subject of agreement. In many instances the negotiations for a consent election led to an admission that the petitioner actually represented the majority of the employees and to the recognition of such representatives for the purpose of collective bargaining.

Three hundred and seventy-three cases, 30 percent of all representation cases, were settled before hearing. These amounted to almost three-quarters of the cases in this category and involved 157,133 workers. One hundred and seventy-nine of these cases were settled by the holding of consent elections, and in 194 cases the employers recognized the representatives of the employees, thus dispensing with elections.

Twenty-two of the remaining 33 cases in this category, involving 14,688 workers, were closed by dismissal of the petitions, while the other 11, in which 860 workers were involved, were transferred to other agencies or from one regional office of the Board to another.

2. *Cases closed after hearing.*—Sixty-nine cases, or about 5 percent of the representation cases, involving 29,522 workers, came within this category. In each of these cases a hearing was held pursuant to specific authorization of the Board, and in 37 cases, involving 17,623 workers, certifications of representatives were issued after elections were held. In addition to these 37 cases, the facts concerning representation in 6 cases, involving 626 workers, were so clearly proven that the Board certified the petitioner as the representative of the employees without finding it necessary to conduct an election. Twelve of the remaining 36 cases, involving 10,311 workers, were settled after hearings, 3 of them by consent elections. In 6 cases, involving 6,511 workers, the petitions were dismissed; in 7 cases, involving 261 workers, the petitions were withdrawn by the petitioner, and in the remaining case, involving 50 workers, the Board refused to certify representatives after an election was held.

3. *Cases pending.*—Six hundred and ninety-two, or slightly more than one-half of the representation cases handled during the year ending June 30, 1937, were pending on that date, again in large measure due to the enormous number of petitions filed after the Supreme Court decisions. These pending cases involved 332,308 workers. Of the 109 cases in which decisions and orders, including certification, were issued during the year, all of them following hearings, only 60, involving 8,940 workers, were awaiting final disposition, since 43 cases as described above were closed by certification and orders provided for dismissal in 5 other cases and for withdrawal in a sixth. Fifty-two other cases, involving 18,977 workers, in which hearings had likewise been held, were awaiting disposal by such decisions and orders. Thus 580 cases, involving 30,439 workers, were pending before hearing but in many of these the regional directors were either making preliminary investigations preparatory to submitting their recommendations to the Board, or were conducting negotiations in an attempt to arrange consent elections, or the cases were being prepared for hearing. Of this group of cases pending before hearing, only 1 had been held up because of an injunction suit as against the 7 cases of the 101 cases pending on June 30, 1936, which were so delayed.

Table VII sets forth the disposition of the representation cases by regions.

27708—37——3

TABLE VII.—*Representation cases by regions*

Origin of cases	Number of cases	Number of workers [1]	Withdrawn by petitioner	Transferred and consolidated	Petitions dismissed	Settled before hearing by— Consent election: Number	Consent election: Workers	Recognition: Number	Recognition: Workers	Hearings held 1936–37	Disposition after hearing: Settled	Dismissed	Withdrawn	Certification without election	Elections ordered 1936–37: Total	Pending	Held	Action after election: Certification	Refusal to certify	Pending	Cases pending: Total	Before hearing	Awaiting decision	Awaiting compliance	Decisions and certifications issued
Board	6	[1] 14,474								4					4	2	2				6		3	3	3
Region:																									
1	63	28,683	1		[2] 1	16	5,434	13	3,788	15	[3] 2				13	13		1			29	28		1	2
2	202	111,506	8		5	38	39,812	12	5,260	14	[3] 1			2	10	2	8	5		4	131	126		5	12
3	26	11,021			1	9	3,106	8	4,050												8	8			
4	47	24,627	2		1	14	2,468	4	2,451									1			25	25			1
5	23	6,234	3	1		1	786	2	65	2					1		1	1			15	15			1
6	19	32,128	3			1	(1)	1	180	2				1	1		1				13	12	1		1
7	64	59,209			[2] 1	5	17,675	10	7,067	1											48	48			
8	47	45,740	4	2	2	6	6,198	3	375	7					2	1	1	1			29	24	4	1	2
9	58	25,003		2	1	13	4,592	6	3,890												36	36			
10	24	11,102	4			3	640	2	577				1		1		1	1			13	13			1
11	31	30,386	1			5	2,440	4	4,315												21	21			
12	39	19,017	1	4	1	12	3,753	8	1,961	2					1		1	1			12	11	1		1
13	81	30,936	7	1		15	8,154	28	2,881					1							29	29			1
14	30	21,018	3		1	4	8,870	1	38	1											21	20	1		
15	46	5,677	4		3	1	(1)	22	795	2				1	2		2	2			13	12	1		3
16	31	3,744	3	1		2	395	5	877	2			1								19	18	1		
17	25	12,719	2			7	628	2	923	1				1							13	13			1
18	67	6,234	16			12	813	25	2,076												14	14			
19	19	5,064	3			3	1,164	2	1,257	4		1	1		3	1	2	1	1		7	6		1	[6] 4
20	127	20,828			4	6	980	5	993	69		2	[5] 4		19		19	21			85	6	40	39	[5] 61
21	199	24,879	42		1	6	1,229	31	4,175	50	9	[4] 3			10		10	2		8	105	95		10	[4] 15
Total	1,274	550,229	107	11	22	179	109,137	194	47,994	176	12	6	7	6	67	19	48	37	1	12	692	580	52	60	109

[1] See footnote 1, p. 15, *supra*.
[2] Including 1 case dismissed after formal action in each instance.
[3] By consent election.
[4] Including 2 cases of refusal to certify before election, and 1 dismissal.
[5] Including 1 case withdrawn.
[6] Including 1 refusal to certify and 1 dismissal.

B. ELECTIONS

During the period ending June 30, 1937, 265 elections were conducted by the agents of the Board, 48 pursuant to Board order and 217 by consent of the parties involved in the controversy concerning representation. There were approximately 181,424 workers eligible to vote in these elections and 164,207 actually participated in the polling. The fact that more than 90 percent of the eligible voters cast ballots in the elections conducted by the Board is an indication of the keen interest shown by employees in the choice of the persons or organizations who are to represent them in collective bargaining with their employers, and their approval of the democratic device of secret ballot to ascertain their choice.

The great majority of requests for investigation and certification of representatives were made by trade unions or their members, rather than by employee representation committee or other forms of "company unions" and almost every industry is represented among the petitioners. Of the total number of valid votes cast, 69.1 percent were in favor of the trade unions whether such unions were the petitioners or not, and 30.8 percent were cast for the company union or against the trade unions. In some cases the ballots offered a choice between two organizations, oftentimes both trade unions, and the votes therefore are here tabulated as for the petitioning trade union, for the nonpetitioning trade union, or for the company union or against the petitioning trade union. Reckoning the elections held by the Board as 265 units, a trade union won in 214 of these units, whereas 44 elections were lost by trade unions. In two instances there were tie votes which are not allotted to either category of elections won or lost by trade unions. Four of the elections involved votes for or against a company union, in one instance the choice lay between two employee representation committees, and in a fifth case the choice was between two company unions.

Methods of conducting the elections were usually shaped to meet the needs of individual cases. In consent elections an attempt was made to secure an agreement regarding all the details of the election. In this manner, the parties determined the proper bargaining unit, the form of the ballot, the polling place, the time of the election, the eligibility list, the method of tallying, and other similar details. In those cases where elections were ordered by the Board it decided what the bargaining unit should be and usually directed that employees on the pay roll on a certain date should be eligible to vote. The regional director in whose region the case originated was empowered by the Board's direction of election to conduct the election and arranged the necessary details.

Some of the elections conducted this year raised similar problems to those which had to be met previously. The Board again ordered elections in several cases involving the maritime industry, and arrangements had to be made whereby notices of election and eligibility lists were posted on board the ships before they left on their outward voyages, and the men were polled on their return to their home ports. In such cases, elections might not be completed for several months after they were commenced. In some cases the ships stopped at two ports before making a long voyage, and it was possible to post elec-

tion notices when the ships left their home port and poll the men at their first port of call.

In almost all cases election notices were posted and distributed several days before the date of the election. These notices contained full details about the election, setting forth the time and place of polling, the purpose of the election, and a copy of the ballot to be used. This enabled the employees to become familiar with the procedure to be followed and avoided much confusion and delay at the polling places. Usually each party had watchers and tellers present at the polling places, and these representatives signed certificates before the ballots were counted stating that the elections were conducted properly and fairly. This had the effect of eliminating many objections which, although without merit, might otherwise have been made by the losing party regarding the conduct of the elections, and were particularly useful in the case of consent elections.

Table VIII shows the regional offices in which the cases in which elections were held originated.

TABLE VIII.—*Results of elections held by the National Labor Relations Board*

Region of origin of cases in which elections were held	Number of elections held	Number of employees eligible to vote	Valid votes cast				Percent of total votes cast		Units won by trade-union	Units lost by trade-union
			Total	For petitioning trade-union	For non-petitioning trade-union	For company union or against petitioning trade-union	For company union or against trade-union	For trade-unions including petitioning and non-petitioning union		
Total	265	181,424	164,207	107,227	6,261	50,647	30.8	69.1	214	44
1	24	7,351	7,265	4,605	119	2,541	34.9	65.0	18	6
2	51	42,162	39,262	24,028	1,916	13,318	33.8	66.2	44	7
3	[1] 8	2,460	[1] 2,453	1,312	--------	[1] 1,069	43.5	53.4	6	1
4	29	26,351	17,672	9,611	1,010	7,051	39.8	60.1	[2] 21	[2] 7
5	5	939	894	738	4	152	17.1	82.9	4	1
6	3	33,840	32,059	23,404	--------	8,655	26.9	73.0	3	0
7	5	15,572	15,480	12,500	--------	2,980	19.2	80.7	5	0
8	7	6,397	6,118	3,722	1,350	1,046	17.0	82.9	4	3
9	13	5,315	4,774	2,959	918	897	18.7	81.2	10	3
10	4	1,724	1,166	896	--------	270	23.1	76.8	4	0
11	8	6,966	6,487	4,397	44	2,046	31.5	68.4	7	1
12	13	4,005	3,840	2,300	101	1,439	37.4	62.5	8	2
13	15	9,040	8,951	5,123	--------	3,828	42.9	57.2	10	5
14	[3] 6	5,986	5,862	4,172	--------	1,690	28.8	71.1	6	0
15	[3] 3	878	773	352	60	361	46.7	53.3	2	[4] 0
16	4	1,208	1,089	754	--------	335	30.7	69.2	3	1
17	7	601	593	305	143	145	24.4	75.5	5	2
18	12	2,379	2,265	1,493	91	681	30.0	69.9	[2] 10	[2] 1
19	5	1,483	1,445	805	144	496	34.3	65.6	4	1
20	26	1,844	1,799	924	361	514	28.5	71.4	25	1
21	17	4,923	3,960	2,827	--------	1,133	28.6	71.3	15	2

[1] Including 1 "yes" or "no" company union election.
[2] Tie vote, not counted to either credit.
[3] Including 3 "yes" or "no" company union elections.
[4] Two company unions involved.

VIII. LITIGATION [20]

During the second year of its existence, the Board continued to be engaged in two principal types of litigation: (*a*) injunction suits in the district courts to restrain the Board from holding hearings or elections under the statute; (*b*) petitions in the circuit courts of appeals to enforce or review orders made by the Board pursuant to statutory procedure.

A. INJUNCTION PROCEEDINGS

At the present time the tide of injunction suits against the Board and its officers throughout the country has almost entirely subsided.[21] A total of 95 such suits have been filed in district courts of the United States since the Board began to administer the statute. Of these, only three injunction decrees, all affirmed by or pending before the first circuit, now remain outstanding.[22] The Supreme Court, on petition of the Board, has granted certiorari to review the action of the first circuit in upholding such injunctions,[23] and the matter will probably be finally determined by the Supreme Court before the end of the present calendar year.

It is important to observe that at the present time, even before any final and authoritative decision by the Supreme Court, the first circuit stands alone in granting injunctive relief. Every other court of appeals that has considered the question, including those in the second, fourth, fifth, sixth, seventh, eighth,[24] ninth, and tenth circuits and in the District of Columbia, in a total of 30 cases, has held to the contrary. The overwhelming majority of district courts—in a total of 73 out of 95 cases—likewise denied injunctive relief when the cases were first presented to them.

In view of the sweeping approval by the Supreme Court of the Board's procedure in the *Jones & Laughlin* case, cited above, pp. 12–13,

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[20] The chapter on litigation in the Board's First Annual Report (Ch. IX, pp. 46–59) covered the period from November 1935 to November 1936. The reason for this departure from the usual practice of limiting reports to the fiscal year was that a misleading picture of the Board's activities in the courts might have been given if the report had covered only the period to July 1, 1936. This section likewise includes matters in litigation which were disposed of by the courts as of November 15, 1937.

[21] A complete cumulative summary of the Board's injunction litigation as of November 15, 1937, is set forth at pp. 36–40, post.

[22] *Myers* v. *Bethlehem Shipbuilding Corporation* (2 cases), 88 F. (2d) 154, rehearing denied, 89 F. (2d) 1000 (C. C. A. 1st), affirming temporary injunctions granted by District Judge Brewster; *Cocheco Woolen Mfg. Co.* v. *Myers*, temporary injunction granted by District Judge Morris (D. N. H.), appeal pending before the Circuit Court of Appeals for the First Circuit.

[23] October 11, 1937, Nos. 181, 182. October Term, 1937. At the same time the Supreme Court granted certiorari on petition of the Newport News Shipbuilding & Drydock Co. (No. 305, October Term, 1937), to review a decision of the fourth circuit affirming a decree of Judge Way (E. D., Va.) denying a temporary injunction and dismissing the company's bill for an injunction. 91 F. (2d) 730.

[24] In *Stout* v. *Pratt* (2 cases), 85 F. (2d) 172, the eighth circuit affirmed decrees of injunction granted by Judge Otis in the district court. After the decisions of the Supreme Court on April 12, 1937, the eighth circuit held to the contrary in *Pratt* v. *Oberman and Co.*, 89 F. (2d) 786, and a number of other cases (pp. 38, 40, *infra*); and Judge Otis granted the Board's motion to vacate the injunction decrees in *Stout* v. *Pratt* and to dismiss the bills of complaint.

and of its repeated refusals at the last term, in no less than 13 cases, to review decisions of the courts of appeals favorable to the Board on the injunction issue, the Board is confident that the Supreme Court will approve its position on this question. Such a decision by the Supreme Court will bring to a successful conclusion the Board's vigorous defense against a movement which at one time threatened completely to nullify the procedure of the act and thus to thwart the declared will and purpose of Congress.

The work in opposing injunction suits continued to consume much of the time and energy of the Board's legal staff during the present fiscal year, although comparatively few new suits were filed after November 1, 1936. There remained on the dockets of the appellate courts a large number of appeals both by the Board and opposing parties, and this appellate work continued to be a very important factor until the spring of 1937. After April 12, 1937, when the decisions of the Supreme Court upholding the act were rendered, the injunction suits then pending in the district and appellate courts were rapidly disposed of, so that for the first time the Board's litigation staff was free to direct its undivided attention to the task of enforcing the Board's orders in the circuit courts of appeals in the manner prescribed by the act. We consider now the Board's results in that class of litigation.

B. ENFORCEMENT LITIGATION

Notwithstanding the large number of injunction proceedings instituted against it, the Board was able to hear and decide a considerable number of cases conducted under the procedure of the act. The Board filed several petitions in the circuit courts of appeals for the enforcement of its orders, and five cases were pressed forward for a comprehensive and final determination by the Supreme Court of the fundamental constitutional questions raised by the act.

On April 12, 1937, the Supreme Court sustained the validity of the act against all attacks made against it, and enforced orders of the Board requiring the respondents to cease and desist from engaging in the unfair labor practices proscribed by section 8, subdivisions (1) and (3) and to reinstate with back pay employees discriminatorily discharged. *The Associated Press* v. *National Labor Relations Board*, 301 U. S. 103; *Washington, Virginia and Maryland Coach Co.* v. *Same*, 301 U. S. 142; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.* (2 cases), 301 U. S. 58. In each of these cases the jurisdiction of the Board over the respondent was sustained. This aspect of the decisions is discussed in Chapter XI, *infra.*

In the *Associated Press case* the Court held that the act does not abridge the freedom of speech or of the press safeguarded by the first amendment. In the *Jones & Laughlin case*, both the substantive and procedural provisions of the act were sustained against attacks under the due process clause of the fifth amendment, among other constitutional provisions. In the same case the Court held that orders of the Board requiring the payment of back wages to

employees discharged in violation of the act do not contravene the seventh amendment in respect to jury trial.

Even prior to the Supreme Court decisions, no circuit court of appeals had held the statute invalid on any basic substantive or procedural ground,[25] apart from the question of the statute's application to manufacturing employees. The Circuit Courts of Appeals for the Second, Fourth, and Fifth Circuits had upheld orders of the Board requiring the reinstatement with back pay of employees discriminatorily discharged, where the employees involved were engaged in or about interstate commerce. *National Labor Relations Board* v. *National New York Packing & Shipping Co.*, 86 F. (2d) 98 (C. C. A. 2d); *National Labor Relations Board* v. *The Associated Press*, 85 F. (2d) 56 (C. C. A. 2d); *National Relations Board* v. *Washington, Va. & Md. Coach Co.*, 85 F. (2d) 990 (C. C. A. 4th); *Agwilines, Inc.*, v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th). In the *Agwilines case* the court also sustained the Board's order requiring the company to bargain collectively with the union as the exclusive representative of its employees, under the majority rule principle.

Following the Supreme Court decisions, the various circuit courts of appeals made a number of decisions on petitions to enforce or set aside orders of the Board. Most of these cases were pending in the respective courts at the time of the Supreme Court's decisions. The following is a list of such decisions:

THIRD CIRCUIT

National Labor Relations Board v. *Delaware-New Jersey Ferry Co.*, 90 F. (2d) 520. The petition to enforce the order of the Board was filed on April 26, 1936. On June 19, 1937, the court denied the petition. The Board's order required the respondent to cease and desist from refusing to bargain collectively with the duly selected bargaining agency of the majority of its employees. The court held that subsequent to the date of the Board's order the employees in question designated new representatives for the purposes of collective bargaining, and that the order of the Board could not, therefore, be enforced. The Board's petition for certiorari to review this decision was denied by the Supreme Court on November 8, 1937.

National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 91 F. (2d) 178. The petition to enforce the order of the Board was filed on December 10, 1935. The case was argued and submitted on March 31, 1936, and reargued and resubmitted at the request of the court on October 6, 1936. On June 17, 1937, the court entered its decision sustaining in part the Board's order. Those parts of the order requiring the respondent to cease and desist from the unfair labor practices proscribed by section 8, subdivisions (1), (2), and (3), of the act, and to reinstate with back pay certain employees whom the Board found had been discharged in violation of the act were approved. The court set aside that part of the Boards' order which required the disestablishment of a company-dominated union. The Board's petition for certiorari to re-

[25] But see the divided opinions in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 87 F. (2d) 611 (C. C. A. 9th), discussed at p. 35, post.

view the court's decision on this part of the order was granted by the Supreme Court on November 8, 1937.

FOURTH CIRCUIT

Jeffery-De Witt Insulator Co. v. *National Labor Relations Board*, 91 F. (2d) 134. A petition to review an order of the Board was filed by the company on May 19, 1936. On June 16, 1937, the court entered its decision denying the petition and enforcing in whole the order of the Board requiring the company to cease and desist from refusing to bargain collectively with the duly chosen representatives of the majority of its employees, and to reinstate strikers who were on strike on July 16, 1935, where the positions held by such strikers on June 15, 1935, were filled by persons who were first employed after July 16. The company's petition for a writ of certiorari to review this order was denied by the Supreme Court on October 18, 1937.

National Labor Relations Board v. *Tidewater Express Lines, Inc.*, 90 F. (2d) 301. A petition to enforce the order of the Board was filed on February 20, 1937. On May 11, 1937, the court entered its decision affirming the order, which required the respondent to reinstate with back pay certain employees whom the Board found had been discharged in violation of the act.

FIFTH CIRCUIT

National Labor Relations Board v. *Bell Oil & Gas Co.*, 91 F. (2d) 509. The petition to enforce an order of the Board was filed on April 14, 1937. On July 21, 1937, the court affirmed the order, which required the respondent to reinstate with back pay an employee whom the Board found the respondent had discriminated against in reinstatement following a strike.

SIXTH CIRCUIT

Renown Stove Co. v. *National Labor Relations Board*, 90 F. (2d) 1017. A petition to review the Board's order was argued and submitted on April 7, 1937. On July 8, 1937, the court entered its decision enforcing the order, which required the company to reinstate with back pay two employees whom the Board found had been discharged in violation of the act.

NINTH CIRCUIT

National Labor Relations Board v. *Santa Cruz Fruit Packing Co.*, 91 F. (2d) 790, decided July 31, 1937. The petition to enforce the Board's order was filed in December 1936. The court sustained the order, which required the respondent to reinstate with back pay certain employees whom the Board found had been locked out in violation of the act. The company's petition for a writ of certiorari to review the court's order is now pending in the Supreme Court.

National Labor Relations Board v. *Pacific Greyhound Lines, Inc.*, 91 F. (2d) 458. The petition to enforce the Board's order was filed in January 1937. On July 16, 1937, the court entered its decision

sustaining the order insofar as it required the respondent to cease and desist from the unfair labor practices proscribed by section 8, subdivisions (1), (2), and (3), of the act, and to reinstate with back pay certain employees whom the Board found had been discharged in violation of the act. The court set aside that part of the Board's order which required the disestablishment of a company-dominated union. The Boards' petition for a writ of certiorari to review this part of the court's decision was granted by the Supreme Court on November 15, 1937.

In *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, the Ninth Circuit first set aside the Board's order requiring the reinstatement with back pay of five employees discriminated against in reinstatement following a strike. 87 F. (2d) 611, January 11, 1937. Judge Wilbur held that strikers were employees within the meaning of the act, but declared the order violated the due process clause of the fifth amendment. Judge Mathews concurred in the result, on the ground that the Board had not made a sufficient finding that the strikers were employees whose work had ceased because of a labor dispute—a ground which Judge Wilbur rejected in his opinion. Judge Garrecht disagreed with Judge Wilbur on the constitutional issue and with Judge Mathews on the issue of the Board's findings. Following the Supreme Court decisions, the Ninth Circuit granted the Board's petition for a rehearing in this case. After reargument, the court again declared the Board's order could not be enforced. Judge Wilbur held that the act could not, consistently with the fifth amendment, be construed to empower the Board to reinstate employees who had voluntarily gone on strike. Judge Mathews and Judge Garrecht reiterated the positions previously taken. The Board is preparing a petition for certiorari to review the court's judgment in this case.

In addition to the cases listed above consent decrees enforcing orders of the Board have been entered in the following cases: *Clinton Cotton Mills* v. *National Labor Relations Board*, 91 F. (2d) 1008 (C. C. A. 4th); *National Labor Relations Board* v. *Alaska Juneau Gold Mining Co.*, 91 F. (2) 1017 (C. C. A. 4th); *National Labor Relations Board* v. *Alabama Mills, Inc.*, entered November 5, 1937 (C. C. A. 5th).

A recapitulation of the above cases shows that the Board has been successful in having its orders enforced in whole in 14 cases (including the 5 Supreme Court cases and 3 consent decrees); and enforced in part in 2 cases (*Pennsylvania Greyhound Lines, Inc.* and *Pacific Greyhound Lines, Inc.*). In only three (*Foster Brothers Manufacturing Co.*,[26] *Mackay Radio & Telegraph Co.*, and *Delaware-New Jersey Ferry Co.*) have the courts denied enforcement of orders of the Board. In no case has the Board's fact findings been reversed in whole, or because of constitutional or other defects in the Board's procedure.

The Board has moved ahead rapidly in an effort to secure compliance with its orders. Where the respondent does not agree to

[26] On October 6, 1936, the Fourth Circuit set aside the Board's order in this case for lack of jurisdiction, 85 F. (2d) 984. Following the Supreme Court decisions, the Board petitioned the circuit court for rehearing. This petition was denied in June 1937, 90 F. (2d) 948.

comply with the Board's order, the Board has taken the case to the circuit courts of appeals. As of November 15, 1937, there were 40 cases pending in the circuit courts of appeals on petitions to enforce or petitions to set aside orders of the Board. It is hoped that the vigorous prosecution of the Board's orders in the courts will ultimately result in voluntary compliance therewith to an ever increasing degree.

C. CUMULATIVE SUMMARY OF INJUNCTION LITIGATION

(As of November 15, 1937)

1. District Court Cases

(*a*) District Court decisions denying temporary injunctions:

Aircraft Workers Union, Inc. v. *Nylander* (S. D. Calif., Yankwich, J.);
Alexander Smith & Sons Carpet Co. v. *Herrick* (S. D. N. Y., Hulbert, J.);
The Associated Press v. *Herrick* (S. D. N. Y., Bondy, J.), 13 F. Supp. 897;
Beaver Mills v. *Madden* (D. C., Adkins, J.);
Bemis Bros. Bag Co. v. *Feidelson* (W. D. Tenn., Martin, J.), 13 F. Supp. 153;
Bethlehem Shipbuilding Corp. v. *Madden* (D. C., Adkins, J.);
Bethlehem Shipbuilding Corp. v. *Nylander* (S. D. Calif., Stephens, J.), 14 F. Supp. 201;
John Blood & Co. v. *Madden* (E. D. Pa., Kirkpatrick, J.), 15 F. Supp. 779;
Bradley Lumber Co. v. *National Labor Relations Board* (E. D. La., Borah, J.);
Brown Shoe Co. v. *Madden* (D. C., Adkins, J.);
S. Buchsbaum & Co. v. *Beman* (N. D. Ill., Wilkerson, J.), 14 F. Supp. 444;
Cabot Mfg. Co. v. *Madden* (D. C., Adkins, J.);
Cannon Mills Co. v. *Feidelson* (M. D. N. C., Hayes, J.);
Carlisle Lumber Co. v. *Hope* (W. D. Wash., Cushman, J.);
Chrysler Corp. v. *Bowen* (E. D. Mich., Moinet, J.);
Shirley Clark et al., individually and as Representatives of the Employees of the H. E. Fletcher Co. v. *Myers* (D. Mass., Sweeney, J.);
Condenser Corp. v. *Delaney* (D. N. J., Fake, J.), 18 F. Supp. 611;
Corinth Hosiery Mill v. *Logan* (N. D. Miss., Cox, J.);
Cornell-Dubilier Corp. v. *Delaney* (D. N. J., Fake, J.), 18 F. Supp. 611;
Dartmouth Woolen Mills, Inc. v. *Myers* (D. N. H., Morris, J.), 16 F. Supp. 633;
E. I. DuPont de Nemours & Co., and DuPont Rayon Co. v. *Boland* (2 cases. W. D. N. Y., Rippey, J.);
Eastern Mfg. Co. v. *Feidelson* (E. D. N. C., Meekins, J.);
Echols v. *Madden* (D. C., Adkins, J.);
H. E. Fletcher Co. v. *Myers* (D. Mass., Sweeney, J.);
Gate City Cotton Mills v. *Madden* (D. C., Adkins, J.);
General Motors Corp. v. *Bajork* (E. D. Mo., Moore, J.);
General Motors Truck Corp. v. *Bowen* (E. D. Mich., Moinet, J.);
General Motors Truck Corp., General Motors Truck Co., and Yellow Truck and Coach Mfg. Co. v. *Bowen* (E. D. Mich., Moinet, J.);
Golden Belt Mfg. Co. v. *Feidelson* (M. D. N. C., Hayes, J.);
Goodyear Tire & Rubber Co. v. *Madden* (D. C., Bailey, J.);
Hatfield Wire & Cable Co. v. *Herrick* (D. C., Cox, J.);
Heller Bros. Co. v. *Lind* (D. C., Adkins, J.);
International Nickel Co. v. *Madden* (D. C., Adkins, J.);
Iowa Packing Co. v. *Madden* (D. C.);
Iowa Packing Co. v. *Madden* (S. D. Iowa, Dewey, J.);
Iowa Packing Co. v. *Bowen* (E. D. Mich., Moinet, J.);
Jamestown Veneer & Plywood Corp. v. *Boland* (W. D. N. Y., Knight, J.), 15 F. Supp. 28;

(*a*) District Court decisions denying temporary injunctions—Continued.
Kelly-Springfield Co. v. *Madden* (D. C., Proctor, J.);
Labor Board of General Motors Truck Corp., etc. v. *Bowen* (E. D. Mich., Moinet, J.);
A. C. Lawrence Leather Co. v. *Madden* (D. C., Adkins, J.);
Mack Molding Co. v. *Madden* (D. C., Adkins, J.);
Mackay Radio & Telegraph Co. v. *Hope* (W. D. Wash., Bowen, J.);
Monthly Checkers Club (Leo Lyons et al.) v. *Rosseter* (N. D. Calif., Roche, J.);
Monthly Checkers Club (Jack Joel et al.) v. *Rosseter* (N. D. Calif., Norcross, J.);
Moore Dry Dock Co. v. *Rosseter* (N. D. Calif., Louderback, J.);
National Motor Bearing Co., Inc. v. *Rosseter* (N. D. Calif., Denman, J.);
National Seal Co., Inc. v. *Herrick* (S. D. N. Y., Patterson, J.);
Newport News Shipbuilding and Dry Dock Co. v. *Schauffler* (E. D. Va., Way, J.);
Nicolet Paper Corp. v. *Clark* (E. D. Wis., Geiger, J.);
Northrop Corp. v. *Madden* (S. D. Calif., Yankwich, J.);
Ohio Custom Garment Co. v. *Lind* (2 cases. S. D. Ohio, Nevin, J.), 13 F. Supp. 533;
J. C. Pilgrim et al. v. *Madden* (D. C., Adkins, J.);
Precision Castings Co., Inc. v. *Boland* (W. D. N. Y., Rippey, J.), 13 F. Supp. 877;
Remington Rand, Inc. v. *Lind* (W. D. N. Y., Knight, J.);
Santa Cruz Fruit Packing Co. v. *Rosseter* (N. D. Calif., Louderback, J.);
Washington Mills Co. v. *Schauffler* (M. D. N. C., Hayes, J.);
Whiterock Quarries, Inc. v. *Penn R. R. Co. and National Labor Relations Board* (M. D. Pa., Johnson, J.);
Wilson & Co., Inc. v. *Gates* (D. Minn., Joyce, J.).

(*b*) District Court decisions granting motions to quash:
Jamestown Veneer & Plywood Corp. v. *National Labor Relations Board* (W. D. N. Y., Knight, J.), 13 F. Supp. 405;
A. C. Lawrence Leather Co. v. *Donoghue* (D. Mass., Sweeney, J.);
Lion Shoe Co. v. *Madden* (D. Mass., Sweeney, J.);
Mackay Radio & Telegraph Co. v. *Hope* (D. Ore., Fee, J.);
New England Transportation Co. v. *Myers* (D. Mass., Sweeney, J.), 15 F. Supp. 807.

(*c*) Suits withdrawn:
Dwight Mfg. Co. v. *Madden* (D. C.);
In re Ralph A. Freundlich, Inc. (D. Mass.);
Iowa Packing Co. v. *Pratt* (W. D. Mo.);
Pure Oil Co. v. *Lind* (N. D. Ohio);
Robinson and Golluber v. *Herrick* (S. D. N. Y.);
Swift & Co. v. *Madden* (D. C.);
Peter Wendel & Sons, Inc. v. *Herrick* (D. C.).

(*d*) District Court decisions granting temporary injunctions:
Bendix Products Corp. v. *Beman* (N. D. Ill., Barnes, J.), 14 F. Supp. 58;
Bethlehem Shipbuilding Corp. v. *Myers* (D. Mass., Brewster, J.), 15 F. Supp. 915;
J. I. Case Co. v. *Clark* (E. D. Wis., Geiger, J.);
Clayton Mark & Co. v. *Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;
Cocheco Woolen Mfg. Co. v. *Myers* (D. N. H., Morris, J.), 16 F. Supp. 788;
Cochrell v. *Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;
Eagle-Picher Lead Co. v. *Madden* (N. D. Okla., Kennamer, J.), 15 F. Supp. 407;
El Paso Electric Co. v. *Elliott* (W. D. Texas, Boynton, J.);
Employees of Bethlehem Shipbuilding Corp. v. *Myers* (D. Mass., Brewster, J.);
The Evening Wisconsin Co. v. *Clark* (E. D, Wis., Geiger, J.);
Highway Trailer Co. v. *Clark* (E. D. Wis., Geiger, J.);
Independent Workers of Clayton Mark & Co. v. *Beman* (N. D. Ill., Woodward, J.), 13 F. Supp. 627;

(*d*) District Court decisions granting temporary injunctions—Continued.

Infant Socks, Inc. v. *Clark* (E. D. Wis., Geiger, J.) (decree subsequently vacated and bill dismissed, in February 1937, on motion of Board);

Iowa Mfg. Co. v. *Beman* (N. D. Iowa, Scott, J.);

Lindemann & Hoverson Co. v. *Clark* (E. D. Wis., Geiger, J.);

Marathon Electric Mfg. Corp. v. *Clark* (E. D. Wis., Geiger, J.);

Oberman & Co., Inc. v. *Pratt* (W. D. Mo., Reeves, J.);

Stout (Majestic Flour Mills) v. *Pratt* (2 cases. W. D. Mo., Otis, J.), 12 F. Supp. 864;

James Vernor Co. v. *Bowen* (E. D. Mich., Moinet, J.);

Weil-Kalter Mfg. Co. v. *Shaw* (E. D. Ill., Wham, J.);

2. Circuit Courts of Appeals Cases

(*a*) Denial of temporary injunctions affirmed:

SECOND CIRCUIT

Alexander Smith & Sons Carpet Co. v. *Herrick*, 85 F. (2d) 16 (affirming decision of Judge Hurlbert, southern district of New York, denying temporary injunction and dismissing bill of complaint);

E. I. DuPont de Nemours & Co. and DuPont Rayon Co. v. *Boland* (2 cases), 85 F. (2d) 12 (affirming decisions of Judge Rippey, western district of New York, denying temporary injunctions and dismissing bills of complaint);

Precision Castings Co., Inc. v. *Boland*, 85 F. (2d) 15 (affirming decision of Judge Rippey, western district of New York, denying temporary injunction and dismissing bill of complaint).

FOURTH CIRCUIT

Newport News Shipbuilding and Dry Dock Co. v. *Shauffler*, Aug. 2, 1937, 91 F. (2d) 730 (affirming decision of Judge Way, eastern district of Virginia, denying temporary injunction and dismissing bill of complaint).

FIFTH CIRCUIT

Bradley Lumber Co. v. *National Labor Relations Board*, 84 F. (2d) 97 (affirming decision of Judge Borah, eastern district of Louisiana, denying temporary injunction and dismissing bill of complaint).

EIGHTH CIRCUIT

General Motors Corp. v. *Bajork*, 90 F. (2d) 248, May 5, 1937 (affirming decision of Judge Moore, eastern district of Missouri, denying temporary injunction and dismissing bill of complaint);

Wilson & Co. v. *Gates*, 90 F. (2d) 247, May 5, 1937 (affirming decision of Judge Joyce, district of Minnesota, denying temporary injunction and dismissing bill of complaint).

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Beaver Mills v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

Bethlehem Shipbuilding Corp. v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

Brown Shoe Co. v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

Cabot Mfg. Co. v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

(*a*) Denial of temporary injunctions affirmed—Continued.

Hatfield Wire & Cable Co. v. *Herrick*, 86 F. (2d) 862 (affirming decision of Judge Cox, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

Heller Bros. Co. v. *Lind*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

A. C. Lawrence Leather Co. v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint);

J. C. Pilgrim et al. v. *Madden*, 86 F. (2d) 862 (affirming decision of Judge Adkins, district court for District of Columbia, denying temporary injunction and dismissing bill of complaint).

(*b*) Granting of temporary injunctions affirmed:

FIRST CIRCUIT

Myers v. *Bethlehem Shipbuilding Corp.*, 88 F. (2d) 154 (affirming decision of Judge Brewster, district of Massachusetts, granting temporary injunction);

Myers v. *Employees of Bethlehem Shipbuilding Corp.*, 88 F. (2d) 154 (affirming decision of Judge Brewster, district of Massachusetts, granting temporary injunction).

EIGHTH CIRCUIT

Pratt v. *Stout* (*Majestic Flour Mills*), 85 F. (2d) 172 (2 cases) (affirming decision of Judge Otis, western district of Missouri, granting temporary injunctions) (decrees subsequently vacated and bills dismissed by District Judge Otis, in July 1937, on motion of the Board).

(*c*) Granting of temporary injunctions reversed:

FIFTH CIRCUIT

Elliott v. *El Paso Electric Co.* (reversing decision of Judge Boynton, western district of Texas, granting permanent injunction).

SIXTH CIRCUIT

Bowen v. *James Vernor Co.*, 89 F. (2d) 968 (reversing decision of Judge Moinet, eastern district of Michigan, granting temporary injunction).

SEVENTH CIRCUIT

Beman v. *Bendix Products Corp.*, 89 F. (2d) 661 (reversing decision of Judge Barnes, northern district of Illinois, granting temporary injunction);

Beman v. *Clayton Mark & Co.*, 88 F. (2d) 59 (reversing decision of Judge Woodward, northern district of Illinois, granting temporary injunction);

Beman v. *Cochrell*, 88 F. (2d) 59 (reversing decision of Judge Woodward, northern district of Illinois, granting temporary injunction);

Beman v. *Independent Workers of Clayton Mark & Co.*, 88 F. (2d) 59 (reversing decision of Judge Woodward, northern district of Illinois, granting temporary injunction);

Clark v. *J. I. Case Co.*, 88 F. (2d) 59 (reversing decision of Judge Geiger, eastern district of Wisconsin, granting temporary injunction);

Clark v. *Highway Trailer Co.*, 88 F. (2d) 59 (reversing decision of Judge Geiger, eastern district of Wisconsin, granting temporary injunction);

Clark v. *Lindemann & Hoverson Co.*, 88 F. (2d) 59 (reversing decision of Judge Geiger, eastern district of Wisconsin, granting temporary injunction);

Clark v. *Marathon Electric Mfg. Corp.*, 88 F. (2d) 59 (reversing decision of Judge Geiger, eastern district of Wisconsin, granting temporary injunction);

(c) Granting of temporary injunctions reversed—Continued.

Shaw v. *Weil-Kalter Mfg. Co.*, 89 F. (2d) 661 (reversing decision of Judge Wham, eastern district of Illinois, granting temporary injunction).

EIGHTH CIRCUIT

Beman v. *Iowa Mfg. Co.*, 90 F. (2d) 249, May 5, 1937 (reversing decision of Judge Scott, northern district of Iowa, granting temporary injunction);

Pratt v. *Oberman & Co.*, 89 F. (2d) 786 (reversing decision of Judge Reeves, western district of Missouri, granting temporary injunction).

TENTH CIRCUIT

Madden v. *Eagle-Picher Lead Co.*, 90 F. (2d) 321, May 28, 1937 (reversing decision of Judge Kennamer, northern district of Oklahoma, granting temporary injunction).

3. SUPREME COURT CASES

(a) Cases in which the Supreme Court denied petitions for writs of certiorari to review decisions of courts of appeals affirming decisions of district courts denying temporary injunctions and reversing decisions granting temporary injunctions:

Beaver Mills v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Bethlehem Shipbuilding Corp. v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Bradley Lumber Co. v. *National Labor Relations Board*, 299 U. S. 559 (certiorari denied Oct. 12, 1936);
Brown Shoe Co., Inc. v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Cabot Mfg. Co. v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
El Paso Electric Co. v. *Elliott* (certiorari denied June 1, 1937);
Hatfield Wire & Cable Co. v. *Herrick*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Heller Bros. Co. v. *Lind*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Independent Workers of Clayton Mark & Co. v. *Beman* (certiorari denied June 1, 1937);
A. C. Lawrence Leather Co. v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937);
Marathon Electric Mfg. Corp. v. *Clark* (certiorari denied Apr. 5, 1937);
Perrin et al. v. *Elliott* (certiorari denied June 1, 1937);
J. C. Pilgrim et al. v. *Madden*, 300 U. S. 672 (certiorari denied Mar. 15, 1937).

(b) Cases in which the Supreme Court granted petitions for writs of certiorari to review decision of courts of appeals affirming decisions of district courts denying temporary injunctions:

Newport News Shipbuilding and Dry Dock Co. v. *Schauffler* (certiorari granted Oct. 11, 1937, to review decision of the Circuit Court of Appeals for the Fourth Circuit affirming decision of Judge Way, eastern district of Virginia, denying temporary injunction and dismissing bill of complaint).

(c) Cases in which the Supreme Court granted petitions for writs of certiorari to review decisions of courts of appeals affirming decisions of district courts granting temporary injunctions:

Myers v. *Bethlehem Shipbuilding Corp.* (certiorari granted Oct. 11, 1937, to review decision of the Circuit Court of Appeals for the First Circuit affirming decision of Judge Brewster, district of Massachusetts, granting temporary injunction);
Myers v. *Employees of Bethlehem Shipbuilding Corp.* (certiorari granted Oct. 11, 1937, to review decision of the Circuit Court of Appeals for the First Circuit affirming decision of Judge Brewster, district of Massachusetts, granting temporary injunction).

IX. DIVISION OF ECONOMIC RESEARCH

During the months prior to the Supreme Court decisions the Board continued to accept cases and prepare them for hearing in much the same manner as described in the first annual report. As a matter of routine, the Division of Economic Research continued to request from the Department of Labor a certified table indicating the major causes of labor disputes in the industry involved for each case set for hearing. In every case in which time permitted, tables of census data were also prepared indicating by States the sources of the chief raw materials, the value of products of the industry, and the location of the chief consuming market. As the remainder of this section indicates, this routine work consumed, however, only a minor part of the time of the staff devoted to the preparation of economic material for cases set for hearing.

After the decisions, the Legal Division requested, as a precautionary measure, that the Division continue to prepare for each case tables indicating the causes of labor disputes and tables based on census data indicating the importance of the industry in terms of employees and value of product, the distribution of the industry by States, the distribution by States of the chief raw materials, and the consumption by States of the product. This work was therefore continued during the rest of the period covered by the report.

The nonroutine work on cases set for hearing may be conveniently classed as (1) preparation of evidence indicating jurisdiction in border-line cases, and (2) preparation of material concerning special phases of labor relations problems. This material may be prepared as exhibits and introduced as such into the record by the trial attorney, or may be introduced through testimony of the Chief Economist. Frequently memoranda are sent out simply for use by the trial attorney as background information to assist in the preparation of the evidence for the hearing.

One of the cases in which the Division prepared extensive material on interstate commerce involved the Borden Co. In the *Borden Company* case (II–C–168) the jurisdiction of the Board was at first in doubt, since the bulk of the milk distributed by the respondent was purchased from New York farmers and consumed in New York City. Furthermore, the decision of the Supreme Court in *Nebbia* v. *New York* (291 U. S. 502) had emphasized the local character of the New York milk supply and the necessity for State regulation of the industry. The Division was able to establish through Government reports [27] and the registration filed by the company with the Securities and Exchange Commission that the respondent was a part of a corporation operating throughout the Nation. A map was prepared indicating the locations of these branches. The Government reports

[27] New York State Joint Legislative Committee, *Report on the Milk Industry*, Joint Legislative Document No. 114, April 10, 1933; Federal Trade Commission, *Sale and Distribution of Milk and Milk Products*, New York Sales Area (1937).

indicated that certain food products, distributed by respondent, such as cheese, butter and eggs, were regularly received from outside the State of New York. Fresh milk, the main product distributed, was also shown to move in interstate commerce, though most of it originated in and was destined for the same State. This was established through an inspection of the files of the departments of health of New York City and of Newark, N. J., and communication with the health authorities of the States of New York and New Jersey, of Stamford, Conn., and of Westchester County, N. Y. The files and correspondence indicated the source, amount, means of transport and point of receipt of milk shipped to the Borden Co. on specified inspection dates. On the basis of these data, tables and maps were prepared indicating that a major portion of the milk originated in or passed through New Jersey, Pennsylvania, Vermont, Connecticut or Massachusetts before being delivered in New York City. It was further shown by advertisements of the company and other sources that Borden's owned and operated more than 60 country milk receiving stations to which farmers delivered milk. From those stations milk was shipped by Borden's in its own tank cars by railroad, or by contract truck carrier. Milk delivered at New Jersey terminals was picked up by Borden's drivers and distributed in New York City as quickly as possible and without essential change in character. The questioning by the regional attorney of a company official verified and amplified these points. It was thus evident that a company which by superficial examination appeared to be engaged only in retail trade not only received products in interstate commerce but was also directly engaged in interstate transportation, and that a strike of its employees would clearly interrupt interstate commerce. After the presentation of this and other evidence, the company agreed to cease and desist from the acts complained of and reinstated 16 employees with back pay amounting to approximately $30,000.

The *Consolidated Edison* case (II–C–224) affords another instance in which staff members of the Division working in the field assisted the regional staff in obtaining and preparing evidence on interstate commerce. The company has no branches outside of New York State and its contracts for sale of electricity, steam, and gas call for delivery to meters within the State. The company contended that its operations were clearly beyond the jurisdiction of the Board. Material prepared by the Division, chiefly from Government reports [28] and from reports and publications of the company itself, showed that the operations of respondent required more than 10,000 tons of coal per day, and that consumption of oil for gas production frequently totaled 600,000 gallons per day. These two necessary raw materials were shipped on regular schedule in interstate commerce to the plants of the respondent.

It was further shown that the steam-electric system of Consolidated Edison was interconnected with the Niagara Hudson Power Corporation network, which in turn received power from Canada.[29]

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[28] Particularly the Report of the Committee on Interstate and Foreign Commerce, House of Representatives, *Relation of Holding Companies to Operating Companies in Power and Gas Affecting Control*, pursuant to H. Res. No. 59, 72d Cong. 1st sess., pt. 3, February 1934.

[29] Consolidated Edison Company, *Serving New York* (1936); New York State Power Authority and New York State Public Service Commission, Report on H. Res. No. 59, *op. cit.*

An examination of the contracts filed by the company with the New York State Public Service Commission revealed that all of the agencies and companies engaging in interstate transportation and communication centering in New York City, such as the post office, railroads, radio broadcasting, telephone and telegraph companies, air and steamship lines, would be seriously hampered or paralyzed by a stoppage of the respondent's operations.

With this information as the basis, a stipulation which covered many of these points was agreed upon prior to the hearing. It seems clear that the effect upon interstate commerce of a strike of Commonwealth Edison employees would be catastrophic.

The *Ford Motor Company* case (C–199) which was heard after the Supreme Court decisions indicates the continued need for evidence relating to jurisdiction even in cases involving large and integrated corporations. The company challenged the Board's jurisdiction and proof of jurisdiction became necessary. The Division furnished the trial attorney with publications of the Ford Motor Co. itself,[20] advertisements,[21] articles in trade papers,[22] publications of industry associations,[23] descriptions in investment manuals,[24] and Government publications,[25] clearly establishing the extent of this vast, integrated enterprise, the location of its foreign and domestic branches, the dependence upon raw materials received from without the State, and the distribution of the product throughout the world. The parallel with other firms in which the courts have held that the Board has jurisdiction would seem obvious.

The other major section of the Division's work on cases before the Board was the preparation of material dealing with problems of labor relations. Thus toward the end of the fiscal year the Board was confronted with a new problem in the interpretation of the act. In the *Inland Steel* case (C–252) the question was raised whether a refusal to sign an agreement with a union, embodying the terms reached in negotiations, constitutes a violation of the act in view of the statutory intent to effectuate collective bargaining.

To aid the Board in reaching a decision on this issue, the Division made a comprehensive study of the history, theory, and practice of collective bargaining, and of the prevailing practices relating to signed, written trade agreements. Material was prepared and introduced at the hearing to explain the purposes of collective bargaining and their relation to written trade agreements. In tracing the historical development of collective bargaining, both in this and in other important industrial countries, special attention was paid

[20] Such as *From the Rouge to the Road* (1935); *Industries Within Industries;* and *Ford and the Coming Agrindustrial Age.*

[21] Of particular importance were the numerous advertisements of parts supplier in the *Detroit Saturday Night,* "Ford Industries Number," June 15, 1936; and an advertisement of the Ford Motor Co. in *Automotive Industries,* April 4, 1936, explaining the dependence of the Company upon "The Ford Fleet" operating on the Great Lakes and in foreign commerce.

[22] Particularly *Mill and Factory,* January 1936, and *Automotive Industries,* February 27, 1937, June 5, 1937, April 4, 1936. *Michigan Manufacturer & Financial Record,* April 25, 1936.

[23] Automobile Manufacturers' Association, *Automobile Facts & Figures* (1936).

[24] *Moody's Manual of Investments,* Industrials (1936).

[25] Bureau of the Census, *Census of Manufactures* (1935), *Motor Vehicles;* U. S. War Department; Board of Engineers for Rivers and Harbors, *Lake Series No. 2* (1931) and *No. 6* (1932), U. S. Department of Commerce, Bureau of Marine Inspection and Navigation, *Merchant Vessels of the United States* (1936).

to the relationship between the bargaining over terms and the reduction to writing of the terms agreed upon. Prevailing practices in the negotiation of agreements were also studied and described. A close analysis was made of the reasons advanced in the past by employers for refusing to reduce agreements to writing and an attempt was made to evaluate these reasons in the light of the past attitude of these employers toward the workers' efforts to organize.

Immediately following the Supreme Court's decision on the constitutionality of the act, many company unions were readapted to conform with the provisions of the law or were supplanted by so-called independent unions. Because the Board received many complaints, charging that these new organizations were dominated by employers, the Division circularized the regional staff, the readapted company unions and the independent unions for constitutions, bylaws, trade agreements, and other pertinent information. A preliminary study, drawing upon the material thus obtained, was made of the circumstances surrounding the formation of these organizations, of their connection with previous company unions, of their present relationships with other labor groups, of their structure and constitutional provisions, of their methods of functioning, and of the agreements they had negotiated.

The increasing importance of back-to-work movements and the prominent role they have played in cases coming before the Board necessitated a study of their significance in the employer-employee relationship. The functions they have historically performed during strikes and their connections, past and present, with employers, employer-dominated organizations, and detective agencies were carefully analyzed.

These two preliminary studies have been used extensively as a basis for testimony and for background material for our trial attorneys in cases in which charges have been made, alleging interference with the workers' right to organize, either by domination of "independent" employee groups or of back-to-work movements.

Cases involving the large integrated companies sometimes present, in addition to the usual questions, problems arising out of the relationship between the holding company and its subsidiary operating companies, and between the latter and the individual plants or units. Outstanding among these were the *Carnegie-Illinois* (United States Steel) and the *Seattle Post-Intelligencer* (Hearst) cases (C–142 and C–136, respectively).

In the former, the staff prepared a series of memoranda indicating the directness of control by the United States Steel Corporation over the labor policies of its subsidiaries, of which Carnegie-Illinois was one. The history of labor relations in the parent system, with its uniformity of policy and centralization of authority, was developed in detail. The extension of this policy into even the non-steel producing operations was described by a study of labor relations in the corporation's shipbuilding, shipping, and coal-mining subsidiaries. Further centralization by the affiliation of the parent Corporation to the American Iron and Steel Institute was shown by a description of the latter, a history of its labor policy, and a comparison of that policy with the policy prevailing throughout the subsidiaries of the Corporation.

The respondent's contention that labor policy, and specifically the terms of the employee representation plan, were the subject of joint determination by management and staff in each plant, was tested by a clause-by-clause comparison of the employee representation plans in the 25 Carnegie-Illinois plants. The infrequency and inconsequence of the variations in substance and in wording, as revealed by the analysis, were highly suggestive of a centralized authorship incompatible with the alleged separate and direct negotiation between management and personnel in the respective plants.

In the *Post-Intelligencer* case both the interstate commerce and the labor relations aspects required a study of the Hearst chain and of its financial and administrative integration. In connection with the former, the corporate structure of the Hearst newspaper system and of its affiliated companies in related fields was obtained from a number of governmental and trade sources. It was thus ascertained that the entire chain of 29 papers, in 18 cities spread over the continent, along with a system of closely interlocked units in the press service, radio, news-film, newsprint, and magazine fields, were owned, through holding companies in varying degrees of directness, by William Randolph Hearst. Every link but one[36] was in the form of a 100-percent ownership of voting stock.

A high degree of administrative integration accompanied this complete centralization of control. Specialized services essential to the functioning of the far-flung member papers were furnished by the central offices. First among these was the supply of news, comics, features, editorials, and other material making up a great part of the paper's page content. Others were national solicitation of advertising, banking services, central auditing, legal counsel, and supply of newsprint. Even the editorial policy of the member papers was found to be directed from above. It thus appears that the Post-Intelligencer was merely a unit in a well integrated, nation-wide business.

It was pointed out that the reliance of the Hearst papers upon the essential services of the Hearst press agencies was matched by the dependence of the latter, and even of non-Hearst agencies, upon the continuous functioning of the local papers for the supply of local news to be redistributed over their national networks. This fact, in view of the need of the business and political world at all times to have complete national press coverage, was one of the indications of the effect upon commerce which necessarily follows from a shutdown of a chain paper by strike or lockout.

On the labor relations side, the complex set-up of separate corporations was shown not to prevent a centralized and uniform labor policy for the whole system. Identical statements of policy in the editorials of the various Hearst papers and in correspondence of their editors were submitted, and even express statements of Hearst officials making reference to a common labor policy. The common policy was then historically examined and found to be antagonistic to the organization of newswriters for collective bargaining.

In connection with its work in the earlier steel cases,[37] the Division prepared for publication its Bulletin No. I, entitled *Governmental*

[36] For Hearst Metrotone News the figure was 50 percent.
[37] *Wheeling, Crucible, Jones & Laughlin,* (C–3, R–25, and C–57, respectively).

Protection of Labor's Right to Organize.[38] A joint hearing in these cases had brought out a mass of evidence bearing on the economic and sociological basis of the National Labor Relations Act and on the reasonableness of the regulations which it embodied. This evidence was analyzed, summarized, and recast by the staff and embodied in the bulletin.

The bulletin was submitted to the justices of the Supreme Court during oral argument in the cases involving the constitutionality[39] of the provisions of the National Labor Relations Act, and, a week prior to the Court's decision on that act, was quoted by Justice Stone in his opinion on the related Railway Labor Act.[40] Four thousand copies were distributed to individuals, libraries, and institutions, selected as having a special interest in the subject matter. By the end of the fiscal year an additional 4,000 were sent out in response to individual requests addressed to the Board or to the Superintendent of Documents.

The demand for the bulletin indicated a keen public interest in the problems with which the act deals. This was further confirmed by the large number of communications received from individuals, unions, and employers' organizations, requesting specific information on questions of labor economics. The requests were complied with to the extent that the Division's work permitted, often by the preparation of special outlines and bibliographies. The Chief Economist directed a project of the Works Progress Administration,[41] sponsored by the Board and the New York State Department of Labor, which included in its work a series of extensive bibliographies on labor subjects, useful not only in the Board's immediate work, but in the response to the growing demand for information.

The indications are that the requests for information will grow, that the public consciousness is being focused on the economic factors inherent in the problems confronting the Board. This trend toward enlightenment presages a better understanding of the problems to be dealt with and consequently more intelligent efforts at solution. At least part of the growing burden of gathering and preparing the required information will continue to fall upon the Division.

Prior to the validation of our act a large part of the work of the Division was devoted to the preparation of the economic arguments and factual material for the Supreme Court briefs. The ultimate responsibility and decision as to the inclusion or exclusion of economic evidence did not rest with the Division, but, at the request of the legal staff, memoranda were prepared analyzing the economic data in the respective records, preparing additional material from sources of which judicial notice could be taken, checking the accuracy of data and of arguments proposed, suggesting further arguments or use of material both as to jurisdiction and as to due process, and, in the case of the master brief for manufacturing industries,[42] drafting the basic description of the steel industry and of the respondent and its operations.

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[38] Government Printing Office, Washington, D. C., 1936.
[39] See above, p. 32.
[40] *Virginia Railway Company* v. *System Federation No. 40*, 300 U. S. 515, (1937).
[41] Official Project No. 167-97-6073.
[42] Jones & Laughlin Steel Corporation.

The decisions of the Supreme Court with their full use of the economic evidence presented in each case, coupled with the complete disregard for finely spun legal distinctions reaffirmed the appropriateness of the "economic approach" for which the famous Brandeis brief was the precedent. At one point the Court was moved to remark:

> We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum * * * *When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities,* how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience.[43]

The Court evidently desires to know not only the facts in regard to the particular respondent, but the facts in regard to the industry and the background of industrial labor relations which will enable it to render a "judgment that does not ignore actual experience."

While the decisions left to the Board a broad field of jurisdiction, many questions as to the extent of coverage are still being raised. The general phrases used by the Court, such as "close and substantial relation," offer no precise test as to commerce and jurisdiction, and it should be obvious that for some time to come the Board will be involved in a series of tests as to its jurisdiction. This is particularly true since opposition to the act persists not only from individual employers but from organized national, local, and industry groups.

This opposition to the act expresses itself not only in terms of challenges to the Board's jurisdiction but in evasion of the intent of the act. If experience in this and other countries with similar labor legislation is a guide, we may expect these practices to become increasingly subtle. Crude methods of interfering with organizations or destroying unions and avoiding collective bargaining will give way to methods which will require increasing vigilance and study if the purpose of the act is to be carried out. Frequently the significance of a particular labor practice of an employer can be understood and its real intent exposed only through a knowledge of the use and effect of similar practices in other regions and industries as well as in the industry and by the employer involved.

The clear necessity for careful preparation of the economic facts in the records and briefs of cases involving tests of the jurisdiction of the Board, and the equally fundamental necessity of contributing to the understanding and prevention of violations and evasions of the act, will persist as long as opposition to the act persists.

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[43] *National Labor Relations Board* v. *Jones and Laughlin Steel Corporation*, 301 U. S. 1, 41 (1937), italics supplied.

X. PUBLICATIONS DIVISION

A. PUBLIC RELATIONS PROBLEMS

The state of public knowledge of a new law has a direct relation to its successful administration. When its provisions are thoroughly understood, compliance is more easily obtained, cases are closed with dispatch, the purpose of the law is quickly translated into practice.

Because of its novelty to the American people, and because during the first 25 months its powers under the Constitution were widely challenged, the National Labor Relations Board knew the handicap of public misunderstanding. This is not a unique experience in the history of administrative agencies. The Interstate Commerce Commission, the Federal Trade Commission, and similar agencies with quasi-judicial functions went through the same cycle during their first years.

As any other quasi-judicial body the Board cannot enter the public arena to debate its own decisions in detail. It must consider each case on the merits of the issues involved, as these appear through the mouths of witnesses. After it has reviewed the facts involved, and makes its conclusion of law, it must stand squarely on the text of its decision. Only after a time, and after many cases have been decided, can the outline of precedents clearly emerge in a new and practically unexplored field of law.

Naturally those directly involved in labor problems will be impatient to know how the law affects themselves. The general public will want to be told how this new law affects the Nation generally. Both groups will demand instant and detailed answers, in more popular language than the necessarily legal phrases of Board decisions.

Such demands to be informed about Board activities became epidemic after the Supreme Court sustained the validity of the act on April 12, 1937. The rush of inquiries at the Board offices revealed an almost universal misapprehension of what the Board could do and what it was doing. Telephones, largely silent until then, importuned information. The mail brought questions written in pencil on ruled pads and others typed under the letterheads of national corporations. The workings of the Board became a topic of collegiate debate. This was not momentary interest. A sustained flood of inquiry has since supported the thesis that the American public has an abiding desire to understand the philosophy of the act and to follow its administration step by step.

B. BOARD POLICY IN ITS PUBLIC RELATIONS

A publications division serves as a general channel of all Board information. This relieves the Board members and attorneys from interruption and places responsibility for material given out. The

policy guiding and limiting the publications division was established in the fall of 1935 and has not since been altered. It is:

> Since a charge of unfair labor practice represents an unsupported allegation, it would be unfair to the employer to publicize the contents.
>
> If investigation finds evidence to support the charges, the Board will make its complaint public.
>
> Hearings will be public.
>
> Digests of Board decisions will be released shortly after the decisions have been served on the parties.
>
> Intermediate reports of Trial Examiners in complaint cases are available at the offices of the Board for public examination.

These rules are designed to provide access to all properly public facts at every stage in a Board case from the issuance of a complaint to the rendering of a decision. The only information withheld is the text of charges as filed with the Board. A ban of silence was placed here because such charges merely represent unsubstantiated allegations and it was held unfair to employers to make them public prior to a Board investigation of the facts. It is noteworthy that up to July 1, 1937, there had been 1,761 Board cases closed by satisfactory settlement, or by the dismissal or withdrawal of charges and petitions. In most of these cases the Board's rule not to disclose allegations against employers operated to keep the disputes out of the newspapers.

C. NEWSPAPER COVERAGE OF BOARD CASES

The Board recognizes the public service done by the press in its reporting of hearings, trial examiner reports, and Board decisions. Unwilling, as the custodian of a law, to enter public debate regarding its application, the Board would be blind to the reality of its problem if it did not appreciate the good which the press does through factual reporting of its activities. Public knowledge of the law can only grow upon facts and upon the editorial debating of them.

Yet, since the Board must perforce remain silent in current debate, it takes this opportunity to make certain observations on a matter so closely touching its administration.

It is only a statement of fact to say that, generally speaking, American newspapers in the fall of 1935 had had little experience to prepare them as reporters and interpreters of a law having to do with collective bargaining between men and management. The concept was new. The Federal right to enforce it by means of the interstate commerce power was gravely doubted and vociferously denied. When lower courts refused to uphold Board orders, on the ground that the Carter Coal Company decision applied to the act, the rumor grew apace that here was a Board whose rulings need not be seriously considered. It seemed conclusive to many city editors that the public did not wish news of Board activities.

On the other hand, the inevitable reader relish for stories of violence led city editors, when strike stories broke, to assign star reporters and to give them front-page space. Up to this time there were very few star reporters with sufficient knowledge of labor situa-

tions to make clear to readers those economic and social causes of which broken heads and pistol shots are merely the relatively final result. It was not in the tradition of American reporting to inform their readers about the issues of a labor dispute—whether employers were refusing to meet a properly selected majority representation of their employees; whether workers were spied upon and discharged for union activity; whether strikes called in defense of legal rights were being broken by an alliance of industry and municipal government under color of patriotic support for American ideals. Such basic inquiry was left to small circulation weeklies. The great mass of the public drew its opinion on strikes from scare headlines and blow-by-blow descriptions of strike violence. Such newspaper analysis of motives as was printed usually found itself buried in back pages.

While this inadequate reporting of labor disputes is described as typical of the fall of 1935, when the Labor Board began operations, it had in fact been chronic for decades prior to that time. The year 1935 is the dividing line between two eras. The passage of the Labor Act, the disclosures on spies before the Senate Civil Liberties Committee, the split between the A. F. of L. and the C. I. O. and the subsequent growth of each to the membership strength of the former alone, all this put labor news on the front page and its reporting into the hands of first-string staff writers. The conditions prior to 1935 no longer exist. Labor news is no longer an unwanted orphan in the city room. Instead of assigning strike stories to any reporter free at the moment for duty, the coverage is given to trained men.

Many of these have been led to probe below the exterior dramatics of strike stories into conscientious study of the complicated social dilemma involved in every labor dispute, however small. More so than at any other period, Sunday editions are carrying thoughtful reviews of the current labor situation.

The Board has pointed out above that the public mind is necessarily in a state of transition between an original apathy toward labor problems and a new awareness of the function which collective bargaining can serve in achieving industrial democracy.

The press, more than any other agency, can banish the misunderstandings which still disturb the relations between American employers and American workmen. The Board is in a peculiar position to know that peace and stability have returned to that relationship in many cases where ignorance of the other's viewpoint had beclouded tolerance. To the end that such settlements of labor disputes may be the rule, the Board suggests to the press the great public service to be done by trained reporters who can bring to this comparatively new field a passion for facts and a background broad enough to present them in clear and balanced measure to a vitally interested public.

D. ACTIVITIES OF PUBLICATIONS DIVISION

The publications division consists of a director, an assistant director, and a secretary. Its duty is to supply or make available information on the status of Board cases, the contents of examiners' reports, the text of Board decisions, and the course of litigation cases.

The division prepares for mimeograph release the following type of information:

Digests of Board decisions.
Digests of Board orders for election.
Announcements of consent elections to be held, and, later, their results.
Digests of complaints (in important cases).

A mailing list is maintained for those who request regular receipt of material issued, including the monthly summary of Board activities. No names are placed on the list except by such specific request. Under these circumstances the list, on June 30, 1937, was as follows:

Receiving releases (includes newspapers, labor organizations, trade journals, students, etc.)	1,320
Regional offices	21
Receiving decisions (includes some of the general mailing list plus lawyers, industries, etc.)	695
Total	2,036

On June 30, 1937, the practice of mimeographing decisions was discontinued. All decisions are now printed at the Government Printing Office and may be obtained only through the Superintendent of Documents.

XI. JURISDICTION

In section 1 of the act, Congress found that "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife and unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (*a*) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (*b*) occurring in the current of commerce; (*c*) materially effecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (*d*) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce." Congress found further that "experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest and by restoring equality of bargaining power between employers and employees." Congress therefore declared it to be "the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing * * *."

Congress made clear, however, that the Board's jurisdiction should be exercised only within constitutional limits, by limiting its authority to unfair labor practices "affecting commerce." The term "commerce" in the act was defined to mean interstate or foreign commerce, except as to operations in the Territories or the District of Columbia; and the term "affecting commerce" was defined to mean "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The issue before the courts was in effect whether the constitutional authority of Congress extended to the categories of situations contemplated in section 1 of the act.

At the outset the Board had no difficulty in sustaining its authority over operations of instrumentalities of commerce or activities carried on in a well-defined stream of commerce. Its orders were upheld in the fields of maritime and motor bus transportation,[44] collection

[44] *National Labor Relations Board* v. *Washington, Virginia & Maryland Coach Co.*, 85 F. (2d) 990 (C. C. A. 4th); *Agwilines, Inc.*, v. *National Labor Relations Board*, 87 F. (2d) 146 (C. C. A. 5th).

and transmission of news,[45] and consolidation of individual shipments or packages in interstate commerce.[46] However, those circuit courts of appeals which had occasion to pass on the question were in agreement that the act could not constitutionally be applied to manufacturing or production employees.[47] These courts held in substance that the finding of Congress that unfair labor practices in manufacturing and producing enterprises materially affect the flow of raw materials and manufactured and processed goods in interstate commerce could not be given effect, in view of prior decisions of the Supreme Court, particularly *Carter* v. *Carter Coal Co.* (298 U. S. 238).

On April 12, 1937, the Supreme Court sustained the constitutionality of the act in five notable decisions. The Court had no difficulty in upholding the Board's authority over interstate transportation and to operations in a current of interstate commerce. *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142; *The Associated Press* v. *National Labor Relations Board*, 301 U. S. 103. The most important and far-reaching of the Court's decisions were those sustaining the application of the act to production employees. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49; *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 301 U. S. 58.

The *Jones & Laughlin case* involved a vast enterprise with widespread interstate ramifications. With its subsidiaries, the Jones & Laughlin Steel Corporation is a completely integrated enterprise, owning and operating ore, coal, and limestone properties, lake and river transportation facilities, and terminal railroads located at its manufacturing plants. The corporation contended that its manufacturing operations were completely separated from interstate commerce and were not a part of a stream or flow of such commerce. The decision of the court on these contentions is of such far-reaching importance that we here quote from it at length:

> We do not find it necessary to determine whether these features of defendant's business dispose of the asserted analogy to the "stream of commerce" cases. The instances in which that metaphor has been used are but particular, and not exclusive, illustrations of the protective power which the Government invokes in support of the present Act. The congressional authority to protect interstate commerce from burdens and obstructions is not limited to transactions which can be deemed to be an essential part of a "flow" of interstate or foreign commerce. Burdens and obstructions may be due to injurious action springing from other sources. The fundamental principle is that the power to regulate commerce is the power to enact "all appropriate legislation" for "its protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); "to foster, protect, control, and restrain." *Second Employers' Liability Cases, supra*, p. 47. See *Texas & N. O. R. Co.* v. *Railway Clerks, supra*. That power is plenary and may be exerted to protect interstate commerce "no matter what the source of the dangers which threaten." *Second*

[45] *National Labor Relations Board* v. *The Associated Press*, 85 F. (2d) 56 (C. C. A. 2d).

[46] *National Labor Relations Board* v. *National New York Packing and Shipping Co.*, 86 F. (2d) 98 (C. C. A. 2d). In only one case involving an employer engaged in interstate commerce did the Circuit Court of Appeals refuse to enforce an order of the Board. *National Labor Relations Board* v. *Mackey Radio & Telegraph Co.*, 87 F. (2d) 611 (C. C. A. 9th). The decision in this case, however, was not predicated upon lack of jurisdiction under the commerce clause.

[47] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 83 F. (2d) 998 (C. C. A. 5th); *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 85 F. (2d) 391; (C. C. A. 6th); *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co.*, 85 F. (2d) 1 (C. C. A. 4th); *Foster Bros. Mfg. Co.* v. *National Labor Relations Board*, 85 F. (2d) 984 (C. C. A. 4th).

Employers' Liability Cases, p. 51; *Schechter Corporation* v. *United States, supra.* Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corporation* v. *United States, supra.* Undoubtedly the scope of this power must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. *Id.* The question is necessarily one of degree. As the Court said in *Chicago Board of Trade* v. *Olsen, supra*, p. 37, repeating what had been said in *Stafford* v. *Wallace, supra:* "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause and it is primarily for Congress to consider and decide the fact of the danger and meet it."

That intrastate activities, by reason of close and intimate relation to interstate commerce, may fall within federal control is demonstrated in the case of carriers who are engaged in both interstate and intrastate transportation. There federal control has been found essential to secure the freedom of interstate traffic from interference or unjust discrimination and to promote the efficiency of the interstate service. *The Shreveport Case*, 234 U. S. 342, 351, 352; *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 588. It is manifest that intrastate rates deal *primarily* with a local activity. But in rate-making they bear such a close relation to interstate rates that effective control of the one must embrace some control over the other. *Id.* Under the Transportation Act, 1920, Congress went so far as to authorize the Interstate Commerce Commission to establish a State-wide level of intrastate rates in order to prevent an unjust discrimination against interstate commerce. *Wisconsin Railroad Commission* v. *Chicago, B. & Q. R. Co., supra; Florida* v. *United States*, 282 U. S. 210, 211. Other illustrations are found in the broad requirements of the Safety Appliance Act and the Hours of Service Act. *Southern Railway Co.* v. *United States*, 222 U. S. 20; *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612. It is said that this exercise of Federal power has relation to the maintenance of adequate instrumentalities of interstate commerce. But the agency is not superior to the commerce which uses it. The protective power extends to the former because it exists as to the latter.

The close and intimate effect which brings the subject within the reach of Federal power may be due to activities in relation to productive industry although the industry when separately viewed is local. This has been abundantly illustrated in the application of the Federal Antitrust Act. * * *

Upon the same principle, the Antitrust Act has been applied to the conduct of employees engaged in production. *Loewe* v. *Lawlor*, 208 U. S. 274; *Coronado Coal Co.* v. *United Mine Workers, supra; Bedford Cut Stone Co.* v. *Stonecutters Association*, 274 U. S. 29. See, also, *Local 167* v. *United States*, 291 U. S. 293, 297; *Schechter Corporation* v. *United States, supra.* The decisions dealing with the question of that application illustrate both the principle and its limitation. Thus, in the first *Coronado case*, the Court held that mining was not interstate commerce, that the power of Congress did not extend to its regulation as such, and that it had not been shown that the activities there involved—a local strike—brought them within the provisions of the Antitrust Act, notwithstanding the broad terms of that statute. A similar conclusion was reached in *United Leather Workers* v. *Herkert, supra, Industrial Association* v. *United States, supra*, and *Levering & Garrigues Co.* v. *Morrin*, 289 U. S. 103, 107. But in the first *Coronado case* the Court also said that "if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint." 259 U. S. p. 408. And in the second *Coronado case* the Court ruled that while the mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce, nevertheless when the "intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control the supply entering and moving in interstate commerce, or the price of it in interstate markets, their action is a direct violation of the Antitrust Act." 268 U. S.

p. 310. And the existence of that intent may be a necessary inference from proof of the direct and substantial effect produced by the employees' conduct. *International Association* v. *United States*, 268 U. S. p. 81.

What was absent from the evidence in the first *Coronado case* appeared in the second and the Act was accordingly applied to the mining employees.

It is thus apparent that the fact that the employees here concerned were engaged in production is not determinative. The question remains as to the effect upon interstate commerce of the labor practice involved. In the *Schechter case, supra*, we found that the effect there was so remote as to be beyond the Federal power. To find "immediacy or directness" there was to find it "almost everywhere," a result inconsistent with the maintenance of our Federal system. In the *Carter case, supra*, the Court was of the opinion that the provisions of the statute relating to production were invalid upon several grounds—that there was improper delegation of legislative power, and that the requirements not only went beyond any sustainable measure of protection of interstate commerce but were also inconsistent with due process. These cases are not controlling here.

Fourth. Effects of the unfair labor practice in respondent's enterprise.—Giving full weight to respondent's contention with respect to a break in the complete continuity of the "stream of commerce" by reason of respondent's manufacturing operations, the fact remains that the stoppage of those operations by industrial strife would have a most serious effect upon interstate commerce. In view of respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic. We are asked to shut our eyes to the plainest facts of our national life and to deal with the question of direct and indirect effects in an intellectual vacuum. * * *

* * * It is not necessary again to detail the facts as to respondent's enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self-organization and freedom in the choice of representatives for collective bargaining.

In the *Fruehauf* and *Friedman-Harry Marks cases* the Court held that the principles announced in its decision in the *Jones & Laughlin case* were applicable to manufacturing concerns which are relatively small when compared with the enterprise involved in the *Jones & Laughlin case*. In the *Freuhauf case* the facts found by the Board and affirmed by the Court disclosed that the Fruehauf Trailer Co., a corporation engaged in the manufacture, assembly, sale, and distribution of commercal trailers and of trailer parts and accessories, imports in interstate commerce to its factory located in Detroit, Mich., more than 50 percent in value of the materials used by it in manufacure and assembly, and that more than 80 percent of its sales are of products shipped outside the State of Michigan through and to other States and to foreign countries. Though the company is the largest concern of its kind in the United States and has branch sales offices and distributors and dealers in other States and principal cities, its factory is small, only about 400 production and maintenance men being employed there at the time the unfair labor practices occurred.

In the *Friedman-Harry Marks case* it was found that almost all of the principal materials used by the company, a manufacturer of men's clothing, in its manufacturing operations come from other States to its plant in Richmond, Va., and that of the garments manufactured by it, approximately 83 percent are purchased by customers outside the State of Virginia. There are more than 3,000 firms in the men's clothing industry, and the company produces a very small percentage of the total production. It employs only 800 of the 150,000 workers engaged in the industry.

It is clear from these decisions that neither size, interstate ramifications, relative position in the industry, character of the commodities produced, nor number of men employed, is a controlling factor in determining whether the act may be constitutionally applied to a given manufacuring or producing enterprise. In brief, the test of the Board's jurisdiction, as laid down in the *Jones & Laughlin* decision and followed in the *Fruehauf* and *Friedman-Harry Marks cases*, is "whether stoppage of * * * operations by industrial strife" would result in substantial interruption to the flow of interstate commerce. Where such interruption would occur, the Court pointed out, unfair labor practices on the part of the employers, shown by long experience to be "prolific causes of strife," have a "close and intimate relation to interstate commerce" and are subject to Federal regulation under the act (301 U. S. at 41, 42, 43). The result of the decisions is a complete affirmance by the Supreme Court of Congress' fundamental premise that unfair labor practices of employers in manufacturing and production do, as a matter of fact and law, materially and intimately affect the flow of raw materials and manufactured or processed goods in interstate commerce, and are therefore subject to the regulatory power of Congress under the commerce clause.

Since the Supreme Court decisions, the Board has been highly successful in securing the enforcement of its orders in the circuit courts of appeals. In no case has an order of the Board been set aside on the ground that the Board did not have jurisdiction.

In *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 91 F (2d) 178 (C. C. A. 3d), and *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 91 F. (2d) 458 (C. C. A. 9th), the application of the act to bus drivers and garage and maintenance men employed by interstate bus lines was sustained. In *National Labor Relations Board* v. *Tidewater Express Lines, Inc.*, 90 F. (2d) 301 (C. C. A. 4th), an order of the Board requiring an interstate truck operator to reinstate with back pay certain drivers whom the Board found had been discharged in violation of the act was affirmed.

In *Jeffery-DeWitt Insulator Co.* v. *National Labor Relations Board*, 91 F. (2d) 134 (C. C. A. 4th), the Court affirmed an order of the Board directed to a small manufacturer of insulators employing from 82 to 166 persons, which imported in interstate and foreign commerce 85 percent in value of its raw materials, and sold in interstate commerce approximately 99 percent in value of its finished products.

In *Renown Stove Co.* v. *National Labor Relations Board*, 90 F. (2d) 1017 (C. C. A. 6th), the Court affirmed the application of the act to a corporation engaged in the manufacture and sale of various types of stoves, heaters, parts, and accessories. The company produces approximately 1 percent of all stoves of the types manufactured by it. It maintains only one plant at Owosso, Mich., where it employs from 175 to 250 men. Over half of the raw materials used by it in the manufacture of its stoves is shipped in to Owosso from points outside the State of Michigan, and approximately 55 percent of the stoves manufactured at its Michigan plant are sold and shipped in other States.

The principle of the Supreme Court decisions is equally applicable to a manufacturing enterprise where a part of the products move

out of the State, regardless of whether the raw materials move into the State of production from other States. Plainly, stoppage of operations by industrial strife in such a case would result in substantial obstruction to interstate commerce, identical with that which would occur in the event of similar strife at the *Fruehauf* plant or the *Friedman-Harry Marks* plant. This has been the ruling of the Fifth, Ninth, and Tenth Circuit Courts—the only courts that have had occasion to pass upon this precise issue since the Supreme Court decisions. In *National Labor Relations Board* v. *Santa Cruz Fruit Packing Co.*, 91 F. (2d) 790 (C. C. A. 9th), the Board's order was directed against a company engaged in the canning and packing of fruits and vegetables, "substantially all" of which were grown in the State in which the plant was located. About 39 percent of the product was shipped to other States and foreign countries. The company contested the jurisdiction of the Board, relying, among other cases, upon *Carter* v. *Carter Coal Co.*, 298 U. S. 238. Upon these facts the Court upheld the application of the act to the company, declaring that the power of Congress to regulate commerce "is plenary as to all productive activities which substantially affect or tend to throttle the volume of goods to be transported in commerce outside the State of production."

In *Lyons* v. *Eagle-Picher Lead Co.*, 90 F. (2d) 321 (C. C. A. 10th), the Board issued a complaint against a company engaged in mining, as well as in the smelting, refining, and further processing of the ores mined. Prior to the Supreme Court decisions the District Court granted a temporary injunction restraining the Board's agents from prosecuting the case. Upon appeal, decided after the Supreme Court decisions, the Circuit Court of Appeals for the Tenth Circuit reversed the District Court and ordered a dismissal of the bill of complaint, concluding that the Board "was proceeding within its lawful powers." As the basis of this decision the Court said:

> It (the evidence) further established that the suspension of any one of the three principal operations, the mining, the smelting and refining, and the manufacturing, by industrial strife would greatly curtail, and probably force a suspension of the others and would have a serious effect upon the flow of interstate commerce between the points of the several operations and from the point where the finished product is produced, into the channels of trade (90 F. (2d) at 323).

The application of the act to oil producing operations has also been sustained. In *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 91 F. (2d) 509 (C. C. A. 5th), the Court, in affirming an order of the Board directed to a small producing company, stated:

> The Act is not confined in its jurisdiction to industries operating upon a nationwide scale. It extends to and embraces within its scope all activities, large or small, which are, or which affect "commerce" as defined in it. By every test of the decisions the commerce power exerted in the act extended to this dispute, and to those involved in it.

The net effect of the decisions of the Supreme Court and of the Circuit Court of Appeals in cases decided since the date of the Supreme Court decisions is that the Board has jurisdiction under the act over all producing and manufacturing enterprises which, in connection with their producing or manufacturing operations, receive or ship in interstate commerce a substantial part of their raw materials or manufactured products.

XII. PRINCIPLES ESTABLISHED

In this chapter, an attempt will be made to set forth all of the important principles which the Board has enunciated in the different types of cases coming before it.[48] For convenience, the chapter has been divided into seven sections:

A. Interference, restraint, and coercion in the exercise of the rights guaranteed in section 7 of the act: This section deals with cases arising under section 8 (1) of the act.

B. Encouragement or discouragement of membership in a labor organization by discrimination: This section deals with cases arising under section 8, subdivision (3), of the act.

C. Collective bargaining: This section deals with cases arising under section 8 (5) of the act.

D. Domination and interference with the formation or administration of a labor organization and contribution of financial or other support to it: This section deals with cases arising under section 8, subdivision (2) of the act.

E. Investigation and certification of representatives: This section deals with proceedings arising under section 9 (c) of the act. Such proceedings normally include the taking of secret ballots to determine representatives for the purpose of collective bargaining.

F. The unit appropriate for the purposes of collective bargaining: This section is devoted to a discussion of the principles developed by the Board pursuant to its power under section 9 (b) of the act. The question of the appropriate unit is an issue in cases arising both under section 8 (5) and section 9 (c) of the act.

G. Administrative remedies: This section deals with the remedies which the Board has applied, pursuant to section 10 (c) of the act, in cases in which it has found that employers have engaged in unfair labor practices.

A. INTERFERENCE, RESTRAINT, AND COERCION IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT

Section 7 of the act provides that—

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Section 8 (1) of the act makes it an unfair labor practice for an employer to—

> interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

[48] For a complete index to the decisions, the reader is referred to the index to the published volumes of decisions of the Board to July 1, 1937. In this chapter these volumes are cited as "1 N. L. R. B." and "2 N. L. R. B.," even though the first volume of the published decisions of the old National Labor Relations Board has, in the past, been similarly cited. The name of a case is cited in full the first time it is discussed in the body of each section of this chapter.

At the outset it should be explained that the Board has held that a violation by an employer of any of the other four subdivisions of section 8 of the act is, by the same token, a violation of section 8 (1). Almost all of the cases in which the Board has found a violation of section 8 (1), are cases in which the principal offense charged fell within some other subdivision of section 8. The explanation for this is, apparently, that even though an employer may be engaging in anti-union activities in violation of section 8 (1), unions do not seek protection of the act until such activities take such drastic form as bring them within the provisions of some other subdivision, as, for example, the discriminatory discharge of union members, which comes within section 8 (3); the domination of or interference with the formation or administration of a labor organization, which comes within section 8 (2); or a refusal to bargain collectively, which comes within section 8 (5). Consequently, in reading this section it should be borne in mind that in almost all of the cases discussed the activities of the employers went beyond those set forth, resulting in violations of other subdivisions of section 8 of the act, and are therefore also discussed in other sections of this chapter However, they are set forth here because the Board has also held that they constitute violations of section 8 (1), and because they involve elements which cannot be discussed appropriately in the other sections.

Since a most extensive array of violations of section 8 (1) are presented in *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*,[49] a rather full description of the unfair labor practices disclosed in that case will serve to reveal the wide range of unfair labor practices condemned by the Board in the many cases which it has decided. Briefly, the situation in the *Remington Rand* case was as follows: The charges were filed by a joint protective committee representing the production and maintenance employees who were affiliated with the American Federation of Labor through membership in various craft or Federal labor unions and who were employed at plants in certain cities and towns situated in various States. The employer's failure and refusal to negotiate in good faith with the joint protective committee, which represented a clear majority of the employees at the plants involved in the case, precipitated a serious strike throughout these plants. Thereafter the employer persisted in its refusal to bargain and set about to destroy the free organization of its employees. Thirty union leaders at various plants were discharged; company-dominated labor organizations were organized under the guise of "back-to-work" movements; and operatives and provocateurs of notorious industrial spy and strike-breaking agencies were employed in great numbers. The scheme as a whole was dominated by the employer's president and has been since known as "The Mohawk Valley Formula."

At one point in its decision the Board formulated its findings with respect to the "Mohawk Valley Formula" and cast them in the form of an exposition of a technique for destroying self-organization of employees. Since this exposition presents a picture of the full extent

[49] 2 N. L. R. B. 626.

of the employer's unfair labor practices under the "Mohawk Valley Formula," the exposition is here set forth in full:[50]

First. When a strike is threatened, label the union leaders as "agitators" to discredit them with the public and their own followers. In the plant, conduct a forced balloting under the direction of foremen in an attempt to ascertain the strength of the union and to make possible misrepresentation of the strikers as a small minority imposing their will upon the majority. At the same time, disseminate propaganda, by means of press releases, advertisements, and the activities of "missionaries," such propaganda falsely stating the issues involved in the strike so that the strikers appear to be making arbitrary demands, and the real issues, such as the employer's refusal to bargain collectively, are obscured. Concurrently with these moves, by exerting economic pressure through threats to move the plant, aline the influential members of the community into a cohesive group opposed to the strike. Include in this group, usually designated a "citizens committee," representatives of the bankers, real-estate owners, and businessmen, i. e., those most sensitive to any threat of removal of the plant because of its effect upon property values and purchasing power flowing from pay rolls.

Second. When the strike is called raise high the banner of "law and order," thereby causing the community to mass legal and police weapons against a wholly imagined violence and to forget that those of its members who are employees have equal rights with the other members of the community.

Third. Call a "mass meeting" of the citizens to coordinate public sentiment against the strike and to strengthen the power of the citizens committee, which organization, thus supported, will both aid the employer in exerting pressure upon the local authorities and itself sponsor vigilante activities.

Fourth: Bring about the formation of a large armed police force to intimidate the strikers and to exert a psychological effect upon the citizens. This force is built up by utilizing local police, State police, if the Governor cooperates, vigilantes, and special deputies, the deputies being chosen if possible from other neighborhoods, so that there will be no personal relationships to induce sympathy for the strikers.[51] Coach the deputies and vigilantes on the law of unlawful assembly, inciting to riot, disorderly conduct, etc., so that, unhampered by any thought that the strikers may also possess some rights, they will be ready and anxious to use their newly acquired authority to the limit.

Fifth: And perhaps most important, heighten the demoralizing effect of the above measures—all designed to convince the strikers that their cause is hopeless—by a "back-to-work" movement, operated by a puppet association of so-called "loyal employees" secretly organized by the employer.[52] Have this association wage a publicity campaign in its own name and coordinate such campaign with the work of the "missionaries" circulating among the strikers and visiting their homes. This "back-to-work" movement has these results: It causes the public to believe that the strikers are in the minority and that most of the employees desire to return to work, thereby winning sympathy for the employer and an endorsement of his activities to such an extent that the public is willing to pay the huge costs, direct and indirect, resulting from the heavy forces of police. This "back-to-work" movement also enables the employer, when the plant is later opened, to operate it with strikebreakers if necessary and to continue to refuse to bargain collectively with the strikers. In addition, the "back-to-work" movement permits the employer to keep a constant check on the strength of the union through the number of applications received from employees ready to break ranks and return to work, such number being kept secret from the public and the other employees, so that the doubts and fears created by such secrecy will in turn induce still others to make applications.

Sixth: When a sufficient number of applications are on hand, fix a date for an opening of the plant through the device of having such opening requested

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[50] 2 N. L. R. B., 664–666. The footnote numbers which appear in the quotation and the corresponding footnotes do not appear in the Board's decision, but have been added here to collate cases presenting similar situations on particular points.

[51] See *Matter of Alabama Mills, Inc., and Local No. 2051, United Textile Workers of America*, 2 N. L. R. B. 20, for the use of citizens committees, public officers, and agents to induce mill workers to renounce union membership. In that case the company paid the salaries of armed deputies assigned to keep union members out of the plant.

[52] Other cases in which the employer incited "back to work" movements among the employees are *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill and Smelter Workers, Local No. 203*, 2 N. L. R. B. 125; and *Matter of Elbe File and Binder Company, Inc., and Bookbinders, Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906.

by the "back-to-work" association. Together with the citizens' committee, prepare for such opening by making provision for a peak army of police by roping off the areas surrounding the plant, by securing arms and ammunition, etc. The purpose of the "opening" of the plant is threefold: To see if enough employees are ready to return to work; to induce still others to return as a result of the demoralizing effect produced by the opening of the plant and the return of some of their number; and lastly, even if the maneuver fails to induce a sufficient number of persons to return, to persuade the public through pictures and news releases that the opening was nevertheless successful.

Seventh: Stage the "opening," theatrically throwing open the gates at the propitious moment and having the employees march into the plant grounds in a massed group protected by squads of armed police, so as to give to the opening a dramatic and exaggerated quality and thus heighten its demoralizing effect. Along with the "opening" provide a spectacle—speeches, flag raising, and praises for the employees, citizens, and local authorities, so that, their vanity touched, they will feel responsible for the continued success of the scheme and will increase their efforts to induce additional employees to return to work.

Eighth: Capitalize on the demoralization of the strikers by continuing the show of police force and the pressure of the citizens' committee, both to insure that those employees who have returned will continue at work and to force the remaining strikers to capitulate. If necessary, turn the locality into a warlike camp through the declaration of a state of emergency tantamount to martial law and barricade it from the outside world so that nothing may interfere with the successful conclusion of the "formula," thereby driving home to the union leaders the futility of further efforts to hold their ranks intact.

Ninth: Close the publicity barrage, which day by day during the entire period has increased the demoralization worked by all of these measures, on the theme that the plant is in full operation and that the strikers were merely a minority attempting to interfere with the "right to work," thus inducing the public to place a moral stamp of approval upon the above measures. With this, the campaign is over—the employer has broken the strike.

The Boards' discussion of the manner in which the employer's tactics in this case violated the provisions of section 8 (1) is as follows:

To put it concisely, those activities were employed to defeat the strike, to end the strike by breaking it, rather than by settling it through collective bargaining. As the strike was in the first instance directly caused by the respondent's refusal to bargain collectively in violation of section 8, subdivision (5), and was thereafter perpetuated through further refusals, also in violation of that section, all of those activities must be regarded as contrary to section 8, subdivision (1). While many, if not all, of those activities would likewise constitute unfair labor practices even though the strike and its continuation were not themselves the results of unfair labor practices, such a determination need not be made in this proceeding. Here, by its illegal refusal to bargain collectively, the respondent caused and perpetuated a strike, and consequently any activities on its part designed to end that strike by defeating it, in contrast to settling it by the method of collective bargaining, are in violation of section 8, subdivision (1). Each step taken so to defeat the strike constituted an assertion that the respondent would illegally continue to refuse to settle the strike through collective bargaining as provided by the act—they were but the opposite faces of the same coin.

The cases heard and decided by the Board have confirmed the facts disclosed at the hearings of the La Follette subcommitee of the Senate Committee on Education and Labor [58] concerning the widespread practice of many sections in American industry of employing professional labor spies, "undercover" men, "missionaries," guards, provocateurs, and strikebreakers. The *Remington Rand* case affords a clear illustration of ruthless, wholesale utilization of such hirelings for the purpose of interfering with the right of employees to self-organization. In its attempt to break the strike the company em-

[58] Appointed pursuant to S. Res. 266, 74th Cong.

ployed Capt. Nathaniel Shaw, known to the strikebreaking profession as "Crying Nat Shaw," to investigate the personnel and the affairs of the union under the guise of searching for "agitators and radicals." Among his activities was an unsuccessful attempt to bribe the president of the State Federation of Labor.[55] The company hired hundreds of "missionaries," guards, and strikebreakers from the Nation's most notorious strikebreaking agencies. Many of the individuals so hired were also used for spying purposes.[56]

The activities of the professional spies were supplemented by the activities of almost 200 men and women "missionaries" supplied to the company by Pearl L. Bergoff. Their job was described as "whispering," "confusing the logic" of the strikers, and spreading "propaganda," principally in visiting the strikers at their homes and inducing them to return to work. The company also hired large numbers of guards, known as "nobles," through two agencies of national notoriety for strikebreaking. The Board found that they were not needed as guards, and that the intended and natural effect of the importation of "nobles" was to provoke and terrorize strikers and to necessitate additional police. Many acts of provocation were committed by these individuals. It was the constant practice of both the guards and the professional strikebreakers on entering the company's grounds to jostle the picketing strikers in order to incite violence.

The company also made use of large numbers of strikebreakers, both to stir up violence and to convey the false impression that jobs were being filled and that the plant was ready for operation.[57]

While especial notoriety has been accorded the professional labor spy, it is equally a violation of section 8 (1) for an employer to spy upon the union activities of his employees through his own system of espionage. In *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*,[58] the employer maintained an espionage system of many years' standing which functioned to give it detailed reports concerning the progress of union activity among its employees at its branch offices. The information contained in these reports was communicated to the employer's general office which regulated the labor policy of its entire system.[59] The employer also utilized its supervisors and employees for espionage

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[55] For attempts to bribe union leaders, see *Matter of Carlisle Lumber Company and Lumber and Sawmill Workers Union, Local 2511*, 2 N. L. R. B. 248; and *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Engineers*, 2 N. L. R. B. 431. Compare *Matter of Hardwick Stove, Inc., and International Molders Union of North America*, 2 N. L. R. B. 78; and *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*, 2 N. L. R. B. 1.

[56] See *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 803. There, an operative of a nationally known agency was given a regular job in the plant for the purpose of ferreting out union activities. He joined the union and eventually became its secretary. He was thus able to furnish the company with the names of active union men. The result was that the latter were discharged and the union was destroyed.

[57] For another case involving the extensive use of strikebreakers and strikebreaking agencies, see *Matter of Elbe File and Binder Company, Inc.*, 2 N. L. R. B. 906. For a case involving the employment of professional "union-wreckers," see *Matter of Brown Shoe Co., Inc., and Boot and Shoe Workers Union, Local No. 655*, 1 N. L. R. B. 803. See also *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Beaver Valley Lodge, No. 200*, 1 N. L. R. B. 503. Both of these cases are discussed in the First Annual Report, pp. 74 and 75.

[58] 2 N. L. R. B. 1.

[59] Compare *Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter*, 2 N. L. R. B. 530, where the employer's city editor, for the purpose of intimidating union members, stated to a union member that the employer had "an espionage system that reaches everywhere."

purposes. At one time the employer requested the chief of police to investigate a union organizer in the hope that it would thereby acquire information of his union activities and that the police would drive him out of town.

The Board has likewise found a violation of section 8 (1) where the employer himself or the official of a corporation engages in this activity. In *Matter of Hardwick Stove Co. and International Molder's Union of North America*,[60] a number of the officers and supervisory employees of the company were discovered eavesdropping under the floor of a building where a union meeting was being held and listening to the proceedings. To escape from these espionage activities, the union adopted the practice of holding meetings out of town. This device proved ineffectual, for the company's plant policeman drove to the out-of-town meeting house and observed who attended the meetings. Subsequently the union resumed its meetings in the city, but a number of employees were deterred from attending because of the presence of numerous officials of the company in front of the union meeting house, where they were observing the employees going in.[61]

In *Matter of Washington, Virginia and Maryland Coach Company, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 1079, et al.*,[62] the vice president of the respondent bus company attended a union meeting wearing a bus operator's cap;[63] and in *Matter of Ralph A. Freundlich, Inc., a corporation, organized under the laws of the State of New York, and Ralph A. Freundlich, Inc., a corporation, organized under the laws of the State of Massachusetts, and Max Marcus, Tony Armao, Peter Giannone, John Giannone, Salvatore Modica, Anthony Lazzaro, Vito Arena, and Alexander Ravitch*,[64] an outside organizer was shadowed constantly for two months by a car containing a number of employees and, on one occasion, the company's assistant superintendent.

A number of cases reveal the practice of using or attempting to use regular employees for the purpose of espionage.[65]

In *Matter of Millfay Manufacturing Company, Inc., and American Federation of Hosiery Workers Branch 40*,[66] an employee-spy at-

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[60] 2 N. L. R. B. 78.

[61] See *Matter of Crucible Steel Co. and Strip Steel and Wire Workers Union, Local No. 20084, American Federation of Labor*, 2 N. L. R. B. 298, where the plant superintendent had been standing on the corner noting the employees who went to the meeting hall; *Matter of Quidnick Dye Works, Inc., and Federation of Dyers, Finishers, Printers and Bleachers of America*, 2 N. L. R. B. 963, where a shop foreman sat in his car across the street from the meeting hall observing the persons entering the hall; *Matter of Millfay Manufacturing Company, Inc., and American Federation of Hosiery Workers Branch 40*, 2 N. L. R. B. 919, where foremen were always waiting outside the union meeting place to record the names of employees as they left; *Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America*, 1 N. L. R. B. 411, 432, where the president and superintendent of the company secretly observed two union meetings to see who attended. See also *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431; *Matter of Wallace Manufacturing Company, Inc., and Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081; *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1; *Matter of Jones and Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[62] 1 N. L. R. B. 769.

[63] See also *Matter of Jones & Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[64] 2 N. L. R. B. 802.

[65] *Matter of Ralph A. Freundlich, Inc.*, 2 N. L. R. B. 802; *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1; *Matter of Friedman-Harry Marks Clothing Co.*, 1 N. L. R. B. 411, 432; *Matter of Protective Motor Service Company and Twenty-Five Employees*, 1 N. L. R. B. 639.

[66] 2 N. L. R. B. 919.

tended union meetings and, with the knowledge and approval of the superintendent of the mill, reported the details of the meetings to foremen who were waiting outside the meeting place to record the names of employees as they left. In *Matter of Remington Rand, Inc.*,[67] the employer paid an employee, who was a member of the union, to attend the union meetings and to report the proceedings to the employer.

In other cases where the Board has found a violation of section 8 (1) employers have utilized their confidential employees, such as the secretary to the president,[68] or messenger, office boy, or chauffeur,[69] to attend union meetings and report the proceedings thereof to the officers of the company. In *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers & Accountants Union, Local 12646*,[70] an employer hired a guard to act as the assistant of an active union employee in order to keep him under constant surveillance.

The Board did not find in all of the cases discussed that the espionage activities by themselves constituted violations of section 8 (1); in most of them such activities were carried on pursuant to schemes to discriminate against union members and leaders, and thus evidence of espionage was taken as part of the case under section 8 (3). Having found that section 8 (3) had been violated, the Board also found that section 8 (1) had been violated. It is clear, however, and the Board has so held, that it is an independent violation of section 8 (1) for an employer to engage in espionage in connection with union activities.

The Board has also found a violation of section 8 (1) in interference with self-organization through spreading propaganda against unions and thus not only poisoning the minds of workers against them, but also indicating to them that the employer is antagonistic to unions and is prepared to make this antagonism effective. In the final analysis, most of this propaganda, even when it contains no direct or even indirect threat, is aimed at the worker's fear of loss of his job.

The extensive use of newspaper, radio, "missionary," and other forms of propaganda has been described earlier in the discussion of the "Mohawk Valley Formula" in the *Remington Rand* case. Other cases which have come before the Board reveal other distinct patterns of the utilization of propaganda to defeat the self-organization of employees. Thus, a recurrent theme is the threat to close[71] or move[72] the plant or to go out of business if the union

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[67] 2 N. L. R. B. 626.

[68] *Matter of Consumers Research, Inc., and J. Robert Rogers, representative for Technical, Editorial, and Office Assistants Union, Local No. 20055, affiliated with the American Federation of Labor*, 2 N. L. R. B. 57.

[69] *Matter of Martin Dyeing and Finishing Company and Federation of Dyers, Finishers, Printers and Bleachers of America*, 2 N. L. R. B. 403, where the employer's chauffeur "stuck his head in" at the door of the meeting hall and could see the president of the union, an employee of the company, presiding at the union meetings. The employee thus observed was discharged the following day.

[70] 2 N. L. R. B. 610.

[71] *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of S & K Knee Pants Company, Inc., and Amalgamated Clothing Workers of America*, 2 N. L. R. B. 940; *Matter of Herbert Robinson and Otto A. Golluber, Co-partners doing business under the firm name and style of Robinson and Golluber*, and *Wholesale Dry Goods Employees Union, Federal Local 19932*, 2 N. L. R. B. 460; *Matter of Quidnick Dye Works, Inc.*, 2 N. L. R. B. 963.

[72] *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of S & K Knee Pants Company, Inc.*, 2 N. L. R. B. 940; *Matter of Ralph A. Freudlich, Inc.*, 2 N. L. R. B. 802; *Matter of Lion Shoe Company and United Shoe and Leather Workers' Union*, 2 N. L. R. B. 819; *Matter of National Casket Company, Inc., and Casket Makers Union 19559*, 1 N. L. R. B. 963.

succeeds in organizing the employees. Such a threat may be peculiarly effective in highly mobile industries in which the movement by employers to unorganized and low-wage areas is well-known, as, for example, the clothing industry,[73] or the shoe industry.[74] It is even more effective where the plant is essential to the economic life of the community, for in such cases the pressure which can be exerted on the workers is overwhelming.[75] This is due not only to the fact that if the workers are discharged they have to seek jobs in other communities, but also because in such a community the employer, in his anti-union drive, can frequently count on the support of other business interests and of public officials.[76]

Efforts by employers to exert economic pressure upon employees and the community in order to discourage union organization contrary to section 8 (1), have taken other forms. In *Matter of Carlisle Lumber Company*,[77] during a strike caused by the respondent's unfair labor practices, the employer posted a notice threatening the eviction of all strikers who did not sign applications for work by a given date. Such action was exceptionally coercive because the town was owned by the company and offered no shelter or employment other than that obtained from the company. This form of coercion evoked the Board's condemnation in the following terms:

> In the opinion of the Board this notice * * * constitutes a flagrant violation of the rights guaranteed to the employees of the respondent by section 7 of the act. In this case, where the respondent has brought its employees to an out-of-the-way company town, where the only shelter and means of livelihood are controlled by the respondent, the notice above-mentioned was calculated to and did exert violent coercion upon the respondent's employees. The only purpose of this economic coercion was to break the individual employee's desire for union organization and representation, and to make him return to work a traitor to his principles. * * * the flagrancy of the respondent's violation of section 8 (1) by its publication of the afore-mentioned notice warrants the Board in here expressing its opinion in the matter even though no separate allegation of section 8 (1) * * * has been set forth in the complaint.[78]

A slightly more indirect form of economic coercion exercised by the employer against his employees because of union activities is illustrated in *Matter of Alaska Juneau Gold Mining Company*,[79] where the employer caused the food stores in the town to stop extending credit to employees engaged in union activities.

The Board has frequently found a violation of section 8 (1) in the efforts of employers to discredit the union and deliberately bring it into disrepute, as where the employer has denounced the union as

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[73] *Matter of S & K Knee Pants Company, Inc.*, 2 N. L. R. B. 940; *Matter of Quidnick Dye Works, Inc.*, 2 N. L. R. B. 963 (coloring of silk and rayon); *Matter of Friedman-Harry Marks Clothing Company, Inc.*, 1 N. L. R. B. 432.

[74] *Matter of Ansin Shoe Manufacturing Co.* and *Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 939; *Matter of Brown Shoe Co., Inc.*, 1 N. L. R. B. 803.

[75] See, for example, *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of Somerville Manufacturing Co.* and *International Ladies' Garment Workers' Union, Local No. 149*, 1 N. L. R. B. 864; *Matter of Brown Shoe Co., Inc.*, 1 N. L. R. B. 803.

[76] *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of Somerville Manufacturing Co.*, 1 N. L. R. B. 864; *Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20.

[77] 2 N. L. R. B. 248.

[78] References to eviction from company houses or notices of evictions are found in *Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20; and *Matter of Hardwick Stove Company, Inc.*, 2 N. L. R. B. 78.

[79] 2 N. L. R. B. 125.

a "racket" or has called the organizers "racketeers."[80] In other cases the statements of this nature have been to the effect that if the worker joins the union, he would "be down here stopping bullets" while the union organizer would be "sitting in the hotel smoking a cigar";[81] that "the dues the workers have paid to the union would have bought them clothes which the organizers are wearing";[82] that "they will get a couple of dollars together and go out and get drunk on your money";[83] that "payment of dues is a waste of money"; that "union leaders are self-serving; unions are of no value to employees";[84] that "any newspaper man is foolish to join the guild craft, do not bother with it," and that union members "would have an excellent opportunity for martyrdom and could expect no favors, promotions, or raises."[85] Sometimes the statements include denunciations of unions as being "rotten," "corrupt," and "crooked," and of workers who would belong to them as being "nothing but a bunch of cutthroats,"[86] "thugs, and highwaymen,"[87] or "reds and Communists."[88]

The question of the extent to which an employer may make statements to his employees concerning a labor organization was raised, but not specifically determined, in *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen.*[91] There an employer, the owner of a bus line, sought to justify his open hostility to the union by explaining that the union, which represented both bus operators and enginemen and firemen in the railroad industry, had at times endeavored to curb the development and extension of motor transportation lines by appearing before various commissions in opposition to applications for franchises for bus companies and by sponsoring legislation favorable to the railroads and their employees and inimical to motor carriers and their employees. In commenting upon the employer's claim that he was justified in pointing out to his employees that the union represented conflicting interests, the Board observed:

> It may be that the Brotherhood, in its dual capacity of representative for the enginemen and firemen employed in the railroad industry and for the motor coach operators employed in the motor carrier industry, at times finds itself

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[80] *Matter of Ralph A. Freudlich, Inc.*, 2 N. L. R. B. 802, where the respondent called a meeting of employees at which its treasurer made a speech characterizing organizers of unions as "racketeers" and "communists," urging its employees to organize a company union. See also *Matter of Atlas Bag & Burlap Co., Inc.*, and *Milton Rosenberg, Organizer, Burlap and Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel, and Tin Workers of North America, N. R. A. Lodge No. 155, Goodwill Lodge No. 157, Rod and Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163*, 1 N. L. R. B. 699; and *Matter of Jones & Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[81] *Matter of Greensboro Lumber Co. and Lumber and Sawmill Workers Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 629. See *Matter of National Casket Co., Inc.*, 1 N. L. R. B. 963; *Matter of Jones & Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[82] *Matter of Bell Oil & Gas Co. and Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America et al.*, 1 N. L. R. B. 562.

[83] *Matter of Crucible Steel Company of America*. 2 N. L. R. B. 298.

[84] *Matter of Union Pacific Stages, Inc., and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1055*, 2 N. L. R. B. 471. See *Matter of Pacific Greyhound Lines, Inc.*, 2 N. L. R. B. 431, where the general manager urged operators not to "pay high dues when benefits to be received would be negligible."

[85] *Matter of William Randolph Hearst*, 2 N. L. R. B. 530.

[86] *Matter of Jones & Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[87] *Matter of Crucible Steel Company of America*, 2 N. L. R. B. 298; *Matter of Ralph A. Freundlich, Inc.*, 2 N. L. R. B. 802; *Matter of Protective Motor Service Co.*, 1 N. L. R. B. 639.

[88] *Matter of Radiant Mills Co. and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274.

[91] 2 N. L. R. B., 431.

representing two groups of employees with conflicting interests. This cannot, however, justify the respondent's conduct towards its operators.

In any event the respondent went farther than merely conveying to its operators the idea that the Brotherhood represented conflicting interests. In addition the respondent urged, persuaded, and warned its operators not to join the Brotherhood and threatened them with discharge if they joined or remained members. By its conduct the respondent has clearly interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the act.

Anti-union statements in cases before the Board have frequently taken the form of threats to discharge union members [92] or to replace them with non-union employees or to refuse to give pay increases to employees who are members of the union.[93] Several cases which have come before the Board reveal significant variations from a straightforward threat to discharge. In *Matter of Elbe File and Binder Company, Inc.*,[94] the employer sought to restrain the union activities of an employee, who was secretary of a union committee and a night law student, by threatening to inform the character committee of the bar association that he was a Communist and had engaged in union activities; and in *Matter of Renown Stove Company and Stove Mounters' International Union, Local No. 76, and International Brotherhood of Foundry Employees, Local No. 88*,[95] an officer of the company, after stating to several discharged employees that their filing charges of discrimination with the Board precluded their reinstatement, threatened to prevent their securing employment elsewhere by blacklisting them, unless the charges were withdrawn. In *Matter of Harrisburg Children's Dress Company, and International Ladies' Garment Workers' Union*,[96] the Board found that the employer had used a more subtle form of coercion, but that the implicit threat of discharge for joining the union was readily apprehended by the employees in accordance with the employer's intention. There, in order to forestall the progress of the union, the owner and superintendent of the plant delivered several speeches to the employees on plant property, informing them that there was no cause for alarm concerning coercion by the union, because the company would afford protection to non-union members, and that employees could join the union or not without fear of loss of their jobs. He stated further that employees should pay no attention to union organizers and that all grievances should be taken up through a shop committee already in existence in the plant. These statements were followed by a request that the employees sign a petition to the effect that they did not recall any members of the firm or its superintendent interfering or intimidating any of their employees in connection with their joining the union.

The Board has condemned a variety of other acts by employers as interference with self-organization. Since unions derive their power from collective action and maintain morale by acting through representatives, employers realize that the strength of unions may be sapped if employees are approached individually. In *Matter of*

[92] *Matter of Pacific Greyhound Lines, Inc.*, 2 N. L. R. B., 431.
[93] *Matter of William Randolph Hearst*, 2 N. L. R. B., 530.
[94] 2 N. L. R. B., 626.
[95] 2 N. L. R. B., 117.
[96] 2 N. L. R. B., 1058.

Remington Rand, Inc.,[97] this strategy was employed upon a large scale through the use of hundreds of "missionaries" to visit employees at their homes. In *Matter of Harrisburg Children's Dress Company*,[98] the employer sought to dissuade his employees from joining the union by sending supervisory employees to the homes of individual employees for the twofold purpose of frightening them and making derogatory remarks about the union. The Board condemned the practice in both cases.

The Board has found intimidation and coercion of individual employees in frequent cases where the employer has called in employees one by one and asked them bluntly whether or not they were members of the union, as in *Matter of Greensboro Lumber Company*.[99] In another case an employer called a meeting of all his employees and attempted to segregate the union from the non-union employees by ordering those employees not affiliated with the union to step to one side. He then addressed each union man individually and asked him to state his grievances. When a grievance was so stated the employer would respond in such a manner that the employee was exposed to humiliation and ridicule before his fellow workers.[1] In *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*,[2] after the union had attempted to bargain collectively with the employer, individual contracts of employment were framed and foisted upon the employees. The Board held that this constituted interference, restraint, and coercion in the exercise of the right to self-organization. In *Matter of Ralph A. Freundlich, Inc.*,[3] the employer interrogated his employees individually about their union activities and urged upon them as an alternative to membership in the union that they join a company union.

In *Matter of Alabama Mills, Inc.*,[4] the Board held that an employer's refusal to negotiate with a union committee concerning the return of strikers under the terms of a prior contract providing for the return of such employees constituted a violation of section 8 (1).

The refusal of employers to deal with representatives who are not in their employ, thereby discouraging affiliation with an outside union, is best illustrated in the cases arising under the collective-bargaining provision, section 8 (5). However, the Board has held that such a refusal is also a violation of section 8 (1). In *Matter of Oregon Worsted Company and United Textile Workers of America, Local*

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[97] 2 N. L. R. B., 626.

[98] 2 N. L. R. B., 1058.

[99] 1 N. L. R. B., 629. For additional cases where an employer questioned employees individually concerning their union affiliation, see: *Matter of Hardwick Stove Company, Inc., and International Moulders' Union of North America*, 2 N. L. R. B. 78; *Matter of Clifford M. DeKay, Doing Business under the Trade Name and Style of D. & H. Motor Freight Company, and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*, 2 N. L. R. B., 231; *Matter of Pacific Greyhound Lines, Inc.*, 2 N. L. R. B. 431; *Matter of Herbert Robinson and Otto A. Golluber*, 2 N. L. R. B., 460; *Matter of Clark & Reid Company, Inc., and Curtis & Croston, Inc., and Piano & Furniture Movers, Drivers, Packers & Helpers' Local Union No. 82*, 2 N. L. R. B., 516; *Matter of William Randolph Hearst*, 2 N. L. R. B. 530; *Matter of Quidnick Dye Works, Inc.*, 2 N. L. R. B., 963; and *Matter of Harrisburg Children's Dress Company*, 2 N. L. R. B., 1058.

[1] *Matter of Herbert Robinson and Otto A. Golluber*, 2 N. L. R. B. 460.

[2] 1 N. L. R. B., 292.

[3] 2 N. L. R. B., 802.

[4] 2 N. L. R. B., 20.

2435,[5] a committee of five union members, consisting of three employees and two non-employees, requested the management to confer concerning the reinstatement of employees who had struck. The management refused to permit the non-employees to participate in the conference and insisted on meeting them separately. The Board held that this—

> insistence upon dividing the committee into employee and non-employee groups constituted an arbitrary and flagrant violation of the employees' right to self-organization. It is not for the employer to dictate the form of representation the employees shall have. By (this) conduct * * * respondent clearly indicated to the employees its dislike for outside representation and preference for dealing directly with its own employees.

The Board has also held that other activities of employers which have the effect of injuring the morale of union members constitute interference, restraint, and coercion. In *Matter of Brown Shoe Company, Inc.*,[6] the union had succeeded in obtaining a seniority agreement with the company. This was the union's "outstanding achievement in collective bargaining." The agreement was not definite as to duration. After it had been in effect about a year, during which time the union succeeded in effecting many adjustments thereunder, the company, without conferring with the union, arbitrarily announced its abrogation at a time when the members of the union were most in need of its protection. The Board said:

> The seniority rule was the union's principal protection against discrimination by the respondent during the seasonal slump. The respondent's arbitrary abrogation of the seniority rule, in the light of the background situation * * * is to be interpreted only as a blow aimed directly at the union. Consequently the respondent's termination of the arrangement without conferring with the union constitutes interference, restraint, and coercion of its Salem plant employees in the exercise of their right to collective bargaining guaranteed by the act.[7]

B. ENCOURAGEMENT OR DISCOURAGEMENT OF MEMBERSHIP IN A LABOR ORGANIZATION BY DISCRIMINATION

Section 8, subdivision (3), of the act provides that it is an unfair labor practice for an employer—

> By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a) in the appropriate collective-bargaining unit covered by such agreement when made.

As interpreted by the Board this section is not intended to interfere generally with the freedom of an employer to hire and discharge as he pleases. He may employ anyone or no one; he may transfer em-

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[5] 1 N. L. R. B., 916; see also *Matter of Wallace Manufacturing Company, Inc., and Local No. 2257, United Textile Workers of America*, 2 N. L. R. B. 1081, where the employer's denial of the employees' right to be represented by non-employees constituted a violation of section 8 (1).

[6] 1 N. L. R. B., 803.

[7] See also *Matter of Louis Hornick & Company, Inc., and Textile Trimming Workers' Union, Local 2440, United Textile Workers of America*, 2 N. L. R. B., 983.

ployees from task to task within the plant as he sees fit; he may discharge them in the interest of efficiency or from personal animosity or sheer caprice. But in making these decisions he must not differentiate between one of his employees and another, or between his actual and his potential employees, on grounds of union affiliation or activity.

1. Discrimination in Regard to Hire or Tenure of Employment[8]

The simplest type of case arising under this language is the frank and open discharge of certain employees for taking part in union activities.[9] In *Matter of Club Troika, Inc., and Hotel and Restaurant Employees Alliance, Local 781*,[10] the waiters and waitresses of the respondent were supposed to be paid $10.50 a week, the union scale. However, the respondent withheld their weekly wages from them although it received a receipt from each for the full sum. The employees complained to the union and an arrangement was entered into between the union and the respondent whereby the latter was to pay to the union weekly the wages due its employees. Several days after this arrangement, the respondent's manager asked each of the employees individually to "kick back" $5 of their wages. All refused to do so and were threatened by the manager in various ways. Shortly thereafter one of the waiters was discharged. The reason given by the head waiter was "Jack, if you want to know why you are fired, the reason is the union." The next day the respondent locked out all the union waiters. The president of the respondent greeted several union waiters with the following question and answer: "Are you with the union or not? If you are with the union you cannot work here." Other union waiters were greeted in similar fashion by the respondent's manager or head waiter. The Board found the discharges to be clear cases of discrimination in regard to hire and tenure of employment.

Similar frankness was displayed in *Matter of Tidewater Express Lines, Inc., and Locals No. 355 and No. 430, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America*,[11] where an admittedly efficient truck driver, who was the only member of the union, was discharged shortly after he joined the union and was told by the general manager that "he had orders from his main office to dispense with the service of all union men," but "that he might be reinstated later if he would quit the union." To another truck driver who joined the union and was subsequently discharged, the company's vice president stated: "Well, you know we don't allow no union workers on this platform." His discharge

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[8] The Board has in most cases used the words "hire" and "tenure of employment" jointly in its findings to connote any type of discrimination which affects an individual's status as an employee rather than his salary or working conditions.

[9] In no case has a respondent admitted in its pleadings or at the hearing that it has discriminated against employees because of their union activity. Frequently, however, clear evidence of discrimination has gone uncontradicted. See, for example, *Matter of Fruehauf Trailer Company and United Automobile Workers' Federal Labor Union No. 19375*, 1 N. L. R. B. 68; *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics' Association*, 1 N. L. R. B. 335; and *Matter of Fashion Piece Dye Works, Inc., a Corporation, and Federation of Silk and Rayon Dyers and Finishers of America*, 1 N. L. R. B. 285.

[10] 2 N. L. R. B. 90.

[11] 2 N. L. R. B. 560.

followed his refusal to sign a "yellow-dog" contract submitted to him by his employer.[12]

In most cases of alleged discriminatory discharge, however, the employer has contended that the dismissals had nothing whatsoever to do with organizational activity, but were for inefficiency, insubordination, infraction of rules, or other legitimate cause. Since each case has of necessity been decided upon its own facts, the Board's method of weighing the evidence can best be understood through the examination of certain typical situations and the decisions they called forth.

Perhaps the most typical situations in which the above defenses have been asserted are presented in the cases involving the discharge of employees in the transportation industry. In *Matter of Houston Cartage Co., Inc.*,[13] the evidence disclosed that the respondent had been exceedingly hostile to the union since its inception[14] and had discharged five or six truck drivers who were union members.[15]

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[12] For another trucking case of frank discharge for union activities, see *Matter of Protective Motor Service Company, a Corporation, and Twenty-Five Employees*, 1 N. L. R. B. 639. See also Supplemental Decision, 2 N. L. R. B. 934. For cases of discharge of employees shortly after election to union offices, see *Matter of Agwilines, Inc., and International Longshoremen's Assn., Local No. 1402*, 2 N. L. R. B., 1; *Matter of Crucible Steel Co. of America and Strip Mill and Wire Workers Union, Local No. 2008½, American Federation of Labor*, 2 N. L. R. B. 298; and *Matter of Houston Cartage Co., Inc., and Local Union No. 367, International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America, and L. S. Brooks*, 2 N. L. R. B. 1000. A number of cases involve the discharge of union members shortly after having been seen attending union meetings. *Matter of Martin Dyeing and Finishing Co. and Federation of Dyers, Finishers, Printers, and Bleachers of America*, 2 N. L. R. B. 403; *Matter of Quidnick Dye Works, Inc., and Federation of Dyers, Finishers, Printers, and Bleachers of America*, 2 N. L. R. B. 963. Compare *Matter of Elbe File and Binder Co., Inc., and Bookbinders, Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906, where an employee had been seen talking to the strike chairman by one of the employer's guards.

[13] 2 N. L. R. B. 1,000.

[14] As to the materiality of evidence of hostility to the union, it should be noted that the Board, when confronted by doubtful cases, has placed emphasis upon the background of the controversy and upon the intentions of the employer as therein manifested. As it said in its first decision:

"In reaching a decision between these conflicting contentions the Board has had to take into consideration the entire background of the discharges, the inferences to be drawn from testimony and conduct, and the soundness of the contentions when tested against such background and inferences. (Compare *Norris* v. *Alabama*, 297 U. S. 584 (1930).) Moreover, as the Supreme Court has stated, 'Motive is a persuasive interpreter of equivocal conduct,' so that the Board may properly view the activities of the respondents in the light of the manifest interest and purpose described above. (*Texas & New Orleans Railroad Co.* v. *Brotherhood of Railroad & Steamship Clerks*, 281 U. S. 548 (1930)." See *Matter of Pennsylvania Greyhound Lines, Inc., et al., and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1, at p. 23; *Matter of Hill Bus Company, Inc., and Brotherhood of Railroad Trainmen, Rockland Lodge, No. 329*, 2 N. L. R. B. 781; *Matter of Radiant Mills Company, a Corporation, and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274; *Matter of Oregon Worsted Company, a Corporation, and United Textile Workers of America, Local 2135*, 1 N. L. R. B. 915; and *Matter of Brown Shoe Company, Inc., and Boot and Shoe Workers' Union, Local No. 655*, 1 N. L. R. B. 803; *Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter*, 2 N. L. R. B. 530; *Matter of Consumers' Research, Inc., and J. Robert Rogers, representative for Technical, Editorial, and Office Assistants Union, Local No. 20055, affiliated with the American Federation of Labor*, 2 N. L. R. B. 57.

[15] The Board has frequently found persuasive evidence of discrimination in an unduly high percentage of union members or union leaders in a series of discharges. See, for example, *Matter of Protective Motor Service Company*, 1 N. L. R. B. 639 and Supplemental Decision 2 N. L. R. B. 934 (20 employees discharged within 2 weeks, all were union members); *Matter of Ralph A. Freundlich, Inc.*, 2 N. L. R. B. 802 (7 employees, all union members, discharged at one time after the employer held a meeting of employees from which these 7 were excluded because of union membership); *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1 (of 7 men discharged in 2 days, all were union members); *Matter of Radiant Mills Company*, 1 N. L. R. B. 274 (all employees in one shift recalled after a shut-down except the president and vice president of the union); *Matter of United Aircraft Manufacturing Corporation and Industrial Aircraft Lodge, No. 119, Machine Tool and Foundry Workers' Union*, 1 N. L. R. B. 236 (almost all employees rehired after a stoppage except 18 union officers, including the president, vice president, treasurer, and members of the executive, grievance, and shop committees); *Matter of E. R. Haffelfinger Co., Inc., and United Wall Paper Crafts of North America, Local No. 6*, 1 N. L. R. B. 760 (8 union members).

Subsequently, Brooks, a truck driver, joined the union and was elected president. Three days later the secretary-treasurer of the respondent followed the truck driven by Brooks for the purpose of observing him. On the following day two supervisors followed Brooks in a similar manner. At the close of work the next day Brooks was discharged by a letter which assigned as the reason therefor certain infractions of the rules committed by Brooks on the days on which he had been followed. In finding that the defense was not persuasive the Board said:

> Experience has shown this Board that there is no field of employment where employers can so easily find means to cloak their real motives for discharging employees as in the employment of bus or truck drivers. In practically every case which has come before us involving such employees, it has been charged and proven that the discharged employees have exceeded the speed limit, left their route, or made stops not strictly in line with their duties. But from the very nature of the work of bus or truck drivers it is apparent that an employer has only to follow any truck or bus driver for a short time to find him guilty of many such violations. We are, therefore, not impressed with the sincerity of an employer who advances such reasons for a discharge, where he fails to show that such violations are flagrant or repeated and where the surrounding circumstances indicated that the employee was active in union activities to which the employer was opposed.[16]

In *Matter of Agwilines, Inc.*,[17] the respondent discharged the president of the union the day following his election to office. The reason given by the respondent for this discharge was inefficiency. Prior to the discharge no complaints had been made about the employee's work. No specific instance of inefficiency was adduced in the record. In fact he had been promoted to the job of header which he retained until his discharge. At the same time the respondent discharged another employee, secretary of the union and head of 16 men, on the alleged ground of insubordination and impudence. His foreman testified that the insubordination took the form of misdirecting freight. As to the particular "impudence" complained of, the record was exceedingly vague. In holding that these defenses were not sustained because the respondent failed to produce any specific instances to support them, the Board said:

> It is not the purpose of the act, or the intent of the Board in the administration of the act, to curtail the normal right of an employer to discipline his employees. There is a duty, however, as the Board sees it, to thrust subterfuge aside. Cause for discharge is a valid answer to the charge of discrimination when, judged by all the facts in the record, it is an honest answer. When cause, so judged, is found wanting, it may well be discrimination within the meaning of the law.[18]

A striking example of conduct which the employer denominated "insubordination" or "insolence" appears in *Matter of Herbert Robinson and Otto A. Gulluber, copartners doing business under the firm name and style of Robinson and Gulluber, and Wholesale Dry Goods Employees Union, Federal Local 19932.*[19] There the employer called a shop meeting of all his employees and informed them that he

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[16] For other cases involving bus or truck drivers wherein such defenses were asserted see *Matter of Hill Bus Company, Inc.*, 2 N. L. R. B. 781 (alleged violation of rules); *Matter of Pacific Greyhound Lines, Inc.*, 2 N. L. R. B. 431 (alleged negligence and loss of piece of freight); *Matter of Union Pacific Stages, Inc., and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1055*, 2 N. L. R. B. 471 (alleged discourtesy).

[17] 2 N. L. R. B. 1.

[18] For a similar holding, see *Matter of Elbe File and Binder Co., Inc.*, 2 N. L. R. B. 906.

[19] 2 N. L. R. B. 460.

had received a letter from the union. He ordered all employees not belonging to the union to step to one side and then interrogated the segregated union employees individually concerning their personal grievances. During the course of this questioning, four employees at different intervals told the other union employees to make no statements, because the employer should deal with the union through its representative. Each of the four men were discharged immediately after voicing this advice. At the hearing before the Board the employer maintained that he had discharged the men for insolence. The Board held that the conduct of the employees was provoked and justifiable in the light of the employer's tactics of mercilessly humiliating in the presence of other employees every employee who dared to express his complaint. The Board concluded that the men were discharged because "they sought to stem the demoralization of the union members which seemed imminent." [20]

In considering the frequent assertions of employers that discharges were for inefficiency rather than for union activities, the Board has given weight to such factors as length of total employment, experience in the particular position from which the employee was discharged, efficiency ratings, the testimony of foremen or other employees, and the treatment given to other employees of apparently equal or less efficiency. In so doing it has not been attempting itself to estimate the employee's efficiency. Its only concern has been to determine whether, regardless of how inefficient the employee might be, his discharge was caused by his union activities rather than by the manner in which he did his work.[21] Long service does not necessarily mean that an employee is efficient; it does indicate that the employer has not considered his possible inefficiency to be serious enough to merit his discharge. Similarly, the fact that employees were retained who had committed errors as serious as those advanced as reasons for the discharge does not imply that discharge for such an error would not have been justified. It indicates merely that the error was not in fact the motivating cause for the severance of employment.

Thus, in *Matter of Pacific Greyhound Lines, Inc.*,[22] the respondent asserted that the discharge of a bus driver was due to an accident causing property damages in the amount of $50. The evidence disclosed, however, that this bus driver, a very active and key union organizer, had on many occasions been awarded with tokens of merit for his splendid record as a driver and that shortly before his discharge he had been awarded a plaque and a bonus for having completed a year of driving without an accident. It was also shown that it was the respondent's general policy not to discharge operators for rear end collisions unless their general driving record was bad. The Board held that these considerations cast great doubt upon the sincerity and validity of the reason advanced by the respondent for the

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[20] For other examples where the defense of insubordination was not sustained by the evidence, see *Matter of William Randolph Hearst et al.*, 2 N. L. R. B. 530, and *Matter of Protective Motor Service*, 2 N. L. R. B. 934 (supplemental decision).

[21] In *Matter of Houston Cartage Co., Inc.*, 2 N. L. R. B. 1000, the Board, in evaluating evidence of an employee's inefficiency and infraction of rules, stated: "It is true that to some extent Brooks did not perform his duties in strict compliance with the respondent's rules. * * * It is not for us to determine whether or not these infractions of the respondent's rules were sufficiently grave to justify the discharge of Brooks. What we are concerned with is whether or not Brooks was discharged because of these infractions or whether the respondent, desiring to rid itself of Brooks because of his union activities, searched for some cause to cloak its real motive for the discharge."

[22] 2 N. L. R. B. 431.

discharge and concluded that in the light of all the evidence the respondent had availed itself of the accident as a pretext for eliminating a union employee.[23]

In this connection the Board has held that an employee need not actually be a union member or engaged in union activities for his discharge to constitute a violation of the act. All that is necessary is that his discharge have a necessary effect of discouraging membership in the union. Thus, in *Matter of Quidnick Dye Works, Inc.*,[24] the Board found that the discharge of an employee who was not engaged in union activities was discriminatory when the reason assigned therefor was the discharge on the preceding day of his brother who was an active union member.[25]

In a considerable number of cases the Board has dismissed the complaint with respect to allegations of a discriminatory discharge where the evidence failed to support such allegations. In *Matter of Union Pacific Stages, Inc.*,[26] the Board found that there was insufficient evidence to sustain the allegations of a discriminatory discharge for union activity where it was shown that the discharged employee, a bus driver, had failed to account for a fare collected, had tampered with the governor of the bus, and had been smoking while on duty. Similarly, in *Matter of United Fruit Company and Richard Schmidt and Gus Carlson*[27] the Board held that the evidence did not sustain the allegation of a discriminatory discharge for a refusal to join a labor organization favored by the employer. The case involved longshoremen who were picked from a crowd and hired for a day's work whenever needed. There was no certainty that any one person would receive work on any particular day. Hence, it was held that failure to receive work on a single day was insufficient to prove a discharge.[28]

The Board has found that the words "discrimination in regard to hire and tenure of employment" include cases not only of outright discharge but also of demotions, temporary lay-offs, or furloughs where discriminatorily applied.[29] Thus, in *Matter of Hardwick Stove*

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[23] The Board made a similar finding as to the discharge of another operator, who was an active union member with a fine record as a driver, where the defense asserted by the respondent was "failure to properly perform driving duties." See also *Matter of General Industries Co., a Corporation, and Hobart Flenner, et al.*, 1 N. L. R. B. 678 (horseplay and mischief during working hours utilized as pretext for discharge); and *Matter of National New York Packing & Shipping Company, Inc., and Ladies Apparel Shipping Clerks Union, Local No. 19953*, 1 N. L. R. B. 1009 (insubordination used as a pretext). Cf. *Matter of Wallace Manufacturing Co., Inc., and Local 2237, United Textile Workers of America*, 2 N. L. R. B. 1081; *Matter of Willard*, 2 N. L. R. B. 1094 (discharge of Garland P. Webb); and *Matter of Martin Dyeing and Finishing Co.*, 2 N. L. R. B. 403.

[24] 2 N. L. R. B. 963.

[25] See *Matter of Fashion Piece Dye Works, Inc.*, 1 N. L. R. B. 285.

[26] 2 N. L. R. B. 489 (supplementary decision).

[27] 2 N. L. R. B. 896.

[28] In this case the Board also held as to another employee that evidence of failure to hire him for 3 weeks after he had participated in a brawl on the employer's premises was insufficient to prove a discriminatory discharge, where it was shown that it was the practice of the employer to penalize employees participating in brawls by not hiring them for 3 weeks. See also *Matter of Harrisburg Children's Dress Co. and International Ladies Garment Workers Union*, 2 N. L. R. B. 1058; *Matter of Nolan Motor Company, Inc. and International Association of Machinists, Local No. 193*, 2 N. L. R. B. 357; and *Matter of Bell Oil & Gas Co. et al. and International Association of Oil Field, Gas Well, and Refinery Workers of America, Local No. 258*, 2 N. L. R. B. 886.

[29] The Board said in *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1, at p. 36:

"If the motivating cause of the discriminatory change in the tenure of employment was interference with the employees in the exercise of their guaranteed rights or discouragement of membership in a labor organization, a violation is established whether the change is temporary or permanent." For similar language see *Matter of Benjamin Fainblott and Marjorie Fainblott doing business under the firm names and styles of Somerville Manufacturing Company and Somerset Manufacturing Company and International Ladies Garment Workers Union, Local No. 149*, 1 N. L. R. B. 864, at p. 874.

Company, Inc., and International Molders Union of North America,[30] the record revealed that the respondent sent spies to union meetings, attempted to buy off union men individually, and terrorized would-be union members by massing company officials in front of the union meeting halls. The Board found that in an atmosphere so charged with coercion and intimidation the demotion of two expert molders, who had been observed by the respondent attending union meetings, to more menial and irregular jobs and later filling their former jobs with employees of lesser seniority constituted a discrimination in regard to conditions of employment.[31]

In *Matter of Greensboro Lumber Co. and Lumber and Sawmill Workers Local Union, No. 2688, United Brotherhood of Carpenters and Joiners of America*,[32] the record revealed that shortly after the union was organized in the respondent's plant, May, the respondent's secretary and treasurer, told an employee that he understood a union was being organized in the plant, that he wanted it stopped, and that anyone who joined the union would be discharged immediately. During the following days May questioned other employees about the union; and when a representative of the union called to request May, as respondent's agent, to engage in collective bargaining, May responded by calling all the employees before him, one at a time, and asking them whether they belonged to "this man's organization." Although a majority replied in the affirmative, the respondent refused to bargain with the union. Two days later the respondent shut down its mill completely for 2 weeks, then for a few weeks more operated on a reduced scale, using only one shift, and returned to its normal two-shift basis 2 days before the hearing in the case. During the period when the mill was completely shut down, 8 or 10 non-union men were employed to stack lumber in the yard, though at least one of them was not by trade a stacker, and though several union members were stackers and had been working as such at the time of the shut-down. When the mill first reopened, operating only during the day, the employees usually on the night shift were employed instead of those on the day shift, May testifying that since the night shift had fewer union members the management considered it to be the more "loyal." When the mill recommenced its two-shift schedule the night shift was transferred back to night work.

The Board stated in its decision that though it considered that the original shut-down of the mill 2 days after the union's effort to bargain collectively was suspicious, the only evidence in the record as to the reason for the shut-down was May's statement that there were few orders and no lumber immediately available to fill them. It refrained, therefore, from finding that the shut-down constituted a lock-out of the union employees, as alleged in the complaint. The employment of inexperienced non-union stackers while the union stackers previously employed were idle, however, was found to have been an act of discrimination discouraging to union membership.

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[30] 2 N. L. R. B. 78.

[31] Cf. *Matter of Wallace Manufacturing Co., Inc.*, 2 N. L. R. B. 1081 (demotion of the president of union followed by discharge and retention of nonunion employees of lesser seniority).

[32] 1 N. L. R. B. 629; cf. *Matter of Hardwick Stove Co.*, 2 N. L. R. B. 78.

The use for day work of the employees habitually on the night rather than the day shift was similarly found to have been an act of discrimination. In regard to one union member who was not reemployed on the reopening of the mill, the Board found evidence in the record that he had been feigning sickness as a means of leaving his work and concluded that he had not been discharged for union activity.

2. Discriminatory Refusal to Reinstate Employees After a Shut-Down, Lock-Out, or Strike

A discharge or a lay-off for union activities, the Board has held, may violate section 8 (3), whether or not it is accompanied by a discriminatory refusal to reinstate.[33] Conversely, a refusal to reinstate certain employees because of their union affiliations has been held to violate the act, even though the original severance of employment was entirely innocent, as in the case of a shut-down for lack of business, or was caused by the employees themselves, as in the case of a strike.[34] Ordinarily a refusal to reinstate has not been found in such cases unless the employees have applied for reinstatement either in person or through their representatives[35] and been denied.[36] Where, however, employers have themselves taken the initiative in recalling certain employees and it has been understood that only those so notified would be reemployed, application for reinstatement by the employees themselves has not been required.[37] And where the original severance of employment was itself an unfair labor practice, the Board has held that the employer was under a duty to offer reinstatement to his employees and their failure to apply for it was immaterial.[38]

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[33] *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626; *Matter of Pacific Greyhound Lines*, 2 N. L. R. B. 431; *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers, and Accountants Union, Local 12646*, 2 N. L. R. B. 610; *Matter of Hardwick Stove Co.*, 2 N. L. R. B. 78; *Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1; *Matter of Brown Shoe Company, Inc., and Boot and Shoe Workers, Local No. 655*, 1 N. L. R. B. 803.

[34] *Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America*, 2 N. L. R. B. 952; *Matter of Mackay Radio and Telegraph Company and American Radio Telegraphists' Association, Local No. 8*, 2 N. L. R. B. 500; *Matter of Segall Maigen, Inc., a Corporation, and International Ladies' Garment Workers' Union, Local No. 50*, 1 N. L. R. B. 749; and *Matter of Ford A. Smith, Blanche F. Smith, and William C. Shanks, partners doing business as Smith Cabinet Manufacturing Company and National Furniture Workers, Local No. 3*, 1 N. L. R. B. 950. The Board has held it immaterial in such cases whether or not the individuals discriminated against retained their status as employees of the respondent at the time they were refused reemployment. In *Matter of Algonquin Printing Company and United Textile Workers of America, Local No. 1044*, 1 N. L. R. B. 264, an employer, having refused reinstatement to 2 union leaders after a temporary shut-down of his plant, argued that since they had ceased to be his employees within the meaning of the act, a refusal to reemploy them could not be an unfair labor practice. The Board in rejecting this argument said, at p. 269:

"Sec. 8, subdivision (3), in forbidding discrimination in employment, is not limited to those who are employees at the time of the discrimination. It forbids discrimination in regard 'to hire' generally. The purpose of the provision is, it is true, to protect employees in their right to self-organization. But surely a refusal by an employer to rehire a former employee because of his union activities which are well known to his former fellow workers discourages the latter and so restrains them in the exercise of their right to self-organization."

For a similar holding see *Matter of Radiant Mills Company*, 1 N. L. R. B. 274. Though the individuals discriminated against need not be his employees, the act of discrimination must be directly chargeable to the respondent or his officers and agents. Discrimination by one employer will not ground a finding of a violation of sec. 8 (3), against another even when carried on at the same time as the other's anti-union campaign, and against employees who work part time for both employers. *Matter of Bell Oil & Gas Company and Local Union 258 of the International Association of Oil Field, Gas Well, and Refinery Workers of America et al.*, 1 N. L. R. B. 562.

[35] *Matter of Elbe and Binder Co., Inc.*, 2 N. L. R. B. 906; *Matter of Mooresville Cotton Mills*, 2 N. L. R. B. 952. The sufficiency of a collective application for reinstatement was upheld in *Matter of Alabama Mills, Incorporated*, 2 N. L. R. B. 20; *Matter of United Aircraft Manufacturing Corporation*, 1 N. L. R. B. 236. See also *Matter of Benjamin Fainblott and Marjorie Fainblott, Individuals, Doing Business Under the Firm Names and*

The Board has considered an offer of reemployment, conditioned upon the abandonment by the employee of his union activities and the renunciation of his rights under the act, to be equivalent to a refusal to reinstate.[39] Likewise, it decided in *Matter of Sunshine Hosiery Mills and Branch No. 55, American Federation of Hosiery Workers*,[40] that rejection of an offer of immediate reemployment by employees while out on strike, did not prevent a finding that a later refusal to reinstate them was a violation of section 8 (3).[41] Rejection of such an offer at the close of a strike, however, merely because the wages offered were too low, has been held to preclude a finding that the employer had in that instance been guilty of a discriminatory refusal to reinstate.[42]

In *Matter of Mackay Radio & Telegraph Company, a Corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3*,[43] the respondent, by blacklisting certain of its employees and letting it be understood they would not be reemployed, caused them to delay their requests for reemployment until their positions had been filled by other men, and then argued that its refusal to reemploy them was not based upon their union record but was due simply to the fact that there were no vacancies for them. The Board ruled that as the blacklist was based upon the union

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Styles of Somerville Manufacturing Company and Somerset Manufacturing Company, 1 N. L. R. B. 864; and *Matter of The Sands Manufacturing Company and Mechanics Educations Society of America*, 1 N. L. R. B. 546.

[36] *Matter of Elbe File and Binder Co., Inc.*, 2 N. L. R. B. 906; *Matter of Alabama Mills, Incorporated*, 2 N. L. R. B. 20; *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, 1 N. L. R. B. 335; and *Matter of Jeffrey-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*, 1 N. L. R. B. 618.

[37] *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 316; *Matter of United Aircraft Manufacturing Corporation*, 1 N. L. R. B. 236; *Matter of Friedman-Harry Marks Clothing Company, Inc., and Amalgamated Clothing Workers of America*, 1 N. L. R. B. 411, 432; and *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

[38] *Matter of Lion Shoe Company and United Shoe and Leather Workers Union*, 2 N. L. R. B. 819; *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of Club Troika, Inc.*, 2 N. L. R. B. 90; *Matter of Ford A. Smith, Blanche F. Smith, and William C. Shanks, partners, doing business as Smith Cabinet Manufacturing Company and National Furniture Workers, Local No. 3*, 1 N. L. R. B. 950; and *Matter of Washington, Virginia, and Maryland Coach Company and Amalgamated Association of Street Electric Railway and Motor Coach Employees of America, Local Division No. 1019, et al.*, 1 N. L. R. B. 769.

[39] *Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20 (yellow-dog contract); *Matter of Carlisle Lumber Company and Lumber and Sawmill Workers Union, Local 2511, Onalaska, Washington*, 2 N. L. R. B. 248 (yellow-dog contract); *Matter of Clarke & Reid Company, Inc., and Curtis and Croston, Inc., and Piano and Furniture Movers, Drivers, Packers, and Helpers Local Union No. 82*, 2 N. L. R. B. 516 (requiring employees to give up their membership in an outside union); *Matter of Benjamin Fainblott and Marjorie Fainblott, individuals doing business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company*, 1 N. L. R. B. 864. Compare the decisions holding that such conditions also discriminate in regard to a "term or condition of employment," discussed infra, pp. 78 and 79.

[40] 1 N. L. R. B. 664.

[41] The Board in this case said at p. 673: "Respondent's argument proceeds upon the assumption that the employees' refusal to abandon a strike at its height in response to a threat that they will be replaced if they fail to return justifies the inference that they have relinquished all interest in their jobs and may be stricken from the employee lists. This contention betrays a fundamental misconception of the rights created by the act. It is elementary that rejection of employment under these circumstances connotes a determination to improve the conditions of a job to which the striker intends to return. The act specifically guarantees the right to strike and provides that the striker retains the status of an employee while he is engaged in this form of concerted activity. To permit the employer to discriminate against strikers when they apply for reinstatement merely because they had previously refused an offer to return to work is, of course, a deliberate rebuke to concerted action by members of a labor organization." *Matter of Alaska Juneau Gold Mining Company and International Union of Mine. Mill. and Smelter Workers. Local No. 203*, 2 N. L. R. B. 125; compare *Matter of Mooresville Cotton Mills*, 2 N. L. R. B. 952.

[42] *Matter of Pioneer Pearl Button Company and Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837. The holding does not, of course, imply that a later refusal of the employer to reinstate these employees, if discriminatory and discouraging to union membership, might not be found to be a violation of section 8 (3).

[43] 1 N. L. R. B. 201.

activities of the employees and was the direct cause of their delayed application, the employer's action was equivalent to a discriminatory refusal to reinstate. In *Matter of Santa Cruz Fruit Packing Company, a corporation, and Weighers, Warehousemen, and Cereal Workers, Local 38–44, International Longshoremen's Association*,[44] the respondent employer was found to have locked out a group of his employees for their union activities and to have contracted out his work to another concern in order to avoid reemploying them. The Board found from the record that in spite of the contract the respondent was in fact able to reinstate the employees and therefore found in his refusal a violation of section 8 (3).[45] It stated, however, that its decision did not imply the validity under the act of such a contract entered into with such a motive.[46]

3. Discrimination in Regard to Any Term or Condition of Employment

The Board has construed the words "any term or condition of employment" to apply, on the one hand, to the treatment of employees and, on the other hand, to the terms on which employment is granted. The first construction was adopted in *Matter of Wheeling Steel Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America et al.*,[47] where an employer was found to have discriminated by ordering its foreman to prefer members of a company-dominated union to members of an outside union, by demoting a foreman for giving an outside union man a good job, and by paying higher wages to company union members than to outside union members for equivalent work.[48]

In *Matter of Lion Shoe Company, a Corporation, and United Shoe and Leather Workers Union*,[49] on the other hand, the language was applied to the act of an employer in conditioning reemployment after a strike upon membership in a company-dominated union.[50] Similarly, in *Matter of Carlisle Lumber Co.*,[51] the Board held that the conduct of the employer in announcing a "yellow-dog" policy not to hire any of its employees who had been striking unless they renounced all their affiliations with labor organizations, and by soliciting and requiring its employees to sign applications for work whereby they agreed to renounce all affiliations with labor organizations, con-

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[44] 1 N. L. R. B. 454.

[45] See *Matter of Nolan Motor Co., Inc.*, 2 N. L. R. B. 357.

[46] Compare with these cases *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519, in which the Board held that a refusal by an employer to sign an application for a certificate required by State law which would permit a 16-year-old girl to be employed amounted to a refusal to reinstate her.

[47] 1 N. L. R. B. 699.

[48] See *Matter of Hardwick Stove Company, Incorporated*, 2 N. L. R. B. 78, where in answer to the respondent's contention that certain employees had not been discharged, but only temporarily laid off, the Board said:

"We note also that in the 5 months between their discharge and the hearing respondent did not afford union men the advantage of its policy of giving old and experienced employees who had been out of work for a considerable period temporary cat-skinning jobs in order to retain their services. Nor did respondent attempt to keep these men by distributing the available work among them as well as the others by reducing the number of hours or days in the work-week as it had in the past, and as it did again in November and December 1935."

It was unnecessary, however, for the Board to find that this unfair allocation of work constituted a discrimination in regard to a term or condition of employment, since it found that the men had been previously discriminatorily discharged. Cf. *Matter of Aguilines, Inc.*, 2 N. L. R. B. 1 (demotion, transfer, and wage reduction).

[49] 2 N. L. R. B. 819.

[50] See also *Matter of Hill Bus Company, Inc.*, 2 N. L. R. B. 781; and *Matter of Clinton Cotton Mills and Local No. 21821, United Textile Workers of America*, 1 N. L. R. B. 97 (shut-down).

[51] 2 N. L. R. B. 248.

stituted a discrimination against these employees with regard to terms or conditions of employment.[52]

4. The Closed-Shop Proviso

The provision in section 8 (3), permitting employees to require membership in a labor organization as a condition of employment if such a labor organization is the representative of the employees in the appropriate collective bargaining unit, is qualified in one important respect. The labor organization must not have been established, maintained, or assisted by any action defined in the act as an unfair labor practice. The proviso with its qualification has been interpreted by the Board in several cases. In *Matter of Clinton Cotton Mills*,[53] the respondent, having shut down its plant, concluded a closed-shop contract with the "Clinton Friendship Association," a labor organization which it had caused to be organized among certain of the employees at its plant. On reopening its mill, it posted a notice stating that pursuant to this contract only members of the Clinton Friendship Association would henceforth be employed. Ninety-six employees who refused to join the Friendship Association were refused employment. The respondent urged that since a closed-shop contract was permitted by the proviso, its conduct did not constitute discrimination within the meaning of the act. The Board stated that as the Friendship Association had been established by acts defined in section 8 (2) of the act as unfair labor practices[54] and hence came within the qualification of the proviso, the general provisions of section 8 (3), applied, and the respondent must be found to have engaged in a discriminatory refusal to reinstate the 96 employees. The Board similarly condemned closed-shop contracts executed with company-dominated unions in *Matter of Lion Shoe Company*[55] and in *Matter of Hill Bus Co., Inc.*[56]

C. COLLECTIVE BARGAINING

1. Provisions of the Act Relative to Collective Bargaining

Section 8, subdivision (5) of the act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)." Section 9 (a) of the act provides:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment,

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[52] *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with United Textile Workers Union*, 1 N. L. R. B. 292; and *Matter of Tidewater Express Lines, Inc.*, 2 N. L. R. B. 560 (conditioning reemployment upon nonmembership in a union). See *Matter of Alabama Mills, Inc.*, 2 N. L. R. B. 20; and *Matter of Clark & Reid, Inc., et al.*, 2 N. L. R. B. 516.

[53] 1 N. L. R. B. 97.

[54] It should be noted, however, that the Board held that the qualification applied to unfair labor practices in the establishment, maintenance, or assistance of a labor organization which occurred before as well as after the effective date of the act. Otherwise, said the Board: "An employer could perpetuate an organization of his creation prior to July 5, 1935, by entering into a closed-shop agreement with it after July 5, 1935, thus enabling it to thrive on the support afforded by the agreement and permitting it to dispense with the constant assistance obtained from company domination and support which would otherwise be necessary."

[55] 2 N. L. R. B. 819.

[56] 2 N. L. R. B. 781.

or other conditions of employment: *Provided*, that any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

2. The Duty to Bargain Collectively

(A) THE ELEMENTS OF COLLECTIVE BARGAINING

The collective bargaining provisions of the act envisage, first, a meeting between the employer and the duly designated representatives of the employees. Refusal to meet with the representatives of the employees constitutes a violation of the act.[57]

The employees must ordinarily make a demand upon the employer to bargain collectively with them and the person or persons seeking to negotiate with the employer must, upon request, show to the employer that they are the duly designated representatives of a majority of his employees in an appropriate bargaining unit. In *Clifford M. Dekay, doing business under the trade name and style of D. & H. Motor Freight Company, and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*,[58] however, the Board said:

> Although neither Strong nor Carlson made the customary and ordinarily necessary statements that they were the duly designated representatives of a majority of the respondent's employees and that the purpose of their presence was to bargain collectively with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment, we believe that other facts established at the hearing show that respondent knew the identity of Strong and Carlson, the capacity in which they called and the purpose of their request. * * * The failure of Dekay to ask the men the purpose of their request when considered in relation to the circumstances surrounding it indicates that Dekay was "too busy" to allow them to state their position and their demands because he knew who they were and what they wanted.

The provision then looks to a course of bargaining between the parties, for the purpose of making a collective agreement which will stabilize employment relations for a period of time.[59] The employer cannot discharge his obligation to bargain by merely accepting or rejecting the proposals of the union; there must be an actual bargaining process in which in good faith an attempt is made to adjust differences and reach a common ground.[60]

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[57] *Matter of Louis Hornick & Company, Inc., and Textile Trimming Workers Union, Local 2440, United Textile Workers of America*, 2 N. L. R. B. 983; *Globe Mail Service, Inc., and Bookkeepers, Stenographers and Accountants, Local 12646*, 2 N. L. R. B. 610. In *Elbe File and Binder Co., Inc., and Bookbinders, Manifold and Pamphlet Division, Local No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906, the employer was held not justified in dealing with a committee of striking employees which had no authorization from the majority to represent them.

[58] 2 N. L. R. B. 231.

[59] *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters & Butcher Workmen of North America, Local No. 159*, 2 N. L. R. B. 39.

[60] *Matter of the Canton Enameling & Stamping Company and Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402. It follows *a fortiori* that where a majority of the employees in an appropriate unit have designated or selected representatives for the purposes of collective bargaining, the duty of the employer under the act remains undischarged by the mere adjusting of individual grievances. In *Matter of Atlantic Refining Company* (1 N. L. R. B. 359), the Board stated:

"That all individual complaints as to working conditions have at all times been satisfactorily settled does not constitute a proper discharge of the respondent's obligations under sec. 8, subdivision (5), of the act, and cannot be said to preclude the employees from engaging in an effort to bargain concertedly with their employer on matters of wages, hours, and basic working conditions" (p. 368). See also *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, and Local Division No. 1063 of The Amalgamated Association of Street Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1.

In *Matter of International Filter Company and International Association of Machinists, District No. 8* (1 N. L. R. B. 489), the Board said:

"The presence or absence of 'problems' or 'grievances' on the part of employees has nothing to do with their right, under the act, to self-organization and collective bargaining through representatives of their own choosing" (p. 498).

In *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 159*,[61] the Board stated that meeting with the employees and discussing working conditions with them was not enough to satisfy the requirements of section 8, subdivision (5) of the act. The Board said:

> While on these facts it cannot be claimed that the respondent has refused unqualifiedly to deal with an organization of its employees (the Board) does not feel that its apparent willingness at all times to meet with representatives of its employees and to discuss all aspects of working conditions with them may be termed genuine collective bargaining. There is much to indicate that the respondent conceives of its function in "collective bargaining" as a mere stating of "yes" or "no" after discussion, to any requests presented to it by representatives of its employees. It does not feel required to work toward a solution satisfactory to both sides of the various problems under discussion by the presentation of counterproposals or other affirmative conduct. The respondent's whole attitude is colored with the belief that the agreement or concession comes as a matter of grace on its part.

The net result sought by the collective bargaining provision is the making of a collective bargaining agreement. In holding that the act imposes upon the employer not only the duty to meet with the duly designated representatives of its employees and to bargain with them in good faith in a genuine attempt to achieve an understanding on the proposals and counterproposals advanced, but also the duty, if an understanding should be reached, to embody that understanding in a binding agreement for a definite term, the Board said, in *Matter of St. Joseph Stock Yards Company:*

> An assertion that collective bargaining connotes no more than discussions designed to clarify employer policy and does not include negotiation looking toward the adoption of a binding agreement between employer and employees is contrary to any realistic view of labor relations. The development of those relations had progressed too far when the act was adopted to permit the conclusion that the Congress intended to safeguard only the barren right of discussion. The protection to organization of employees afforded by the first four subdivisions of section 8 can have meaning only when the ultimate goal is viewed as the stabilization of working conditions through genuine bargaining and agreements between equals. That such is the goal is made clear in section 1 of the act, wherein the policy of the United States is stated to be the protection of self-organization of workers and the designation of their representatives for the purpose of negotiating the terms and conditions of their employment.[62]

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[61] 2 N. L. R. B. 39.

[62] 2 N. L. R. B. 39. The Board also stated in regard to the respondent's policy of not entering into agreements with labor organizations representing its employees:

"The solution of the problem lies in the recognition of that attitude. Such an attitude grows out of an antipathy toward organization of workers and a refusal to concede that the policy of the United States shall be the policy of the respondent. It is designed to thwart and slowly stifle the Union by denying to it the fruits of achievement. It is based upon the knowledge that in time employees will grow weary of an organization which cannot point to benefits that are openly credited to its aggressiveness and vigilance and not to an employer's benevolence that on the surface may appear genuine but in truth is forced upon the employer by the organization. To many this unwillingness to enter into an agreement with a labor organization may seem no more than a harmless palliative for the employer's pride and to amount only to a petty refusal to concede an unimportant point purely as a face-saving device. But the frequency with which the old Board was compelled to denounce such a policy on the part of employers indicates its potency as a device subtly calculated to lead to disintegration of an employee organization. Viewed from the other side, the main objective of organized labor for long has been the collective agreement and the history of organization and collective bargaining may be written in terms of the constant striving for union recognition through agreement. In many cases employees have left their employment and struck solely because of the employer's refusal to enter into a collective agreement. An objective that has been so bitterly contested by employer and employee, that has been the cause of many long and costly strikes, must be evaluated in the light of the conflict it has produced. The respondent's persistent adherence to the policy of not entering into agreements with labor organizations representing its employees must be regarded as an intentional and effective interference with the employees' exercise of the rights guaranteed in sec. 7 of the act."

(B) THE MANNER AND EXTENT OF COLLECTIVE BARGAINING

(1) *The actual bargaining process.*—The Board has emphasized that the employer has not discharged its obligation under section 8 (5) of the act unless it has in fact bargained with the representatives of its employees. In *Matter of Atlantic Refining Company and Local Nos. 310 and 318, International Association of Oil Field, Gas Well, and Refinery Workers of America,*[63] the failure on the part of the respondent to approach the negotiations with an open mind and to make a reasonable effort to reach a common ground of agreement was held to be in violation of the act.

In *Matter of the Timken Silent Automatic Company and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics' Association,*[64] the Board, in finding that the respondent refused to bargain collectively with the representatives of its employees, stated:

> From these facts it is clear that the respondent categorically refused to bargain with the union as the representative of its employees and made it clear that it was undisposed to explore with an open mind the possibilities of making an agreement with its employees. It is true that officers of the respondent did meet union committees from time to time; after being surprised into a display of downright hostility at the initial approach of the union, the officers were courteous and discreet and ready to discuss casual grievances and demands. The demands, however, were treated as suggestions upon which the respondent, if it acted, acted, not on the basis of a collective bargain or agreement, but of grace. When asked to consider an agreement regulating prospectively relations between it and its employees in a comprehensive manner, the respondent refused to discuss the idea or any detail of it and made it clear that it had a fixed policy precluding such discussion. It thus refused in its dealings with its employees to accede even to the forms and the procedure of collective bargaining (pp. 341–2).[65]

(2) *The requirement of good faith.*—The Board has repeatedly asserted that good faith on the part of an employer is an essential ingredient of collective bargaining. In *Matter of S. L. Allen & Company, Incorporated, and Federal Union No. 18526,*[66] the Board announced the principle that—

> To meet with the representatives of his employees, however frequently, does not necessarily fulfill an employer's obligations. * * * A construction of the collective-bargaining provision which overlooked a requirement that a bona fide attempt to come to terms must be made, would substitute for nonrecognition of the employees' representatives the incentive simply to hamstring the union with needless and profitless "negotiations." In the absence of an attempt to bargain in good faith on the employer's part, it is obvious that such "negotiations" can do nothing to prevent resort to industrial warfare where a dispute of this nature arises.

The Board has indicated that the manner in which the respondent has negotiated may be indicative of its good faith. In *Matter of Edward E. Cox, Printer, and International Printing Pressmen and Assistants Union, Local No. 376,*[67] the Board held that the respondent did not fulfill its obligations by "listening to a committee member read the proposed agreement and then turning the proposals

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[63] 1 N. L. R. B. 359.
[64] 1 N. L. R. B. 335.
[65] See also *Matter of S. L. Allen & Company, Incorporated, and Federal Labor Union Local No. 18526,* 1 N. L. R. B. 714.
[66] 1 N. L. R. B. 714.
[67] 1 N. L. R. B. 594.

down in their entirety without submitting counterproposals or entering into an honest and sincere discussion of the proposals."

Similarly in *Millfay Manufacturing Company, Inc., and American Federation of Hosiery Workers, Branch 40*,[68] the Board held that the fact that the entire conference was consumed by the respondent in cross-examining the employees' committee on the latter's interpretation of the phrase "union recognition," "indicated a complete absence of any attempt on the part of the respondent to bargain collectively."

The intent of the collective bargaining provision of the act is that collective bargaining be the method adopted by the parties to settle industrial disputes. It may therefore be indicative of bad faith on the part of the respondent that it has attempted to reach a settlement by other means. In *Matter of Shell Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America*,[69] the union had, on May 18, 1936, approached respondent and had asked that respondent set a date on which to meet them. The respondent agreed to meet with the union on June 30. In the interim, respondent revived a dormant wage conference plan and reached an agreement with the delegates chosen under that plan. The agreement covered a part of the group of men that the union claimed constituted a bargaining unit. The Board found that:

> If respondent had desired to bargain with the unions in good faith and at the same time question the scope of their representation, it would have set an early date for a meeting with them when first approached on April 7, 1936. The exact scope of the unions representation could then have been determined in an equitable manner that would have satisfied both parties.
>
> Instead of fairly presenting to the unions its objections, and arranging for an equitable settlement of the question of representation, respondent used every effort to prevent collective bargaining with the unions by persuading a number of its employees to select conference delegates under a plan dormant for 3 years. In order to have time to consummate its plan for entering into an agreement with delegates as representatives of a number of its employees and thereby secure a superficially valid argument for not bargaining with the unions, respondent advised the unions of a date on which it would meet with them only when it felt certain that its plan would succeed. Only then did respondent notify the unions that it would meet with them on June 30, 1936.

In *Consumers Research, Inc., a corporation, and J. Robert Rogers, Representative for Technical, Editorial & Office Assistants' Union, Local No. 20055, affiliated with the American Federation of Labor*,[70] the Board, although finding that negotiations during that period satisfied the requirements of section 8 (5), nevertheless stated that the act of the respondent in sending a telegram to American Federation of Labor officials and arranging a conference during which it denounced the local union to these officials, at the same time that it was negotiating with that local union, raised "grave doubts of respondent's good faith."

For the employer to misrepresent deliberately the conditions concerning which the negotiations are being held again may constitute

[68] 2 N. L. R. B. 919.
[69] 2 N. L. R. B. 835; cf. *Remington Rand, Inc.*, 2 N. L. R. B. 626.
[70] 2 N. L. R. B. 57.

bad faith on its part. In *Matter of M. H. Birge Sons Company and United Wallpaper Craft of North America*,[71] the Board stated:

Such distortion of the situation obviously transcends the exaggerations that often accompany negotiations in this field; it reveals a determination to thwart the process of collective bargaining, to render it wholly ineffective.

In *Matter of The Sands Manufacturing Company and Mechanics' Educational Society of America*,[72] the Board said:

It is hardly necessary to state that from the duty of the employer to bargain collectively with his employees there does not flow any duty on the part of the employer to accede to demands of the employees. However, before the obligation to bargain collectively is fulfilled, a forthright, candid effort must be made by the employer to reach a settlement of the dispute with his employees. Every avenue and possibility of negotiation must be exhausted before it should be admitted that an irreconcilable difference creating an impasse has been reached. Of course no general rule as to the process of collective bargaining can be made to apply to all cases. The process required varies with the circumstances in each case. But the effort at collective bargaining must be real and not merely apparent.

Nevertheless the fact that the reasons advanced by the respondent for not bargaining further in respect to a particular demand are not reasonably related to that demand, may cast doubt upon the bona fides of the respondent. In *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*,[73] the Board said:

Respondent attempted to evade the allegation of bad faith by testimony about the competitive position of the port of Tampa and how that position would be imperiled were there changes made in the wages or hours of its longshoremen. We are frankly of the opinion, however, that this explanation was availed of, at the hearing and at the "collective bargaining" conferences, not because it was meritorious per se, but because it served as a solemn toga to cloak respondent's unwillingness to enter into genuine negotiations.

At the hearing before the trial examiner much was said as to the effect of an increase in cost of operations on respondent's competitive position; and the same point was argued by respondent's counsel before this Board. But in the record nothing appears as to the point at which higher operating costs would necessitate a change in freight rates. Prior to an increase in freight rates, competition would not be affected. Furthermore, so far as concerns the union's proposals at the April 8 conference—merely for recognition and preference, without change in hours, without increase in wages, without written agreement—respondents witnesses were silent. There is no conclusion to be reached from the above facts except that respondent's collective bargaining negotiations were sham. From beginning to end of this record of conferences there is no evidence to give even colorable standing to respondent's contention that it bargained collectively with the representatives of its employees.

In *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers & Accountants Union, Local 12646*,[74] the Board analyzed the respondent's position and its counterproposals and stated that:

Under all the circumstances, we are inclined to believe that the respondent's efforts at collective bargaining during the strike were more apparent than real.[75]

In *Matter of Pioneer Pearl Button Company and Button Workers Union, Federal Local 20026*,[76] the Board said the assertions of the respondent that its financial condition was poor, when it refused to

[71] 1 N. L. R. B. 731.
[72] 1 N. L. R. B. 546.
[73] 2 N. L. R. B. 1.
[74] 2 N. L. R. B. 610.
[75] The Board, however, did not decide the case on this ground.
[76] 1 N. L. R. B. 837.

either prove its statement or permit independent verification, was insufficient to relieve it of the obligation to bargain collectively.[77]

For the respondent to negotiate with the duly designated representatives of its employees through agents who have no authority or instructions to enter into a collective bargaining agreement may indicate bad faith on its part. In *Matter of Agwilines, Inc.*,[78] the union sent a notice to the steamship agents requesting that collective bargaining negotiations be opened. Pursuant to this notice, the Maritime Association of the Port of Tampa, an association of shipping interests, appointed a subcommittee of five to meet with the representatives of the union. In examining the situation the Board found that—

> Neither Gillett (local agent of the respondent) nor Bartlett (general agent of the respondent) had any authority from their superiors to enter into any agreement with the union representatives. Nor were they in a position to be bound by any action agreed upon by the association. It was explained by these witnesses that the making of any agreement was a matter of management policy for respondent at New York to decide. Likewise, the spokesman for the subcommittee admitted that he, too, was without authority to enter into an agreement for any of the lines which he represented. Thus the implication is plain that no amount of consideration of the proposals by the Maritime Association at Tampa could have resulted in any agreement. So far as respondent is concerned, although it was kept informed of the progress of negotiations by its local officials, it nevertheless gave no instructions whatever. The general agent admitted that he had not asked his home office for authority to make any agreement, or to make any offer that might be used as a basis for an agreement; nor did he, acting on his own authority, make any proposals or counterproposals to the union representatives. Gillett testified substantially to the same effect. These admissions led us to conclude that the association acted merely as a blind to give pretense of bona fide negotiations.

It is, of course, true, that the manner and extent of negotiations necessary to constitute collective bargaining may vary from case to case. In *Matter of M. H. Birge & Sons Company*,[79] the Board stated that—

> The question of whether an employer has failed in his affirmative duty to bargain collectively with the representatives of his employees has meaning only when considered in connection with the facts of a particular case. The history of the relationships between the particular employer and its employees, the practice of the industry, the circumstances of the immediate issue between the employer and its employees are all relevant factors that must be given weight. Consequently, a proper evaluation of the respondent's conduct requires a consideration of the labor relation's background of the industry and the actions of the other union manufacturers in the period under examination.
> * * * The respondent's refusal to meet with the union on September 17 was a definite break with the method of conducting labor relations that for long had been firmly established in the industry, and which the respondent itself had consistently pursued over a long period of years. When considered in relation to that method, the refusal and the events preceding the definite step constitute a refusal to bargain collectively within the meaning of section 8, subdivision 5 of the act.

(3) *The fulfillment of the duty to bargain.*—It is clear that the duty to bargain collectively does not comprehend a duty on the part

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[77] See also *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, organizers, Burlap & Cotton Bag Workers Local Union No. 2469, affiliated with the United Textile Workers Union*, 1 N. L. R. B. 292; *Matter of Harbor Boat Building Co. and Ship Carpenters Local Union No. 1835*, 1 N. L. R. B. 349.

[78] 2 N. L. R. B. 1; cf. *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626.

[79] 1 N. L. R. B. 731.

of the employer to accede to demands of its employees that the agreement which the employer enters into with its employees after a meeting of the minds has been achieved, be for an extended period of time. In *Matter of St. Joseph Stock Yards Company*,[80] the Board stated:

> Even that duty does not require that the employer enter into an unalterable obligation for an extended period of time, since many collective agreements contain a clause permitting termination or modification by either party upon prescribed notice. The duration of the agreement, like any of its substantive terms, is a matter for negotiation between the parties.[81]

The employer is not required to continue to bargain collectively with the representatives of its employees when negotiations already held indicate that to do so would be futile. In *Matter of Jeffery-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*,[82] the Board stated the principle that after an impasse had been reached in negotiations between the employer and its employees, the employer may be justified in refusing to meet further with the employees on the basis that no new agreement is possible. In that case, the Board, after finding that there was a refusal to bargain collectively on and after July 16, 1935, nevertheless stated that—

> the respondent did engage in collective bargaining with Local No. 455 on and prior to June 20, 1935, even though no agreement had been reached by the parties. Despite the fact * * * that respondent's good faith in some of its earlier dealings with Local No. 455 is questionable, the fact that the respondent offered to enter into an agreement with Local No. 455 on June 1, accepting some of its demands, and met frequently with Local No. 455 in the period from June 1 to 20, 1935, to discuss the proposals and counterproposals, leads us to believe that the bargaining by the respondent at that time was done in good faith. It is undoubtedly true that an impasse had been reached by the parties on June 20, 1935, on the three substantive issues of seniority, union shop, and check-off, Local No. 455 being unyielding in its demands concerning these issues, the respondent equally firm in its refusal to recede from its position. As long as this impasse continued the respondent might have been justified in refusing to meet with the committee on the basis that no agreement was possible (p. 624).

However, the situation may change, thus creating a new cause for further negotiations. In *Matter of S. L. Allen & Company, Incorporated*,[83] where the alleged deadlock was found in reality to be a refusal to bargain by the employer, the Board went on to state that—

> even if respondent had bargained in good faith before and directly after the strike, and an impasse had been reached, nevertheless, the employer may not always attempt to confine the union's subsequent efforts to secure a settlement to written offers which may be rejected or accepted without explanation. Interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion, and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process. Where in the course of the strike supervening events, such as the formal discharge of the strikers and the importation of strikebreakers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining (p. 728).

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[80] 2 N. L. R. B. 39.
[81] See also *Matter of The Sands Manufacturing Company and Mechanics Educational Society of America*, 1 N. L. R. B. 546.
[82] 1 N. L. R. B. 618.
[83] 1 N. L. R. B. 714.

And the Board has stated that the line between permissible refusal to continue further with collective bargaining negotiations and the duty imposed by the act is one that is sharply drawn. The test is the good faith of the employer in the endeavor to reach an understanding.[84]

In *Louis Hornick & Co., Inc., and Textile Trimming Workers Union, Local 2440, United Textile Workers of America*,[85] the Board found a violation of section 8 (5) of the act where the employer had taken an arbitrary stand upon an issue in dispute and had refused to meet with its employees unless the employees yielded on this particular issue.

And it will be an indication of bad faith on the part of the employer when its refusal to bargain further on any of the issues involved is based upon reasons which do not correspond with the actual situation.[86]

In many cases, employers have advanced untenable reasons for their failure to bargain collectively. In *Matter of International Filter Company*,[87] the employer sought to evade its duty to bargain collectively with the union as the representative of its employees on the ground that recognition of the union and meeting with the union representatives required entering into a closed-shop agreement. The Board stated:

> The respondent's position that meeting with union representatives *ipso facto* draws it into a closed-shop agreement is too specious to merit serious consideration. Our experience has been that the cry of "closed shop" is constantly being raised by employers who seek an excuse to evade their duty to bargain collectively under the act and to obstruct and deny the right of employees to do so. There is not an iota of evidence that the union representatives in this case proposed a closed shop as part of an agreement. The respondent never permitted the chosen representatives of its machinist employees an opportunity to propose anything * * * An unfounded apprehension that employees may demand a closed shop is no excuse for a flat refusal to bargain collectively (p. 499).

In *Matter of Columbian Enameling & Stamping Company*,[88] where the union representatives were in fact seeking a closed shop, the Board stated that this act alone did not preclude the necessity of collective bargaining, and that—

> The specific question to be asked is whether * * * the respondent was justified in believing that further negotiation would be fruitless and settlement of the strike beyond reasonable probability.

In *Alaska Juneau Gold Mining Company and International Union of Mine, Mill and Smelter Workers, Local No. 203*,[89] the Board stated that—

> A strike for a closed shop is not illegal; employees striking for such an end are as fully entitled to the benefits of the act as are all other striking employees * * *

And, as to the respondent's claim that the men had been dominated by their union officers, the Board said:

> But in any case the respondent has no right to pass judgment on what occurred at union meetings. It is neither the business of the Board nor of an

[84] *Matter of St. Joseph Stock Yards Company*, 2 N. L. R. B. 39.
[85] 2 N. L. R. B. 983.
[86] *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1.
[87] 1 N. L. R. B. 489.
[88] 1 N. L. R. B. 181.
[89] 2 N. L. R. B. 125.

employer to inquire into the manner in which labor organizations conduct their internal affairs. The right to self-organization and to bargain collectively must be free from interference with and restraint of any kind by the employer. This right would be a sham and a mockery were the manner of its exercise subject to the approval or disapproval of the employer. The desire, pretended or real, of the employer to protect his employees against the dire consequences envisaged as flowing from the exercise of such right cannot serve as a justification for an inquiry by the employer into the internal affairs of labor organizations. Nor can the fact that a union may not conduct its affairs in perfect parliamentary fashion give the employer any justification for violating the act.

Another example of an employer whose stated reason for refusing to bargain collectively was deemed inadequate is found in *Matter of Harbor Boatbuilding Co.*,[90] wherein the Board stated that—

It is clear that an employer cannot refuse to bargain collectively on the ground that his competitors have not entered into negotiations or made agreement with their employees.

Again, in *Matter of Rabhor Company, Inc.*,[91] where the employer sought to excuse its refusal to meet with the union as the representative of its employees on the ground that the union brought the workers out on strike by false statements and promises, and induced strikers to engage in acts of violence, the Board found the argument to be irrelevant, and said:

Where groups are to be organized and moved into action it is not unusual for the leaders to promise more than can be secured or to indulge in some exaggeration. Indeed, it is one of the functions of collective bargaining to eliminate the misunderstandings that are bound to arise in these struggles and to resolve demands into what can be achieved. The act does not give to us the mandate to examine the speeches and the conduct of those whom the employees choose to follow, and to determine whether, in our opinion, they are worthy to lead. That is for the workers alone to decide.

In regard to the alleged violence, the Board stated further:

In any case the fact that during a strike, necessarily a time of heated emotions, the bounds of permissible conduct may have been overstepped by men or leaders cannot be used to deny to employees their full right of representation.

The Board has emphasized the fact that it has no power under the act to decide upon the subject matter or substantive terms of a union agreement, and it has stated that the claim of the employer that the union, by its demands, was attempting to seize control of the organization is not tenable as an excuse for the employer's refusal to bargain collectively:[92]

Respondent's theory that the labor dispute involved in this case was simply a plot to seize control of the organization renders advisable a brief statement of the position of the National Labor Relations Board in such a matter. The Board has no power under the act to decide upon the subject matter or substantive terms of a union agreement. For this reason attempted seizure of control through the medium of collective bargaining negotiations is not within the cognizance of the Board. Again, highly improbable as it is to say that a union might be able to effect a change of management by means of the collective bargaining machinery of the act, a union could never seize control unless such "seizure" were acquiesced in by the employer. By the act, the terms of agreement are left to the parties themselves; the Board may decide whether collective bargaining negotiations took place, but it may not decide what should or should not have been included in the union contract, * * * We conclude

[90] 1 N. L. R. B. 349.
[91] 1 N. L. R. B. 470.
[92] *Matter of Consumers' Research, Inc.*, 2 N. L. R. B. 57.

from the entire record that there was no attempt by the union to seize control of the organization; that the record persuasively indicates that the union was without power to seize control; and that in any event seizure of control through the mechanism of collective bargaining is outside the scope of the Board's jurisdiction.

3. Duty to Bargain Where There Is a Strike

The duty of an employer to bargain collectively with the representatives of his employees is not extinguished by the occurrence of a strike. In *Matter of Columbian Enameling and Stamping Co.*[93] the Board stated:

The act requires the employer to bargain collectively with its employees. Employees do not cease to be such because they have struck.[94] Collective bargaining is an instrument of industrial peace. The need for its use is as imperative during a strike as before a strike. By means of it, a settlement of the strike may be secured[95] (p. 197).

This duty of the employer exists unless "further negotiation would be fruitless and settlement of the strike beyond reasonable probability."

The negotiations during a strike must be carried on in the same manner and to the same extent as would be requisite were there not a strike. In *Matter of S. L. Allen & Company, Incorporated,*[96] the Board stated that—

even if respondent had bargained in good faith before and directly after the strike, and an impasse had been reached, nevertheless, the employer may not always attempt to confine the union's subsequent efforts to secure a settlement to written offers which may be rejected or accepted without explanation. Interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion, and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is of the essence of the bargaining process. Where in the course of the strike supervening events, such as the formal discharge of the strikers and the importation of strikebreakers, introduce new issues, the employer must meet with the representatives of its employees in order to realize the full benefits of collective bargaining.

In *Matter of Carlisle Lumber Company,*[97] the employer during the progress of a strike issued a notice to the effect that it had discharged all of the employees who were then striking. In holding that the respondent could not by this method modify its obligations, the Board stated:

The respondent by its notice of discharge sought to alter its legal relationship to these employees. This it was powerless to do under the act without their consent. * * *

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[93] 1 N. L. R. B. 181.

[94] Sec. 2, subdivision (3), of the act provides that the term "employee" shall include "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment." See also *Matter of Jeffery-DeWitt Insulator Company,* 1 N. L. R. B. 618.

[95] In the following decisions, the Board has held the employer to have violated the act because of a refusal to bargain collectively with the representatives of its employees during a strike: *Matter of Carlisle Lumber Company,* a corporation, and *Lumber and Sawmill Workers Union, Local 2511, Onalaska, Washington,* and *Associated Employees of Onalaska, Incorporated,* a corporation, intervenor, 2 N. L. R. B. 248; *Matter of Consumers Research, Inc.,* a corporation, and *J. Robert Rogers,* representative for *Technical, Editorial and Office Assistants Union, Local No. 20055,* affiliated with the American Federation of Labor, 2 N. L. R. B. 57; *Matter of Louis Hornick & Co., Inc., and Textile Trimming Workers Union, Local 2440, United Textile Workers of America,* 2 N. L. R. B. 983; *Matter of The Timken Silent Automatic Company,* 1 N. L. R. B. 355; *Matter of Rabhor Company, Inc.,* 1 N. L. R. B. 470; *Matter of The Sands Manufacturing Company,* 1 N. L. R. B. 546 (temporary shut-down of plant); *Matter of S. L. Allen & Company, Incorporated.* 1 N. L. R. B. 847; *Matter of Columbia Radiator Company,* 1 N. L. R. B. 714.

[96] 1 N. L. R. B. 714.

[97] 2 N. L. R. B. 248.

Under section 2 (3), of the act an employee whose work has ceased as a consequence of or in connection with a labor dispute retains his employee status as long as such labor dispute remains current and as long as he has not obtained regular and substantial equivalent employment.

In *Matter of M. H. Birge & Sons Company*,[98] where the employees had called a strike pending the negotiations in order to reenforce their demands, the Board, in finding there had been a refusal to bargain collectively by the employer after the strike had been called, said:

We are not unmindful of the fact that employees who strike must be prepared in many cases to suffer the economic consequences of their action and that the employer is not required by the act to refrain from protecting his economic interests [in this instance through the employment of new employees]. But even in regard to such periods in labor relations, Congress, in the National Labor Relations Act, has placed restrictions upon the employer's conduct in an endeavor to achieve an equality in bargaining power.[99]

The Board stated further:

Had the respondent after September 3 [the strike was called on September 1] sincerely utilized the long-established practice of dealing with the union when faced with labor problems that required solution, had it attended the general conference on September 17, or even had it acted in good faith when it met with the union on September 19 and September 23, a solution of the difficulty might have been evolved and the union employees reinstated (p. 731).

4. Majority Rule

(A) Exclusive Representation

Under section 8 (5) and 9 (a) of the act it is an unfair labor practice for an employer to refuse to bargain collectively and exclusively with representatives selected by the majority of employees in an appropriate unit.[1]

The attempt on the part of an employer to avoid collective bargaining through bargaining individually with its employees constitutes a violation of the act. In *Matter of Columbian Enameling & Stamping Co. and Enameling & Stamping Mill Employees Union No. 19694*,[2] the Board found that though the respondent—

was now in contact with its employees' representatives, though negotiations had been initiated looking to the settlement of the strike, the respondent continued to solicit individual employees to return to work and at the same time refused to engage in the negotiations. Thus, the employees had no channel through which to arrange their return to work as an organized group, conformably to the decision of that group. By its tactics the respondent emasculated the union as an effective instrument of employee representation. We hold that by so doing it

[98] 1 N. L. R. B. 731.

[99] The Board ordered the reinstatement of the striking employees and the dismissal, if necessary, of the new employees hired after the date of the strike. In a dissenting opinion, J. Warren Madden, chairman of the Board, stated, in part: "I think the decision amounts to a holding that an employer whose employees have struck, not as a result of any unfair labor practice on the part of the employer, is legally obliged to close his plant for an indefinite time while he negotiates with the strikers for their return to work. I see no such provision in the statute. If it is successfully read into the statute it will have the effect of inducing unions to call strikes without first taking careful stock as to whether their economic power is sufficient to bring the employer to their terms. Labor unions will gain no permanent advantage from such a doctrine. Employers and the public will properly insist that such a rule is unfair unless it is accompanied by compulsory arbitration" (p. 748). See *Matter of Bell Oil and Gas Company*, 1 N. L. R. B. 562, where a strike interrupted negotiations and prevented further attempts to reach an agreement.

[1] See *Matter of Atlantic Refining Company*, 1 N. L. R. B. 359.

[2] 1 N. L. R. B. 181.

has engaged in unfair labor practices within the meaning of section 8, subdivisions (1) and (5) of the act.[3]

Again, in *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469 affiliated with United Textile Workers Union,*[4] the obtaining by an employer of individual contracts of employment with employees in place of bargaining with the designated representatives of the majority was held to constitute an unfair labor practice under the act.

An employer may not enter into negotiations with any group purporting to bargain for all the employees, in preference to the actual representatives designated or selected for such purposes by a majority of the employees. In *Matter of Elbe File and Binder Company, Inc., and Bookbinders, Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders,*[5] the Board held that the employer was in no way justified in dealing with a committee of eight of his striking employees who had not been designated to act as their representatives by the majority of employees.

In *Matter of The Sands Manufacturing Company*[6] the employer shut down its factory in consequence of a dispute with the union representing a majority of employees and later reopened the factory after negotiations with a union which did not so represent a majority. The Board held that the employer was not justified in altering the status quo without bargaining with the prior union as the exclusive representative of the employees.

It is not an unfair labor practice, however, for an employer to refuse to discuss grievances with employee representatives when such representatives do not represent the majority of the employees in an appropriate bargaining unit.[7]

(B) DETERMINATION OF MAJORITY

In cases of alleged refusal to bargain collectively it is necessary to determine whether the representative has been selected by a majority of the employees in an appropriate unit. In the absence of satisfactory proof, the employees may petition the Board for an

[3] See *Matter of The Timken Silent Automatic Company,* 1 N. L. R. B. 335; *Matter of Jeffery-DeWitt Insulator Company,* 1 N. L. R. B. 618; *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482,* 1 N. L. R. B. 651.

[4] 1 N. L. R. B. 292.

[5] 2 N. L. R. B. 906.

[6] 1 N. L. R. B. 546.

[7] *Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America,* 2 N. L. R. B. 952; *Matter of Wallace Manufacturing Co., Inc., and Local No. 2237, United Textile Workers of America,* 2 N. L. R. B. 1081. Even though a majority of the employees may not have designated representatives to bargain collectively for them, the employer may be found guilty of interfering with the right of employees to organize for the purposes of collective bargaining, under section 8 (1) of the act. In *Alaska-Juneau Gold Mining Company,* 2 N. L. R. B. 125, the Board said: "For the respondent to have announced that 'no agreement with any labor organization will be signed,' 'No committee will be recognized as the exclusive bargaining agency for all the employees,' and to have insisted that it will consider for reemployment only those making individual applications when this was not made necessary by exigencies of work, constituted a clear attempt on its part to eliminate the union as a factor by depriving it of its legitimate functions as a labor organization. It is of the essence of the right of workers to organize for the purpose of bargaining collectively that they should be represented by labor organizations in dealing with employers, and that their labor organizations be recognized and dealt with as exclusive bargaining agencies if they represent a majority of the employees. For an employer to deny to his employees these legitimate objectives of labor organization is to frustrate their right to self-organization. The respondent was therefore interfering with, coercing, and restraining its employees in their right to organize for the purpose of collective bargaining."

investigation and certification of representatives under the provisions of section 9 (c) of the act.[9] Where the employees or their representatives can produce satisfactory evidence of a majority, however, they may proceed directly under section 8 (5). The nature and amount of evidence which the Board will require will of necessity depend upon the situation in each case.

In *Matter of Delaware-New Jersey Ferry Co. and Marine Engineers' Beneficial Association, No. 13*,[10] the respondent's answer questioned the authority of the union to represent the employees. At the hearing the union introduced in evidence cards signed by 11 of the 12 employees in the appropriate unit authorizing the union to represent them in collective bargaining with the respondent. There was also uncontroverted evidence that all 12 of the employees were members in good standing of the union. The Board accepted this evidence as sufficient proof.[11] In *Matter of Atlas Bag & Burlap Co., Inc.*,[12] the union proved that it represented a majority of the employees by placing in evidence membership applications signed by 13 of the 18 employees in the appropriate unit, together with testimony that membership in the union authorized representation by the union for the purposes of collective bargaining.[13]

In *Matter of Globe Mail Service, Inc.*,[14] a certified public accountant appointed by the trial examiner, found from the pay rolls furnished him by the respondent, that there were 105 regular employees in the appropriate bargaining unit, and that of this number, 65 corresponded to the list of union members. The Board stated that this was sufficient proof of a majority.

In *Matter of Millfay Manufacturing Company, Inc.*,[15] the fact that at a vote sanctioned by the employer, the employees had voted 385 to 16 for an "outside" union, and that a majority of the employees in the appropriate unit had signed cards applying for membership in the union, was held sufficient to indicate that the union represented a majority of those in the appropriate unit.

In *Matter of Clifford M. DeKay, doing business under trade name and style of D & H Motor Freight Company, and International Brotherhood of Teamsters, Chauffeurs, Stablemen Helpers of America, Local Union No. 649*,[16] the respondent objected that there was not sufficient proof of a majority because it was not shown that a majority of the employees had paid their initiation fees for union membership. The Board stated that such a contention rested upon a misconstruction of the act. It said:

> Section 9 (a) of the act states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees * * *," the act says nothing about union membership. These applicants by requesting membership in the union indicated their desire to have the union act as their representative for the purposes of collective bargaining and thereby selected the union for that purpose.

In *Matter of Harbor Boatbuilding Co.* and *Ship Carpenters Local Union, No. 1335*,[17] the respondent filed no answer to the allegation of

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[9] This section is treated on p. 104 *et seq.*
[10] 1 N. L. R. B. 85.
[11] See also *Matter of International Filter Company*, 1 N. L. R. B. 489.
[12] 1 N. L. R. B. 292.
[13] Similarly, a membership list was introduced in evidence by the union in *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618.
[14] 2 N. L. R. B. 610.
[15] 2 N. L. R. B. 919.
[16] 2 N. L. R. B. 231.
[17] 1 N. L. R. B. 349.

the complaint that a majority of the employees had designated the union as their representative for purposes of collective bargaining. At the hearing the union introduced uncontradicted testimony to the effect that all of the employees in the appropriate unit were members of the union and had designated a union committee to represent them in collective bargaining. At a later date, after the issuance of the report of the trial examiner, the respondent, in its exceptions, stated for the first time that the union did not and never had represented a majority of the employees. The Board stated:

> A bare denial of a state of fact raised at this belated point in the proceedings, unmentioned in any answer to the allegations in the complaint, unsupported by evidence introduced by respondent or adduced by cross-examination of the union's witnesses, when respondent had full opportunity to raise the issue on any or all of these occasions, is insufficient to undermine the conviction carried by the uncontradicted testimony of the union's witnesses.

In *Matter of Atlantic Refining Company* [18] the evidence offered by the union consisted of two petitions circulated among the employees and signed by a majority of them, designating the locals of the union as representatives for the purposes of collective bargaining. This evidence was uncontested by the respondent, and was relied upon by the Board.[19]

In *Matter of Rabhor Company, Inc.*, and *International Ladies' Garment Workers' Union*,[20] the Board, in considering the question of majority representation, found that 219 persons had been out on strike, and—

> had personally signed a strikers' roll at union headquarters and were receiving strike benefits from the union. This was more than half of the 350 workers in the plant. These figures are based on the number receiving strike benefits and, as such, are well authenticated and exactly determined. We have in the record the strike benefit pay roll for the week ending October 2, contemporaneously compiled, showing the name of each person, and, opposite his name, the signature of the person. By accepting and signing for a strike benefit, the signer asserted his position as a striker making common cause with other strikers.

In finding further that the union was the designated agent for collective bargaining, the Board stated: [21]

> The leadership of a strike is necessarily entrusted with the functions of collective bargaining during the strike. It has formulated the demands and called the strike to win them. It has constantly before it the problem of finding ways and means to achieve the objectives, and among the means one of the most important and most usual is collective bargaining.[21] [22]

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[18] 1 N. L. R. B. 359.

[19] The locals had begun proceedings under both section 8 (5) and section 9 (c) of the act. Proceedings under the latter section were dismissed in view of the order in the unfair labor practice proceedings that the employer should bargain collectively with the union. Other cases in which petitions signed by a majority of the employees were accepted by the Board as satisfactory evidence of the selection of representatives were: *Matter of Canton Enameling & Stamping Company*, 1 N. L. R. B. 402; *Matter of Bell Oil and Gas Company*, 1 N. L. R. B. 562; *Matter of Edward E. Cox, Printer, Inc.*, 1 N. L. R. B. 594 (employees signed proxies).

[20] 1 N. L. R. B. 470.

[21] See also *Matter of the Timken Silent Automatic Company*, 1 N. L. R. B. 335. For other cases in which the Board has found that the union represented a majority of the employees in an appropriate bargaining unit, see *Matter of the Sands Manufacturing Company*, 1 N. L. R. B. 546; *Matter of S. L. Allen and Company, Incorporated*, 1 N. L. R. B. 714; *Matter of M. H. Birge & Sons Company*, 1 N. L. R. B. 731; *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847.

[22] In *Matter of Carlisle Lumber Company*, 2 N. L. R. B. 248, and in *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1, the respondent did not question the fact that the committee represented a majority of its employees. The Board regarded this as important evidence of the fact of majority.

D. DOMINATION AND INTERFERENCE WITH THE FORMATION OR ADMINISTRATION OF A LABOR ORGANIZATION AND CONTRIBUTION OF FINANCIAL OR OTHER SUPPORT TO IT

Section 8 (2) of the act declares that it shall be an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."[23] Section 7 of the act guarantees to employees "the right to self-organization" and "to bargain collectively through representatives of their own choosing." Section 8 (2) is clearly intended to protect this right by proscribing any form of employer participation in the formation or administration of a labor organization of employees.

The term "labor organization" as used in section 8 (2) is defined in section 2 (5), to mean "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Thus, no matter what form the organization takes, whether it be an employee representation plan,[24] good-will club,[25] friendship association,[26] department councils,[27] or back-to-work association,[28] if it exists in part for the purpose of dealing with the employer concerning the matters so specified, it is a labor organization within the meaning of the sections involved. Obviously, the existence of employer control of an organization included within the type described in section 2 (5) does not prevent the organization from being termed a "labor organization" within the meaning of the act. The designation of such employer-controlled organization as a "labor

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[23] A proviso to this section reads as follows: "Provided, that subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay." To date the Board has found it neither necessary nor expedient to issue any rules and regulations on this point, and in only one case decided by the Board has the proviso been in issue. *In Matter of International Harvester Company and Local Union No. 57, International Union, United Automobile Workers of America* (*infra*), the respondent contended that the proviso permits the practice of allowing employee representatives to perform all of their duties without loss of pay. To this contention the Board answered:

"* * * The clear words of the proviso negate any such construction—'an employer shall not be prohibited from permitting employees *to confer with him* during working hours without loss of time or pay.' (Italics ours.) The Senate committee report speaks of the 'right to receive normal pay *while conferring*,' * * * and it is manifest that the proviso goes no further than permitting such conferences directly with management to occur without loss of pay to the employee representatives.' " (Referring to 74th Cong., 1st sess., Senate Committee on Education and Labor, Report No. 573, pp. 7 and 10.)

[24] *Matter of Shell Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America, International Association of Machinists, International Brotherhood of Boilermakers, Iron Ship Builders and Helpers, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, International Brotherhood of Electrical Workers, and Welders International Association, Intervenor*, 2 N. L. R. B. 835; *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431; *Matter of International Harvester Company and Local Union No. 57, International Union, United Automobile Workers of America*, 2 N. L. R. B. 310; *Matter of Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America*, 1 N. L. R. B. 1.

[25] *Matter of Wallace Manufacturing Company and Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081; *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 316.

[26] *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97.

[27] *Matter of Wheeling Steel Corporation and the Amalgamated Association of Iron, Steel, and Tin Workers of North America, N. R. A. Lodge No. 155, Goodwill Lodge No. 157, Rod and Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163*, 1 N. L. R. B. 699.

[28] *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626.

organization" accordingly does not invest the organization with the distinction of legitimacy as a genuine and independent organization of employees. On the contrary, a finding that an employer's activities constitute an unfair labor practice within the meaning of section 8 (2) must be predicated upon a preliminary finding that the employer's activities are directed against a "labor organization" as defined in section 2 (5) of the act. The term is used merely as a matter of statutory draftsmanship for the purpose of bringing all employer-controlled organizations having, at least in part, collective bargaining as a function, within the ban of section 8 (2) no matter what form they may take.[29]

The activities of an employer which are intended to produce, or have the necessary effect of producing the result prescribed as an unfair labor practice are multifarious. The cases do not single out any one activity or circumstance as determinative of the existence of a violation under this section. In each of the cases so far determined a series of acts have been revealed which in their totality constitute domination or interference with a labor organization. The scope of this section can best be illustrated by a description of those activities which the Board has held to be violative of the section. The Board has found employer-controlled labor organizations to have been formed and administered as a result of conduct varying from direct and overt participation by employers in the labor organizations of their employees to the more subtle and indirect influences designed to shackle their employees in the exercise of their right to self-organization and collective bargaining.

In *Matter of International Harvester Company and Local Union No. 57, International Union, United Automobile Workers of America*,[30] the employer was wholly responsible for the formation of a labor organization called the Harvester Industrial Council Plan. Openly espoused by the employer, the mechanics of the plan's functioning left no doubt of its subservience to the will of the employer. The plan, conceived in 1919 by the respondent, was introduced, submitted to vote, and accepted by the employees in 25 of its plants situated throughout the United States and Canada. In 1927, the plan was introduced into the respondent's Fort Wayne plant, the subject of the Board's decision, by the manager of industrial relations at a conference of its foremen. Foremen thereupon selected employees to publicize the plan and distribute booklets prepared by

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[29] In answering a respondent's contention that an industrial council "plan" was not a "labor organization" as the term is used in sec. 8 (2), the Board stated:

"It is obvious that the term 'labor organization' is not used in its ordinary meaning but in a special and technical sense solely for the purpose of statutory draftsmanship and to make the prohibition of section 8 (2) all-inclusive. That prohibition was intended to apply to any device which would tend to displace, or masquerade as, a genuine labor organization, whether it was itself such a genuine organization or not." *Matter of International Harvester Company and Local Union No. 57, International Union, United Automobile Workers of America*, 2 N. L. R. B. 310. Conversely, to the objection by an independent labor organization to the Board's characterization of a rival organization claimed to be employer-controlled as a "labor organization," the Board said:

"In fact, from the legal point of view, the Board has no power to find that an employer has violated that subdivision (sec. 8 (2)) unless it also finds that his illegal acts were taken with respect to a 'labor organization'; as used in sec. 8 (2), the term has the meaning given by sec. 2 (5). A review of the decisions thus far made by the Board will demonstrate that by making the essential finding under sec. 2 (5), the Board does not intend to place the stamp of legitimacy upon organizations which should be, and which have been, outlawed." *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 328. Also see *Matter of Wallace Manufacturing Company and Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081.

[30] 2 N. L. R. B. 310.

the respondent to explain its features. Upon a carefully prepared groundwork of employer endorsement, the plan was submitted to vote and accepted by an overwhelming majority of the employees.

The operation of the plan, exhaustively analyzed by the Board in its decision, may be summarized as follows: The plan provided for a "works council" consisting of representatives of both the employees and the management. Employee representatives were elected by secret ballot, the plant being divided into voting divisions, each division being entitled to one representative. To be eligible for nomination and election to the council, an employee was required to be a citizen of the United States, at least 21 years old, and must have been employed at the plant for at least 1 year immediately prior to nomination. The works council held regular monthly meetings presided over by the manager of the respondent's industrial relations department, or his designee. The council was empowered to investigate, consider, and make recommendations on all questions of mutual interest to employer and employee. Meeting places were provided by the respondent, and provision was made that the plan could be terminated after 6 months' notice, by a majority vote of the employees or by the board of directors of the respondent.

In addition to the monthly meetings of the council, the employee representatives met weekly with the superintendent of the plant, after first convening alone to decide upon subjects for discussion. All meetings occurred in the plant, during working hours, the employee representatives being compensated by the respondent for time so spent. Linked to the plan was the administration of a credit union, an athletic association, and a vacation and pension plan.[31]

The shortcomings of the plan as a genuine instrumentality for collective bargaining, are clearly delineated in the conclusions reached by the Board:

> The plan is intended to provide a medium whereby "representatives elected by the employees shall have equal voice and vote with the management in the consideration of matters of mutual interest." It is therefore a "labor organization" within the meaning of the act * * *. But, in any real sense, can the Harvester industrial council plan be considered as an effective method of employee representation and collective bargaining? Or, on the contrary, is it anything more than an elaborate structure designed to create in the minds of the employees the belief that they possess something of substance and value that enables them to deal with their employer on an equal footing, so that they will be sufficiently content to resist the appeal of an outside labor union? * * *
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> The employees as a group come in direct contact with the plan when they elect their representatives. But when such yearly elections are concluded, the employees as a body cease to have any direct concern with the plan until the next year. They do not meet in a group to instruct their chosen representatives, to in turn secure information from them, or to consider as a group problems that affect them as a group. Since the adoption of the plan, no election has ever been held on substantive questions or on the advisability of changes

[31] In describing the relationship of these beneficial activities to the plan, the Board said: "In another field, by careful manipulation and scrupulous adherence to the outward forms of collective bargaining, the respondent has so interwoven the plan into the numerous beneficial activities designed to improve the welfare and morale of the employees and thus increase their efficiency—vacation plan, credit union, athletic association, pension plan, safety measures, etc.—that the plan receives credit for many of these benefits in the eyes of the employees. This association of things intrinsically beneficial to the employees with a system of collective bargaining which in reality has played little or no part in their creation or functioning constitutes 'restraint' upon the employees to adhere to the plan and 'support' for the plan. The impropriety would hardly be more obvious if the respondent were to inaugurate the practice of Christmas bonuses and allot them to the employee representatives for distribution."

in the plan—each election has been merely for the purpose of choosing representatives under the plan * * *.

The major role in the plan is occupied by the works council. As stated in the plan, it is designed to provide the representatives of the employees "an equal voice and vote with the management in the consideration of matters of mutual interest." On paper it is admirably adapted to that purpose. Representatives of management and employees sit in solemn council, discuss and debate matters of mutual concern, and decide such matters by a vote in which the strength of each is equal, one vote to each side. But obviously the management representatives do not exercise a judgment independent of that of their superior, the superintendent. His decision is their decision, so that a conception of the works council as a deliberative body possessing power is false * * *. The whole philosophy of the plan is based upon free discussion between employer and employees as a method of handling disputes, instead of a resort to direct employee action as a group. It presupposes well-informed employee representatives and intelligent discussion between them and management. Yet it is clear that even the sincerest employee representatives are at a hopeless disadvantage. On one side are management representatives possessing complete information, statistical and factual, relating to the business and able to command the resources of a huge and efficient organization. On the other are employee representatives with no information other than that which their working experience has given them. Intelligent discussion of the complex problems involved in the fixing of wages, hours, and general working conditions in an organization of the respondent's size is impossible under such conditions. The only possible weapon of the employee representatives—the assistance of outside experts—is effectively denied to them, since the management controls the purse strings. * * * Finally, when a deadlock is reached on any matter, the employee representatives can do nothing. They possess no funds, no organization to fall back upon, no mass support.

The manner in which fundamental changes in working conditions are made indicates that the plan does not provide genuine collective bargaining. Such changes are nearly uniformly "announced" to the works council as accomplished acts; their formulation is for the management, not the council. * * * In some instances the employee representatives point out defects in certain management policies and thereby "focus attention" on these aspects. But instead of the council making a change, the management then considers the problem alone and announces its solution to the council. In furtherance of such policies, no agreement relating to hours, wages, or conditions of employment has ever been entered into by the management with its employees. By keeping itself free from any binding commitments in these fields, so that it may at will make any changes that it desires, the management has at the same time denied to its employees the advantages of collective labor agreements. As a result, its employees possess only the shadow, not the substance, of collective bargaining * * *.

Finally, the plan has no means of independent financial support. No dues are payable by the employees who participate by voting. All of its expenses and requirements are met by the respondent. The employee representatives are reimbursed by the respondent * * *.

Such complete support of the plan makes its existence entirely subject to the will of the respondent. If it chooses to withdraw its support, the plan collapses at once. If it chooses to continue its support, the plan continues. The choice as to whether representation of employees for collective bargaining shall continue is thus a choice that rests with the respondent and not with the employees * * *.

The respondent's contributions are not limited to financial support. Its president, vice-presidents, manager of industrial relations, superintendents—in fact its whole executive and supervisory force—unceasingly extoll the virtues of the plan. The employee whose economic life is at the mercy of those who sing such praises will not fail to comprehend their significance. And, such economic considerations aside, the praises of such business leaders at the very least are certain to commend the plan to many an employee and his family * * *.

The plan is thus entirely the creature of the management. The respondent in its relation to the employees may be conceived as a holding company—the athletic association, pension plan, vacation plan are the subsidiary operating companies. The Harvester industrial council plan is merely one of these subsidiary concerns controlled by the respondent. In so controlling it the respond-

ent is beyond question acting contrary to section 8 (2), and interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in section 7 of the act * * *.

The Board, finding that the respondent had controlled the plan ever since its inception in 1927, and that such control subsequent to July 5, 1935, constituted a violation of the act, ordered the respondent to withdraw all recognition from the plan as an agency for collective bargaining at the Fort Wayne plant, and disestablish it as a representative of its employees.[32]

Though not so elaborate as the Harvester industrial council plan, the Drivers Association, Pacific Greyhound Lines, described in *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen*,[33] was effectively controlled by the employer. In 1933 the respondent conducted elections among the employees in its various divisions for the purpose of choosing employee representatives to negotiate with it. The representatives so elected met, without loss of pay, with the respondent's officers in San Francisco. They were told of their privilege to organize as they pleased, but were advised that an organization of their own would be of greater benefit to them. The constitution and bylaws of the association were drafted with the aid of the respondent's officers, and supplemented with a working agreement adopted by both the representatives and the respondent. Operators were thereafter urged, persuaded, and coerced by the respondent's officers to join the association. At the time of the hearing the original working agreement was still in effect, together with amendments drawn up under the guidance and with the aid of the respondent. In addition, the respondent had issued certain rules and regulations interpreting and modifying its provisions. As in *Matter of International Harvester Company*, no provision was made for regular meetings of the employee representatives with their constituents. The respondent provided secretarial assistance and its stationery to the association and permitted the activities of the association to be conducted during working hours, without loss of pay to the members involved. Officers of the respondent frequently attended and addressed meetings of the association and took notes of the proceedings. The inadequate representation afforded the employees through the association was clearly revealed by one of the respondents' officers, who testified that when the respondent and the men could not agree on a certain matter, the status quo remained, and the association neither did nor could have done anything about it.

The effects of the employer's participation in the organization of its employees, ostensibly formed to give to the employees an instrument for collective bargaining, were described by the Board in the following terms:

The so-called working agreement between the Drivers' Association and the respondent is in effect not an agreement at all. Although it provides that it shall remain in effect for a certain period of time and that it may be changed only by mutual consent of the parties, its terms apparently do not bind the respondent. Witness to this effect are the rules and regulations issued by the respondent from

[32] See also *Matter of Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 1 N. L. R. B. 1.
[33] 2 N. L. R. B. 431.

time to time interpreting and modifying various provisions of that instrument; * * *. Furthermore, the provision of the working agreement making the decision of the president of the respondent final in any appeal, concentrates all the power over the destiny of its employees in the respondent's hands.

The presence of the respondent's officers at the meetings of the Drivers' Association, "taking notes of the proceedings," and joining in the discussion of working conditions and proposals for changes in the so-called working agreement, exerts a powerful pressure upon the members and representatives to do as the respondent bids. The respondent's zealous interest in the affairs and the expansion of the Drivers' Association has made it apparent to the operators that this is the organization which the respondent favors and which it would be wise to join. By gratuitously supplying the Drivers' Association with secretarial help, stationery, and meeting places, by supporting its members and their representatives while engaged in its affairs by payment to them of their regular wages, and by collecting the dues of the Drivers' Association the respondent has clearly identified itself with that organization in the eyes of its operators and has impaired the bargaining power of the Drivers' Association by placing it in the position of a debtor. Under such circumstances the respondent's operators are not free to exercise the rights guaranteed by the act.

Having found that the activities of the employer constituted an unfair labor practice, in addition to its formal cease and desist order, the Board ordered the disestablishment of the Drivers' Association as the representative of the respondent's employees for collective bargaining.

In *Matter of Hill Bus Company, Inc., and Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, Spring Valley, New York*,[35] the labor organization which was the subject of the employer's illegal interference extended to several companies. Some five years prior to the hearing in the case the Hudson Bus Transportation Drivers' Association sprang up among the employees of the Hudson Bus Transportation Co., with which the president of the respondent had been associated for a long period of time. The membership in the association was limited to those companies with which the president of the respondent was associated. At the same time that the association came into existence, similar organizations came into being on every independent bus line in Hudson County, N. J. Although these organizations were not affiliated in one central body, they conducted joint meetings to discuss grievances and the provisions of proposed agreements.

At the request of the respondent's superintendent one of its employees invited the president of the association to organize the respondent's employees. Shortly thereafter the association's organizational activity commenced, and within a brief period it recruited a majority of the respondent's employees to its ranks and secured a closed-shop agreement from the respondent. In summation the Board stated:

* * * The successful organization of the respondent's employees by the association was almost entirely due to the intervention and solicitation of employees by the respondent's supervisor, Dellatorre. Proceeding sometimes with caution and subtlety, but often fostering his design with abrupt warning as to the consequences of nonconformity, Dellatorre succeeded in erecting a barrier against the influence of the Brotherhood, and in herding the employees into the safe pasturage afforded by the closed-shop agreement between the respondent and the association: The respondent has thus substituted its will for the freedom of choice guaranteed to its employees by the act.

[35] 2 N. L. R. B. 781.

The Board ordered the respondent to disestablish the association as the representative of its employees.

In *Matter of Carlisle Lumber Company, and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington and Associated Employees of Onalaska, Inc., Intervenor*,[36] the refusal of the respondent to bargain with a union led to a strike on May 3, 1935. In July of the same year, during the progress of the strike, the respondent's mill superintendent, its sales manager, and others, conceived a plan to reopen the mill, which had been closed down, without further labor difficulties. Old non-union employees were approached by the superintendent and foremen and solicited to return to work. Those who returned were required to sign a statement in which they renounced "any and all affiliation with any labor organization." Those who refused to sign the statement were refused employment. Thereafter union employees were invited to return to work on similar terms.

When the mill reopened on August 5, 1935, the creation of a new labor organization did not come as a surprise to the employees, who had been apprised of the plan when they had been solicited to return to work. After a few preliminary meetings, Associated Employees of Onalaska, Incorporated, was formed and supplied with application cards which were distributed by an officer of the respondent. Meetings were held on mill property, and supervisory officials participated in the association activities. The Board, in finding that the respondent dominated and interfered with the formation and administration of the association, and contributed support to it, stated:

> The early announcement by Clyde (the respondent's superintendent), and Brandemeier (the respondent's sales manager), that a company union would be created after the plant reopened, the activities of Baker Carlisle, another of the respondent's officers, with respect to the solicitation of members for Associated Employees, the clause in the membership application blank giving the respondent the authority to deduct monthly dues from pay checks of the members of Associated Employees, the presence of the officers of the respondent at the meetings of Associated Employees, the distribution by the respondent of election notices and instructions, could have no other effect upon the employees than to identify the creation, the perpetuation and the administration of Associated Employees with the respondent. It is not unreasonable to say under such circumstances that the respondent's employees joined Associated Employees and remained members of that organization in order not to incur the respondent's disfavor. It is at least evident that such circumstances are calculated to take away the freedom of choice of an employee with respect to the joining of labor organizations.
>
> From the aforementioned facts it is clear that the respondent has not only been instrumental in creating Associated Employees and in persuading its employees to become members thereof, but by its many gratuitous services and privileges has fostered and continued its existence. * * *

Upon the basis of its findings, the Board ordered the respondent to withdraw all recognition from the association as the representative of its employees for collective bargaining.[37]

The utilization of employer-controlled organizations, in connection with other devices, to foster the development of back-to-work movements in the course of strikes, has been of significance in several cases

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[36] 2 N. L. R. B. 248.

[37] See also *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97; *Matter of Hill Bus Company, Inc., and Brotherhood of Railroad Trainmen, Rockland Lodge No. 329, Spring Valley, New York*, 2 N. L. R. B. 781.

considered by the Board. This technique in conjunction with the threat of removing the plants from the communities wherein they were located was used as part of the notorious Mohawk Valley Formula in *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers.*[38] On May 26, 1936, the independent union called strikes in the respondent's plants at Ilion, N. Y., Syracuse, N. Y., and Middletown, Conn. In all three cases, the respondent incited the fears of public officials and businessmen as to the possible disastrous effects of the strike and the losses which might be occasioned to the communities by the removal of the plants. At Ilion and Middletown, citizens' committees were established to negotiate with the respondent. In each case, during conferences between the respondent and such committees, a group of "loyal" employees appeared, expressed their desire to return to work, and indicated that they echoed the sentiments of a majority of the employees. At Syracuse, businessmen were invited to visit Ilion to observe the effective cooperation of city officials. At Ilion, the Ilion Typewriter Employes Protective Association, working in conjunction with the citizens' committee to effect the mass return of employees, and advertising extensively in community newspapers, succeeded in breaking the strike.[39] At Syracuse, the Employes Independent Association similarly flourished. At Middletown, the association of one of the respondent's attorneys with both the citizens' committee and the Remrand Employees Back-to-Work Association was revealed. The discredited citizens' committee disbanded, and advertising by the association ceased. The association was later revived as Middletown Remington Rand Employes Association.

The use of public officials and citizens' committees to secure control over labor organizations was not confined to *Matter of Remington Rand, Inc.* In *Matter of Alaska Juneau Gold Mining Co.* and *International Union of Mine, Mill and Smelter Workers, Local No. 203*,[40] the organization which was subject to the employer's illegal interference came into existence during a strike called by an independent union in May 1935 for the purpose of enforcing collective bargaining. A back-to-work movement was commenced by a group of employees, who, encouraged by the superintendent of the mine, circulated petitions and held meetings. In response to the petitions, the city council intervened in the strike, and particularly through the efforts of the city attorney, who did not attempt to conceal his interest in the welfare of the respondent, the back-to-work movement prospered. The city council passed a so-called police protection resolution drafted by the city attorney which empowered the mayor to appoint as many special policemen as necessary and which also provided that it was unlawful for anyone to interfere with those desiring to return to work by shouting, insult, intimidation, or for more than five men to assemble in one place. Finally, at a meeting held on June 22, 1937, it was decided to form the "Juneau Mine Workers Association," and subsequently a constitution was adopted. The constitution of the association required that membership therein be lim-

[38] 2 N. L. R. B. 626. The Mohawk Valley Formula is described in sec. A of this chapter, *supra*.

[39] The association later formed the basis for the organization of the respondent-controlled Remington-Rand Employes Association.

[40] 2 N. L. R. B. 125.

ited to the respondent's employees and that a strike vote proposal, or a demand for changes in working conditions, originate in a special committee, be posted for 2 weeks, and receive a two-thirds vote of the members before action thereon could be taken. On July 5, 1937, the mine reopened under police protection.

Although the respondent did not participate directly in the formation and administration of the association, the evidence revealed the connection between the two. The Board emphasized the role played by the city attorney in the back-to-work movement, in the life of the association, and in the other events which lead to the reopening of the mine. In the words of the Board:

> It was he (the city attorney) who assisted the movement to return to work in its incipiency; it was he who brought to bear the full weight of the authorities on the side of those seeking to break the strike; it was he who drew up the resolution calling for a vote on the question of returning to work; it was he who drafted the Police Protection Resolution; it was he who addressed the workers at the association meeting and urged them to go back to work; it was he who warned pickets to disperse; it was he who paid the fare and expenses of Danielson, first president of the association, to Seattle; it was he who wrote the anonymous letter condemning the jury for acquitting the strikers charged with rioting; and in all this by his own admission he did not act in his capacity as city attorney. And, admittedly, he was in frequent conferences with Metzgar (general superintendent of the respondent) after the strike was called * * *.

The record disclosed that the city attorney was directly connected with the respondent. He acted as attorney for the respondent in at least one matter and he was registered and appeared as lobbyist for the respondent in the Territorial legislature. The Board then stated:

> Active undisguised participation in the formation of the association could not better serve its purpose. Its passive aloofness could at least serve to camouflage its subtle guidance of the moves. We are not, however, rendered powerless by the legerdemain of the respondent. What it could not do openly and directly it could not accomplish clandestinely and indirectly. It is not difficult to see through the surface of the respondent's conduct to the actualities of the situation. The respondent dominated and interfered with the formation of the association.

Since it was found that the association continued to thrive under the benevolence of the respondent after the strike had been broken, the Board ordered the respondent to withdraw all recognition from it as a collective bargaining agency for its employees.

In *Matter of Lion Shoe Company, a Corporation, and United Shoe and Leather Workers' Union*,[41] the respondent utilized the threat of removing its plant from the town to replace the independent union by an organization more subservient to its will.[42]

The respondent scheduled its operations for the season to terminate on October 31, 1935, at the same time that its collective agreement with the independent union expired. Thereafter the respondent issued a statement that it intended to remove its business from the town. On October 31, 1935, an employee of long standing told an officer of the respondent that many of the employees desired to have the respondent continue its business. The officer made no comment,

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[41] 2 N. L. R. B. 819.

[42] Also see *Matter of Ansin Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 929. Immediately after the respondent's announcement that it was preparing to move its plant from the town, a citizens committee formed which held meetings of employees and succeeded in organizing the Progressive Shoe Workers' Union, membership in which was restricted to employees in that plant.

and on November 11 an offer to enter into a "reasonable business proposition" was made to another officer, who replied, "I don't care to open up on an open-shop basis. It is an irresponsible manner of doing business. As for a company union, we are not interested in that because it is too one-sided * * * if you can show us where you will be able to get a sufficient number of our employees in an organization that is a legitimate organization capable of entering into a contract, I will recommend to the rest of them (officers) that we will give you the opportunity. But you have got to show us."

On November 12 one of the employees hired a hall and invited the employees "to get together and talk it over." Approximately 40 of the 300 employees attended. They elected officers and proceeded to organize themselves into the Shoe Workers' Protective Association. A committee was appointed to approach the firm and attempt to enter into an agreement. The following evening at a better attended meeting, two wage-reduction plans proposed to the committee were discussed and it was decided to accept a 15 percent reduction in all wages, 5 percent to be refunded in December to employees who had during the year conformed to the rules of the organization. A committee of five met the following day with officers of the respondent. In the afternoon, at a meeting of employees in the respondent's plant, one of the respondent's officers suggested that the employees procure the services of an attorney in order to assist in the drafting of an agreement. On November 17 the association changed its name to Lynn Shoe Workers' Union and ratified a draft of a proposed closed-shop contract with the respondent. The contract was later signed and the factory resumed operations.

Following the formation of the association, the respondent more actively intervened and, through its supervisory employees, engaged in a vigorous campaign to recruit members. Meanwhile, the respondent had been negotiating with the independent union. Late in November, however, when it was certain of the success of the association, the respondent abruptly terminated these negotiations, feeling secure that under its closed-shop contract with the association it had solved its labor troubles. In the language of the decision, "The formation of the Lynn Shoe Workers' Union is a clear example of how an employer, by suggestion and indirection, may encourage others to bring into being an organization subservient to its wishes." [43]

An employer's activities designed to form a labor organization constitute an unfair labor practice within the meaning of section 8 (2) even though no labor organization is in fact formed.[44] In *Matter of Millfay Manufacturing Company, Inc.*, during an organization campaign conducted by an independent union among the respondent's employees, four of the employees discussed during working hours the possibilities of forming an association of their own

[43] The Board, in ordering the respondent to withdraw recognition from the association and disestablish it as a collective bargaining agency of its employees further held the closed-shop contract between the respondent and the association to be illegal. See *Matter of Hill Bus Company, Inc., and Brotherhood of Railroad Trainmen, Rockland Lodge No. 529, Spring Valley, New York*, 2 N. L. R. B. 781, in which the Board also held that a closed-shop contract between an employer and an employer-dominated labor organization was illegal.

[44] *Matter of Millfay Manufacturing Company, Inc., and American Federation of Hosiery Workers, Branch 40*, 2 N. L. R. B. 919; *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519.

as suggested by one of their members. They were approached by the plant superintendent who, upon being told of the idea, immediately launched into a eulogy of its merits. After consulting his superiors, the superintendent promised the embryo association a wage increase and recognition of a grievance committee. He refused, however, to put his concessions in writing, and three of the four employees refused to have anything further to do with organization plans. Petitions were later circulated among the employees, but a strike called shortly thereafter checked the progress of the short-lived association. In finding that the conduct of the respondent amounted to the domination and interference prescribed by section 8 (2), the Board cited its conclusions in *Matter of Canvas Glove Manufacturing Company, Inc., and International Glove Makers' Union, Local No. 88:*[45]

> In our opinion, section 8, subdivision (2) of the act forbids domination or interference not only where it is successful, and a labor organization is actually formed, but also makes it an unfair labor practice where the domination or interference is unsuccessful. In this case, the respondent was unsuccessful because of the firmness of its employees. Since the act is remedial, it is appropriate to require the respondent to cease and desist from unfair labor practices which may, at some future time, be more successful.[47]

The purpose of section 8 (2) is obvious. The formation and administration of labor organizations are the employees', and not the employers', concern. The Board has held that every form of conduct of an employer which has the effect of defeating this free choice of employees constitutes an unfair labor practice under this section, whether such conduct is undertaken with the immediate object of building up a wall of protection against the invasion of a genuine union, breaking a strike, or weakening the power of an already existing genuine union.

E. INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES

Section 9 (c) of the act provides that—

> Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

By virtue of section 9 (a) of the act, representatives designated or selected for the purposes of collective bargaining by a majority of

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[45] 1 N. L. R. B. 519, 526–7.

[47] See *Matter of Mackay Radio & Telegraph Company, a Corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3,* 1 N. L. R. B. 201, and *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America,* 1 N. L. R. B. 316, where it was held that the evidence was insufficient to warrant the Board in finding a violation. In the second case, *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America,* after reviewing the evidence to the effect that the employer had encouraged membership in a Good Will Club formed early in 1935, through such devices as a use of bulletin boards for a notice by the club declaring a closed shop and solicitation by foremen, the Board held that the evidence was not sufficient to warrant a finding that the employer dominated or interfered with its administration, although such acts were deemed a violation of sec. 8 (1). However, on a petition for rehearing by the local of the United Textile Workers in existence at the plant, the Board indicated that in the future on a similar state of facts it might reach a different conclusion with respect to sec. 8 (2). In addition, on the basis of the violation of sec. 8 (1), the Board ordered that the employer withdraw all recognition from the Good Will Club as representative of its employees since the acts of the employer had enabled it to achieve its large membership.

[48] 2 N. L. R. B. 896.

the employees in an appropriate unit are the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. For an employer to refuse to bargain collectively with such representatives is, by virtue of section 8, (5), an unfair labor practice which the Board is empowered to prevent.

The purpose of section 9 (c) is to give the Board the necessary investigatory power to determine whether or not a majority of the employees in an appropriate unit desire a particular labor organization to represent them. As stated in section 9 (c), this investigatory power may be exercised in conjunction with a proceeding under section 10 to determine whether an employer has committed an unfair labor practice, but the proceeding under section 9 (c) is separate and apart from proceedings involving unfair labor practices. Thus, a proceeding under section 9 (c) results merely in a certification that a particular labor organization has been chosen by a majority of the employees in an appropriate unit, if such in fact is the case, and does not result in an order requiring the employer to cease and desist from an unfair labor practice or to take any affirmative action. Since no order against an employer is issued in such a proceeding, there is no right of review of such certification in any court. If, however, such certification of a labor organization is subsequently used in whole or in part to prove that an employer has committed an unfair labor practice by refusing to bargain collectively with the labor organization so certified, and a cease and desist order is issued on the basis of such finding, the investigation and certification under section 9 (c) becomes reviewable by the circuit court of appeals as part of the record in the case.

An investigation under section 9 (c) involves the determination of many questions which also arise in proceedings involving unfair labor practices. The question of what constitutes an appropriate unit must be determined both in a proceeding under section 8 (5) and in a proceeding under section 9 (c). This problem is therefore treated separately.[50] The problem of whether or not the question concerning representation affects commerce is identical with the problem of whether an unfair labor practice affects commerce, and is likewise treated elsewhere.[51]

1. The Existence of a Question Concerning Representation

Section 9 (c) empowers the Board to certify representatives only when a question concerning the representation of employees exists. Whether such a question exists is a question of fact to be determined upon the circumstances existing in each case.

The question is not necessarily dependent upon whether or not an employer has been requested to bargain collectively and refused.[52] But in instances where a demand has been made and the employer

[50] See sec. F, ch. XII.

[51] Sec. A, ch. XIII.

[52] No demand to bargain collectively had been made in *Matter of Chrysler Corporation and Society of Designing Engineers*, 1 N. L. R. B. 164 and in *Matter of Dwight Manufacturing Company and Local No. 1878, United Textile Workers of America*, 1 N. L. R. B. 309. See also *Matter of Agwilines, Inc., and National Marine Engineers' Beneficial Association*, 2 N. L. R. B. 390, where the Board stated it was unnecessary to determine whether the refusal of an agent of the company to bargain collectively bound the company.

has refused to bargain collectively, the employees have a choice of either proceeding under section 8 (5), or asking an investigation and certification under section 9 (c). It is obvious that a labor organization will normally invoke the 9 (c) proceeding after a refusal to bargain only where it is uncertain of the right to represent a majority or as to the propriety of the unit, or where it does not wish to establish that right except through the use of a secret ballot.

The circumstances which the Board has found to establish the existence of a question concerning representation are too diversified to be catalogued. It may be that more than one labor organization exists among the employees and that the employer is dealing with one to the exclusion of the others, as in *Matter of Pittsburgh Steel Company and Amalgamated Association of Iron, Steel, and Tin Workers of North America; All Nations Lodge No. 164, Monessen, Pennsylvania, and Allenport Lodge No. 160, Allenport, Pennsylvania,*[53] and in *Matter of Dwight Manufacturing Company and Local No. 1878, United Textile Workers of America;*[54] or it may be that the employer is dealing with each of the organizations as the representative of its membership, as in *Matter of Bendix Products Corporation and Local No. 9, International Union, United Automobile Workers of America,*[55] and in *Matter of International Nickel Company, Inc., and Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel, and Tin Workers of North America.*[56]

Such a question may also exist where only one labor organization exists among the employees. In such case, the employer while meeting with the organization, may refuse to recognize its right to act for all of the employees, *Matter of Saxon Mills and Local Union No. 1882, United Textile Workers of America,*[57] and *Matter of American Tobacco Company, a corporation, and Tobacco Workers' International Union, Local No. 192,* [58] or may have refused to deal with the organization at all as in *Matter of Stimson Lumber Company and Lumber and Sawmill Workers, Glenwood Local No. 2540.*[59] See also *Matter of Beaver Mills-Lois Mill and Local No. 1871 United Textile Workers of America.*[60]

An admission by an employer that he does not know whether a particular labor organization represents a majority of his employees, is proof that such a question exists, *Matter of New York and Cuba Mail Steamship Company and United Licensed Officers of the United States of America,*[61] and *Matter of Richards-Wilcox Manufacturing Company and Federal Labor Union No. 18589.*[62] In many instances this admission by employers takes the form of a demand that a labor organization secure a certification from the Board before he will recognize such organization as the exclusive representative of his employees, *Matter of American Cyanamid & Chemical Corporation and Local No. 1, Amalgamated Powder Workers of North America,*[63] *Matter of Motor Transport Company and General Chauf-*

[53] 1 N. L. R. B. 256.
[54] 1 N. L. R. B. 309.
[55] 1 N. L. R. B. 173.
[56] 1 N. L. R. B. 907.
[57] 1 N. L. R. B. 153.
[58] 2 N. L. R. B. 198.
[59] 2 N. L. R. B. 568.
[60] 1 N. L. R. B. 147.
[61] 2 N. L. R. B. 595.
[62] 2 N. L. R. B. 97.
[63] 2 N. L. R. B. 881.

feurs, Teamsters & Helpers, Local Union No. 200,[64] and *Matter of R. C. A. Communications, Inc. and American Radio Telegraphists' Association*.[65]

As previously stated, employees may elect to proceed under section 9 (c) after an employer has refused to bargain collectively. Thus a question concerning representation has been found to exist where an employer has refused to bargain collectively on the ground the union does not represent a majority of the employees, as in *Matter of United States Stamping Company and Porcelain Enamel Workers' Union No. 18630*,[66] in *Matter of Richards-Wilcox Manufacturing Company*,[67] and in *Matter of Stimson Lumber Company*;[68] that some other labor organization had the right to bargain collectively for all of the employeees, as in *Matter of Motor Transport Company*;[69] or that no grievances existed concerning which bargaining should be conducted as in *Matter of International Filter Company, a corporation and International Association of Machinists, District No. 8*.[70]

In *Matter of Oregon Worsted Company, a corporation, and United Textile Workers of America, Local 2435*,[71] the Board ruled that the contention of the company that the issues were moot because the mill was closed down and was liquidating, was not decisive. The Board said:

> The operations at the mill ceased as a result of the strike, and intentions in such industrial situations are notoriously mercurial.

The Board has held in three cases that no question concerning representation existed. In *Matter of Pacific Steamship Company, a Corporation, et al and Sailors' Union of the Pacific*,[72] the evidence showed that the companies involved had been operating under a contract executed jointly in 1934 by the International Seamen's Union and the Sailors' Union of the Pacific, the latter at that time being a District Union of the International Seamen's Union. In January 1936, and again in May 1936, the International Seamen's Union took action which, it alleged, effectively revoked the charter of the Sailors' Union. The Sailors' Union denied that the action had this effect and brought suit in the Superior Court of California to have the purported revocation declared void and of no effect. Nevertheless the Sailors' Union, with the intent, subsequently carried into effect, of terminating the existing contract on September 30, 1936, filed a petition with the Board alleging that the International Seamen's Union had no authority to represent the sailors in the negotiations then about to begin for a new contract but that the International Seamen's Union was claiming the right to do so. Negotiations were begun during the time the Board was investigating the case; and the ship owners and the International Seamen's

[64] 2 N. L. R. B. 492.
[65] 2 N. L. R. B. 1109. See also *Matter of Johns-Manville Products Corporation and Asbestos Workers' Union, Nashua Local, Affiliated with the Committee for Industrial Organization, the Independent Asbestos Workers' Association, and the American Federation of Labor*, 2 N. L. R. B. 1048, where the employer made a similar demand after the union refused to submit a list of members to prove their claim.
[66] 1 N. L. R. B. 123.
[67] 2 N. L. R. B. 97.
[68] 2 N. L. R. B. 568.
[69] 2 N. L. R. B. 492.
[70] 1 N. L. R. B. 489.
[71] 2 N. L. R. B. 417.
[72] 2 N. L. R. B. 214.

Union by their actions in the negotiations and by their testimony at the Board's hearing indicated that both conceded the right of the Sailors' Union to negotiate as the exclusive representative of the sailors employed by the companies involved. The Board refused to certify on the ground that no question concerning representation existed at the time it rendered its decision.

In *Matter of Williams Dimond & Company et al. and Port Watchmen, Local No. 137*,[73] the union claimed to represent only 5 of the 65 or 70 employees of one of the companies involved. The Board dismissed the petition as to this company on the grounds that no question concerning the representation of these employees existed.

In *Matter of Todd Seattle Dry Docks, Inc., and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10*,[74] the evidence presented by the petitioning union clearly indicated that the petitioner did not represent a majority of the employees in a unit which had been agreed upon by the unions involved. The Board dismissed the petition on the grounds that no question concerning representation existed.

2. Certification Without an Election

Section 9 (c) empowers the Board to certify representatives with or without an election. If a labor organization can present evidence which the Board considers adequate proof that such organization represents a majority of the employees it may be certified without the necessity of an election. If no such evidence is presented or the evidence presented is considered inadequate the Board will order an election to be held.

What evidence the Board will consider adequate to justify certification without holding an election depends on the facts and circumstances involved in each case. In *Matter of John Blood & Company, Inc., a corporation, and American Federation of Hosiery Workers, Branch No. 69*,[76] the Board certified on the basis of a petition signed by a majority of the employees in the appropriate bargaining unit. The signatures had been obtained just prior to the filing of the petition requesting the Board to conduct an investigation, and the persons who had secured the signatures testified under oath at the hearing that the signatures were those of employees of the company and that they had been obtained without coercion.

Cards signed by a majority of the employees authorizing a labor organization to represent them, have been considered adequate proof of majority. In *Matter of Panama Rail Road Company and Marine Engineers Beneficial Association*,[77] these cards were signed within a 6-weeks' period preceding the filing of a petition for investigation and certification. In *Matter of Seas Shipping Company and National Marine Engineers' Beneficial Association, Local No. 33*,[78] the cards had been signed within a period from 2 weeks prior to the filing of the petition for investigation and certification up to the time of the final hearing on the petition. Cards signed at

[73] 2 N. L. R. B. 859.
[74] 2 N. L. R. B. 1070.
[76] 1 N. L. R. B. 371.
[77] 2 N. L. R. B. 290.
[78] 2 N. L. R. B. 398.

about the same time the petition for investigation was filed with the Board, which directed the employer to deduct union dues from wages, were considered sufficient evidence of the desire of a majority of the employees in *Matter of American Cyanamid & Chemical Corporation.*[79] Membership rolls of a union were considered adequate proof for certification in *Matter of Richards-Wilcox-Manufacturing Company,*[80] although by reason of the company's failure to participate in the hearing no payrolls were produced, the Board saying—

> To hold that the refusal of the company to submit its own pay roll, or to utilize the opportunity to challenge the membership roll offered by the union at the hearing can avert the consequences of the union's showing of a majority, would put a premium on obstructive tactics without furthering the proper functioning of the act.

Certification has been made where the employer has admitted that the organization requesting certification was the choice of a majority of his employees. In *Matter of Duplex Printing Press Co. and Lodge No. 46, International Association of Machinists,*[81] this admission was in the form of a stipulation entered into at the hearing. In *Matter of Cosmopolitan Shipping Co., Inc., and National Marine Engineers' Beneficial Association, Local No. 33,*[82] the company admitted that prior to a strike a majority of its employees were members of the petitioning union, but contended that such members had ceased to be employees because of the strike.

In Matter of *Lykes Brothers Steamship Co., Inc., et al., and National Marine Engineers' Beneficial Association, National Organization of Masters, Mates, and Pilots of America, American Radio Telegraphists' Association,*[83] the Board certified American Radio Telegraphists' Association on the basis of testimony of the secretary of that organization that all the radio operators employed by the companies involved were members of the association. The Board justified certification on the grounds that this testimony was not disputed by any radio operator, by any of the companies, or by any other labor organization.

Under other circumstances the Board has felt that somewhat similar proof has not been sufficient evidence on which to base a certification. In *Matter of Belmont Stamping & Enameling Co., a corporation, and Stamping & Enameling Workers Federal Labor Union No. 18816,*[84] the Board refused to certify where the company offered proof that some of the signatures on authorization cards had been obtained by coercion and compulsion. In *Matter of Ocean Steamship Company of Savannah and United Licensed Officers of the United States of America,*[85] the Board stated that dues receipts issued 10 months and a year prior to the filing of petitions for investigation and certification were too remote to justify a finding that these employees desired the union to act as their representative at the present time. In *Matter of New York and Cuba Mail Steamship Company,*[86] the Board stated that the

[79] 2 N. L. R. B. 881.
[80] 2 N. L. R. B. 97.
[81] 1 N. L. R. B. 82.
[82] 2 N. L. R. B. 759.
[83] 2 N. L. R. B. 102.
[84] 1 N. L. R. B. 378.
[85] 2 N. L. R. B. 588.
[86] 2 N. L. R. B. 595.

unsettled conditions for the past several months in the maritime industry made it less reasonable to infer that membership in a particular union at a period several months previous to the filing of a petition indicated a present desire to have that union represent them. In the same case the Board held that possible favoritism by the company to one of the unions involved, by which the union may have secured these members, was an additional reason against certification on the basis of the evidence introduced.

In *Matter of Oregon Worsted Company*,[87] applications for membership in the union were rejected as sufficient proof for certification partially on the grounds that no check had been made on the authenticity of the signatures on the application cards.

The Board does not require a union to submit its membership lists. Thus in *Matter of Samson Tire and Rubber Corporation and United Rubber Workers of America, Local No. 44*,[88] the Board said—

> * * * the union refused to submit its membership rolls for examination. This the union was at liberty to do, since it is the established policy of the Board not to compel the union to produce the membership rolls for examination lest its members be exposed to possible discrimination by the employer.

3. Directions of Election

(a) *Date on which eligibility of voters is determined.*—The question of what date should be used for the determination of the eligibility of employees to vote in an election is an important one, due to changes which may have occurred in employment during the period between the filing of the petition and the direction of election. In many cases the Board's directions of election have provided that those persons employed on the date of the direction of election shall be eligible to vote. Such directions, instead of using the specific language of "the date of this direction of election," have also been couched in terms similar to those used in *Matter of Gate City Cotton Mills and Local No. 1938, United Textile Workers of America*,[89] where it was directed that the election should be conducted—

> * * * among the employees * * * on the pay roll of the Gate City Cotton Mills, on November 2, 1935, and those employed between that date and the date of this decision, excepting * * * those who quit or have been discharged for cause during such period * * *.

In this case the date November 2 was chosen because the company at the hearing had submitted a pay roll list as of November 2.

In *Matter of Pittsburgh Steel Co.*,[90] the Board directed an election among the "employees * * * on the pay roll on the date of the payment of wages immediately preceding the date of this direction * * *" this language being used because the company might not have a completed pay roll as of the date of the direction of election. This wording has been followed in many later cases, including *Matter of Bendix Products Corporation*[91] and *Matter of Dwight Manufacturing Co.*[92]

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[87] 2 N. L. R. B. 417.
[88] 2 N. L. R. B. 148.
[89] 1 N. L. R. B. 57.
[90] 1 N. L. R. B. 256.
[91] 1 N. L. R. B. 173.
[92] 1 N. L. R. B. 309.

In *Matter of Interlake Iron Corporation and Toledo Council, Committee for Industrial Organization*,[93] the decision directed that an election be held among those employees "* * * on its pay roll during the pay roll period last preceding such election." In *Matter of R. C. A. Communications, Inc.*,[94] however, the election was directed among the employees who were employed on the date the petition was filed, except those who had quit or been discharged for cause since that date.

In *Matter of Johns-Manville Products Corporation and Asbestos Workers' Union, Nashua Local, Affiliated with the Committee for Industrial Organization, the Independent Asbestos Workers' Association, and the American Federation of Labor*[95] eligibility was based on the pay roll immediately preceding the date of the hearing "including, in addition to those appearing on the pay roll as of that date, all regular employees * * * who were then temporarily absent for illness or other cause, and excluding all who have since quit or been discharged for cause."

In *Matter of International Nickel Co., Inc.*,[96] the union requested that a pay roll of a particular date be used and the company made no objection. In *Matter of Acklin Stamping Co. and International Union, United Automobile Workers of America, Local No. 12*,[97] and in *Matter of R. C. A. Manufacturing Company, Inc.*, and *United Electrical and Radio Workers of America*,[98] all of the parties to the proceeding agreed upon a particular date to determine eligibility. In all three cases, the Board directed that eligibility be determined as of the date so requested or agreed upon.

In *Matter of Saxon Mills*[99] and in *Matter of Oregon Worsted Company*[1] a strike was in effect at the time of the hearing. The Board directed that those on the pay roll on the last working day prior to the strike in Saxon Mills be eligible to vote, and that those on the pay roll next preceding the date of the strike were eligible to vote in Oregon Worsted Co.[2]

In cases involving maritime employees the Board has generally required, in conformity with its decision in *Matter of International Mercantile Marine Company et al. and International Union of Operating Engineers, Local No. 3*,[3] that those voting must (1) have been employed by the company at some time between the date of the filing of the petition and the date of the direction of election and (2) have made the round trip voyage at the conclusion of which the election is held.[4]

Some changes, however, have been made in later cases, to meet the requirements of the particular case. In *Matter of Lykes Brothers Steamship Co., Inc.*,[5] those eligible to vote were required to have

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[93] 2 N. L. R. B. 1036.
[94] 2 N. L. R. B. 1109.
[95] 2 N. L. R. B. 1048.
[96] 1 N. L. R. B. 907.
[97] 2 N. L. R. B. 872.
[98] 2 N. L. R. B. 159.
[99] 1 N. L. R. B. 153.
[1] 2 N. L. R. B. 417.
[2] See also *Matter of R. C. A. Manufacturing Company*, 2 N. L. R. B. 159, where the date agreed upon by the parties preceded the date of the strike.
[3] 1 N. L. R. B. 384.
[4] The Board required that notice of election, a sample ballot, a list of employees eligible to vote, and a notice of the time and place where balloting would be held, be posted throughout the voyage.
[5] 2 N. L. R. B. 102.

been employed by the company within the period from the date of filing of the petition to the date of the direction of election, and to have signed articles to make the round trip voyage on which notices of election were posted. This change in eligibility requirement was made to expedite the elections on vessels whose time to complete a round trip voyage was 6 months or more by allowing the Board to conduct the election at a port prior to the completion of the round trip voyage. In *Matter of International Mercantile Marine Company et al. and National Maritime Union of America*[6] the Board dispensed with the requirement that employees must have been employed at some time between the date of the filing of the petition and the date of the direction of election and provided merely that "all unlicensed personnel * * * who are employed on the ship when it is posted and who are still employed in such capacity at the time balloting takes place * * *" shall be eligible to vote. In this case the Board also provided that—

> each ship must be posted with a notice of election, a sample ballot, a list of employees eligible to vote, and a notice of the time and place where balloting will be conducted, at, at least, one port of call in the United States prior to the port where balloting is conducted.

(*b*) *The period within which the election is directed to be held.*—The direction of election names the person who, as agent of the Board, shall conduct each election, and in the cases of industrial plants states that the election shall be held within a designated period, thus leaving the exact day, as well as the details of the election procedure, to be determined by the agent. In the case of a normal industrial plant the period stated in the direction of election varies from a week to 20 days, depending on the circumstances of the case, the most important factor being the number of persons who are to vote. This period ordinarily begins from the date of the direction of election but in some few cases[7] has been stated to begin after the furnishing of a pay roll by the company in accordance with a subpoena issued by the Board.

In elections involving maritime workers the Board is faced with serious difficulties in conducting elections. These difficulties arise from the fact that in most steamship companies crews are hired immediately before the sailing of a vessel for a trip which may extend over many months. During the course of the trip, the vessel may not stop at any port in the United States. In order to provide sufficient notice to the seamen, the early decisions of the Board required that each vessel of the company be posted with a notice of election and other material at the home port of the vessel on the next trip, if possible, following the date of the direction of election, and that balloting be conducted when the vessel returned to the port where it had been so posted.[8] This required that a period elapse between the direction and the completion of balloting sufficient to allow each vessel of the company to make a round trip voyage after the direction of

[6] 2 N. L. R. B. 971.

[7] *Matter of Dwight Manufacturing Co.*, 1 N. L. R. B. 309; *Matter of Mosinee Paper Mills Co., and International Brotherhood of Paper Makers and International Brotherhood of Pulp, Sulphite and Paper Mill Workers*, 1 N. L. R. B. 393; *Matter of Crucible Steel Co. of America and Strip Steel and Wire Workers Union, Local No. 20084*, A. F. of L., 1 N. L. R. B. 545.

[8] See *Matter of International Mercantile Marine Company*, 1 N. L. R. B. 384.

election.[9] In *Matter of Lykes Brothers Steamship Co., Inc., et al.*[10] the record showed that practically a year would elapse before balloting could be completed under these requirements. In order to hasten the process of balloting the Board in that case directed that the vessels be posted in their home ports but gave the Board's agent discretion either to ballot a vessel when it returned to the home port, to mail ballots from some other port of call, or, in the case of vessels employed in the "Far East Trade" requiring several months for a round trip voyage, to ballot the vessel before it left its home port. In *Matter of Swayne & Hoyt, Ltd., and National Marine Engineers' Beneficial Association, Pacific Coast District,*[11] the Board sought to expedite the election procedure by allowing vessels to be posted in any port of the United States where the vessel might be found after the issuance of the direction of election rather than to wait for the return of the vessel to its home port, balloting to be conducted when the vessels returned to the port of San Francisco or San Pedro, California.

In *Matter of International Mercantile Marine Co. et al. and National Maritime Union of America*[12] the Board provided—

> We will direct these elections to be held as soon as possible under the direction and supervision of the regional director for the second region, who shall determine in her discretion the exact time, place, and procedure for posting notices of election and for balloting on each ship, provided, however, that each ship must be posted with a notice of election, a sample ballot, a list of employees eligible to vote, and a notice of the time and place where balloting will be conducted, at, at least, one port of call in the United States prior to the port where balloting is conducted.

(*c*) *Form of the Ballot.*—Where only one labor organization is known to exist within a unit, the Board's direction of election provides that an election shall be conducted to determine whether or not the employees desire that union to represent them. In such cases the ballot gives the employees the opportunity to vote for or against the named organization. Where two or more rival unions claim the right to represent the employees, the direction of election provides that the election shall be held to determine which of the organizations the employees desire to represent them, and the organizations are each given a place on the ballot. It may be that the employer has violated section 8 (2) of the act with respect to one of such organizations. However, the Board has directed that such an organization be given a place on the ballot[13] unless a charge has been filed that the employer is violating section 8 (2) of the act, and the Board, after hearing, has found the charge sustained.

The Board has often been requested to put blank spaces on the ballot where employees might write in the name of any other organization they might desire to have represent them. The Board has consistently refused to include such a space on the theory set forth in *Matter of Grace Line, Inc. and Panama Mail Steamship*

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[9] For a variation of this rule at the request of the parties see *Matter of Ocean Steamship Company of Savannah,* 2 N. L. R. B. 588.
[10] 2 N. L. R. B. 102.
[11] 2 N. L. R. B. 282.
[12] 2 N. L. R. B. 971.
[13] See, for example, *Matter of Dwight Manufacturing Co.,* 1 N. L. R. B. 309, and *Matter of New England Transportation Company and International Association of Machinists,* 1 N. L. R. B. 130.

Company and National Marine Engineers' Beneficial Association, Local No. 33:[15]

We hold that since ample opportunity was given at the hearing for the introduction of any evidence tending to show that any other organization claimed to represent these employees but that no such evidence was presented, the placing of a blank space on the ballot is unnecessary.[16]

4. CERTIFICATION FOLLOWING AN ELECTION

(*a*) *Majority rule.*—As previously stated, in cases decided under section 9 (c) where certification has been made on the basis of proof introduced at the hearing and no election has been held, the Board has ruled, as it has in cases arising under section 8 (5), that a majority of those in the appropriate unit must designate the organization to be certified.[17]

In all cases arising prior to July 1, 1936, where an election had been held, the Board also required that an organization to be certified must secure a majority of the votes of those eligible to vote. Thus in *Matter of Chrysler Corporation and Society of Designing Engineers*,[18] where 700 persons were eligible to vote and only 125 ballots were cast, the Board refused to make any certification.

Following the decision of the Circuit Court of Appeals for the Fourth Circuit in *Virginian Railway Co.* v. *System Federation No. 40*, 84 F. (2d) 641 (subsequently affirmed by the Supreme Court, 300 U. S. 515), the Board, in *Matter of Associated Press, a Corporation, and American Newspaper Guild*,[19] said:

A majority of those eligible voted; a majority of those voting, though less than a majority of those eligible, voted for the American Newspaper Guild. In certifying the Guild we are following the rule established by the Circuit Court of Appeals for the Fourth Circuit in *Virginian Railway Co.* v. *System Federation No. 40*, decided June 18, 1936. The Court had before it the provision in the Railway Labor Act, 45 U. S. C. section 131 et seq., that: "The majority of any craft or class shall have the right to determine who shall be the representative of the class or craft." It decided that where a majority of the eligibles voted, a majority of those voting, though less than a majority of those eligible, determined the representative.

After pointing out that popular democratic government is universally conducted upon that principle and alluding to the many decisions of the Supreme Court applying the principle to political elections, the Court says:

"We see no reason why the act should not be interpreted as contemplating that this well-settled rule of elections should be applied in the case of the employees' election for which it provides, in cases like this where a majority of those qualified to vote participate in the election. Such a rule is fair and just to all parties. It gives every employee an opportunity to express his choice. It preserves the secrecy of elections. And it prevents the breaking down of the plan of collective bargaining which it was the purpose of the act to set up."

With these reasons we are in entire accord. The parallel language in the National Labor Relations Act: "Representatives designated or selected * * * by the majority of the employees in a unit" differs slightly but not materially from that in the Railway Labor Act and requires the same construction.

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[15] 2 N. L. R. B. 369.

[16] Refusal to include such a space should be distinguished from a provision in many directions issued subsequent to July 1, 1937, for a space on the ballot, in cases in which more than one labor organization is involved, where employees can indicate they do not want any of the organizations named to represent them. See *Matter of American-France Line et al. and International Seamen's Union of America*, 3 N. L. R. B. 45.

[17] See sec. C (3), ch. XII.

[18] 1 N. L. R. B. 164.

[19] 1 N. L. R. B. 686.

This interpretation was followed in *Matter of New England Transportation Company and International Association of Machinists*,[20] in *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*,[21] and in *Matter of American-Hawaiian Steamship Company et al. and National Organization Masters, Mates & Pilots of America, West Coast Local No. 90*.[22]

A further development occurred in the certification following an election in *Matter of R. C. A. Manufacturing Company*.[23] In that case 9,752 employees were eligible to vote; 3,163 cast ballots; 17 of the ballots cast were blank or void; 79 ballots were challenged; 51 ballots were cast for the Employees' Committee Union; and 3,016 ballots were cast for United Electrical & Radio Workers of America. The election followed a strike which had been precipitated because of the unrest and strife created at the Camden plant by a controversy as to representation existing between the United Electrical & Radio Workers of America and the Employees' Committee Union. The strike had been settled after the filing of a petition, but prior to the hearing held by the Board, by an agreement between United Electrical & Radio Workers and the company which contained as one of its provisions the agreement of both parties that an election be held under the auspices of the Board and that "the company and the union (United Electrical & Radio Workers) agree that the sole bargaining agency shall be the candidate receiving a majority of the votes of all those eligible to vote in such election." At the hearing before the Board the Employees' Committee Union agreed to be bound by this agreement in the same way as though it had been a party to it. Two days before the date on which the election was scheduled to begin, the Employees' Committee Union voted to refuse to participate in the election and from that time until the closing of the polls (4 days later, the election having been postponed because of this action) waged an unceasing campaign to boycott the election. As part of the campaign, circulars predicting violence, bloodshed, and perhaps loss of life, rioting, street fighting, and general disorder, and a threat of taking pictures of employees who voted, were distributed throughout Camden and vicinity, and a sound truck, broadcasting similar warnings, was operated in the vicinity of the plant. The Board certified United Electrical & Radio Workers of America as the exclusive representative of the employees within the unit found appropriate. The Board stated that there were three possible interpretations of the words "by a majority of the employees" used in section 9 (a) of the act:

> (1) The phrase "majority of the employees" refers to an affirmative majority of the employees eligible to vote, so that to be certificated as the exclusive representative an organization must have received a number of affirmative votes equal to a majority of the employees eligible to vote in the election; (2) the phrase "majority of the employees" refers to the employees participating in the election, so that the organization which is the victor in an election participated in by at least a majority of the eligible employees is to be certified as the exclusive representative; (3) the phrase "majority of the employees"

[20] 1 N. L. R. B. 143.
[21] 2 N. L. R. B. 774.
[22] 2 N. L. R. B. 424.
[23] 2 N. L. R. B. 168.

refers to a majority of the eligible employees voting in the election, so that the organization receiving a majority of the votes cast is to be certified as the exclusive representative.

The Board, in support of its adoption of the third interpretation, said in part:

* * * this interpretation should be carefully explored. In such a consideration the special factors operating in labor elections must be kept in mind. The facts of the instant case are especially important in this regard, for they illustrate the inadvisability of an interpretation which fastens upon actual participation of a majority of the eligible employees. Such an interpretation defeats the purpose of the act by placing a premium upon tactics of intimidation and sabotage. Minority organizations merely by peacefully refraining from voting could prevent certification of organizations which they could not defeat in an election. Even where their strength was insufficient to make a peaceful boycott effective, such minority organizations by waging a campaign of terrorism and intimidation could keep enough employees from participating to thwart certification. Employers could adopt a similar strategy and thereby deprive their employees of representation for collective bargaining.

In all such situations the purpose of the act would be thwarted. One of its basic policies is to encourage "the practice and procedure of collective bargaining" between an employer and his employees. Section 9 (a), and especially the election procedure, is designed to promote collective bargaining by means of a prompt determination of the representative of the employees to carry on that bargaining. The object of the whole procedure is the elimination of obstructions to the free flow of commerce caused by the refusal to accept the procedure of collective bargaining. The realization of that object thus depends upon the efficacy of the election device as a peaceful means of settling disputes between contesting labor organizations. If an election is allowed to fail on account of the causes mentioned above, the results will be the continuation of unrest and strife consequent upon the doubt as to which organization is entitled to represent the employees. In the instant case such doubt has already led to a bitter strike which materially disrupted the commerce of the company. A failure to certify in this case would perpetuate the conditions which caused that strike and thereby defeat the intent of the act.

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It is an accepted canon of statutory construction that an unwise and unworkable interpretation is to be rejected if another, and sensible, interpretation is at hand. Consequently, we feel that the third interpretation mentioned above, a majority of the eligible employees voting in the election, is required if the intent of Congress in enacting the act is to be fulfilled. Such an interpretation is in harmony with decisions of the Supreme Court interpreting similar phrases to refer to the votes cast rather than to the number of eligible voters.

The Board also said:

The last sentence of paragraph 5 of that agreement states that "the company and the union agree that the sole bargaining agency shall be the candidate receiving a majority of the votes of all those eligible to vote in such an election." The company contends that under this sentence the union needed the affirmative votes of a majority of the eligible voters and having failed to secure such a number of votes cannot be certified as the exclusive representative. But such a contention overlooks entirely the fact that the election was not held pursuant to the agreement, to which the Board was not a party, but as the result of an investigation and hearing conducted by the Board in accordance with the authority conferred upon it by the act. Under that authority the Board's power is an exclusive one and not in any way dependent upon, or affected by, such agreements between private parties in situations of this nature. Consequently, the act and not the agreement furnishes the rule that must guide the Board in its determination.

The same interpretations of "majority of the employees" was adopted in the certification of the union in *Matter of American-Hawaiian Steamship Company, a Corporation, and Gatemen, Watchmen, and Miscellaneous Waterfront Workers Union, Local 38-134;*

International Longshoremen's Association,[24] where, though 55 employees were eligible to vote, only 19 cast ballots, 17 for the union and 2 against it; in *Matter of Williams Dimond & Company* et al.,[25] as to the certification of employees of Hammond Shipping Co.; and in *Matters of Charles Cushman Shoe Company et al. and United Shoe Workers of America*.[26] In the last-mentioned case the Board further said:

> Only in elections involving Koss Shoe Co., Inc., and Venus Shoe Co. did the union obtain a majority of all persons eligible to vote as well as a majority of those who actually voted. However, in prior decisions we have established the principle that the majority of the employees referred to in the act is a majority of those participating in the election. The reason behind this principle is clearly vindicated by the present cases. The association and the independent union boycotted the elections and thus impaired the secrecy of the ballot. With only the members of one union participating in the elections employees by voting in effect signified their intention to vote for such union. In view of the bitter opposition to the union which had been expressed by the companies, this fact must certainly have caused many supporters of the union to refrain from voting. Where a labor organization claiming to represent a majority of the employees in a particular plant has refused to participate in a fair and impartial election conducted by this Board for the purpose of determining the accuracy of its claim, it cannot thereafter contest the right of a rival labor organization which has made the same claim and has received a majority of the votes cast in such election to be certified as exclusive bargaining agency, on the ground that such rival labor organization has not obtained the votes of a majority of all persons eligible to vote. We will certify the union as the exclusive representative of all the employees in the appropriate unit of each of the companies.

(*b*) *Certification during the course of an election.*—In *Matter of Lykes Brothers Steamship Company, Inc., et al.*[27] the Board directed elections to be held among the licensed deck officers and the licensed engineers employed on the 58 vessels operated by the three Lykes Brothers companies. Because of a strike, which had tied up the remaining vessels of the companies, the Board directed that the ballots already cast be counted after 54 of the vessels had been balloted. Masters, Mates and Pilots and Marine Engineers' Beneficial Association were certified as the representatives of the licensed deck officers and the licensed engineers, respectively, on the basis of the partial vote, because the number of deck officers and engineers who had already voted for the organizations certified constituted a majority of the number eligible to vote on the 58 vessels.

(*c*) *Certification where only one employee in appropriate unit.*—In elections ordered by the Board in *Matter of Bay Cities Transportation Company, a Corporation, and Gatemen, Watchmen and Miscellaneous Waterfront Workers Union, Local 38–124; International Longshoremen's Association*, and in *Matter of Kingsley Company of California, a Corporation, and Gatemen, Watchmen and Miscellaneous Waterfront Workers Union, Local 38–124; International Longshoremen's Association*,[28] it was found that only one person was employed by each of the companies within the unit found appropriate. The Board refused to certify the petitioning unions as to these companies, though each of the employees had indicated his desire to have the petitioner represent him, saying:

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[24] 2 N. L. R. B. 195.
[25] 2 N. L. R. B. 867.
[26] 2 N. L. R. B. 1017.
[27] 2 N. L. R. B. 102.
[28] 2 N. L. R. B. 181.

The National Labor Relations Act creates the duty of employers to bargain collectively. But the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain. The act therefore does not empower the Board to certify where only one employee is involved. This conclusion does not mean that a single employee may not designate a representative to act for him; he had such a right without the act, and the act in no way limits the right. By the same token, this conclusion in no way limits the protection which the act otherwise gives such an employee.[29]

(*d*) *Refusal to certify following an election where proof is offered of a change of affiliation.*—In *Matter of New York and Cuba Mail Steamship Company*,[30] protests were filed during the course of the election by two of the organizations involved. Both protests included allegations that the company had interfered in the conduct of the election, one of the protests also alleging that a majority of the licensed engineers had changed their union affiliation during the course of and subsequent to the election. The Board, after further hearing called for the purpose of ascertaining the truth of the facts alleged, found that the evidence did not sufficiently establish interference which would warrant it declaring that the elections should be voided. In connection with the evidence presented on the change of affiliation, however, the Board said:

In a case like this, where prior to the Board's certification of the results of an election there is an apparent change in the wishes of a majority of the men, we believe that another election should be held.

5. Election or Certification During Existence of Contract

In *Matter of New England Transportation Company and International Association of Machinists*,[31] the company objected to the holding of an election on the grounds that the company had already entered into "contracts" with certain of its mechanical department employees. These "contracts" fell into two groups. The first group was signed in October 1934, prior to the passage of the act, and pertained to wage increases for mechanical department employees. A mimeographed form, entitled an "agreement," was circulated among the employees. It provided that the "agreement" was between the company and the individuals who signed and that the rate of pay of the employee would be increased 5 percent beginning October 20, 1934, the increase to continue effective until November 1, 1935, and thereafter until after 30 days' notice by either party. The second group was entered into in April 1935, also prior to the passage of the act, and was entitled "agreement between New England Transportation Co. and employees of its mechanical department." The "agreement" was accepted on behalf of the company by its vice president, and then circulated among the employees of the mechanical department for signature by them. Ninety-six out of a total of 153 to 156 employees signed this "agreement." This "agreement" contained a series of rules regarding working conditions, hours, overtime pay, handling of grievances, and similar matters. The Board found that under the circumstances of this case, and in view

[29] In *Matters of Williams Dimond & Company et al.*, 2 N. L. R. B. 859, there were three persons eligible to vote, but only one voted. Nevertheless certification was made on the principle established in *Matter of R. C. A. Manufacturing Company*, 2 N. L. R. B. 159.

[30] 2 N. L. R. B. 603.

[31] 1 N. L. R. B. 130.

of the nature of the so-called agreements, they were no bar to an election.

In *Matter of Black Diamond Steamship Corporation and Marine Engineers Beneficial Association, Local No. 33*,[32] the company had entered into a contract with United Licensed Officers of the United States of America, despite knowledge that National Marine Engineers' Beneficial Association also claimed the right to act as exclusive representative of the licensed engineers employed by the company. The contract, effective December 1, 1935, for a period of a year, was to continue from year to year unless notice of termination was given 30 days prior to the expiration of that year, by either party to the contract. The Board ordered an election on September 24, 1936, stating:

> The mere holding of the election will in no way affect the rights and duties, if any, arising out of the contract entered into between the company and the United. Moreover, since that contract is shortly subject to termination (December 1, 1936), and the representatives of the engineers, who will have been ascertained prior to that date, may elect to terminate it, we deem it unnecessary to determine what would otherwise be the effect of the contract on the petition before us.[34]

6. Jurisdictional Disputes

Although a question concerning representation existed, the Board has dismissed petitions in several cases which it termed jurisdictional disputes. In *Matter of Aluminum Company of America and Aluminum Workers Union No. 19104*,[35] the petition for certification stated that the petitioning union and the National Council of Aluminum Workers Union each claimed to represent the employees in the two plants of the company at Alcoa, Tenn. The petitioner, Aluminum Workers Union No. 19104, was a Federal labor union, having a charter from the American Federation of Labor. The National Council of Aluminum Workers was formed under the direction of President Green of the American Federation of Labor, and was composed of representatives from various plants of the Aluminum Company of America, including the Alcoa plants, and representatives of aluminum workers' unions in other companies. Prior to negotiations for an agreement with the Aluminum Company of America in August 1935 the Alcoa local withdrew from the council. It agreed to participate in the negotiations, although not a member of the council, but withdrew from the negotiations before a contract was made. The contract was subsequently completed upon President Green's statement that the Alcoa local would be bound by the contract. Thereafter, the Alcoa local demanded that the company enter into a separate contract with respect to the employees at Alcoa, stating it was not bound by the contract executed by the council. The Board said:

> Taking the petition in this case at its face value, the Board is only asked to investigate and certify, pursuant to section 9 (c) of the act, the "name or names of the representatives that have been selected" by the employees at the Alcoa plants. Ordinarily, such a request would involve (1) a decision as to whether the employees at those plants constitute an appropriate bargaining unit within the meaning of section 9 (b); (2) if they do constitute such unit,

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[32] 2 N. L. R. B. 241.

[34] See also *Matter of Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 282; *Matter of Panama Rail Road Company and Marine Engineers Beneficial Association*, 2 N. L. R. B. 290.

[35] 1 N. L. R. B. 530.

the holding of an election to determine whom the employees desire as their representatives for collective bargaining; and (3) the certification of the name or names of the representatives chosen at such an election. Normally, such cases arise from situations in which the only organization claiming to represent the employees contends that it represents a majority of the employees in an appropriate unit but the employer refuses to bargain with it on the ground that such representation is not established, or in which each of two or more competing organizations claims a majority. The machinery of section 9 (b) and 9 (c) is thus designed to complement and make workable the principle of the majority rule declared in section 9 (a). Its purpose is simply to resolve, by means of an election or other suitable method, any doubts concerning which, if any, organization can claim the exclusive right to bargain collectively for certain employees.

As stated above, on its face the instant petition appears to present the normal situation described above: One organization, Aluminum Workers Union No. 19104, claims to represent a majority of the employees at the Alcoa plants of the company. It asserts that another body, the council, contests this claim. It in effect requests an election to resolve the issue thus created. However, the foregoing brief summary of the facts in the case indicates that the issues here are of an essentially different character. A short statement of the real issues in the case makes it clear that under the guise of a petition for certification the parties are presenting entirely different questions to this Board for its decision.

Assuming for the purposes of the argument that the Alcoa plants constitute an appropriate bargaining unit, as the union contends, an election would be necessary to establish the strength of the union. If the union received a majority vote in such an election, the Board would then certify it as the representative of the employees at Alcoa. But such certification would in no way conclude this controversy since the underlying question here is not whether the union shall represent the employees, but rather, who shall represent the union in its dealings with the company. The solution of that question is far from simple. Wetmore, the president of the union, contended before the Board that he speaks for the union in all matters, including its dealings with the company. He claims that his contention is supported by the actual wishes of the members of the union. With equal vigor, Williams asserted that the applicable rules of the American Federation of Labor demand that the Alcoa union bargain only in concert with the other unions through the council which he heads and that consequently that body and not Wetmore speaks for the Alcoa union in its dealings with the company. It may be observed, so as further to point the problem, that the rules of the American Federation of Labor as applied to this case are by no means free from doubt. The Alcoa union is a Federal labor union directly chartered by the American Federation of Labor. The constitution of the Federation in article XIV provides as follows:

"SEC. 2. The executive council (of the Federation) is authorized and empowered to charter local trade unions and Federal labor unions, to determine their respective jurisdictions not in conflict with national and international unions, to determine the minimum number of members required, qualifications for membership and to make rules and regulations relating to their conduct, activities and affairs from time to time and as in its judgment is warranted or deemed advisable."

While this section was referred to by Williams, he did not offer evidence of any action by the executive council itself directed to the instant case or any delegation of authority to President Green, but introduced only the ruling of the latter. While it might be said that a strict and technical view would therefore make that ruling of President Green inapplicable, it must be remembered that Wetmore and the organization he represents are still, and voluntarily, parts of a larger organization and that Green is its president. It is possible that the unwritten law of tradition and custom makes his rulings binding within the Federation until altered. However, as hereinafter appears, in our view of the case it becomes unnecessary to resolve these opposing contentions.

The course and conduct of the future bargaining of the Alcoa union is thus bound up with the question of who shall speak for that union. The real question is therefore who represents and speaks for the Alcoa union and not whether that union represents a majority of the employees at Alcoa. The Board feels that the question is not for it to decide. Such a question, involv-

ing solely and in a peculiar fashion the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves.

A jurisdictional dispute was also found to exist in *Matter of The Axton-Fisher Tobacco Company and International Association of Machinists, Local No. 681, and Tobacco Workers' International Union, Local No. 16*, and in *Matter of Brown and Williamson Tobacco Corporation and International Association of Machinists, Local No. 681, and Tobacco Workers' International Union, Local No. 185.*[36] The Tobacco Workers International Union, Local No. 16, an organization chartered by a parent body affiliated with the American Federation of Labor, and the International Association of Machinists, Local No. 681, also affiliated through its parent body with the American Federation of Labor, both claimed jurisdiction by virtue of their charters over the machine fixers within these companies' plants. The Board in this decision said:

Thus the National Labor Relations Act did not give rise to these problems [jurisdictional disputes]. They occurred before, they will doubtless occur again, and they have prompted the majority of labor organizations in this country to establish a procedure of their own creation and management for their solution. While the act provides a new vocabulary in which such jurisdictional disputes may be described, it does not alter their nature. The instant case affords an apt illustration. The machinists union claims that the machinists proper and the machine fixers constitute together a "unit appropriate for the purposes of collective bargaining" in the terminology of section 9 (b). The tobacco workers' union contends that the tobacco workers and the machine fixers belong together and as such constitute an appropriate unit, as do the machinists alone. But such use of the act's terminology does not disguise the real issue. Since both employers operate on a closed-shop basis, each employee in the plants must join some union. Obviously a craftsman will join the union to which other members of his craft belong and which is recognized by the American Federation of Labor as having jurisdiction over that craft. As long as the machinists union has recognized jurisdiction over machinists in the tobacco industry, a machinist will belong to that union. Similarly a decision by the Amercan Federaton of Labor on the jurisdictional question involving the machine fixers would determine to which organizaton they will choose to belong, unless for some reason the parent body is defied. Consequently, the issue remains as simply a jurisdictional dispute between two labor organizations. Each recognizes the jurisdictional character of the other—tobacco workers and machinists; the question involves only the drawing of a precise boundary line.

* * * * * * *

Both of the labor organizations involved in the instant cases are affiliated with the American Federation of Labor and possess charters from that body. In view of the structure of that body, the instant controversy is simply a dispute involving the internal affairs of a labor organization, here the American Federation of Labor. That dispute resembles the hundreds of other jurisdictional questions handled by the Federation and is clearly of a type which it has power to decide. There thus exists a body to which these two organizations belong and which has the authority to render a binding decision on the dispute between them. Under such circumstances, the Board is of the opinion that it should not intervene in the dispute for the reasons stated in the *Aluminum Co.* case.[37]

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[36] 1 N. L. R. B. 604.

[37] See also *Matter of Standard Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America*, 1 N. L. R. B. 614, where the rule was followed even though several of the unions involved had no actual members among the employees in the alleged bargaining unit; *Matter of American Tobacco Company, a corporation, and Tobacco Workers' International Union, Local No. 192*, 2 N. L. R. B. 198, where, after ordering an election in a unit in which machine adjusters were included, the Board amended its direction of election to exclude these employees on a petition for intervention filed by International Association of Machinists subsequent to the direction of election.

The reason for the Board's refusal to interfere in such cases is stated in *Matter of Aluminum Co. of America:*[38]

It is preferable that the Board should not interfere with the internal affairs of labor organizations. Self-organization of employees implies a policy of self-management. The role that organizations of employees eventually must play in the structure established by Congress through that act is a large and vital one. They will best be able to perform that role if they are permitted freely to work out the solutions to their own internal problems. In its permanent operation the act envisages cohesive organizations, well-constructed and intelligently guided. Such organizations will not develop if they are led to look elsewhere for the solutions to such problems. In fine, the policy of the National Labor Relations Act is to encourage the procedure of collective bargaining and to protect employees in the exercise of the rights guaranteed to them from the denial and interference of employers. That policy can best be advanced by the Board's devoting its attention to controversies that concern such fundamental matters.

and also in *Matter of The Axton-Fisher Tobacco Co.* and in *Matter of Brown and Williamson Tobacco Corporation:*[39]

It is perhaps unnecessary to point out that the internal dispute presented in these cases is merely one of many now existing within the American Federation of Labor and other organizations of labor. Some of these disputes, obviously difficult of solution, are far-reaching and fundamental to the labor movement; others are small by comparison. But in either case, it is preferable that in the light of the declared policy of Congress—"the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing"—the Board should leave organizations of labor free to work out their own solutions through the procedure they themselves have established for that purpose.

In *Matter of Interlake Iron Corporation and Toledo Council, Committee for Industrial Organization,*[40] the competing unions were the petitioner and Blast Furnace and Coke Oven Workers' Union Local No. 20572, affiliated with the American Federation of Labor. The latter organization moved to dismiss the petition on the grounds a jurisdictional dispute was involved. The Board stated:

In the present case, however, although technically both the contending unions may be said to be affiliated with the same organization, the American Federation of Labor, we should be blind, indeed, to facts of common knowledge if we therefore concluded that both unions would submit to the authority of that body. Since the action by the Executive Council of the American Federation of Labor on September 5, 1936, suspending the international unions affiliated with the Committee for Industrial Organization, if not for a long time before, those unions have ceased to obey the orders of the Federation.

The motion was accordingly denied and an election directed to be held.

F. THE UNIT APPROPRIATE FOR THE PURPOSES OF COLLECTIVE BARGAINING

Section 9 (b) of the act provides that—

The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

Such a determination is required in two types of cases: (1) Petitions for certification of representatives, pursuant to section 9 (c)

[38] 1 N. L. R. B. 530.
[39] 1 N. L. R. B. 604.
[40] 2 N. L. R. B. 1036.

of the act, and (2) complaints charging that an employer has refused to bargain collectively with the representatives of his employees, in violation of section 8 (5) of the act.[41] In each instance, a finding as to the appropriate unit is indispensible to the ultimate decision. A certification of representatives would be meaningless in the absence of a finding defining the unit to be represented. Similarly, a complaint alleging that an employer has refused to bargain collectively with the representatives of his employees may be sustained only if such representatives were designated by employees in a unit appropriate for the purposes of collective bargaining.[42]

Self-organization among employees is generally grounded in a community of interest in their occupations, and more particularly in their qualifications, experience, duties, wages, hours, and other working conditions. This community of interest may lead to organization along craft lines, along industrial lines, or in any of a number of other forms representing adaptations to special circumstances. The complexity of modern industry, transportation, and communication, and the numerous and diverse forms which self-organization among employees can take and has taken, preclude the application of rigid rules to the determination of the unit appropriate for the purposes of collective bargaining.

In attempting to ascertain the groups among which there is that mutual interest in the objects of collective bargaining which must exist in an appropriate unit, the Board takes into consideration the facts and circumstances existing in each case. The nature of the work done by the employees involved, their training and the extent of their responsibilities, and the organization of the employer's business are all entitled to weight. In evaluating these factors, the Board must also consider the effect which they have been given by the employees themselves in their attempts, successful or otherwise, at self-organization. Finally it is important to consider the manner in which the Board evaluates the various factors which go to determine the appropriate unit.

The precise weight to be given to any of the relevant factors cannot be mathematically stated. Generally several considerations enter into each decision. The following résumé of the Board's decisions is designed to show the manner in which it has gone about determining the unit which will serve best to further collective bargaining and self-organization among employees.

1. Method of Determination

In *Matter of Grace Line, Inc., and Panama Mail Steamship Company and National Marine Engineers' Beneficial Association, Local No. 33*,[43] the Board stated, "The appropriate unit in each case must be determined in light of the circumstances existing in the particular case." Unlicensed junior engineers in that case were included within

[41] For a discussion of cases in which the Board would ordinarily have determined the unit appropriate for the purpose of collective bargaining, except for jurisdictional disputes between labor organizations, see sec. E *supra*.

[42] Sec. 8 (5) of the act is expressly subject to sec. 9 (a), which reads, in part, as follows: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *."

[43] 2 N. L. R. B. 369.

the same appropriate unit as the licensed engineers, despite their exclusion in a prior decision of the Board.[44] It appeared that in the earlier case practically all of the junior engineers were licensed, whereas that was not true in the *Grace Line* case.

The Board has recognized that changes in the facts and circumstances which are of importance in determining the appropriate unit may work a corresponding change in the unit which has been found appropriate for the employees of a particular company. Thus in *Matter of R. C. A. Communications, Inc. and American Radio Telegraphists' Association*[45] the Board held that the "live traffic" employees of the company at two of its centers of operation constituted an appropriate unit, and rejected the company's contention that its employees of that description throughout the country should be considered together. It appeared that no attempt had as yet been made to organize any employees other than those at the two plants described in the union's petition. The Board recognized that the unit contended for by the company would under some circumstances be appropriate, but said:

> The "live traffic" employees of the Company in the metropolitan area should not be denied the benefits of the act until all of the employees of the Company throughout the country are organized.

The fact that all of the parties to a proceeding are agreed as to the extent of the unit has usually been treated by the Board as decisive. This agreement may appear in a stipulation entered into between the parties,[46] or in the pleadings, or in testimony given at the hearing.[47] In cases involving an alleged violation of section 8 (5) of the act by refusal to bargain collectively, the agreement of the respondent may appear from its failure to question the appropriate unit alleged in the Board's complaint.[48]

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[44] *Matter of International Mercantile Marine Co. et al. and International Union of Operating Engineers, Local No. 3,* 1 N. L. R. B. 384. The decision in the *Grace Line* case was later changed by the Board on the basis of further evidence, procured in a hearing held under a petition for certification of the unlicensed personnel of the same companies. See Supplemental decision and Direction of Elections, 2 N. L. R. B. 369. See also *Matter of R. C. A. Communications, Inc., and American Radio Telegraphists' Association,* 2 N. L. R. B. 1109, where the Board said: "The determination of the appropriate unit is governed by an appraisal and consideration of the totality of the facts, circumstances, and setting of the particular case."

[45] 2 N. L. R. B. 1109.

[46] *Matter of American-Hawaiian Steamship Company, Oceanic & Oriental Navigation Company, and Williams Steamship Corporation and National Organization of Masters, Mates and Pilots of America, West Coast Local, No. 90,* 2 N. L. R. B. 424; *Matter of Santa Fe Trail Transportation Company and The Brotherhood of Railroad Trainmen,* 2 N. L. R. B. 767; *Matter of Todd Seattle Dry Docks, Inc., and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 10,* 2 N. L. R. B. 1070, where the Board said: "The I. U., the Metal Trades Council, and Todd, having stipulated at the hearing 'that the appropriate unit * * * should comprise all employees of that company except foremen and higher supervisory officials, clerical and office employees, and janitors * * *' the only question before us for determination" is whether a question concerning representation has arisen.

[47] *Matter of Lykes Brothers Steamship Co., Inc., Tampa Inter-Ocean Steamship Co., Lykes Brothers Ripley Steamship Co., Inc., and National Marine Engineers' Beneficial Association, National Organization of Masters, Mates and Pilots of America, American Radio Telegraphists Association,* 2 N. L. R. B. 102 (as to radio operators); *Matter of Samson Tire and Rubber Corporation and United Rubber Workers of America, Local No. 44,* 2 N. L. R. B. 148; *Matter of Shell Oil Company of California and International Association of Oil Field, Gas Well and Refinery Workers of America, International Association of Machinists, International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, International Brotherhood of Electrical Workers, and Welders' International Association, Intervenor,* 2 N. L. R. B. 835 (as to employees formerly on an hourly pay basis); *Matter of American Cyanamid & Chemical Corporation and Local No. 1, Amalgamated Powder Workers of North America,* 2 N. L. R. B. 881; *Matter of International Mercantile Marine Company, Luckenbach Steamship Company, Inc., Black Diamond Steamship Corporation and National Maritime Union of America,* 2 N. L. R. B. 971.

[48] *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159,* 2 N. L. R. B. 39; *Matter of Clifford M. DeKay, doing business under the trade name and style of D. & H.*

However, the mere absence of contention does not require the Board to accept the unit assumed by the parties to be appropriate. In *Matter of Richards-Wilcox Manufacturing Company and Federal Labor Union No. 18589*.[49] a representation proceeding in which only one union was involved, and in which the company took no active participation, the Board refused to limit the appropriate unit to the company's permanent production workers, as desired by the union, but extended it to include the temporary production workers because of the substantial identity of their interests.

2. Self-organization

The form which self-organization has taken among the employees involved in a proceeding, or among workers similarly situated, is one of the most significant factors in determining the appropriate unit. Self-organization which has resulted in successful collective bargaining in the past can be relied on as a guide for future collective bargaining. Similarly, the form of self-organization presently existing, and the rules governing eligibility to membership in the labor organizations which have engaged in organization in the field, aid in determining the most effective method of collective bargaining. In taking these factors into consideration, the Board utilizes the experienced judgment of the workers themselves as to the existence of the mutual interest in working conditions which must exist among the members of an appropriate unit.

(a). History of labor relations in the industry, and between the employer and his employees

The recognition through an established course of dealing between an employer and his employees that a certain group of employees should be treated together for the purposes of collective bargaining is an important consideration in the determination of the appropriate unit. Collective bargaining is facilitated by adhering to the methods of the past, in the absence of any indication that a change in those methods has become necessary.

In *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*[50] the question arose whether the production and maintenance employees in a number of the respondent's geographically separated plants constituted a single appropriate unit, as alleged in the complaint. In finding in favor of the single unit rather than separate units for each of the plants the Board pointed out that—

> The bargaining that took place in 1934 was on the basis of a grouping of the plants in which there were unions representing the production and maintenance employees. The respondent made no objection to such a principle. In 1935 the extension of the agreement to the Tonawanda plant and the subsequent dealing with the District Council for the five plants indicated that the respondent recognized the appropriateness of a system of bargaining which considered its organized plants as a unit.

Motor Freight Company, and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America. Local Union No. 649. 2 N. L. R. B. 231; *Matter of Elbe File and Binder Co., Inc., and Bookbinders, Manifold and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders,* 2 N. L. R. B. 906; *Millfay Manufacturing Company, Inc., and American Federation of Hosiery Workers, Branch 40,* 2 N. L. R. B. 919.

[49] 2 N. L. R. B. 97.

[50] 2 N. L. R. B. 626.

In *Matter of The Acklin Stamping Company and International Union, United Automobile Workers of America, Local No 12*,[51] there were two unions, both of which accepted employees throughout the company's plant, but one of which, the Mechanics Educational Society of America, claimed that the employees in two of the departments of the plant should be considered separate. The Board said:

> The contention of the M.E.S.A. that the tool and die and die repair department employees and the machine repair and maintenance department employees each constitute a unit appropriate for the purposes of collective bargaining is inconsistent with its former position in collective bargaining activities with the company. At all times prior to January 7, 1937, the M.E.S.A. bargained with the company for these employees not as constituting separate and distinct units but merely as parts of the larger unit, namely, all of the production and maintenance employees in the plant. This was done by means of a single shop committee representing all of the company's employees. This type of bargaining on a plantwide basis was apparently successful. That the tool and die and die repair department employees as well as the other employees in the plant found no objection with this method of bargaining is clear from the record.[52]

In *Matter of Grace Line, Inc.*,[53] where the Board decided that the marine engineers of two shipping companies which were both subsidiaries of a single corporation should be considered as two units rather than one, it was noted that the two companies had signed separate contracts with another labor organization for their respective unlicensed personnel.

Since the Board, in determining the appropriate unit, seeks to establish the most effective mechanism for collective bargaining, it does not limit its consideration to the history of collective bargaining with the particular company involved, but considers also the methods which have been successful in the industry as a whole.[54] In *Matter of Portland Gas and Coke Company and Gas and Coke Workers Union, Local No. 19591, affiliated with the American Federation of Labor, and Gasco Employees Association*,[55] the question arose whether the men in a certain division of the company's plant which was separated from the balance of the plant by 7 miles shoud be included within a single appropriate unit with the rest of the employees. The Board held that it should be so included and pointed out that it was not unusual for labor organizations in the industry to have members scattered over 50 miles. In *Matter of Sante Fe Trail Transportation Company and The Brotherhood of Railroad Trainmen*[56] it was considered significant that two subsidiaries of the company involved had signed contracts with the union covering the same group of employees as was found by the Board to be an appropriate unit.

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[51] 2 N. L. R. B. 872.

[52] See also *Matter of Bell Oil and Gas Co. and Local Union 258 of the International Association of Oil Field, Gas Well and Refinery Workers of America et al.*, 1 N. L. R. B. 562; *Matter of S. L. Allen & Co., Inc., and Federal Labor Union, Local No. 18526*, 1 N. L. R. B. 714; *Matter of M. H. Birge & Sons Co. and United Wall Paper Crafts of North America*, 1 N. L. R B 731; *Matter of Swayne & Hoyt, Ltd., and National Marine Engineers' Beneficial Association, Pacific Coast District*, 2 N. L. R. B. 282; *Matter of Shell Oil Company of California*, 2 N. L. R. B. 835; *Matter of Millfay Manufacturing Company, Inc.*, 2 N. L. R. B. 919; *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B 1109.

[53] 2 N. L. R. B. 369. (Supplemental Decision and Direction of Elections.)

[54] *Matter of M. H. Birge & Sons Co.*, 1 N. L. R. B. 731; *Matter of International Mercantile Marine Company*, 1 N. L. R. B. 384; *Matter of Mosinee Paper Mills Co. and International Brotherhood of Pulp, Sulphite and Paper Mill Workers*, 1 N. L. R. B. 393; *Matter of Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 282; *Matter of Motor Transport Company and General Chauffeurs, Teamsters & Helpers, Local Union No. 200*, 2 N. L. R. B. 492; *Matter of Williams Dimond & Company, et al. and Port Watchmen, Local No. 137*, 2 N. L. R. B. 859; *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109.

[55] 2 N. L. R. B. 552.

[56] 2 N. L. R. B. 767.

(B). FORM OF PRESENT SELF-ORGANIZATION

Although section 9 (b) of the act vests in the Board discretion to decide in each case whether the unit shall be the employer unit, craft unit, plant unit, or a subdivision thereof, that discretion must be exercised in a manner calculated "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act." Accordingly, in determining the unit the Board has given great weight to the desires of the employees themselves, especially as manifested by efforts at self-organization. In *Matter of Atlantic Refining Company and Local Nos. 310 and 318, International Association of Oil Field, Gas Well, and Refinery Workers of America,*[57] after pointing out the difficulties raised by the geographical differences between the Brunswick, Ga., plant and the Pennsylvania plants of the respondent, the Board added the following:

> The Employees' Representation Plan, which purports to cover not only the employees at the Brunswick plant but the employees of the respondent at its other refineries and properties as well, was put into effect by the respondent in October 1934, several months after the Locals were organized. By organizing as they did before the Plan was put into effect, and by clear manifestations since, the employees at the Brunswick plant have definitely indicated their desire to bargain as a unit, through the Locals and not through the Plan. In view of this and the other circumstances of this case, we find that the employees, with the exception of the clerical and supervisory staffs, engaged at the Brunswick plant of the respondent constitute a unit appropriate for the purpose of collective bargaining.

In *Matter of The American Tobacco Company, a corporation, and Tobacco Workers' International Union, Local No. 192,*[58] the petitioning union contended that the appropriate unit should be limited to those of the company's employees who were actually engaged in the production and handling of cigarettes. The company argued that the employees in certain collateral departments, such as the power plant, the machine shop, and the cafeteria, as well as the employees who were engaged in the manufacture of little cigars, should also be included. The Board, in finding in favor of the smaller unit, said:

> In determining the appropriate unit we take into consideration the fact that the employees have themselves organized the Union along lines which exclude from membership employees in the adjunct and little cigar departments described above. It is also significant that employees engaged in the power plant, machine shop, cafeteria and little cigar departments are eligible to membership in established labor organizations other than the union.
>
> In these circumstances and in the absence of proof of a present desire on the part of the employees engaged in the Reidsville plant to be bracketed in a single unit for the purposes of collective bargaining, we are of the opinion that the policy of the act would be best served in this case by not including the employees in the office, medical, cafeteria, machine shop, power plant and little cigar departments and the watchmen in the same bargaining unit with the employees in the cigarette department.[59]

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[57] 1 N. L. R. B. 359.

[58] 2 N. L. R. B. 198.

[59] See also *Matter of Chrysler Corporation and Society of Designing Engineers,* 1 N. L. R. B. 164; *Matter of Crucible Steel Company of America and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.,* 2 N. L. R. B. 298; *Matter of Agwilines, Incorporated and International Longshoremen's Association, Local No. 1402,* 2 N. L. R. B. 1; *Matter of Oregon Worsted Company, a corporation, and United Textile Workers of America, Local 2435,* 2 N. L. R. B. 417; *Matter of American Cyanamid & Chemical Corporation,* 2 N. L. R. B. 881. See also cases *infra,* dealing with union rules of eligibility.

The fact that the employees in a smaller group have indicated a desire not to be included with other employees in a single bargaining unit has been considered significant by the Board. In *Matter of Motor Transport Company and General Chauffeurs, Teamsters and Helpers, Local Union No. 200*,[60] the question arose as to whether all of the company's drivers and dockmen should be treated as one appropriate unit or whether there should be a separate unit for those employed in Milwaukee County, Wis. After pointing out that the unions in this field had for years organized into units covering local areas only, the Board said:

> The form of organization thus voluntarily chosen and retained for many years by employees in the industry generally is necessarily entitled to great weight in determining the unit in question. Moreover, it appears that 59 of the 80 drivers, drivers' helpers, dockmen and dockmen's helpers employed by the company in Milwaukee, Wis., exclusive of supervisory employees, desire that the appropriate unit be defined in keeping with the practice in the industry. Although 53 other employees of the company signed a petition requesting that the unit should embrace all employees of the company, it is significant that not one of the signers was employed in Milwaukee County, Wis. The Board is loath to combine in one unit employees of the company engaged in and outside of Milwaukee County, Wis., knowing that a majority of the former prefer to bargain as a separate unit.[61]

The Board has also given consideration to the form which labor organizations existing generally in the industry have taken.[62] In *Matter of Crucible Steel Company of America and Strip Steel and Wire Workers Union, Local No. 20084, A. F. of L.*,[63] in holding that the maintenance men should not be included in the same unit with the production employees, the Board said:

> Many of the maintenance men, also the engineers, firemen, electricians, etc., have their separate organizations and consider their interests as distinct from the production workers, a point of view which, in this case at least, is shared by the Union.

In *Matter of International Mercantile Marine Company et al., and International Union of Operating Engineers, Local No. 3*,[64] the Board denied a motion of the United Licensed Officers of the United States of America to include deck officers and unlicensed engineers of the company in a single unit, for the following reasons:

> In passing upon this motion we also take into consideration the fact that there are already in this field two well established labor organizations, the Marine Engineers Beneficial Association and Local No. 3, whose membership is limited to engineers, and a third established labor organization, the Masters, Mates, and Pilots, restricted to deck officers. In the light of this situation; in the absence of proof of a present desire on the part of engineers and deck officers to combine in one unit; and in view of the marked difference in qualifications, responsibilities, and duties between the engineers and deck officers, we are of the opinion that the policy of the act would be best served here by not requiring that deck officers and engineers be combined in one unit for purposes of collective bargaining.[65]

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[60] 2 N. L. R. B. 492.
[61] See also *Matter of International Mercantile Marine Company*, 1 N. L. R. B. 384 and *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. discussed supra.
[62] *Matter of The American Tobacco Company, a corporation, and Tobacco Workers International Union, Local No. 192*, 2 N. L. R. B. 198; *Matter of Motor Transport Company*, 2 N. L. R. B. 492.
[63] 2 N. L. R. B. 298.
[64] 1 N. L. R. B. 384.
[65] This case was followed in *Matter of Black Diamond Steamship Corporation and Marine Engineers' Beneficial Association, Local No. 33*, 2 N. L. R. B. 241, and several subsequent cases.

(C) ELIGIBILITY TO MEMBERSHIP IN LABOR ORGANIZATIONS

The rules of eligibility to membership in the unions which the employees form or join constitute one of the clearest manifestations of the manner in which they desire collective bargaining to take place. If such organizations are formed of the employees' free will, the qualifications for membership therein reflect the judgment of the employees as to the proper unit for collective bargaining.[66] In *Matter of The Acklin Stamping Company*,[67] the question arose whether there should be a plant-wide bargaining unit or separate units for two of the groups of employees, the tool and die men and the maintenance men. Although the Board recognized that there were certain arguments for a finding in favor of the smaller units claimed, it said:

> The plant wide unit urged by the union as appropriate for the purposes of collective bargaining is coterminous with the groups of employees eligible for membership not only in the union but in the M. E. S. A. as well. Both of these organizations admit to membership all employees of the company except supervisory and clerical or office employees. Both are industrial in character. Neither organization maintains any divisions in its ranks based upon trade classifications or occupations in the company's plant.

In two cases, *Matter of Charles Cushman Company et al., and United Shoe Workers of America*,[68] and *Matter of Interlake Iron Corporation and Toledo Council, Committee for Industrial Organization*,[69] the qualifications for membership in the competing unions were the same, and the Board found it unnecessary to go beyond this fact in determining the appropriate unit. In the latter case it was stated:

> It appears that membership in both the contending unions is open and confined to hourly rate employes at the company's Toledo plant, except supervisory employees, watchmen, and police. According to oral testimony, both unions admit to membership clerical employees who are paid on an hourly rate basis. In the absence of any other evidence, the classification stated appears to be the appropriate bargaining unit.

In *Matter of Richards-Wilcox Manufacturing Company*,[70] the fact that the only union involved admitted to membership certain temporary production workers was mentioned as a reason for rejecting that union's contention that the appropriate unit should be limited to permanent production workers.

However, it is clear that the Board cannot be bound in determining the appropriate unit by the rules established by the labor organizations in the field. Those rules constitute only one of the factors which the Board considers in making its decision. Not even the fact that some of the employees involved are ineligible to membership in one or more of the competing unions is necessarily a bar to their inclusion in the unit found appropriate by the Board.

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[66] *Matter of the Timken Silent Automatic Company and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association*, 1 N. L. R. B. 335; *Matter of International Filter Co. and International Association of Machinists, District No. 8*, 1 N. L. R. B. 489; *Matter of Agwilines, Incorporated*, 2 N. L. R. B. 1; *Matter of Luckenbach Steamship Company, Inc., et al., and Gatemen, Watchmen, and Miscellaneous Waterfront Workers Union, Local 38–124, International Longshoremen's Association*, 2 N. L. R. B. 181; *Matter of Motor Transport Company*, 2 N. L. R. B. 492; *Matter of Portland Gas and Coke Company*, 2 N. L. R. B. 552.

[67] 2 N. L. R. B. 872.

[68] 2 N. L. R. B. 1015.

[69] 2 N. L. R. B. 1036.

[70] 2 N. L. R. B. 97.

In *Matter of Grace Line, Inc.*,[71] where two out of the three unions competing for the company's engineers excluded unlicensed junior engineers, the Board in holding that the latter should be included in the bargaining unit for the engineers said:

> However, since they are eligible to membership in one of these organizations and since, even though not eligible to membership they may desire one of the two other labor organizations to represent them, we feel that on the particular facts before us our conclusion is justified.[72]

This decision was followed in *Matter of New York and Cuba Mail Steamship Company and United Licensed Officers of the United States of America*,[73] where the Board pointed out that one of the unions which excluded unlicensed junior engineers had represented these employees before the Railway Mediation Board.

In *Matter of Luckenbach Steamship Company, Inc., and various other companies, and Gatemen, Watchmen, and Miscellaneous Waterfront Workers Union, Local 38–124; International Longshoremen's Association*,[74] where the question was raised whether dock watchmen could be included in a certain appropriate unit, the contention was made that many of these watchmen were licensed policemen and as such were forbidden by a local ordinance to join any labor organization. The Board stated that it was unnecessary to decide whether the ordinance in fact had that effect and said:

> We are herein concerned only with the question of whom these employees desire to be represented by in bargaining with their employers concerning rates of pay, wages, hours of employment, and other conditions of employment. That these watchmen are entitled to bargain about their working conditions, that they may delegate the bargaining to an agent, and that such agent may be a labor organization which they may not for various reasons be eligible to join, are matters not prohibited by the regulation under any interpretation nor, we take it, seriously controverted by the employers. Without here deciding whether or not watchmen who are special police officers may become members of the union, we hold that these watchmen, whether special police officers or not, may be properly included in the bargaining unit and may, if they desire, designate the union as their representative for collective bargaining.

Finally, the Board has held that the appropriate bargaining unit may be limited to a group smaller than that covered by the rules of eligibility established by the unions involved. In *Matter of Merchants and Miners Transportation Company and United Licensed Officers*,[75] the question was whether the appropriate units for licensed deck officers and licensed engineers should include certain lower rank employees who were not required to be licensed, but who, in fact, held licenses entitling them to positions of higher rank. All three of the participating unions admitted these employees to membership and contended that they should be included in the appropriate unit. The Board adopted the company's contention, and excluded these employees, saying that in view of other circumstances the mere fact of eligibility, standing alone, did not warrant their inclusion.

3. Mutual Interest

Under the terms of the act, the Board in determining the appropriate unit attempts to insure to employees the full benefit of the

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[71] 2 N. L. R. B. 369.
[72] For final decision of this case, see footnote 44 supra.
[73] 2 N. L. R. B. 595.
[74] 2 N. L. R. B. 181.
[75] 2 N. L. R. B. 747.

right to self-organization and to collective bargaining. The chief object of the Board, therefore, is to join in a single unit only such employees, and all such employees, as have a mutual interest in the objects of collective bargaining. The appropriate unit selected must operate for the mutual benefit of all the employees included therein. To express it another way, is there that community of interest among the employees which is likely to further harmonious organization and facilitate collective bargaining?

In *Matter of Merchants and Miners Transportation Company*,[76] the extent of two appropriate units, one for licensed deck officers and one for licensed engineers, was being considered. It appeared that the company employed many licensed employees in positions in which licenses were not required. In holding that these men should not be included within the appropriate unit, the Board said:

> Nowhere in the record does it appear, however, that these particular men will ever have an opportunity in the future to be promoted to positions where licenses are required by law, or that it is the policy of the company so to promote them. Although licensed, the status of these men in unlicensed positions is permanent. Since they have no apparent interest in matters concerning licensed deck officers and licensed engineers employed as such they should not be allowed to participate in the elections hereinafter ordered by the Board.

It also appeared, however, that the company followed the policy of retaining in unlicensed positions licensed employees for whom it had no employment as such as a result of temporary removal of boats from service. The Board said:

> These men will most likely be returned to their former positions or to some other licensed positions in their classification as soon as the vessels now out of service are put back into service. Under these circumstances it is clear that they have an interest in the terms and conditions of employment of the licensed personnel employed as such as well as in the identity of the representatives for the purposes of collective bargaining regarding such terms and conditions of employment. In view of such interest they should be allowed to participate in the elections hereinafter ordered to determine such representatives.

In *Matter of International Mercantile Marine Company, et al.*,[77] the petitioning union had contended that chief engineers, assistant engineers, and licensed junior engineers employed by the company should together be considered a single bargaining unit, while the company had contended that each class of engineers should be in a unit apart from the others. After pointing out the similarities, and some few differences, in qualifications, experience, and duties of the three classes of engineers, the Board went on to state that:

> From the viewpoint of economic interest all three classes are vitally interdependent and realistically one. All engineers must sign new articles of agreement for every round trip voyage. The company recognizes no seniority rights. A chief engineer on one voyage may be an assistant, a junior, or even unemployed on the following voyage. Similarly, an engineer employed as a junior on one occasion may be an assistant or a chief when next he signs ships' articles. This condition is enhanced by the transfer of men among the various vessels of the company. Since the status of the engineer is subject to change upon such short notice within the range of all three classes, it is patent that each of the engineers has an economic interest in the wage rate and working conditions of all who are employed as engineers, regardless of rank.

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[76] 2 N. L. R. B. 747.
[77] 1 N. L. R. B. 384.

The Board held, therefore, that the chief, assistant, and junior engineers constituted a unit appropriate for purposes of collective bargaining.[78]

We have pointed out that one of the methods of discovering the existence of mutual interest is to follow the guidance given by the self-organization which has already taken place among the workers involved, or among workers similarly situated. The specific factors which create that mutual interest and which determine the appropriate unit must now be considered.

(A) NATURE OF WORK

Generally it will be seen that men who do the same type of work will have the same problems with regard to hours, wages and other conditions of employment. The reasons for enabling them to bargain collectively as a single unit are, therefore, obvious.

In *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*,[79] the men who worked in and about the company's docks were involved. For some of the purposes of the industry these men were divided into two classifications, longshoremen and dock workers. In finding in favor of a single unit, the Board said:

> So far as a finding in the matter of an appropriate unit is concerned, the distinction is unimportant and fictitious. Respondent's longshoremen and dock workers at Tampa are paid the same hourly wage, obtained from the same labor reservoir, at times are used interchangeably by respondent, i. e., are longshoremen today and dock workers tomorrow, are members of the same Local, and are otherwise homogeneous.

Quite commonly the Board has defined the appropriate unit to include those employees who are engaged in the central operations of the company, thereby excluding employees in collateral and adjunct departments. Most commonly this takes the form of limiting the appropriate unit to the company's production employees, but it may also take other forms.

In *Matter of The American Tobacco Company, a corporation*,[80] the company involved was engaged in the manufacture of cigarettes and also little cigars. The company contended that all but its supervisory employees should constitute the appropriate unit. The union contended that only those employees who were engaged in the production and handling of cigarettes should be included. This meant the exclusion of office employees, employees in the medical department, power plant, machine shop, and cafeteria, and the employees in the little cigar department. The Board, after describing the operations of these departments, said:

> It is thus apparent that the qualifications, responsibilities, and duties of the employees in the categories in question differ substantially from those engaged in the cigarette department described above. Employees in the office, the medical department, the power plant, the machine shop, and the cafeteria are merely adjuncts to the primary group engaged in the receipt of tobacco and

[78] See also *Matter of Wayne Knitting Mills, Inc., and The American Federation of Hosiery Workers, Branch No. 2*, 1 N. L. R. B. 53; *Matter of Consumers' Research, Inc. and J. Robert Rogers, Representative for Technical, Editorial and Office Assistants Union, Local 20055, affiliated with the American Federation of Labor*, 2 N. L. R. B. 57.

[79] 2 N. L. R. B. 1.

[80] 2 N. L. R. B. 198.

the manufacture and shipment of cigarettes. The little cigar department is really a factory within a factory. It could as well be operated entirely independent of the rest of the Reidsville plant.

It, therefore, found in favor of the union's contention.[81]

In *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159*,[82] the Board limited the appropriate unit to those of the respondent's employees who were directly engaged in the servicing of livestock, the activity in which the respondent was chiefly engaged. Excluded were the "yard clerks, watchmen, janitors, elevator operators, and corn testers," which employees, the Board noted, "do not participate in that servicing."

In *Matter of Consumers' Research, Inc., and J. Robert Rogers, Representative for Technical, Editorial, and Office Assistants Union, Local 20055, affiliated with the American Federation of Labor*,[83] the respondent was engaged in the gathering and dissemination of information of interest to consumers. The union involved excluded from its membership those employees who were engaged in work outside of the ordinary functions of the respondent; for example, lunch room, maintenance, and construction workers. The Board said:

> The bylaws make plain that the professional and intellectual homogeneity of a white-collar group was sought to be preserved, and that community of interest was to be a condition of eligibility to union membership.

The appropriate unit was found accordingly.

Mutual interest among various groups of employees appears readily where there is a substantial amount of interchangeability among the members of those groups. In *Matter of Portland Gas and Coke Company*[84] the operating department of the company was divided into four bureaus, each performing somewhat dissimilar functions. The Board noted, however:

> As shown above, the work both in the production and distribution bureaus consists of a similarly wide range of labor both skilled and unskilled. Indeed, the employees in the two bureaus are interchangeable. At present 40 employees in the production bureau are transferees from the distribution bureau. The problem of who should represent the transferees is one which is productive of confusion under a division of the operating department into three units but would be nonexistent if the collective bargaining agency represented the whole operating department. Likewise, the problem of seniority of transferees is a difficult one now under the tripartite division of the operating department, but would not present an abnormal problem under a unitary arrangement of the whole operating department * * * The evidence is clear that the same standards of wages and working conditions must prevail throughout the operating department for corresponding work in the various bureaus.

It was therefore held that all the employees in the operating department constituted a single appropriate unit.[85]

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[81] See also *Matter of Crucible Steel Company of America*, 2 N. L. R. B. 298; *Matter of R. C. A. Manufacturing Company, Inc., and United Electrical and Radio Workers of America*, 2 N. L. R. B. 159; *Matter of Carlisle Lumber Company, a corporation, and Lumber and Sawmill Workers' Union, Local 2511, Onalaska, Washington, and Associated Employees of Onalaska, Inc., Intervenor*, 2 N. L. R. B. 248.

[82] 2 N. L. R. B. 39.

[83] 2 N. L. R. B. 57.

[84] 2 N. L. R. B. 552.

[85] See also *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1; *Matter of Luckenbach Steamship Company, Inc., and various other companies*, 2 N. L. R. B. 181; *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers, and Accountants' Union, Local 12546*, 2 N. L. R. B. 610.

Clerical employees deserve special mention. The principles discussed above frequently point to the exclusion of such workers from units which include production workers. This question received extensive consideration in *Matter of R. C. A. Manufacturing Company, Inc., and United Electrical and Radio Workers of America*,[86] where the Board said:

> The main group in dispute consists of clerical employees of various types. Some of these clerical workers, in the main classified as typists, stenographers, clerks, file clerks, bookkeepers, messengers, etc., work in the treasurer, comptroller, and sales departments, located in buildings 2 and 15. These employees, all of whom are salaried employees, perform purely clerical tasks in large part bound up with the management and administration of the company and their immediate working conditions and problems are significantly different from those of actual production workers. Other clerical employees work in the various buildings in which production takes place and are on the production department pay roll. In addition to the types of employees generally classified as clerical workers, this group includes such occupations as expeditors, dispatchers, dispatch clerks, time keepers, breakdown clerks, etc. The majority are salaried employees; some are paid on an hourly rate. In some divisions their hours differ from those of actual production employees; in others they are the same. In many cases they occupy offices adjoining the foreman's office and have the appearance of a foreman's office staff. Their tasks are clerical in nature, carried on at desks, and they do not handle materials or products. As in the case of the clerical workers in the other departments, their immediate interests and problems are not those of actual production workers. The Board concludes that in the plant under consideration none of the clerical workers should be included in the same bargaining unit with the actual production workers.

The lack of common interest between clerical and other workers was also stressed in *Matter of Motor Transport Company*.[87] The Board said:

> The status and function of the office force is completely different from that of other employees of the company engaged in or about the transportation of freight, with the result that there is not that community of interest regarding wages, hours and working conditions which makes for an appropriate collective bargaining unit. We, therefore, find that the employees engaged in the office of the company shall not be included in the appropriate unit.

(B) SKILL

Organization of skilled employees along craft lines is an outgrowth of the identity of problems confronting those engaged in a common pursuit. Generally the wages, hours, and working conditions of the skilled craftsmen are different from those of other employees of the same employer, necessitating special treatment in collective bargaining. Hence, in several decisions of the Board, separate appropriate units have been established for specially skilled workers, and in others they have been excluded from the unit found to be appropriate for the balance of the company's employees.

In *Matter of R. C. A. Communications, Inc.*,[88] the question arose whether the company's "live traffic" employees should be a unit separate from the balance of the company's staff. The Board said:

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[86] 2 N. L. R. B. 159.

[87] 2 N. L. R. B. 492. See also *Matter of United States Stamping Company and Porcelain Enamel Workers' Union, No. 18630*. 1 N. L. R. B. 123; *Matter of Crucible Steel Company of America*. 2 N. L. R. B. 298; *Matter of The American Tobacco Company*, 2 N. L. R. B. 198; *Matter of Remington Rand, Inc.*, 2 N. L. R. B. 626; *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*, 2 N. L. R. B. 772; *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109.

[88] 2 N. L. R. B. 1109.

The "live traffic" employees are engaged in work of a highly skilled nature and have qualifications and duties different from those of the office employees. Most of them have received a technical training of a distinctive type which distinguishes them from the other workers of the company. They are allied by common problems of skill and community of interest. They receive substantially higher wages than messengers, clerical, and other employees.

It was therefore held that the company's "live traffic" employees constituted an appropriate unit.[89]

In *Matter of Chrysler Corporation and Society of Designing Engineers*,[90] the testimony showed that the designing engineers employed by the company might be classified into three main groups—chassis, body, and tool and die designers—and that each in turn had certain subclasses, the members of which had special aptitudes and experience. In holding that all the designing engineers engaged by the company constituted a unit appropriate for purposes of collective bargaining, the Board said:

Practically all have received professional training in technical schools or colleges. The training is of a distinctive type. The men are fitted by training and experience to work in more than one of the subclassifications listed above and can move from a lower to a higher rating. The group is distinguished in function and training from clerical and production workers on the one hand and from electrical and chemical engineers on the other.[91]

As between two skilled groups, substantial difference in the nature of their respective training may require a separate appropriate unit for each. In *Matter of Black Diamond Steamship Corporation and Marine Engineers Beneficial Association, Local No. 33*,[92] the Board held that licensed deck officers and licensed engineers constituted two separate appropriate units. It said:

The qualifications, responsibilities, and duties of the licensed engineers differ in kind from those of licensed deck officers. The United States Bureau of Navigation and Steamboat Inspection as a prerequisite to the issuance of a license to an engineer requires of the applicant education and experience substantially different from that of an applicant for a deck officer's license. Deck officers navigate the ship, stand deck watches, and check cargo in and out of the vessel, while engineers confine their activities almost wholly to the operation and maintenance of the engine department.

(C) WAGES

A common wage rate or a common manner of payment of wages may serve to identify a class of employees uniformly affected by wages, hours, and working conditions, and hence interested in bargaining as a unit. This factor may do no more than point the difference otherwise existing between two groups of the employees of the same employer. For example, all employees paid by the hour may be production workers, while those paid weekly are clerical employees.

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[89] See also Machinists, apprentices, and helpers: *Matter of Duplex Printing Press Co. and Lodge No. 46, International Association of Machinists*, 1 N. L. R. B. 82; *Matter of New England Transportation Co. and International Association of Machinists*, 1 N. L. R. B. 130; *Matter of the Canton Enameling and Stamping Co.* and *Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402; and *Matter of International Filter Co.*, 1 N. L. R. B. 489. Ship carpenters, caulkers, and joiners: *Matter of Harbor Boatbuilding Co.* and *Ship Carpenters' Local Union no. 1335*, 1 N. L. R. B. 349. Printing pressmen and assistants: *Matter of Edward E. Cox, Printer, Inc.*, and *International Printing Pressmen and Assistants' Union, Local No. 376*, 1 N. L. R. B. 594. Blank cutters: *Matter of Pioneer Pearl Button Co.* and *Button Workers' Union, Federal Local 20026*, 1 N. L. R. B. 837.

[90] 1 N. L. R. B. 164.

[92] 2 N. L. R. B. 241. See also *Matter of Panama Rail Road Company* and *Marine Engineers' Beneficial Association*, 2 N. L. R. B. 290.

In *Matter of R. C. A. Manufacturing Company, Inc.*,[93] the Board excluded from the appropriate unit for production workers certain employees who were on a salary basis. It said:

> While nearly all of the actual production workers are paid on an hourly basis, there are employees working in the production department who are paid on a salary basis. Most of the employees in the engineering department are on a salary basis. All salaried employees receive 2 weeks' vacation with pay, are paid for holidays, and are paid semi-monthly and not weekly. While in certain cases the tasks performed by some of these salaried workers are not different from those performed by comparable hourly paid workers, the benefits flowing from a salaried status result in a difference of interests and viewpoints that is sufficiently marked to prevent in this case the inclusion of both employees in the same unit.

A similar question arose in *Matter of Consolidated Aircraft Corporation and International Association of Machinists, Aircraft Lodge No. 1125*,[94] although in that case the salaried employees in question were not production workers. The Board said:

> There is also a class of salaried employees in the factory, not engaged in production, including inspectors, among others, whose positions are more secure than that of the hourly paid employees, with the result that there is not that community of interest regarding wages, hours, and working conditions which would warrant their inclusion in one unit with the hourly paid employees.[95]

In *Matter of Shell Oil Company of California*,[96] the collective bargaining which had taken place in the past had covered the hourly paid employees of the company. The Board, in fixing the appropriate unit, adopted that one which had formed the basis of the earlier collective bargaining, and included with the hourly paid employees those who had formerly been on an hourly paid basis and had since been placed on a weekly salary basis, but whose work had remained substantially unchanged.

(D) FOREMEN AND OTHER SUPERVISORY EMPLOYEES

The exclusion of supervisory employees from bargaining units composed of ordinary employees is based on their connection with the management, with which collective bargaining is to take place. The extent to which foremen and subforemen come within this rationale is often the subject of dispute. The criteria which have been used by the Board in deciding issues of this kind may be seen in two cases involving subforemen. In *Matter of R. C. A. Manufacturing Company, Inc.*,[97] it was agreed by all of the parties that foremen should be excluded from the appropriate unit, but one of the participating unions contended for the exclusion also of certain working group leaders. The Board said:

> These working group leaders, who may on occasion actually work on materials, possess authority to give orders to the employees under their super-

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[93] 2 N. L. R. B. 159.
[94] 2 N. L. R. B. 772.
[95] See also: *Matter of Bendix Products Corporation and Local No. 9, International Union, United Automobile Workers of America*, 1 N. L. R. B. 173; *Matter of Agwilines, Inc.*, 2 N. L. R. B. 1; *Matter of The America Tobacco Company*, 2 N. L. R. B. 198; *Matter of American Cyanamid & Chemical Corporation*, 2 N. L. R. B. 881; *Matter of Interlake Iron Corporation*, 2 N. L. R. B. 1036. In *Matter of Pioneer Pearl Button Co.*, 1 N. L. R. B. 837, unlike all other employees engaged at the plant of the company, who were paid on a time basis, the blank cutters were paid on a piece basis, and were held to constitute an appropriate unit.
[96] 2 N. L. R. B. 835.
[97] 2 N. L. R. B. 159.

vision and to recommend disciplinary action to the foremen or assistant foremen. They are therefore to be considered as part of the supervisory force.[98]

In *Johns-Manville Products Corporation and Asbestos Workers' Union, Nashua Local, Affiliated with the Committee for Industrial Organization, The Independent Asbestos Workers' Association, and the American Federation of Labor*,[99] a similar situation was presented as to assistant foremen. The Board included them in the appropriate unit, saying:

It appears, however, that these employees have no right to hire or discharge and ordinarily are engaged directly on production. Their only distinguishing function is that they temporarily replace absent foremen. We think that their interests are closer to those of the ordinary, than to those of the supervisory, employees.[1]

It is clear that the power to hire and discharge is not the sole criterion of what constitutes a supervisory employee. In *Matter of Consumers' Research, Inc.*,[2] the Board excluded from an appropriate unit the personnel director of the respondent, "who, despite her position, was not the final arbiter in the matter of tenure of employment." The Board said:

A personnel director is, *ipso facto*, intimately connected with management, and in a position to affect employment policies.

(E) TEMPORARY EMPLOYEES

Where a company employs men for temporary periods, the question may arise whether such employees are to be included in the appropriate unit for those who do the same type of work on a permanent basis. The Board has held that they should be so included where they have a mutual interest in collective bargaining with the permanent employees; as, for example, where the company's policy justifies the temporary employees, when laid off, in anticipating being recalled when an increase in staff occurs.

In *Matter of Richards-Wilcox Manufacturing Company*,[3] the Board rejected the contention of the petitioning union that the appropriate unit should be limited to permanent production workers. It said:

This is a classification based not on function but on the adventitious ebb and flow of business. The testimony does not establish that the "temporary" employees were engaged for a temporary period or that if the volume of business permits, their status is any less permanent than that of other employees. The temporary as well as the permanent production workers are eligible for membership in the union. In view of the undefined character of their tenure, the similarity of their functions and the substantial identity of their interests, we find that the temporary and permanent production employees of the company constitute a unit appropriate for the purposes of collective bargaining.

In *Matter of William Dimond and Company et al. and Port Watchmen, Local No. 137*,[4] the question arose as to the extent of the

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[98] See also: *Matter of United States Stamping Company*, 1 N. L. R. B. 123, foremen and assistant formen excluded from an appropriate unit, "as having supervisory authority and duties that relate them more directly to the management than to the workers;" *Matter of St. Joseph Stock Yards Company*, 2 N. L. R. B. 39.

[99] 2 N. L. R. B. 1048.

[1] See also: *Matter of American Cyanamid & Chemical Corporation*, 2 N. L. R. B. 881, in which five assistant foreladies, who were normally engaged in production and only took over in case of absence, were included in the appropriate unit.

[2] 2 N. L. R. B. 57.

[3] 2 N. L. R. B. 97.

[4] 2 N. L. R. B. 859.

appropriate unit for the watchmen of the various companies. It appeared that there were three types of watchmen: Steady watchmen; extra steady watchmen, who worked for the same employer for long periods and were subject to call when needed; and extra watchmen, who were supplied by agencies and rotated among the docks of the various companies. The limiting of the appropriate unit to the first two of these groups was not seriously contested; but the Board mentioned as the basis for the distinction the differences in "duties, tenure, and manner of employment."[5]

A related problem was raised in *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers and Accountants Union, Local 12646*,[6] where it appeared that the respondent hired many temporary employees at various periods, but that those who worked for 13 weeks or more were considered permanent employees. This criterion was adopted by the Board in establishing the appropriate unit.

(F) FUNCTIONAL COHERENCE

The functional coherence and interdependence of the various departments in mass-production industries has often impelled the Board to treat all of the production and maintenance employees of a given company as a single unit. Some of the reasons for this method of treatment are mentioned above, as are also the reasons for excluding supervisory and clerical employees. It should be noted, however, that the similarity of the nature of the work of production employees, which is stressed above, is not the sole reason for providing for the industrial form of collective bargaining. Functional interdependence between the various departments of a plant may lead to the same result, even where there is some difference between the skill required in those departments.

In *Matter of The Acklin Stamping Company*,[7] membership in both of the unions involved was open to all of the company's employees, but one of the unions contended that the tool and die men and the maintenance machinists constituted two separate appropriate units by reason of the greater skill required of these men, and the higher wages paid to them. The Board said:

> The company has divided its plant, consisting of one floor, into numerous small departments for cost purposes and into large departments for purposes of control. The tool and die and die repair department and the machine repair and maintenance department are two of these larger departments. They are separated from one another as are the other departments only by means of a fence. However, not all of the work performed by the employees in the plant including these employees in the two aforementioned departments is performed within the physical confines of their respective departments. The performance of their duties constantly takes them to nearly every other department in the plant. Thus they work and come in contact with employees in the other departments all the time. Although there is some measure of physical separation between the various departments in the plant, including the tool and die repair as well as the machine repair and maintenance departments, all function coherently in the completion of a specific order for goods. Each department in turn contributes its share of work to the filling of every order for goods. Furthermore, every individual department cooperates fully with

[5] See also: *Matter of Consumers' Research, Inc.*, 2 N. L. R. B. 57 and *Matter of Merchants and Miners Transportation Company*, 2 N. L. R. B. 747.
[6] 2 N. L. R. B. 610.
[7] 2 N. L. R. B. 872.

every other one in the completion of the finished product; none of the individual departments is able to complete any specific order for goods without the help of the others.

The Board therefore found a single industrial unit.

In *Matter of Johns-Manville Products Corporation*,[8] the situation was similar. Although the company divided its operations into ten departments, it appeared that this classification was entirely arbitrary; that it had nothing to do with the wages paid; that the departments were not segregated from each other; and that there was a great deal of interchanging of personnel among the various departments. Hence the Board found that there was only a single plant-wide appropriate unit.[9]

A total lack of functional coherence between two departments of a company may be a reason against adopting a single appropriate unit for the employees in both departments, even where the work done is in some respects the same. In *Matter of The American Tobacco Company*,[10] the company involved was engaged chiefly in the manufacture of cigarettes, but also had a separate department for the manufacture of little cigars. This department had its own stemmers, adjusters, feeders, operators, examiners, packers, and finishers. The Board held that the employees in this department should not be included in the appropriate unit for the cigarette production employees. It noted that here there was "a factory within a factory," which could be operated entirely independent of the rest of the plant.

(G) GEOGRAPHICAL CONSIDERATIONS

The geographical arrangement of an employer's business may require separate appropriate units for plants which lie at a great distance from each other.

In *Matter of Atlantic Refining Co. and Local Nos. 310 and 318, International Association of Oil Field, Gas Well, and Refinery Workers of America*,[11] the respondent operated three refineries in the State of Pennsylvania, and one, the Brunswick plant, in the State of Georgia. The latter plant was under the immediate supervision of managerial personnel different from that at the other plants. The Board stated the following as one of the reasons for holding that the employees engaged at the Brunswick plant, with the exception of clerical and supervisory staffs, constituted a unit appropriate for purposes of collective bargaining:

Because of the geographical differences between the Brunswick plant and the other plants and units of the respondent, the labor problems of the employees at the Brunswick plant differ from those of the respondent's employees elsewhere. The rates of pay for certain operations at the Brunswick plant are different from those at the respondent's other plants. The Brunswick plant

[8] 2 N. L. R. B. 1048.

[9] See also: *Matter of United States Stamping Company*, 1 N. L. R. B. 123; *Matter of International Nickel Co., Inc., and Square Deal Lodge No. 40, Amalgamated Association of Iron, Steel, and Tin Workers of North America*, 1 N. L. R. B. 907; *Matter of The Timken Silent Automatic Company*, 1 N. L. R. B. 335; *Matter of Globe Mail Service, Inc.*, 2 N. L. R. B. 610. In *Matter of Segall-Maigen, Inc., and International Ladies' Garment Workers' Union, Local No. 50*, 1 N. L. R. B. 749, the appropriate unit was held to be the production employees at the respondent's factory, excepting cutters, and those in clerical and supervisory positions. But for the fact that the cutters had their own labor organization, they would have been included in the appropriate unit.

[10] 2 N. L. R. B. 198.

[11] 1 N. L. R. B. 359.

is approximately 900 miles from the other refineries and from the home office of the respondent, and therefore a prompt and clear exchange of views between the employees at Brunswick and the employees at the other refineries is difficult.[12]

However, the mere fact of geographical separation, which might otherwise require separate appropriate units, may be overcome by other factors. Thus, in *Matter of Remington Rand, Inc.*,[13] the fact that there was a substantial history of collective bargaining with representatives from several of the respondent's plants together required a finding that the production employees in all of the respondent's plants constituted a single appropriate unit. These plants were located at various points in New York and Connecticut.[14]

G. ADMINISTRATIVE REMEDIES

1. Provisions of the National Labor Relations Act Governing Orders

Section 10 (c) of the act reads, in part, as follows:

* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order.

The various provisions of cease and desist orders issued by the Board will be considered under the five subdivisions of section 8. Provisions of orders requiring affirmative action will be discussed thereafter.

2. Types of Orders Issued by the Board

(A) ORDERS REQUIRING EMPLOYERS TO CEASE AND DESIST FROM ENGAGING IN UNFAIR LABOR PRACTICES

1. *Cease and desist orders in cases where the Board has found that the employer has engaged in unfair labor practices within the meaning of section 8 (1) of the act.*—Where the Board has found that an employer has interfered with, restrained, or coerced his employees in the exercise of the rights guaranteed to them in section 7 of the act, it issues an order requiring the employer to cease and desist from such action. Such orders have been general in nature, and couched in the language of the statute used in sections 7 and 8 (1) of the act. Thus in *Matter of Jones & Laughlin Steel Corporation and Amalgamated Association of Iron, Steel & Tin Workers of North America, Beaver Valley Lodge No. 200*,[15] the Board having found that the respondent, Jones & Laughlin Steel Corporation, had inter-

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[12] See also: *Matter of Pittsburgh Steel Co. and Amalgamated Association of Iron, Steel, and Tin Workers of North America et al.*, 1 N. L. R. B. 256; *Matter of Mosinee Paper Mills Co.*, 1 N. L. R. B. 393; *Matter of Bell Oil & Gas Co.*, 1 N. L. R. B. 562; *Matter of Crucible Steel Company of America*, 2 N. L. R. B. 298.

[13] 2 N. L. R. B. 626.

[14] See also: *Matter of New England Transportation Co.*, 1 N. L. R. B. 130; *Matter of Shell Oil Company of California*, 2 N. L. R. B. 835, where there was a history of collective bargaining similar to that in the *Remington Rand* case; *Matter of Portland Gas and Coke Company*, 2 N. L. R. B. 552, where the distance separating the plants was only 7 miles, and the evidence showed that collective bargaining in the industry in question frequently involved units covering far greater distances.

[15] 1 N. L. R. B. 503.

fered with, restrained and coerced its employees in the exercise of the rights guaranteed in section 7 of the act, ordered the respondent to:

> * * * cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in section 7 of the National Labor Relations Act.[16]

Since under the language of section 8 (1) a violation of any other subdivision of section 8 constitutes also a violation of subdivision (1) the normal order of the Board includes a cease and desist provision of this nature.

Where facts are alleged which constitute a violation of section 8 (1) separate and apart from those which constitute the violation of another subdivision, the Board has also issued another order requiring the employer to cease and desist from engaging in the specific conduct and activities which constitute the violation of section 8 (1). Thus in *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*,[17] the Board found that the respondent had employed a detective for the purpose of espionage within the United Automobile Workers Federal Labor Union No. 19375, and ordered that the respondent "cease and desist from employing detectives or any other persons, for the purpose of espionage within the United Automobile Workers Federal Labor Union No. 19375."[18]

The failure of proof under one subdivision of section 8 does not always mean a dismissal of the complaint. In *Matter of Harrisburg Children's Dress Company and International Ladies' Garment Workers' Union*,[19] the Board found that it was not proven that a discharge had been occasioned by activities on behalf of the union, but that it was clear that the respondent had coerced its employees and interfered with their right to self-organization. The Board

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[16] Similar cease and desist orders were issued by the Board in the following representative cases involving interference with, restraint, or coercion of employees in the exercise of the rights guaranteed in sec. 7 of the act; *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management Company, Corporations, and Local Division No. 1063 of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America*, 1 N. L. R. B. 1; *Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375*, 1 N. L. R. B. 68; *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788; *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill, and Smelter Workers, Local 203*, 2 N. L. R. B. 125; *Matter of Renown Stove Company and Stove Mounters' International Union, Local No. 76, and International Brotherhood of Foundry Employees, Local No. 88*, 2 N. L. R. B. 117.

[17] 1 N. L. R. B. 68.

[18] See also *Matter of Alabama Mills, Inc., and Local No. 2051, United Textile Workers of America*, 2 N. L. R. B. 20, where the Board ordered the respondent, Alabama Mills, Inc., to "cease and desist from in any manner inducing or causing citizens and public officials from interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in sec. 7 of the act;" *Matter of Lukens Steel Company and Amalgamated Association of Iron, Steel and Tin Workers of North America*, 2 N. L. R. B. 1009, where the Board ordered Lukens Steel Company to cease and desist from threatening its employees with discharge if they engaged in union activities, and from carrying on propaganda by the publication of newspaper advertisements or otherwise, against union activities in general and membership in the Amalgamated Association of Iron, Steel, and Tin Workers of North America, affiliated with the Committee for Industrial Organization, in particular; from in any manner inducing and causing citizens, civic bodies, and public officials, and its supervisory and other employees, to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed in sec. 7 of the act, in accordance with the stipulations entered into at the hearing; *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap and Cotton Bag Workers, Local Union No. 2469, Affiliated with United Textile Workers Union*, 1 N. L. R. B. 292, where the Board ordered Atlas Bag and Burlap Company, Inc., "to cease and desist from * * * in any manner * * * offering, soliciting, entering into or continuing and enforcing or attempting to enforce an individual anti-union contract of employment with its employees * * *."

[19] 2 N. L. R. B. 1058.

dismissed the complaint in so far as it concerned a violation of section 8 (3), but issued its usual cease and desist order under section 8 (1) in view of the evidence of the violation of that subdivision.

In several cases where the Board found a violation of section 8 (1) solely by virtue of a finding of a refusal to bargain collectively in violation of section 8 (5), it has deemed it unnecessary to issue a general cease and desist order such as is normally issued in cases involving violations of section 8 (1). In such cases, the order requiring the employer to cease and desist from refusing to bargain collectively with the representatives of his employees was sufficient under the circumstances.[20]

2. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (2) of the act.*—The usual cease and desist order issued by the Board in cases involving the so-called company-controlled, company-dominated, or company-supported unions has likewise followed a general pattern. In a typical instance, the Board found, in *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill and Smelter Workers, Local No. 203*,[21] that the respondent, Alaska Juneau Gold Mining Co. had dominated, interfered with, and contributed financial and other support to a labor organization of their employees known as the Juneau Mine Workers Association, and thereupon ordered the respondent "to cease and desist from dominating or interfering with the administration of the Juneau Mine Workers Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Juneau Mine Workers Association or any other labor organization of its employees, except that nothing in this paragraph shall prohibit the respondent from permitting its employees to confer with it during working hours without loss of time or pay." [22]

A respondent may engage in an unfair labor practice within the meaning of section 8 (2) by attempting to dominate and interfere with the formation of a labor organization, even though no organization ever comes into being. Since the act is remedial, it is appropriate to require such a respondent to cease and desist from unfair labor practices which may, at some future time, be more successful, and the Board has issued such orders.[23]

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[20] See, for example, *Matter of Columbian Enameling & Stamping Co. and Enameling and Stamping Mill Employees Union No. 19694*, 1 N. L. R. B. 181; *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 159*, 2 N. L. R. B. 39; *Matter of Harbor Boatbuilding Co., a Corporation and Ship Carpenters Local Union 1335*, 1 N. L. R. B. 319; *Matter of Atlantic Refining Company; and Local Nos. 310 and 318. International Association of Oil Field, Gas Well and Refinery Workers of America*, 1 N. L. R. B. 359; *Matter of the Canton Enameling and Stamping Company, a Corporation, and Canton Lodge No. 812, International Association of Machinists*, 1 N. L. R. B. 402, and *Matter of Clifford M. DeKay, doing business under the trade name and style of D & H Motor Freight Company and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union No. 649*, 2 N. L. R. B. 231.

[21] 2 N. L. R. B. 125.

[22] In some cases, a shorter form has been used: "Cease and desist from dominating or interfering with the formation and administration of any labor organization of its employees or contributing financial and other support thereto." See, for example, *Matter of International Harvester Company and Local Union No. 67, International Union and United Automobile Workers of America*, 2 N. L. R. B. 310; *and Matter of Carlisle Lumber Company, a Corporation, and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington, and Associated Employees of Onalaska, Incorporated, a Corporation, Intervener*, 2 N. L. R. B. 248.

[23] *Matter of Milljay Manufacturing Company, Inc. and American Federation of Hosiery Workers, Branch 40*, 2 N. L. R. B. 919; and *Matter of Canvas Glove Manufacturing Works, Inc. and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519.

Certain specific conduct of the respondent in violation of section 8 (2) has called for a more particularized cease and desist order prohibiting the particular conduct found to be contrary to the act.[24] But such an order has supplemented rather than replaced the general cease and desist order.

3. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (3) or (4) of the act.*—Cease and desist orders in cases arising under section 8 (3) of the act have been adapted to the circumstances of each case but have nevertheless retained a general form. In *Matter of Fruehauf Trailer Company*,[25] the Board found that the respondent had discriminated against its employees within the meaning of section 8 (3) of the act, and thereupon issued an order to—

Cease and desist from discouraging membership in United Automobile Workers Federal Labor Union No. 19375, or any other labor organization of its employees by discrimination in regard to hire or tenure of employment or any term or condition of employment.

In many cases arising under section 8 (3), the Board has pointed to the specific type of discrimination which its cease and desist order is designed to prevent.[26] At the same time, these orders have included the more general phraseology requiring the employer to cease and desist from in any manner encouraging or discouraging membership in any labor organization.

The first case involving a violation of section 8 (4) to come before the Board was *Matter of Friedman-Harry Marks Clothing Company, Inc. and Amalgamated Clothing Workers of America*,[27] in

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[24] See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97, where the Board ordered the Clinton Cotton Mills to "cease and desist (*a*) from permitting its overseers * * * and other supervisory officials to remain or become officers or members of the Clinton Friendship Association, to participate in its activities and to solicit membership in it; and (*b*) from affording the Clinton Friendship Association the privileges of having its dues collected by the respondent (Clinton Cotton Mills) from the wages of its members and of soliciting for members during working hours and on mill property unless similar privileges are offered to Local Union No. 2182, United Textile Workers of America and any other labor organization of its employees"; and *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, Affiliated with United Textile Workers Union*, 1 N. L. R. B. 292, where the Board ordered the Atlas Bag & Burlap Co., Inc., to cease and desist "from in any manner soliciting or encouraging membership in such organizations (company unions) and from dealing with or recognizing such organizations as representing its employees and from continuing the existence of such organizations."

[25] 1 N. L. R. B. 68.

[26] See, for example, *Matter of Clinton Cotton Mills and Local No. 2182, United Textile Workers of America*, 1 N. L. R. B. 97, where the Board ordered the Clinton Cotton Mills to "cease and desist (a) from requiring as a condition of employment in its mill that the employee or applicant for employment become a member of the Clinton Friendship Association (company dominated union) or sign a power of attorney or other document authorizing the Clinton Friendship Association to represent him for the purpose of collective bargaining or grant any other authorization to the Clinton Friendship Association * * *"; *Matter of Radiant Mills Company, a Corporation, and J. R. Scarbrough and George Spisak*, 1 N. L. R. B. 274, where the Board ordered the Radiant Mills Co. to "cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined or assisted American Federation of Hosiery Workers, Local No. 114. * * *"; *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers, Local Union No. 2469, Affiliated with United Textile Workers' Union*, 1 N. L. R. B. 292, where the Board ordered the Atlas Bag & Burlap Co., Inc., to "cease and desist from * * * in any manner * * * offering, soliciting, entering into or continuing or enforcing or attempting to enforce an individual anti-union contract of employment with its employees * * *"; and *Matter of Anwelt Shoe Manufacturing Company and Shoe Workers' Protective Union, Local No. 80*, 1 N. L. R. B. 939, where the Board ordered the Anwelt Shoe Manufacturing Co. to cease and desist "from discouraging membership in the Shoe Workers' Protective Union, or any other labor organization of its employees, by discharging, threatening to discharge, or refusing to reinstate any of its employees for joining or assisting the Shoe Workers' Protective Union or any other labor organization of its employees."

[27] 1 N. L. R. B. 411.

which the Board found that the respondent had discharged an employee for having filed charges under the act. The Board's cease and desist order in that case simply required the Friedman-Harry Marks Clothing Co., Inc., to cease and desist "from discharging or otherwise discriminating against any of its employees for filing charges or giving testimony under the National Labor Relations Act."

Only one other case has thus far involved similar charges. In *Matter of Willard, Inc., operating under the name and style of Willard Hotel, and Hotel and Restaurant Employees Alliance, Local 781*,[28] the Board found that Willard, Inc., had discharged an employee because she had given testimony under the act, at a prior hearing, and thereupon issued a similar order.[29]

4. *Cease and desist orders in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (5) of the act.*—Cease and desist orders in cases involving refusals to bargain collectively have been simple in nature and uniform in language. A typical case is *Matter of Jeffery-DeWitt Insulator Company and Local No. 455, United Brick and Clay Workers of America*,[30] where the Board ordered the respondent to:

> Cease and desist from refusing to bargain collectively with Local No. 455 as exclusive representative of its employees engaged in production in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Similar orders have been issued in all the other cases involving a refusal to bargain collectively.[31]

(B) ORDERS REQUIRING EMPLOYERS TO TAKE AFFIRMATIVE ACTION WHICH WILL EFFECTUATE THE POLICIES OF THE ACT

With the exception of cases in which the respondent has already taken such action as would be directed by the Board,[32] the Board's orders normally require the respondent who has engaged in unfair labor practices to take certain affirmative action deemed necessary to effectuate the policies of the act. In general the Board has sought in its affirmative orders to remedy the harm done by the unfair labor practices of the respondent and to restore the situation to that which existed before the start of such conduct. Since the action necessary for such restoration differs with each case, the affirmative provisions of the Board's orders have varied more widely than have the cease and desist provisions. Nevertheless the Board has developed a consistent and uniform policy.

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[28] 2 N. L. R. B. 1094.

[29] See also *Matter of Baer Co., Inc., and United Textile Workers of America*, 1 N. L. R. B. 159, where the Board issued an order requiring the Baer Co., Inc., to "cease and desist * * * from any conduct inconsistent with compliance with the requirements of section 8, subdivisions (1), (2), (3), (4), and (5) of the National Labor Relations Act", in accordance with the terms of a stipulation agreed upon between the Baer Co., Inc., and the Board at the hearing in that case.

[30] 1 N. L. R. B. 618.

[31] See for example, *Matter of M. H. Birge & Sons Company and United Wall Paper Crafts of North America*, 1 N. L. R. B. 731; *Matter of Columbia Radiator Company and International Brotherhood of Foundry Employees, Local No. 79*, 1 N. L. R. B. 847; *Matter of St. Joseph Stock Yards Company, a corporation, and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159*, 2 N. L. R. B. 39; and *Matter of Carlisle Lumber Company, a Corporation, and Lumber and Sawmill Workers' Union, Local No. 2511, Onalaska, Washington, and Associated Employees of Onalaska Incorporated, a Corporation, Intervener*. 2 N. L. R. B. 248.

[32] *Matter of Nolan Motor Company, Inc., and International Association of Machinists, Local No. 193*, 2 N. L. R. B. 357.

1. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (1) of the act.*—Specific affirmative orders in cases involving a violation of section 8 (1) have been required in relatively few cases. In two cases, the Board has sought to right patent discrimination against a national labor organization, and in favor of a company-dominated union, by ordering the company to treat both unions alike when it granted special privileges. In *Matter of Alaska Juneau Gold Mining Company*,[33] the Board ordered Alaska Juneau Gold Mining Co. to "prohibit the use of its bulletin boards for posting of notices by the Juneau Mine Workers' Association or any other labor organization of its employees unless free and unconditional privileges as to the use thereof shall be equally extended to International Union of Mine, Mill and Smelter Workers, Local No. 203, and to any other labor organization of its employees." A similar order with respect to the use of the community hall, or other property of the respondent, for meetings of labor organizations, was made in *Matter of Wallace Manufacturing Company, Inc., and Local No. 2237, United Textile Workers of America.*[34]

In *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America*,[35] the evidence before the Board showed that the respondent's overseers and foremen had, at least tacitly, encouraged membership in the Good Will Club; that the respondent did not deny the existence of a closed-shop agreement with the Good Will Club, although the latter had, without authorization from the respondent, published a notice on the mill's bulletin boards that a closed-shop agreement had been entered into; and that this silence precipitated an influx of membership into the club. The Board found that the evidence did not warrant a finding of a violation of section 8 (2), but that the respondent, by such conduct, had violated section 8 (1). Since the crux of this violation was the subtle coercion practiced by the employer in failing to deny the existence of the closed-shop contract, a general cease and desist order alone would have been of little effect. The Board also ordered that the respondent post notices, in conspicuous places about its plant, stating that there was no closed-shop agreement with the club.

Upon a reconsideration of its order, on the union's petition for modification, and for an order disestablishing the Good Will Club as a representative for the purposes of collective bargaining with the Atlanta Woolen Mills, the Board issued a supplementary decision,[36] modifying its previous order. In speaking of the earlier order, the Board stated:

> We now believe that this order did not go far enough on the facts as found. It merely requires the respondent to make an announcement that there is no closed shop agreement with the Good Will Club. However, we found that if it had not been for the affirmative acts of the respondent's officers and the respondent's failure to act with respect to the closed shop notices on the bulletin boards, the Good Will Club would not have succeeded in enlisting the membership of most of the employees. The only effective remedy which

[33] 2 N. L. R. B. 125.
[34] 2 N. L. R. B. 1081.
[35] 1 N. L. R. B. 316.
[36] *Matter of Atlanta Woolen Mills and Local No. 2307, United Textile Workers of America, Supplementary Decision and Modification of Order*, 1 N. L. R. B. 328.

will restore the situation as it existed before the respondent interfered with the self-organization of its employees is to require the disestablishment of the Good Will Club. We feel that in going this far we are doing no injustice to the respondent, inasmuch as it is clear on the evidence, and we have so found, that before the respondent had interfered in the manner set forth, the Good Will Club led merely a formal existence. If we were right in concluding on the evidence that the club was feeble and insignificant as an organization representing the employees before the respondent gave it life, we feel that we are justified in requiring such action as will render the club as ineffective as it had previously been. We do not believe that the posting of a notice stating no more than that there is no closed shop agreement can achieve this result.

With respect to its power to issue an order disestablishing the Good Will Club as a bargaining agency in the absence of a finding that section 8 (2) had been violated by the Atlanta Woolen Mills, the Board stated:

In basing an order that the club be disestablished as a bargaining agency on a conclusion that section 8, subdivision (1), of the act has been violated, and not, as is normally the case, on a conclusion that section 8, subdivision (2), has been violated, we are not exceeding the power granted to the Board in section 10, subdivision (c), of the act, wherein the Board is empowered to require the taking of 'such affirmative action as will effectuate the policies of this act.' It is clear from this provision that in order to require the disestablishment of a labor organization as a bargaining agency, it is not essential that the Board conclude that an employer has violated section 8, subdivision (2), with respect to it. We construe section 10, subdivision (c), as empowering the Board to require the taking of such affirmative action as will provide an appropriate and effective remedy for any violations of any subdivision of section 8.

The Board then ordered the Atlanta Woolen Mills to "withdraw all recognition from the Good Will Club as the representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work," and to post notices in conspicuous places in its mill, stating that the Good Will Club was so disestablished, and that it would refrain from any recognition thereof. In all other respects the modified order was identical to the original.

In *Matter of Alabama Mills, Inc., and Local No. 2051, United Textile Workers of America*,[37] the Board found that the respondent, by repeatedly refusing to meet a union committee for negotiations concerning the return to work of strikers, in accordance with the terms of a November 1934 settlement proposal, thus denying to its employees their right to bargain collectively, and by causing its officials and the public officials of the town to terrorize the mill workers into renouncing union membership, had violated section 8 (1). In view of these findings, the Board found it unnecessary to pass on the specific allegations of the complaint charging the respondent with a refusal to bargain within the meaning of section 8 (5) of the act. The Board ordered Alabama Mills to "upon request, enter into negotiations with Local No. 2051 for the purpose of collective bargaining in respect to the strike settlement proposal of November 1934."

In *Matter of Brown Shoe Company, Inc., a corporation, and Boot and Shoe Workers' Union, Local No. 655*,[38] the Board found that the respondent's arbitrary termination of a seniority agreement with the union in violation of section 8 (1) was responsi-

[37] 2 N. L. R. B. 20.
[38] 1 N. L. R. B. 803.

ble for the strike at its plant on October 14, 1935. In order to restore the status quo in existence before the strike, the Board directed that the Brown Shoe Co. offer reinstatement to its striking employees and, upon request, enter into negotiations for the purpose of collective bargaining, in respect to this seniority arrangement. The reason for such order was set forth in the decision as follows:

The strike at the Salem plant on October 14 was caused by the respondent's conduct in arbitrarily terminating the seniority agreement with the union and by other antiunion conduct for which we have found it to be responsible. Moreover, we have found that the violent breaking of the picket line on the day of the strike was caused by the respondent, this conduct amounting to interference, restraint, and coercion of its employees in the exercise of their right to concerted activities for mutual aid and protection. An order requiring the respondent to cease and desist from such conduct will not wholly restore the union to at least the position it occupied in the Salem plant on the day of the strike. We shall, therefore, in order to restore the status quo, order the respondent to offer reinstatement to those employees at the Salem plant who went out on strike on October 14, and to that end, if necessary, to displace employees hired since October 14 to take the places of strikers. In order to restore the status quo, we shall also order the respondent to enter into negotiations with the union with the object of reaching an agreement in regard to the seniority arrangement which the respondent arbitrarily abrogated in violation of its employees' rights to collective bargaining in respect to conditions of employment.

2. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (2) of the act.*—In cases in which the Board has found violations of section 8 (2), the cease and desist order has been accompanied by an affirmative order requiring the employer to withdraw all recognition from, and to disestablish, the company-dominated union as the representative of his employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.[39] In such cases the Board has also ordered the respondent to post notices in conspicuous places about his plant or place of business stating that the union is so disestablished and that the respondent will refrain from any such recognition.[40]

The reason for ordering the disestablishment of a labor organization as a collective bargaining agency, where such organization is found to be company-controlled, company-dominated, or company-supported, is succinctly set forth by the Board in its decision in *Matter of Wheeling Steel Corporation & The Amalgamated Association of Iron, Steel & Tin Workers of North America, N. R. A. Lodge No. 155, Good Will Lodge No. 157, Rod & Wire Lodge No. 158, Golden Rule Lodge No. 161, Service Lodge No. 163.*[41] In that case the Board stated:

Simply to order the respondent to cease supporting and interfering with the councils would not set free the employee's impulse to seek the organization

[39] It should be noted that the order does not require disestablishment of the union as such, but merely disestablishment as representative for purposes of collective bargaining.

[40] In *Matter of International Harvester Company and Local Union No. 57, International Union, United Automobile Workers of America*, 2 N. L. R. B. 310; *Matter of Lion Shoe Company, a corporation, and United Shoe and Leather Workers Union*, 2 N. L. R. B. 819; *Matter of Hill Bus Company, Inc., and Brotherhood Railroad Trainmen, Rockland Lodge No. 329, Spring Valley, New York*, 2 N. L. R. B. 781; *Matter of Wallace Manufacturing Company, Inc., and Local No. 2237, United Textile Workers of America*, 2 N. L. R. B. 1081; *Matter of Pacific Greyhound Lines, Inc., and Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431.

[41] 1 N. L. R. B. 699.

which would most effectively represent him. We cannot completely eliminate the force which the respondent's power exerts upon the employee. But the councils will, if permitted to continue as representatives, provide the respondent with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen the council as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these unlawful compulsions. Consequently the respondent must affirmatively withdraw recognition from departmental and general councils, as organizations for the purpose of collective bargaining upon behalf of its employees.[42]

In *Matter of Atlas Bag and Burlap Company, Inc. and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, Affiliated with United Textile Workers Union,*[43] the Board ordered the Atlas Bag & Burlap Co. to—

personally inform in writing the officers of the Atlas Bag & Burlap Co. Employees' Union and the members of the Collective Bargaining Committee of the Atlas Bag & Burlap Co. that these organizations have been formed and administered in violation of the National Labor Relations Act * * *, and that the respondent will not in any manner deal with or recognize such organizations, and that they shall be dissolved and cease to exist.

In *Matter of Lukens Steel Company, a corporation, and Amalgamated Association of Iron, Steel & Tin Workers of North America,*[44] the Board also ordered the respondent, in accordance with stipulations entered into at the hearing, to—

take every possible legal means to secure the surrender of the charter of Lukens Employees Association and to do everything in its power to secure its dissolution; * * * inform all of its officials and agents, including superintendents, foremen and other supervisory employees that they shall not in any manner approach employees concerning or discuss with employees the question of their labor affiliations, or threaten employees in any manner because of their membership in any labor organization in general, or the Amalgamated Association of Iron, Steel & Tin Workers of North America in particular.

3. *Orders requiring affirmative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (3) or (4) of the act.*—In all but a few cases involving discriminatory discharges, discriminatory refusals to employ or reinstate, or discriminatory demotions in violation of section 8 (3), the Board has ordered the employer to offer reinstatement to the employee discriminated against and to make whole such employee for any loss of pay that he has suffered by reason of the discrimination.[45]

The orders requiring the employer to offer reinstatement to the employee discriminated against have further required that such offer of reinstatement be made with respect to the former position held by the employee, and that it be made without prejudice to any senior-

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[42] See also, *Matter of Carlisle Lumber Company, a Corporation, and Lumber & Sawmill Workers' Union, Local 2511, Onalaska, Washington, and Associated Employees of Onalaska, Incorporated, a Corporation, Intervener,* 2 N. L. R. B. 248; *Matter of Oregon Worsted Company, a corporation, and United Textile Workers of America, Local No. 2435,* 1 N. L. R. B. 915; and *Matter of Ansin Shoe Manufacturing Company and Shoe Workers Protective Union, Local No. 80,* 1 N. L. R. B. 929.

[43] 1 N. L. R. B. 292.

[44] 2 N. L. R. B. 1009.

[45] In *Matter of Isador Panitz, doing business under the trade name and style of Yale Underwear Company, and Amalgamated Clothing Workers of America, Local No. 127,* 1 N. L. R. B., 539, and *Matter of Greensboro Lumber Company and Lumber and Sawmill Workers' Local Union No. 2688, United Brotherhood of Carpenters and Joiners of America,* 1 N. L. R. B. 629, no back pay was ordered under the circumstances of the cases.

ity rights, or other rights and privileges previously enjoyed by him.[46] In particular cases, the order has been changed to require reinstatement to a position corresponding to that previously held, if for one reason or another, reinstatment to the previous position is impossible or unlikely. Thus in *Matter of Oregon Worsted Company, a Corporation and United Textile Workers of America, Local 2435*,[47] where reinstatement of the discharged employee to his former position could not be ordered because the work which he formerly performed had greatly diminished and had been divided among a number of girls who also performed other tasks, the Board ordered the respondent to offer to the discharged employee reinstatement to a position substantially equivalent in wages and type of work to the position which he formerly held. This order was motivated in part by the finding that the discharged employee had been hired in the original instance as an inexperienced worker, that he learned his work well, and that he was complimented by his foreman on his thoroughness in performing it. Under such circumstances, the Board concluded that—

> In all likelihood * * * it will not be difficult for him to adapt himself to new work.

Individual anti-union, or "yellow-dog," contracts come directly within the prohibition of section 8 (3). Several cases involving such contracts have come before the Board. In *Matter of Carlisle Lumber Company and Lumber and Sawmill Workers' Union, Local 2511, Onalaska, Washington, and Associated Employees of Onalaska, Inc., Intervener*,[48] the respondent announced a "yellow-dog" policy of not hiring any workers unless they renounced all affiliations with labor organizations, and further solicited and required them to sign applications for work whereby they agreed to renounce all such affiliations. In its decision, the Board ordered the Carlisle Lumber Co. to cease and desist from so doing, and to personally inform each and every one of its employees who had entered into a "yellow-dog" contract with it, that such contract constituted a violation of the National Labor Relations Act, and that it was therefore obliged to discontinue such contract, as a term or condition of employment, and to desist from in any manner enforcing or attempting to enforce such contract. The respondent was also ordered to post notices stating that—

> the "yellow-dog" contracts of employment entered into between it and some of its employees are in violation of the National Labor Relations Act, and that it will no longer offer, solicit, enter into, continue, enforce, or attempt to enforce such contracts with its employees.[49]

In some cases employers have varied the technique of the "yellow-dog" contract by making it impossible for workers to secure employment or reinstatement unless they agree to renounce membership

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[46] See, for example, *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*, 2 N. L. R. B. 1; *Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America*, 2 N. L. R. B. 952; *Matter of Mackay Radio and Telegraph Company, a corporation, and American Radio Telegraphists' Association, San Francisco Local No. 3*, 1 N. L. R. B. 201; and *Matter of National New York Packing and Shipping Company, Inc., and Ladies Apparel Shipping Clerks Union, Local No. 19953*, 1 N. L. R. B. 1009.

[47] 1 N. L. R. B. 915.

[48] 2 N. L. R. B. 248.

[49] For a similar order, see *Matter of Atlas Bag and Burlap Company, Inc., and Milton Rosenberg, Organizer, Burlap & Cotton Bag Workers Local Union No. 2469, Affiliated with Textile Workers Union*, 1 N. L. R. B. 292.

in a labor organization to which they belong and to become members of a company-dominated union. In *Matter of Lion Shoe Company and United Shoe and Leather Workers' Union*,[50] the Board found that the respondent had resorted to this device, and ordered that the employees be offered reinstatement, and at the same time be notified that they would not be required either to relinquish their membership in the union to which they belonged or to submit to the terms of the illegal (closed shop) agreement between the respondent and the company-dominated union.

Within the past year several cases involving adaptations of the usual reinstatement order have arisen. The most important of these have involved the problem of the "runaway" mill or factory. Where employers have attempted to evade their responsibilities under the act by removing, or threatening to remove, their plants to so-called good labor towns, the Board has not only required the reinstatement of employees to their positions, wherever operations are resumed, but has also ordered the respondent to pay the transportation expenses of any employee (and his family) who is forced to move in order to obtain reinstatement. Thus in *Matter of S & K Knee Pants Company, Inc. and Amalgamated Clothing Workers of America*,[51] the Board found that the respondent, S & K Knee Pants Co., had closed its plant in Lynchburg, Va., with the intent of removing operations to a new location at Culpeper, Va., in order to avoid recognition of, and collective bargaining with, the union. The Board, unaware at the time of hearing as to whether the respondent had resumed operations at its Lynchburg plants, or at any other place, ordered the respondent, its officers, agents, successors, and assigns, to take the following affirmative action, which it found would effectuate the policies of the act:

(*a*) If it has not resumed operations since the date of the hearing, upon application reinstate to their former positions without prejudice to seniority or other rights and privileges previously enjoyed, all of its employees on any of its pay rolls during the period from September 13 to October 18, 1935, who have not since obtained regular and substantially equivalent employment elsewhere, before employing any other persons, whenever it resumes operation of its Lynchburg plants or commences operations in any other plant or plants, in Lynchburg or Culpeper, Va., or elsewhere whether such operations be resumed or commenced in its present corporate title or any other corporate or other title;

(*b*) If it has resumed operations since the date of the hearing, regardless of where such operations have been resumed and regardless of whether such operations have been resumed under its present corporate title or under any other corporate or other title, upon application reinstate to their former positions, without prejudice to seniority or other rights and privileges previously enjoyed, all of its employees, who were on any of its pay rolls during the period from September 13 to October 18, 1935, who have not since obtained regular and substantially equivalent employment elsewhere, to the extent that work for which they are now available is being performed by persons engaged for the first time since October 18, 1935, and dismissing if necessary such persons so engaged, and place the remainder of such employees on a preferred list prepared on the basis of seniority in their respective classifications, to be called for reinstatement as and when their services are needed;

(*c*) Reimburse each of its employees for transportation expenses, including the expense of transporting their families, occasioned by removal from Lynchburg, Va., to some other place in order to obtain reinstatement.[52]

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[50] 2 N. L. R. B. 819.

[51] 2 N. L. R. B. 940.

[52] In a later Supplement to Decision, 2 N. L. R. B. 951, the Board, advised that the respondent had resumed operations, ordered that section (b) of the order quoted above be modified by inserting between the words "application" and "reinstate" the words "on

In *Matter of Herbert Robinson and Otto A. Golluber, Co-Partners, doing business under the firm name and style of Robinson and Golluber, and Wholesale Dry Goods Employees Union, Federal Local 19932*,[53] a modification of the usual reinstatement order was likewise found necessary to effectuate the policies of the act. In this case, it was contended that the departments in which the four discharged employees had been working had been permanently abandoned, making reinstatement impossible. However, the evidence at the hearing showed that the departments in question had not been abandoned, but simply removed from New York City to Clifton, N. J., and that respondents were therefore in a position to offer reinstatement at Clifton if not at New York City. The Board thereupon ordered the respondents to offer to the four discharged employees "immediate and full reinstatement to their former positions or to positions corresponding to those formerly held, in respondents' place of business either in New York City or in Clifton, N. J., with all rights and privileges previously enjoyed, and with pay at not less than the rate paid at the time of their discharge."

In *Matter of Louis Hornick & Company, Inc., and Textile Trimming Workers Union, Local 2440, United Textile Workers of America*,[54] under the terms of an existing contract with the union, the latter supplied knitters to the respondent and divided the available work among its members. The Board's order required the respondent to reinstate in accordance with the custom prevailing between it and the union prior to the lockout. Because it was uncertain which employees would be reinstated, the Board ordered that the knitters discriminated against be made whole by payment to them of a sum equal to that of the respondent's pay roll budgeted to knitters, from the date of the lockout to the time the respondent offered reinstatement.

Employees who have been discriminated against and who have consequently suffered a loss, are entitled to back pay up to the date of the offer of reinstatement. The date from which such back pay is

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or before November 15, 1937," thus affording employees 30 days from the date of such further order to apply for reinstatement. See *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626, for an order similar to the one in the principal case. In making provision for the moving and allocation of employees at the various plants of the respondent, the Board said:

"In this fashion as far as possible employees will be reinstated in the plants in their own towns and will not be required to move elsewhere. But after such reinstatement there will still be a large group of employees, composed almost exclusively of Norwood, Syracuse, and Middletown employees, who will have to move to other cities in order to obtain reinstatement. Consequently, all such production and maintenance employees not reinstated in the plant in their own towns shall be grouped together, regardless of the plant in which they were previously employed, on a single preferential list on the basis of seniority by classifications, to be offered the positions at the Elmira plant, and any positions still available at any of the other plants after those who struck at such plants have been reinstated. At Elmira, as well as elsewhere, individuals employed since May 26, 1936, who were not employed on that date must be dismissed if such action is necessary to effectuate such reinstatement. Thereafter, this list shall be drawn upon whenever further employees are needed at any of the plants involved, including the Elmira plant, preference being given to employees on the list then residing in the locality in which employment is available. The respondent will be ordered to pay the transportation expenses of any employee and his family who is forced to move in order to obtain reinstatement under these conditions. As can be gathered, the Board has attempted to keep such moving to a minimum by ordering that available positions at each plant be filled by employees residing in the locality. Finally, as many of the employees who had, prior to the strike, designated the Joint Board as their representative for collective bargaining will thus be reinstated to the Elmira plant instead of to the plants where they had worked on May 26, 1936."

[53] 2 N. L. R. B. 460.
[54] 2 N. L. R. B. 983.

computed varies with the type of case: in cases of discriminatory discharge, from the date of the discharge;[55] in cases of discriminatory refusal to employ or reinstate, from the date of the refusal;[56] and in all other cases, from the date when the discrimination first caused a loss. The Board has generally ordered that back pay be computed at the normal rate of pay received by the employee at the time of his discharge or lay-off.[57] Where the application of this principle was difficult or impossible the Board has applied rules suited to the particular circumstances.[58]

Back-pay orders usually require that there be deducted from the sum due the employee any amount he may have earned during the period involved.[59] However, no deductions are made in cases where the employee has continued to earn money at occupations in which he had simultaneously and regularly engaged while working for the respondent,[60] unless the money was earned during the hours in which he would normally have worked for his employer had he not been discharged.[61]

In several cases involving discriminatory discharges, the Board has accompanied its back-pay order with the further direction that all disputes as to the amount of such back-pay be laid before it, for determination in accordance with its order.[62]

Where a trial examiner has found in his intermediate report that the employer has not violated section 8 (3) of the act, and the Board has reversed the finding of the trial examiner, the Board has not ordered back pay for the period between the date of the intermediate

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[55] See, for example, *Matter of The Associated Press and American Newspaper Guild*, 1 N. L. R. B. 788.

[56] See, for example, *Matter of Mooresville Cotton Mills and Local No. 1221, United Textile Workers of America*, 2 N. L. R. B. 952. In *Matter of National Casket Company, Inc., and Casket Makers Union 19559*, 1 N. L. R. B. 963, where the discriminatory conduct involved a refusal to reinstate employees who had been discharged in 1934, the Board ordered back pay in the case of each employee from the date after the refusal to reinstate, on which another person was hired to do the work formerly done by him, to the date of the offer of reinstatement.

[57] See, for example, *Matter of Martin Dyeing and Finishing Company and Federation of Dyers, Finishers, Printers, and Bleachers of America*, 2 N. L. R. B. 403, and *Matter of Hardwick Stove Company, Inc., and International Molders' Union of North America*, 2 N. L. R. B. 78.

[58] See, for example, *Matter of Louis Hornick & Company, Inc.*, 2 N. L. R. B. 983, *supra; Matter of Clark & Reid Company, Inc., and Curtis & Croston, Inc., and Piano & Furniture Movers, Drivers, Packers & Helpers Local Union No. 82*, 2 N. L. R. B. 516, where the Board ordered the back pay of irregular employees to be a sum equal to that which each of them would normally have earned, computed at the average amount earned by similar employees who took their places; *Matter of Club Troika, Inc., and Hotel and Restaurant Employees Alliance, Local 781*, 2 N. L. R. B. 90, and *Matter of Willard, Inc.*, 2 N. L. R. B. 1094, where the Board ordered that the amount of average weekly tips received in the 3 months prior to the discharge, be added to the regular weekly wages; *Matter of Agwilines, Inc., and International Longshoremen's Association, Local No. 1402*, 2 N. L. R. B. 1, where back pay was computed at the rate, normal and overtime, earned by employees doing the same work in similar positions since the discharge; *Matter of Union Pacific Stages, Inc., and Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division 1055*, 2 N. L. R. B. 471, where back pay was ordered to be computed according to the average weekly earnings of the discharged employees for the 6 months immediately preceding the discharge; and *Matter of Bell Oil and Gas Company, Burke-Divide Oil Company, Consolidated, Reno Oil Company and International Association of Oil Field, Gas Well & Refinery Workers of America, Local No. 258, and George E. Bebermeyer*, 2 N. L. R. B. 577 (plus the fair value of whatever housing and lights the respondents would normally have furnished during the period, less any actually furnished).

[59] See, for example, *Matter of Quidnick Dye Works, Inc., and Federation of Dyers, Finishers, Printers, and Bleachers of America*, 2 N. L. R. B. 963, and *Matter of The Associated Press*, 1 N. L. R. B. 788.

[60] *Matter of Louis Hornick & Company, Inc., and Textile Trimming Workers Union, Local 2440, United Textile Workers of America*, 2 N. L. R. B. 983; *Matter of Anwelt Shoe Manufacturing Company and Shoe Workers Protective Union, Local No. 80*, 1 N. L. R. B. 939.

[61] *Matter of Pusey Maunes & Breish Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 195*, 1 N. L. R. B. 482.

[62] *Matter of United Aircraft Manufacturing Corporation and Industrial Aircraft Lodge No. 119, Machine, Tool, and Foundry Workers' Union*, 1 N. L. R. B. 236.

report and the date of its decision.[63] The reason for this rule is set forth by the Board in *Matter of E. R. Haffelfinger Co., Inc., and United Wall Paper Crafts of North America, Local No. 6:*[64]

In order to undo, so far as possible, the harm resulting from the unfair labor practices, we are ordering respondent to reinstate the eight discharged employees. Normally, we would also order back pay from the date of discharge to the time of respondent's offer of reinstatement. We believe, however, that in view of the trial examiner's recommendations, respondent could not have been expected to reinstate the discharged men after it received the intermediate report (Jan. 17, 1936), and therefore it should not be required to pay back-pay from that time to the date of this decision.[65]

In cases of discriminatory refusal to reinstate after a strike or walkout, the Board has ordered the respondent to: Reinstate employees to their former positions, dismissing if necessary all those hired since the date of the strike or walkout; place all those for whom positions were not immediately available on a preferential seniority list; and make whole such of the employees who receive employment by payment of back pay from the date of the refusal to reinstate to the date of the offer of reinstatement.[66] In *Matter of Timken Silent Automatic Company, a Corporation, and Earl P. Ormsbee, Chairman, Executive Board, Oil Burner Mechanics Association,*[67] the Board adverted to some important rules concerning the availability of old employees for reinstatement, and the use of a seniority rule in returning them to work.[68]

* * * A number of the men to be reinstated have performed more than one type of work for the respondent. Ormsbee, for example, has done installation, service work, and inspection. Ormsbee's availability is, apparently, not limited to the last job he held. Insofar, therefore, as it was customary to regard a man as available for more than one job, that fact shall be taken into consideration in determining whether a new man is now filling a job for which an old man is available. Assuming that on this basis there are fewer jobs than there are available men, the men will receive preference according to their seniority, except that a man who was actually employed at the time of the strike in the job to be filled shall be preferred to one who was not so employed. It is possible that the respondent does not observe seniority rules in its business. We believe, however, that the form of relief is necessary to accomplish the policies of the act. Certain of the 18 men in question were more prominent in union activity than others. If we permit the respondent to choose among them, discrimination, though within a narrower range, may be continued. Seniority is prima facie a relevant criterion of fitness, so that, as at present advised, we believe the application of that rule would operate fairly.

In many cases, discriminatory discharges are followed by strikes called in protest against such unfair labor practices. In these cases,

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[63] *Matter of Mann Edge Tool Company and Federal Labor Union 18779,* 1 N. L. R. B. 977, and *Matter of Brown Shoe Company, Inc.,* 1 N. L. R. B. 803.

[64] 1 N. L. R. B. 760.

[65] See also, *Matter of Bell Oil and Gas Company, Burke-Divide Oil Company, Consolidated, Reno Oil Company and International Association of Oil Field, Gas Well & Refinery Workers of America, Local No. 258, and George E. Bebermeyer,* 2 N. L. R. B. 577. In *Matter of Hill Bus Company, Inc., and Brotherhood of Railroad Trainmen, Rockland Lodge, No. 329, Spring Valley, New York,* 2 N. L. R. B. 781, no back pay was ordered from the time of a prior order of a State court to the date of the decision of the Board.

[66] *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill, and Smelter Workers, Local No. 203,* 2 N. L. R. B. 125; *Matter of Segall-Maigen, Inc., a Corporation, and International Ladies Garment Workers' Union, Local No. 50,* 1 N. L. R. B. 749.

[67] 1 N. L. R. B. 335.

[68] Preferential seniority lists were ordered in: *Matter of Alabama Mills,* 2 N. L. R. B. 20; *Matter of Remington Rand, Inc.,* 2 N. L. R. B. 626; *Matter of Globe Mail Service, Inc., and Bookkeepers, Stenographers, and Accountants Union, Local 12646,* 2 N. L. R. B. 610; and *Matter of Segall-Maigen, Inc., a Corporation, and International Ladies' Garment Workers' Union, Local No. 50,* 1 N. L. R. B. 749.

reinstatement of the discharged employees alone would not restore the situation as it existed before the start of the unfair labor practices. The Board has held that the policies of the act could only be fully effectuated by also restoring the striking employees to their former positions. As in other cases, the striking employees must be reinstated upon application even though it means the displacement of workers hired since they left work, and if all cannot be put back to work, then the remainder are to be placed upon a preferential seniority list.[69]

In cases of strikes caused by discriminatory discharges, back pay is awarded to employees thus discharged before the strike begins from the date of their discharge to the date of the strike, if the plant was operating in that period, and again from the date on which operations in their departments began after the reopening of the plant to the date of offer of reinstatement; the back pay of striking employees in such a situation is usually ordered to be computed from the time of the discriminatory refusal to reinstate to the offer of reinstatement.[70]

In the two cases in which the Board has found violations of section 8 (4) of the act, *Matter of Friedman-Harry Marks Clothing Company, Inc.*,[71] and *Matter of Willard, Inc.*,[72] employees were discharged for filing charges or giving testimony under the act. In both cases, the Board issued orders requiring their reinstatement, similar to orders in cases of discharges falling within section 8 (3).

4. *Orders requiring affimative action in cases where the Board has found that an employer has engaged in unfair labor practices within the meaning of section 8 (5) of the act.*—In cases where the Board has found that an employer has refused to bargain collectively with the representatives of his employees, it has consistently ordered the employer to bargain collectively with such representatives, upon request to do so.[73] Thus in *Matter of Jeffery-DeWitt Insulator Company*,[74] the Board ordered that the respondent, and its officers and agents, take the following affirmative action:

> Upon request, bargain collectively with Local No. 455 as the exclusive representative of its employees engaged in production in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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[69] Reinstatement was ordered for employees who went on strike in consequence of discriminatory discharges in the following cases: *Matter of Carlisle Lumber Company*, 2 N. L. R. B. 248; *Matter of Benjamin Fainblott and Marjorie Fainblott, Individuals, Doing Business Under the Firm Names and Styles of Somerville Manufacturing Company and Somerset Manufacturing Company, and International Ladies' Garment Workers Union, Local No. 149*, 1 N. L. R. B. 864; *Matter of Foster Brothers Manufacturing Company, Inc., and Federal Labor Union, Local No. 20137, United Brotherhood of Carpenters and Joiners of America*, 1 N. L. R. B. 880; *Matter of Canvas Glove Manufacturing Works, Inc., and International Glove Makers Union, Local No. 88*, 1 N. L. R. B. 519.

[70] *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*, 2 N. L. R. B. 626. It is not always necessary to make individual application for reinstatement: *Matter of Alaska Juneau Gold Mining Company and International Union of Mine, Mill, and Smelter Works, Local No. 203*, 2 N. L. R. B. 125.

[71] 1 N. L. R. B. 411.

[72] 2 N. L. R. B. 1094.

[73] See, for example, *Matter of Harbor Boat Building Company, a corporation, and Ship Carpenters Local Union No. 1335*, 1 N. L. R. B. 349: *Matter of The Canton Enameling & Stamping Company, a corporation, and Canton Lodge, No. 812, International Association of Machinists*, 1 N. L. R. B. 402; *Matter of Consumer's Research, Inc., a Corporation, and J. Robert Rogers, representative for Technical, Editorial, and Office Assistants Union, Local No. 20055, affiliated with the American Federation of Labor*, 2 N. L. R. B. 57; and *Matter of Agwilines, Inc., and International Longshoremen's Association Local No. 1402*, 2 N. L. R. B. 1.

[74] 1 N. L. R. B. 618.

In several cases involving a refusal to bargain collectively the Board has also ordered the employer to bargain collectively with the object of reaching an agreement covering rates of pay, wages, hours of employment, and other terms and conditions of employment.[75] In *Matter of St. Joseph Stock Yards Company, a corporation and Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 159*,[76] the Board found that the respondent had refused to bargain collectively with the representatives of its employees. The union had presented to the company an agreement which merely contained provisions upon which the respondents' representatives had previously agreed. The Board thereupon ordered the St. Joseph Stock Yards Co., the respondent, to take the following affirmative action which it found would effectuate the policies of the act:

> Upon request, bargain collectively with Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 159, as the exclusive representative of the above-mentioned employees with respect to rates of pay, wages, hours of employment, and other conditions of employment and, if an understanding is reached on any of such matters, embody said understanding in an agreement for a definite term, to be agreed upon, if requested to do so by said union.

Many cases have involved strikes caused or prolonged by a refusal to bargain collectively. The Board has carefully considered the remedy to be granted in such cases, and has realized the futility of an order merely requiring the employer to bargain collectively. In *Matter of Columbian Enameling & Stamping Company and Enameling & Stamping Mill Employees Union, No. 19694*,[77] the Board spoke of the reason for its remedy, as follows:

> A question arises as to the form of relief. It would be futile simply to order the respondent to bargain with the union, since the plant now has its full quota of men and the process of bargaining could yield little comfort to those who are not employed; nor do we know whether the union now represents a majority. Under these circumstances we must restore, as far as possible, the situation existing prior to the violation of the act in order that the process of collective bargaining, which was interrupted, may be continued.
>
> * * * * * * *
>
> The purpose of the conference proposed by the conciliators on July 23 was to settle the strike and to put the men back to work. It does not lie in the mouth of the respondent to say that this result would not necessarily have followed. The law imposed a duty to bargain under these circumstances because that result might have followed. It is respondent's conduct which has precluded that possibility.

In *Matter of Remington Rand, Inc., and Remington Rand Joint Protective Board of the District Council Office Equipment Workers*,[78] the Board further stated:

> Our previous decisions point the general remedy for these illegal acts. We have required in cases of strikes caused by a refusal to bargain collectively that the employer both bargain collectively with the representatives of his employees. and restore as far as possible the status quo that existed at the time of the strike. Normally, such restoration of the status quo is accomplished by the reinstatement of all employeese on the pay roll at the time of the strike, any new employees hired since that date to be dismissed if such

[75] See. for example. *Matter of Harbor Boat Building Co., a corporation. and Ship Carpenters Local Union No. 1335*, 1 N. L. R. B. 349, and *Matter of The Canton Enameling & Stamping Company, a corporation. and Canton Lodge, No. 812, International Association of Machinists*, 1 N. L. R. B. 402.
[76] 2 N. L. R. B. 39.
[77] 1 N. L. R. B. 181. p. 198.
[78] 2 N. L. R. B. 626. p. 737.

action is necessary. If, because of curtailed production or other reasons, there are not a sufficient number of positions available to take care of all of the employees on the pay roll at the time of the strike, the initial reinstatement is to be made on the basis of seniority by classifications, and those not reinstated are to be placed, on a similar basis, on a preferential list.[79]

(C) ORDERS REQUIRING EMPLOYERS TO POST NOTICES AND TO REPORT TO THE BOARD UPON THE EXTENT TO WHICH THEY HAVE COMPLIED WITH THE ORDER OF THE BOARD

In most of the cases in which it was found that an employer had engaged in an unfair labor practice, the Board ordered the employer to post notices to his employees, in conspicuous places in his plant, or place of business, stating that he would cease and desist as required by the order of the Board.[80] In some cases, the Board has desired to make certain that a particularly important fact will be brought to the attention of the employees, and has ordered the respondent to state specifically that it will cease and desist from committing the particular unfair labor practice, or that it will take the necessary affirmative action to remedy the situation.[81] Thus, it has required that the notices state that the employees are free to join or assist a particular union which has been discriminated against, or any labor organization of their own choosing;[82] that a particular (company-dominated) union is disestablished as a representative of the employees for purposes of collective bargaining;[83] or that the respondent will not discharge or in any manner discriminate against members or those desiring to become members of a union.[84] Usually, the respondent is required to keep the notices posted for 30 days.

Under section 10 (c), the Board may require respondents to make reports from time to time showing the extent to which they have complied with the order. Ordinarily, the Board has ordered that the respondent notify the appropriate regional director within 10 days from the time of the order, what steps it has taken to comply therewith.[85]

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[79] Orders to the same effect were issued in the following cases: *Matter of Carlisle Lumber Company*, 2 N. L. R. B. 248; *Matter of Alaska Juneau Gold Mining Company*, 2 N. L. R. B. 125; *Matter of Jeffery-DeWitt Insulator Company*, 1 N. L. R. B. 618; *Matter of Rollway Bearing Company, Inc., and Federal Labor Union 18482*, 1 N. L. R. B. 651.

[80] *Matter of The Associated Press*, 1 N. L. R. B. 788. Occasionally the Board has pointed to the particular places it wishes these notices placed, in order to insure that employees will see them. See *Matter of Elbe File and Binder Co., Inc., and Bookbinders, Manifold, and Pamphlet Division, Local Union No. 119, International Brotherhood of Bookbinders*, 2 N. L. R. B. 906 (on each floor); *Matter of Houston Cartage Company, Inc., and Local Union No. 367, International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, and L. S. Brooks*, 2 N. L. R. B. 1000 (where they will be observed by the employees); and *Matter of Martin Dyeing and Finishing Company, a corporation, and Federation of Dyers, Finishers, Printers, and Bleachers of America*, 2 N. L. R. B. 403 (in all departments * * * and near the time clock).

[81] *Matter of S & K Knee Pants Company*, 2 N. L. R. B. 940.

[82] *Matter of Harrisburg Children's Dress Company*, 2 N. L. R. B. 1058.

[83] *Matter of Wallace Manufacturing Company, Inc.*, 2 N. L. R. B. 1081.

[84] *Matter of Jones & Laughlin Steel Corporation*, 1 N. L. R. B. 503.

[85] Longer periods have been specified in some cases: *Matter of S & K Knee Pants Company*, 2 N. L. R. B. 940 (15 days); *Matter of Columbian Enameling & Stamping Co.*, 1 N. L. R. B. 181 (30 days).

XIII. LIST OF CASES HEARD AND DECISIONS RENDERED

Following is a list of cases originally heard during the fiscal year 1936 on which further action was taken during the fiscal year 1937.

Name of case	Date hearing held—				Date decision issued
	By trial examiner		By Board [a]		
	Date opened	Date closed	Date opened	Date closed	
Delaware-New Jersey Ferry Co.	Oct. 31, 1935	Oct. 31, 1935			Dec. 30, 1935
Further hearing	Nov. 11, 1936	Nov. 11, 1936			Nov. 20, 1936
Wheeling Steel Co.			Nov. 18, 1935	Nov. 20, 1935	(c)
El Paso Electric Co.	Nov. 18, 1935	Nov. 26, 1935			(d)
Do	do	do			(d)
New England Transportation Co.	Nov. 26, 1935	do			Jan. 21, 1936
Consumers Research, Inc.	Dec. 16, 1935	Dec. 23, 1935			July 7, 1936
Protective Motor Service Co., Inc.	Jan. 8, 1936	Feb. 8, 1936			Apr. 28, 1936
Further hearing	Aug. 6, 1936	Aug. 6, 1936			May 6, 1936
Bemis Bros. Bag Co.	Jan. 24, 1936	Feb. 25, 1936			(c)
Lion Shoe Co.	Jan. 27, 1936	Jan. 31, 1936			May 20, 1937
Lehman Bros., Inc.	Jan. 29, 1936	Jan. 29, 1936			(b)
Sneath Glass Co.	Feb. 4, 1936	Feb. 6, 1936			(c)
International Mercantile Marine Co.	Feb. 13, 1936	Feb. 18, 1936			Mar. 21, 1936
Further hearing	Nov. 24, 1936	Nov. 24, 1936			
Wallace Manufacturing Co.	Feb. 10, 1936	Feb. 11, 1936			June 30, 1937
Ralph A. Freundlich	Feb. 17, 1936	Feb. 19, 1936			May 19, 1937
Gray-Knox Marble Co.	do	Apr. 3, 1936			(b)
Englander Spring Bed Co.	Mar. 2, 1936	Apr. 10, 1936			(c)
Ohio Custom Garment Co.	do	Mar. 4, 1936			(b)
Hardwick Stove Co.	do	Mar. 5, 1936			July 8, 1936
Alabama Mills, Inc.	Mar. 9, 1936	Mar. 10, 1936			July 6, 1936
Alaska Juneau Gold Mining Co.	Mar. 12, 1936	Mar. 21, 1936			July 21, 1936
The Warfield Co.	do	Mar. 14, 1936			(c)
Mesta Machine Co.	Mar. 16, 1936	Mar. 16, 1936			(b)
Mooresville Cotton Mills	do	Apr. 29, 1936			June 10, 1937
Renown Stove Co.	Mar. 17, 1936	Mar. 19, 1936			July 21, 1936
Bradley-Lumber Co.	Mar. 16, 1936	Apr. 29, 1936			(d)
Do	do	do			(d)
C. G. Conn, Ltd.	Mar. 19, 1936	Mar. 30, 1936			(b)
Crucible Steel Co.	Mar. 23, 1936	Mar. 23, 1936			Oct. 29, 1936
Cherry Cotton Mills	do	Mar. 26, 1936			(c)
Robert H. Foerderer, Inc.	Mar. 24, 1936	Apr. 7, 1936			(c)
S. Cohen & Sons	Mar. 30, 1936	Mar. 30, 1936			(c)
Wholesale Radio Service, Inc.	Apr. 2, 1936	Apr. 10, 1936			(b)
Gray-Knox Marble Co.	do	Apr. 3, 1936			(b)
Aluminum Co. of America	Apr. 7, 1936	June 30, 1936			(b)
Carlisle Lumber Co.	do	Apr. 18, 1936			Sept. 26, 1936
Indiana Textile Mills, Inc.	Apr. 9, 1936	Apr. 9, 1936			(c)
Robinson & Golluber	Apr. 13, 1936	Apr. 14, 1936			Dec. 19, 1936
Louis Hornick Co.	Apr. 16, 1936	Apr. 22, 1936			June 12, 1937
Bemis Bros. Bag Co.	Apr. 17, 1936	Apr. 18, 1936			(c)
Signal Knitting Mills	Apr. 20, 1936	Apr. 23, 1936			(b)
Ilena Knitting Mills	do	do			(b)
Samson Tire & Rubber Corp.	do	May 20, 1936			Sept. 10, 1936
Tucker Oil Co.	Apr. 24, 1936	Apr. 25, 1936			(c)
Demarest Silk Co.	Apr. 27, 1936	Apr. 27, 1936			(b)
Gardner-Denver Co.	Apr. 29, 1936	May 1, 1936			(b)

[a] Where the trial examiners held hearings in cases filed in the regional office originally, and the Board held further hearings at a later date, the hearings before the trial examiners are the only ones listed.
[b] Settled before decision of Board was issued.
[c] Awaiting Board decision.
[d] Decision not issued because of pending injunction proceeding.

Name of case	Date hearing held— By trial examiner: Date opened	By trial examiner: Date closed	By Board: Date opened	By Board: Date closed	Date decision issued
The Optical Products Co	Apr. 30, 1936	May 2, 1936			(b)
Boss Manufacturing Co	do	May 1, 1936			(c)
Do	do	do			(c)
Riverside Knitting Mills	do	do			(b)
Aluminum Products Co	do	June 16, 1936			(c)
Trenton Mills, Inc	May 1, 1936	May 2, 1936			(c)
Welwood Norwich Silk Mills, Inc	do	May 4, 1936			(b)
Club Troika, Inc	do	do			July 8, 1936
Pacific Mills Co	do	May 6, 1936			(b)
S. Gutman & Co., Inc	do	May 23, 1936			(c)
American Potash & Chemical Co	do	June 3, 1936			(c)
International Harvester Co			May 5, 1936	May 16, 1936	Nov. 12, 1936
J. Freezer & Sons, Inc	May 7, 1936	May 7, 1936			(c)
Agwilines, Inc	do	May 11, 1936			July 3, 1936
Quidnick Dye Works	May 14, 1936	May 14, 1936			June 11, 1937
American Tobacco Co	do	do			Oct. 31, 1936
Fall River Gas Works Co	May 18, 1936	May 19, 1936			(c)
Fit-Rite Slipper Co. Inc	do	do			(c)
St. Joseph Stock Yards Co	do	May 18, 1936			July 8, 1936
Memphis Furniture Mfg. Co	May 21, 1936	May 27, 1936			(c)
Do	do	do			(c)
Clark & Reid	May 25, 1936	May 25, 1936			Dec. 30, 1936
Atlas Mills	do	May 26, 1936			(c)
J. W. Sanders Cotton Mills, Inc	do	do			(c)
Stanley Works Co	May 28, 1936	May 28, 1936			(c)
Richards Wilcox Mfg. Co	do	May 29, 1936			July 8, 1936
D. & H. Motor Freight Co	June 8, 1936	June 8, 1936			Sept. 12, 1936
Lykes Bros.-Ripley Steamship Co	June 12, 1936	June 15, 1936			July 8, 1936
Do	do	do			Do.
Do	do	do			Do.
Chesapeake Mfg. Co	June 15, 1936	June 16, 1936			(c)
Claussner Hosiery Co			June 17, 1936	June 17, 1936	(b)
Nolan Motor Co	June 22, 1936	June 23, 1936			Nov. 12, 1936
Schonfield & Reis	June 25, 1936	June 25, 1936			(b)
Boyertown Burial Casket Co.	June 26, 1936	June 26, 1936			(c)
Fisher Body Corporation	June 30, 1936	July 6, 1936			(b)
Chevrolet Motor Co	do	do			(b)

[b] Settled before decision of Board was issued.
[c] Awaiting Board decision.

LIST OF CASES HEARD AND DECISIONS RENDERED—Continued

Following is a list of cases originally heard during the fiscal year 1937:

Name of case	Date hearing held—				Date decision issued
	By trial examiner		By Board [a]		
	Date opened	Date closed	Date opened	Date closed	
Martin Dyeing & Finishing Co.	July 2, 1936	Aug. 21, 1936			Dec. 7, 1936
Uxbridge Worsted Co., Glenmark mill	July 9, 1936	Aug. 11, 1936			([c])
Luckenbach Steamship Co., Inc.	July 15, 1936	July 17, 1936			Aug. 31, 1936
Associated Banning Co.	do	do			Do.
United Fruit Co.	do	do			Do.
Dollar Steamship Lines, Inc., Ltd.	do	do			Do.
San Francisco Stevedoring Co.	do	do			Do.
American-Hawaiian Steamship Co., a corporation	do	do			Do.
Matson Navigation Co.	do	do			Do.
McCormick Steamship Co., a corporation	do	do			Do.
Union Steamship Co. of New Zealand	do	do			Do.
Nelson Steamship Co.	do	do			Do.
Ocean Terminals, Inc.	do	do			Do.
Pacific Steamship Lines	do	do			Do.
Arrow Line	do	do			([b])
Pacific Oriental Terminals Co.	do	do			Aug. 31, 1936
Nippon Yusen Kaisha Line	do	do			([b])
Grace Line, a corporation	do	do			Aug. 31, 1936
Bay Cities Transportation Co.	do	do			Do.
Williams Dimond & Co.	do	do			Do.
Sudden & Christenson	do	do			Do.
The Kingsly Co. of California	do	do			Do.
Mackay Radio & Telegraph Co.	do	July 27, 1936			Dec. 29, 1936
Bell Oil & Gas Co. et al.	July 16, 1936	July 21, 1936			June 1, 1937
Clermont Cravat Co.	July 20, 1936	do			([b])
Pacific Steamship Lines	do	do			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Sept. 10, 1936
A. B. Johnson Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
E. K. Wood Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
J. Ramselius	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Hart Wood Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Pacific Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			([b])
Dispatch Stevedoring & Contracting Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Sept. 10, 1936
E. L. Reitz Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
American-Hawaiian Steamship Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.

[a] Where the trial examiners held hearings in cases filed in the regional office originally, and the Board held further hearings at a later date, the hearings before the trial examiners are the only ones listed.
[b] Settted before decision of Board was issued.
[c] Awaiting Board decision.

Name of case	Date hearing held— By trial examiner: Date opened	Date hearing held— By trial examiner: Date closed	Date hearing held— By Board: Date opened	Date hearing held— By Board: Date closed	Date decision issued
American Mail Line, a corporation	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Sept. 10, 1936
Los Angeles-San Francisco Navigation Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Baxter Lumber Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Beadle Steamship Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Chamberlain Steamship Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Coos Bay Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Dollar Lines, Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Freeman Steamship Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Grace Line, Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
J. A. Griffiths Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Hammond Shipping Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Higgins Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			(b)
Hobbs-Wall Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			(b)
Kingsley Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Sept. 10, 1936
Lawrence-Phillips Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
McCormick Steamship Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
McCormick Steamship Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Moore Mill & Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
National Steamship Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Nelson Steamship Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Nelson & Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Oceanic & Oriental Navigation Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Ogden Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Olson Steamship Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Paramino Lumber Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Schaeffer Brothers, Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
States Steamship Co., Inc.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Sudden & Christenson	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Sudden & Christenson	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Swayne & Hoyt	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
United Fruit Co.	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Matson Lines	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
J. R. Hanify	July 20, 1936	July 21, 1936			
Further hearing	Sept. 2, 1936	Sept. 3, 1936			Do.
Bell Oil & Gas Co., et al.	July 21, 1936	July 22, 1936			Mar. 4, 1937
Pacific Greyhound Lines, Inc.	July 23, 1936	July 29, 1936			Dec. 18, 1936
R. C. A. Mfg. Co., Inc.	July 25, 1936	July 25, 1936			Aug. 3, 1936
Do.	do.	do.			Do.

[b] Settled before decision of Board was issued.

Name of case	Date hearing held— By trial examiner: Date opened	By trial examiner: Date closed	By Board: Date opened	By Board: Date closed	Date decision issued
Y. M. C. A. of the District of Columbia	Aug. 3, 1936	Aug. 5, 1936			(b)
Union Pacific Stages, Inc.	do	Aug. 12, 1936			Dec. 19, 1936
American-Hawaiian Steamship Co.	Aug. 6, 1936	Aug. 6, 1936			Dec. 12, 1936
Oceanic & Oriental Navigation Co.	do	do			Do.
Williams Steamship Co.	do	do			Do.
Swayne & Hoyt, Ltd.	Aug. 7, 1936	Aug. 7, 1936			Oct. 2, 1936
S. Liebovitz & Sons, Inc.	Aug. 10, 1936	Aug. 10, 1936			(b)
Black Diamond Steamship Corporation	Aug. 20, 1936	Aug. 24, 1936			Sept. 24, 1936
Panama R. R. Co.	Aug. 21, 1936	Aug. 22, 1936			Oct. 21, 1936
The Associated Press	Aug. 27, 1936	Aug. 27, 1936			(c)
The Weiss & Klau Co.	Sept. 3, 1936	Sept. 14, 1936			(c)
Cities Service Refining Co.	Sept. 10, 1936	Sept. 11, 1936			(b)
William Randolph Hearst et al.	do	Sept. 29, 1936	Nov. 9, 1936	Nov. 10, 1936	Jan. 13, 1937
Alexander Smith Sons & Co.	Sept. 24, 1936	Sept. 25, 1936			(b)
Seas Shipping Co.	Oct. 13, 1936	Oct. 13, 1936			Dec. 4, 1936
Further hearing	Nov. 19, 1936	Nov. 19, 1936			
Grace Line, Inc.	Oct. 13, 1936	Oct. 13, 1936			Nov. 13, 1936
Further hearing	Jan. 7, 1937	Jan. 7, 1937			Feb. 4, 1937
Remington-Rand, Inc.	Oct. 14, 1936	Dec. 11, 1936			Mar. 13, 1937
Waldorf System, Inc.—John F. Brady	Oct. 15, 1936	Oct. 19, 1936			(b)
American Potash & Chemical Co.	do	Oct. 16, 1936			(c)
Hill Bus Co., a corporation	Oct. 26, 1936	Nov. 12, 1936			May 3, 1937
Clyde-Mallory Lines	Nov. 2, 1936	Nov. 2, 1936			Nov. 30, 1936
Oregon Worsted Co.	Nov. 9, 1936	Nov. 9, 1936			Dec. 9, 1936
Tidewater Express Lines, Inc.	Nov. 23, 1936	Nov. 30, 1936			Jan 23, 1937
Motor Transport Co.	Nov. 24, 1936	Nov. 25, 1936			Jan. 22, 1937
International Mercantile Marine Co.	do	Nov. 24, 1936			(b)
Globe Mail Service, Inc.	Dec. 7, 1936	Dec. 23, 1936			Mar. 10, 1937
The Samoset Mills	Dec. 8, 1936	Mar. 30, 1937			(c)
Shell Oil Co.	Dec. 10, 1936	Jan. 29, 1937			May 24, 1937
Moore Dry Dock	Dec. 15, 1936	Dec. 17, 1936			(c)
United States Steel Corporation and carnegie Illinois Steel Corporation	Jan. 13, 1937	Feb. 20, 1937	Dec. 17, 1936	Jan. 12, 1937	
Further hearing			Apr. 26, 1937	Apr. 26, 1937	(b)
Do			June 4, 1937	June 4, 1937	
Rocks Express Co.	Dec. 21, 1936	Dec. 21, 1936			(c)
Stimson Lumber Co.	do	Dec. 22, 1936			Feb. 16, 1937
Portland Gas & Coke Co.	Dec. 22, 1936	do			Mar. 9, 1937
Crystal Springs Finishing Co.	Dec. 28, 1936	Dec. 28, 1936			(c)
Houston Cartage Co.	do	Dec. 29, 1936			June 12, 1937
Goodman Warehouse Corporation	Jan. 4, 1937	Jan. 4, 1937			(b)
Cosmopolitan Shipping Co.	Jan. 11, 1937	Jan. 11, 1937			Apr. 2, 1937
Merchants & Miners Transportation Co.	Jan. 14, 1937	Jan. 14, 1937			Mar. 18, 1937
Phillips Petroleum Co., Phillips Pipe Line Co.	Jan. 18, 1937	Feb. 5, 1937			(b)
Shell Oil Co. of Calif.	do	Jan. 29, 1937			May 24, 1937
Ocean Steamship Co. of Savannah	Jan. 21, 1937	Jan. 21, 1937			Mar. 6, 1937
Do	do	do			Do.
New York & Cuba Mail Steamship Co.	Jan. 22, 1937	Jan. 22, 1937			Do.
Do	do	do			Do.
American Steamship Owners' Association			Jan. 22, 1937	Jan. 28, 1937	(b)
International Mercantile Marine Co.			do	do	(b)
Grace Line, Inc.			do	do	(b)
Luckenbach Gulf Steamship Co., Inc.			do	do	(b)
Luckenbach Steamship Co., Inc.			do	do	(b)
Munson Steamship Line			do	do	(b)

[b] Settled before decision of Board was issued
[c] Awaiting Board decision.

Name of case	Date hearing held— By trial examiner: Date opened	By trial examiner: Date closed	By Board: Date opened	By Board: Date closed	Date decision issued
Export Steamship Corporation			do	do	(b)
American Pioneer Line, Atlantic Division, Inc			do	do	(b)
Panama Mail Steamship Co., Inc			do	do	(b)
United States Line Co			do	do	(b)
American Hampton Roads Line			do	do	(b)
Baltimore Insular Line, Inc			do	do	(b)
A. H. Bull Steamship Co			do	do	(b)
Shepard Steamship Co			do	do	(b)
Mississippi Shipping Co., Inc			do	do	(b)
Waterman Steamship Corporation, Mobile, Ala			do	do	(b)
Pan Atlantic Steamship Corporation			do	do	(b)
Ocean Steamship Co. of Savannah			do	do	(b)
Mooremack Gulf Lines			do	do	(b)
Newtex Steamship Corporation, Inc			do	do	(b)
Argonaut Line, Inc			do	do	(b)
Sword Steamship Line, Inc			do	do	(b)
Sinclair Navigation Co			do	do	(b)
Lykes Bros. Ripley Steamship Co., Inc			do	do	(b)
Lykes Brothers Co., Inc			do	do	(b)
American Republic Line			do	do	(b)
Cosmopolitan Shipping Co., Inc			do	do	(b)
New York & Cuba Mail Steamship Co			do	do	(b)
New York & Porto Rico Steamship Co			do	do	(b)
Clyde Mallory Lines			do	do	(b)
Colombian Steamship Co., Inc			do	do	(b)
Isthmian Steamship Co., Inc			do	do	(b)
Standard Oil Co. of New Jersey			do	do	(b)
Black Diamond Steamship Corporation			do	do	(b)
Atlantic Gulf & West Indies Steamship Lines			do	do	(b)
American West African Line, Inc			do	do	(b)
Willard, Inc	Jan. 25, 1937	Jan. 25, 1937			June 30, 1937
Further hearing	May 11, 1937	May 11, 1937			
Calvert-Maryland Distilling Co., Inc	Jan. 28, 1937	Jan. 29, 1937			(c)
United Fruit Co	Feb. 2, 1937	Feb. 4, 1937			June 1, 1937
Elbe File & Binder Co., Inc	Feb. 4, 1937	Feb. 6, 1937			June 2, 1937
Wald Transfer & Storage Co., Inc	Feb. 8, 1937	Feb. 18, 1937			(c)
Do	do	do			(b)
Oregon Worsted Co	do	Mar. 25, 1937			(c)
Greenwald & Co	Feb. 9, 1937	Feb. 9, 1937			(b)
Condenser Corporation of America	Feb. 15, 1937	Pending			(c)
Further hearing	June 3, 1937	June 24, 1937			(c)
Condenser Corporation of America	Feb. 15, 1937	Mar. 1, 1937			(c)
Further hearing	June 3, 1937	June 24, 1937			(c)
Cornell Dubilier Corporation	Feb. 15, 1937	Mar. 1, 1937			(c)
Further hearing	June 3, 1937	June 24, 1937			(c)
Suburban Lumber Co	Feb. 18, 1937	Feb. 19, 1937			(c)
Black Diamond Steamship Corporation	Feb. 23, 1937	Feb. 25, 1937			(c)
Appalachian Electric Power Co	Feb. 25, 1937	Feb. 26, 1937			(c)
Central Truck Lines, Inc	Feb. 26, 1937	Mar. 2, 1937			(c)
Do	do	do			(c)

[a] Settled before decision of Board was issued.
[b] Awaiting Board decision.

Name of case	Date hearing held— By trial examiner: Date opened	Date hearing held— By trial examiner: Date closed	Date hearing held— By Board: Date opened	Date hearing held— By Board: Date closed	Date decision issued
Postal Telegraph Cable Co.	Mar. 1, 1937	Mar. 1, 1937			(b)
Millfay Manufacturing Co.	do	Mar. 3, 1937			June 5, 1937
Northrup Corporation	Mar. 5, 1937	Mar. 5, 1937			(b)
Do	do	do			(b)
Do	do	do			(b)
Douglas Aircraft Co., Inc.	do	Mar. 15, 1937			(b)
Do	do	do			(b)
Santa Fe Trail Transportation Co.	Mar. 8, 1937	Mar. 8, 1937			Apr. 2, 1937
Grace Line, Inc.	Mar. 9, 1937	Mar. 9, 1937			(b)
Consolidated Aircraft Corporation	Mar. 11, 1937	Mar. 16, 1937			Apr. 30, 1937
Harrisburg Children's Dress Co.	Mar. 12, 1937	Mar. 25, 1937			June 28, 1937
WCAU Broadcasting Co.	Mar. 15, 1937	Mar. 15, 1937			(b)
Montgomery Ward & Co.	Mar. 17, 1937	Mar. 24, 1937			(c)
Willard, Inc.	Mar. 18, 1937	Mar. 30, 1937			June 30, 1937
Further hearing	May 11, 1937	May 11, 1937			
The Borden Co. et al.	Mar. 18, 1937	May 17, 1937			(c)
Willard, Inc.	do	Mar. 30, 1937			(b)
Nicolet Paper Co.	do	Mar. 18, 1937			(b)
Newton Packing Co.	Mar. 29, 1937	May 22, 1937			(c)
Do	do	do			(c)
Louisville Refining Co.	Apr. 1, 1937	Apr. 8, 1937			(c)
Panama Pacific Lines	do	Apr. 5, 1937			(b)
Williams Dimond Co.	do	do			May 24, 1937
Associated Banning Co.	do	do			Do.
Norton Lilly & Co.	do	do			(b)
American Hawaiian Steamship Co.	do	do			May 24, 1937
Interocean Steamship Corporation	do	do			(b)
Luckenbach Steamship Co.	do	do			May 24, 1937
Dollar Steamship Lines, Inc., Ltd.	do	do			(b)
Swayne & Hoyt, Inc. Steamship Co.	do	do			May 24, 1937
McCormick Steamship Co.	do	do			Do.
Ocean Terminals, Inc.	do	do			(b)
Hammond Shipping Co., Ltd.	do	do			May 24, 1937
Grace Line	do	do			Do.
Matson Navigation Co.	do	do			(b)
Outer Harbor Dock Wharf Co.	do	do			May 24, 1937
Inner Harbor Terminal Co.	do	do			Do.
Kerckhoff & Cuzner Mill & Lumber Co.	do	do			(b)
Hammond Lumber Co.	do	do			(b)
Consolidated Lumber Co.	do	do			(b)
Patten-Blinn Lumber Co.	do	do			(b)
John E. Marshall, Inc.	do	do			(b)
Gripper and Haglind Lumber Co.	do	do			(b)
Barber Steamship Lines, Inc.	do	do			(b)
Dodwell & Co., Ltd.	do	do			(b)
Furness Pacific, Ltd.	do	do			(b)
Marine Terminals Corporation	do	do			(b)
P. F. Soto Shipping Co.	do	do			(b)
Sudden & Christenson	do	do			(b)
American Lumber & Treating Co.	do	do			(b)
E. K. Wood Lumber Co.	do	do			(b)
Pinkerton National Detectives Agency & Patrol Service	do	do			May 24, 1937
Pacific Port Service Corporation	do	do			Do.
Honolulu Stevedores, Ltd., & Castle & Cook, Ltd.	Apr. 5, 1937	Apr. 29, 1937			(c)
Do	do	do			(c)
Grower-Shipper Vegetable Association of Central California	Apr. 12, 1937	May 18, 1937			(c)

[b] Settled before decision of Board was issued.
[c] Awaiting Board decision.

Name of case	Date hearing held— By trial examiner: Date opened	Date hearing held— By trial examiner: Date closed	Date hearing held— By Board: Date opened	Date hearing held— By Board: Date closed	Date decision issued
F. V. Birbeck	do	do			(c)
Bruce Church Co	do	do			(c)
O. O. Eaton	do	do			(c)
Farley Fruit Co	do	do			(c)
H. P. Garin Co	do	do			(c)
E. E. Harden Packing Co	do	do			(c)
Holme & Seifert	do	do			(c)
Ice-Kist Packing Co	do	do			(c)
M. L. Kalich & Co	do	do			(c)
J. G. Marinovich	do	do			(c)
S. Rianda Packing Co	do	do			(c)
J. A. Simmons, Inc	do	do			(c)
E. H. Spiegl	do	do			(c)
D. A. Storm, Inc	do	do			(c)
Watsonville Exchange, Inc	do	do			(c)
A. Arena & Co., Ltd	do	do			(c)
Farmers Produce Co., Inc	do	do			(c)
S. A. Gerrard Co	do	do			(c)
W. B. Grainger Packing Co	do	do			(c)
Major Distributing Co	do	do			(c)
Merrill Packing Co., Inc., Ltd	do	do			(c)
K. R. Nutting Co	do	do			(c)
Salinas Valley Vegetable Exchange	do	do			(c)
Salinas Lettuce Co	do	do			(c)
Sears Brothers & Co	do	do			(c)
Lester Stirling Co	do	do			(c)
Peter A. Stolich, Inc	do	do			(c)
W. R. Van Noy, Inc	do	do			(c)
W. & S. Packing Co	do	do			(c)
Western Growers Protective Association	do	do			(c)
Ohio Fuel & Gas Co	do	Apr. 14, 1937			(c)
New York-Pennsylvania Motor Express, Inc	Apr. 15, 1937	Apr. 16, 1937			(b)
Benders Transport Co	Apr. 16, 1937	do			(b)
Todd Seattle Dry Docks, Inc	do	Apr. 22, 1937			June 29, 1937
Acklin Stamping Co	do	Apr. 27, 1937			May 28, 1937
Frederick R. Barrett	Apr. 29, 1937	May 8, 1937			(c)
Bowman Elder, receiver for Indiana R. R., Inc	May 3, 1937	May 18, 1937			(c)
United States Stamping Co	May 6, 1937	May 21, 1937			(c)
The Goodyear Tire & Rubber Co	do	May 6, 1937			(b)
Highway Trailer Co	do	May 13, 1937			(c)
Emerson Electric Mfg. Co	May 7, 1937	May 14, 1937			(b)
Southgate Nelson Corporation	May 13, 1937	do			(c)
Advance Pressure Castings, Inc	do	May 15, 1937			(c)
American Cyanamid & Chemical Corporation	do	May 13, 1937			May 28, 1937
Southgate Nelson Corporation of Norfolk, Va	May 14, 1937	May 14, 1937			(c)
Cosmopolitan Chemical Co. et al	May 17, 1937	June 26, 1937			(c)
Biles Coleman Lumber Co	do	Pending [e]			(c)
McCabe, Hamilton & Renny, Ltd	May 18, 1937	May 20, 1937			(c)
Interlake Iron Corporation	May 20, 1937	May 22, 1937			June 26, 1937
Electric Boat Co	do	June 17, 1937			(c)
Kroehler Manufacturing Co	do	June 18, 1937			(b)
National Motor Bearing Co	May 24, 1937	Pending [f]			(c)
Charles Cushman Shoe Co	do	June 15, 1937			(b)
Do	do	do			(b)
Do	do	do			(c)
Do	do	do			(b)
Somerset Shoe Co	do	do			(b)
Do	do	do			(b)
Do	do	do			(b)
Do	do	do			(c)

[b] Settled before decision of Board was issued.
[c] Awaiting Board decision.
[e] Hearing continued until July 14, 1937.
[f] Hearing continued until July 2, 1937.

Name of case	Date hearing held— By trial examiner: Date opened	Date hearing held— By trial examiner: Date closed	Date hearing held— By Board: Date opened	Date hearing held— By Board: Date closed	Date decision issued
Clark Shoe Co.	June 15, 1937	May 24, 1937			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(b)
Augusta Shoe Corp.	do.	do.			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(b)
C. V. Watson Co.	do.	do.			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(b)
Do.	do.	do.			(c)
Venus Shoe Co.	do.	do.			(c)
Mascott Shoe Co.	do.	do.			(c)
Holmes-Bohr Co.	do.	do.			(c)
Lown Shoe Co.	do.	do.			(c)
Maine Shoes, Inc.	do.	do.			(c)
Lumbard Shoe Co.	do.	do.			(c)
Koss Shoe Co., Inc.	do.	do.			(c)
B. A. Corbin & Son	do.	do.			(c)
Ault-Williamson Shoe Co.	do.	do.			(c)
Thompson Products, Inc.	do.	May 26, 1937			(c)
RCA Communications, Inc.	May 27, 1937	May 27, 1937			June 30, 1937
R. C. A. Communications, Inc.	do.	do.			June 30, 1937
Sheba Ann Frocks, Inc.	do.	do.			(c)
Do.	do.	do.			(c)
The Industrial Rayon Corporation	do.	June 10, 1937			(c)
International Mercantile Marine Co.			May 27, 1937	May 28, 1937	June 11, 1937
Luckenbach Steamship Co., Inc.			do.	do.	Do.
Black Diamond Steamship Corporation			do.	do.	Do.
Seagraves Corporation	June 1, 1937	June 1, 1937			(c)
Lukens Steel Co.	June 2, 1937	June 9, 1937			June 14, 1937
Yardley Screen & Weatherstrip Co.	do.	June 8, 1937			(b)
Johns-Manville Products Corporation	June 3, 1937	June 3, 1937			June 26, 1937
Grover C. Naylor, Jr.	do.	do.			(b)
Federal Bearing Co., Inc. et al.	do.	June 12, 1937			(c)
Hopwood Retinning Co., Inc. et al.	June 7, 1937	June 19, 1937			(c)
Fansteel Metallurgical Co.	do.	June 25, 1937			(c)
Douglas Aircraft Co., Inc.	do.	Pending [e]			(c)
Do.	do.	do. [e]			(c)
Mansfield Mills, Inc.	June 10, 1937	June 14, 1937			(c)
Metropolitan Engineering Co. et al.	do.	June 17, 1937			(c)
Electric Vacuum Cleaner Co.	do.	June 18, 1937			(c)
Do.	do.	do.			(c)
Combustion Engineering Co., Inc.	do.	June 11, 1937			(b)
Westinghouse Electric Mfg. Co.	June 11, 1937	do.			(c)
Hunter Packing Co.	June 14, 1937	June 15, 1937			(c)
Northrop Corp.	do.	June 19, 1937			(c)
Fleischer Studios, Inc.	June 16, 1937	June 17, 1937			(c)
Titan Metal Manufacturing Co.	June 17, 1937	Pending [h]			(c)
Cardinale Trucking Corp.	do.	June 18, 1937			(c)
Triplett Electrical Instrument Co.	do.	June 23, 1937			(c)
Do.	do.	do.			(c)
Industrial Rayon Corp.			June 18, 1937	June 19, 1937	(c)
American Locomotive Co.	June 21, 1937	June 21, 1937			(b)
Idaho-Maryland Mining Co.	do.	June 30, 1937			(c)
Dickson-Jenkins Mfg. Co.	do.	June 24, 1937			(c)
Washington Mfg. Co.	do.	Pending [i]			(c)

[b] Settled before decision of Board was issued.
[c] Awaiting Board decision.
[e] Hearing continued until Aug. 20, 1937.
[h] Hearing continued until July 7, 1937.
[i] Hearing continued until July 30, 1937.

Name of case	Date hearing held—				Date decision issued
	By trial examiner		By Board		
	Date opened	Date closed	Date opened	Date closed	
Huth & James Shoe Mfg. Co.	June 21, 1937	June 21, 1937			(e)
American France Line			June 21, 1937	June 21, 1937	(e)
American Foreign Steamship Corporation			do	do	(e)
American Caribbean Line, Inc			do	do	(e)
American Diamond Lines, Inc			do	do	(e)
American Export Lines			do	do	(e)
American Hampton Roads Line			do	do	(e)
American Republics Lines			do	do	(e)
American Scantic Line			do	do	(e)
American Steamship Co			do	do	(e)
American South African Line, Inc			do	do	(e)
American Sugar Transit Corporation			do	do	(e)
American Tankers Corporation			do	do	(e)
American West African Line, Inc			do	do	(e)
Anchor Line			do	do	(e)
Argonaut Line, Inc			do	do	(e)
The Atlantic & Caribbean Steam-Navigation Co			do	do	(e)
Atlantic Gulf and West Indies Steamship Lines			do	do	(e)
The Atlantic Refining Co			do	do	(e)
Baltimore & Carolina Line, Inc			do	do	(e)
Baltimore Mail Steamship Co			do	do	(e)
Baltimore Steam Packet Co			do	do	(e)
Barbour Steamship Lines, Inc			do	do	(e)
A. H. Bull Steamship Co			do	do	(e)
Baltimore Insular Co			do	do	(e)
Calmar Steamship Corporation			do	do	(e)
Cities Service Oil Co			do	do	(e)
Clyde Mallory Line			do	do	(e)
Colonial Navigation Co			do	do	(e)
Continental Steamship Co			do	do	(e)
Grace Line, Inc			do	do	(e)
Gulf Oil Corporation			do	do	(e)
Isthmian Steamship Co			do	do	(e)
Kellogg Steamship Corporation			do	do	(e)
Lykes Bros. Ripley Steamship Co., Inc			do	do	(e)
The Export Steamship Corporation			do	do	(e)
Cosmopolitan Shipping Co			do	do	(e)
Eastern Steamship Lines			do	do	(e)
Moor & McCormack Co., Inc			do	do	(e)
Merchant & Miners Transportation Co			do	do	(e)
Mississippi Shipping Co			do	do	(e)
Mooremack Gulf Lines, Inc			do	do	(e)
Munson Steamship Co			do	do	(e)
The New York & Porto Rico Steamship Co			do	do	(e)
Newtex Steamship Co			do	do	(e)
New York & Cuba Mail Steamship Co			do	do	(e)
Ocean Steamship Co. of Savannah			do	do	(e)
Old Dominion Steamship Line			do	do	(e)
Ore Steamship Corporation			do	do	(e)
Panama R. R. Co. Steamship Line			do	do	(e)
Pennsylvania Shipping Co			do	do	(e)

e Awaiting Board decision.

Name of case	Date hearing held— By trial examiner: Date opened	By trial examiner: Date closed	By Board: Date opened	By Board: Date closed	Date decision issued
Petroleum Navigation Co			June 21, 1937	June 21, 1937	(e)
Porto Rico Line			do	do	(e)
Pure Oil Co			do	do	(e)
Red "D" Line of Steamships			do	do	(e)
Richfield Oil Co			do	do	(e)
Sabin Towing Co			do	do	(e)
Savannah Line			do	do	(e)
Seas Shipping Co., Inc			do	do	(e)
Seatrain Lines, Inc			do	do	(e)
Shepard Steamship Co			do	do	(e)
Sinclair Navigation Co			do	do	(e)
Socony Vacuum Oil Co			do	do	(e)
South Atlantic Steamship Line			do	do	(e)
Southern Pacific Co			do	do	(e)
Southern Steamship Co			do	do	(e)
Standard Fruit & Steamship Co			do	do	(e)
Standard Navigation Co			do	do	(e)
Standard Oil Co. of New Jersey			do	do	(e)
Sun Oil Co			do	do	(e)
Sword Steamship Line, Inc			do	do	(e)
Tampa Inter Ocean Steamship Co			do	do	(e)
Tankers Corporation			do	do	(e)
The Texas Co			do	do	(e)
Tidewater Associated Oil Co.			do	do	(e)
United Fruit Co			do	do	(e)
Waterman Steamship Corp			do	do	(e)
Harry Fleisig, Inc	June 22, 1937	June 25, 1937			(e)
Canadian Fur Trappers Corporation et al	June 24, 1937	June 30, 1937			(e)
The Globe Machine & Stamping Co	do	June 25, 1937			(e)
Do	do	do			(e)
Do	do	do			(e)
Ward Furniture Mfg. Co	do	June 28, 1937			(b)
Montgomery Ward & Co., Inc	do	Pending [f]			(e)
American-Hawaiian Steamship Co		June 24, 1937			(e)
McCormick Steamship Co. et al		do			(e)
Panama Pacific Steamship Co. et al	do	do			(e)
Williams Dimond & Co	do	do			(e)
Swayne & Hoyt	do	do			(e)
General Steamship Corporation	do	do			(e)
Norton Lilly & Co	do	do			(e)
Hammond Shipping Co., Ltd	do	do			(e)
Associated Banning Co	do	do			(e)
Dollar Steamship Lines, Inc., Ltd	do	do			(e)
Grace Line	do	do			(e)
Marine Terminals Corporation	do	do			(e)
Matson Navigation Co	do	do			(e)
Interocean Steamship Corporation	do	do			(e)
Los Angeles & San Francisco Navigation Co	do	do			(e)
P. F. Soto Shipping Co., Ltd	do	do			(e)
Luckenbach Steamship Co., Inc	do	do			(e)
Outer Harbor Dock & Wharf Co	do	do			(e)
Ward Furniture Mfg. Co	do	June 28, 1937			(b)
Woods Manufacturing Co	June 28, 1937	do			(b)
Inland Steel Co	do	Pending [h]			(e)

[b] Settled before decision of Board was issued.
[e] Awaiting Board decision.
[f] Hearing continued until July 9, 1937.
[h] Hearing continued until Oct. 13, 1937.

XIV. FISCAL STATEMENT

FUNDS TRANSFERRED AND APPROPRIATED

There was available to the Board during the fiscal year 1937 the sum of $790,838 for salaries and other obligations. This amount was derived from the following sources:

Unobligated balance transferred from National Industrial Recovery, Labor, National Labor Relations Board 1933–37		$40,838
Appropriations:		
Independent Offices Appropriation Act (49 Stat. 1177):		
Salaries and expenses	$700,000	
Printing and binding	35,000	
		735,000
Salaries and Expenses (Third Deficiency Appropriation Act, Public, No. 354, 75th Cong.)		15,000
Total		790,838

EXPENDITURES AND OBLIGATIONS

The expenditures and obligations for fiscal year ended June 30, 1937, are as follows:

Salaries	$550,671
Travel expense	84,121
Communications	30,888
Reporting	35,261
Rentals	33,562
Furniture and equipment	7,968
Supplies and materials	9,020
Special and miscellaneous	1,193
Transportation of things	1,531
Total salaries and expenses	754,215
Printing and binding	34,313
Grand total obligations	788,528
Total estimated surplus	2,310
Total available funds	790,838

APPENDIX

LIST OF REFERENCES ON NATIONAL LABOR RELATIONS BOARD

PREPARED BY THE DIVISION OF ECONOMIC RESEARCH

A. CURRENT

Bureau of National Affairs, Inc. *Labor relations reports.* Washington. (Weekly survey of the news and the law of the relations between workers and management.)

Commerce Clearing House. *Labor law service.* New York. (New developments in the field of labor law.)

Congressional Intelligence. *Labor relations service.* Washington. (Current bulletins giving procedure of the National Labor Relations Board complaints, hearings, petitions for elections, and cases adjusted.)

Prentice-Hall. *Labor and unemployment insurance service.* New York. (A guide to all existing and pending legislation.)

B. BOOKS AND PAMPHLETS, ARRANGED ALPHABETICALLY BY AUTHOR

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National Industrial Conference Board. *Individual and collective bargaining under the N. I. R. A.* New York. 1933. 37 p.
——— *Individual and collective bargaining in May, 1934.* 36 p.
Saposs, David J. *Problem of labor; an aspect of the National Labor Relations Board* (in U. S. Department of Agriculture. Graduate School. *Lectures in current economic problems.* p. 171–181. Washington. 1936).
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——— *The National Labor Relations Act; its scope, purposes, and implications.* Chicago. University of Chicago. 98 p.
Stein, E. and others. *Labor and the new deal.* New York. F. S. Crofts. 1935 (with supplement). 112 p.
Twentieth Century Fund. *Labor and the government: an investigation of the role of the government in labor relations*: research staff, Alfred L. Bernheim, David J. Saposs, and others. New York. McGraw-Hill. 1935. 413 p.
U. S. Congress. House. *Compilation of laws relating to mediation, conciliation, and arbitration between employers and employees.* Compiled by Elmer A. Lewis, Superintendent, Document room. Washington. 1937. 296 p.
——— Committee on labor. *Labor disputes act. Hearings. 74th Cong. 1st sess. on H. R. 6288.* March 13, 14, 19, 20, 28, and April 3, 4. 1935. Washington. 367 p.
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——— *Constitutionality of National Labor Relations Act. Opinions of the Supreme Court of the United States.* 75th Cong. 1st sess. Document no. 51. Washington. 1937. 57 p.
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U. S. National Labor Board. *Decisions. August 1933–March 1934.* Washington. 1934. 98 p.
——— *Decisions. Part II. April 1934–July 1934.* Washington. 1934. 94 p.
U. S. National Labor Relations Board [old] *Decisions. July 9, 1934–December 1934.* Washington. 1935. 223 p.
——— *Decisions. vol. II. December 1, 1934–June 16, 1935.* Washington. 1935. 556 p.
U. S. National Labor Relations Board. *Decisions and orders. vol. I. December 7, 1935–July 1, 1936.* Washington. 1936. 1094 p.
——— *Rules and regulations. Series 1, as amended April 27, 1936.* Washington. 27 p.
——— *First annual report * * * for the fiscal year ended June 30, 1936.* Washington. 1936. 150 p.
——— Division of economic research. *Governmental protection of labor's right to organize. Summary of evidence introduced at a hearing before the National Labor Relations Board bearing upon the factual basis of the National Labor Relations Act and the reasonableness of the regulations embodied therein. Bulletin no. I.* Washington. 1936. 174 p.
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C. PERIODICALS AND NEWSPAPERS, ARRANGED CHRONOLOGICALLY, 1933–OCTOBER 1937

1933

[On August 5, 1933, the President created the National Labor Board upon the request of the industrial and labor advisory boards of N. R. A. On December 16, 1933, the President issued an executive order, retroactive to August 5, ratifying all actions to date and bestowing full authority on the Board to adjust all industrial disputes arising out of operation of President's reemployment agreement or codes]

Weirton and 7a; editorial in New Republic. December 27. 77: 183.
Mr. Harriman explains the labor provisions of the Recovery Act. Nation's Businesss. October. p. 15.

1934

[In March of 1934, Senator Wagner introduced a bill which would create a permanent National Labor Board. The bill never reached the floor of the Senate. Temporary legislation in the form of a joint resolution (Public Res. 44, 73rd Cong.) was passed by both Houses and approved by the President on June 19, 1934. Under authority granted by this resolution, the President, on June 29, 1934, issued an executive order creating a "National Labor Relations Board," and dissolving the National Labor Board on July 9, 1934]

Labor under the National Recovery Act, by Sumner H. Slechter. Harvard Business Review. January 1934.

Employers throw down the gauntlet; editorial in New Republic. March 28. 78: 172–3.

Senator Wagner's new labor bill, by Herbert Rabinowitz. Nation. March 28. 138: 356–8.

Wagner bill, not a liberation, but a trap, by Walter Lippman. Industry. March 31. (Reprinted from Herald Tribune.)

Theories and facts about labor relations, by Ernest T. Weir. Nation's Business. August 22: 24–6+.

Good-bye, Section 7a; editorial in New Republic. October 31. 80: 325–7.

Effects of the recovery act upon labor organizations, by David A. McCabe. Quarterly Journal of Economics. November. 49: 52–78.

Labor boards; the new mechanisms for industrial relations, by John A. Fitch. Survey Graphic. November. 23: 533–7+.

Operations during first four months. Monthly Labor Review. December. 1424–7.

1935

The life of the Board was extended by successive Executive orders from June 16, 1935, to August 27, 1935 although the active work of the Board practically ceased immediately after the issuance by the Supreme Court on May 27, 1935, of its decision in the case of *Schechter Poultry Co. et al. v. United States.*[45]

The National Labor Relations bill was re-introduced by Senator Wagner in the Senate on February 21, 1935 (S. 1958, 74th Cong., 1st sess., 79 Cong. Rec. 2454–2458), and on February 28, 1935. a companion bill was introduced in the House by Representative Connery (H. R. 6288, 79 Cong. Rec. 2783). Hearings were held before the Senate Committee on Education and Labor on March 11–14, March 15–19, and March 21–April 2; and before the House Committee on Labor on March 13, 14, 19, 20, 28, and April 3–4. On May 2, 1935, the bill was reported by the Senate Committee, with minor amendments (Rept. No. 573), and after debate, was passed by the Senate on May 16, 1935, without amendment, by a vote of 63 to 12 (79 Cong. Rec. 7846–7855, 7858, 7877, 7848–7960, 7967–7980).

The bill was reported by the House Committee on Labor on May 21, 1935 (Rept. No. 972), thereafter recommitted, and subsequently reported with further amendments on June 10, 1935 (Rept. No. 1147). The bill was extensively debated on the House floor and passed with amendments on June 19, 1935, without a record vote (79 Cong. Rec. 10057–10092, 10094–10111). After conference, the bill was approved by both houses on June 27, 1935 (79 Cong. Rec. 10668, 10704–10705; Conference Report No. 1371), and signed by President Roosevelt on July 5, 1935.[46]

7a and the future, by Lloyd K. Garrison. Survey Graphic. February. 53–57+.

American labor movement since the war, by David J. Saposs. Quarterly Journal of Economics. February. 49: 236–54.

Government and collective bargaining, by Sumner H. Slichter. Annals, Amer. Acad. March. 178: 107–22.

Labor organizing by the Congress and lawmaking by the Board, by R. L. Lund. Annals, Amer. Acad. March. 178: 95–106.

What labor demands of government, by Emil Rieve. Annals, Amer. Acad. March. 178: 123–8.

A national labor law. Nation. March 6. 140: 265.

New techniques in labor settlements, by Lloyd K. Garrison. Survey Graphic. April. 24: 159–64+.

Employee elections conducted by National Labor Relations Board. July 10, 1934–January 9, 1935, by George Wheeler. Monthly Labor Review. May. 1149–54.

American Federation of Labor and the N. I. R. A., by David A. McCabe. Annals, Amer. Acad. 179: 144–51.

Troubled path of 7 (a), by Paul H. Hayward. Nation's Business. June. p. 31.

Wagner labor disputes bill, by Joel Seidman. Nation. June 26.

Can labor enforce the Wagner bill. Nation. 141: 32.

New national labor law, by Leo Wolman. Review of Reviews. September. v. 82, no. 3: 31–33.

Analyses of employee elections, July 10, 1934, to June 16, 1935, by George Wheeler. Monthly Labor Review. October. p. 956–9.
National Labor Relations Board, by J. Warren Madden. American Federationist. November. v. 42, no. 11, p. 1180–86.
National Labor Relations Act, by Lloyd K. Garrison. Survey Graphic, December 24: 596–8+
Fifty-eight lawyers report, by Thomas Reed Powell. New Republic. 85: 119–21.

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An enforceable right, by J. Warren Madden. American Federationist. January. v. 43, no. 1, p. 24–30.
The National Labor Relations Act and the courts, by Charlton Ogburn. Workers education. January. v. 13, no. 1.
National Labor Boards, by Lloyd K. Garrison. Annals, Amer. Acad. March 184: 138–46.
The economic background of the National Labor Relations Act, by Samuel M. Levin. Workers Education. April. v. 13, no. 2.
The National Labor Relations Board, by Towne J. Nylander. Workers Education. April. v. 13, no. 2.
Some legal aspects of the Wagner-Connery Act, by Wayne L. Morse. Workers Education. April. v. 13, no. 2.
Will unionism be compulsory, by Leo Wolman. Review of Reviews. May. v. 93, no. 5: 55–6+.
Jurisdictional disputes and labor boards, by Joel Seidman. American Socialist Monthly. July. 5: 21–5.
National Labor Relations Act, by Lois McDonald. American Economic Review. September. v. 26: 412–67.
Labor and the government, by Sumner H. Slichter. Yale Review. December. v. 25: 258–74.
NLRB, industry's new dictator, by U. V. Wilcox. American Mercury. December 39: 431–40.

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Activities of the National Labor Relations Board. Monthly Labor Review. March 44: 610–13.
Principles established by the National Labor Relations Board. American Federationist. April–May. v. 44, no. 4–5.
Aliquippa celebrates, by Rose Stein. Nation. April 24. 144: 466.
Wagner Labor Board decision. American Federationist. May. v. 44, no. 5. p. 465–67.
What workers and employers should know about the National Labor Relations Act, by Edwin S. Smith. Labor Information Bulletin. June.
Labor relations in industry: Wagner Labor Act, by Edward McGrady. Nation's Business. June. 25: 53–4.
Relations with employees; Chamber of Commerce round table. Nation's Business. June. 25: 50–2.
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Collective bargaining under the Wagner Labor Act, by E. C. Robbins. Harvard Business Review. Summer issue. v. 15, no. 4.
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The attack on the labor board. Nation. September 11. 145: 252–3.
Labor's green light; Wagner's Labor Relations Act. American Mercury. September 124: 16–17+.
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[45] First annual report of the National Labor Relations Board, p. 7.
[46] Ibid., p. 9.

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